the Parole Board
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[2023] PBRA 147

Application for Reconsideration by the Secretary of State for Justice in the case of Ahad

Application

1. This is an application by the Secretary of State for Justice ('the Applicant') for reconsideration of the decision of a panel of the Parole Board who on 3 July 2023, after an oral hearing on 19 June 2023, issued a decision to direct the release on licence of Ahad ('the Respondent').

2. I am one of the members of the Parole Board ('the Board') who are authorised to make decisions on reconsideration applications, and this case has been allocated to me.

Background and history of the case

3. The Respondent is now aged 42. He suffered a significant head injury at the age of 10 or 11 and a few years later he spent a time in hospital as a result. A neuro-pathological assessment in 2021 showed that he has difficulty in retrieving up-to-date information and in thinking about concepts, categorising and considering alternatives.

4. He is a devout Muslim and has clearly been open to indoctrination by others. In 2014 he was recruited by another man to assist in disseminating recordings and transcripts of speeches made by an Islamic fundamentalist. At one point he downloaded a copy of a magazine which promoted violent jihad. The magazine included advice on how to use an AK-47 rifle, and stated that it was better to kill 10 soldiers in America than 100 apostates in Yemen.

5. The Respondent's activities came to the attention of the authorities and he was convicted after a contested trial of four offences of dissemination of a terrorist publication and one of possessing a document likely to be useful to a person preparing or committing an act of terrorism. He continues to deny his guilt of those offences. The Board is, of course, required as a matter of law to approach his case on the basis of the jury's verdicts.

6. On 12 February 2020, at the age of 38, he received an extended sentence for the offences. The sentence was made up of a custodial term of 4 years and six months and an extended licence period of one year.

7. The Respondent has been a model prisoner. He has held enhanced status throughout: he has received no adjudications and is described by staff in a positive manner. He has engaged with professionals at all times, with staff raising no concerns about his motivation or levels of engagement. During his time in custody he has, despite his continued denial, engaged positively with various psychological assessments. He has also engaged positively with prison Imams.

8. There have been no concerns linking him to extremism. He has not associated with other prisoners convicted of offences under the Terrorism Acts ('TACT offenders'), and indeed he has been commended for socialising with prisoners from all walks of life. He has taken a course to improve his English.

9. On 9 December 2022 the Respondent became eligible for early release on licence. It is the responsibility of the Board to decide whether to direct his early release. It may only do so if it is satisfied that his continued confinement in prison is no longer necessary for the protection of the public ('the test for release'). The Applicant referred his case to the Board to decide whether that test is met.

10. If the Respondent is not released early by direction of the Board, he will be automatically released on licence in less than 10 months' time (in June 2024). His sentence will not expire until June 2025.

11. The panel of the Board to which the case was allocated ('the panel') comprised a judicial member, a psychiatrist member and an independent member, all of whom have considerable experience of TACT cases.

12. The panel decided that the test for release was met and directed the Respondent's release on licence. It is that decision which is the subject of this application.

13. In making their decision the panel considered (a) the dossier containing 594 pages which had been provided by the Applicant and (b) the oral evidence of the following witnesses:

    a. the Prison Offender Manager ('POM');
    b. the author of an end of contact report;
    c. a prison psychologist;
    d. the Community Offender Manager ('COM'); and
    e. the Respondent himself.

14. At the conclusion of the hearing, which occupied approximately six hours, the panel agreed that the Respondent's legal representative should provide his closing submissions in writing. Those representations were duly submitted on 21 June 2023.

15. As noted above, the panel issued its decision on 3 July 2023. This application for reconsideration was made on 25 July 2023 and representations opposing it were submitted by the Respondent's solicitors on his behalf on 3 August 2023.

The Relevant Law

16. As indicated above the test for release on licence is whether the Applicant's continued confinement in prison is necessary for the protection of the public.

The Parole Board Rules 2019 (as amended)

17. Under Rule 28(1) a decision is eligible for reconsideration if (but only if) it is a decision that the prisoner is or is not suitable for release on licence.

18. Reconsideration will only be directed if one of more of the following three grounds is established:

    (a) It contains an error of law or
    (b) It is irrational or
    (c) It is procedurally unfair.

19. A decision that a prisoner is or is not suitable for release on licence is eligible for reconsideration whether it is made by:

    (a) A paper panel (Rule 19(1)(a) or (b)) or
    (b) An oral hearing panel after an oral hearing, as in this case, (Rule 25(1)) or
    (c) An oral hearing panel which makes the decision on the papers (Rule 21(7)).

20. The panel's decision in this case not to direct release on licence is thus eligible for reconsideration.

21. The application for reconsideration is made on the ground of irrationality. There is no suggestion of an error of law or procedural unfairness.

Irrationality

22. In **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)**, the Divisional Court set out as follows 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."

23. This was the test which had been set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374** and applies to all applications for judicial review. 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.

