

[2024] PBRA 62

Application for Reconsideration by Wallace

Application

1. This is an application by Wallace (the Applicant) for reconsideration of a decision of a Parole Board panel (the panel) dated the 20 February 2024 (the Decision) not to direct release following an oral hearing held on 16 February 2024.
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. This is an eligible case, and the application was made in time.
3. I have considered the application on the papers. These consist of the reconsideration proforma, the application dated 10 March 2024 (the application), an email dated 13 March 2024 by the Public Protection Casework Section (PPCS) on behalf of the Secretary of State (the Respondent) offering no representations and the Applicant's Dossier consisting of 590 pages (the Dossier).

Background

4. The Applicant was sentenced to life imprisonment with a minimum term of 3 years (less time spent on remand) on 30 August 2000 for an offence under s 18 of the Offences Against the Person Act 1861 of causing grievous bodily harm with intent (the index offence). She was then aged 19, and 18 at the time of the index offence. Her tariff expiry date was 3 August 2003. It is suggested that she may already be the longest, or one of the longest, detained post tariff female offenders for an offence short of actual murder. She is now aged 42 and has spent most of her life to date in prison.
5. Already by the time of the index offence, the Applicant had accumulated a pattern of violent behaviour including a previous conviction under s 18. In the index offence she attacked the victim with a bottle believing he had spiked her boyfriend's drink with drugs.
6. It appears from the Dossier and the Decision that this was the Applicant's 5th recall review (it may, in fact have been her seventh), all the previous releases having resulted in recall, the latest recall (in November 2015) having occurred only a week after release after she had breached the curfew at her approved premises and failed



3rd Floor, 10 South Colonnade, London E14 4PU

www.gov.uk/government/organisations/parole-boardinfo@paroleboard.gov.uk

@Parole_Board



0203 880 0885

to reside at the hostel. Previous recalls had occurred after allegations of violence, drink driving and concerns as to her mental health.

7. Despite much positive progress in custody, she has been presenting since at least April 2019 with mental health issues including thought disorder and paranoid delusions (leading to a diagnosis of paranoid schizophrenia), emotional instability, personality disorder, misuse of drugs and alcohol and occasional testing for cocaine and alcohol. Further deterioration occurred around October 2021 and again in 2023 despite intervening treatment in hospital. She has been treated by Mental Health Teams (specifically Mental Health In-Reach Teams (MHIT)) and prescribed appropriate medical treatment (though this has not always been compliant particularly before her latest parole review). A number of psychological and psychiatric and other reports including on addiction and mental health (in addition to the usual assessments) have been commissioned, most recently in 2022 and 2023.
8. Member Case Directions (MCD) directing an oral hearing were made by a single member of the Parole Board on 28 February 2023 (almost a year prior to the actual hearing), meticulously focussing on the issue of risk assessment and management of the risk in the community bearing in mind the concerns over the Applicant's mental health, directing psychological risk assessments from the Applicant and prison authorities, and a list of witnesses including the prison psychiatrist and the psychologists providing the above-mentioned reports. Moreover, a panel of three members to include specialist psychologist and psychiatrist members was also directed.
9. The requested reports were eventually produced, and local authority social workers became involved in considering questions of accommodation and aftercare under s 117 Mental Health Act 1983 (MHA 1983) following the Applicant's discharge from hospital.
10. However, matters do not appear to have progressed as they should. Specifically, a further direction was made in Panel Chair Directions (PCD) of 5 January 2024 reiterating the requirement for the attendance of a psychiatrist special member since, despite the earlier direction, this did not appear to have materialised. The PCD also noted that the prison authorities and the local authority social workers were both experiencing many problems of obtaining engagement from the MHIT (specifically its head – who, it appears from the PCD and Decision, had produced conflicting reports, and was unaware he was expected to attend the Parole Board hearing and, in the event, refused to attend the oral hearing owing to another meeting).
11. Even at the panel hearing itself there was difficulty in ensuring all the required witnesses were attending: one, a Mental Health Nurse, was substituted with the agreement of the Applicant's legal representative for one of the report writers, whilst another, a social worker, was found and attended at the last minute. As previously noted, the head of the MHIT did not attend.
12. The panel however was constituted as directed: an independent chair plus the psychological and psychiatric special members.

Request for Reconsideration



3rd Floor, 10 South Colonnade, London E14 4PU



www.gov.uk/government/organisations/parole-board



info@paroleboard.gov.uk



@Parole_Board



0203 880 0885

13. The principal grounds for seeking a reconsideration as set out in the application are substantially as follows, as I understood them:

a. Procedural Unfairness:

- i. although the MCD directed updated psychology reports, there was no direction for a psychiatric report; the last one having been completed in 2022;
- ii. there was some conflict of evidence over the Applicant's compliance with prescribed drugs for her mental health condition;
- iii. whilst concerns had been expressed about the Applicant having been under the influence of illicit substances, no tests were carried out to establish this; and
- iv. owing to the lack of co-operation from the MHIT, it was not possible to secure suitable accommodation for the Applicant under s 117 MHA 1983.

b. Decision irrational:

- i. When it became apparent that there were "*concerns in relation to several other matters*" the panel should have stopped or adjourned the proceedings for a psychiatric report which "*would have provided the panel with valuable information*" in relation to treatment and management in the community, and time to enable the detail around the Applicant's s 117 accommodation to be established; and
- ii. By failing to adjourn the proceedings, the panel reached a decision which was "*fundamentally irrationality [sic] unfair*" to the Applicant.

