

[2021] PBRA 72

## Application for Reconsideration in the case of Samra

### The Application

1. This is an application by the Secretary of State (the Applicant) for the reconsideration of a decision made by a panel of the Parole Board (the Panel) dated 7 April 2021 following an oral hearing held on 1 April 2021 directing release of Samra (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. They consisted of the dossier containing 576 pages; the Panel's Decision; representations on behalf of the Applicant and the Respondent (submitted on her behalf by her legal representatives); and other documents relating to the application.

### The Background Leading up to and Including Recall

4. It is necessary to examine the background to this application in some detail. It is convenient to place alongside those matters the circumstances of the Respondent's recall to prison, to provide some context for the competing submissions made on behalf of the Applicant and the Respondent.

### *The Index Offence and the sentencing of the Respondent*

5. The Respondent is now 21 years of age and prior to her appearance in the Crown Court in January 2018 she had no previous convictions. She was 19 years old when she was sentenced having pleaded guilty to an offence of engaging in conduct in preparation of terrorist acts. The custodial term was set at 3 years and 6 months, with an extended licence period of 12 months. The sentence will end in January 2022. Therefore, the risk period being considered by the Panel was some 10 months. Before passing the sentence the Judge heard evidence which arose from a Newton Hearing. The Respondent had put forward a Basis of Plea which was not accepted by the prosecution and accordingly the Judge heard evidence from the Applicant. He gave a detailed Ruling relating to that evidence and to the evidence in the case generally. I requested a copy of the Basis of Plea and the Ruling but neither has been provided. Generally speaking the relevance to the Parole Board of a Basis Of Plea and a ruling thereon by an experienced criminal judge is that it casts more light upon how the court was intending to approach the basis of sentence



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which in turn provides the Parole Board with a greater understanding of the sentencing court's view of the nature and seriousness of the offending and the defendant's culpability. It can also allow the reader to consider exactly what a defendant was saying in relation to an index offence at the point of sentence. That said I do not regard myself to be disadvantaged by not having that material before me. The effect of the Judge's Ruling and therefore the basis upon which he passed sentence, as reflected in the Sentencing Remarks was that he was sure that the Respondent intended, if possible, to take direct involvement or assist in the commission of serious acts of violence by those who supported Daesh, which would in his judgment have included giving assistance to those whose intention was to commit murder.

6. In the summer of 2015 when aged 16, the Respondent was converted to radical Islam through online contacts. Concerns had been raised about her online activity and statements she had made at school. She was visited by Prevent and worked with them until May 2016. In June 2017, aged 17, and following the intervention by Prevent, she was arrested on suspicion of distributing terrorist material and inviting support for Daesh. The judge in passing sentence accepted that she may have originally formed an intention to travel to Syria to work as a nurse with Jihadi fighters but was also actively seeking extreme terrorist material online by means which could not be traced. Following her 18<sup>th</sup> birthday, she communicated via online apps and discussed her support for Daesh and her wish to travel to Syria. In that regard she had made enquiries about false travel documentation and gathered information on how she might be smuggled out of this country. She also contacted a person in Egypt who the Judge found was clearly an Daesh terrorist. She effectively agreed to marry him and travel with him to Syria to join in the fighting and if necessary, die in support of the cause to establish a Islamic State.

### *The Parole Board Review in 2019*

7. An earlier review of the Respondent's case was heard by a Panel of the Board in November 2019. That Panel comprised the same three Board members who heard the Respondent's review in April 2021. In her evidence to the 2019 Panel, the Respondent accepted that if she had managed to get to Syria she may have become involved in fighting for Daesh, either through being forced to or by radicalisation. It is important to note that the 2019 Panel determined that whatever the true position was at the time of the Index Offence, the position was by 2019 that the Respondent had developed more moderate and widely accepted interpretations of Islam.
8. The Panel in November 2019 identified the Respondent's risk factors (aspects of her life that would incline her towards harmful behaviour) as including relationships, employment, thinking and behaviour and attitudes as well as online peer group influences, loneliness, emotional wellbeing and boredom. The Panel also found that exposure to radicalisation, a lack of consequential thinking in respect of events that led to the Index Offence and her lack of maturity were also relevant to risk.
9. It is important to note the main conclusion and decision of the 2019 Panel. Having considered all the evidence it concluded that the Respondent's behaviour in the lead up to the index offence was prolonged and demonstrated an ideology supportive of Daesh. They found that the Respondent was influenced by the secretive nature of her life, a reliance on online "friends" and a lack of peer contact in the "real world".



