

[2021] PBRA 120

Application for Reconsideration in the case of Iqbal

Application

1. This is an application by The Secretary of State (the Applicant) for reconsideration of a decision made by a panel of the Parole Board (the Panel) dated 28 June 2021 following an adjourned oral hearing heard on 14 May 2021 and concluded on 18 June 2021, directing the release of Zahid Iqbal (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. It is agreed that this is an eligible case.
3. I have considered the application on the papers. These include the application for reconsideration itself which was received on 19 July 2021, detailed written submissions, the Decision Letter and the dossier which runs to 593 pages.

Background

4. On 4 March 2013 the Respondent (then aged 33 with no previous convictions) and three others entered pleas of guilty to an offence of engaging in conduct in preparation for acts of terrorism contrary to section 5(1) of the Terrorism Act 2006. On 18 April 2021 the Respondent was sentenced to an extended sentence of imprisonment of 16 years 3 months with a custodial term of 11 years 3 months and an extension licence period of 5 years. He was also made subject to a terrorist notification period pursuant to the provisions of Part 4 of the Counter Terrorism Act 2008 for 30 years. The Conditional Release date is 30 July 2023 and both the Licence End Date and the Sentence End Date are 29 July 2028.
5. The facts and circumstances of the offence were set out in detail by the sentencing Judge, by the Court of Appeal Criminal Division in dismissing the Respondent's appeal against sentence and by the Panel in its Decision Letter.
6. As briefly as is necessary for present purposes the facts are as follows. The prosecution's case to which the Respondent pleaded guilty having submitted a Basis of Plea was that he had facilitated, planned and encouraged others to travel overseas; organised, encouraged and participated in physical training; purchased survival equipment; downloaded, researched and discussed electronic files which contained practical instructions for a terrorist attack; discussed methods, materials



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and targets for a terrorist attack which included the use of firearms and improvised explosive devices (for which a potential military target had been identified) and collecting and providing funds for purposes overseas.

7. The Respondent and his three co-defendants were arrested following an extended police surveillance operation. He was instrumental in facilitating and arranging for one of his co-defendants to go to Pakistan for terrorist training. The two of them had detailed conversations about how to make that journey without arousing suspicion and the Respondent provided the co-defendant with £850 to be given to the insurgency in Pakistan. His home was searched first in September 2011 prior to travel plans taking place when incriminating material was found but no arrest was made. His home was searched again in April 2012 when further incriminating mind-set material was found which included *"39 ways to support Jihad"*.
8. The sentencing Judge considered that the Respondent's involvement was of a different and more serious order than that of his co-defendants not least because he was considerably older and was instrumental in arranging travel for terrorist purposes. The Respondent's Basis of Plea suggested that his terrorist intent was generalised, ill formed and never settled. The Judge however found that the nature, persistence and extent of the Respondent's involvement in a series of different types of terrorist activities together with the evidence that he continued after the first search of his home with the mind-set that informed his actions, justified a finding that he posed a significant risk of serious harm to members of the public.

Proceedings before the Parole Board

9. Having become eligible for parole in October 2019, this was the Respondent's first review. At the hearing on 14 May 2021 the Respondent was legally represented as was the Secretary of State's who had on 10 May 2021 provided detailed written submissions. The Secretary of State's representative confirmed that the Secretary of State was satisfied that the Panel had before it all relevant risk-related material to enable it to assess the Respondent's current and future risk. The Panel heard oral evidence from the Respondent, a prison Imam, the Prison Offender Manager and a prison psychologist. The Community Offender Manager's evidence was not reached due to there being insufficient time. At the reconvened hearing on 18 June 2021, the Panel heard further evidence from the Prison Offender Manager, from the Community Offender Manager and again from the Respondent himself.