14. In substance, the main complaint was that the panel should have taken steps to adjourn the proceedings to seek an updated psychiatric report, to resolve issues as to drug testing and drug prescription compliance and allow time for the question of accommodation (as part of the risk management plan) to be resolved. There were also complaints to the effect that the panel had not paid due regard to evidence there was unanimous support for release and that the risk management plan was robust enough and there was a conflict of evidence between the Applicant and the Mental Health Nurse as to the taking of her medication.

Current parole review

15. The decision of the panel was set out in a lengthy, careful, and meticulous decision letter. The Applicant, as foreshadowed above, was legally represented. Witness evidence was heard from the Prison Offender Manager (POM), the Community Offender Manager (COM) a prison psychologist, a prisoner commissioned psychologist, plus the Mental Health Nurse and social worker referred to above as well as the Applicant herself.

16. In accordance with the MCD referred to previously, the panel concentrated on those matters considered important in the panel's assessment of risk. There were detailed analytical passages relating to the past offending behaviour and risk factors and her progress in custody and on licence, to the evidence of change including concerns as to her mental health condition and her suggested delusions and substance misuse and the conflicts of evidence in the reports whilst at the same time noting many



positive aspects about the Applicant's presentation including substantial analysis of the evidence from the Mental Health Nurse, the POM and COM, the social worker, the psychologists, and the Applicant herself. The panel carefully considered the paper-based reports as reflected in the OASys noting the assessment of risk was a high likelihood of harm to the public and a medium risk to all other groups in the community which they found difficult to assess as to whether they were accurate in light of the Applicant's current health presentation. The panel felt the risks would increase if her mental health needs were not met.

17. The panel further noted that the development of the risk management plan had been hampered by the absence of any meaningful engagement by the mental health team. Despite repeated efforts to seek up to date information, attempts to engage with the head of Mental Health and Psychological Services "*were met with contradictory information and a failure to answer any of the relevant questions posed*". Unsurprisingly, the panel was not reassured that the MHIT would provide sufficient support for the transition to community based mental health. Even the latter support could not, it was noted "*be guaranteed*". The proposed Approved Premises (AP) for the Applicant were well outside her home area (unavoidable, it was thought, given the lack of APs for women) and would not provide the specialist support she required. Move-on accommodation was not identified and might not even be available. With the necessary support neither confirmed nor in place, the risk management plan was found to be inadequate. Assertions as to what might be available in the community were "*aspirational and unrealistic*". All this would simply add to the stress to the Applicant and increase the risk of her becoming destabilised.
18. In two significant and helpful passages the panel noted protective and positive factors for the Applicant, her absence of violence in recent years, her good relationship with those who supervised her. "*She is [the panel found] bright and articulate and a good advocate for herself*". The panel considered adjourning for a fully formed risk management plan to be prepared but were not convinced that the COM and social worker would receive the support required to improve the plan within a reasonable period of time including outstanding information regarding warning signs and triggers that would be needed for any risk management plan to effectively monitor her mental health.
19. The panel was plainly concerned at the Applicant being significantly over-tariff. The unanimous support for her release was noted but the panel remained concerned about her fragile mental condition. The panel in particular (noting it included psychologist and psychiatrist members) also noted the Applicant presented during the hearing as actively psychotic with delusions even though none of the professionals involved with the Applicant appeared unduly concerned about this even though most of them had never observed her present in this way. The panel felt it hard to reconcile their evidence that the Applicant's current active psychotic presentation was manageable in the community with a support package that remained unclear. The fact that the Applicant had been recently refusing medication without discussion appeared to have "*slipped under the radar*". Whilst accepting that the Applicant had not been violent since her diagnosis of schizophrenia, the risks increased significantly when suffering from the acute symptoms of psychosis, particularly in response to delusions (as was the case here) and propensity to misuse alcohol or other substances.



20. In these circumstances, the Applicant's current mental health presentation, the inadequacy of the accommodation, support and risk management plan, and the lack of engagement and support from the mental health teams and despite the unanimous recommendations for release, the panel was not satisfied she currently met the test for release and accordingly could not recommend it.
21. The panel did however make two important recommendations: first, that a future panel would benefit from a psychiatric risk assessment report regardless of whether the Applicant had experienced further psychiatric disturbance; second that developing a future risk management plan should commence at the earliest opportunity.

