

**[2020] PBRA 16****Application for Reconsideration in the case of Mettam****Application**

1. This is an application by the Secretary of State (the Applicant) for reconsideration of a decision of a two-member panel sitting at an oral hearing on 31 October 2019 in the case of Mettam (the Respondent).
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 that the decision is irrational (a) or that it is procedurally unfair (b).
3. The Applicant invites the Reconsideration Assessment Panel to conclude that the decision of the panel was irrational. I have concluded that this is an eligible application.
4. The decision of the Reconsideration Assessment Panel has been arrived at having regard to the following information: the written application and supporting letter from the Applicant dated 16 December 2019 and a dossier, now containing 276 pages. Representations were sought from the Respondent's representatives but none were received.

**Background**

5. The Respondent is now aged 37. On 5 November 2010 at a Crown Court, he was sentenced to an indefinite period of imprisonment for public protection (IPP) for an offence of attempted rape. The minimum term to be served was set at 2 years and 158 days and expired on 13 April 2013. The Respondent served 8 years and 4 months. He was released on 19 November 2018.
6. On 25 February 2019 the Respondent was recalled to prison. He remained unlawfully at large until, on 16 March 2019, he was returned to prison and detained there, which is where the hearing later took place.
7. The panel which heard the case received evidence from the Offender Supervisor, the Offender Manager and the Respondent.
8. There was no dispute that the Respondent had been properly recalled. The panel applied the **Calder** test, namely whether the decision to recall the Respondent was correct. However, the decision to recall was not in issue.



9. As the Applicant points out in his written submissions, the panel decision records the fact that they considered a dossier containing 252 pages. This is, as indicated, incorrect. The dossier contained further information which is at pages 253-263<sup>1</sup>.
10. Included in this further information are documents from the Victim Liaison Officer, an Exclusion Zone and further submissions from the Respondent's legal representative. Those further submissions are dated 19 November 2019 and therefore post-date the oral hearing. It is not clear from the decision, nor the submissions, why they were lodged, save that the submissions were "*invited...following receipt of the late-served victim impact statements*".
11. Those added documents are as follows: a victim impact statement from the child of the victim of the index offence; a statement from a person who is described as a 'discretionary victim', (this is a reference to the former partner of the Respondent), and the exclusion Zone, which excludes the Respondent from the relevant area.
12. I note that the Exclusion Zone did form part of the dossier and is at page 184 (187 of the dossier before me).
13. The written decision of the panel is dated 23 November 2019.

### **Request for Reconsideration**

14. The Applicant applies for reconsideration of the decision on the grounds that the decision may be held to be irrational "*as conclusions were reached without reasons being given, and the selective recording of evidence in the decision letter did not cover key evidence which should have been taken into account*".
15. The Applicant's representations point out that the documents in the dossier, after pages 252 - 263, were not referred to in the panel's decision. I note that the Applicant makes no reference to the statement provided by the child of the victim of the index offence victim impact statement. The issue centres on the statement relating to the Respondent's former partner and their child statement provided by the 'discretionary victim'. The "*key evidence*" referred to by the Applicant relates to the risk the Respondent presents to children and partners, both past and future, and evidence before the panel that the Respondent continues to wish to have contact with his child.
16. The Victim Impact Statement provided by a Victim Liaison Officer sets out details of the relationship between the Respondent and his former partner and their child, and it charts events up to March 2018 when it is asserted that the Respondent was intending to contact his former partner on release from prison. Consequently, when he was first released, non-contact conditions were sought and put into place. The Respondent was excluded from the relevant area. As I have pointed out, the exclusion zone formed part of the dossier before the panel and is referred to in the decision letter on several occasions. The panel included the exclusion zone and non-contact conditions in their decision letter.

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<sup>1</sup> The Reconsideration Decision must have regard to the fact the papers have been renumbered to give effect to the fact that there is additional introductory material which alters the pagination of the original dossier.



17. The submissions from the legal representative, dated 19 November 2019, makes reference to the "*late-served Victim Impact Statements*". There is a brief reference to the victim of the index offence. The thrust of the submissions is the relationship with the Respondent's former partner and their child. The representative comments on the various statements, indicating that they had taken instructions from the Respondent, in particular, regarding his relationship with his former partner. It is to be noted that the Respondent accepts some of the assertions made by his former partner but there are factual issues raised by the written submissions. It is asserted on behalf of the Respondent that he no longer wishes to have contact with his former partner.

### The Relevant Law

18. In **R (on the application of 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."*

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. This strict test for irrationality is not limited to decisions whether to release; it applies to all Parole Board decisions.

19. I have also considered a similar case where Reconsideration was sought: **Dowe [2019] PBRA 14**, but in my judgement this case can be distinguished.

