

**[2025] PBSA 1****Application for Set Aside by Howell****Application**

1. This is an application by Howell (the Applicant) to set aside the decision made by a Member Case Assessment (MCA) paper panel of the Parole Board dated 13 November 2024 not to direct the Applicant's release.
2. I have considered the application on the papers. These are the MCA decision, the dossier, the application for set aside (dated 6 December 2024). The Public Protection Casework Section (PPCS) on behalf of the Secretary of State (the Respondent) did not provide any submissions.

**Background**

3. The Applicant was sentenced to a nine year determinate sentence for the offences of affray, wounding with intent to cause grievous harm and a conviction for committing an offence whilst subject to a community order. He was found guilty at trial. The index offences were committed in the company of others. The Applicant and the victim are said to have engaged in an altercation, during which the Applicant bit part of the victim's ear off. The ear could not be reattached to the victim's head. The Applicant was said to be drunk at the time and the sentencing judge described his behaviour as '*grotesque savagery.*'
4. The Applicant was first released in September 2020 but recalled back into custody in May 2022 on a fix term basis following his arrest for a series of motoring offences, including failing to provide a specimen and driving without due care and attention. He was next released on 1 June 2022 and remained in the community for some two years, until he was again recalled on 26 July 2024 following his arrest on suspicion of affray and threats to kill.
5. Prior to his arrest the Applicant had broadly complied well with supervision, although a non-contact condition was added to his licence in respect of his ex-partner and her family, following allegations that he had made a threat to kill against his ex-partner. According to updated Probation Reports professionals were also concerned that the Applicant may not have been residing as directed, and that he may have breached his licence condition in relation to residing at an address with a child under the age of 18. Since these were allegations only, the panel placed no weight on these matters.

**Application for Set Aside**

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6. The application for set aside has been provided by those instructed on the Applicant's behalf and was served on the Parole Board by email on 17 December 2024.
7. Legal submissions state that the decision not to release would not have been made but for an error of fact, namely that *'new information has been confirmed, and that had the new information been taken into account, then the decision would have been different.'* Those instructed also suggest that the panel erred in not adjourning the Applicant's case for updated information to be provided with regards to an ongoing police investigation.

### Current Parole Review

8. The Applicant's case was referred to the Parole Board by the Respondent to consider whether to direct release.
9. The case was considered by a Single Member of the Parole Board at the Member Case Assessment stage (MCA) on the 13 November 2024 and concluded by way of a written decision on the papers. The panel did not direct the Applicant's release. Nor did the panel direct an oral hearing given the short time to sentence end date (SED) (April 2025). The Parole Board has an operational policy that cases with a SED beyond 26 weeks of the review date will not be sent to an oral hearing unless there are exceptional circumstances for so doing.
10. The paper decision was issued on the 14 November 2024.
11. The panel held the Applicant's recall to have been appropriate, based on the evidence before it.

### The Relevant Law

12. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2024) (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.
13. The types of decisions eligible for set aside are set out in rules 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)).
14. 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 made if information that had not been available to the Board had been available, or
- c) A direction for release would not have been made 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**

15.The Respondent did not provide any submissions.

### **Discussion**

#### **Eligibility**

16.The application concerns a panel’s decision not to direct release following a paper review under rule 25(1). The Applicant argues that the condition in rules 28A(1) and 28A(4)(b) are made out. I agree with this submission. It is therefore an eligible decision which falls within the scope of rule 28A

#### **The test for set aside**

17.In determining the application for set aside, I must consider the impact of the legal submissions now provided on the panel’s decision not to release the Applicant. This is a two-stage process, (i) firstly, do I consider there to be an error of fact (ii) if so, would a direction for release have been made if that information had been known.

18.In decisions not to release the Parole Board has the power to set aside a decision only if there is an error of law or fact (where proceedings were unlawful or relied on factually inaccurate information) and the decision would not have been made were it not for that error. Importantly, the legislation does not allow for the decision to be set aside based on (i) information that was available but was not provided to the Parole Board when their decision was made; or (ii) where there has been a change of circumstances relating to the prisoner that occurred after the decision was made.

19.With this legislation in mind, after carefully considering all of the evidence before me, including the legal submissions provided, I do not consider there to be any errors of fact (or law) in the Applicant’s case.

20.The instant decision was submitted on the 13 November 2024 and relied, reasonably in my view, on the contents of the Applicant’s parole dossier provided. No legal submissions were provided for consideration, despite being invited. Personal submissions appear to have been added to the dossier subsequently.

21.Within the Applicant’s dossier was an updated Police Report dated 11 October 2024 which confirmed that Police investigations were still in train and that further enquires would be made (including sending the Applicant’s phone away for interrogation). The report further stated, as set out in the decision at paragraph 2.11, that thereafter the case would be sent to the Crown Prosecution Service for a charging decision. Whilst no explicit time frames were provided, in my estimation the panel made a wholly

reasonable assessment that this would take some time. The report was comprehensive and unambiguous.

22. Whilst it is right to say that the Part C report (which post-dates the Police Report [30 October 2024]) suggests that the Applicant's case *'likely... would be dropped due to evidential difficulties'* the Community Offender Manager also confirmed that they were *'yet to receive a response from the Police Officer involved in the case to confirm this is the case'*. As such the panel decided to conclude the Applicant's case on the papers on the basis of the information that was available to it, namely the seriousness of the new allegations, the fact that the Applicant's case had already been adjourned for updated information regarding the new allegations on 1 October 2024, and the lack of certainty about the resolution of the new allegation under police investigation. In my estimation this was a wholly reasonable judgment based on the evidence available to the panel at the time.
23. With regards to legal submissions that the panel ought to have adjourned the Applicant's case for further information, unfortunately again I do not agree with this submission. The panel had already adjourned the Applicant's case for more information on 1 October 2024, as aforementioned, and based on the evidence provided within the updated Police Report and the lack of certainty in the Part C report, it was reasonable for the panel to conclude that the Police investigation was far from complete, in my view. The panel was also under a duty to ensure the Applicant a timely review.
24. Whilst I note the submissions of those instructed, that the Police investigations had indeed been concluded before the MCA review took place, ultimately legislation does not permit for the panel's decision to be set aside on the basis of information which might have been available but was not within the Applicant's parole dossier at the time, given that it was a decision not to release.
25. Having, made the above findings, I must finally consider whether it is the interests of justice for the decision to be set aside.
26. I am not so satisfied on all the evidence before me.

## Decision

27. For the reasons I have given, the application is dismissed, and the decision of the panel dated 13 November 2024 should not be set aside.

**Heidi Leavesley**  
**07 January 2025**