

[2020] PBRA 139

Application for Reconsideration by Khan

Application

1. This is an application by Khan (the Applicant) for reconsideration of a decision of a Parole Board panel at an oral hearing dated the 4 August 2020 not to direct 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
 - i. The Dossier of 699 pages.
 - ii. The Decision Letter of 18 pages.
 - iii. Representations submitted on behalf of the Applicant.
 - iv. Representations submitted on behalf of the Secretary of State.
 - v. A significant number of emails between the Parole Board, the Chair of the Panel, the Police, the Applicant's legal representatives and the Ministry of Justice.

Background

4. The Applicant was sentenced to imprisonment for public protection in September 2002. His tariff expired in September 2008. In January 2009 he was released on licence by direction of the Parole Board. In 2011 he was convicted of conspiracy to supply drugs and sentenced to 11 years imprisonment. A Parole Board panel in 2016 declined to direct his release.

Request for Reconsideration

5. The application for reconsideration is dated 21 August 2020.
6. The grounds for seeking a reconsideration are in summary as follows: it is said that the Parole Board:

(A) "failed to follow and adhere to its own guidance on how to vary, amend or revoke directions without suitable explanation as to why they have deviated from that guidance;"



(B) failed to provide a rationale or reasoned decision process in making a finding of fact relating to uncorroborated security intelligence and the use of a mobile phone; and

(C) took into account information for the purposes of assessing the applicant's risk which the panel should not have taken into account."

Current parole review

7. The case was referred to the Parole Board in January 2017. There were a large number of deferrals before it was ready for hearing, as follows: 18 December 2017 to April 2018, April 2018 to August 2018, August 2018 to January 2019, January 2019 to June 2019. On 5 June 2019 the hearing began but was adjourned until 27 February 2020. On that day the hearing was again deferred to 30 March 2020 and on that day, it was deferred again until the 27 and 28 July 2020.
8. The hearing was conducted remotely by a 3-member panel on 27-28 July 2020. The panel considered the dossier previously referred to and heard evidence from:
 - A Police Detective Inspector,
 - A prison Security Officer,
 - A solicitor who had acted for the Applicant at a previous criminal trial,
 - The Offender Supervisor,
 - A prison keyworker,
 - The Offender Manager, and
 - The Applicant.

The Relevant Law

9. The panel correctly set out in its decision letter dated 4 August 2020 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

10. 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. This is therefore an eligible decision.
11. 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

12. 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."

13. 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.
14. 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

15. Procedural unfairness means that there was some procedural impropriety or unfairness which resulted 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 focuses on the actual decision.
16. 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.
17. The overriding objective is to ensure that the Applicant's case was dealt with justly.

Other

18. It is possible to argue that mistakes in findings of fact made by a decision maker result in the final decision being irrational, but the mistake of fact must be fundamental. The case of **E v Secretary of State for the Home Department [2004] QB 1044** sets out the preconditions for such a conclusion: *"there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter; the fact or evidence must have been "established", in the sense that it was uncontroversial and objectively verifiable; the appellant (or his advisors) must not have been responsible for the mistake; and the mistake must have played a material (though not necessarily decisive) part in the tribunal's reasoning."* See also **R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2003] AC 295**, which said that in order to establish that there



was a demonstrable mistake of fact in the decision of the panel, an Applicant will have to provide “*objectively verifiable evidence*” of what is asserted to be the true picture.

19. 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.*”
20. Omitting to put information before a panel is not a ground of procedural unfairness, as has been confirmed in the decision on a previous reconsideration application - **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. There was nothing to indicate that further evidence was available or necessary, and so there was nothing to indicate that there was any procedural unfairness.

The reply on behalf of the Secretary of State

21. The Secretary of State has submitted representations solely concerning the supply by a caseworker at the Public Protection Casework Section (PPCS) of the dossier to the senior police officer. (As to this see below para 22 p below).

