

[2021] PBRA 30

**Application for Reconsideration in the case
of Kahar**

The 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 3 February 2021 following an oral hearing held on 22 January 2021 directing release of Kahar (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. This is an eligible case.
3. I have considered this application on the papers. They consisted of the dossier containing 564 pages, the Panel's Decision, representations on behalf of the Applicant and the Respondent and documents relating to an application regarding disclosure of material.

Background

4. The Respondent is now 43 years of age. He was aged 37 years old when he was sentenced in November 2015 following his conviction by a jury of 10 counts alleging various offences under the Terrorism Act 2006 and the Terrorism Act 2000. He received a total term of imprisonment of 5 years. That sentence was referred to the Court of Appeal. The sentences imposed by the trial judge were quashed and in their place the Respondent was ordered to serve a total of 8 years. The sentence end date is recorded as being April 2024 and the Panel was therefore considering a risk period of just over 2 years and 3 months.
5. It is necessary to examine the Respondent's proven offending in a little detail. He was first arrested in March 2015, released on bail and re-arrested in April 2015 of that same year. To all outward appearances he had up to that point lived a normal and law-abiding life. The main allegation against him was that from late 2013, through 2014 and until March 2015 he was preparing to travel to Syria to join and fight for Islamic State. Amongst the matters that the prosecution relied upon were downloading and making secure messenger applications regarding travel to Syria. He also downloaded onto his telephone information thought to be useful to those wanting to join Islamic State in Syria. In early 2015 he made enquiries of a travel agent about visas. There was no evidence that he had purchased any ticket in order to travel and fight. Other proven allegations included offences relating to funding terrorism, inviting support for a terrorist organisation and disseminating terrorist publications. On his first arrest he said he did not believe in terrorism and was not



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even a practising Muslim. He said he wanted to learn about Islamic State and Sharia Law. Between his two arrests in 2015 and while on bail, he continued to download information. On his second arrest he told police that he wanted to travel to and live in Syria as it provided free housing.

6. The significant features of his conduct were as follows:
 - i) His offending lasted 15 months
 - ii) It was wide ranging
 - iii) His radical position appeared to have hardened over time
 - iv) He offered to fund others to travel and fight
 - v) He tried to encourage members of his family to go.
7. The Respondent's risk factors that the Panel found it had to consider included his lifestyle and associates; thinking and behaviour; attitudes and his ideology. On this and other matters of relevance to risk, the Panel received and considered a significant amount of evidence both written and oral from the five witnesses they heard.

The Relevant Law

Parole Board Rules 2019

8. 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

9. 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."

10. 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.
11. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: see, for example **Preston [2019] PBRA 1** and others.

The Application for Reconsideration

12. The single ground upon which the Applicant seeks a reconsideration is that the Panel did not take sufficient account of some of the evidence given and the recommendations made by those witnesses who did not support release.
13. In essence, the submission is that the release decision was made despite evidence that the Respondent's risk had not reduced to a manageable level because the Panel placed insufficient weight upon the evidence of those witnesses who remained concerned about the Respondent's risk. In so submitting the Applicant has drawn to my attention what are submitted to be inappropriate findings which in addition are inadequately and/or insufficiently explained.

The reply on behalf of the Respondent

14. I have taken into account submissions made by and on behalf of the Respondent which were submitted on 8 March 2021.

Discussion

15. It is necessary to begin a discussion of the merits of this application with the following observations.
16. The importance of giving adequate reasons in the decisions of the Parole Board has been made clear in the cases of **Wells [2019] EWHC 2710 (Admin)** and **Stokes [2020] EWHC 1885 (Admin)** both of which contain helpful guidance which I am bound to follow on the correct approach to deciding whether a decision made by a panel in the face of evidence from professional witnesses can be regarded as irrational.
17. It is, for example, suggested in **Wells** that rather than ask "*was the decision being considered irrational?*" the better approach is to test the ultimate conclusions reached by a panel against all the evidence it has considered, 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. Panels of the Board are wholly independent and are not obliged to adopt opinions and recommendations of professional witnesses. It is the responsibility of a panel to make their own risk assessment and to evaluate the likely effectiveness of any proposed risk management plan. That will require a panel to test and assess the evidence presented to it and to decide what evidence they are able to accept and what evidence they cannot accept.
18. Having reached conclusions upon the evidence it is clear from the guidance provided by **Wells** and **Stokes** that a panel is then required to explain its reasons, especially if they are going to depart from the recommendations made by experienced professionals. In those circumstances, it is required to explain why it is doing so and ensure as best it can that its stated reasons are sufficient to justify its conclusions. It follows that what lies at the heart of my determination of this application, is whether on a reading of the Panel's decision, I am satisfied that the conclusions they reached are first justified by the evidence they considered and

secondly whether I am satisfied that those conclusions are adequately and sufficiently explained.

19. Before turning to consider the merits of this application, I should make one further observation. The reconsideration mechanism is not a process where I am required to indicate whether, or not, I might have reached the same or a different conclusion from that reached by the Panel.

20. The Applicant submits in effect that the Panel erred in reaching a number of important conclusions and furthermore failed to explain and/or justify those conclusions. To decide whether the Applicant's submissions, or any of them, are well founded, I have considered the Panel's decision in detail. In my judgment the decision demonstrates that the Panel:

- i) Made clear that it had considered all of the evidence.
- ii) Considered the difficulty of assessing cases of this nature wherein the issue of self-reported change arises.
- iii) Addressed the possibility that the Respondent may have been attempting to deceive the Panel in some of his evidence and found that it preferred the evidence of an expert witness in that regard.
- iv) Assessed other evidence it found that was not in favour of the Respondent's case and carefully examined his responses regarding that evidence from which it drew conclusions that were open to them to draw.
- v) Examined carefully the work the Respondent had done during his sentence noting that an expert witness, having reviewed the effectiveness of programmes completed by the Respondent, concluded that no further work needed to be undertaken in custody.
- vi) Took fully into account the Respondent's offending, his risk factors as well as the work he had completed in custody to which I have referred.
- vii) Drew attention to several other concerns that were raised by the evidence and addressed those concerns thoroughly and appropriately.
- viii) Addressed specifically the Respondent's relationship with a particular professional tasked to provide him with support.
- ix) Found that in its opinion it had been provided with a reliable, evidence based, picture of the Respondent's progress and future risk and in those circumstances was able to approve a detailed risk management plan. In addition, the Panel addressed the question of the external management of the Respondent in the community noting the co-operation between the various agencies that would be responsible for his management.
- x) Having taken all of these and other matters into account, decided that the likely effectiveness of the risk management plan proposed enabled it to conclude that the statutory test for release had been met.

21. On my careful analysis of the decision I am entirely satisfied that the Panel reached conclusions that were fully justified by the evidence placed before them and furthermore that it in a carefully constructed, thorough and fair-minded decision adequately and sufficiently explained those conclusions. It follows that I am unable to accept the submissions made on behalf of the Applicant.

22. This was on any view a serious and difficult case. Any analysis of the manageability of risk is, as the Panel observed, made more difficult in cases where the prisoner's self-reporting of change is a significant factor. The question for resolution by the Panel was whether it was satisfied that there was, apart from the Respondent's own evidence, any real evidence of change. The Panel clearly found that there was and explained how and why they had reached that conclusion.

Decision

23. In those circumstances and for those reasons this application is refused.

HH Michael Topolski QC
17 March 2021