

Application for Reconsideration in the case of Hawes

Application

1. This is an application by the Secretary of State (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 20 January 2020 to direct the release of Hawes (the Respondent).
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 original dossier running to 148 pages, the oral hearing decision letter and the Applicant's submissions dated 10 February 2020. The Respondent has made no representations.

Background

4. The Respondent is serving a sentence of Imprisonment for Public Protection imposed on the 14 September 2006 for offences, committed in 2005 and 2006, of possession and distribution of indecent images of children.
5. The minimum period the Respondent had to serve before he was eligible to apply for parole expired on the 29 September 2007.
6. On a separate indictment, the Respondent was sentenced to 18 years imprisonment (subsequently reduced on appeal to 10 years) for offences of buggery, attempted rape and indecent assault on children aged between 5 and 15 years. The offences were committed between 1962 and 1979 and prior to a previous conviction in 1987.
7. In 1987, the Respondent was sentenced to 5 years imprisonment in respect of offences of buggery and other sexual offences against children. The judge, when passing sentence in 2006, said the Respondent had not revealed those sexual offences when he was sentenced in 1987; the Respondent said he had revealed them.



8. On the 19 June 2017, the Respondent's case was considered by the Parole Board. This was his first oral hearing. He declined to attend and indicated he wanted to stay in prison and had nothing to be released to. The panel did not direct release.

Current parole review

9. The second and present oral hearing took place on the 17 September 2019 before a single-member panel who heard from the Respondent (who chose not to be represented) and from his Offender Manager. The hearing was adjourned for further information in respect of the risk management plan and on the 20 January 2020 the panel issued a decision letter directing release.

Request for Reconsideration

10. The application was received on the 10 January 2020. The Applicant gives a number of reasons in support of the allegations of irrationality.
11. The Applicant submits, among other matters, the panel should not have found that the test for release had been met because the Respondent is an "untreated sex offender" (i.e. a sex offender who has not completed any training course whilst in custody to address sexual offending). The Applicant also submitted that the risk management plan was inadequate given the Respondent's assessed level of risk, particularly given he had not identified, suitable accommodation to go to.

The Relevant Law

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 paragraph 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'.
14. It is an insufficient basis for a challenge to a panel's decision simply to put forward a reasonable, alternative conclusion consistent with the evidence. As Lord Hailsham remarked in **Re W (An Infant) [1971] AC 682** *"Two reasonable [persons] can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their right to be regarded as reasonable."*



Discussion

15. Self-evidently, this was a difficult decision to have to make. The main factors militating against release were, (a) the Respondent was an untreated sex offender; (b) he had an enduring interest in children; (c) he had refused to do work to address his offending; (d) his expressed remorse and victim empathy had to be put in the context of refusing to do any work to address his offending; (e) he had been assessed as posing a high risk of serious harm to children and a medium risk of being reconvicted for sexual offending against children; (f) little had changed since June 2017.
16. The Applicant draws my attention to a number of undoubtedly significant problems surrounding release. He submits that in 2017, the panel refused release because there was no suitable accommodation. My reading of the letter dated the 20 June 2017 is that, although the panel was anxious about the absence of suitable accommodation, the principal reasons for refusing release were the Respondent's high risk of harm, the fact he had undertaken no offending behaviour work and that his release was not recommended by either the Offender Supervisor or the Offender Manager and a suitable risk management plan was not in place.
17. The Applicant points out that the Respondent's risk has not diminished since the last hearing either through age or other factors.
18. The Applicant reminds me that the Respondent had previously offended whilst in sheltered accommodation, a fact taken into account by the present panel.
19. The Applicant also places emphasis on the Respondent's failure to engage in offending behaviour work and argues that his promise to cooperate with his Offender Manager in the future is hedged with reservations and personal considerations.
20. The Applicant submits that the fundamental problem is the absence of suitable accommodation.
21. There are undoubtedly real difficulties about accommodation. The Respondent is now aged approximately 81 and suffers from peripheral vascular disease, diabetes and other diabetic complications. He does not meet the criteria for designated accommodation because of his need for daily care and the local authority that will be responsible for housing the Respondent may not have been as helpful as the panel would have wished.
22. The panel did identify changes since 2017. The Respondent now wants to be released and dreads returning to prison. For the first time he is cooperating with his Offender Manager. Unlike 2017, both the Offender Supervisor and the Offender Manager support his release, albeit with the proviso that there should be suitable accommodation.
23. I turn to the vexed question of accommodation. The Respondent did not want to go into designated accommodation and in any event, one was not available. The relevant authority's assessment was that the Respondent did not require sheltered



accommodation and it proposed he should be placed in independent accommodation with care support.

24. As far as accommodation is concerned, the panel directed release on the following basis, (a) the Respondent will be in independent accommodation with care support and will be monitored by Multi-agency public protection arrangements (MAPPA) which are designed to ensure his successful management as a convicted sex offender; (b) the relevant county council will fund the care support; (c) the Offender Manager and the prison housing officer will assist the Respondent in making an application for housing from the relevant local authority department; (d) that local authority will not identify the particular accommodation unless either the Respondent's release is confirmed (which presumably it can be) or he presents as "homeless".
25. Residence in designated accommodation would have been for a limited period and then the Respondent would have to move on. There were perceived advantages to sheltered accommodation but of course that sort of accommodation had not prevented the Respondent from offending in the past.
26. The panel decided that the combination of independent accommodation with care support combined with a robust risk management plan and the involvement of MAPPA (see above) was likely to be effective. It is necessary to consider whether the panel was unreasonable or unrealistic in coming into that opinion.
27. The panel did not minimise either the Respondent's sexual offending which had been entrenched and extensive nor did it minimise the current level of risk. A careful reading of the decision letter reveals the release plan had the support of the Offender Manager and the Offender Supervisor. The panel expressed the view *"there is nothing to indicate that appropriate sheltered housing will not be secured given your level of care needs"*. In its context it seems that the word "sheltered" was added inadvertently.
28. The Applicant's representations are thoughtful and thought-provoking. It is perhaps a shame they were not before the panel at the oral hearing. However, I have to ask whether they succeed in establishing the decision was irrational in the sense there was an absence of logical connection between the evidence and the ostensible reasons for the decision. As I have already observed, this was a difficult decision and it is not inconceivable that a different panel could have come to a different conclusion. However, irrationality is one facet of unreasonableness, and as Lord Hailsham observed, to come to opposite conclusions does not necessarily forfeit the right of either to be regarded as reasonable.
29. Very much in the spirit of the above, I am not persuaded this decision was irrational within Lord Diplock's definition.



Decision

30. For the reasons I have given, I do not consider that the decision was irrational and accordingly the application for reconsideration is refused.

James Orrell
25 February 2020