

[2022] PBRA 116

Application for Reconsideration by Seaward

Application

1. This is an Application by Seaward (the Applicant) for reconsideration of a decision by a Panel of the Parole Board dated 15 July 2022 not to direct his release. The decision was made following an oral hearing on 5 May 2022. This was the second review conducted as a consequence of the revocation of Mr Seaward's life licence and his recall to custody.
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)) on the basis that the decision either (a) contains an error of law (b) is irrational or (c) is procedurally unfair.
3. I have considered the Application on the papers. These are: the Application for Reconsideration with representations; the Decision document; the Case Dossier; the email on behalf of the Secretary of State confirming that no representations were made on his behalf.

Background

4. On 28 April 2003, having been convicted of false imprisonment, the Applicant was sentenced to imprisonment for life. The minimum custodial term was set at 3½ years and his tariff expired on 28 October 2006. A concurrent term of 7 years' imprisonment was imposed for the associated offence of indecent assault on a female over the age of 16. That sentence expired in April 2010. The Applicant had pleaded guilty to both offences.
5. The Applicant was 51 at the time of the index offences which were committed on 18 August 2002. The victim was a young woman who had come into his shop as a customer. No one else was there and the Applicant was sexually attracted to her. He locked the shutters and persuaded her to go to the back of the shop where he forced her into a small room or cupboard which he locked for a short while. He then instructed her, under threat, to remove her clothing. When she was naked he penetrated her digitally, and made her perform oral sex on him.
6. The Applicant had many previous convictions dating from 1970. In March 1973, aged 22, he was sentenced to 7 years' imprisonment for burglary with intent to rape and indecent assault on a female over 16. He forced his way into a young woman's home



and forced her up to her bedroom at knifepoint. When she told him she was menstruating, he forced his penis into her mouth. In June 1989 aged 39 he was sentenced to a total of 4 years' imprisonment for abducting a 14-year-old girl by force, indecently assaulting her and assaulting her occasioning actual bodily harm. When she came into his shop, he dragged her upstairs, grabbed her around the throat and punched her in the face several times before urinating over her hair. He made an unsuccessful attempt to force her to give him oral sex.

7. The Applicant had other convictions for common assault, unlawful wounding, burglary, theft and driving whilst disqualified and when over the prescribed alcohol limit. Some of his offences were committed when he was on bail.
8. The judge who sentenced the Applicant to life imprisonment referred to the psychiatric report which described his particular deviation of enjoying practising his sexual fantasies on non-consenting women. He concluded that at that time he presented a very real danger to young women.
9. The Parole Board Panel which conducted the Applicant's 5th post tariff review on 31 January 2018 decided to direct his release. Following the decision letter dated 2 February 2018, he was released on life licence on 28 April 2018. He appeared to be making good progress in the community but concerns arose after he provided responses to questions during polygraph sessions.
10. Further enquiries revealed that he had befriended an elderly man who lived with his daughter and seven year old granddaughter. The Applicant had visited him at home when the grandchild was present and had also been with both of them in a car journey to a bank. As the grandfather was visually impaired it was concluded that there had been unsupervised contact by the Applicant with a child under 16.
11. The Applicant was said to have travelled to Cornwall twice to visit his boat and that on both occasions he had slept overnight in his campervan. When challenged, he explained that he thought permission was needed only if he were away for three nights or more.
12. Thirdly, the Applicant disclosed that he had deleted information from his phone and that he had had contact with the sister of a convicted sex offender. Although warned about this, he had continued to contact her.
13. The Applicant's licence was revoked by the Secretary of State on 10 September 2018 for breaching the following conditions: (1) to be of good behaviour and not behave in a way which undermines the purpose of the licence period; (6) to reside permanently at an address approved by the supervising officer and obtain the approval of the supervising officer for any stay of one or more nights at a different address; (11) not to have unsupervised contact with any children under the age of 16 without prior approval of the supervising officer.
14. The concerns expressed in the licence revocation notice were *"You have been in contact with a 7 year old child with a blind grandfather living in your neighbourhood. You travelled on two occasions without prior approval from probation and probation*



are concerned that you might be showing a grooming behaviour of a young vulnerable child whose caregiver is also a blind person.”

15. Contact with the sister of a convicted sex offender was not given as a reason to revoke the licence.

Request for Reconsideration

16. The Application for Reconsideration is dated 28 July 2022 and contains detailed representations by the Applicant.

17. The grounds for seeking reconsideration are that the decision not to grant release was irrational on the basis that there was no evidence that he had specifically breached his licence conditions

and that the assessment of his risk was based on the historic report of a discredited psychiatrist. He further submits that the Panel failed to take into account the fact that he was seriously ill at the time of the recall .

18. It is not submitted that the Decision contained an error of law or that it was procedurally unfair.

19. It has been confirmed on the Secretary of State's behalf that he does not wish to make any representations in response to the Application.

Current parole review

20. The Applicant's case was referred to the Parole Board by the Secretary of State to decide whether to direct his release. The terms of reference included an invitation to advise, in the event of release not being directed, whether the Applicant should be transferred to open conditions. Such advice is not within the remit of the Reconsideration Application.