Discussion

22. Ground (A) - This ground may be subdivided into three separate strands. First it is said that the Board – the panel chair in effect –
 - i. failed to adhere to the guidance issued by the Parole Board on how to vary or amend its directions,
 - ii. failed to explain why the Board had done so, and
 - iii. as a consequence of these failures, accepted evidence from the Police witness referred to above as to allegations or suspicions concerning the risk posed by the Applicant to the public without a proper basis for doing so.
23. In order to consider this ground properly I asked for all the email and other communications (not already contained in the dossier) between the Police, the Parole Board, the Panel Chair, the Applicant’s representative, and the Public Protection Casework Section (PPCS) of the Ministry of Justice prior to the hearing to be supplied to me. While there are no obvious gaps in the material I received as a result of my request, I was informed that I cannot be certain that there were no other communications between the parties between 27 May 2020 and the hearing. With that possible limitation, the background to this ground may be summarised as follows;



- a. As can be seen from the summary at paragraph 7 above, the case had been deferred or adjourned some six times since it was originally set down for hearing in December 2017.
- b. On 30 March 2020 the case was deferred again to a two-day hearing on 27 & 28 July.
- c. On 27 May, Panel Chair Directions (PCD) were issued, one of which required the attendance of 'a senior [police] officer 'to answer questions regarding the Police Intelligence Reports contained in the Parole Dossier and to assist the panel in assessing the validity of the intelligence and its relevance to the risk of causing serious harm.'
- d. On 12 June PPCS submitted a Stakeholder Response Form (SHRF). It referred to eight police intelligence reports which were already within the dossier and requested that the requirement for the attendance of the 'senior [Police] officer' be revoked.
- e. On 18 June the legal representative of the Applicant responded to the SHRF. She stated that the Applicant '*vehemently denies the allegations raised within the reports.....If the Parole Board intend to attach any weight to this hearsay evidence then the author(s) of the reports should be made available....*'.
- f. On 23 June the legal representative provided an additional response to the SHRF in which she stated; '*It remains the case that if the Parole Board are minded to attach any weight to the allegations raised within the police intelligence reports then it is important that [the Applicant] has the opportunity to address and test the veracity of those allegations.....We refer to panel chair directions dated 17 August 2018 wherein it was stated; 'Although [the Applicant] has not asked for the attendance of [the] police at his hearing the Panel Chair considers it entirely appropriate for the author of the material to attend in order to justify what the police are asserting.'*
- g. On 24 June the Panel Chair responded by way of a further SHRF. In summary he directed '*that a Senior Police Officer, who is familiar with the police intelligence reports in the dossier and who understands how intelligence is collected, analysed and graded, attends at [the Applicant's] hearing by telephone link in order that the panel and [the Applicant's] representative be afforded the opportunity to pose questions.'*
- h. On 14 July a Parole Board caseworker sent an email to sixteen recipients, including the Applicant's legal representative, informing them that the hearing would be conducted as a telephone hearing with all participants, including the Applicant doing so remotely by telephone link.
- i. On 15 July, with the hearing now less than two weeks away, the Panel Chair emailed the Parole Board reminding it of his direction concerning the attendance of the 'Senior Police Officer' and asking for confirmation that his direction was being complied with.
- j. On 17 July following an email from the Parole Board caseworker to the Police, a lawyer apparently representing the police responded to the SHRF form originally submitted on 12 June. This email:
 - i. Named the senior officer who would be attending the hearing.
 - ii. Set out the limits of the senior officer's ability to elaborate on police processes or on the 'intelligence content' of the reports.
 - iii. Indicated that the officer would have been able by the time of the hearing to satisfy himself as to the 'accuracy and probity' of the reports.