The Application for Reconsideration

10. There are three Grounds put forward on behalf of the Secretary of State which are set out in written submissions dated 19 July 2021. It is submitted that:
 - a) In Ground 1 that the release decision is irrational because the Panel failed to consider risk related evidence;
 - b) In Ground 2 that the release decision is irrational because the Panel gave inappropriate weight to particular parts of the evidence and failed to provide adequate reasons for the approach they had taken; and
 - c) In Ground 3 that there was procedural unfairness because the Parole Board failed to appoint specially TACT trained panel members to hear the case.



The Relevant Law

Parole Board Rules 2019

11. 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)).

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: see **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



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(e) the panel was not impartial.

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

The reply on behalf of the Respondent

18. I have carefully considered the written submissions dated 27 July 2021 made on behalf of the Respondent by his legal representatives which I have taken into account in reaching my decision.

The Grounds for Reconsideration in more detail

Ground 1

19. In support of its submission that the Panel failed to consider risk related evidence, the Applicant relies on five matters arising from the evidence:

- a) The Panel failed to consider in sufficient detail evidence regarding the Respondent's relationship with family members and how this linked to the possibility of increased risk on release;
- b) The Panel failed to fully explore the evidence given by the Imam regarding the benefit the Respondent would derive from undertaking further risk focused work;
- c) The Panel failed to explore sufficiently evidence that amounted to offence paralleling behaviour regarding receipt of a payment from an unknown source and the Respondent's association with another TACT prisoner;
- d) The Panel failed to test adequately the issues of impression management and self-reporting on the part of the Respondent; and
- e) The Panel failed to consider in sufficient depth the diagnostic assessment in the context of the "impact of self reporting" neither did the Panel adequately address concerns raised by professional witnesses regarding the diagnostic assessment and the Respondent's compliance in the community.

Ground 2

19. In support of the submission that the Panel gave inappropriate weight to particular aspects of the evidence, the Applicant relies upon four examples:

- i. The Panel inappropriately over relied upon the Respondent's evidence regarding his beliefs, insight and attitudes and gave insufficient weight to the evidence that further work was required to increase his awareness. Further, it is submitted that the Panel should have made clearer their rationale for the finding that he had developed insight into his own behaviour;
- ii. The Panel erred to the point of irrationality in placing little or no weight on the security report referred to in Ground 1 (c) above and in failing to discuss the security entries with witnesses;
- iii. The Panel placed too much weight on the Respondent's good custodial behaviour particularly where such evidence was undermined by other evidence; and



- iv. The Panel erred in its apparent acceptance of the prison psychologist's evidence that the professionals working directly with the Respondent had a good understanding of his risk and warning signs. That it is submitted should have been contrasted with the concerns of the professionals that warning signs may be difficult to identify. Further, the Panel failed to provide sufficient reasons to justify their finding that the professional witness responsible for the supervision of the Respondent in the community was well placed to respond to any risk related concerns, and that they failed to explain their decision to prefer the evidence of the psychologist.

Ground 3

20. The proceedings were procedurally unfair because the Parole Board failed to appoint properly qualified TACT trained members to make up the Panel.

Analysis

21. I shall deal with each matter relied upon under each Ground in turn. Given the manner in which the submissions are put there will necessarily be some overlap and I shall attempt to avoid undue repetition.

Ground 1

22. This Ground focusses upon the submission that the Panel failed to consider risk related evidence in full.

- a) The Panel took effectively as its starting point the Respondent's risk factors set out in the dossier and agreed with the analysis set out in the assessment. To that assessment the Panel added a number of additional risk factors, which included attitudes and beliefs that condoned the use of violence; feelings of isolation; peer influence; a sense of injustice; a lack of identity; purposeful activity; intellectual stimulation and feelings of disillusionment. The Panel went on to analyse in some detail factors surrounding the Respondent's family relationships concluding that the family was supportive but found little evidence that they were protective, given that he was living with them while offending. The Panel also addressed the security intelligence report in which it was suggested (and denied by the Respondent) that he had been coaching his wife in how to answer police questions. The experienced Panel were aware of and sensitive to the possibility of impression management by the Respondent and obviously took that into account. Based upon all of the evidence, and in particular the psychological evidence together with that of the Respondent himself, the Panel accepted that the Respondent had developed insight into his triggers to offending and had challenged his previous attitudes and beliefs and had thereby developed a healthy ability to question the reasons behind his engagement with terrorism. In my judgment it is clear from the Decision Letter that the conclusions reached by the Panel were evidence based and were clearly the result of very detailed consideration.
- b) The Panel provided the Imam with the advantage of hearing the evidence given by the Respondent before he gave evidence. The Imam's opinion was that the Respondent's evidence to the Panel was reflective of his stance and learning while participating in a particular intervention under his guidance. The Panel had before



