

[2023] PBRA 217

Application for Reconsideration by Sandhu

Application

1. This is an application by Sandhu (the Applicant) for reconsideration of a decision of an oral hearing panel dated 21 November 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 640 pages; the Application for Reconsideration submitted by the Applicant's legal representative; and the response by the Secretary of State.

Background

4. On 17 April 2014 the Applicant was sentenced in relation to offences of rape and wounding with intent to cause grievous bodily harm committed in May 2013. The Applicant was sentenced to an extended sentence consisting of a custodial period of 12 years and an extension period of 6 years. His parole eligibility date was in October of 2022. His conditional release date is in October 2026.
5. The Applicant attacked a female sex worker having asked for services from her. He punched the victim and then struck her several times to the head with a brick. He also repeatedly raped the victim, while she was unconscious. The incident lasted for about 2 hours.

Request for Reconsideration

6. The application for Reconsideration is dated 1 December 2023.
7. The grounds for seeking a reconsideration are set out below.

Current parole review

8. This was the Applicant's first review by the Parole Board.

Oral Hearing



3rd Floor, 10 South Colonnade, London E14 4PU

www.gov.uk/government/organisations/parole-boardinfo@paroleboard.gov.uk

@Parole_Board



0203 880 0885

9. The review was conducted by a judicial Chair of the Parole Board, and a psychiatrist member of the Parole Board. Oral evidence was given by two Prison Offender Managers (POM's), a prison-instructed psychologist and a Community Offender Manager (COM). The Applicant was represented by a solicitor.

10.A dossier consisting of 619 pages was considered.

The Relevant Law

11.The panel correctly sets out in its decision letter dated 21 November 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)

12.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)).

13.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

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 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.

Procedural unfairness



17. 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.
18. 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.
19. The overriding objective is to ensure that the Applicant's case was dealt with justly.
20. 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.*"
21. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility to make their own risk assessments and to evaluate the likely effectiveness of any risk management plan proposed. They must make up their own minds on the totality of the evidence that they hear, 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 failed to do just that. As was observed by the Divisional Court in **DSD**, they have the expertise to do it.

Adequate Reasons

22. It is well established now, by decisions of the courts, that a failure by a panel to give adequate reasons for its decision is a basis on which its decision may be quashed and reconsideration directed. Complaints of inadequate reasons have sometimes been made under the heading of irrationality and sometimes under the heading of procedural unfairness: whatever the label, the principle is the same. The reason for requiring adequate reasons had been explained in a number of decisions including:
- **R v Secretary of State for the Home Department ex parte Doody (1994) 1WLR 242;**
 - **R (Wells) v Parole Board (2009) EWHC 2710 (Admin);**
 - **R (PL) v Parole Board and Secretary of State for Justice (2019) EWHC 306;**
 - **R (Stokes) v Parole Board and Secretary of State for Justice (2020) EWHC 1885 (Admin).**



23. The principal reason for the duty to give reasons is said to be the need to reveal any error which would entitle the court to intervene. Without knowing the panel's reasons, the court would be unable to identify any such error, and the parties right to challenge the decision would not be an effective one. In **Wells** Mr Justice Saini pointed out that the duty to give reasons is heightened when a panel of the Board is rejecting expert evidence.

The reply on behalf of the Secretary of State (The Respondent)

24. The Respondent offered no representations.

Reconsideration grounds and discussion

Overarching Ground

25. The overarching ground for this application, submitted by the Applicant's solicitor was that the panel failed to provide sufficient reasons to support their decision not to order release of the Applicant. Also argued was that the panel failed to provide sufficient reasons for departing from the recommendations of witnesses.

