

[2020] PBRA 20

## Application for Reconsideration by St Hill

### Application

1. This is an application by St Hill (the Applicant) for reconsideration of a decision of an Oral Hearing Panel dated 16 December 2019 not to direct his release. The Secretary of State has offered no response to the application, other than to refer the Reconsideration Assessment Panel to the existence of a Risk Management Plan in the report of the Offender Manager, dated 11 December 2019.

### Background

2. The Applicant is serving a sentence of life imprisonment. His tariff expired in June 2007.

### Request for Reconsideration

3. The application for reconsideration is dated 23 December 2019.

### Current parole review

4. In August 2018 the Secretary of State referred the Applicant's case to the Parole Board for his ninth review.

### The Relevant Law

5. Rule 25 (decision by a panel at an oral hearing) and Rule 28 (reconsideration of decisions) of the Parole Board Rules 2019 apply to this case.
6. Rule 28(1) provides that applications for reconsideration may be made in eligible cases on the basis that (a) the decision is irrational and/or (b) that it is procedurally unfair. This is an eligible case.
7. In **R (on the application of 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."*



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. This strict test for irrationality is not limited to decisions whether to release; it applies to all Parole Board decisions.

## Discussion

8. The Applicant is now 55 years of age. He has numerous previous convictions. Until 1988, his convictions were limited to non-sexual offending, albeit of sufficient gravity to attract custodial sentences.
9. In November 1988 he was convicted of two offences of rape and burglary. In brief, he had entered a particular house on two separate occasions and had raped two different women who were in the house. These offences attracted a determinate sentence of 15 years imprisonment. He was released in February 1998.
10. In June 2000 he was convicted again of offences of rape and burglary, committed within 18 months of his release. The circumstances of these offences were strikingly similar to the 1988 convictions. He was sentenced to life imprisonment with a minimum term of 7 years.
11. The grounds on which this application is based are set out in a letter dated 23 December 2019. It is somewhat discursive in style. The grounds, as understood by this Reconsideration Assessment Panel (RAP), are set out and considered one by one below.
12. First, the Oral Hearing Panel (OHP), having directed a full psychological risk assessment, failed to give any weight to it, in particular by finding that there were further treatment needs which the Applicant had to address before release. The reporting Psychologist had asserted in the report and in evidence that no further work was necessary.
13. The question for this RAP is not whether the decision made by the OHP that further work was necessary was one which this RAP would itself have made, but whether the decision was irrational in the sense described above.
14. The dossier included psychological reports which had been directed in relation to the most recent parole hearing in 2017. Those reports suggested that further work needed to be undertaken, whether through programmes (two were particularly referenced in the reports) or by one-to-one intervention. The evidence before the OHP was that the Applicant had been assessed for both of the suggested programmes but was found unsuitable for them. The alternative of one-to-one work had not been undertaken, not because it was considered unnecessary or unsuitable but because, it seems, resources had not been made available. Further, there was



evidence before the OHP that the Applicant's risk remained unchanged since the previous hearing in 2017.

