

[2022] PBRA 107

Application for Reconsideration by Wright

Application

1. This is an application by Wright (the Applicant) for reconsideration of a decision made by an oral hearing panel dated 6 July 2022 not to direct his release. It was issued to the parties on 15 July 2022.
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.
3. I have considered the application on the papers. These are the oral hearing decision, the dossier, and the application for reconsideration.

Background

4. The Applicant received an extended sentence, comprising a ten-year custodial period with a four-year licence period on 25 April 2014, following conviction after trial for manslaughter. His parole eligibility date is reported to be 28 April 2020, his conditional release date is reported to be 28 August 2023 and his sentence expiry date 28 August 2027. The Applicant was 32 years old at the time of sentencing and is now 40 years old.

Request for Reconsideration

5. The application for reconsideration is dated 27 July 2022 and has been drafted and submitted by solicitors acting on behalf of the Applicant.
6. It submits that the decision was procedurally unfair. These submissions are supplemented by written arguments to which reference will be made in the **Discussion** section below. On the ground of irrationality, the application simply refers me to the section on procedural unfairness. No arguments are made as to why the decision was irrational and, as such, I disregard this ground and will consider only the substantive submissions made in respect of procedural unfairness. No submissions were made regarding an error of law.



Current Parole Review

7. The Applicant's case was most recently referred to the Parole Board by the Secretary of State in June 2021 to consider whether or not it would be appropriate to direct his release.
8. The case proceeded to an oral hearing on 6 July 2022 before a three-member panel. The Applicant was legally represented throughout. The panel heard oral evidence from the Applicant's Community Offender Manager (COM) and his Prison Offender Manager (POM).
9. The POM said that the proposed Risk Management Plan (RMP) was robust and could manage the Applicant's risk (decision, para. 2.7). His COM considered that there was core risk reduction work outstanding, and, without that core work, the Applicant's risk was unmanageable in the community (decision, para. 2.16).
10. The panel did not direct the Applicant's release.

The Relevant Law

11. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.

Parole Board Rules 2019 (As amended)

12. 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)) or by an oral hearing panel which makes the decision on the papers (rule 21(7)).
13. 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)).
14. 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**.

Procedural unfairness

15. 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.

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.

The reply on behalf of the Secretary of State

18. The Secretary of State has submitted no representations in response to this application.

Discussion

Eligibility

19. The panel's decision was made under rule 25(1) and is therefore eligible for reconsideration under rule 28.

Procedural unfairness

20. The application for reconsideration submits that the decision was procedurally unfair since the panel should have adjourned for further information about the proposed RMP before making its decision.

21. It notes three passages from the decision as follows. First, that the COM said (decision, para. 2.14):

"[The Applicant] demonstrated some insight into his offending in relationships, but [an accredited moderate intensity programme for intimate partner violence] (the moderate-intensity programme) was core work that needed to be completed before release, albeit he acknowledged that it was not available at [the Applicant's current establishment] and that he had not yet explored whether it could be undertaken locally on resettlement day release (RDR) or preparatory group work could be available on resettlement overnight release (ROR)."

22. Next (decision, para. 2.1), referring to the decision of the panel that considered the Applicant's 2020 parole review:

"[The Applicant] had undertaken a Programme Needs Assessment (PNA) previously that did not find him suitable for [an accredited high intensity programme for intimate partner violence] (the high-intensity programme). Professional suggested he would be suitable for [the moderate-intensity programme] at the time, but he was not allocated a place on the programme."

23. Finally (decision, para. 2.5):
"[The POM] had spent time together [with the Applicant] starting bespoke relationship work and enhanced behavioural monitoring (EBM) in April [2022]. She had worked with a psychologist on objectives and planned sessions to address the outstanding areas of need in relationships".
24. Reference is also made to the reconsideration decision in **Cooper [2021] PBRA 17**. It is (impliedly) submitted that this is authority for the point that the panel ought to have adjourned for further information.
25. As a matter of law, I am not bound by the decision in **Cooper**. Nonetheless, it is of persuasive value, and I have read it carefully.
26. **Cooper** was a successful application for reconsideration. It succeeded on the basis that the panel failed to give adequate reasons for its decision for departing from the unanimous recommendation of professional witnesses who supported Mr Cooper's release to a community project (about which the panel had limited information).
27. If a panel makes a decision contrary to the opinions and recommendations of all professional witnesses, it is important that it should clearly explain its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions (**R (Wells) v Parole Board [2019] EWHC 2710**). The panel in **Cooper** did not do so.
28. While the primary reason for granting the application in **Cooper** was a failure to give reasons, it is also clear that the panel's decision in that case was significantly influenced by the absence of further information about the community project to which release was supported and it was acknowledged that there was force to a submission that the panel should have adjourned for that information to be obtained and there is, therefore some similarity with this case.
29. There are also some differences. First, the application in **Cooper** was granted based on irrationality rather than procedural unfairness. Second, there is not unanimity between the professional witnesses in this case.
30. Where there is a conflict of opinion, it is a matter for a panel to determine which opinion it preferred, provided its reasons given are soundly based on evidence and rational in law.
31. My analysis of **Cooper** leads me to conclude that it is possible for a failure to adjourn for further information to amount to procedural unfairness (as adjournment is a point of procedure) if a panel's decision is significantly influenced by the absence of that information. It is also capable of amounting to irrationality if the panel's reasons are insufficiently clear for its logic to be determined.
32. The question in this case then becomes one of whether I am satisfied that the panel's decision was significantly influenced by the absence of the further information raised in the application: first, an assessment of outstanding treatment needs (in other words, whether the EBM work was sufficiently effective to reduce risks sufficiently for release and whether the moderate-intensity programme was available in the community) and second, further detail on accommodation and employment prospects.

33. The panel preferred the view of the COM to the POM. It was entitled to do so, and gave clear and rational reasons (decision, para. 4.5). The panel was not persuaded that the bespoke EBM sessions were sufficient to address risk within relationships and concluded, after hearing extensive evidence, that there was core risk reduction work on relationships outstanding (in the form of the moderate-intensity programme).
34. I acknowledge the COM had not explored whether the moderate-intensity programme could be undertaken in the community on RDR or ROR. However, I do not consider that the lack of this knowledge significantly influenced the panel's decision not to release. The panel was clear that the Applicant had core risk reduction work outstanding. It did not say, or imply, that if the moderate-intensity programme had been available in the community it would have directed release. The COM only countenanced the Applicant undertaking the moderate-intensity programme on RDR or ROR: in other words, in the community during periods of release on temporary licence from open conditions and not on release in the community.
35. Given the panel's clearly articulated conclusion regarding outstanding core risk reduction work it is difficult to see that further information around accommodation and employment prospects would have significantly influenced its decision. It was not unfair for the panel not to adjourn for this information.
36. It was also open to the Applicant to seek an adjournment for a review of the effectiveness of the bespoke EBM sessions and the other matters raised in the application. His legal representative would have been aware of the divergent views between POM and COM and, had they thought an adjournment would have been beneficial to the Applicant could have sought one.

Decision

37. For the reasons I have given, I do not find the decision was procedurally unfair and accordingly the application for reconsideration is refused.

Stefan Fafinski
15 August 2022