

[2024] PBRA 5

Application for Reconsideration by Weldon

Application

1. This is an application by Weldon (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 15 December 2023. The decision of the panel was not to direct release.
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, and/or (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 dossier now consisting of 623 pages; the application for reconsideration submitted by the Applicant's legal representative; and the response by the Secretary of State (the Respondent).

Background

4. In August of 2005 the Applicant was sentenced in relation to an offence of wounding with intent to cause grievous bodily harm. He was also sentenced to a concurrent determinate sentence of 18 months for unlawful wounding and assault with intent to resist arrest. The Applicant was sentenced to a sentence of imprisonment for public protection. His tariff expired in 2007. He was aged 20 when sentenced he is now aged 38. He had been released and recalled to custody on four occasions during this sentence. He was released in June 2014 and recalled in August 2014. He was released once again in February 2015 and recalled in March 2017. He was released in November 2019 and recalled in April 2020. He was most recently released in April 2021 and recalled one month later.
5. The facts of the index offence were that the Applicant attacked the victim, stabbing him with a knife and causing serious injuries (S18). He also attacked another individual with a knife causing less extensive injuries (S20).
6. The recall in 2017 involved a serious attack where he repeatedly punched a victim. The offence resulted in charges, a conviction for grievous bodily harm (S20) and a sentence of 24 months custody. This further offence had a background of excessive alcohol.



7. The recall in 2021 occurred in circumstances where the Applicant had been in the community for four weeks having been released on licence. The Applicant, again under the influence of alcohol, assaulted a victim with whom he had been spending time in a hotel. The victim suffered a permanent facial scar and the loss of their front teeth. The Applicant was charged with Section 20 wounding and sentenced to a period of two years custody for this offence.

Request for reconsideration

8. The application for reconsideration is dated the 18 December 2023.
9. The grounds for seeking a reconsideration are set out below.

Current parole review

10. This was the Applicant's second review by the Parole Board since his last recall. The first review was scheduled during the operational period of his determinate sentence and was completed, at the request of the Applicant, by a paper decision.

Oral Hearing

11. The review was conducted by an independent Chair of the Parole Board, a second independent member and a third psychologist member of the Parole Board.
12. Oral evidence was given by the Prison Offender Manager (POM), a specialist key worker from the prison, a prison instructed psychologist, a prisoner instructed psychologist and a Community Offender Manager (COM). The Applicant was represented by a solicitor.
13. A dossier consisting of 603 pages was considered.

The Relevant Law

14. The panel correctly sets out in its decision letter dated 15 December 2023 the test for release. The panel were not asked to consider open prison conditions in this case.
15. *Parole Board Rules 2019 (as amended)* Pursuant to 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

16. 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."

17. 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.
18. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

Procedural unfairness

19. 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.
20. 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.
21. The overriding objective is to ensure that the Applicant's case was dealt with justly.
22. In **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said: *"It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship."*
23. 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.



Adequate Reasons

24. It is well established now, by decisions of the courts, that a failure by a panel to give adequate reasons for its decision is a basis on which its decision may be quashed, and reconsideration directed. Complaints of inadequate reasons have sometimes been made under the heading of irrationality and sometimes under the heading of procedural unfairness: whatever the label, the principle is the same. The reason for requiring adequate reasons had been explained in a number of decisions including:
- **R v Secretary of State for the Home Department ex parte Doody (1994) 1WLR 242;**
 - **R (Wells) v Parole Board (2009) EWHC 2710 (Admin);**
 - **R (PL) v Parole Board and Secretary of State for Justice (2019) EWHC 306;**
 - **R (Stokes) v Parole Board and Secretary of State for Justice (2020) EWHC 1885 (Admin).**
25. The principal reason for the duty to give reasons is said to be the need to reveal any error which would entitle the court to intervene. Without knowing the panel's reasons, the court would be unable to identify any such error, and the parties right to challenge the decision would not be an effective one. In **Wells** Mr Justice Saini pointed out that the duty to give reasons is heightened when a panel of the Board is rejecting expert evidence.

The reply on behalf of the Respondent

26. The Respondent made no representations.

Reconsideration Grounds and Discussion

27. The solicitor acting on behalf of the Applicant submits that the panel in this case failed to give adequate reasons why it disagreed with the unanimous professional opinion in favour of release.
28. The Applicant's solicitor, in the application for reconsideration, correctly indicates that the Parole Board panel was not bound to accept the recommendations or views of professionals, but it was incumbent upon them to set out clearly its reasons for rejecting those recommendations.

