

[2021] PBRA 68

Application for Reconsideration by Ciantar

Application

1. This is an application by Ciantar (the Applicant) for reconsideration of a decision of a decision by the Parole Board under Rule 25(1) of the Parole Board Rules 2019 (the 2019 Rules) that the Applicant was unsuitable for release (the Decision). The letter by which the Decision was communicated is dated 12 April 2021 (the Decision Letter).
2. I have considered the application on the papers comprising: a dossier of 621 numbered pages including the Decision Letter, and written submissions by the Applicant's solicitors dated 6 May 2021 in which reconsideration is requested.

Background

3. In July 2004 the Applicant was sentenced to an indeterminate (Life) sentence of imprisonment, with a minimum tariff that expired in July 2018. The Applicant was sentenced after his conviction of murder. The Applicant was aged 34 when he received the sentence in July 2004, and he is now aged 50.

Current parole review

4. The Decision was made on the Secretary of State's referral of the Applicant's case to the Parole Board to consider whether or not it would be appropriate to direct the Applicant's release, and if not to advise on his suitability for open conditions. The referral was the first such referral of the Applicant's case to the Board in relation to that sentence.
5. The Decision was made by a panel of the Board that considered the Applicant's case at an oral hearing in April 2021 (the Panel). The Panel was comprised of two Independent Members of the Board and a Psychologist Member. The hearing was conducted remotely by an internet video link, due to Covid-19 restrictions in place at the time.

Application and response

6. The 6 May 2021 written submissions assert that the Decision is marred by irrationality and procedural unfairness and request an order for reconsideration.
7. By an email dated 17 May 2021, the Public Protection Casework Section notified the Board that The Secretary of State offered no representations in response to the Applicant's reconsideration application.



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The Relevant Law

8. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.

Irrationality

9. In **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)**, the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said at para. 116,

"the issue is whether the release decision was so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

10. This test was set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374**. The Divisional Court in DSD went on to indicate that in deciding whether a decision of the Parole Board was irrational, due deference had to be given to the expertise of the Parole Board in making decisions relating to parole. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing 'irrationality'. The fact that Rule 28 contains the same adjective as is used in judicial review shows that the same test is to be applied.
11. The application of this test has been confirmed in previous decisions on applications for reconsideration under Rule 28: **Preston [2019] PBRA 1** and others.

Procedural unfairness

12. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result.

Discussion

13. The Applicant's case is that there was irrationality and procedural unfairness in the Panel's consideration of the Applicant's suitability for a move to open conditions.
14. However, reconsideration under rule 28 of the 2019 Rules applies only to decisions made by the Board under rule 19(1)(a) or (b), 21(7) or 25(1) of those Rules, which are decisions on suitability for release. Recommendations as to suitability for a move to open conditions are outside of the scope of rule 28, so reconsideration could not be directed on the grounds that the Board has erred in its consideration of a request by the Secretary of State to advise on that matter. See also **Barclay [2019] PBRA 6**.

Decision

15. The application for reconsideration is, accordingly, refused.

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