Up to that point the Panel found that she had reflected on her faith and had opened herself up to be challenged about her interpretation of Islam. She had worked with professionals and there was, in that panel's judgment, an effective plan to manage her risk. It found that there was a likelihood of compliance and was not persuaded that there would be any imminence of risk if released. Consequently, the Panel directed her release which took place on 2 February 2020. She was recalled seventeen days later, on 20 February 2020.

### *Release on Licence*

10. Prior to her release on licence a further psychological assessment was carried out. That assessment found that there were comprehensive licence conditions in place, that the Respondent was assessed as being willing to comply with them and there was no evidence before the professional witnesses that they should be cautious about her case.

### *Recall to prison*

11. The Respondent's recall to prison was on an emergency basis. She was living in designated accommodation. The recall was precipitated by an allegation that she had tampered with the GPS tag she was required to wear as a condition of her licence. The Respondent denied the allegation and said the damage she had caused was inadvertent. The Panel noted that the Respondent raised several concerns regarding her relationship with those responsible for her compliance and welfare in the community and further noted that it was clear that that professional working relationship had broken down.
12. Prior to the events regarding the tag, the Respondent had received a warning on 10 February 2020 for accessing an electronic device, the use of which the Respondent had disclosed to Probation. The Panel accepted the professional's opinion that this was a minor mistake denoting no sinister intent. The following day the Respondent was late for an appointment having according to her got on the wrong bus because she was refused the use of a map. At the time she had not given a reason for her lateness and this seemed to those supervising her that it demonstrated that she was disinterested. On 13 February 2020 the Respondent received a written warning for deleting a contact on her telephone and for taking an earlier train than the one agreed. The Panel accepted the Respondent's explanation for the deletion of the telephone number – the phone itself having been examined by police and professionals without any concerns being reported. The Panel concluded that the events surrounding the train journey demonstrated that the Respondent was not prioritising her licence conditions.
13. As for the allegation of tampering with the electronic tag, the Panel heard from two expert witnesses, who agreed that the damage done could only have been caused by applying considerable force. The Panel did not accept the Respondent's evidence that the damage done was accidental. It went on to consider the Respondent's likely motivation. It concluded that her actions were unlikely to indicate a wish to abscond or to become involved in committing crime. The doors of where she was living were locked and the Panel observed there was no evidence that during her time on licence there were any concerns regarding extremist thinking or attitudes. The Panel concluded that there was not sufficient evidence from which a conclusion could be



drawn that the Respondent was attempting to remove the tag. It was in the Panel's view evidence of a lack of focus on her licence, growing dissatisfaction with probation and a testing of the boundaries of her supervision.

### *The Return to prison and a further concern*

14. Following recall and the Respondent's return to prison a further concern arose. The Respondent entered into a relationship with the brother of a prisoner in April 2020. By May 2020 she had apparently agreed to marry him. This relationship was not disclosed to professionals or her family. The Respondent told her probation officer that it was none of her business. It came to light because an application to marry was submitted and she was on 28 May 2020 adjudicated upon for sending material by way of a letter to the person concerned. The Respondent gave evidence to the Panel about this relationship accepting she should have answered questions about it. This relationship was of concern because it paralleled the Respondent's behaviour at the time of the Index Offence. The Panel again noted the deterioration in the Respondent's relationship with the responsible professionals and expressed the view that she seemed to be looking for reasons to blame them for her recall when it was her conduct in damaging the tag that had precipitated it. Noting the Respondent's disengagement from professionals, the panel accepted the evidence given by one of them that the Respondent appeared to find it easier to disengage than resolve issues which in the view of the Panel demonstrated that she had not taken responsibility for her behaviour which led to the recall.
15. The Panel in 2021 made similar findings to those made in 2019 with regard to extant risk factors. It noted that a specialist psychological assessment had consistently identified a low level of risk and a low level of engagement with extremist causes or ideologies and no evidence of any intent to cause harm or pursue any extremist related activity. The Panel's view was that the traits of her diagnosed condition (identified by the Panel in 2019), the Respondent's level of maturity, impulsivity, being impressionable and concerns about her ability to work openly and honestly with professionals were all additional risk factors.