- k. On 20 July the Applicant's legal representative and the Panel Chair received an SHRF from the Secretary of State (SoS) asking for comments by the following day, and seeking the permission of the panel to allow the attendance of Queens Counsel to accompany the senior police officer, who, it was said, would be attending by telephone. The SHRF asked that the senior officer be supplied with a copy of the dossier.
- l. The same day at 9:13am the Panel Chair emailed the Parole Board case manager concerning a number of matters. These included the necessity for the senior police officer to make a formal application for his evidence to be heard by telephone only, and a request to the caseworker to 'make sure' the officer and his Counsel had copies of the dossier. (underlining added)
- m. Later the same day at 15:15pm a case manager from PPCS emailed the Applicant's legal representative (copied to the Parole Board caseworker) asking her to comment on the SHRF requests 'as a matter of urgency.'
- n. Later the same day the Applicant's legal representative and others received an email from the Parole Board caseworker timed at 19:42pm which contained the comments of the Panel Chair on the earlier e-mail. The email pointed out or directed *inter alia* that
 - i. The senior police officer needed to submit a formal application that his evidence be heard by telephone rather than by video link, and directed
 - ii. That the senior police officer and his Queens Counsel should be provided with copies of the dossier and of the video link details for the hearing. (underlining added).

It asked for responses to these and other points as soon as possible.

- o. Later still the same day at 22:08pm the Applicant's legal representative replied as follows:

"It would appear that the Panel Chair has proceeded to rule on two of the three points raised without having considered the SHRF application or written representations from myself.....I would therefore ask that the Panel Chair immediately rescind the first two comments in the list below. My representations will be added to the SHRF tomorrow and passed to the Parole Board for Directions to be made."

- p. The next day - 21 July - at 10:21am a PPCS caseworker carried out the Panel Chair's instruction to supply the senior police officer with a copy of the dossier.
- q. At 12:13pm the same day the Applicant's legal representative emailed the Parole Board asking that the dossier not be supplied to the senior police officer and his counsel until she had submitted representations and a formal direction had been made. The email included an offer to speak direct to the Panel Chair on the telephone.
- r. An untimed extract from an email the same day from the Panel Chair to the Parole Board caseworker had asked her to 'hold fire' on disclosure of the dossier until he had had time to consider the issue. This extract was contained in an email at 13:14pm from the Parole Board caseworker to PPCS asking them to 'confirm if the dossier has been shared with a senior police officer'.
- s. At 13:27pm that day a Case Manager from PPCS informed the Applicant's legal representative by email that she had complied with the Parole Board direction to send a copy of the dossier to the senior police officer at 10:21am that morning and that receipt of it had been confirmed by its recipient.



- t. At 16:44pm that day, the Applicant's legal representative emailed PPCS, copied to the Parole Board, asking why the dossier had been sent in view of the objection that she had raised and for details of when it was sent.
- u. At 17:10pm PPCS replied to the Applicant's legal representative informing her that the dossier had been sent at 10:21am that morning.
- v. At 17:45pm the Applicant's legal representative submitted a response to the SHRF. It contained a number of comments on the scope of the evidence to be provided by the senior police officer and objected to the applications to allow Queens Counsel to accompany him at the hearing and – specifically to the fact that he and Queens Counsel had been supplied with a copy of the dossier in spite of the objection referred to above at sub-paragraph o. In addition, the Applicant's legal representative objected to the direction allowing the senior police officer to give evidence by telephone rather than video link.
- w. On 22 July the Panel Chair set out in an SHRF Response. He granted the application for the senior police officer to be accompanied by Queens Counsel as follows:

"An overriding consideration is that [the Applicant] receives a fair hearing. In her representations [the legal representative for the Applicant] does not make the case that the attendance of [Queen's Counsel] will result in any unfairness or disadvantage to [the Applicant]."

If [the] Police wish to appoint Counsel to provide legal advice to one of their employees regarding the evidence, they are to provide the Chair can see no reason not to allow the application. It is in the interests of the panel that all witnesses are allowed facilities to provide best evidence to the hearing.

Permission is therefore granted for QC to attend the hearing

- 1) *The application from PPCS states that "[the senior police officer] intends to join only via telephone option available on video calls".*

The application contains no rationale or justification for the request as to why [the senior police officer] cannot give his evidence by video link.

[The senior police officer] is therefore directed to appear on the video link when he gives his evidence.

