

[2024] PBRA 45

Application for Reconsideration by English

Application

1. This is an application by English (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated 19 December 2023 not to release the Applicant or to direct an oral hearing.
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, (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 response from the Secretary of State (the Respondent) and the dossier consisting of 205 pages. Pursuant to Rule 9 of the Parole Board Rules 2019 (as amended) the Secretary of State sought an extension of 5 days to provide his response, which I agreed to in the interests of justice.

Background

4. The Applicant is serving an extended sentence for wounding with intent. The offence saw him and another man confront a man and his female partner who were using a supermarket cashpoint. The Applicant was carrying a kitchen knife, and swung it at his victim, on the second attempt cutting the upper arm of the man which had been raised in self-defence. He was aged 23 at the time of the index offence and is now 29.
5. He received an extended sentence comprising 9 years custodial element and a 4 year extension period. His parole eligibility date is 26 February 2024, his conditional release date is in February 2027 and his sentence expiry date is in February 2031.

Request for Reconsideration

6. The application for reconsideration is dated 6 February 2024. It was submitted by legal representatives on behalf of the Applicant.



7. The grounds for seeking a reconsideration are irrationality and procedural unfairness. The application is put on the following basis:
 - a. The panel indicated in their decision that information was outstanding in a number of areas, which should have been clarified prior to any decision;
 - b. [The Applicant] asserts that the Parole process was not made clear to him by professionals and as such he feels he has been placed at a disadvantage in terms of advancing his case.

Current parole review

8. The case was referred to the Parole Board by the Secretary of State on 26 May 2023. The referral was considered by a Member Case Assessment panel on 19 December 2023 when a provisional no release decision was made on the papers. No application in writing was made for a panel at an oral hearing to determine the case under Rule 20 of the Parole Board Rules 2019 (as amended) in the 28 day period following this decision.

The Relevant Law

9. The panel correctly sets out in its decision letter dated 19 December 2023 the test for release. This is pre-populated in the template letter. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined.

Parole Board Rules 2019 (as amended)

10. Under Rule 28(1) of the Parole Board Rules 2019 the only types of decisions which are eligible for reconsideration are those concerning whether 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)). Decisions concerning the termination, amendment, or dismissal of an IPP licence are also eligible for reconsideration (rule 31(6) or rule 31(6A)).
11. Rule 28(2) of the Parole Board Rules provides the sentence types which are eligible for reconsideration. These are indeterminate sentences (rule 28(2)(a)), extended sentences (rule 28(2)(b)), certain types of determinate sentence subject to initial release by the Parole Board (rule 28(2)(c)) and serious terrorism sentences (rule 28(2)(d)).

Irrationality

12. 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."



13. 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.

Procedural unfairness

14. 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.
15. 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.
16. The overriding objective is to ensure that the Applicant's case was dealt with justly.

The reply on behalf of the Respondent

17. The Respondent has stated in an email dated 16 February 2023 that PPCS provided the prison with an e-mail on 26 May 2023, which included a letter for [the Applicant] advising him of the commencement of his parole review and the associated deadlines. PPCS submitted the full parole dossier to the Parole Board on 22 August 2023. The Board issued an e-mail to the prison to confirm that they were in receipt of the complete parole dossier on 23 August 2023, stating that the Applicant had until 20 September 2023 to submit representations.

Discussion

18. The first ground considered is that of irrationality. The application refers to the decision letter which identifies information which was outstanding which should have been clarified prior to any decision being made. This related to a tentative diagnosis by psychiatry of mixed personality disorder, ADHD and psychotic episodes; lack of clarity about custodial behaviour including the outcome of two assaults on staff which had been referred to the police; as well as the basis upon which an assessment of risk of serious harm to a known adult had been made.
19. A Parole Board panel is subject to the 'duty of enquiry', a duty which has been explained in various decisions of the courts and of reconsideration panels including,



for example, **Samuel [2021] PBRA 100** : “One situation which may give rise to a finding of irrationality or procedural unfairness is where a panel has made a decision in the absence of an important piece of evidence which might have made a difference to the decision and which the panel might reasonably have been expected to obtain (adjourning the hearing, if necessary), for that purpose”.

20. It was agreed by the professional report writers that the Applicant needed to complete core risk reduction work before he could be safely released. The Applicant had commenced risk reduction work but then been segregated due to poor behaviour and moved to a prison establishment where he could not complete this work. It was intended that the Applicant would move to an alternative prison in due course in order to enable this work to be completed.
21. Furthermore, the Applicant had demonstrated mixed custodial behaviour which involved adjudications, being placed in segregation, self-harm, climbing onto the safety netting and suspected misuse of substances.
22. With these elements in mind, I consider that the absence of clarity on the points identified by the application would not have made a difference to the decision and it was not reasonable in the circumstances to expect the panel to obtain it. I reject this ground.
23. The second ground considered is that of procedural unfairness. The application asserts that the Applicant was confused by professionals and was not clear on what would be required at each stage of his parole process and was under the impression that his case would not be considered before February 2024, at his Parole Eligibility Date.
24. Clearly the Applicant had a legitimate interest in being able to participate in the decision, which was recognised by the standard letter sent to the Applicant at the commencement of the parole process. This has been identified by the Respondent in his representations as having been provided to the prison on 26 May 2023. The letter advised the Applicant of the commencement of his parole review and the associated deadlines. The Prison Offender Manager confirms in her report within the dossier that she passed this to the Applicant on 30 May 2023 and discussed with him obtaining legal representation, further discussing with him that he had until August 2023 to consider his options.
25. The Applicant advised the Prison Offender Manager when he received this letter that he would be obtaining legal representation once he had credit on his telephone. It is unclear at what point he in fact obtained legal representation as the application is silent on this point. From having the standard letter in May 2023 the Applicant had some 4 months to obtain advice and make his representations.
26. A further email was sent to the prison on 23 August 2023, recording that the Parole Board had received the dossier and stating that the Applicant had until 20 September 2023 to submit representations. No representations were received from either the Applicant or his legal representative in advance of the MCA decision. Whilst the Applicant confirms that he received a copy of the dossier and the representations form, he states that no attempt was made to collect the representations form from him and he was unaware of the date for their submission.



27. The dossier itself contains a Parole Board standard 'easy read' guide leaflet to help prisoners with their parole review. The leaflet was developed with the support of the 'Working for Justice' group and is written in clear, simple language with supporting illustrations. It provides guidance on 'the things that happen for your parole review' and on making submissions, providing suggestions on what a prisoner might wish to include. The leaflet gives the contact details of the Prisoner Advice Service, who offer free advice and the Parole Board itself.
28. In the relevant period the dossier shows that the Applicant spoke with his Prison Offender Manager and was interviewed twice by his Community Offender Manager (8 June 2023 and 28 July 2023) for the purpose of his parole assessment.
29. It is of concern that the Applicant's voice was not heard by the MCA decision maker. Decision makers should listen to those who have something relevant to say. However, I consider that a fair procedure was followed, giving the Applicant informed opportunity to make representations and participate in his parole process. There was correspondence, direct discussion with experienced professionals, an easy read leaflet explaining the process and a sufficient window for him to seek legal advice or free advice if he wished to do so. In my view it could scarcely be said the Applicant was unaware of the process and I consider there is nothing in this ground.

Decision

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

Angharad Davies
28 February 2024