

[2024] PBRA 65**Application for Reconsideration by Lindley****Application**

1. This is an application by Lindley ('the Applicant') for reconsideration of the decision of a panel of the Parole Board ('the panel') who on 18 February 2024, after an oral hearing on 19 January 2024, issued a decision not to direct his release on licence and not to recommend that he should be transferred to an open prison.
2. I am one of the members of the Parole Board ('the Board') who are authorised to make decisions on reconsideration applications, and this case has been allocated to me.

Background and history of the case

3. The Applicant is aged 68 and is serving life imprisonment for the murder of a young woman with whom he had been having an intimate relationship. He was aged 40 at the time of the murder and the victim was aged 19. He denied the murder but was convicted by the jury. His minimum term ('tariff') was set at 15 years and 1 day.
4. The murder occurred one morning at the victim's home. They had spent the night together and quarrelled in the morning. The Applicant beat her up and then strangled her with a ligature. For many years after being convicted the Applicant denied that he had responsible for the murder but he now accepts responsibility.
5. The Applicant's tariff expired in January 2011, and in November 2013 he was released on licence by direction of the Board.
6. In April 2015 he was recalled to prison as a result of having been arrested for having sexually assaulted his 7 year old niece. He was subsequently convicted of that offence after a contested trial. He received a 4 year sentence for that offence and a consecutive 9 month sentence for possessing indecent images of children, to which he had pleaded guilty. He continues to deny the sexual assault.
7. In 2015, 2019 and 2020 his case was referred by the Secretary of State to the Board to decide whether to direct his re-release on licence and, if not, to decide whether to recommend that he should be transferred to an open prison. On each of those occasions it was decided on the papers that he should remain in a closed prison.
8. In July 2022 his case was referred again to the Board. On this occasion his case was sent for an oral hearing which eventually took place on 19 January 2024.

9. The panel which conducted the hearing comprised an independent chair, another independent member and a psychologist member. The Applicant was legally represented.
10. The panel considered the dossier provided by the Secretary of State which at that stage contained 438 numbered pages. The panel also considered oral evidence from the following witnesses:
- a) the probation officer responsible for supervising the Applicant in prison [‘the POM’];
 - b) the Applicant himself;
 - c) a prison psychologist who had carried out a structured assessment of the Applicant’s risks [‘the psychologist’]; and
 - d) a probation officer who was standing in for the officer who would be supervising the Applicant in the community if he was re-released on licence [‘the COM’].
11. The Applicant sought a direction for re-release on licence. None of the professional witnesses supported such a direction. They did, however, all support a move to an open prison.
12. As indicated above the panel decided that the Applicant should remain in a closed prison. The reasons given by the panel for this decision will be explained below.

The Relevant Law

The test for release (or re-release) on licence

13. The test for release or re-release on licence is whether the Applicant’s continued confinement in prison is necessary for the protection of the public.

The rules relating to reconsideration of decisions

14. Under Rule 28(1) of the Parole Board Rules 2019 (as amended in 2022) a decision is eligible for reconsideration if (but only if) it is a decision that the prisoner is or is not suitable for release on licence.
15. Reconsideration will only be directed if one of more of the following three grounds is established:
- (a) It contains an error of law
 - (b) It is irrational
 - (c) It is procedurally unfair.
16. A decision that a prisoner is or is not suitable for release on licence is eligible for reconsideration whether it is made by:
- (i) A paper panel (Rule 19(1)(a) or (b)); or
 - (ii) An oral hearing panel after an oral hearing, as in this case, (Rule 25(1)); or
 - (iii) An oral hearing panel which makes the decision on the papers (Rule 21(7)).
17. The decision of the panel in this case not to direct release on licence is thus eligible for reconsideration. The decision not to recommend a transfer to an open prison is not.



The test for irrationality

18. In **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)** (*the "Worboys case"*), the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It stated at paragraph 116 of its decision:

"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."

19. This was the test which had been set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374** and applies to all applications for judicial review.

20. The Administrative 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 Board in making decisions relating to parole.

21. The Parole Board, when deciding whether or not to direct a reconsideration, adopts the same high standard as the Divisional Court for establishing 'irrationality'. The fact that Rule 28 uses the same adjective as is used in judicial review cases in the courts shows that the same test is to be applied. The application of this test to reconsideration applications has been confirmed in previous decisions under Rule 28: see, for example, **Preston [2019] PBRA 1**.

Procedural unfairness

22. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed, thereby producing a manifestly unfair, flawed or unjust result. These issues (which focus on how the decision was made) are entirely separate from the issue of irrationality (which focuses on the actual decision).

23. The kind of things which might amount to procedural unfairness include:

- (a) A failure to follow established procedures;
- (b) A failure to conduct the hearing fairly;
- (c) A failure to allow one party to put its case properly;
- (d) A failure properly to inform the prisoner of the case against him or her; and/or
- (e) Lack of impartiality.

24. Other things may also amount to procedural unfairness, and the overriding objective in any consideration of a prisoner's case is to ensure that his case is dealt with fairly.

The request for reconsideration

25. The request for reconsideration was made on 8 March 2024 by the Applicant's solicitors on his behalf. Their representations will be discussed below.

The Secretary of State's position

26. The Secretary of State is a party to all parole proceedings, the other party being the prisoner. As a party ('the Respondent') the Secretary of State is entitled to submit

representations in response to a request by a prisoner for reconsideration of a panel's decision.

27. In this case PPCS on behalf of the Secretary of State have indicated by e-mail that he offers no representations in respect of the application.