The Relevant Law

22. The panel correctly set out in the Decision 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 (as amended)

23. Rule 28(1) of the Parole Board Rules provides the types of decision which are eligible for reconsideration. Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for reconsideration whether made by a paper panel (rule 19(1)(a) or (b)) or by an oral hearing panel after an oral hearing (rule 25(1)) as here or by an oral hearing panel which makes the decision on the papers (rule 21(7)). Decisions concerning the termination, amendment, or dismissal of an IPP licence are also eligible for reconsideration (rule 31(6) or rule 31(6A)).
24. Rule 28(2) of the Parole Board Rules provides the sentence types which are eligible for reconsideration. These are indeterminate sentences (rule 28(2)(a)), extended sentences (rule 28(2)(b)), certain types of determinate sentence subject to initial release by the Parole Board (rule 28(2)(c)) and serious terrorism sentences (rule 28(2)(d)).
25. 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

26. 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."

27. 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.

28. 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

29. 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.

30. 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.

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

Other

32. 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.*"

33. Omitting to put information before a panel is not a ground for procedural unfairness, as has been confirmed in the decision on the previous reconsideration application in **Williams [2019] PBRA 7**. This is the case even where the information, had it been before the panel, would have been capable of altering its decision, or prompting the panel to take other steps such as putting the case off for an oral hearing where the new information and its effect on any risk assessment could be examined. This is because procedural unfairness under the Rules relates to the making of the decision by the Parole Board, and when making the decision the panel considered all the evidence that was before them.

The reply on behalf of the Respondent



34. I have mentioned above that the PPCS offered no response on behalf of the Respondent.

Discussion

35. The panel was plainly and rightly anxiously concerned about the Applicant's position and the lack of support and engagement received (or rather not received) from prison-based services, particularly in terms of mental health. The panel noted that the Applicant felt she is being "warehoused" in custody, a view with which they were inclined to agree. In short, the panel presented a vivid and compelling portrait of a bright and articulate woman sadly let down.

36. The view that she was or was being unfairly treated was indeed striking. But that does not mean she was dealt with unfairly or irrationally by the panel or in terms of her hearing or the Decision. The Decision demonstrates, in my judgment, how carefully and analytically the panel considered the Applicant's case. But they have a duty to consider the public interest as well as the rights of the Applicant. In my judgment the panel discharged this duty, exercising proper independent judgment and considerations as evidenced by their careful and detailed Decision.

37. It is not apparent from the papers before me whether an application for any adjournment for any updated psychiatric report or other reason was made on behalf of the Applicant. But whether it was or was not, it is apparent from the Decision (see above) that the panel did consider whether to adjourn to enable a fully formed risk management plan to be prepared (which must of necessity have include issues both as to accommodation and as to monitoring her mental health) and came to the conclusion that this could not be achieved within a reasonable period of time.

38. That in my judgment was a perfectly reasonable decision for the panel to have made, particularly given the length of time that had elapsed since the direction (as I said, almost a year earlier) for an oral hearing, the difficulties encountered in convening the actual hearing and the lack of cooperation from mental health teams. In any event their concerns as to the mental health presentation of the Applicant, her accommodation needs, and overall mental health support were more than adequately reflected in the two recommendations they made (and summarised above) for any future panel hearing. Adjournment for drug testing was unlikely to add significantly to the outcome one way or the other. Moreover, the "several other matters" were never cogently or clearly set out in the written representations on behalf of the Applicant, nor was it explained how the "valuable information" might assist beyond speculation. A suggestion that another panel might have reached a different conclusion is also a matter of mere speculation. It does not follow that the Decision must therefore be irrational or unfair.

39. It does however follow that I see nothing irrational or unfair in the panel declining to grant an adjournment or, for that matter, as further developed below, in the Decision.

40. The task of the panel was to hear, consider, evaluate, and assess the evidence they heard and to determine the matter in a balanced, fair and proper judicial manner in accordance with the law, accepting or rejecting the evidence as appropriate. They are, it must be repeated, an independent panel. The mere fact that there was



unanimity of recommendation for release (as here recognised by the panel) does not inevitably result in a decision for release if there are good reasons for refusing it. Again, in my judgment the panel recognised the complexities, difficulties and concerns of the case, the predicament of the Applicant, her incarceration long over tariff, the failings of the prison-based authorities and the conflicts in the reports. But on the evidence before them including the long history of the Applicant, her manner of current presentation, her many positive qualities, as well as the risk factors involved and assessed, the inadequacy and uncertainty of the risk management plan including as to accommodation and mental health support, all of which were carefully analysed and considered and resulted in a Decision which might be thought hard in the circumstances but as to which there was nothing irrational or unfair. The panel plainly gave very careful thought to all the evidence before them even as to that which might be obtained within a reasonable time. It must also not be forgotten that the panel had the advantage of two specialist qualified members.

Decision

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

HH Roger Kaye KC
22 March 2024

