

**[2022] PBRA 45****Application for Reconsideration by Junior Hassan****Application**

1. This is an application by Junior Hassan (the Applicant) for reconsideration of a decision of an oral hearing dated the 10 March 2022 not to direct release.
2. 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.
3. I have considered the application on the papers. These are the dossier of 399 pages, including the decision letter and the grounds in support of the application.

**Background**

4. On the 27 February 2014, the Applicant was given an extended determinate sentence, comprising a custodial term of 9 years and an extended licence of 4 years for robbery.
5. He and two accomplices carried out a planned robbery of a shopkeeper who was transferring approximately £250,000 from his shop to his home. He was attacked and beaten with bricks, sustaining serious long term injury.
6. The Applicant had a history of acquisitive and violent offending including robbery.
7. He was released on automatic licence on the 11 March 2020.
8. On the 20 August 2020, he was stopped by the police driving a black Audi Q7 with two passengers, both of whom had previous convictions for supplying Class A drugs. 500 grammes of cocaine were found in the car. A bag containing £25,000 and police body armour were found in a VW Golf parked close by and owned by one of the other two men.
9. On the 21 August 2020, the Applicant was recalled to custody. He was subsequently prosecuted for possession with intent to supply Class A drugs but was found not guilty.

**Request for Reconsideration**

10. The application for reconsideration was received on the 25 March 2022.



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11. The grounds for seeking a reconsideration are based on irrationality and procedural unfairness and are as follows:

#### *Irrationality*

- a) The panel failed to give adequate reasons for its conclusions and in particular for disagreeing with the unanimous professional opinion in favour of release and for the recommendations that further risk reduction work was not deemed to be necessary prior to release.
- b) That in evaluating the circumstances of the recall, the panel disregarded the Applicant's account to the panel and placed too little weight on the fact he had been found not guilty.

#### *Procedural unfairness*

- a) There had been a delay between December 2021 and March 2022 in issuing the panel's decision. In those circumstances, the decision would not have been made when the information given at the oral hearing had been fresh in the minds of the decision makers, with the risk that this would impact on the quality of the decision.

### **Current parole review**

12. The Secretary of State's referral is undated but requires the panel to consider the Applicant's suitability for rerelease.

13. On the 14 December 2021, the panel heard evidence from the prison offender manager, the Applicant and the community offender manager.

14. On the 6 January 2022, a Panel Chair Direction was issued stating,

*"The panel chair has been unwell since the oral hearing and unable to complete the decision for this case.*

*She apologises to [the Applicant] for the delay in issuing the decision letter. There will be a short adjournment.*

*[The Applicant] told the panel he has completed the Thinking Skills Programme. The panel would like to see a copy of that report".*

15. On the 8 February 2022 a further Panel Chair Direction was issued stating,

*"The panel chair is unwell and apologises for the delay in issuing this decision letter. There will be a short adjournment".*

16. The decision letter is dated the 10 March 2022.

### **The Relevant Law**

17. The panel correctly sets out in its decision letter the test for release.

*Parole Board Rules 2019*

18.[Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that 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)).

*Irrationality*

19.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."*

20.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.]

21.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*

22.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.

23.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.

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



*Other*

25. 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 prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship."*

**The reply on behalf of the Secretary of State**

26. The Public Protection Casework Section on behalf of the Secretary of State offers no representations in response to the Applicant's reconsideration application.

**Discussion**

27. The Applicant completed the thinking skills programme (TSP) on the 12 September 2014. Since recall, he has done some in cell work. There is no accredited work available at the prison where he is currently confined and he would have to move prison.

28. He is a gym orderly and a mentor for Time4Change. The dossier contains a letter from the deputy governor praising his work as a mentor.

29. On the 31 January 2021, he received an adjudication for possessing a telephone.

30. The stand in prison offender manager gave evidence and said (a) the Applicant was motivated to lead a pro social life, (b) offence behaviour work was not necessary prior to release, (c) approved premises were essential and recommended release.

