

[2024] PBSA 18

## Application for Set Aside in the case of Edwards

### Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision to direct release in the case of Edwards (the Respondent). The decision was made by a panel (the panel) after an oral hearing on the 20 February 2024. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, the oral hearing decision dated the 28 February 2024, and the application for set aside dated the 22 March 2024. I have also considered representations from the Respondent's legal representative dated the 27 March 2024.

### Background

3. On the 7 February 2007, the Respondent received a sentence of imprisonment for public protection following conviction for s18 wounding.
4. The Respondent was aged 26 at the time of sentencing. He is now 43 years old.
5. He has been released twice on this sentence. The first was in 2019 and the second was in 2022. Most recently, his licence was revoked on 18 January 2023 and he was returned to prison on 23 January 2023. The panel's review on 20 February 2024 was the first review since the Respondent's recall to custody. After hearing evidence from the Respondent, his Community Offender Manager (COM) and the Prison Offender Manager (POM), the panel directed that the Respondent be re-released.

### Application for Set Aside

6. The application for set aside has been drafted and submitted by the Applicant.
7. In detailed representations, the Applicant submits that there has been a change in circumstances.
8. The Applicant states that there has been a significant deterioration in the Respondent's mental health which will have an impact on managing his risk in the community, and that the risk management plan is no longer suitable or robust.

### The Relevant Law

9. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the **Parole Board Rules**) provides that a prisoner or the Secretary of State may apply to the Parole Board to set aside certain final decisions. Similarly, under rule 28A(1)(b), the Parole Board may seek to set aside certain final decisions on its own initiative.
10. The types of decisions eligible for set aside are set out in rule 28A(1). Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for set aside whether 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)).
11. A final decision may be set aside if it is in the interests of justice to do so (rule 28A(3)(a)) **and** either (rule 28A(4)):
- a) a direction for release (or a decision not to direct release) would not have been given or made but for an error of law or fact, or
  - b) a direction for release would not have been given if information that had not been available to the Board had been available, or
  - c) a direction for release would not have been given if a change in circumstances relating to the prisoner after the direction was given had occurred before it was given.

### The reply on behalf of the Respondent

12. In response, the Respondent has offered explanations for the concerns he has raised about the risk management plan, particularly in terms of the location of his designated accommodation. He disputes much of what has been said about him since the panel's decision and maintains that he is suitable for re-release.

### Discussion

13. It is argued on behalf of the Applicant that there has been a change in circumstances.
14. I have little difficulty in determining that the information now before me is a relevant consideration, particularly when noting the concerns raised by both the Applicant and the Respondent about the risk management plan. I cannot be satisfied that the panel would have been minded to direct release in this case had the reported change in circumstances relating to the Respondent occurred before the release direction was given.

### Decision

15. I am satisfied that it is in the interests of justice for the decision of the panel dated the 28 February 2024 to be set aside.

**Robert McKeon**  
**08 April 2024**