

[2022] PBRA 102

Application for Reconsideration by Roles

Application

1. This is an application by Roles (the Applicant) for reconsideration of a decision by the Parole Board under Rule 25 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 30 June 2022.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the Parole Board Rules) provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) either on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair.
3. I have considered the application on the papers. These are:
 - a. Dossier of 600 numbered pages; and
 - b. Written representations for the applicant by the legal representative dated 20 July 2022.

Background

4. The Applicant is serving a sentence of imprisonment with a custodial term of eight years and an additional licence period of one year for the attempted rape of a five-year old child, which is an offence specified in Schedule 3 of the Sexual Offences Act 2003. His case was referred to the Parole Board to consider whether or not it would be appropriate to direct his release. The review was directed to an oral hearing that was held on 10 May 2022 before a three-member panel that included a specialist psychologist member.

Request for Reconsideration

5. The application for reconsideration is dated 20 July 2022.
6. The grounds for seeking a reconsideration are that the Decision is irrational or procedurally unfair.



The Relevant Law

7. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined.

Parole Board Rules 2019 (as amended)

8. Under Rule 28(1) of the Parole Board Rules 2019 the only types of decisions which are eligible for reconsideration are those concerning whether the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is made by a paper panel (Rule 19(1)(a) or (b)) or by an oral hearing panel after an oral hearing (Rule 25(1)) or by an oral hearing panel which makes the decision on the papers (Rule 21(7)).
9. Rule 28(2) of the Parole Board Rules provides the sentence types which are eligible for reconsideration. These are indeterminate sentences (rule 28(2)(a)), extended sentences (rule 28(2)(b)), certain types of determinate sentence subject to initial release by the Parole Board (rule 28(2)(c)) and serious terrorism sentences (rule 28(2)(d)).

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,

"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.

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. These issues (which focus on how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.
13. In summary an Applicant seeking to complain of procedural unfairness under Rule 28 must satisfy me that either:

- (a) express procedures laid down by law were not followed in the making of the relevant decision;
- (b) they were not given a fair hearing;
- (c) they were not properly informed of the case against them;
- (d) they were prevented from putting their case properly; and/or
- (e) the panel was not impartial.

14. The overriding objective is to ensure that the Applicant's case was dealt with justly.

The reply on behalf of the Secretary of State

15. On 2 August 2022 the Secretary of State confirmed that it offered no representations in response to the Applicant's reconsideration application.

Reasons

16. The Applicant has submitted that the decision not to direct release was irrational because the Panel failed to provide adequate reasons for its decision.

17. The Applicant notes that the Panel stated that it was persuaded that there was outstanding risk reduction work around self-management and healthy relationships work required in reducing risk to manageable level. However, the Applicant submits that that is not sufficient reason for the Decision, because the Panel failed to state whether this was "core risk reduction work" that needed to be completed before he could be safely released or whether such work could be undertaken in the community. The Applicant notes that both of the psychologist witnesses were of the view that this work could be completed safely in the community and the Applicant asserts that, if the work was deemed to be core risk reduction work, the Panel should have identified it as such and provided adequate reasons for that view. However, there is no clear or agreed definition of whether offending behaviour work is "core" and the designation or otherwise of offending behaviour work as such is not an essential element of the statutory test for release.

18. The Applicant notes that the Panel's reasons also included the following:

"After careful consideration and taking into account the risk reduction work that is still recommended, the Panel were not confident that currently [the Applicant] would fully comply with his licence and positively engage with the future work required to reduce his risk in the community".

19. The Applicant submits that those reasons imply that the recommended risk reduction work could be undertaken in the community but for the fact that the Panel were not confident he would comply with his licence conditions. I agree that that is a correct reading of the Panel's reasoning, which I consider is a perfectly proper approach to the statutory test for release.

20. The Applicant further submits that the decision was procedurally unfair in that the Panel applied the wrong test when assessing the Applicant's suitability for release on licence, namely that he would not fully comply with his licence and/or engage with further work. That is in reality another challenge to the rationality of the Panel's

reasoning, which again was entirely proper in its consideration of whether the Applicant's risk to the public was manageable in the community under the proposed Risk Management Plan, in spite of its finding that there was outstanding offending behaviour work that he needed to complete for the protection of the public.

Decision

21. For the reasons I have given, I do not consider that the decision was irrational or procedurally unfair and the application for reconsideration is accordingly refused.

Timothy Lawrence
5 August 2022