

[2023] PBRA 173

Application for Reconsideration by Talbot

Application

1. This is an application by Talbot (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 1 September 2023. The decision of the panel was not to direct release.
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)) either on the basis (a) that the decision contains an error of law, and/or (b) that it is irrational and/or (c) that it is procedurally unfair.
3. I have considered the application on the papers. These are the dossier consisting of 1392 pages; the Application for reconsideration submitted by the Applicant; and the response by the Secretary of State (the Respondent).

Background

4. On the 6 October 2005 the Applicant was sentenced to Life imprisonment in relation to an offence of murder. The minimum term fixed by the judge was fifteen years, one month and twelve days. The Applicant was aged 35 at the time he was sentenced and is now 53 years old.
5. The victim of the offence was a partner of the Applicant. The Applicant was at the partner's home. The Applicant became angry when the partner requested him to leave her home. The Applicant had been under the influence of alcohol. The Applicant discovered that the victim had been in contact with a former partner. The Applicant became angry, jealous and violent and murdered the victim by strangulation. There had been a history of domestic violence.
6. Prior to the commission of the index offence, the Applicant was noted to have an extensive criminal history. His offending included offences involving violence. The panel found that the Applicant's offence history indicated a pattern of aggressive and violent offending with a background of sexual jealousy, fear of rejection, controlling behaviour and excessive alcohol consumption.

Request for Reconsideration

7. The application for reconsideration is dated the 18 September 2023.



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8. The grounds for seeking reconsideration are set out below.

Current parole review

9. This was the Applicant's second review. He had spent some time in an open prison but had been transferred back to a closed prison.

Oral Hearing

10. The review was conducted by an independent Chair of the Parole Board, a psychologist member of the Parole Board and an independent third member of the Parole Board. Oral evidence was given by the Prison Offender Manager (**POM**), a prison instructed psychologist and a Community Offender Manager (**COM**). The Applicant was represented by a solicitor.
11. A dossier consisting of 1357 pages was considered.

The Relevant Law

12. The panel correctly sets out in its decision letter dated 1 September 2023 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 (as amended)

13. Pursuant to 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)).
14. 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**.

Irrationality

15. 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."

16. 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.

17. 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

18. 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.
19. 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.
20. The overriding objective is to ensure that the Applicant's case was dealt with justly.
21. 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 Respondent

22. The Respondent has informed the Parole Board that he does not offer any representations concerning this application.

Reconsideration grounds and discussion

Ground 1

23. The grounds of appeal in this case, as drafted by the Applicant's legal advisor, are directed in the main towards the contention that the panel placed insufficient weight on professional assessments of risk, the Applicant's custodial behaviour, the Applicant's compliance in open conditions, and his compliance on temporary release when in an open prison.

Discussion

24. As noted above the reconsideration process does not apply to any decision relating to a recommendation to transfer a prisoner to an open prison. The Applicant's position at the hearing was that the three professionals giving evidence namely the COM, the POM and the prison instructed psychologist, made no recommendations for release. All three however recommended transfer to an open prison. The reality therefore was that the panel did place weight upon the views of the professionals. They accepted that the test for release was not met. They diverged from the views of the professional witnesses in connection with whether a recommendation for a transfer to an open prison was appropriate. As indicated above, the reconsideration process is not applicable to a decision as to whether or not to recommend a transfer to an open prison.

Ground 2

25. The Applicant's legal representative submits that the behavioural work which the Applicant needed to complete, in connection with risk reduction, was not, as contended by the panel, core risk reduction work.

Discussion

26. At paragraph 2.37 of the panel's decision letter, the panel noted that the Applicant's POM had indicated that there was concern that a behavioural programme that the Applicant had undertaken had not been delivered in a format which was fully accessible to the Applicant. This, it was contended, may have affected the efficacy of the programme in reducing risk. In the view of the Applicant's POM, a further assessment was required to be undertaken. The view of the POM was that this further assessment could be undertaken in an open prison. The panel disagreed with this contention. The panel took the view that the assessment of the efficacy of any behavioural programmes had to be undertaken before any decision relating to release or indeed progression generally was considered.
27. Further the view of the Applicant's POM was that the Applicant lacked insight and that compliance issues meant that, in the view of the POM, the Applicant's risk could not be safely managed in the community. Hence there was no recommendation for release from the POM.
28. At paragraph 2.45 of the panel's decision letter the panel identified a further concern. The reporting psychologist indicated that testing had shown that the Applicant's cognitive functioning was well below average. This meant that programmes and learning which had been delivered to the Applicant had not been appropriately adapted and therefore the Applicant was unlikely to have gained the necessary skills and tools from those programmes to be effective. The panel noted that this was not the fault of the Applicant, however the panel's duty related to risk to the public. The panel concluded that the Applicant had not yet had the benefit of psychological interventions and treatment, in respect of his risk factors, sufficient to address and reduce the risk of serious harm. Accordingly, the panel had concluded that there was insufficient evidence of a reduction in risk appropriate to meet the test for release.
29. At paragraph 2.56 of the panel's decision letter, the panel noted that the Applicant's COM took the view that outstanding work existed in relation to risk management, however the COM's view was that the work could be completed in an open prison. Again, the panel disagreed with this view.

30. Panels of the Parole Board are not obliged to accept the opinions and recommendations of professional witnesses. It is the responsibility of the panel to make their own risk assessments and to evaluate the likely effectiveness of any risk management plan. The panel must make up its own mind on the totality of the evidence including any evidence from the Applicant. They would be failing in their duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if they fail to do just that. It was observed by the divisional Court in **DSD** that panels have the expertise to do this.
31. However, as indicated in the case of **R (Wells) v Parole Board [2019] EWHC 2710 (Admin)**, if the panel were to make a decision contrary to the opinions and recommendations of professional witnesses, it is important that the panel explain clearly its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions.
32. So far as the issue of this application for reconsideration was concerned, the panel did not make a decision contrary to the opinions and recommendations of the professional witnesses. It is apparent from the evidence in this case that no professional was recommending release. The panel also found that a decision to direct release was not supported by the evidence. The panel set out clearly its reasons for refusing to direct release.
33. All professionals were supporting a recommendation by the panel to the Respondent that the prisoner be transferred to an open prison. The panel did not support this view. This aspect of the panel's decision is not amenable to reconsideration, however the panel made clear, in the decision letter, the reasons why it was not recommending a transfer to an open prison.

Decision

34. In all the circumstances therefore this application for reconsideration is refused.

HH S Dawson
26 September 2023