24. The Parole Board, when deciding whether or not to direct a reconsideration, adopts the same high standard as the Divisional Court for establishing 'irrationality'. The fact that Rule 28 uses the same adjective as is used in judicial review cases in the courts shows that the same test is to be applied. The application of this test to reconsideration applications has been confirmed in previous decisions under Rule 28: see, for example, **Preston [2019] PBRA 1**.

25. The reasons why a panel's decision may be found to be irrational include:

(a) The giving of manifestly disproportionate or inadequate weight to a relevant consideration; or
(b) A failure to give sufficient reasons for the panel's decision.

26. The importance of giving reasons was reiterated in **R (on the application of Stokes) v Parole Board [2020] EWHC 1885 (Admin)** in which the court cited the following explanation given by Lord Carnwath in **Dover District Council v CPRE Kent [2017] UKSC 79** for the need to give reasons in public law decision-making:

> *"I think it important that there should be an effective means of detecting the kind of error which would entitle the court to intervene, and in practice I regard it as necessary for this purpose that the reasoning of the [decision maker] should be disclosed... It is to be noted that a principal justification for imposing the duty was seen as the need to reveal any such error as would entitle the court to intervene, and so to make effective the right to challenge the decision by judicial review."*

27. It follows that a panel must provide sufficient reasons to explain its logic and how its conclusion follows from the evidence put before it. There should not be an *"unexplained evidential gap or leap"*: see the decision of Mr Justice Saini in **R (on the application of Wells) v Parole Board [2019] EWHC 2710 (Admin).**

The application for Reconsideration in this case

28. The application was made by the Public Protection Casework Section ('PPCS') Reconsideration Team on behalf of the Applicant. It correctly sets out the legal principles applicable to applications of this kind. The grounds advanced may be summarised as follows:

(1) The panel do not appear to evidence full consideration of the risk-related evidence presented to them in both written and verbal format within their decision. The panel do not clearly evidence a reduction in the Respondent's risk.

(2) It was irrational for the panel to direct the release of the Respondent in circumstances where they considered that the risk management plan was insufficient without the support of a theologian: their decision was contingent on the availability of a theologian, and there was over-reliance on the role of the theologian.

(3) There was no licence condition requiring the Respondent to engage with a theologian.

The Respondent's response to the application

29. The Respondent, via his legal representative, submits that the application is largely based on misunderstandings. It is pointed out that the Applicant chose not to be represented at the hearing and therefore his officials who presented the application did not have a full knowledge of what took place at it. It is also pointed out that the Respondent's legal representatives' closing submissions (not referred to in the application) provided answers to much of what is now advanced on behalf of the Applicant. Of course these matters did not invalidate the arguments advanced in the application (which was necessarily based on the dossier and the panel's decision), but

a lack of full knowledge of the proceedings was certainly a factor which may have had a bearing on the way in which the Applicant's case is now put in the grounds.

Documents considered

30. I have considered the following documents for the purpose of this application:

(i) The dossier provided by the Applicant for the Respondent's case, which now runs to 624 pages and contains copies of the legal representative's closing submissions and of the panel's decision;

(ii) The application for reconsideration; and

(iii) The representations submitted by the Respondent's solicitors in response to the application.

Discussion

31. It is convenient to discuss in turn the three grounds advanced by the Applicant in support of the application.

Ground (1): The Panel do not appear to evidence full consideration of the risk-related evidence presented to them in both written and verbal format within their Decision. The panel do not clearly evidence a reduction in the Respondent's risk.

32. The panel's assessment of the Respondent's current risk to the public was, of course, central to their decision. I cannot accept that the panel's decision failed to evidence full consideration of the risk-related evidence. Nor can I accept that the panel failed to evidence a reduction in the Respondent's risk.

33. Dealing with the last point first, there was ample evidence (identified in the panel's decision) of a substantial reduction in the Respondent's risk. That evidence included:

(a) the Respondent's exemplary behaviour in custody;
(b) his current understanding that the Islamic fundamentalist's views are not taught anywhere in the Qur'an, and that the use of violence is wrong;
(c) his positive engagement with prison staff and psychologists;
(d) his enthusiasm to learn more about his faith;
(e) the fact that in the prison setting he has built confidence and associated more widely than he ever did in the community;
(f) the lack of any evidence that he has associated with TACT offenders;
(g) his acceptance of the proposed licence conditions and his willingness to comply with them;
(h) the lack of any concerns about his family or friends holding extremist views; and
(i) the prison psychologist's opinion that the Respondent's risk has been reduced to a level at which, with the proposed risk management plan (including support from a theologian) in place, it will be safely manageable in the community.

34. Dealing with the first point, I have carefully examined the panel's decision, from which it is clear that they made a careful analysis of the evidence of the professional witnesses and weighed up all the relevant points for and against a conclusion that the test for release was met. As well as the positive points identified above the panel recognised and took into account a number of negative ones raised by the POM and the COM in support of their views that there was further risk reduction work for the Respondent to do in prison before he was released. Those points include:

(a) the Respondent's continued denial of his offences and consequent lack of insight into them;
(b) his need for identity and belonging;
(c) his susceptibility to indoctrination;
(d) his cognitive difficulties;
(e) his difficulty in understanding other people's viewpoints;
(f) his struggles with new concepts and abstract thinking; and
(g) his lack of pro-social associates in the community.