Documents considered

28. I have considered the following documents which have been provided for the purpose of this application:

- (a) The dossier provided by the Secretary of State for the Applicant's case, which now runs to 467 numbered pages and includes a copy of the panel's decision letter;
- (b) The representations submitted by the solicitors in support of this application; and
- (c) The e-mail from PPCS referred to above.

Discussion

29. It is convenient first to set out the reasons given by the panel for its decision and for disagreeing with the recommendations of the professional witnesses. They were as follows:

'The panel was provided with a Risk Management Plan (RMP). The RMP and requested licence conditions were discussed with [the Applicant] and his future plans explored. However, having concluded its risk assessment, the panel is of the opinion that it is premature to implement an RMP/release plan, and that the RMP provided would not manage the risks [the Applicant] currently poses. There is outstanding work to be completed regarding thinking and decision making skills, emotional self-regulation, use of violence (both instrumental and reactive) and aggression, sexual offending, and genuine internalisation and consolidation of his learning.

'[The Applicant] must develop insight and responsibility taking, understanding and self-management of his personality traits and schemas, evidence a consistent willingness to be open about negative or difficult developments, to address his use of impression management and a need to develop skills in being open, honest and being consistently co-operative with professionals involved in his case, in order that his risks can be managed

'The Parole Board shall not direct release unless it is satisfied that it is no longer necessary for the protection of the public that [the Applicant] should be confined. At this stage, the panel was not so satisfied, concluding there to be insufficient evidence of risk reduction consistent with protecting the public from risk of serious harm either upon release or, in circumstances where, in open prison conditions, he would be in the community, unsupervised, under licensed temporary release

'For the reasons set out in this decision letter, the panel disagrees with the recommendations made by the witnesses in this case.'

30. I will now set out the submissions made by the solicitors and my comments about them.



(1) 'Professionals agreed that there was no core risk reduction work outstanding and that remaining risk was manageable in open conditions.'

31. Where there is core risk reduction work outstanding (i.e. accredited risk reduction programmes which a prisoner needs to complete in closed conditions) the Board will not direct release on licence. The converse is not the case. A prisoner may have completed all accredited programmes deemed to be suitable in his case but still pose too high a risk to justify release on licence. The panel considered that to be the case here, and provided solid reasons (set out above) for that view.

32. It is correct that the professional witnesses were all of the view that the Applicant's risk of serious harm to the public was manageable in open conditions. The panel disagreed and provided solid reasons for doing so. Even if I had believed that the panel's decision on that point was irrational (which I do not) I could not have directed reconsideration of that decision as the Rules do not permit reconsideration of a decision not to recommend a move to an open prison (see above).

(2) 'Professionals were also agreed that any further consolidation work could be carried out in conditions of lesser security.'

33. Please see above. Even if the professionals were right, that would not be a ground for reconsideration.

(3) 'In their conclusion, the panel [stated that they were] in difficulties identifying any protective factors. The panel appears to have disregarded any evidence to the contrary and those set out in the psychological risk assessment namely:-

- **No evidence of violence for a very long time**
- **Positive engagement with the prison regime and good behaviour**
- **Regular contact and support from family**
- **Excellent work ethic and strong creative skills**
- **Positive engagement with the [a service run by psychologists]'**

34. 'Protective factors' are things which make it less likely that a prisoner will re-offend. I agree that (contrary to the panel's 'difficulties') the above factors were all 'protective' in the Applicant's case. However, protective factors can only carry so much weight in assessing a prisoner's risk: they need to be balanced against the prisoner's risk factors. In this case there were clearly significant risk factors (spelt out by the panel) which the Applicant needed to address further before it would be safe to release him into the community. The panel's decision would therefore have been the same if they had recognised the existence of these protective factors.

(4) 'A robust Risk Management Plan was proposed with which contained a number of additional licence conditions including residence at Approved Premises, polygraph testing and trail monitoring.'

35. The panel recognised that there was a robust Risk Management plan but gave solid reasons for concluding, as they did, that it would not be sufficient to enable the Applicant's risk of serious harm to the public to be managed safely in the community. It is often the case that the plan proposed is as robust as it could be, but it can only



contain external controls and the prisoner needs to have sufficient internal controls to enable his risk to be managed safely in the community. The panel were fully entitled to their view, on the evidence, that that was not the case here.

(5) 'In addition, the Applicant would have access to Intensive Intervention and Risk Management Services (IIRMS). Although voluntary the Applicant clearly expressed his willingness to comply with IIRMS when available.'

36. The same applies to this point. The panel were fully entitled to their view that participation in IIRMS would not be sufficient to enable the Applicant's risks to be managed safely in the community. In any event the COM gave evidence that IIRMS would not be available to him at the present time.

(6) 'In the light of the above, it is submitted on behalf of the Applicant that the panel placed insufficient weight on the reports and evidence of the professionals. A request is therefore made for that decision to be reconsidered with a view to a new oral hearing.'

37. This argument overlooks the fact that none of the professional witnesses supported the Applicant's release on licence. They were all of the view, as was the panel, that his risk was too high to be safely manageable on licence in the community. Like the panel, they gave solid reasons for that view. The fact that they supported a move to an open prison is irrelevant for the purposes of a reconsideration application, as the panel's decision not to recommend such a move is not susceptible to reconsideration.

Decision

38. In the light of the above I am satisfied that there was no irrationality in the panel's decision and no procedural unfairness either. There was ample evidence to support the decision not to direct the Applicant's release on licence. The panel's reasons were carefully and convincingly explained. I must therefore refuse this application for reconsideration.

**Jeremy Roberts
22 March 2024**

