

[2023] PBRA 150**Application for Reconsideration by Williams****Application**

1. This is an application by Williams (the Applicant) for reconsideration of a decision of the Parole Board dated 11 July 2023 not to direct his release. The decision followed an oral hearing which took place on 5 January 2023 and 23 June 2023.
2. Rule 28(1) of the Parole Board Rules 2019 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 (1) the dossier, now running to some 787 pages including the decision; and (2) the application for reconsideration made in written submissions from the Applicant's legal representative.

Background

4. On 20 August 2010 the Applicant, then aged 20, was sentenced to imprisonment for public protection (IPP) for an offence of arson being reckless as to whether life was endangered. The minimum term for his sentence was set at 2½ years. This minimum term expired on 20 February 2013.
5. The Applicant has a significant criminal history for offences of arson. In March 2004, when he was just 14 years of age, he was warned for reckless arson. In August 2006 at the age of 16 he was sentenced to an extended sentence of detention (2 years custodial, 3 years extended licence) for a further offence of reckless arson. In February 2010 he was sentenced to a further 6 months for an offence of arson committed in his prison cell.
6. The offence for which the Applicant was sentenced to IPP was committed in January 2006, prior to imposition of the extended sentence noted above. The Applicant set fire to mopeds situated under a block of flats; damage to the cost of £20,000 was caused to the flats. In August 2010 the Applicant volunteered admissions to this arson and to five other crimes of arson also committed between 2005 and 2006. In the pre-sentence report (PSR) prepared for the sentencing court it was noted that he had made threats to magistrates to burn their houses down and that he told the reporter that he felt he had to burn the Judge's house down.

7. At the time of sentence a psychiatric report was prepared on the Applicant. The psychiatrist recognised the possibility of personality disorder and autistic spectrum disorder (ASD). In addition the Applicant himself described heavy drinking and the use of drugs.
8. The Applicant undertook the Fire Setting Intervention Programme for Prisoners (FIPP) in 2013. It is noted that his engagement in the course deteriorated as it progressed; and he received an adjudication for setting a fire in his cell in 2015 after its completion. The Applicant was transferred to join a therapeutic community in 2016 but withdrew from it.
9. As noted above, there was reason to suppose that the Applicant might have ASD at the time of his sentence; and a psychological report prepared on him in 2006 had found that elements of his behaviour were highly suggestive of ASD. It was, however, only in March 2020 that the Applicant was formally assessed for ASD and found to satisfy the criteria for diagnosis. It is therefore only since March 2020 that his case has been approached on the basis that he has a formal diagnosis of ASD. He is also said to have schizoid and schizotypal personality disorder and other mental health issues.

Current Parole Review

10. The Applicant was referred to the Parole Board for review in December 2021. His legal representative submitted that an oral hearing was required, saying that the case was a very complicated one with *“psychological, psychiatric and forensic threads all feeding into the assessment”* of the Applicant’s risk. In due course an oral hearing was directed.
11. The hearing commenced in January 2023 but did not conclude until June for three main reasons. Firstly, further one-to-one work was being undertaken by a psychologist with the Applicant between August 2022 and March 2023. Secondly, there was for some months a question whether the Applicant would be transferred to a secure psychiatric hospital. Thirdly, a psychological risk assessment (PRA) was prepared on the Applicant at the Parole Board’s direction. I will return to this assessment below.
12. The panel consisted of an independent member in the chair, a specialist member (a psychiatrist) and a judicial member. It had a dossier consisting of 772 pages. It received evidence from the prison offender manager (POM), the psychologist who prepared the recent PRA, a member of the mental health team at the prison, the community offender manager (COM) and of course the Applicant himself.
13. In the run-up to the June hearing the Applicant was reported to have declined to meet his POM and COM, and to have been angry and aggressive towards his POM when she went to see him. No professional witness recommended release. The psychologist and COM both considered that further work was required in closed conditions. They considered that an appropriate move would be to a psychologically informed prison environment (PIPE) where he could increase his understanding of his personality disorder and ASD.

14. The panel declined to order his release. It is sufficient for the purposes of this decision to quote paragraph 4.3 of the panel's reasons.

"4.3 Professionals recognise that [the Applicant] has not addressed the full range of his risks. They variously identify that further risk-focussed interventions are required, as outlined above. This is to include work around psycho-education and behavioural practice skills; looking at social interactions, inter-personal and communications skills; building self-esteem; learning to cope with change, stress, anxiety, and frustration, and develop healthier coping skills; to better understanding his ASD and his problematic personality traits, and to develop more appropriate self-management; to address emotional/anger management; to work on developing independent living skills; to build effective and trusting relationships with professionals; to refresh/consolidate skills from FIPP; and to develop better problem-solving skills. For the panel this is core risk-reduction work to be completed in custody in closed prison conditions."