15. In those circumstances, the decision of the OHP that further work needed to be done before release, far from being irrational, was supported by evidence before it. This was evidence which the OHP was fully entitled to accept and to act upon.
16. Secondly, it is submitted that the OHP did not make a fair assessment of the evidence given to them by the Applicant and thus overestimated his risk. The focus of this complaint appears to be that the OHP placed too much emphasis on his inability to explain the triggers for his sexual offending, suggesting that he was unable to recognise warning signs.
17. It is submitted that the OHP paid insufficient regard to comments in one of the 2017 psychological reports to the effect that the Applicant *"...given his extensive treatment to date ... may never fully verbalise his sexual interests or make the links in his offending the way the professionals want him to..."* and later referring to *"...an unrealistic expectation that he must understand everything about himself..."*. The Psychologist who gave evidence to the OHP appears to have agreed with this, going on to express a lack of confidence *"...as to whether there was ever a time when one can say there is 100% insight when working with [the Applicant]..."*.
18. It also appears to be submitted that the Applicant may have found difficulty in expressing himself as well as he might have hoped when giving his evidence. This submission is merely asserted without any evidential or other basis. It is not a matter which this RAP can reasonably take into account.
19. The Decision Letter sets out a summary of the Applicant's evidence; it is not submitted that the summary is incomplete or inaccurate. The OHP rejected his evidence as to the circumstances and motivations for his sexual offending. Their considered conclusion was that the Applicant had not given them confidence that he had the insight or ability to recognise or manage any of the risks that he may present in the future.
20. This RAP finds no inconsistency between the finding made by the OHP and the psychological evidence referred to above. The findings of the OHP as to lack of insight, lack of understanding and lack of recognition of links (or triggers) for the Applicant's sexual offending appear consistent with the psychological evidence. In any event, the OHP, having received evidence from the Applicant, were required to make an assessment of it. Their conclusions were in accordance with a fair assessment of the evidence and cannot be characterised as irrational.
21. Thirdly, complaint is made that the OHP did not give sufficient weight to the progress made by the Applicant in custody, leading them to make an erroneous assessment of risk.
22. The Decision Letter sets out clearly the approach which the OHP took to this. It contains an express acknowledgement of the Applicant's positive custodial behaviour as well as careful assessment of risk. There is reference to three different risk assessment tools which featured in the dossier and in the evidence. The OHP's



finding that the Applicant poses a high risk of sexual or violent recidivism was based on a rational assessment of all of the material before it, including the circumstances of his previous offending. This finding was not irrational.

23. Fourthly, complaint is made about reference in the Decision Letter to remorse shown (or not shown) by the Applicant.
24. This observation was plainly not central to the decision of the OHP and was nothing more than a partial explanation for the OHP's agreement with the assessment of the 2017 panel that it was difficult to ascertain what, if any, things in life that may reduce the chances of reoffending in the future.
25. This complaint is ill-founded and without substance.
26. Fifthly, it is submitted that there was no fully developed Risk Management Plan before the OHP.
27. It is unclear to this RAP what the substance of this complaint is. There was, in fact, a Risk Management Plan, dated 11 December 2019, before the OHP. It seems that, to the extent that the plan was incomplete, the Panel Chair undertook to adjourn this part of the decision in the event that the OHP determined to direct release.
28. Since that was not the determination of the OHP, this complaint is of no conceivable relevance. It is, in any event, wholly misplaced.
29. Sixthly, complaint is made about a passage in the Decision Letter in which reference is made to the OHP's concerns about aspects of the Applicant's personality and possible psychopathic traits that had been suggested in past assessments not to have been fully identified. It is submitted that the hearing should have been adjourned or deferred for further enquiry to be made as to this. The failure to do so amounts, it is argued, to procedural unfairness.
30. The dossier already had abundant material in it, including at least six psychological reports. The passage complained of constituted a small (and relatively unimportant) part of the Decision Letter.
31. There is no reason of substance why the hearing should have been adjourned for yet further assessments and reports. In addition, considerations of proportionality would have made such a course inappropriate.
32. This complaint of procedural unfairness is ill-founded and is rejected.
33. More generally, it is important to note that Reconsideration Assessment Panels are empowered only to reconsider decisions as to whether a prisoner is suitable or unsuitable for release. A recommendation that a prisoner is or is not suitable for a move to open conditions is final and not within the scope of the reconsideration process (see Parole Rules 2019 rules 19 (1) (a) and (b), 21 (7), 25 (1) and (5) and 28).



34. In this case, all of the professionals whose evidence was considered by the OHP agreed that the Applicant was not suitable for release. They took the view, with varying degrees of enthusiasm, that the time had come for the Applicant to be tested in open conditions. The difference between them and the OHP was on this point only.

35. In those circumstances and in the light of the cogent and rational reasons given by the OHP, their decision not to direct release was plainly rational.

## **Decision**

36. 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.

**Alistair McCreath**  
**27 January 2020**

