

[2021] PBRA 11

Application for Reconsideration by Hodge

Application

1. This is an application by Hodge (the Applicant) for reconsideration of a decision of the Parole Board that the Applicant was unsuitable for release (the decision).
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 comprise a dossier of 209 numbered pages, written submissions from the Applicant dated 23 December 2020 and 24 December 2020, representations from the Applicant's solicitors dated 4 January 2020, an application form CPD2 dated 22 January 2021 and email representations by the Secretary of State dated 25 January 2021 and 8 February 2021.

Background

4. On 4 January 2005, the Applicant received a life sentence of imprisonment, with a minimum tariff of 3 years and 9 months (4 years less time served) for an offence of grievous bodily harm with intent. The minimum tariff expired on 4 October 2008. The Applicant was aged 38 at the time of sentencing. He is now aged 54.
5. On 25 June 2020 the Applicant's case was referred to the Parole Board by the Secretary of State, for the consideration of the Applicant's suitability for release. On 24 November 2020 a single member of the Board decided on consideration of the papers that the Applicant was unsuitable for release (the decision).
6. The Applicant subsequently applied for a panel at an oral hearing to determine his case. Written representations by the Applicant's solicitors supporting that application are included in the dossier and are dated 27 November 2020. In a decision dated 10 December 2020, another single member of the Board decided to refuse to direct the case to an oral hearing.
7. The Applicant subsequently applied for reconsideration.

Request for Reconsideration

8. The initial application for reconsideration is dated 23 December 2020. The application states that *"I wish to appeal the decision of the single panel member*



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and letter dated 10 December 2020". The letter referred to the Applicant having spoken to a new solicitor, with their details having been given.

9. Further representations on the application were made by the Applicant dated 24 December 2020. Representations were then made by the Applicant's solicitors dated 4 January 2021. Those solicitors were not the same as the new solicitor whose details had been given in the application.
10. As the application and representations all received were in very general terms, with the solicitor's representations not addressing the application for reconsideration at all, I asked for further particulars of the Applicant's grounds. This request was made to the Applicant, the solicitor who had provided representations and the new solicitors the Applicant had named. As a result, the Applicant completed the CPD2 application form. No further representations were received from either set of solicitors.
11. The application could be read as stating that reconsideration is sought of the decision to refuse to direct the case to an oral hearing, which is not available under the 2019 Rules. I have however construed the application as seeking reconsideration of the decision of 27 November 2020 that the Applicant was unsuitable for release.
12. The CPD2 representations assert that the decision is procedurally unfair and irrational.
13. In relation to procedural unfairness, the representations assert that there have been substantive delays in receiving post, that the Applicant did not have a copy of the dossier and that he did not receive in advance of the decision a copy of his self-representations from his solicitor to sign. The representations also set out that the Applicant has previously spent time in a regime designed and supported by psychologists and completed programmes in custody.
14. In relation to irrationality, the representations challenge the conclusions of the professionals whose reports are in the dossier who recommend that he spend further time in a regime designed and supported by psychologists in custody and submit that he is suitable for release to a regime designed and supported by psychologists in the community.

The Relevant Law

15. Rule 28 of the Parole Board Rules 2019 provides that a party may apply to the Board for the decision that a prisoner serving an eligible sentence is or is not suitable for release on licence to be considered. The grounds for reconsideration are that a decision on the prisoner's suitability for release is irrational or procedurally unfair.

Procedural unfairness

16. 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.

17. 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.
18. The overriding objective is to ensure that the Applicant's case was dealt with justly.

Irrationality

19. 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."

20. 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 reply on behalf of the Secretary of State

21. The Secretary of State has replied to the application in an email of 25 January 2021 and an email of 8 February 2021.

Discussion

22. Rule 16(2)-(3) of the 2019 Rules requires the dossier to be served on every prisoner at the same time that they are served on the Board. The Applicant states that he was not provided with a copy of his dossier.
23. Having received the application, I directed PPCS to provide me with the details of how the dossier was provided to the Applicant. They confirmed by a letter of 8 February 2021 the following:

"PPCS, on behalf of the Secretary of State, would like to highlight that following contact with the Prison Offender Manager (POM) and the Offender Management Unit (OMU) they have confirmed that the dossier was sent via internal post however, due to COVID 19 restrictions in place within the Prison at that time they are unable to confirm if it was physically delivered to [the Applicant]."