### Discussion

20. The decision letter considers the events leading up to the Respondent's recall. On release the Respondent was expected to and did reside at designated accommodation. He was then asked to leave the designated accommodation and, as reported, he went absent and, it is said, "*essentially his whereabouts were unknown*". He failed to make contact with his Offender Manager; the police officer assigned to monitor the Respondent; the housing association or other interested parties. The decision letter suggests later that the Respondent was placed in accommodation elsewhere. In fact, the dossier states that the Respondent did not take up the offer of the accommodation because of a previous incident in his past and he therefore decided to "*sofa surf*". The dossier also suggests that while on licence he was misusing drugs and alcohol and had been "*clubbing*". The dossier reveals that he was eventually arrested in an area from which he was banned, in breach of the requirements of the exclusion zone.

21. The decision states that there is "*no intelligence*" that the Respondent offended during the period he was unlawfully at large but it does, at an earlier point state that: "*It is right to say that you did enter the exclusion zone and had contact with [the former*



*partner]’s mother....”*. The decision letter does not make clear what happened, nor is it clear to whom this is referring. If this was contact with the former partner’s mother (the surnames in the victim impact statement and the decision are the one and the same) then this was ostensibly in breach of a licence condition and would no doubt have caused alarm to the former partner. The Part B report in the dossier suggests it was the former partner’s mother, not the discretionary victim. It is clear from the dossier, however, that the Respondent was within the exclusion zone. This discreet aspect is not considered in the decision.

- 22.As I have said the decision letter refers to the decision in **Calder**. However, as the panel properly concluded that the decision to recall was not in issue, it is unfortunate that the decision letter does not adequately chart the events which were not in dispute when the Respondent went absent and was unlawfully at large. For example, only passing reference is made to the fact that the Respondent was found within the exclusion zone. No mention is made of the reason for this or whether this presented a risk to a known victim.
- 23.I note that the decision letter makes no reference to the submissions which were sought from the Respondent’s representatives in respect of the victim statements. This is an unfortunate omission.
- 24.The decision letter sets out the appropriate tests to be applied when deciding whether the Respondent should be re-released. It sets out a summary of the Respondent’s previous offending. On the issue raised by the Applicant it is recorded that he had used violence within relationships, causing actual bodily harm by assaulting a partner and biting the partner whilst the partner was holding a baby. That is a reference to the Respondent’s former partner and, no doubt, their child. It was noted that their relationship is at an end. It is reported that the Respondent still seeks contact with his former partner although the assessment of risks and their origin report states otherwise, as do the legal submissions.
- 25.The decision letter properly assesses the risk the Respondent presents and, includes a reference to the test used to assess prisoners who present as a risk to partners and concludes that the Respondent is a “*high risk of future spousal assault*”. The decision letter, whilst referring in general terms to the Respondent’s progress before he was released and to the work he has undertaken since he was recalled, does not set out any specific programme of work which might have been undertaken to address the risk he presents to partners, both past and future.
- 26.Nevertheless, I have concluded that, taken as a whole, the decision letter, save for the failure to refer specifically to the post hearing documents and the risk he might present towards his former partner and their child, considers in detail the risk the Respondent now presents.

## Decision

- 27.The Applicant correctly points out that the re-release decision incorrectly states the number of pages which made up the dossier and also the Applicant correctly points out that there is no indication that some relevant evidence on this point was considered by the panel, namely the submissions from the Respondent’s representatives and,



therefore, the extent of risk to the Respondent's former partner and their child in the judgement of the panel.

28. I have concluded that the Applicant is correct in his assertion that there were no findings of fact in respect of the material submitted after the panel had sat, nor the reason why they were sought. They should have been considered and mentioned in the decision letter and the assertions made on the Respondent's behalf should have been addressed in the decision letter. More particularly, the decision does not seek to resolve the factual issues in dispute regarding the relationship with the Respondent's former partner and whether the Respondent did in fact present a risk while he was at large.
29. Having said that I have considered the decision letter as a whole. Whilst it seems that the Respondent entered the exclusion zone when he was at large, and the panel examined that matter, the issue regarding the risk the Respondent presents to his former partner does not appear to have been demonstrated by the events when he was unlawfully at large. I take the view that the decision, taken as a whole, with the exception of the discrete issue presented by his relationship with his former partner, addressed all the issues of risk the Respondent presented and considered them with care.
30. The panel sets out in detail whether the Respondent has undertaken accredited work since his return to prison and whether he will be better equipped if re-released. The panel records how they asked themselves whether the Respondent had tried to pull the wool over their eyes and concluded, referring to the experienced professionals, and, it appears from the decision, their own assessment, that they were satisfied that his evidence could be accepted. Accordingly, whilst I take the view that there are defects within the decision letter, I am not persuaded that it is in defiance of logic or so outrageous that it should be reconsidered. The above-mentioned authority, **DSD**, places a high burden on the applicant and I have concluded that it has not been discharged.
31. The application for reconsideration is therefore rejected.
32. The Respondent will be re-released and will be subject to the stringent conditions to which I have already alluded. Having regard to the fact that the Respondent appears to have breached the terms of his licence conditions and entered the exclusion zone he will no doubt be closely monitored on re-release and returned to custody if he shows any indication that he intends to make contact with his former partner and/or their child.

**Nicholas Coleman**  
**21 January 2020**

