

[2023] PBRA 194

Application for Reconsideration by Hatch

Application

1. This is an application by Hatch (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated 9 October 2023 not to order his release following an oral hearing on 5 October 2023.
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)) 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 application for reconsideration; the decision of the panel and the dossier running to 585 pages at the time of the hearing.

Background

4. On 18 April 2019 the Applicant was sentenced to 80 months imprisonment for offences relating to indecent images of children and encouraging others to commit serious sexual assaults on very young children. As he was an offender of particular concern, he was sentenced to an extended licence period of a further 12 months. Ancillary orders were also made.

Request for Reconsideration

5. The application for reconsideration is dated 30 October 2023.
6. The grounds for seeking a reconsideration are as follows: all the professionals, including a psychologist, recommended release and were of the view that the Applicant's risk could be managed in the community under the risk management plan. The Applicant had a very good record while in custody and had complied with everything that was required of him. He had successfully completed a Horizon programme and while he was assessed by the prison service as meeting the risk criteria for the Healthy Sex programme it was decided that he did not meet the need criteria. In those circumstances it is argued that it was irrational for the panel to decide that the Applicant did not meet the release test.



Current parole review

7. The case was referred to the Parole Board by the Secretary of State on 20 September 2021 to decide whether the Applicant should be released. An oral hearing was due to take place on 26 September 2022 but was adjourned so that the Applicant could complete the Horizon programme which he was due to start. The next hearing on 8 June 2023 was adjourned for a Psychological Risk Assessment to be carried out and a specialist psychologist member was added to the panel.
8. During the hearing on 5 October 2023 the panel heard evidence from the Applicant; the Prison Offender Manager; the Community Offender Manager and the Prison Commissioned Psychologist. The Applicant's legal representative made submissions to the panel.

The Relevant Law

9. The panel correctly sets out in its decision letter dated 9 October 2023 the test for release and applied it.

Parole Board Rules 2019

10. 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. Accordingly, this decision is eligible for reconsideration.

Irrationality

11. 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."

12. 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.

13. 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 (the Respondent).

14.The Respondent has made no submissions in relation to this application.

Discussion

15.I can understand the Applicant's disappointment and frustration that his application for release was refused. He has behaved well during his time in custody and has co-operated with any interventions that have been suggested to assist with his rehabilitation. Importantly he has successfully completed the Horizon programme. He has persuaded all the professionals that he can be safely released.

16.Despite all that, it is still the panel that has to be satisfied that the Applicant met the test for release. Having heard his evidence and the evidence of the professionals and asked them detailed questions, they were not so satisfied. A panel does not have to agree with the evidence of the professionals even if it all appears to go one way. Where that is the situation, the obligation on the panel is to explain in sufficient detail so that the reasons can be understood why they disagree with the recommendations of the professionals.

17.It is unfortunate from the Applicant's point of view that the panel considered that *"the learning and support that the HSP (Healthy Sex Programme) provides may have been of some benefit in furthering the understanding and manageability of the Applicant's risk"*. (see para 2.2 of the decision) It was not his decision not to go on the programme, the prison decided that he was ineligible.

18.The evidence of the Applicant was critical to the success of his application in that the panel needed to be satisfied that he had insight into his sexual interest in children so that he could control any desires that he had by getting help if needed. The offences of which he was convicted were very serious and the consequences for children potentially catastrophic. The panel concluded that the Applicant was not giving satisfactory answer to questions on that topic, for whatever reasons, leaving them in doubt that if his sexual interest in children arose again *"he would be able to seek help"*. (para 2.13)

19.The panel were concerned that the failure of the Applicant to answer questions that they asked him in a straightforward way may be because he was being manipulative which is something a panel will always need to be cautious about.

20.While the prison psychologist disagreed with these concerns about the Applicant, the panel were not bound to agree with her view. They had asked questions of the Applicant and there was a specialist psychologist on the panel who was able to use her expertise to help in the assessment of the evidence of the prison psychologist and the Applicant.

21.In the 'Conclusion' section of the decision (para 4) the panel acknowledged those factors in the evidence supporting release. The panel also considered the evidence of the experts but explained why they were not satisfied, despite that evidence, that the test for release had been reached.

22. In my judgment, whether you agree with them or not, the panel gave adequate reasons for their disagreement with the assessment of the panel. For the reasons they gave, they were entitled to disagree with the recommendations of the professionals. The panel saw the Applicant, asked him questions, and made their own judgment of his risk, taking into account all the evidence in the case. That is the function they have to carry out.

23. The panel did rely in its decision on the case of Johnson. I have considered whether that was appropriate. While I do not consider that that decision was relevant to the decision the panel had to make in this case, I do not think that their use of that case amounted to an error of law.

Decision

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

John Saunders
09 November 2023