Discussion

29. The panel, in its decision, accepted that since the Applicant had returned to custody he had engaged in programmes, and treatment, to address his offending behaviour. He had also spent a period of time on a specialised prison unit aimed at consolidating the matters that he had learnt on the offending behaviour programmes. The panel acknowledged that the Applicant had demonstrated positive behaviour since his recall to prison. Also acknowledged was the fact that all professional witnesses, including the psychologists, had submitted to the panel that, in their view, the Applicant's risk could be safely managed in the community.

30. The panel, in its analysis of risk, indicated that they acknowledged that the Applicant's custodial behaviour, since his return to prison on this occasion, had been positive. The panel also noted however, that on previous releases, the Applicant had demonstrated positive behaviour in prison, but had very soon returned to risky behaviour on licence and committed offences and therefore his risk of serious harm had elevated. By clear inference, therefore, the panel indicated that positive behaviour in custody was not necessarily an indicator, in the case of the Applicant, of likely behaviour in the community.
31. The panel also acknowledged that the Applicant would, if released, be subject to a robust risk management plan which the panel accepted would be likely to be sufficient, by way of external controls to manage his risk.
32. The panel's decision therefore was based upon a concern about the Applicant's internal controls, and the Applicant's ability to control his behaviour in the community following release. The panel referenced the number of times that the Applicant had been released on licence and had soon engaged in behaviour, including serious violent behaviour, which required recall.
33. The panel gave a clear reason for its conclusion that the Applicant's risk did not meet the statutory test. That reason was that the panel took the view, that on the basis of the Applicant's history that there had been insufficient time for the Applicant to consolidate his learning and to demonstrate over a longer period that he was able to manage his risky behaviour. The panel were not convinced, despite the positive evidence concerning behaviour and the completion of programmes and consolidation periods, that the Applicant's risk could, at the time of the hearing, be safely managed in the community.
34. The panel did not accept therefore the views of professionals as to the period of consolidation and stable behaviour that was adequate to ensure that the risk to the public was protected. The panel by inference took the view that the professionals in this case had not taken sufficient account of the historical behaviour of the Applicant and his tendency to decompensate very quickly into risky behaviour in the community.
35. The panel in this case had the advantage of an extensive dossier of reports and other material. They also had the advantage of seeing and hearing the Applicant as well as the witnesses. The Applicant was also legally represented throughout. It is the responsibility of panels 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. The panel would be failing in their duty to protect the public from serious harm (whilst also protecting the prisoner from unnecessary incarceration) if they fail to do just that. As was observed by the Divisional court in **DSD** they have the expertise and experience to do it.
36. However, where a panel makes a decision contrary to the opinions and recommendations of the professional witnesses, it is important, as noted above, that it should explain clearly its reasons for doing so and that it stated reasons

should sufficiently justify the conclusion as enunciated in the case of **Wells v The Parole Board 2019 EWHC 2710**.

37. As I have indicated, the panel explained the reason why their decision was contrary to the opinions and recommendations of the professional witnesses.
38. The reconsideration mechanism is not a process whereby the judgement of the panel, when assessing risk, can be lightly interfered with. Where a panel arrives at a conclusion, exercising its judgement, based upon 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 that decision.
39. This decision was no doubt a disappointment to the Applicant, as he was progressing well and had participated in offending behaviour programmes and demonstrated appropriate behaviour in custody to date. However, the panel were obliged to take a wider view of their responsibilities regarding risk. The Applicant had a very poor history of behaviour on release which involved committing violent offences. His past negative behaviour had been preceded by periods in custody of demonstrating stability and indicating a commitment to a prosocial lifestyle.
40. In the light of all these considerations I am not persuaded that the decision of the panel was irrational in the sense set out above.
41. There are no specific arguments regarding procedural unfairness, and I therefore find no evidence of procedural unfairness in the conduct of the panel hearing. For these reasons the application is refused.

Decision

42. In all the circumstances therefore, I conclude that the decision in this case was not irrational in the legal sense set out above and that the decision was not procedurally unfair. I refuse the application for reconsideration.

HH S Dawson
08 January 2024