

Application for Reconsideration by Spencer

Application

1. This is an application by Spencer ("the Applicant") for reconsideration of a decision of the Parole Board dated 20 December 2022 following an oral hearing on 13 December 2022. The panel declined to release him.
2. Rule 28(1) of the Parole Board Rules 2019 (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, (b) that it is irrational and/or (c) that it is procedurally unfair.
3. I have considered the application on the papers. These are: (1) the dossier, now running to some 777 pages including the decision letter; and (2) the application for reconsideration dated 3 January 2022.

Background

4. On 22 October 2007 the Applicant, then aged 18, was sentenced to Imprisonment for Public Protection (IPP) with a minimum term of 1 year, 10 months and 27 days. On appeal the sentence was varied to a sentence of Detention for Public Protection, (DPP) which was the appropriate sentence for his age. It should be noted that the PNC record inaccurately states the result of the appeal as being a sentence of detention in a young offender's institution; I have called for and seen a transcript of the judgment of the Court of Appeal, which records the correct position.
5. The minimum term expired on 17 September 2009. On 10 October 2018 the Applicant was first released on licence; while he was on licence he was admitted to hospital under the Mental Health Act between 27 March 2019 and 29 April 2019, at which point he was recalled to prison. On 22 April 2020 he was released on licence again; and on 14 January 2021 he was recalled to prison again.
6. The Applicant's index offence was an attempted robbery. He threatened a bus driver with a knife and told him to hand over the takings. He had been drinking alcohol all day and had argued with his girlfriend. When the bus driver refused he ran away. He was on bail for other offences at the time of his arrest. He had numerous previous convictions, including convictions for assault, robbery, criminal damage, public order offences, possession of an offensive weapon and dwelling house burglary.

Request for Reconsideration



7. The application for reconsideration is dated 3 January 2023. The Applicant prepared it himself. He relies on the grounds of procedural unfairness and irrationality. He has set out his submissions in detail in four handwritten sheets. I have considered these sheets as a whole; but for the purpose of analysis the main arguments appear to be as follows.
- a. **Representation.** The hearing was unfair and unbalanced because he was not adequately represented; his solicitor submitted representations running only to 2½ pages and did not ask many significant questions.
 - b. **Risk Management Plan.** The hearing was unfair because there was no realistic risk management plan; the panel should have insisted on such a plan.
 - c. **Recall.** The panel wrongly found that he had been recalled for “*parallel violent behaviour*”; this was not true.
 - d. **Compliance.** The panel referred to concern about his “*lack of compliance and attitude to authority*”, and to poor compliance in custody and the community.
 - e. **Understanding.** The panel said that he did not “*understand how drug use and mental health can lead to offending*”; this was not true.
 - f. **Substance abuse.** The panel found that he had no intention of changing his habits around substance misuse; this was not true.
 - g. **Engagement.** The panel found that he had “*clear difficulties with probation and engagement with it*”; this was not true.
 - h. **Adherence to licence conditions.** The panel said that it had no confidence that he would adhere to his licence conditions; but the only licence condition he had broken was to be of good behaviour (because he had taken drugs).

Current parole review

8. On both occasions when he was released the Applicant’s risk management plan involved a significant level of specialist support.
9. On the first occasion he spent 5 months in a PIPE AP; but he was eventually asked to move on due to ongoing drug misuse and concerns about his behaviour; and he spent only a short time in independent accommodation before his level of paranoia (which was accompanied by increase in substance misuse) led to his compulsory admission to psychiatric hospital.
10. On the second occasion he was placed in long term accommodation in a forensic step-down service for people released from custody with substance misuse issues. He did not make significant progress in dealing with these issues, and there continued to be concern about his paranoid thoughts. But



his recall eventually was by reason of allegations of assault by another resident; the assault was alleged to contain a sexual element. The Applicant denied sexual assault but admitted to the police that he pinned the complainant on the bed and put his fingers in the complainant's mouth, causing him to gag. The Applicant told police that he had several warnings from staff about bullying the complainant; he thought the complainant made the allegation of sexual assault to get back at him for this bullying. The Crown Prosecution Service determined to take no action, considering that there was not enough evidence to prosecute a sexual offence.

