

[2020] PBRA 120

Application for Reconsideration by Knights

Application

1. This is an application by Knights (the Applicant) for reconsideration of a decision of a three member panel of the Parole Board dated 3 August 2020 to refuse release or to recommend his transfer to open conditions.
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.
3. I have considered the application on the papers. These are: the application from the Applicant's legal representative, the decision of the panel following an oral hearing dated 3 August 2020 and the dossier of 809 pages which was available to the Applicant and the panel at the oral hearing.

Background

4. The Applicant was sentenced to life imprisonment on 31 March 2000. The Applicant was found guilty of two counts of possession of a firearm, six counts of using a firearm with intent to resist arrest and one count of kidnapping. He also received concurrent determinate sentences of imprisonment for three counts of possession of a firearm with intent to cause fear of violence and four counts of possessing a firearm or ammunition without a certificate. The Applicant was 42 years old at the date of his conviction. He is now 62 years old and this was his sixth Parole Board review.

Request for Reconsideration

5. The application for reconsideration is dated 17 August 2020.
6. The grounds for seeking a reconsideration are as follows:
 - (a) Irrationality
 - (i) That the panel placed too much weight on establishing an explanation for the index offence having occurred;
 - (ii) Two reports from medical professionals referred to by the panel in their decision were not contained within the bundle; and

- (iii) That the panel failed to attach sufficient weight to the conclusion that the Applicant's risk was such that he could be managed in the community.

(b) Procedurally unfair

- (i) That the panel have not detailed why they departed from professional recommendations to release.

Current parole review

7. The Applicant's case was referred to the Parole Board by the Secretary of State in January 2018. The case was directed following a Member Case Assessment to an oral hearing on 5 May 2018. Thereafter the review has complex procedural history. The detail of the procedural history is not relevant to this review but can be summarised by it first being listed for oral hearing on 31 January 2019 when it was adjourned, listed again on 11 July 2019 when it was adjourned again and then listed again on 14 November 2019 when the matter was deferred. The original panel recused themselves at that point, after it became apparent that the Applicant had ongoing legal proceedings against the Parole Board and in particular had complaints about that panel's conduct of his case.
8. A new three member panel convened for an oral hearing on 15 July 2020. The panel comprised a judicial chair, a Psychologist member and a Psychiatrist. The panel heard oral evidence from the Applicant's Offender Supervisor, his Offender Manager and a Prison Psychologist as well as from the Applicant himself.

The Relevant Law

9. The panel correctly sets out in its decision letter dated 3 August 2000 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

Parole Board Rules 2019

10. Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that 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)).
11. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**.

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.
14. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

Procedural unfairness

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

The reply on behalf of the Secretary of State

17. The Secretary of State confirmed on 20 August 2020 that he has no response in respect of the Applicant's reconsideration application.

Discussion

18. The panel had the advantage of an extensive dossier of reports and other material. They had the advantage, too, of seeing and hearing the Applicant as well as the Prison Psychologist, the Applicant's Offender Manager and Offender Supervisor. Where there is a conflict of opinion, it was plainly a matter for the panel to determine which opinion they preferred, provided the reasons given are soundly based on evidence, as well as rational and reasonable or at least not so outrageous in the sense expressed above.



19. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility to make their own risk assessments and to evaluate the likely effectiveness of any risk management plan proposed. They must make up their own minds on the totality of the evidence that they hear, including any evidence from the Applicant. They would be failing in their duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if they failed to do just that. As was observed by the Divisional Court in **DSD**, they have the expertise to do it.
20. However, if a panel were to make a decision contrary to the opinions and recommendations of all the professional witnesses, it is important that it should explain clearly its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions, per **R (Wells) v Parole Board 2019 EWHC 2710**.
21. I have found that the panel did clearly explain its reasons for departing from the judgments of the professional witnesses and that this was sufficient to justify its conclusions. It is clear from the panel's detailed and careful decision that they were concerned that there is not yet a consensus amongst those working with the Applicant about what his risk factors are. The panel reference the evidence of the witnesses before them, as well as views expressed in the past by medical professionals treating the Applicant. The panel refer to these opinions not to place weight on them but to illustrate that those professionals disagreed with the current witnesses on the Applicant's mental health condition. After carefully detailing their reasons, the panel reached the conclusion, which they were entitled to do, that the professionals working with the Applicant do not have a clear and sufficient knowledge of the Applicant's risks.
22. It was also clear to the panel that the Applicant himself does not have a real insight into his risk factors. Given the unreliability of the formulation before them, the panel make clear that they would have to look for objective evidence to demonstrate risk factors beyond the Applicant's self-report. The panel also looked at evidence from the time of the index offence to point against some of the explanation for the index offence given by the Applicant and the other witnesses at the hearing. The panel found that the Applicant was an evasive and inconsistent witness at the hearing. In the circumstances, the panel was entitled to focus on the Applicant's understanding of why he committed the index offence as well as the different explanations provided by the professionals working with him. This enabled the panel to make the findings they did in relation to the Applicant's understanding of his risk factors and those of the professionals. This was not an irrational approach.
23. Furthermore, reference to two further professional opinions (which differed from each other as well as the opinion of the witnesses at the hearing) was given as an illustration of how professional opinion on the Applicant's risk factors has differed over time. The panel place no further reliance on those reports than that. In the circumstances it was not irrational or unfair for them to refer to such opinions without ordering the full reports of each Doctor.



24. The panel then goes on to carefully explain why the risk management plan put forward by the professionals working with the Applicant is not, in their view, sufficient to manage the Applicant's risk. The panel have clearly considered fully the view of the Applicant's Offender Manager but remain concerned that aspects of it (particularly the lack of supported designated accommodation) would not sufficiently manage the Applicant's risk, particularly given his risk profile and history of mental health. The panel were clearly entitled to reach this view and again explained their reasons for departing from the recommendations of the professionals.
25. Where a panel arrives at a conclusion, exercising its judgement based on the evidence before it and having regard to the fact that they saw and heard the witnesses, it would be inappropriate to direct that the decision be reconsidered unless it is manifestly obvious that there are compelling reasons for interfering with the decision of the panel.
26. I have also found that the panel dealt with the decision justly and, contrary to the assertions of the Applicant, that the panel has justified its conclusions clearly and carefully.

Decision

27. 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.

Kay Taylor
3 September 2020