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it, the evidence of the Respondent's cognitive abilities and there is nothing to suggest that they failed (as is submitted), to take this and all other relevant evidence into account when considering the evidence of the Imam.

- c) The Applicant's submission is that the Panel failed to adequately explore what is suggested to be offence paralleling behaviour by the Respondent revealed in a Security Report. The details in the report are very brief indeed. It is reported only that between 22 March 2019 and 25 March 2020 the Respondent received some funds (amount not specified) from an individual (unidentified) not on his contact list and that he had between 26 March 2020 and 25 September 2020 been associating with a prisoner (not identified) who had changed his religion (details not provided). In relation to this entry the security report indicated in terms that there had been no other concerns raised regarding this association. It is to be noted that no further information was provided to the Panel and that at the oral hearing the representative of the Secretary of State indicated that the Secretary of State was satisfied that the Panel had before it all relevant risk related material to assess the Respondent's current and future risk. Professional witnesses made fleeting references to "*limited security information*" and "*the lack of behavioural or security concerns*". In their representations in this application solicitors acting on behalf of the Respondent submit that "*[The Respondent] security intelligence was minimal and did not demonstrate a pattern or propensity of behaviour*". I do not see any reference to these matters in written submissions dated 10 May 2021 placed before the Panel on behalf of the Secretary of State. The Panel noted this security material and reached a view upon it. Clearly in the Panel's view it did not warrant nor justify the view now taken of it on behalf of the Secretary of State that (if accurate) they amounted to "*offence paralleling behaviour*". The Panel had the issue of compliance well in mind as the decision plainly demonstrates.
- d) The issue of impression management and the Panel's approach to the care which must be taken with self reporting is raised directly and indirectly by the Panel in its decision. As I read the decision the Panel have throughout identified and explained its approach in reaching its conclusions. The decision makes it clear that the Panel was mindful of the need in TACT cases in general and the Respondent's case in particular to recognise that self reporting cannot be relied upon by itself and consequently the task of a panel is to look for credible supporting evidence from other sources that it can accept. In this type of case the Panel found that it had to be satisfied that there was evidence independent of the Respondent upon which it could assess whether in its judgment there had been evidence of change and risk reduction. In this case the Panel went one step further and explored its own capacity for bias which in a case involving allegations of the planning of serious acts of terrorism here and abroad is of obvious and real importance. Here the Panel have explained, in terms, how it has gone about discharging its task. They indicate that they examined any potential bias in their own approach by, where possible, triangulating the evidence of those who have had clinical involvement in the delivery of programmes to the Respondent and those who have not, while at the same time carrying out a thorough review of current assessments and earlier ones. In taking that approach they reached the conclusion that they could accept the prison psychologist's evidence that the Respondent had completed essential risk reduction work and had addressed key areas of risk. By taking that route the Panel satisfied itself that it had a reliable and valid picture of the Respondent's progress and future risk and further that the diagnostic assessment provided appropriate external



monitoring and control as well as support. I find the Panel's approach to have been appropriate and fair.

- e) For similar reasons as set out in (d) above I am unable to agree that the Panel failed to consider sufficiently the concerns of two of the professional witnesses regarding the impact of the issue of self reporting in the management of the Respondent in the community. The two witnesses concerned were questioned thoroughly by the Panel as demonstrated by the fact that the word used to describe their questioning is "probed". One witness who did not support release when asked to identify vulnerabilities in the diagnostic assessment plan emphasised the need for more information about the Respondent's insight but then went on to accept that the diagnostic assessment plan was sufficient to manage risk, particularly while the Respondent will be residing in controlled and approved accommodation. In my judgment this evidence was manifestly considered with care.

