

[2024] PBRA 154**Application for Reconsideration by Weldon****Application**

1. This is an application by Weldon (the Applicant) for reconsideration of a decision of the Panel dated 13 June 2024 (the Decision) by which it made no direction for his 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, (b) that it is irrational and/or (c) that it is procedurally unfair. This is an eligible case, and the application was made in time.
3. I have considered the application on the papers. These are the Directions fixing the Hearing for 23 April 2024, the Adjournment Directions of 23 April 2024, the Decision, the Application for Reconsideration, the email dated 6 August 2024 from the Public Protection Casework Section (PPCS) stating that the Secretary of State (the Respondent) would not be making any submissions in response to the Application for Reconsideration and the Dossier totalling 356 pages.

Request for Reconsideration

4. The application for reconsideration received 3 July 2024.
5. The ground for reconsideration is that it was procedurally unfair for the Panel to conclude consideration of the Applicant's parole claim in the Decision of 13 June 2024 when neither the Applicant nor his legal representative had been aware of the Parole Board's intention to conclude matters on the papers at that time or indeed until the Decision was actually received on 13 June 2024. So is said that a consequence of the fact that the Applicant and his legal representative did not have any warning of the Board's intention was that the Applicant was not given an adequate opportunity to put forward his case properly on the matters of importance. This application requires consideration of whether in those circumstances the Applicant and his legal representative were able to put forward his case properly.
6. It is important to bear in mind that 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 made.



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7. In summary, an Applicant seeking to complain of procedural unfairness under rule 28 must show 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;
 - (e) the panel did not properly record the reasons for any findings or conclusion; and/or
 - (f) the panel was not impartial.
8. The overriding objective is to ensure that the Applicant's case was dealt with justly and therefore for a claim for procedural unfairness to succeed, it must be shown that his case was not dealt with justly.

Background

9. The Background to the claim for Reconsideration is that the Applicant, who is now 60 years old, is serving a sentence of life imprisonment imposed on him on 14 October 1999 for an offence of attempted rape which was the index offence. He had many previous convictions including a rape conviction in 1990 after he had broken into the home of a 78-year-old woman who was a semi-invalid and asleep in her bed before raping her.
10. The Applicant has now been detained for almost 25 years for the index offence and that includes detention for more than 20 years since the expiry of his tariff on 14 May 2004.

Current Parole Review

11. The history of the Applicant's present claim for parole is that:
- (a) the oral hearing of the Applicant's application for parole was listed for 23 April 2024, and all parties with the exception of the Applicant attended on that occasion.
 - (b) information was received through Prison Officers prior to that hearing that the Applicant was refusing to attend the 23 April 2024 parole hearing.
 - (c) the Panel were informed by the Applicant's legal representative that he had arranged to see the Applicant in prison on the day before the parole hearing, but that the Applicant had then refused to see him.
 - (d) the legal representative had intended to apply to the Panel at that hearing on 23 April 2024 for the Panel to make a recommendation for the Applicant to be moved to Open Conditions, but he was unable to update the Panel any further on this application as he had been unable to take instructions from the Applicant.



- (e) the legal representative was aware that the Applicant's Prison Offender Manager (POM) had been told that the Applicant would be refusing to attend the parole hearing on 23 April 2024 and so the POM had asked a Wing Staff member, who knew the Applicant well, to talk to him to obtain more information, but the POM was also aware that the Applicant was refusing to see that Wing Staff member and also that the Applicant did not want to see the dossier of papers for his 23 April 2024 Parole review.
- (f) The POM also told the Panel that the Wing Staff member had seen the Applicant and that he had still indicated that he did not want to attend the parole hearing on 23 April 2024. The Applicant had wanted to obtain his Category C status prison allocation at a parole hearing for years so that he could move out of his current prison.
- (g) The Panel asked the POM to update them on the Applicant's conduct before the hearing fixed for 23 April 2024. They were told by the POM that there had been a deterioration in the Applicant's prison behaviour and in his reports over the previous month. On 4 April 2024, during a search of the Applicant's single occupancy cell, 4 amitriptyline tablets had been found in his cell and he was then reduced to "Basic" on the Incentives and Earned Privileges scheme with a loss of privileges as well as being referred to the Drug and Alcohol Recovery Team.
- (h) The POM also told the Panel that on 17 April 2024 there had been an incident at the Applicant's place of work, the tailor's workshop, when the Applicant had made threats to another prisoner and the staff had removed the Applicant from his workplace. As he left the workshop, the Applicant threw his coffee into the sink and that he has refused to go back to his work since that incident.
- (i) The legal representative requested the Panel to adjourn the hearing on 23 April 2024 so that he could take instructions as he had been informed that although the Applicant had refused to see him, he had written to his legal representative who suspected that this letter from the Applicant would be awaiting him back at his office which he had not attended since the previous week.
- (j) The Panel were mindful that possibly some of the Applicant's behaviour might be linked to self-sabotage and anxiety and that taking evidence from the Applicant would be helpful to the Panel giving a full independent assessment of the risk posed by the Applicant.



- (k) The Panel were prepared to accede to the legal representative's application to adjourn and to receive further legal representations as to how best to proceed. So, the Panel agreed to adjourn the case to receive further legal representations as to how best to proceed. The Panel agreed to review the case on the papers in the light of these submissions and they would welcome the opportunity to have an updated report from the POM that provided an assessment and details of the recent behaviour of the Applicant.
- (l) Directions were given for an updated report from the POM and for further legal representations.

