

[2021] PBRA 76

## Application for Reconsideration by Cummings

### Application

1. This is an application by Cummings (the Applicant) for reconsideration 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 27 April 2021 (the Decision Letter).
2. I have considered the application on the papers comprising:
  - a) A dossier of 527 numbered pages including the Decision Letter; and
  - b) Written submissions by the Applicant's solicitors dated 18 May 2021 in which reconsideration is requested.

### Background

3. In March 2007 the Applicant was sentenced to an indeterminate sentence of imprisonment for public protection, with a minimum tariff that expired in June 2008. The Applicant was sentenced after his conviction of an offence of robbery. The Applicant was aged 25 when he received the sentence and he is now aged 39.
4. The Applicant was released during the indeterminate sentence in October 2013 on an indefinite licence that was revoked in December 2019, leading to his return to prison soon after. The details of the recall that are stated in the case summary are that the Applicant had displayed poor behaviour relating to drugs, compliance and relationships.

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### Current parole review

5. 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.
6. 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 Judicial member of the Board.

### Application and response

7. The 18 May 2021 written submissions assert that the Decision is marred by irrationality.

8. By an email dated 28 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.

### The Relevant Law

9. 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.

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#### Irrationality

10. 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,

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*"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."*

11. 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.

12. 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

13. 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.

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### Discussion

14. The 18 May 2021 written submissions note that the Decision is based on the Applicant's 'risk in relationships' being considered to be high. The submissions note that that assessment is in turn based on allegations rather than convictions for offences relating to intimate partner violence against his former intimate partner. The submissions do not overtly seek to challenge the basis of that element of the risk assessment. Certainly, there is no reasoned challenge to the assessment within the submissions and there is no obvious irrationality that I can discern in relation to the assessment.

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15. It is essentially asserted in the submissions that the weight of the evidence was that the Applicant's risk of committing intimate partner violence could be managed by the proposed risk management plan, which was focused on that risk and included external controls to monitor the Applicant's movements using the Global Positioning System

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(GPS) and his exclusion from the area where his former intimate partner was living. It is also asserted that the evidence indicated that the Applicant was prepared to disclose relationships and that he had repaired the difficulties in his relationships with professionals since recall.

16. It is stated in the submissions that all of the three professional witnesses considered the Applicant's risk was manageable under the proposed risk management plan and that the two of those witnesses who felt able to offer recommendations to the Panel had recommended the Applicant's release. It is stated that the third witness, a psychologist, had not made a definitive recommendation but considered that there would be warning signs for risks increasing and that, should the intimate partner relationship not resume, that it would not be necessary to complete an identified moderate intensity cognitive-behavioural group work intervention targeting intimate partner violence 'imminently'.

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17. It is also stated in the submissions that the Panel considered that the Applicant's risks would be manageable in the short term but were anxious that the relationship with his former intimate partner would resume and be conducted in secret.

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18. It is not in my consideration possible to describe the release decision as irrational.

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19. The Panel was persuaded by the evidence of the psychologist witness that the identified moderate intensity cognitive-behavioural group work intervention that was proposed as part of the plan to manage the Applicant's risk in the community would not address the Applicant's attitudes regarding intimate relationships. The Panel considered that it was necessary to address those attitudes for the management of risk in the longer term, based on the evidence of the psychologist witness and the Applicant's oral evidence in which, in the Panel's assessment, he showed little understanding of problematic aspects of his behaviour and minimised its impact on his partner and children. The Panel was persuaded by the evidence of the psychologist witness that that unmet need could be effectively targeted by a higher intensity intervention that was not available in the community and it was not persuaded that the treatment that was proposed in the community would be adequate.

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20. The Panel was concerned that the Applicant might resume a relationship with his former intimate partner in secret or that tensions might arise in his relationship with her as parents of their three children. However, the Panel considered that the Applicant would also pose a risk to a new intimate partner and the Decision Letter reveals that all three professional witnesses harboured doubts about the Applicant's openness and honesty. The Panel noted that the proposed GPS monitoring would be for six months only.

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21. It is important that a panel should explain clearly a decision that is contrary to the opinions and recommendations of professional witnesses. That is especially so in the case of unanimity among professional witnesses: **R (Wells) v Parole Board 2019 EWHC 2710**. However, the Parole Board is not obliged to adopt the opinions and recommendations of professional witnesses and it is a panel's responsibility to make its own risk assessment and to evaluate the likely effectiveness of any risk management plan proposed on the totality of the evidence, which it may be expected to perform with the benefit of its expertise in the realm of risk assessment; see **DSD**, for example. In the Applicant's case, I consider the reasons stated within the Decision Letter to be adequate.

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## Decision

22.The Decision is not marred by irrationality or procedural unfairness. The application for reconsideration is, accordingly, refused.

**Timothy Lawrence**  
**14 June 2021**