### **The Application for Reconsideration**

16. The single ground on which the Applicant relies is that the Panel in directing release failed to demonstrate and/or explain how it had decided that the Respondent had shown sufficient evidence of reduction in her risk to satisfy the statutory test for release.
17. In their written submissions in paragraphs 8 to 17, the Applicant sets out a number of specific submissions in support of their primary ground to which I shall return.

### **The Relevant Law**

#### *Parole Board Rules 2019*

18. 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*

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 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.

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

### **The reply on behalf of the Respondent**

22. I have considered with care the legal submissions dated 6 May 2021 on behalf of the Respondent which I have taken into account in reaching my decision on this Application.

### **Discussion**

23. I begin a discussion of the merits of this Application with the following observations.

### *Giving Reasons*

24. 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.

25. 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.

26. 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 or whether there are any unexplained evidential gaps or leaps in reasoning which fail to justify the conclusion that is reached.
27. 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.

#### *The Grounds for Reconsideration in more detail*

28. The starting point of the submissions made on behalf of the Applicant is the assertion made by the Panel that it must be satisfied that there is independent evidence of change that risk has reduced. The Applicant submits that the Panel has failed to identify sufficient independent evidence of change when directing release. The Applicant submits that there was revealed to the Panel a body of evidence that the Respondent's risk had not reduced. For example, they highlight her inconsistent self reporting regarding a number of risk related incidents leading to recall and her conduct once back in prison which they submit mirrors her dishonesty and inaccurate evidence throughout her offending history. It is, submits the Applicant, a feature of the decision that the Panel failed to adequately address the recurring theme of inconsistencies in her self-reporting which amount, submits the Applicant, to a lack of risk reduction.
29. In their submissions, solicitors for the Respondent submit that the Panel are not indicating that in the absence of independent evidence of change and risk reduction a prisoner cannot be released. All the Panel are saying they submit, is that risk reduction cannot be determined particularly in Terrorism Act (TACT) cases based on self-reporting alone. It is submitted that in order to determine change and risk reduction, independent evidence should be sought to either verify or discredit the suspect self-reporting.
30. What should be the preferred way of expressing the correct approach is not in my judgment something that I need to attempt to resolve. It suffices for present purposes to say that the statutory test for release and the obligation on a panel to explain and justify its reasoning remains clear and unchanging whatever the nature of the offending.



31. The Applicant seeks to demonstrate that the Panel failed to provide an adequate or sufficiently justifiable basis to support its release decision and in particular has failed to justify its finding that risk had reduced in light of, in particular, the following:
- a) The body of evidence that showed that her risk had not reduced, for example, her inconsistent self-reporting of risk related incidents during her short period of time on licence in the community and her dishonest evidence about some of those incidents.
  - b) The Respondent's inconsistent accounts of her conduct showed non-compliance and boundary pushing which the Panel failed to consider in sufficient depth.
  - c) The Panel's decision effectively ignored her offence paralleling behaviour once she had been returned to prison - the most notable example of which is submitted to be her entering into a relationship with a man which she did not disclose to her family or to professionals responsible for her. It is submitted that this incident was noteworthy because it only came to light once the Respondent was the subject of an adjudication and found guilty.
  - d) It was important to note, submits the Applicant, that this was the same sort of behaviour that the Respondent described to the 2019 panel as "stupid" . Further they submit that the same risk factors highlighted by the Panel in 2019 are identified again in 2021 and indeed more are added.
  - e) The Respondent's poor level of compliance and engagement was evidence that her risk could not be managed on release. Hence the fact that there was no support at the oral hearing for re-release. There was, submits the Applicant, further clear evidence of non-compliance to be seen in the recall incident, in deleting a telephone contact, in unreported use of public transport, in her disengagement, in the breakdown of her relationship with professionals and finally with her entering into some kind of relationship.
  - f) The Applicant relies upon psychological evidence that the Respondent's traits and personality might translate into other risky behaviour which may be difficult to identify as warning signs of an increase in risk.
  - g) Recent assessments which led to a recommendation placed before the Panel that the Respondent be encouraged to develop a better understanding of her vulnerabilities, hence the Applicant submits, the recommendation of psycho-educational work. The Applicant's submission being that the Panel failed to provide any reasoning for a finding that her risks were such that the recommended psychological work was not necessary.

