

Application for Reconsideration by Osbourne

Application

1. This is an application by Osbourne ("the Applicant") for reconsideration of a decision of the Parole Board dated 8 November 2022 following an oral hearing on 10 August 2022. The panel declined to release him.
2. Rule 28(1) of the Parole Board Rules 2019 (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 (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: (1) the dossier, now running to some 777 pages including the decision letter; (2) the application for reconsideration dated 28 November 2022; and (3) an email dated 31 October 2022 from the Applicant's legal representative and written closing submissions.

Background

4. On 17 January 2007 the Applicant was sentenced to imprisonment for public protection ("IPP") with a minimum term of 2 years 3 months less time on remand. This tariff period expired on 4 February 2009. The Applicant has, however, never been released. He has remained in closed conditions apart from a brief period of 4 months in open conditions during 2015. He is now 37 years of age.
5. The Applicant's IPP sentence was imposed for an offence of arson reckless as to whether life was endangered. He was in approved premises ("AP") by reason of an existing sentence. He piled his clothes behind the door of his room, set fire to them and left the premises. It is recorded that the fire caused some £60,000 damage to the premises and required the evacuation of residents. At the time the Applicant was 21 years of age. His previous convictions, mostly in 2006, included assault occasioning actual bodily harm, criminal damage, and battery. In 2018, during the course of his IPP sentence, he was convicted of an offence of exposure to a female prison officer and sentenced to 6 months imprisonment.

Request for Reconsideration

6. The application for reconsideration is dated 28 November 2022. The grounds relied on are irrationality and procedural unfairness. The grounds relied on overlap; the points made can be summarised as follows.

- a. The panel placed too much weight on concerns about the Applicant's mental health. There were no concerns about his mental health; he



no longer required in-patient hospital treatment under mental health legislation; no issues in respect of his mental wellbeing were reported in the dossier or at the oral hearing. Any concerns were not relevant to risk.

- b. The panel placed weight on the fact that the Applicant had been in custody since the age of 21. This was not a determining factor in managing his risk and it was unfair to place reliance on it, since it put him in a position of impasse, with no hope for release.
 - c. The panel regarded the risk management plan (which included a period of 8 weeks in approved premises ("AP")) as insufficient. It was wrong to do so; the more robust plan which it wished to see would only manage his risk for a further period of 4 weeks in the community.
 - d. Expert witnesses indicated that the Applicant's risk of serious harm was moderate; on that basis the risk of serious harm could be managed in the community. The panel gave no weight to the external controls within the plan, which would manage risk.
 - e. The decision was biased and heavily reliant upon the evidence given by the psychological witnesses, notwithstanding that the Parole Board is said to be independent.
 - f. The panel gave no weight to the following factors: the Applicant's evidence; his insight into his risk; his willingness to engage with an Intensive Intervention and Risk Management service ("IIRMS"); the closing submissions; and the fact that there have been no offence paralleling behaviour or traits.
 - g. Taking all these matters into consideration the panel did not provide the Applicant with a fair review and was not impartial in its decision making.
7. I have considered all these grounds as potentially relevant to both procedural unfairness and irrationality; and I have considered them individually and cumulatively.

Current parole review

8. The Applicant's previous review concluded with a decision dated 12 August 2018 declining to release him. The decision records various instances where the Applicant had not co-operated with psychological assessments; and noted suggestions that he might suffer from paranoid illness or from Autistic Spectrum Disorder ("ASD"). It found that there was little evidence that he had insight into his behaviour or risks and was concerned that his lack of insight might be symptomatic of a disorder. It declined to release him and suggested that an assessment of suitability for hospital treatment was essential.