24. The Prison Offender Manager was not able to interview the Applicant in preparation for her Parole report as he failed to answer her telephone calls to his in-cell telephone. The Community Offender Manager however spoke with the Applicant by video link on 17 September 2020 in preparation for her Parole report. The Applicant would have been well aware of the purpose of this meeting having had previous parole hearings. Her report makes no reference to him stating that he had not been supplied with the dossier.
25. The Applicant's representations state that he did not receive correspondence from his solicitors "with myself reps enclosed to sign". The representations made by the solicitor of 27 November 2020 (post the decision) state "He never received his parole dossier or rule 39 letters from his legal representatives. Hence the inability to approve the representations." It is not suggested that the solicitors did not have the dossier. It is apparent that the Applicant had solicitors representing him, and it would be expected that his solicitor would ensure that the Applicant had full copies of everything they had.
26. The purpose of Rule 16 is to ensure that in accordance with principles of natural justice the prisoner should be properly informed of the case against him. As Lord Diplock explained in **Hadmor Productions Ltd v Hamilton [1983] 1 AC 191** at 233 one of the most fundamental rules of natural justice is "the right ...to be informed of any point adverse...that is going to be relied upon ...and to be given an opportunity of stating what his answer to it is".
27. There is clear evidence that the Applicant was aware of the parole review, knew that he could make representations and was legally represented. However, he is clear that he did not receive the dossier and whilst the dossier was sent to the Prison there is no evidence he received it, with it being observed that there were COVID-19 restrictions in place.
28. The failure to provide the dossier to the Applicant is a breach of Rule 16 and of natural justice, accordingly I find that this is a procedural unfairness.
29. The second of the grounds raised by the Applicant relate to his sentence planning and the progress he considers he has made in custody. The decision sets out the evidence of change and progress in custody of the Applicant. It clearly details a number of the programmes that the Applicant has undertaken to reduce risk during his sentence. The decision made careful reference to the Applicant's time in regimes designed and supported by psychologists, recording that the two placements had been unsuccessful. It also set out that the transfer to another regime designed and supported by psychologists which was scheduled had not taken place due to the Applicant assaulting a custody officer, an offence for which he was sentenced to a further term of imprisonment March 2020.
30. The Applicant is wholly unclear in his representations how these matters give rise to a procedural unfairness and I can find nothing in this element of the ground to uphold his claim of procedural unfairness.
31. The basis of the Applicant's claim of irrationality sets out some of the evidence of professionals and makes the submission that he is suitable for release into the community.



32. The Board had the written evidence of the Prison Offender Manager and the Community Offender Manager, neither of whom recommended release nor a move to open conditions until his outstanding treatment needs had been addressed. This was also the conclusion of the psychologist who carried out a risk assessment on the Applicant in 2019.
33. The decision recorded that there had been no progress in the Applicant addressing his risks since his last parole review, which had been conducted at an oral hearing in 2019. Of key importance in the assessment of risk was the unprovoked assault on a custody officer in prison in June 2019, for which he received the further term of imprisonment mentioned above. The panel explained why the risk management plan was insufficient to manage the Applicant's risk in the community without the Applicant completing further work in custody to address his risks.
34. The irrationality ground is in my view really an attempt by the Applicant to argue his position that he should be released from custody. It does not establish at all that the making of the decision involved irrationality and I find that there was no such irrationality.

Decision

35. Accordingly, I have found there to have been a procedural irregularity, I consider therefore that the decision is procedurally unfair. I do so solely for the reasons set out above. The application for reconsideration is therefore granted and the case should be reviewed by a fresh panel by way of a paper hearing.
36. For the reasons I have given, I do not consider that the decision was irrational accordingly the application for reconsideration on that ground is refused.

Angharad Davies
17 February 2021