Discussion

26. The background to this case, as set out above, is that the Applicant is serving a lengthy prison sentence in connection with serious offences of rape and violence. The Applicant had no previous convictions. At the time of sentence, the Applicant was 39 years old. Of relevance was the fact that the Applicant had throughout his life lived with his parents and therefore had little experience of independent living. There was also a clear inference within the dossier that the Applicant was dependent upon the support of his parents despite his age. Additionally, the evidence within the dossier indicated that the Applicant appeared to be living somewhat of a hedonistic lifestyle. He had told the panel that during the time of the index offence he had been experiencing a mixture of internal and external stresses. He had been using alcohol and drugs to excess. He had a mindset which objectified sexual relations and he had very frequent contact with sex workers. He had accepted that his life was a "*recipe for disaster*". He felt under pressure from his family to change his life. The panel surmised that the index offence occurred in an atmosphere of suppressed anger and the overuse of alcohol and drugs. In addition to the index offence, there was evidence on the dossier of a domestic violence incident involving a male family member.

27. The panel concluded that the risk factors in the case of the Applicant were alcohol and drug misuse, low self-esteem, poor emotional well-being, difficulty in managing anger, poor thinking skills and negative attitudes towards women. Additionally, an inability to maintain a positive independent lifestyle as an adult.

28. Following his sentence, the reports from prisons were that the Applicant had demonstrated consistently positive behaviour as a prisoner. The Applicant had also completed various behavioural interventions in prison and the agreed position was that no further formal behavioural interventions would be relevant or required.

29. As implied by the reconsideration application, the POMS (the Applicant was co-worked by two prison offender managers), a prison instructed psychologist who



prepared a report assessing risk and the Applicant's Community Offender Manager (COM) were, by the time of the oral hearing, recommending that the Applicant be released.

30. The panel in their concluding remarks accepted that the Applicant had completed all necessary behavioural programmes and may well have taken on board the lessons from those programs about future positive behaviour.
31. Whilst the panel acknowledged the views of the professionals, namely that the Applicant could be safely released, the panel indicated that they were not minded to follow those recommendations. The major concern of the panel was that the Applicant's future plans for life in the community were vague. The Applicant had no job in view. The Applicant had no experience, despite his age, of caring for himself and never lived away from his parental home. The panel had no evidence before it of the Applicant's independent living skills. The Applicant also had limited support in the community. His support would be mainly from his family. The Applicant had been abstinent in relation to alcohol and drugs in prison, however again the Applicant had no experience of managing the pressures associated with alcohol and possibly drugs, in the community.
32. In addition to these concerns the panel took the view that the Applicant's relationship with his COM was undeveloped and there were no firm details as to who would manage his risk in the community, as he would be living outside the area of his family home.
33. In essence therefore the panel gave clear indications of the reasons why the Applicant did not, in their view, meet the test for release. The panel's rationale was that the index offence itself had occurred in circumstances where it appeared that the Applicant had decompensated and lost control because of his emotional pressures and lifestyle in the community. The panel took the view that, without stable and realistic plans as to how the Applicant would manage independently, the risk to the public remained at a level which meant that the Applicant did not meet the test for release.
34. As the Applicant's legal representatives accept themselves, the panel had the right and the duty to consider the evidence in relation to risk independently. They were not obliged to follow the views or recommendations of any particular professionals or indeed of all the professionals. It is clear that the panel set out within the decision letter the reasons why they took the view that the Applicant did not meet the test for release. I am not therefore persuaded that this was a decision which could be argued to be irrational in the sense set out above.

Other grounds

35. The Applicant's solicitors also argue that there is insufficient explanation by the panel as to why the recommendation of each of the professionals was rejected.

Discussion

36. In my determination the reasons for rejecting the views of the professionals were clearly closely associated with the reason why the panel took the view that the test for release was not met. Namely the absence of reassurance that the Applicant would be capable of managing in the community given the length of time that he



had been in custody and the fact that his life would be entirely different to that which he had been living up to the time of his incarceration.