21. At the post recall review hearing on 5 May 2022, a Panel of the Board (the Panel) considered a dossier running to 457 pages and took oral evidence from the Applicant's Prison Offender Manager, his Community Offender Manager, a Prison Psychologist, an independent Psychologist instructed on behalf of the Applicant and from the Applicant himself. All four professional witnesses supported the Applicant's re-release. Written closing submissions were provided on 6 May 2022.

22. After the hearing, the Panel decided to adjourn the case on the basis that this was a complex case and that it could not complete its risk assessment without further information being provided. Directions were made for a report by the COM covering 14 identified issues, a clinical healthcare report, a report from the Offender Personality Disorder Pathway Manager, a security report and legal representations. The case was to be reviewed on 10 June 2022. The directed reports were duly provided. The COM report was very detailed and ran to 17 pages.



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23. On 28 June 2022, the Panel Chair issued a further adjournment notice, described within it as a technical adjournment, for personal representations from the Applicant to be provided by the end of business on 1 July 2022. The notice stated that the Panel's decision would be provided within 14 days of that date.
24. The Applicant's representations were duly provided, the oral hearing was not resumed, and the Panel's Decision was issued on 15 July 2022.
25. According to the Decision document, having considered the reports before it, the oral evidence, updated reports, legal and personal submissions, the Panel found that the recall had been appropriate and that its circumstances evidenced potential offence paralleling behaviour. It concluded that there was core risk reduction work which should be undertaken in closed conditions. The Panel could not be sure that work of sufficient intensity was available in the community or that the Applicant would be able/motivated to engage with it. Accordingly, the Panel did not direct the Applicant's release.

The Relevant Law

26. The Decision Letter correctly sets out the test for release.

Parole Board Rules 2019

27. Under Rule 28(1) of the Parole Board Rules 2019, the only types of decision 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)).
28. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**.

Illegality

29. An administrative decision is unlawful under the broad heading of illegality if the panel:
- (a) misinterprets a legal instrument relevant to the function being performed;
 - (b) has no legal authority to make the decision;
 - (c) fails to fulfil a legal duty;
 - (d) exercises its discretionary power for an extraneous purpose;
 - (e) takes into account irrelevant considerations or fails to take account of relevant considerations and/or:



(f) improperly delegates decision-making power.

30. The task in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument confirming the duty or power upon the panel. The instrument will normally be the Parole Board Rules, but it may also be an enunciated policy, or some other common law power.

31. The issue to be considered under this ground would be whether there is evidence that the correct legal process was not followed either in the application of the Parole Board Rules or in the fair conduct of the hearing.

Irrationality

32. 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.”

33. 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 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 uses the same word as is used in judicial review proceedings demonstrates that the same test is to be applied.

34. The application of this test has been confirmed in decisions on applications for reconsideration under Rule 28: **Preston [2019] PBRA 1** and others.

35. The importance of giving adequate reasons in Parole Board decisions has been made clear in two High Court cases. In **Wells [2019] EWHC 2710 (Admin)** it was suggested that, rather than ask was the decision being considered irrational, the better approach is to test the decision maker’s ultimate conclusions against all the evidence received and ask whether the conclusions reached can be safely justified on the basis of that evidence while giving due deference to the panel’s experience and expertise.

36. Panels of the Board are wholly independent and are not obliged to adopt the opinions or recommendations of professional witnesses. A panel’s duty is to make its own risk assessment and to evaluate the likely effectiveness of any proposed risk management plan. That will require a panel to test and assess the evidence and decide what evidence it accepts and what evidence it rejects. Once that stage has been reached, following the guidance provided by cases such as **Wells** and also **Stokes [2020] EWHC 1885 (Admin)**, a panel should explain in its reasons whether or not it is going to follow or depart from the recommendations of professional witnesses.



37. It follows that, in reaching a decision about irrationality on this application, I am required to decide first, whether I am satisfied that the conclusions reached by the panel were justified by the evidence and second, whether I am satisfied that the conclusions are adequately and sufficiently explained.

Procedural unfairness.

38. 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 from the issue of irrationality which focuses on the actual decision.

39. 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.

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

40. In considering the amount of detail needed to be included in a decision letter, there has been guidance from the High Court, in **Oyston [2000] PLR 45**. At paragraph 47 Lord Bingham said "*It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to require elaborate or impeccable standards of draftsmanship.*"

Discussion

41. There was no evidence that the Applicant was in the presence of the 7-year-old child at any time when her grandfather was not present. There was an assumption in the revocation reasons that he was blind but the Prison Officer who had been the Applicant's former Offender Supervisor provided a statement dated 25 September 2019 confirming that the Applicant's Offender Manager told him that he was not blind but partially blind. Although the licence condition does not include any requirement relating to the physical attributes of the person supervising, it is implicit that the supervision should be adequate in the sense of being able to see what the Applicant did or did not do.