9. The current review was instituted in December 2018. Directions were again made for psychological and psychiatric assessment. Assessments made in 2019, with which the Applicant did not fully co-operate, indicated that he should be transferred to hospital for assessment; but the Applicant did not agree to this course. On 24 March 2020 a member, noting that an apparent impasse had been reached, directed the matter to oral hearing. Inevitably there was then delay by reason of the Covid pandemic.
10. In 2021 further psychological reports were prepared on the Applicant by the witnesses who were eventually to attend his hearing. Ms A, a prison psychologist, prepared a report dated 7 April 2021. Ms B, an independent psychologist instructed by the Applicant's solicitors, prepared a report dated 15 June 2021. They then prepared a joint report.
11. The following key points emerge from the joint report. The psychologists agreed that there were recent problems with insight and partial problems with symptoms of major mental illness. They agreed that the Applicant continued to display symptoms associated with post-traumatic stress disorder, which could make relational work challenging for him, particularly because of his suspiciousness and paranoia which could be a barrier to gaining trusting relationships. They agreed that further work was required with him, and that he might find it challenging to engage with community recommendations. They agreed that there had been some positive changes – he had shown increased stability in his behaviour. They disagreed, however, as to the way forward. Ms A proposed a period of further testing in open conditions. Ms B considered that he could be released if her monitoring and treatment recommendations could be provided while he was living in supported accommodation which offered a high level of supervision and support.
12. As noted above, the oral hearing took place on 10 August 2022. The panel consisted of a psychologist chair, a second psychologist and an independent member. The panel heard from the Prison Offender Manager ("the POM"), the Community Offender Manager ("the COM"), the previous COM, the Applicant and the two psychologists. The risk management plan offered to the panel was centred upon a maximum of 8 weeks in a standard AP. Neither psychologist considered this a sufficient risk management plan: Ms B withdrew her recommendation for release for this reason. The panel adjourned and gave directions to the COM in the hope of obtaining a better risk management plan.
13. On 30 September 2022 the COM provided a report setting out the result of her enquiries. The AP which had been proposed for the Applicant confirmed that it could not provide a longer placement. Other APs which had been considered at the oral hearing were also unable to accept referrals. The IIRMS for the Applicant's area would be able to accept a referral, but there was a waiting list; the estimated waiting time at present was 6 months. Moreover, the IIRMS would begin work while the Applicant was in custody; the work done in custody served as a formal assessment and relation-building period determining suitability for future involvement on licence. In the result, therefore, the only risk management plan available to the panel was



residence in a standard approved premises for 8 weeks without a clear move on plan.

14. Following receipt of this report the Applicant's solicitors sent an email confirming that they would ask for a decision on the papers and would lodge written closing submissions. Written closing submissions followed.
15. It was against this background that the panel delivered its decision dated 8 November 2022 declining release. It is sufficient to quote two paragraphs from this decision.
16. As to risk, the panel said (within paragraph 2.6) -

"Risk of serious recidivism is low and risk of contact sexual offending is medium. Risk of serious harm is assessed as high to the public and a known adult and medium to staff in the community. This risk assessment reflects the lack of therapeutic work addressing underlying problems eg trauma, [the Applicant's] reluctance to discuss his sexual risks, his reluctance to engage with a full assessment of his mental health needs and the lack of longer term stable and supportive accommodation. The panel agreed with the COM's risk assessment which was supported by both psychologists in their evidence."

17. As to the risk management plan, the panel said (within paragraph 4.2) -

"The panel agreed with the professional witnesses that this risk management plan is insufficient to manage [the Applicant's] risks of serious harm to others. He has been in custody since he was 21 years old and had very limited experience of living independently before that. There remain concerns about his mental health which has not been fully assessed and risk appears to be at least partly underpinned by traumatic experiences when he was an adolescent, which he is reluctant to address at present. Although he cannot be compelled to engage in trauma work and it may be more appropriate to be undertaken in the community, he shows limited insight into his difficulties and the panel consider that he requires a great deal of support continuing for a lengthy period if he to successfully rehabilitate into the community."

18. The panel also declined to recommend open conditions for the Applicant. There can be no application for reconsideration of such a decision; but I note that the Applicant had been adamant that he would not agree to go to open conditions. The panel thought that regular meetings between the COM and the Applicant, together with the support of IIRMS, might offer a more constructive path to release.

