

[2022] PBRA 83

## Application for Reconsideration by ATHWAL

### Application

1. This is an application by the Secretary of State (the Applicant) for reconsideration of a decision made by a panel of the Parole Board (the panel) on the 18 May 2022 and issued on the 25 May 2022 directing the release of Athwal (the Respondent).
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 amounting to 450 pages and including the decision letter, the submissions on behalf of the Applicant dated the 22 June 2022 and the submissions on behalf of the Respondent dated the 29 June 2022.

### Background

4. On the 19 September 2007, the Respondent was sentenced to a mandatory life sentence for murder. The tariff, which was set at 20 years but subsequently reduced to 15 years by the Court of Appeal, Criminal Division, expired on the 12 March 2022.
5. The Respondent played a leading role in a family meeting in England at which it was decided to murder the Respondent's daughter-in-law. A short time afterwards, the Respondent accompanied the victim to the Punjab ostensibly to attend two weddings. The victim was then murdered by a close relation of the Respondent's.
6. Subsequently, the deceased's share in the matrimonial home was transferred to the Respondent and her son by the son forging his deceased wife's signature
7. At the time of sentence, the Respondent was aged 70; she is now aged 85.

### Request for Reconsideration

8. The application for reconsideration is dated the 22 June 2022.
9. The grounds for seeking a reconsideration are based on irrationality and are as follows:

**Ground 1. The panel placed inappropriate weight on health factors and failed to consider appropriately risk related evidence.**

**Ground 2. The panel gave disproportionate weight to, and misdiagnosed, protective factors.**

**Ground 3. Failure to consider the non-disclosure of information about victims.**

### **Current parole review**

10. The referral to the Parole Board by the Secretary of State is dated the 8 June 2021. The Secretary of State asked the panel to consider whether it was appropriate to direct the Respondent's release or alternatively to consider recommending a transfer to open conditions. However, the Respondent's condition made it impossible for her to be placed in a Category D establishment. At the hearing, the Respondent had a litigation friend and was in addition legally represented.

11. The panel heard evidence from the prison offender manager, the community offender manager, a social worker, and an independent psychiatrist.

### **The Relevant Law**

12. The panel correctly sets out in its decision letter the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

#### *Parole Board Rules 2019*

13. 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*

14. 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."*

15. 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

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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.

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

17. 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 prisoner**

18. It was argued that the grounds submitted by the Secretary of State did not meet the high test for irrationality.

### **Discussion**

19. I will deal with the individual grounds in turn.

#### **Ground 1. The panel placed inappropriate weight on health factors and failed to consider appropriately risk related evidence.**

20. Paragraphs 8 and 11 of the Applicant's submissions are very similar. In essence the complaint is the panel placed undue weight on the Respondent's failing health and gave insufficient weight to evidence of violent and aggressive behaviour whilst in custody. Paragraph 10 alleges the panel failed to consider the possibility of offence paralleling behaviour and any reduction in risk.

21. The specific evidence is that on the 3 May 2022, the Respondent became distressed during a visit and slapped her daughter. Additionally, at page 262, there are a number of adverse entries in the Security Intelligence Report. On three occasions, the Respondent appeared distressed and swung her stick. On one occasion she assaulted a member of staff and on another occasion, she assaulted a fellow prisoner.

22. These incidents were described in evidence as "*low level assaults*" and no one had been injured.

23. The panel had not been concerned to protect members of the Respondent's family, staff and the public from low level assaults by an intellectually impaired, confused and distressed octogenarian. The panel was concerned with protecting the public from the risk of serious harm.

24. When she was younger, the Respondent had been convicted of instigating and planning the murder of her daughter in law. It is difficult to see how in her final illness the Respondent's outbursts provide evidence of the risk of serious harm.
25. The Prison Offender Manager gave evidence that before the onset of dementia there had been no instances of aggression.
26. The submission from the Respondent's representative indicates that the community offender manager described the risk of reoffending as very low. The prison offender manager thought the likelihood of the Respondent facilitating any further serious offence as "*almost zero*" and the psychiatrist, an expert in psychiatry of the elderly said the Respondent was "*too disorganised or fragmented*" for her to present a risk to others.
27. The clear burden of the evidence suggested the Respondent would be difficult to manage in exactly the same way as any other person suffering from dementia and no more.
28. It is extremely difficult to see how the symptoms of dementia can be equated with offence paralleling behaviour and the suggestion the panel should have placed more weight on the Respondent's current behaviour arguably lacks a sense of reality.
29. There is an additional submission in paragraph 9 that the panel ought to have directed an adjournment for witnesses to attend the hearing to allow further exploration of the evidence of the incident on the 3 May 2022.
30. In response, the Respondent's representative said that there had been a discussion within the hearing as to whether or not it would be productive and necessary to make those further inquiries. The Secretary of State's advocate was consulted and did not at any point suggest that the hearing should be adjourned. In those circumstances, the Secretary of State would have difficulty in obtaining relief in judicial review proceedings. It seems to me that, in the absence of an application for an adjournment by the Secretary of State, the panel was entitled to proceed on the sensible basis it did.
31. This ground falls far short of the high test required for irrationality.