- 2) *[The legal representative for the Applicant] objects to the provision of a copy of the parole dossier to the police and [Queen's Counsel] . She opines that it is not necessary for the police to receive "additional, supplementary information, much of which is confidential between [the Applicant] and identified experts". [The legal representative] is not specific about the information to which she refers but it occurs to the Chair that it is entirely possible for the police to obtain the contents of the parole dossier through information sharing protocols that exist between the Prison Service, the Probation Service and [Multi-agency Public Protection Arrangements]if they so wished.*

In any event it appears that PPCS have, on my direction, already provided a copy of the parole dossier to the police.



If [the legal representative for the Applicant] believe that this now disadvantages [the Applicant] or is likely to significantly prejudice the fairness of his hearing I am happy to take further representations."

- x. On 22 July the Applicant's legal representative responded via the SHRF procedure. She pointed out that the Parole Board Rules do not provide for the provision of the dossier to third parties – such as the police. She asserted too that it appeared that there had been a breach of Rule 6 of the Parole Board Rules in that the SHRF form had been submitted and its terms varied following the provision of an email from a solicitor acting for the witness to the Parole Board of which neither she nor the Applicant had had sight. In respect of the supply of the dossier it was asserted that:
 - i. The dossier had been supplied before the Applicant had had a chance to address the issue.
 - ii. That the reason given in the application for the request that *the 'senior police officer might have a proper appreciation of the context in which he might be asked to give evidence'* was not sufficient or particular enough so that in effect no proper explanation had been put forward for the request.
- y. On 23 July, the Chair responded via the SHRF procedure. He ruled that the contention by the Applicant's legal representative that the Applicant would be severely disadvantaged by the provision of the dossier to the senior police officer had not been specified. He asserted that even if, which was not conceded, there had been a breach of procedure, the Applicant's legal representative had not particularised how the breach might have affected the fairness of the proceedings and noted that the Applicant's legal representative had not suggested one way or another that the Applicant could not now have a fair hearing. He concluded by saying that if the Applicant's legal representative wished to make further representations, he would be happy to receive them.
- z. On 24 July there were emails unconnected directly with this ground concerning the way in which the senior police officer would give his evidence – by video link and not by telephone.

24. The submissions submitted on behalf of the Applicant make the following points:

Parole Board Guidance on the current SHRF form contains the following:
"The Parole Board will not accept applications without a properly completed SHRF being submitted by the applying party, i.e. ad hoc applications via email/letter/telephone without the completed SHRF will not be accepted."

It is clear from the sequence of events set out above that this did not occur – in particular concerning the direction to supply the dossier to the senior police officer. Additionally, the Applicant's legal representative had not had sight of the original request and therefore had no opportunity to reply to it. Even though the Applicant's legal representative submitted an objection to the sharing of the dossier with the senior police officer, the direction was complied with the following day.