35. Having weighed up all the evidence the panel preferred the opinion of the prison psychologist to those of the POM and COM, stating:

"The panel considered all the evidence with care, together with the opinions of the professionals and the written submissions on [the Respondent's] behalf. The main difficulties are presented by [the Respondent's] denial of the offending, which means that it is effectively impossible to examine his motivation at the time of the index offending and to find what if any changes there have been since, and by his cognitive difficulties.

The panel could not detect in the dossier, or the evidence it heard, anything to indicate that [the Respondent] retains any connection with, or interest in, violent extremism. On that he seemed to the panel to be open, honest and consistent. He seemed genuinely anxious to learn about his beliefs and to discuss them, and to take guidance from people he respects.

The panel accepts the evidence that [the Respondent] would comply with his licence conditions if released. It agrees that the longer he is on licence, the more likely it is that his behaviour in [the] future will be pro-social. The panel considers, as it must, the protection of the public both during and after the licence period.

In the circumstances the panel is satisfied that [the Respondent's] risk of reoffending is not imminent, and that he is manageable in the community. There is a caveat to this: the panel regards it as crucial that [the Respondent] has a theologian to work with in the community, and to consult about the challenges he faces and the ideas he comes across. If a theologian is not available to him on release, and preferably to start working with him before release, the panel would take a very different view of [the Respondent's] case. Without that, even this very robust Risk Management Plan would be insufficient.

The panel carefully considered the proposed licence conditions, which must be both necessary and proportionate. The panel does not consider the proposed exclusion zones … to be either necessary or proportionate in [the Respondent's] case.

The panel is satisfied that it is no longer necessary for the protection of the public that [the Respondent] should be confined, and therefore directs his release subject to [the licence conditions specified].”

36. The panel was fully entitled on the evidence to reach these conclusions, and its reasoning cannot be faulted. There was no *‘unexplained evidential gap or leap’* in its explanation of its decision. In these circumstances **Ground 1 must fail.**

Ground (2): It was irrational for the panel to direct the release of the Respondent in circumstances where they considered that the risk management plan was insufficient without the support of a theologian: their decision was contingent on the availability of a theologian, and there was over-reliance on the role of the theologian.

37. The panel accepted the views of all the professional witnesses that if the Respondent’s risk was to be managed safely in the community he would need the support of a theologian who could explain the aspects of his faith which he did not fully understand, and could steer him away from any dangerous indoctrination. The Respondent himself had been keen to turn to the relevant prison Imams for advice on any points on which he needed advice, and he expressed a desire to be able to turn to a theologian in the community for similar advice.

38. This ground, advanced on behalf of the Applicant, appears to be suggesting that there might not be a theologian available to work with the Respondent in the community. However, it is the Applicant’s responsibility to make available to an offender any intervention which is reasonably required (as the panel and all the professional witnesses agreed was the case here) to enable him to reduce or manage his risk; and the COM told the panel that she had never known a case where a theologian was not available in the community.

39. The panel would have preferred the theologian to start work with the Respondent before his release but that may be impracticable for the Applicant to arrange. The Respondent is detained at a prison a long way away from the area where he is to be released and where the theologian will be based.

40. I am satisfied that the panel was fully entitled to make its decision on the assumption that the Applicant would abide by his obligation and that a theologian would be made available in the community to work with the Respondent when he is released.

41. I cannot see that there was any *‘over-reliance’* on the role of the theologian, which was an important one as all the Applicant’s witnesses agreed. Though the panel regarded it as an essential part of the robust and comprehensive risk management plan, the other parts were clearly needed as well.

42. In these circumstances **Ground 2 must also fail.**

Ground (3): There was no licence condition requiring the Respondent to engage with a theologian.

43. The Applicant’s officials responsible for presenting this application appear not to have been aware that engagement with a theologian is, like engagement in some other

helpful activities, generally regarded as voluntary and not something which should be imposed on an offender by a licence condition. That was certainly the understanding of the Applicant's own official (the COM) who was in favour of engagement with a theologian but did not include it in the extensive list of proposed licence conditions which she presented for the panel's consideration. The panel clearly had the same understanding as the COM. It was therefore in no way irrational for the panel to act on that understanding. The Respondent has expressed his own desire to engage with a theologian and there is no reason to suppose that he will not do so on a voluntary basis.

44. If the Applicant wishes to change the approach which has generally been taken in the past by his officials, he can of course apply to the Parole Board for an amendment of the Respondent's licence conditions by the addition of a condition requiring him to engage with a theologian. However, there was no irrationality in the panel's approach and **Ground 3 must therefore also fail.**

Decision

45. For the reasons which I have explained above none of the grounds advanced on behalf of the Applicant can succeed and I am unable to find that there was any irrationality in the panel's decision. I must therefore refuse this application.

Jeremy Roberts
17 August 2023