

[2022] PBRA 172

Application for Reconsideration by Cawley

Application

1. This is an application by Cawley (the Applicant) for reconsideration of a decision made by a duty member dated 18 October 2022 not to terminate the licence imposed upon him in connection with a sentence of imprisonment for public protection (the **IPP licence**).
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the **Parole Board Rules**) provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) either on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair.
3. I have considered the application on the papers. These are the decision, the IPP licence termination dossier, and a psychological risk assessment (dated November 2022).

Background

4. The Applicant received a sentence of imprisonment for public protection (**IPP**) on 20 November 2006 following conviction on two counts of robbery.
5. He was most recently released on licence on 1 February 2016 following an oral hearing, having already been subject to one recall. He was recalled to custody on 31 August 2017 following his being charged with a further robbery. He was convicted and sentenced to a further concurrent 12 years in custody on 30 November 2018. He had received several cautions and other convictions since his first release in November 2011. This is his first request for suspension of supervision.
6. The Applicant was 18 years old at the time of sentencing and is now 34 years old.

Request for Reconsideration

7. The application for reconsideration is dated 14 November 2022 and has been drafted by solicitors acting for the Applicant. It submits that the decision was procedurally unfair.
8. This submission is supplemented by written arguments to which reference will be made in the **Discussion** section below. No submissions were made regarding irrationality or error of law.



Current Reference

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) on 3 October 2022 under section 31A of the Crime (Sentences) Act 1997 to consider whether or not it would be appropriate to terminate his licence.
10. On 18 October 2022, a Duty Member dismissed the reference.

The Relevant Law

Crime (Sentences) Act 1997

11. Section 31A of the Crime (Sentences) Act 1997 provides the process for consideration of licences by the Parole Board which relate to 'preventative sentences' after the 'qualifying period' has passed.
12. The 'qualifying period' is ten years beginning with the date of release on licence, regardless of whether the prisoner has subsequently been recalled to prison (section 31A(5)).
13. A 'preventative sentence' is a sentence of imprisonment for public protection or a sentence of detention for public protection (including such a sentence of imprisonment or detention in a young offender institution or detention passed as a result of section 219 or 221 of the Armed Forces Act 2006) (section 31A(5)).
14. If a prisoner has been released on licence (regardless of whether they have been subsequently recalled) and the qualifying period has expired and if Secretary of State has previously referred the case to the Parole Board, the case must be re-referred 12 months from the date of the previous determination (section 31A(3)).
15. The Parole Board shall direct the Secretary of State to make an order that the licence is to cease to have effect if it is satisfied that it is no longer necessary for the protection of the public that the licence should remain in force (section 31A(4)(a)).
16. If the prisoner is in prison having been recalled, the test is different. The Parole Board must decide whether it is not necessary for the protection of the public for the prisoner, when released, to be released on licence in respect of the preventative sentence or sentences (section 31A(4B)(b)(ii)).
17. If the Parole Board directs release under section 31A(4B)(ii), that release is unconditional (section 31A(4C)).

Parole Board Rules 2019 (as amended)

18. Rule 28(1) of the Parole Board Rules provides the types of decision which may be considered for reconsideration, including decisions made in response to a referral by the Secretary of State under section 31A of the 1997 Act (rule 31(6))



or rule 31(6A)): specifically, a decision to terminate a licence or a decision to dismiss the Secretary of State's reference.

19. Decisions concerning preventative sentences (as defined in section 31A(5) of the 1997 Act) are eligible for reconsideration under rule 28(2).

Procedural unfairness

20. 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.

21. 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.

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

The reply on behalf of the Secretary of State

23. The Respondent has submitted representations in response to this application dated 25 November 2022, to which reference will be made in the **Discussion** section below.

Discussion

24. The Applicant submits that the decision was procedurally unfair as he was not given the opportunity to submit representations in respect of the matter.

25. The Respondent submits that representations were not received in time and the case was referred in line with the Public Protection Casework Section (PPCS) policy.

26. The policy in question is the '*Managing Parole Eligible Offenders on Licence Policy Framework*' (implementation date 11 November 2020, re-issue date 1 September 2022) (the '*policy*') This policy is publicly available on the gov.uk website at <https://www.gov.uk/government/publications/managing-parole-eligible-offenders-on-licence-policy-framework>.