- a. This was done in breach of Rule 6 of the Parole Board Rules 2019 concerning the right of parties subject to a direction to make representations concerning it.
 - b. The application had been made pursuant to the aim stated on one of the reports prepared by the Police prior to the application for, and subsequent receipt of, the dossier, namely "*providing justification for denying the release of [the Applicant] on Parole.....*"
 - c. Even if, which was not conceded, the police may have been able to gain access to most if not all the contents of the dossier through 'information sharing protocols' that process had not been carried out and the Applicant and his representative had not had the opportunity to argue the matter either in general or as to particular documents within the dossier.
 - d. Faced with the possibilities of proceeding with a hearing which had already been deferred or adjourned on seven occasions, the Applicant had no alternative but to accept the position as it now stood and proceed with the hearing.
25. Grounds (B) and (C). These grounds which overlap and will be summarised together make a number of criticisms of the way in which the panel approached the police intelligence and came to its conclusion concerning the Applicant's continuing involvement in serious and organised crime and a consequent unacceptable risk of serious harm to the public if he were to be released.
- a. Although the senior police officer contended, and the panel accepted, that most of the reports in the intelligence material were corroborated, that was in fact far from the case in that of fifty seven reports, fifty were classed as 'known indirectly' or 'unknown' and therefore effectively uncorroborated.
 - b. This mistaken conclusion had to be set against the fact, accepted by the panel, that one particular report of crime had resulted in criminal proceedings being dropped since there had been serious malpractice by the prosecution, including the police.
 - c. The Applicant had no real opportunity to test the assertions in the police reports with the witness who had had no personal knowledge of any of them until he was asked to review them for the purposes of the parole hearing.
 - d. The panel failed to explain how its conclusions drawn from the material in the police intelligence reports had impacted upon its assessment of the risk now presented by the Applicant.
 - e. No reasonable attempts were made by the panel to verify the accuracy, truthfulness or cogency of the oral evidence of the senior police officer.
 - f. The fact that a prosecution of the Applicant in 2018 had been dismissed following malpractice by police officers and representatives of the Crown Prosecution Service, while it was taken into account by the Board in the Decision Letter, should have resulted in far less weight being placed on the all the other information provided by the senior police officer.
 - g. The panel effectively ignored paragraph 20 of the Board's own Guidance on Allegations dated March 2019 in considering the weight to be attached to the general picture of wrongdoing, and
 - h. Failed to refer to the evidence of the Applicant who had denied the allegations.



- i. The panel looked, and found support, for the more recent intelligence spoken to by the senior police officer in the convictions of 2002, 2010 and 2018. Save for the more recent incident the panel should not have found that events of 10 or 18 years ago corroborated the recent matters spoken to by the senior officer.
 - j. The court which sentenced the Applicant in respect of his possession of mobile phones in 2018 had accepted the mitigation of the Applicant to the effect that his use of them had been purely for domestic and social purposes. The panel indicated that it considered that to have been unlikely. No explanation was forthcoming as to why the panel reached or came to that conclusion.
26. Finally, though not cited specifically as a Ground, the Applicant complains that he was not informed prior to the hearing, but has subsequently discovered, that the Panel Chair was once employed by a police force which had been involved in the case which was dropped because *inter alia* of malpractice by members of the same force. There is no criticism in the grounds of the Chair's integrity, but the complaint is made that the fact of his previous employment should have been revealed before the hearing so that that possibility could be considered.

Decision

27. I find that the first Ground (A) - is made out and represents a significant breach of procedural fairness under Rule 28. Witnesses who are not part of the core participants at parole hearing such as the Offender, the Offender Manager/Supervisor, and other professionals concerned directly with the management or medical or other treatment of the prisoner (in particular those being called by the Secretary of State specifically for the purpose of providing material which militates against the release of an offender), should not be provided with copies of the dossier without the offender being given an opportunity to object to all or to certain parts of the dossier being disclosed. The decision to do so and its execution before the Applicant had had a chance to make a case for not doing so justifies this application for reconsideration which is accordingly granted.
28. The Reconsideration Assessment Panel (RAP) has considerable sympathy with the predicament the Panel Chair found himself in at the time the application for disclosure was made. The case was already very old and had been deferred or adjourned, on one occasion after an oral hearing had been started, seven times since 2018. The police evidence was served much later than was appropriate, albeit no doubt there were particular pressures and difficulties encountered by those responsible for preparing and serving that evidence and making the application. It may have been, as the Chair suggested, that in the particular case there was nothing in the dossier which could not have been obtained through 'information sharing protocols', and so far as the RAP is aware no particular material within the dossier was highlighted by the Applicant's legal representative at the time of her objection or later at the hearing, although it occurs to the writer that in many dossiers there is personal data, whether relating to the offender or other persons, which would almost certainly fall outside the ambit of information which may be shared between agencies under the Multi-agency Public Protection Arrangements and other systems of joint agency working/information sharing. It



is also the case that it seems that the Applicant's legal representative did not take the opportunity before or at the hearing to argue the matter further. Of course, to have done so may well have led to the hearing being abandoned and further delay and even the possibility that a new panel would need to be formed. This against the background that the Applicant's Offender Supervisor and Offender Manager were both recommending release.