11. The current referral to the Parole Board was made on 22 February 2021 following the Applicant's second recall to prison. A psychological risk assessment was directed; this was received in February 2022. In June 2022, shortly before an oral hearing was to take place, the Community Offender Manager ("the COM") commented on the extent of paranoia evident during interview and recommended a psychiatric assessment. The case was adjourned for a psychiatric report and an update to the psychological risk assessment. These were received respectively in October and November 2022. At the hearing on 13 December 2022 the panel took evidence from the Prison Offender Manager ("the POM"), the psychologist and psychiatrist, the COM, and the Applicant himself.
12. The panel's reasons for its decision are detailed, running to some 16 pages. It is sufficient to at this point to quote three paragraphs of its conclusions.

"4.3 Inevitably the issue which most troubled the panel was whether [the Applicant] would or could adhere to his licence conditions in the future as opposed to his behaviour on his previous releases. The panel was exercised as to whether he had sufficiently learned from the recalls and reduced his risks to make him manageable in the community in the future. His earlier record of lack of compliance and attitude to authority also gives the panel cause for concern.

4.4 In consideration of all the evidence in respect of [the Applicant] the panel concludes that: he has little real understanding that his use of illegal drugs leads to a decline in his mental health which manifests itself in his paranoia; there is no clear indication that he understands how that in turn can lead to offending which, in any event, he also minimises, evidencing a lack of insight into the risk he presents; he has other mental health and personality issues which go to his risk; he has apparently no intention of changing his habits in respect of illicit substances and the consequent paranoia may easily lead to violence as it did on the last release; he has clear difficulties with the probation service and engagement with it; all the evidence suggests the RMP is unlikely to be able to effectively manage his risks in the community given his poor compliance in the community and in custody, together with his limited supportive and protective factors; and it has no confidence that he could or would adhere to his licence conditions. Importantly, all the professionals concur there is further core risk reduction work to be done and [the Applicant's] mental



health issues need to be systematically addressed by whatever appropriate means before his risk can be said to have been effectively reduced.

4.5 In all the circumstances the panel is satisfied [the Applicant] does not meet the legal test and that it is necessary for the protection of the public that [the Applicant] remains confined. Accordingly, the panel makes no direction for release."

The relevant law

13. In its decision letter the panel correctly set out the test for release: the Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.
14. The Applicant was serving a sentence of Detention for Public Protection. The panel's decision as to release is eligible for the reconsideration procedure: see rule 28(2)(a) of the Parole Board Rules 2019. For the avoidance of doubt, the panel's decision as to a recommendation for open conditions is not eligible for the reconsideration process.
15. The concept of irrationality is derived from public law. The test is whether the 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.*" See **CCSU v Minister for the Civil Service** [1985] AC 374, applied to Parole Board decisions by **R (DSD and others) v the Parole Board** [2018] EWCH 694 (Admin). This is the standard I have applied when considering this application for reconsideration.
16. The concept of procedural fairness is rooted in the common law. A decision will be procedurally unfair if there is some significant procedural impropriety or unfairness resulting in a manifestly unfair or flawed process. The categories of procedural unfairness are not closed; they include cases where laid-down procedures were not followed, or a party was not sufficiently informed of the case they had to meet, or a party was not allowed to put their case properly, or where the hearing was unfair, or the panel lacked impartiality.

The reply on behalf of the Secretary of State

17. The Secretary of State offers no representations in response to the application.

Discussion

18. I have reached the conclusion that the Applicant's criticisms of procedural unfairness and irrationality are not well-founded. I will take in turn the main arguments which I have identified above.
19. **Representation.** I do not accept that the Applicant was inadequately represented. As to questioning, the procedure of the Parole Board is inquisitorial: the panel will ask questions first on all aspects of the case relevant to



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risk and risk management. The Applicant's representative will not be expected in effect to repeat the questions asked by the panel; nor will the representative be expected to ask questions on matters which are of no or no significant relevance to risk and risk management. As to representations, the Applicant had himself lodged representations running in total to some 12 pages; his representative appropriately referred to these without repeating them all; and the representative's final submissions are appropriately focussed on the key issues which the panel had to determine.