**Ground 2. The panel gave disproportionate weight to, and misdiagnosed, protective factors.**

32. The Secretary of State's argument is advanced in this way,
- a) The family has persistently denied the Respondent's offending. The panel accepted this and described it as understandable.
  - b) It is further submitted, that the panel found the family was not a protective factor.
  - c) The Offender Assessment System identified one risk factor as the Respondent's controlling influence and power over the other family members.

d) The panel contradicted itself when it relied on the family's desire to cooperate with services and support the Respondent appropriately.

33. The decision letter is clear, intelligent and above all succinct. The panel consisted of an independent member, a psychologist and a psychiatrist. It is inherently unlikely that such a panel would contradict itself in such a unintelligent way by one moment saying the family was not protective and then saying it was.

34. I have noted paragraphs 3.11 and 3.14. As I read paragraph 3.11, the panel is saying no more than (whether the family denies the Respondents guilt or not) members of the family are cooperating with Probation and will receive training and support so that *they*, the Respondent's proposed carers, will not be at risk from the consequences of the Respondent's dementia. As I read paragraph 3.14, it provides evidence that the *Respondent herself* will not be at risk from members of the family who are caring for her.

35. In other words, the fact that family members are cooperating in the way described is relevant to the safety of the Respondent and the family in the context of caring for and being cared as a dementia patient.

36. The passage relied upon on behalf of the Secretary of State is paragraph 4.4. This should be read in the context of the preceding paragraph 4.2 where it is stated "*there was substantial evidence of the family being willing to help her comply with licence conditions, even returning her promptly to prison after ROTL's, despite her protestations.*" The Offender Assessment System makes the valid point that the dementia will make it difficult for the Respondent to comply with licence conditions and the cooperation of the family in the way described is relevant to that issue rather than the risk of serious harm.

37. Quite separately, the submission does not take sufficient account of the speed and deterioration in the Respondent's mental condition. The passage in the Offender Assessment System is referring to the Respondent's position in the household some 14 years ago. No doubt her influence continued after she went to prison but the onset of dementia is in itself capable of being regarded as a protective factor – see page 215 of the dossier, "*Diagnosis of Dementia may serve to be a protective factor*". On page 223 of the dossier the Offender Assessment System states "[*the Respondent*] now has a diagnosis of dementia and is not able to address attitudes and beliefs that she may have held in the past. In custody, she has periodically displayed some aggressive/abusive behaviours towards others as a result of her condition".

38. Some idea of the speed of deterioration can be gleaned from the reports of the psychiatrist. In April 2020, he described the Respondent as being in the early stages of dementia but by November 2021 he is noting a clear decline in her condition with instances of very serious confusion. The report relied on by the Secretary of State is dated August 2021.

39. The panel was entitled to proceed on the basis the Respondent's behaviour was the result of dementia and to rely on that dementia as a protective factor and was

entitled to take into account the family's cooperation for the limited purpose the panel did.

40. Again, this ground is not made out.

### **Ground 3. Failure to consider the non-disclosure of information about victims.**

41. **The Prisoners (Disclosure of Information About Victims) Act 2020** requires the panel (a) to take into account the prisoner's non-disclosure of information about the whereabouts of a victim's remains, and (b) take into account the reasons (in their view) for the prisoner's failure to disclose the information.

42. The Secretary of State submits it is irrational for the panel not to have explored fully the "*evidence appropriately and in line with the statute*". The ground does not give further information as to what more the panel should have done. The Respondent was not capable of providing oral evidence, so the panel was not able to explore the evidence with her and, as is submitted by the Respondent's representative, it was not capable of making any difference to the panel's decision. I have tried to envisage how the panel could have proceeded further and to what effect. I have failed to find any defect in the approach taken by the panel.

43. I cannot uphold this ground.

44. I have read the relevant parts the dossier and considered the evidence for and against release in the round. I have then tried to test the panel's ultimate conclusion against the evidence before it and to ask whether the conclusion can be safely justified on the basis of that evidence. In other words, I have tried to apply the test in **Wells v Parole Board [2019] EWHC 2710**. The conclusion I came to was that there is a very strong case that the panel's decision was supported by the evidence and that there is no hint of irrationality in its decision making.

### **Decision**

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

**James Orrell**  
**07 July 2022**