

[2023] PBRA 201

## Application for Reconsideration by Campbell

### Application

1. This is an application by Campbell (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 9 October 2023. The decision of the panel was not to direct release.
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, 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 the dossier consisting of 460 pages; the application for reconsideration submitted by the Applicant's legal representative; and the response by the Secretary of State (the Respondent).

### Background

4. On 12 March 1991, the Applicant was convicted of murder. The victim was a five-month-old infant. The Applicant, then aged 35 years old, was sentenced to a mandatory life sentence with a minimum term of 12 years being specified by the judge. The minimum term expired in May 2002. The facts of the offence were that the Applicant was controlling a female who was the mother of the child. The mother of the child was earning through prostitution. The child was left in the care of the Applicant. The Applicant admitted that in a fit of rage he swung the child against a wall causing the child's death. At the time of this conviction the Applicant also received sentences for offences of assault occasioning actual bodily harm and for living off immoral earnings. Before the index offence the Applicant had convictions for offences of robbery, assault with intent to rob, and indecent assault.

### Request for Reconsideration

5. The application for reconsideration is dated the 27 October 2023.
6. The grounds for seeking a reconsideration are set out below.

### Current parole review

7. The Applicant was released on licence in June 2005 and recalled in January 2008 as a result of non-compliance with licence conditions and violence within a relationship.



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8. The Applicant is now aged 68 years old.

### Oral Hearing

9. The review was conducted by an independent Chair of the Parole Board, a psychology member of the Parole Board and an independent third member of the Parole Board. Oral evidence was given by the Prison Offender Manager (POM), a prison instructed psychologist, a prisoner instructed psychologist and a Community Offender Manager (COM). The Applicant was represented by a solicitor.

10. A dossier consisting of 431 pages was considered.

### The Relevant Law

11. The panel correctly sets out in its decision letter dated 9 October 2023 the test for release.

#### *Parole Board Rules 2019 (as amended)*

12. Pursuant to 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. Such a decision is eligible for reconsideration whether it is 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. 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*

14. 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."*

15. 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.

16. 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*

17. 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.

18. 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.

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

20. 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.*"

21. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility to make their own risk assessments and to evaluate the likely effectiveness of any risk management plan proposed. They must make up their own minds on the totality of the evidence that they hear, including any evidence from the Applicant. They would be failing in their duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if they failed to do just that. As was observed by the Divisional Court in **DSD**, they have the expertise to do it.

#### *Adequate Reasons*

22. It is well established now, by decisions of the courts, that a failure by a panel to give adequate reasons for its decision is a basis on which its decision may be quashed and reconsideration directed. Complaints of inadequate reasons have sometimes been made under the heading of irrationality and sometimes under the heading of procedural unfairness: whatever the label, the principle is the same. The reason for requiring adequate reasons had been explained in a number of decisions including:

- **R v Secretary of State for the Home Department ex parte Doody (1994) 1WLR 242;**
- **R (Wells) v Parole Board (2009) EWHC 2710 (Admin);**



- **R (PL) v Parole Board and Secretary of State for Justice (2019) EWHC 306;**
- **R (Stokes) v Parole Board and Secretary of State for Justice (2020) EWHC 1885 (Admin).**

23. The principal reason for the duty to give reasons is said to be the need to reveal any error which would entitle the court to intervene. Without knowing the panel's reasons, the court would be unable to identify any such error, and the parties right to challenge the decision would not be an effective one. In **Wells**, Mr Justice Saini pointed out that the duty to give reasons is heightened when a panel of the Board is rejecting expert evidence.

### The reply on behalf of the Respondent

24. The Respondent offered no representations.

### Reconsideration grounds and discussion

#### Ground 1

25. The panel failed to give sufficient reasons about core risk reduction work.

26. The Applicant's legal adviser submits, at paragraph 11 of the application, that the panel had not "*set out what core risk reduction work is outstanding*".

#### Discussion

27. Evidence was given in this case by a prison commissioned psychologist. That psychologist was asked by the panel about outstanding treatment needs. The primary treatment needs were said to be in relation to trauma. The psychologist took the view that this treatment need could be accessed either in the community or in custody. The psychologist had told the panel that in the view of the psychologist (at paragraph 2.31) the Applicant's needs were more in connection with "*applying skills*" in the community. The psychologist again took the view that this need could be addressed in custody, or in the community by trauma intervention work.

28. The psychologist also indicated, in a written report provided to the panel, that only a cautious recommendation (regarding release into the community) could be offered and that recommendation was dependent upon the Applicant being accommodated in probation accommodation (preferably specialist accommodation) and being afforded specialist psychological support in the community.

29. I therefore do not find that the panel were irrational in concluding that further core risk reduction work was required. It was for the panel to reach a conclusion as to their view of whether any risk reduction work was required (based upon assessments and recommendations of professionals) and whether the work which was required should be undertaken in custody or in the community.

30. Further at paragraph 2.6 the panel indicated as follows "*[the Applicant] requires treatment that is more robust to consolidate his learning either in a Therapeutic*



*Community or a PIPE [Psychologically Informed Planned Environment] Unit. However, he is assessed as not suitable because of his lack of motivation. The outstanding treatment needs relate to his personality traits, schemas, attachment and high levels of shame and low self-worth".*

31. It is clear therefore that the panel did set out the areas of behavioural and other psychological work which required to be addressed. I do not therefore find that there is an absence of references to the required work about which the panel were concerned.

## **Ground 2**

32. It was irrational for the panel to conclude, as indicated in the decision, that a number of the Applicants responses "*lacked credibility*".