### *Conclusions*

32. It is from all of the material before me, recognising and respecting the considerable experience of this Panel and its familiarity with the Respondent, that I have to decide whether I am satisfied that the conclusions they reached are first justified by the evidence as I understand it to have been and, whether I am also satisfied



that those conclusions are adequately and sufficiently explained and justified in the Decision. The approach recommended in the case of **Wells** to which I have already referred, suggests that I should approach the test to be applied in reconsideration applications by asking whether the conclusions reached follow from the evidence or are there any unexplained evidential gaps or leaps in reasoning which fail to justify the conclusion? Applying this approach I have, after anxious consideration, reached the conclusion that there are gaps and/or leaps in reasoning in relation to the following aspects of the decision:

- a) The Panel accepted that the Respondent had tested the boundaries and showed at the same time little or even minimal regard to her licence conditions, in which considerable confidence had been expressed in the 2019 Decision. The Panel were also confronted by her rigid thinking leading to the damage done to the electronic tag which the Panel were able to attribute more to compliance than risk without going on to consider the impact this conduct would have on the Risk Management Plan and hence her risk.
- b) To this should be added the professional's evidence that an increase in risk would be harder to identify and made more complicated by the apparent breakdown in the relationship between the Respondent and those responsible for her supervision. The Panel also referred to additional risk factors which on the evidence do not appear to have reduced risk. All of which in my judgment needed to be explored and explained in greater detail in order that it could be clearly understood that the Panel had fully considered the impact all these factors would have on the Risk Management plan and the Respondent's risk upon release.
- c) The conclusion reached by the Panel that many of the concerns expressed by professionals leading to their recommendations not to support release were found to relate more to compliance and engagement than risk similarly in my view required further and more detailed explanation and justification.
- d) The finding that the proposed licence conditions provided adequate external controls was not in my view sufficiently examined in the Decision in the light of the fact that similar licence conditions imposed in 2019 did not prevent the events leading to recall.
- e) Having identified additional risk factors, I also consider that the present circumstances required these to be compared and contrasted with the earlier decision in 2019 in light of subsequent events and to explain why a release decision now was justified and supportable.
- f) The Decision does not appear to address the relationship between the Respondent and her family other than to note the evidence that they remain supportive but not protective, given that they minimised the index offence and her behaviour and that she did not openly discuss her recent relationship with them. On the face of it, this does appear to be a potentially important example of a lack of progression since the hearing in 2019 which on the face of the Decision does not appear to have been examined by the Panel.





33. Taking a step back and to summarise my conclusions. I am satisfied that the release decision was made notwithstanding recent offence paralleling conduct on the part of the Respondent. Of particular concern were the events regarding her electronic tag and once she had been returned to prison following her recall. The Panel identified a number of additional risk factors which taken together with her behaviour on licence raised significant questions about her ability to apply her learning from the offence focused work she had completed. The evidence the Panel heard indicated that a high number of important risk factors remained active. This experienced Panel recognised that it had to be satisfied that there was evidence of change and reduction of risk. It broadly accepted the submission to it made on behalf of the Respondent that the real concern was one of compliance and not risk. It may be that this is where the Panel took a wrong turn. In my judgment it has not in a detailed Decision pointed to evidence of a risk reduction in any key area. It can be said that given the circumstances that led to recall and the subsequent events in prison, the evidence pointed in a different direction going beyond compliance and indicating at the very least no real reduction in risk. In all those circumstances while perfectly entitled to direct release in the face of the unanimous recommendations of the professional witnesses, the obligation upon the Panel was to provide a decision that fully explained and fully justified their conclusions. I have found that faced by what was clearly a serious and worrying case, on this occasion they fell short of the required standard.

## Decision

34. For all the reasons set out above I grant the application for a Reconsideration.

**HH Michael Topolski QC**  
**28 May 2021**