20. **Risk Management Plan.** The psychiatrist, in the report dated October 2022, diagnosed the Applicant as suffering not only from dissocial personality disorder in conjunction with substance misuse but also now from a functional psychotic disorder consistent with a diagnosis of paranoid schizophrenia. The COM's risk management plan was for the Applicant to stay initially in a PIPE AP (appropriate for a prisoner on licence with significant personality disorder), and be subject to close supervision, involvement of drug and mental health services, and strict licence conditions. It emerged shortly after the hearing that the PIPE AP to which a referral had been made required, before it would take him, a full mental health assessment to ensure that his mental health, especially his paranoid schizophrenia, was medically managed: see the file note dated 13 December 2022. So before the COM's risk management plan could be operated such an assessment would have to take place.

21. The Applicant's complaint is that the risk management plan contained "*no place for me to live that meets my needs.*" The Applicant's case was a complex one, involving personality disorder, persistent misuse of drugs, and now a diagnosis of psychotic disorder. The risk management plan was concerned to protect the public; and I see nothing unfair about a plan which proposed a stay in a PIPE AP initially, after which his housing could be considered further. It would have been open to the panel to adjourn for a further mental health assessment if it had thought the risk management plan workable; but the concerns about the Applicant's use of violence, personality disorder and persistent misuse of drugs would have persisted. I do not think it was procedurally unfair for the panel to take its decision on the basis of the evidence which it had before it.

22. **Recall.** The Applicant argues that the conduct which led to his recall was "*bullying not a violent assault*". As noted above, he accepted that he had pinned the complainant to a bed and put his fingers into the complainant's mouth, causing him to gag. The panel was entitled to conclude that this was violence as well as bullying. There is no substance in the Applicant's argument.

23. **Compliance.** The Applicant argues that the finding of lack of compliance and attitude to authority is unjustified because he has always engaged with agencies, attended appointments and behaved politely and respectfully. There was in my view ample material on which the panel could draw the conclusion that there was a concerning lack of compliance and attitude to authority. He had been warned over an extended period about his conduct towards the vulnerable resident (dossier pages 49 and 50); his conduct had given cause for concern on both occasions when he had been released; and



on both occasions he had repeatedly abused drugs despite warnings and advice; moreover he had continued to use drugs in custody, even shortly before the hearing (see decision, paragraph 2.7).

24. **Understanding.** The Applicant argues that, contrary to the panel's view, he did have a deep understanding of how drug use and mental health can lead to offending. The Applicant has not quoted the panel's reasons exactly; I think the panel's view is set out best in paragraph 4.4, quoted above. There was a rational basis for the view that the Applicant had "*little real understanding*" that his use of illegal drugs led to a decline in his state of mind: see in particular the report of the psychiatrist (dossier pages 582-583). There was a rational basis for the finding of lack of insight: see in particular the updating report of the psychologist (dossier pages 568-569).
25. **Substance abuse.** There was ample material from which the panel could rationally conclude that the Applicant appeared to have no intention of altering his behaviour as regards drug abuse. As noted above, he had continued to abuse drugs not only when released but also in custody, even shortly before the oral hearing.
26. **Engagement.** This argument is closely related to the argument concerning compliance. Engagement does not merely involve turning up to supervision and being polite; it involves a serious attempt to act upon the issues raised by supervision – principally in this case, acting on advice given in relation to drug abuse and bullying. The panel was entitled to find that he had difficulties in engagement with the probation service.
27. **Adherence to licence conditions.** The panel lacked confidence in the Applicant's future adherence to licence conditions. Given his failure to adhere to his licence conditions in the past, especially in relation to drug misuse, the panel's view was a rational one.
28. I have looked at the Applicant's arguments individually and I have considered them as a whole. It is a matter for concern that the Applicant remains in custody so long after the expiry of the minimum term of his sentence, a matter of which the panel was well aware (see paragraph 1.6 of its reasons). However, the panel must apply the public protection test, and I can see nothing unfair or irrational about its application here. The updated psychological report makes suggestions, in paragraph 8.1, as to possible ways forward in his case; these will require the co-operation of the Applicant and considerable input and planning. I hope they will be taken forward on all sides before the Applicant's next review.

Decision


29. For the reasons I have given the application for reconsideration is dismissed.

21 February 2023

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