31. The community offender manager, who had been in post since June 2021, said (a) she recommended TSP in the community, (b) approved premises were essential, (c) the risk could be managed in approved premises whilst waiting to do TSP, (d) the Applicant was very committed to his fitness business, (e) the risk of violence was still present, (f) drugs misuse needed to be monitored, (g) she was concerned about the Applicant's aversion to drug testing and she recommended release to approved premises.

32. There is no challenge to the panel's finding that the recall was appropriate. The panel was entitled to investigate and make findings in respect of the prosecution, even though it ended in an acquittal and the panel was entitled to use its findings in coming to its conclusion.

33. The panel found the incident showed the Applicant had involved himself in risky situations and had been associating with anti-social peers on licence. No serious challenge can be mounted against those findings.

34. The panel considered the proposed risk management plan in Section 7 of the letter and concluded, *"The panel considered this plan which included initial placement in*

*approved premises is not capable of managing risk in the community while you still have risk reduction work to complete”.*

35. The conclusion and decision of the panel is set out in Section 8. The panel provided a succinct and accurate recital of the Applicant's history, continuing problems and recent improvements and decided against release. The panel gave two reasons, the Applicant's violent offending history (a constant factor which would feature in all his applications for release), and the Applicant had done no accredited work to address this.
36. The decision letter records the views of the prison offender manager and the community offender manager on TSP but does not describe their views on work specifically to address violent offending.
37. The prison offender manager's recommendation was that further offending behaviour work was not necessary prior to release. The decision letter does not say why the panel disagreed with that assessment.
38. The community offender manager's opinion was that the Applicant's risk could be managed in the approved premises prior to doing TSP. The decision letter does not explain, particularly in the context of the panel's view on the proposed risk management plan in section 7 quoted above, why it took the view it could not be so managed.
39. The decision letter does not inform the reader why the two professional witnesses thought that TSP, rather than a violent offending focused programme, was the correct intervention; it did not explain whether they had been asked during the oral hearing to consider any or any particular piece of work to address violent offending and why they thought such a piece of work was not necessary or why the panel thought violent offending work was necessary and why it had to be done in custody.
40. All that is recorded is that the prison offender manager thought the Applicant would not be eligible for the Moderate intensity accredited programme, the Applicant said he had looked at violence reduction on Time4Change and the community offender manager had agreed the Applicant had not completed any programme dealing with violence although the risk of violence remained.
41. At the heart of this case, there is a divergence between the professional witnesses on the one hand and the panel on the other over two topics, whether the Applicant should do TSP or violent offending work and, whether the work had to be done prior to release or might be done in the community.
42. They are the only topics the panel identified as the basis for saying the risk could not be managed in the community. I have come to the conclusion that, even bearing in mind Lord Bingham's comments in Oyston above, the decision letter contains too little information on the panel's understanding of how the professional witnesses came to their recommendations and why the panel disagreed with those recommendations.
43. I have thought whether this is a case that could be returned to the panel for it to amplify its reasoning. I have no doubt that the original panel would be fully capable

of approaching the matter conscientiously and fairly. It seems to me there are two objections to that course. First, there is the question of justice being seen to be done, and secondly, it is implicit in the Applicant's third ground that the deficiencies in the decision letter have been caused or contributed to by the unavoidable delay between the hearing and the decision letter.

44. Having come to the conclusion the decision cannot stand on the first ground, I do not need to go on and decide the other two grounds. My inclination is to say that the panel was entitled to come to the view it did in respect of the Applicant's evidence about his recall and the third ground raises questions of policy and approach, in very unusual circumstances, which are better left to the policymakers at the Parole Board.

## Decision

45. I consider, applying the test as defined in case law, that the decision not to direct release to be irrational/procedurally unfair. I do so solely for the reasons set out above. The application for reconsideration is therefore granted and the case should be reviewed by a fresh panel by way of an oral hearing.

**James Orrell**  
**7 April 2022**