27. The relevant part of the policy is found in section 3.5 (IPP licence termination) which "*applies to IPP individuals where a period of 10 years has elapsed since their original release on IPP licence*".



28. Section 3.5.7 provides:

Where the individual is in contact with the Probation Service, the COM (Community Offender Manager) or Probation Practitioner must inform the individual that they have seven calendar days to submit representations in respect of the referral and ask them to complete the representations form, attached to the Termination of IPP Licence Report. Should the individual provide their own representations, then the COM/Probation Practitioner must submit these to PPCS together with the report.

29. Section 3.5.8 provides:

Upon receipt of the Termination report, PPCS is responsible for compiling and formally referring the dossier to the Parole Board. Unless there are exceptional circumstances, PPCS must not submit the dossier to the Parole Board until the individual's representations have been received, or, if none have been received, until the 7 calendar day deadline for representations has expired. PPCS must submit the individual's representations to the Parole Board whenever they are received, unless the Parole Board have already issued their decision.

30. The Applicant's legal representative sets out the following timeline:

- a) 18 August 2022: contacted PPCS to enquire about accessing the Applicant's IPP termination review online. PPCS informed the Applicant's legal representative that they could not simultaneously access the IPP termination dossier and the recall dossier.
- b) 18 August 2022: enquired when the IPP termination was due. PPCS informed the Applicant's legal representative that it was due to take place on 14 March 2023. The Applicant's legal representative challenged this as the ten-year period had lapsed and sought clarification of how the March 2023 date had been calculated. No response was received.
- c) 24 October 2022: decision received.

31. The Applicant's legal representative notes the following:

- a) PPCS had their details on record as representing the Applicant in the recall review; and
- b) The Applicant has completed a form of authority stating he would like representations submitted via his legal representative.

32. The form of authority is contained within the dossier. It is signed by the Applicant and gives the details of his legal representative. It contains the following statement:

I wish to make written representations through my legal representative and understand that it is my responsibility to ensure that they are aware of the deadline to submit any such representations to the Public Protection Casework Section, Public Protection Group.



33. PPCS has confirmed that the Applicant's Prison Offender Manager (POM) was aware of the licence termination request and had been scheduled to meet the Applicant on 5 October 2022 to ask him to sign the annex regarding representations.
34. The application states that the Applicant was told he had "*five days in order to submit representations*". Section 3.5.8 of the policy states seven calendar days; this would ordinarily equate to five working days. Regardless of this, it is argued that the relatively short window for preparation was inadequate since the Applicant has limited literacy and five days would be insufficient for him to give instructions, obtain a legal visit and submit representations. It is also argued that PPCS failed to inform the legal representative that the review had started and give the Applicant the opportunity to give representations.
35. The policy is very clear. PPCS are not responsible for contacting a prisoner's legal representative when an IPP licence termination review is under way. The trigger event is set out in section 3.5.7 of the policy and begins, as it did in this case, with a prisoner being told they have seven calendar days in which to submit representations.
36. The Applicant was informed of the review by his POM who attended to disclose the dossier. It is impossible for me to say whether the POM specifically told the Applicant of the deadline or his responsibility to submit timely representations. However, the Applicant did sign to accept responsibility and if he was not sure of what he was signing, then it was open to him to ask his POM, especially if his literacy is limited.
37. I cannot find any breach of rule or procedure on which to make a finding of procedural unfairness. The documented procedure was followed, the Applicant was informed of the content of the dossier, and he was not prevented from putting his case properly; he simply failed to do so in time.
38. Moreover, while the Applicant may feel disadvantaged by the timetable set out by the PPCS, it was not open to the duty member to extend the window for representations: the discretion under rule 9 to alter prescribed time limits only applied within the Parole Board Rules and cannot be imposed on third party policies.
39. The application goes on to give reasons why the IPP licence should be terminated, but, even if I had granted the application, it would not be open to me to remake the decision of the duty member.

Decision

40. For the reasons I have given, I do not find the decision was procedurally unfair and accordingly the application for reconsideration is refused.

Stefan Fafinski
08 December 2022