42. The Applicant accepted that he had not obtained the permission of his supervising officer to stay one or more nights at an address other than that which had been approved by his supervising officer. He thought he needed permission to reside elsewhere only if he were staying away for three nights or more. The condition refers explicitly to "a stay of one or more nights at a different address." The issue was whether or not, by staying in a camper van or his boat (which the Applicant denies) or sleeping overnight in his car away from his approved address (which he accepts), the Applicant



breached the licence condition to reside permanently at an address approved by his supervising officer. Common sense dictates that it would have been a breach.

43. There was no evidence that the Applicant breached the licence condition not to have contact with a convicted sex offender. The evidence was that he had been in contact with the sister of such an offender and it was not suggested that she had been used as an intermediary. In any event the licence condition did not define such contact as including indirect contact and the reasons for recall did not refer to breaching that condition.
44. There was no dispute that the Applicant had evidenced positive custodial behaviour since his recall and held Enhanced Status under the Incentives and Earned Privileges Scheme. He is in poor physical health, having been diagnosed with cancer, and has a number of other ailments. His engagement in programmes intended to address his core risks had been compromised in the past by his continued denial of the sexual offences of which he had been convicted. Denial is not in itself a bar to developing insight but it does have the potential to compromise it. For example, the Applicant deselected himself from the Core Sex Offender Treatment Programme in 2006 and he has more recently refused to undertake the Kaizen Programme even though an admission of guilt by a participant is not a requirement.
45. At the hearing, the COM expressed the hope that the proposed Risk Management Plan, whilst heavily reliant on external controls, would be sufficient to manage the Applicant's risks. He stressed the fact that the Applicant had not committed any further offences whilst on licence.
46. According to the latest OASys (offender assessment system) Report, the Applicant's OGRS3 (offender group reconviction scale version 3) score placed him in the category of offenders with a low static risk of re-offending. The probability of both violent and non-violent re-offending was assessed as low. The risk of serious harm to the public, to any known adult and to children in the event of any re-offending in the community was assessed as high. He was assessed under OSP/C (OASys sexual reoffending predictor) as posing a high risk of contact sexual offending. At the hearing the Prison Psychologist confirmed her assessment that the Applicant posed a moderate risk of sexual re-offending, (in contrast to the view of the psychologist in February 2020 that it was high). In the Independent Psychologist's view the risk was low and approaching zero because of his age.
47. In its Decision, the Panel concluded that the risk assessments were appropriate. However, it rejected the opinion of the report writers that the Applicant's risk was not imminent. Notwithstanding there had been no evidence of actual offence paralleling behaviour since recall it was concerned by the acts of non-compliance which had the potential to escalate risk. Having heard his evidence the Panel concluded that he lacked credibility and it was concerned that he did not consider himself to be a risk to others.
48. The Panel took the view that the risk management plan was robust. It included provision for the Applicant to be referred for the Horizon Programme. The Applicant had indicated that he would consider completing this in the community although he would prefer one to one work.



49. The Panel concluded that, for the Risk Management Plan to be effective in managing the Applicant's risk, it would be dependent on his willingness to engage as directed and work openly and honestly with professionals. It had reservations about his willingness to do so. It also concluded that because he remained untreated he had not had the opportunity to develop insight into his sexual offending or to develop internal controls.
50. The Decision document provides a detailed analysis of the Applicant's offending behaviour, a review of his risk factors and an assessment of current risk after consideration of the material available to the Panel by way of reports and in oral evidence at the Hearing. The Panel expressly had regard to the opinions expressed by the professional witnesses, but it was entitled as an independent judicial body to reach its own conclusions.
51. There is nothing in the Decision reasons to indicate that the Panel gave any weight to the opinions of the psychiatrist which had been referred to by the Applicant as "bogus". Nor did any of the psychologist reports prepared since recall for the purpose of the current review place any reliance on them
52. Denial is not in itself a bar to reducing risk. However, the extent of the Applicant's serious sexual offending and his refusal to accept it limits the extent and value of his insight which is an important factor. The Panel concluded that, until he was able to embark upon work which would include acceptance of serial offending against young children, his risk would remain impossible to measure. It concluded that despite the robust risk management plan proposed and the confidence of the POM and COM the Applicant's risk remained too high for him to be safely managed in the community.

Decision

53. The Panel clearly took into account all the evidence it read and heard and the written representations submitted to it.
54. For the reasons set out in paragraphs 33 and 34, the Panel was properly able to conclude that the Applicant's recall was justified.
55. There was sufficient evidence for the Panel to reach the conclusion that the Applicant lacks sufficient insight and does not yet have sufficient internal controls for his safe management in the community.
56. Applying the test as set out in case law, and on the basis of the evidence before it, I do not find that the Panel's decision was irrational. A panel is not bound to follow the recommendation of professional witnesses. It adopted a careful approach to the issue of risk, explained why it disagreed with them and reached its own decision on a rational basis. It is clear from the Decision document that it made an objective assessment of risk and applied the correct legal test in a fair and objective manner.
57. The Application for Reconsideration is accordingly refused.

HH Judge Graham White
31 August 2022



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