37. So far as the POMs views were concerned. It appears to me that the question as to whether or not one or other (or both) of the POMs had changed their view (a matter argued within the reconsideration application) is of limited material value in this matter. The fact is that at the point of the hearing both of the POMs were recommending release.
38. The POMs had clearly taken account of the fact that the Applicant had demonstrated a combination of good behaviour within the prison system and had completed all recommended interventions, which were part of a sentence plan. These factors are often the basis for POM's recommending release. POMs (particularly in closed prisons) have limited first-hand experience of the availability or otherwise of community support country wide. Thus, the views of prison offender managers, although helpful, would not necessarily be overwhelmingly persuasive in circumstances where the ability of a prisoner to manage in the community was a live issue and was under consideration by the panel.
39. The Applicant's solicitor argues, in the submissions supporting a reconsideration decision, that the panel appeared to have applied undue weight to the fact that one of the POMs changed his recommendation and altered his position about the need for testing in the community. I am not convinced that this argument has merit. The panel, in their carefully worded decision, did not appear to place enormous weight upon either the former position of the POMs or their current position. The panel's decision was based upon a concern, as indicated above, about the ability of the Applicant to manage in the community given his background, history and the circumstances of the index offence.
40. The Applicant's solicitor also argues that the recommendation of the prison instructed psychologist (namely that the Applicant should be released) should have been followed and that the panel failed to take account of the prison instructed psychologist's analysis of risk. Again, in my determination the panel clearly took account of the views of the prison instructed psychologist. The panel accepted that behavioural work had been completed and the panel had the calculations, provided within a report, relating to risk levels.
41. Once again however the panel's view was predicated upon a concern about the ability of the Applicant to transition safely into the community. There was a clear difference of opinion between the prison instructed psychologist and the panel. The panel explained why they took the view that the risk management plan was undeveloped, and, as a result, they took the view that the Applicant's risk did not meet the statutory criteria.
42. Finally, so far as the view of the COM was concerned, the panel considered various reports in the dossier from the COMs. The Applicant had been allocated a COM at an earlier stage of his prison sentence. That COM had written a report in preparation for a parole hearing, and at that time she had indicated that there were concerns about whether the Applicant could manage in the community, in the light of the Applicant's lifestyle before arrest. That COM took the view that the Applicant should



spend a period of time in an open prison to prepare and transition into the community to ensure that his risk could be safely managed.

43. By the time of the oral hearing, a new COM had been appointed. That COM wrote a report five months before the hearing. In that report the COM indicated that he took the view that the Applicant's risk could not be managed in the community and was also recommending that the Applicant should spend time in an open prison. The rationale for the recommendation (at that time) was the concern about the Applicant's ability to manage, given the fact that he lived with his parents and never lived independently before his prison sentence.
44. At the oral hearing the COM indicated that he had changed his position and that he was now recommending release. The rationale for that updated recommendation, as noted by the panel, was that by the time of the hearing the COM had concluded that the Applicant was now expressing empathy with the victim.
45. Whilst an expression of empathy with the victim was a positive development, it was a factor which had no connection whatsoever with the Applicant's ability to manage in the community and to live independently.
46. The panel, appropriately, took some account of the changed position of the COM, for the simple reason that the COM was likely to be the professional with the most insight into the Applicant's ability to adapt and transition into the community. As noted above however, the rationale for the change in position by the COM was confusing, as it appeared to be entirely unconnected with the basis of the original recommendation.
47. The fact that the Applicant had improved in terms of his empathy towards the victim had little direct connection with his ability to manage his life and emotions in the community, in circumstances where he would be living alone and without the regular input from his parents. Faced with this confusing argument it is unsurprising that the panel undertook an independent analysis of the position and reached the decision they did. They in fact supported the original view of the COM concerning the Applicant's inability to manage his risk.
48. Accordingly, I am not persuaded that the decision of the panel to reject the recommendation of the COM or of the other professionals could be considered to be irrational in the sense set out above.

Decision

49. In all the circumstances therefore, I conclude that the decision in this case was not irrational in the legal sense set out above and that the decision was not procedurally unfair. I refuse the application for reconsideration.

HH S Dawson
22 December 2023