The relevant law

19. In its decision letter the panel correctly set out the test for release: the Parole Board will direct release if it is no longer necessary for the protection



of the public that the prisoner be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.

20. The Applicant was serving an IPP sentence. The panel's decision as to release is eligible for the reconsideration procedure: see rule 28(2)(a) of the Parole Board Rules 2019. As noted above, the panel's decision as to a recommendation for open conditions is not eligible for the reconsideration process.
21. The concept of irrationality is derived from public law. The test is whether the 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.*" See **CCSU v Minister for the Civil Service** [1985] AC 374, applied to Parole Board decisions by **R (DSD and others) v the Parole Board** [2018] EWCH 694 (Admin). This is the standard I have applied when considering this application for reconsideration.
22. The concept of procedural fairness is rooted in the common law. A decision will be procedurally unfair if there is some significant procedural impropriety or unfairness resulting in a manifestly unfair or flawed process. The categories of procedural unfairness are not closed; they include cases where laid-down procedures were not followed, or a party was not sufficiently informed of the case they had to meet, or a party was not allowed to put their case properly, or where the hearing was unfair or the panel lacked impartiality.

The reply on behalf of the Secretary of State

23. The Secretary of State has indicated that he does not offer any representations in respect of this application for reconsideration.

Discussion

24. I have reached the conclusion that the decision of the panel was neither irrational nor procedurally unfair. Against the background which I have already set out, I can deal quite briefly with each of the points which I have identified.
25. As to a, I do not think the panel was irrational or unfair in its approach to the psychological evidence. It is true that the Applicant did not display psychotic symptoms and that there was no longer any intention to transfer him to hospital for assessment. But there were continuing concerns as to the Applicant's mental state and he continued to exhibit symptoms of paranoia. These concerns were highly relevant to the question whether he would cooperate with any risk management plan and whether he had insight into his own risks. Given the seriousness of the index offence and the potential for widespread harm if it were repeated, the panel was fully entitled to attach significance to the opinion of psychologists.

26. As to b, the panel did not regard the time the Applicant had spent in custody as in any way decisive of the question whether his risk could be managed in the community. It was one factor which the panel took into account in determining whether the risk management plan was sufficient to ensure the safety of the public if he was immediately released. This was a rational and fair approach.
27. As to c, the panel was plainly looking for a risk management plan which would manage the Applicant's risk indefinitely: it was looking for a whole range of provision for him, as recommended by the psychologists and the COM. One essential component was a period in AP followed by appropriate moving-on accommodation. The panel was entitled to find that the short period in an AP, which was all that could be found, was not sufficient; and it was entitled to derive support for this view from the psychological witnesses.
28. As to d, I have quoted above the panel's assessment of the risk of serious harm, which it found to be high, in particular to the public. Although the risk of offending was moderate, the danger to the public from further offending like the index offence was plainly very considerable. I do not think the panel's assessment was either irrational or unfair.
29. As to e, whenever the Parole Board (or indeed any court or tribunal) reaches a decision in a case where there are opposing submissions, it will have to weigh up the evidence and arguments and it is likely to have favour one side over the other: that is its job. That is what the panel did here. I see no procedural unfairness in the way the panel approached its task. It was the proper task of the panel to consider and weigh up the psychological evidence.
30. As to f, I see no reason to suppose that the panel left out of account the various matters which are mentioned in the Applicant's submissions. The panel summarised key points in the Applicant's evidence; it expressly found that he "shows limited insight into his difficulties;" it summarised key submissions of the Applicant's representative in paragraph 4.1 of its reasons, including the points that there had been no further offence paralleling behaviour and that the Applicant's behaviour had recently improved. The problem with the IIRMS service was that work had to start while the Applicant was in custody and there was a substantial waiting list in any event; the problem was not that the Applicant would not co-operate.
31. As to g, whether the points relied on are viewed individually or cumulatively, I see no reason to doubt the impartiality of the panel or to conclude that it did not provide the Applicant with a fair review.

Decision

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



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