12. In the Adjournment Directions of 23 April 2024, it was provided that the Panel would reconvene on the papers on 15 May 2024 and there was a direction for legal representations to be served on 14 May 2024. By then, according to the Decision, *"the panel had not received any further legal Reps from [the legal representative] and no indication on progress."*

13. The Decision noted that *"the [Panel Chair] chased through the Board Secretariat and gave [the legal representative] a further 14 days to provide any legal reps and on 28 May 2024, there were still no legal Reps and the Panel Chair enquired further and there was no further update."*

14. A written question was posed by me to the Panel Chair to ascertain *"when/ if the prisoner or his legal [representative] was informed of the decision to conclude on papers between the time the submissions had been due and when the decision was issued on 13 June 2024"*.

15. The Panel Chair explained in his written evidence that before answering that written question, he *"had now had a chance to refresh my memory on this case"*. His written evidence was that:

"As I recall at the [Oral Hearing], the legal representative encouraged me to complete the case on the papers after his client failed to attend the [Oral Hearing] on the morning of the hearing. [The Applicant] had also failed to attend to see his Legal Rep on the Sunday/Saturday before the hearing according to [the legal representative], so he was of the strong view that he was sending a message. When this was added to the verbal update from the POM that staff had seen him in the morning and [the Applicant] had said that he did not wish to attend the [Oral Hearing] it appeared to all that [the Applicant] was making his views felt very clearly.

However I as Chair issued an adjournment notice to enable [the legal representative] to have time to make some legal [representations] in case his client had written to him back at the office. [The legal representative] had indicated that he had been away from the office for a few days trying to see clients ... so he was not aware if there would be anything sent in by post.

I was surprised to not hear anything in writing from [the legal representative] as he is an experienced legal Rep and usually good for his word. I gave him extra time



having enquired with the CM at the Board. After getting no legal reps I issued the decision on the papers.

I did not see much point in issuing the Rule 21 notice as the panel already had discussions with [the legal representative] about this outcome. I know that some Chairs formally do this and foreshorten the time scale to a day or two. I did not consider this to be necessary in the light of the history of this case. In so doing, I took the view that I was neither being procedurally unfair to [the applicant] or irrational in our decision making”.

16. In the Application for Reconsideration, it was pointed out by the legal representative that on 22 June 2024, he met with the Applicant who was very apologetic for not having attended on 23 April 2024 explaining on that date, he had asked Prison Officers to inform the Board that he had physical and mental issues and was therefore unable to attend at that time but he had “every intention of attending his rescheduled Oral Hearing this being when he had recovered sufficiently enough to attend”.

The Outstanding Issue

17. As has been explained, the crucial issue on this application is whether it was procedurally unfair to conclude the Applicant’s parole application on the papers in the Decision of 13 June 2024 when neither the Applicant nor his legal representative had been aware of the Board’s intention to conclude the matter on the papers until the Decision was received on 13 June 2024. It is contended by the Applicant that he was not given an adequate opportunity to put forward his case properly.

The Relevant Law

18. The Panel correctly sets out in its decision letter the test for release.

Parole Board Rules 2019 (as amended)

19. 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)). Decisions concerning the termination, amendment, or dismissal of an IPP licence are also eligible for reconsideration (rule 31(6) or rule 31(6A)).
20. 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)).

The reply on behalf of the Respondent



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21. By an email dated 6 August 2024, PPCS stated that the Respondent would not be making any submissions.

Discussion

22. For this particular claim of procedural unfairness to succeed, it would be necessary to show that the Applicant was not given an adequate opportunity to put forward his case on the matters of importance and that exercise has required me to consider whether he and his legal representative were able "to put the Applicant's case fairly" before the Decision of 13 June 2024 was received by them.

23. The Applicant knew at the latest when the Panel adjourned his oral hearing on 23 April 2024 that the Panel wanted to receive representations from him so as to make a decision on his parole application and the issue is whether he was given an adequate opportunity to do so or whether he was prevented from putting his case fairly. I have concluded that he was given an adequate opportunity to do so before he received the 13 June 2024 decision for the following reasons particularly bearing in mind that the Applicant knew that his parole case was going to be reviewed on the papers on 15 May 2024.

24. First, the Applicant was given an opportunity to put forward his case on parole when the Panel adjourned the oral hearing to review the Applicant's case on 23 April 2024 so as to then make further representations on how to proceed. This review on the papers was due to take place on 15 May 2024 in the light of further legal representations from, inter alia the Applicant and his legal representative, an updated report from the Applicant's Prison Offender Manager on the Applicant's conduct as well as the opportunity to talk to the Applicant.

25. Second, the Applicant was given almost 3 weeks to put forward this information prior to 15 May 2024 and he was then given an additional 14 days, until 28 May 2024, to produce the information. So, he was given 5 weeks in total to provide any information considered relevant.

26. Third, nothing has been put forward to show that at or before the time when the 13 June 2024 Decision was taken that this period was not long enough for the Applicant to put forward any representations he wished to make or that the Applicant required a further period to put forward the information which he wished the Panel to consider.

27. Fourth, the Applicant knew that the Panel would review the case on the papers and that one conclusion could be that his parole application would be refused on the papers. This must have been a powerful incentive for the Applicant to put forward all matters in his favour.

28. Fifth, there has been no argument put forward that the Applicant did not have adequate time or facilities to put forward or deal adequately with all the issues which would further his case.

29. Sixth, it is noteworthy that although the Applicant complains that he did not have adequate or any notice of the Board's intention to conclude the matter on the papers until he received the Decision on 13 June 2024, he does not state that if he had



received longer notice he would have been able to put forward any specific additional or alternative arguments which he did not adduce.

Decision

30. For the reasons I have given, I do not consider that the Decision was procedurally unfair and accordingly the application for reconsideration is refused.
31. I am concerned that the Applicant should be given an opportunity to put forward to the Panel his views on where and how he should serve his imprisonment and I hope that he will be given such an opportunity.

Sir Stephen Silber
20 August 2024