## **Discussion**

33. The reference by the panel to the Applicant's credibility was scheduled by the panel (at paragraph 4.3) as one of the concerns which led them to take the view that the Applicant did not meet the test for release. The panel did not specify in detail the comments upon which they were basing their finding.

34. However, at paragraph 2.16 and 2.17 of the panel's decision, the panel noted an explanation by the Applicant (given in evidence) as to his association, whilst on licence, with a vulnerable female. He told the panel that he understood that this relationship should have been disclosed to his COM. He also anticipated that his COM would not support the continuation of this relationship. He told the panel he, nonetheless, continued with the relationship as he felt it would be "*letting the vulnerable person down*". He went on to confirm to the panel that he was also aware that this association with the vulnerable person was a breach of Narcotics Anonymous guidelines (a group he was associated with as a client). Additionally, he explained that he had arranged for the vulnerable person's benefit payments to be paid into his bank account. He told the panel he would withdraw benefits and hand them to the vulnerable person and was given £50 for this assistance.

35. In my estimation this account is an example of the Applicants lack of credibility and is clearly documented by the panel in the decision letter. The decision letter also highlighted a number of other explanations that the Applicant gave for becoming involved in relationships with vulnerable women while on licence. The explanations were set out at paragraph 2.19 and again in my estimation amount to evidence of a lack of credibility. In particular (by way of example) the explanation for the reason why the Applicant was receiving benefit funds from a vulnerable individual.

## **Ground 3**

36. It was irrational to record that professionals "*were ambivalent*" about the Applicant's ability to comply with licence supervision and his level of openness and honesty.

## **Discussion**

37. I have listened to the tape recording of the panel hearing and considered the panel decision. It is quite clear that the professionals used terms such as "cautious" and "tentative" in indicating their recommendations and their views about the likelihood of the Applicant complying with his licence conditions in the community. Again, I reject the submission that this comment could amount to an irrational conclusion.

#### **Ground 4**

38. The Applicant's legal adviser submits that, "if the panel had concerns" about the risk management plan, procedural fairness required them to adjourn and issue appropriate directions to satisfy themselves, and make sure a suitable plan was provided.

#### **Discussion**

39. This ground can be taken shortly. A Parole Board panel has no duty to become involved in progression planning or to advance the progression of a prisoner. The panel's obligation is to make an assessment, at the time of the hearing of the potential risk to the public. The panel are obliged to apply the statutory test to the evidence as they found it on the day of the hearing.

#### **Ground 5**

40. The Applicant's legal adviser submits that at the Applicant's oral hearing "the panel heard from four professional witnesses all of whom recommended release to the panel. This was unanimous."

#### **Discussion**

41. The Panel in their decision noted the recommendations of the professionals. At paragraph 2.44 of the panel decision the panel noted that the Applicants POM, and both the prison instructed psychologist and the prisoner instructed psychologist were recommending that the Applicant be released. The panel indicated that the Applicant's COM, did not recommend release. I have now listened to the tape recording of the hearing. The submission by the Applicants legal adviser is incorrect. Although three of the professionals did recommend release, the COM did not. The view of the COM was significant, because the recommendations of the psychologists were heavily dependent upon the availability of probation accommodation on release and of stable and clear arrangements for any progression following a period of time in probation accommodation. The Applicant's COM told the panel that a place would not be offered to the Applicant in probation accommodation, and that, no place was available in local authority accommodation, although applications were being progressed. The decision of the panel therefore was not surprising given the fact that, as presenting at the hearing, the key elements of any risk management plan were not in place.

42. I therefore do not find that the panel were irrational in rejecting the views of the three professionals who had recommended release. Their recommendations were contingent upon plans which were not, at the time of the hearing, available or being offered. The panel's acceptance of the view of the COM, namely that the Applicants





risk could not be safely managed in the community, was understandable in these circumstances.

### Ground 6

43.The panel applied the wrong test when considering open conditions.

### Discussion

44.As the Applicant's legal adviser notes, a decision as to whether to recommend or not recommend a move to open conditions is not eligible for reconsideration under the rules. This has been confirmed by the decision in **Barclay [2019] PBRA 6**. The Applicant's solicitors are correct in pointing out that the use of the word "essential", by the panel in their decision, was an error. It is a matter of concern that the Parole Board template, used by panel chairs, was not correctly adjusted after the change in directions. This had the effect of requiring panel chairs to note the correction themselves on each of their decisions.

45.This error is not one which is amenable to reconsideration, however the Respondent and the prison service have a right and a duty to consider whether any particular prisoner should be transferred to an open prison at any time. Those representing the Applicant are in a position to make representations directly to the prison or the Secretary of State to consider their powers of transfer if felt appropriate.

### Decision

46.I have considered the representations within the application made by the legal representative of the Applicant. As set out above, I am not persuaded that this was a case either where the decision of the panel was irrational in the legal sense set out above, or where there was any procedural unfairness, again as set out above. For that reason, the Application for reconsideration is dismissed.

### Format of Application

47.Although applicants are not obliged to submit applications in any particular fixed format, applicants and their legal advisers would assist the Parole Board, and indeed themselves, if they were able to formulate their applications on the basis of a series of grounds which indicate individually the basis upon which the application is made. A lengthy narrative application, while not impossible to address, can require inferences to be drawn rather than clarity as to the exact ground being argued, and the basis of that argument. The Parole Board reconsideration administrators are willing and able to assist applicants with guidance should that be requested.

**HH S Dawson**  
**21 November 2023**