23. I do not find that Ground 1 is made out.

Ground 2

24. This Ground focuses upon the submission that inappropriate weight was given by the Panel to aspects of the evidence

- a) In paragraph 11 on page 3 of the Applicant's submissions it is recorded that "*The Panel discussed [The Respondent] beliefs with him in detail*". It is submitted that the Panel went on to over rely upon his evidence and placed insufficient weight on the recommendations of professional witnesses that further work was needed to increase awareness of the Respondent's ideology. It is relevant to note that the Panel were advised that the appropriate intervention was available in the community, but the professionals' preference was for it to commence while the Respondent remained in custody. I am satisfied that the Panel were entitled to reach the conclusion they did reach, and I am satisfied that their conclusion and the reasons for it were adequately and sufficiently explained.
- b) I have dealt with the Security Report when dealing with Ground 1 (e) above. The Applicant submits that the Panel did not "discuss" this report with witnesses. It did, in the shape of the Respondent who gave his account which I must assume was not contradicted by other evidence. The Panel was satisfied that the Security Reports did not impact upon the Respondent's risk of serious reoffending or risk of serious harm. In my judgment this was a matter entirely for the Panel and the decision reached and the explanation provided for it, albeit brief, was acceptable in public law terms.
- c) The Applicant submits that it is irrational for the Panel to inappropriately place weight on the Respondent's custodial behaviour in the light of antithetical evidence from other witnesses. I disagree. The view taken of the overall effect of the Respondent's custodial behaviour did not stand alone and was clearly considered alongside other evidence – the process the Panel described in some detail as "triangulation". I do not find that the conclusion reached meets the high test set by public law whether the challenge is on the basis of irrationality or insufficient reasons or both.



- d) The decision must be read fairly and as a whole. As for the Panel's view of the evidence of C, the Applicant submits that the Panel have not provided a reason for concluding that the witness is well placed to proactively respond to any risk related concerns. The Panel are clear that they base that finding upon C's own evidence to them. As for failing to provide reasons for placing more weight on the prison psychologist's evidence, it is necessary to read the whole decision which in my judgment at various points examines and sufficiently explains the reasons for doing so.

25. I do not find that Ground 2 is made out.

Ground 3

26. This Ground asserts that the proceedings were procedurally unfair.

- a) It is submitted that the Parole Board have failed to ensure that a member who had undergone specialist TACT training had been appointed to the Panel to hear this case and that there may have been a different outcome had such a member been part of the Panel;
- b) As far as I am aware this is the first time that a submission challenging the composition and expertise of a panel has been made in support of an application for Reconsideration. It is necessary to make the following observations:
 - (i) The Parole Board is an independent body created by statute and stands separate and apart from any other participant in the Parole process.
 - (ii) The process whereby members are selected to sit as panel members in any case is a matter for the Parole Board and only for the Parole Board.
 - (iii) The Parole Board has recognised that the particular complexities and demands of TACT cases have necessitated the formation of a group of parole board members who have undergone specialist TACT training to conduct these cases.
 - (iv) The Divisional Court in **DSD & Ors** (see above) as I read it, implicitly recognised the standing of every panel established by the Parole Board when it said at para.117: *"The individual members of a panel, through their training and experience, possess or have acquired particular skills and expertise in the complex realm of risk assessment"*.

27. In fact, all three members of the Panel in this case were experienced and had undergone specialist TACT training.

28. It is a pity that the Applicant did not make a simple enquiry of the Board to ascertain the actual position before making a submission that was fatally flawed from the outset. It is noteworthy that this issue was not raised at any point prior to or during the parole review until now.

29. Referring to Rule 28 of the Parole Board Rules 2019 and to paragraphs 15 and 16 (a) to (e) above, I shall assume that it is submitted that the hearing was unfair because the panel was not properly constituted.