Request for Reconsideration

15. On behalf of the Applicant it is submitted that the panel's decision was unfair and irrational as the panel relied heavily on risks associated with his diagnosed ASD without considering any evidence from a health professional with a specialism in ASD.
16. This submission is developed in the following way. It is argued that issues surrounding the Applicant's ASD were raised at various points in the panel's decision. In particular, the failure of the Applicant to engage with the POM and the COM in the run-up to the hearing could be seen as linked to ASD. So could other, longer term, behaviours such as reluctance to mix with others. The panel said it could not ignore the risks inherent in the behaviours presented by the Applicant. Therefore evidence from an expert with extensive experience of ASD was essential to understand how these behaviours are rooted in the Applicant's ASD, whether they can be changed, and how they can best be managed both in custody or in the community, and with what level of adjustment. Such an expert would have been able to comment on whether progress to a PIPE unit would have been suitable given the Applicant's ASD.
17. Particular reference is made to paragraph 4.3 (quoted above) where it is said that the Applicant has not addressed the full range of his risks. Given that many of these risks were associated with his ASD, it was unfair and irrational to come to this conclusion without any evidence from a recognised ASD expert.
18. The Applicant's representations acknowledge that the report of the psychologist shows some experience of working with prisoners who have ASD but argues that she did not have any particular experience or expertise in assessing or managing such prisoners.

The Relevant Law

19. The panel correctly set out the test for release in its decision. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined.

20. The panel's decision as to release is eligible for reconsideration since the Applicant is serving an indeterminate sentence and the decision was taken under rule 25(1) of the Parole Board Rules: see rule 28(1) and 28(2)(a) of the Rules. The panel's decision not to recommend open conditions is not eligible for reconsideration.
21. The concept of irrationality is derived from public law. The test is whether the 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.*" See **CCSU v Minister for the Civil Service** [1985] AC 374, applied to Parole Board decisions by **R (DSD and others) v the Parole Board** [2018] EWCH 694 (Admin). This is the standard I have applied when considering this application for reconsideration.
22. The concept of procedural fairness is rooted in the common law. A decision will be procedurally unfair if there is some significant procedural impropriety or unfairness resulting in a manifestly unfair or flawed process. The categories of procedural unfairness are not closed; they include cases where laid-down procedures were not followed, or a party was not sufficiently informed of the case they had to meet, or a party was not allowed to put their case properly, or where the hearing was unfair, or the panel lacked impartiality.
23. Two further points of relevance to this application are established by the decision of the Supreme Court in **Osborn v Parole Board [2013] UKSC 61**. Firstly, the question whether a hearing was procedurally fair is one which I must determine for myself: see paragraph 65. My role is not simply to review the reasonableness of the panel's decisions about procedure. Secondly, the purposes of a fair hearing include ensuring that the panel has all relevant information and that it is properly tested, and ensuring that the prisoner's interest in participating in the decision is properly respected: see paragraphs 66-70.

The reply on behalf of the Secretary of State (the Respondent)

24. The Respondent has informed the Parole Board that he does not offer any representations concerning this application.

Discussion

25. I do not accept that the decision was irrational or procedurally unfair as the Applicant's representations suggest.
26. It is, I think, important to keep two points in mind.
27. Firstly, the Applicant had more than one issue concerned with his psychological condition which the Parole Board had to consider. In addition to ASD there was personality disorder (said most recently to be schizoid and schizoid atypical), mental health impairment and his past tendency to fire-setting.
28. Secondly, the Applicant's diagnosis of ASD had been established by a specialist assessment in March 2020. This is a thorough assessment running to some 25 pages, relying on the administration of standard tools and interviews not only with



him but also with his birth mother. It sets out in reasonable detail the aspects of ASD most apparent in the Applicant's case. This assessment was not in dispute at any point during the referral; all professionals accepted it.

29. Against this background I do not find it at all surprising that in January 2023 the panel directed a report from a psychologist with general forensic and prison experience rather than an autism specialist. Risk assessment – and fairness to the Applicant when making that assessment - required consideration of the whole spectrum of the Applicant's problems.
30. Moreover, I see nothing in the report of the psychologist to suggest that it was unfair to the Applicant or to her to expect her to address the full range of the Applicant's issues. As to ASD, she allowed for the limitations of using structured risk assessment with individuals on the autistic spectrum (paragraph 3.1 of her report), made appropriate reference to the ASD assessment in March 2020 (paragraph 5.8), considered the relevance of autism at various points in her report, and set out a recommendation for transfer to a PIPE unit which was specifically designed to enable the Applicant to understand better his personality disorders and autism. She also set out, in paragraph 6.7.4, some specific considerations for professionals to take into account when managing his ASD.
31. I therefore consider that the panel acted rationally and fairly in proceeding on the evidence which it had available to it, including the psychologist's report. I do not think that fairness required the panel to obtain a further specialist report from a specialist in ASD.
32. I would add that the written closing submissions made on behalf of the Applicant do not suggest that fairness required an adjournment to obtain a specialist ASD opinion. Those written closing submissions rely on the existing evidence of the Applicant's ASD.

Decision

33. For these reasons I refuse the application for reconsideration.
34. As I leave this case, I wish to add one point. The Applicant is an IPP prisoner who is some 10 years over tariff and has not progressed either to release or to open conditions. His case is – as his legal representative rightly comments – a complex one. I hope that the transfer to a PIPE will take place without delay and that the Applicant himself will see this transfer as a potential way to understand himself better and to progress. If there is delay, I am sure his legal representative will wish to make representations, given that he is an IPP prisoner so long over tariff.

David Richardson
21 August 2023