

[2024] PBRA 34**Application for Reconsideration by Noon****Application**

1. This is an application by Noon (the Applicant) for reconsideration of a decision of a panel at an oral hearing on 4 December 2023. The decision dated the 18 December 2023 was not to direct the Applicant's release.
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 are the application for reconsideration made by the Applicant, a dossier submitted by the Secretary of State (the Respondent), amounting to 490 pages, and the Applicant's application.

Background

4. The Applicant is serving a discretionary life sentence following conviction of rape of a child under 16, nine counts of indecent assault, four counts of gross indecency with a child under 16 and sexual activity with a child. The offences were committed against six children over a period of 39 years.
5. The Applicant was sentenced on 28 February 2005 and a minimum tariff of eight years was set, which expired on 28 February 2013. In 2018 the Applicant was released on licence but was recalled eight months later in 2019.

Request for Reconsideration

6. The application for reconsideration is dated 3 January 2024.
7. The grounds for seeking a reconsideration are as follows:
 - That the decision of the panel was irrational.
8. The Applicant provided further particulars of why he submitted that the panel's decision was irrational, which were as follows:
 - The panel placed undue weight on concerns about the Applicant's openness with professionals if he were to be released.
 - The panel's view was irrational on whether the Applicant had consolidated previous learning about managing his risk.



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- The panel's view that the risk management plan was underdeveloped was irrational.

Current parole review

9. The Applicant's case was referred to the Parole Board for consideration on 5 September 2022. It was reviewed by a single member on 13 March 2023, who directed the case to an oral hearing. That hearing was first listed to take place on 6 October 2023, but due to the overrunning of another hearing, there was insufficient time to hear the Applicant's case on that day. It was therefore adjourned, and the same panel reconvened to hear the case on 4 December 2023.
10. On that date, a three-member panel made up of a judicial member, a psychologist member and an independent member heard and decided the Applicant's application for release. They considered a dossier of 472 pages including written legal submissions made on behalf of the Applicant. The panel heard oral evidence from the Applicant's supervising officer in custody, and the Probation Officer who would manage the Applicant in the community if released. The Applicant also gave oral evidence to the panel.

The Relevant Law

11. The panel correctly sets out in its decision letter dated 18 December 2023 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

Parole Board Rules 2019

12. 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)).
13. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**.

Irrationality

14. 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."

15. 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.

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

The reply on behalf of the Respondent

17. The Respondent made no representations in relation to the Applicant's application.

Discussion

18. The Applicant has set out the three areas in which he submits that the panel's decision making was irrational. I will address each of those areas in turn.

The panel placed undue weight on concerns about the Applicant's openness with professionals if he were to be released.

19. The Applicant concedes that his recall in 2019 was following his failure to disclose that he had had contact with a child. It also appears from the evidence that the Applicant lied to professionals when challenged.

20. The panel noted that the Prison Offender Manager (POM) thought the recall had been "*a salutary lesson about the importance of being open and honest*".

21. The Applicant's risk to causing serious harm to children in the community was assessed by professionals as being high. The panel's view was that the risk would be "*increased if [the Applicant] was not compliant with licence conditions and not open and honest with probation*".

22. The panel noted that the POM thought that it would be important if the Applicant were re-released that "*firm external controls were in place*".

23. The panel noted the number of restrictive licence condition proposed, but that given the nature of those conditions and of the risk posed by the Applicant, the management of his risk would rely substantially on the Applicant being open with his supervising probation officer.

24. It also noted that the Applicant had not disclosed to his supervising probation officer during the time he was on licence that he had used Viagra within an age-appropriate relationship and would take it in future if he found himself in similar circumstances. The panel recorded the Community Offender Manager's (COM) concern that the Applicant had not discussed this with him at the time.

25. In its conclusion section in the decision letter, the panel set out other important issues which contributed to its decision. Those included that the Applicant had not completed work to consolidate previous treatment and had not sufficiently evidenced internal risk management skills as well as lacking empathy and focusing on gratification and self-interest.
26. The letter sets out that both professional witnesses emphasised the importance of restrictive licence conditions, which would require the openness and honesty of the Applicant if they were to be successful in managing his risk.
27. It is clear to me that, whilst the Applicant's ability to be open and honest with professionals was an important part of the panel's decision making considerations, it was not the only consideration. It is evident that other factors were also considered to be important. In any event, given the nature of the Applicant's offending, the inherent reliance on him sharing information in order to be able to manage his risk, and the evidence from his history and behaviour on licence, I am not satisfied that their concerns about the Applicant's openness were unduly weighted.

The panel's view was irrational on whether the Applicant had consolidated previous learning about managing his risk.

28. The panel noted that the COM was of the opinion that no core risk reduction work remained to be completed. It is of course open to the panel to disagree with his opinion.
29. The panel set out in its decision letter that on arrival at his current establishment, the Applicant had indicated he would like to engage in some one-to-one work to refresh and embed his learning because he had not used the skills, he had learned from previous treatment programmes when he had been in the community, and this had led to his recall.
30. The POM had tried to arrange for the Applicant to be offered that work, but it had not been available to him. Alternative, less intense work was however undertaken, which amounted to sessions with his POM (who is not psychologically trained) discussing diary entries written by the Applicant. Unfortunately the Applicant, through no fault of his own, had not been offered any one-to-one psychological work.
31. In light of the Applicant's indication that he would like to undertake that work, the seriousness of his offending and the level of risk arising from the circumstances which led to his recall, the fact that the more intense work was not completed was a relevant factor for the panel to take into consideration.

The panel's view that the risk management plan was underdeveloped was irrational.

32. The panel noted that the COM would be concerned if the Applicant was released with no support in the community other than professional support, but "*was unable to say where that other support could come from, apart from emphasising that any future friendships or relationships would need to be closely monitored*".

33. The panel clearly set out in its decision letter why it considered that the risk management plan was underdeveloped, including the short period that the Applicant would be in approved premises and the Applicant's own plan of possibly buying his own home in a new and unfamiliar area. It also noted that the professional relationship between the Applicant and his COM was newly established, and in light of the importance of the Applicant being open and sharing personal information with him, that was a factor in the panel concluding that the risk management plan was underdeveloped.
34. The panel had the advantage of an extensive dossier of reports and other material. They had the advantage, too, of seeing and hearing the Applicant as well as the POM and COM.
35. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility to make their own risk assessments and to evaluate the likely effectiveness of any risk management plan proposed. They must make up their own minds on the totality of the evidence that they hear, including any evidence from the Applicant. They would be failing in their duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if they failed to do just that. As was observed by the Divisional Court in **DSD**, they have the expertise to do it.
36. However, if a panel were to make a decision contrary to the opinions and recommendations of all the professional witnesses, it is important that it should explain clearly its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions, per **R (Wells) v Parole Board 2019 EWHC 2710**. I am satisfied in this case that the panel has done so.
37. Where a panel arrives at a conclusion, exercising its judgement based on the evidence before it and having regard to the fact that they saw and heard the witnesses, it would be inappropriate to direct that the decision be reconsidered unless it is manifestly obvious that there are compelling reasons for interfering with the decision of the panel.
38. The Reconsideration Mechanism is not a process whereby the judgement of a panel when assessing risk can be lightly interfered with. Nor is it a mechanism where I should be expected to substitute my view of the facts as found by the panel, unless, of course, it is manifestly obvious that there was an error of fact of an egregious nature which can be shown to have directly contributed to the conclusion arrived at by the panel. This is not such a case.

Decision

39. For the reasons I have given, I do not consider that the decision was irrational and accordingly the application for reconsideration is refused.

V Farmer
8 February 2024