30. In my judgment this Ground is ill - judged, misconceived and devoid of merit.



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31. Ground 3 is refused.

Discussion

Giving Reasons

32. There are classes of cases in which there is a duty on the decision maker to give reasons. One such group is where the subject matter is highly regarded by the law such as one that engages personal liberty.
33. The importance of giving adequate reasons in decisions made by the Parole Board has been made clear in two High Court cases both of which contain helpful guidance which I am bound to follow on the correct approach where a panel decides either to accept or reject evidence presented to it.
34. In **Wells [2019] EWHC 2710 (Admin)** it is suggested that rather than ask "*was the decision being considered irrational*" the better approach is to test the decision maker's ultimate conclusions against all the evidence received and ask whether the conclusions reached can be safely justified on the basis of that evidence while giving due deference to the panel's experience and expertise.
35. Panels of the Board are wholly independent and are not obliged to adopt the opinions or recommendations of professional witnesses. The panel's duty is clear, and it is to make its own risk assessment and to evaluate the likely effectiveness of any proposed diagnostic assessment plan. That will require a panel to test and assess the evidence and decide what evidence they accept and what evidence they reject.
36. Once that stage has been reached, following the guidance provided by cases such as **Wells** and **Stokes [2020] EWHC 1885 (Admin)** a panel should explain its reasons whether or not they are going to follow or depart from the recommendations of professional witnesses.
37. The giving of reasons by a decision maker is "*One of the fundamentals of good administration*" (**Breen v Amalgamated Engineering Union [1971] 2 QB 175**). When reasons are provided, they may indicate that a decision maker has made an error or failed to take a relevant factor into account, hence their importance. As I understand the principles of public law engaged in deciding this application, an absence of reasons does not automatically give rise to an inference that the decision maker has no good reason for the decision. Neither can it be necessary for every factor to be dealt with explicitly for the reasoning to be legally adequate in public law.
38. The way in which a panel fulfils its duty to give reasons will inevitably vary depending upon the facts and circumstances revealed by the evidence in any particular case. For example, if a panel is intending to reject the unanimous evidence of professional witnesses then detailed reasons will be required. If on the other hand a panel is accepting the evidence of one, or more than one professional



witness but at the same time not accepting the evidence of another or others, then again, some reasons will be required.

39. In reaching my decision on this application I am required to decide first, whether I am satisfied that the conclusions reached by the Panel were justified by the evidence and secondly, whether I am satisfied that the conclusions are adequately and sufficiently explained.

Conclusions

40. This was a serious and complex case. A highly experienced and expert panel had in essence two questions to resolve. First, did the Respondent need to remain in prison or could his risk be safely managed in the community. The professional witnesses via written reports and oral evidence given over two days placed before the Panel all the relevant evidence some of which pointed away from a decision to release. The Panel in a decision running to 18 pages rehearsed and balanced the evidence and the contrasting positions of the witnesses and decided that the Respondent's risk could be safely managed in the community notwithstanding that there was evidence pointing in another direction.

41. The two issues I must decide, as I have earlier indicated, are first whether I am satisfied that the conclusion reached by the Panel was justified by the evidence they considered and secondly whether that conclusion was adequately and sufficiently explained.

42. As far as the first issue is concerned, I am entirely satisfied that the decision to release was justified on the totality of the evidence placed before the Panel.

43. As for the second issue, taking a step back and considering the matter as a whole, I conclude that in a carefully reasoned decision, which sets out the findings, assessments, operative reasoning and conclusions of the professional witnesses and takes into account the considerable body of evidence given to the Panel including from the Respondent himself, the Panel satisfied the public law duty to provide evidence based reasons that in my judgment adequately and sufficiently explain the conclusion they reached to direct release.

Decision

44. For the reasons I have given I do not consider that the decision was irrational and neither do I consider that the proceedings were in any way procedurally unfair.

45. The application for reconsideration is refused.

HH Michael Topolski QC
19 August 2021



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