29. That finding is sufficient to dispose of the application. However, it may be thought helpful if I set out my conclusions on the other grounds.

Ground (B)

- i. Paras 24 a, b, d & e: I find that there is little force in these contentions. Corroboration in the criminal law is some independent evidence which supports a particular allegation or contention. However, the existence of a number of similar, albeit individually uncorroborated, allegations (even if one of them may have been made maliciously) may well entitle a panel to conclude on the balance of probabilities that there is sufficient in terms of quantity and quality of information – in particular when the offender concerned, has, as in this case, been recently convicted of unlawful use of mobile telephones during his sentence – to assist it in making its assessment of risk. There was nothing irrational in the way the panel dealt with the issue.
- ii. Para 24 c: There are frequently assertions and allegations aired in the course of parole hearings which are relayed to the panel by a witness who has no direct knowledge of their truth or otherwise. Panels have to deal with this problem in almost every case they hear. I find no indication in the Decision Letter that this particular panel behaved irrationally in respect of this ground.
- iii. Para 24 f: I find too that this ground has no substance. It effectively suggests that because the police/prosecution behaved in such a way as to cause the abandonment of one prosecution little or no weight should have been placed on other and different intelligence concerning different allegations. The Decision Letter dealt with this perfectly properly and, unusually, devoted an entire sub-chapter (from 5.11-5.20,) to the topic.
- iv. Para 24 g & h: I find too that this ground has little substance, and certainly nowhere near enough to amount to irrationality or procedural unfairness. The six factors set out at paragraph 20 of the Guidance of April 2019 are not mandatory and are set out as factors which "can be considered". It is clear in fact that the panel did consider to the extent possible at paras 5.2-5.20 of the Decision Letter:
 1. The credibility and reliability of the sources.
 2. The existence of any supporting evidence – which of course includes the ability to conclude that information from different sources alleging similar conduct can be mutually supportive.
 3. The nature of the allegations.
 4. The time period over which the information has been obtained and the length of time since the alleged events contained within the information.



5. The question of the context of the allegations. In this respect the panel was entitled to look, as it did, at the whole of the Applicant's offending.
6. The Applicant's own evidence. The panel was entitled to come to a view about the credibility of the Applicant's evidence. The fact that in one instance – though it is hard to discern from the papers in the dossier whether the acquittal in 2018 at the Crown Court was by a jury (p259 of the dossier) or by the judge's direction following a finding of malpractice by the police and/or the Crown Prosecution Service – the Applicant was acquitted in respect of one allegation or set of allegations cannot lead to a conclusion that every other allegation put forward on 'information' should be disregarded.

The conclusion, at para 5.20 of the Decision Letter was one which the panel was entitled to reach on the information before it, including the evidence of the Applicant and his former solicitor at the trial at Crown Court.

- v. Para 24 i. This ground too has little or no substance and could not lead to a finding of irrationality under the legal principles set out above. The panel referred to the evidence of, and an address by, the Applicant at paragraphs 5.9, 5.11, 5.24, 5.28-30, 5.41-45 and 8.10-11 in the Decision Letter and expressed measured and reasonable conclusions about it.
 - vi. Para 24 j. This ground has no substance. The Magistrates' Court which heard the case in December 2019 passed a custodial sentence following a plea of guilty. There is nothing on the papers to indicate that a finding of fact was made by the court following a Newton hearing and it is most unlikely that that Court had the benefit of knowing the information available to the panel through the dossier and the oral evidence of the witnesses. The panel was perfectly entitled to come to, and express, the conclusion criticised in the grounds.
30. Accordingly, I do consider, applying the test as defined in case law, that the decision of 4 August 2020 was procedurally unfair. I do so solely for the reasons set out above. The application for reconsideration is therefore granted and the case should be reviewed by a fresh panel by way of an oral hearing.

David Calvert-Smith
30 September 2020