

[2024] PBRA 16**Application for Reconsideration by Quinn****Application**

1. This is an application by Quinn (the Applicant) for reconsideration of a decision of an oral hearing panel dated 19 December 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 810 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 13 February 2008 the Applicant was sentenced in relation to an offence of false imprisonment. The Applicant was aged 32 when convicted. The Applicant was sentenced to an indeterminate sentence of imprisonment for public protection. The minimum term set by the judge was 2 years and 146 days. The Applicant's tariff expired on 9 July 2010. The Applicant was released on licence by the Parole Board on four occasions the last release was in August of 2021 and he was recalled in September of 2021.
5. The victim was a male. The Applicant was offered a lift in vehicle by the male. During the journey the Applicant threatened the victim and had a screwdriver. He forced the male to drive to the home of a friend. There the victim was threatened with a knife and was forced to hand over a debit card and details of the pin number. Money was then taken.
6. The Applicant was noted to have an extensive history of criminal offending and a substantial number of offences of violence prior to committing the index offence.

Request for Reconsideration

7. The application for reconsideration is dated 8 January 2024.
8. The grounds for seeking a reconsideration are set out below.

Current parole review

9. This was a review by the Parole Board of the Applicants position. The Applicant had been released and recalled, this was his first review since recall.

Oral Hearing

10. The review was conducted by an independent Chair of the Parole Board, a judicial member of the Parole Board and an independent third member of the Parole Board. Oral evidence was given by a Prison Offender Manager (POM) and a Community Offender Manager (COM). The Applicant was represented by a legal advisor.
11. A dossier consisting of 782 pages was considered.

The Relevant Law

12. The panel correctly sets out in its decision letter dated 12 December 2023 the test for release.

Parole Board Rules 2019

13. 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)).
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**.

Irrationality

15. 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."

16. 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.

17. 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

18. 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.

19. 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.

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

21. 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."*

22. 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.

23. It is possible to argue that mistakes in findings of fact made by a decision maker result in the final decision being irrational, but the mistake of fact must be fundamental. The case of **E v Secretary of State for the Home Department [2004] QB 1044** sets out the preconditions for such a conclusion: *"there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter; the fact or evidence must have been "established", in the sense that it was uncontentious and objectively verifiable; the appellant (or his advisors) must not have been responsible for the mistake; and the mistake must have played a material (though not necessarily decisive) part in the tribunal's reasoning."* See also **R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2003] AC 295**, which said that in order to establish that there was a demonstrable mistake of fact in the

decision of the panel, an Applicant will have to provide “*objectively verifiable evidence*” of what is asserted to be the true picture.

The reply on behalf of the Respondent

24.The Respondent offered no representations.

Reconsideration grounds and discussion

Ground 1

25.Factually incorrect matter- irrational -The submission in support of this ground appears to be that the panel, in its decision letter, took the view that officials had decided to withdraw contact by the Applicant with a close family member because of the result of a drug test. The argument adduced is that in fact the decision to withdraw contact with the close family member had been made before a positive test for drugs had emerged. It is therefore argued that this was a factually incorrect attribution.

Discussion

26.As indicated above, a mistake of fact can be irrational in the sense set out above. However, the mistake must have played a material (though not necessarily decisive) part in the panel’s reasoning. The obvious point in relation to this argued ground is that the concerns of the panel were not associated with the reason for officials withdrawing contact by the Applicant with the family member. The decision of the panel in this case was concerned with the overall assessment of risk factors. These factors were the historical use of illicit substances, emotional instability and the Applicant’s attitude to staff and supervision in the community.

27.In the circumstances, therefore, the material point in relation to this area of the panel’s decision was concerned with the question of the Applicants risk and not with any decision relating to contact with a family member or the timing or exact reason for any such decision. I am therefore not persuaded that this point is material in the sense set out in the case alluded to above.

Ground 2

28.It is submitted on behalf of the Applicant that the panel favoured the evidence of the POM in this case, as against the evidence of the COM. It is therefore argued that this was unfair and that it was irrational to fail to take into account the evidence of the COM. This was said to be particularly relevant in the context of the fact that the Applicant appeared to have a positive working relationship with his COM, but not with his POM. The explanation for this positive working relationship being inappropriately (in the view of the Applicant) attributed to the fact that the Applicant’s COM, was recommending release, whereas the POM was not.

29.It was also submitted that the panel were unfair in assessing that the Applicant showed elements of manipulation and what was described as transactional behaviour. In essence, the panel, in the submission on behalf of the applicant , were



suggesting that the Applicant was compliant and would cooperate, but only on his own terms.

Discussion

30. It is apparent from the panel's decision that a current and historical concern in relation to the Applicants risk was his relationship with professionals. Those difficulties with professionals were not confined to his relationship with his current POM or COM. At paragraph 1.7 of the panel's decision the panel noted as follows:

"1.7. It has also previously been noted that [the Applicant] has a history of extreme antipathy towards community-based professional support (probation and psychology). His willingness and ability to work cooperatively with professionals has fluctuated and has at times been dependent on his perception of whether particular professionals are supportive of him or not. He has evidenced rigid thinking, poor perspective taking and poor consequential thinking skills, grievance thinking and a tendency to ruminate and dwell on past events. This has previously been assessed as 'a significant barrier' to him making progress in the community."

31. So far as the panel's assessment of the Applicant's responses being transactional, the panel heard the entirety of the evidence in this case, including importantly, evidence from the Applicant. The panel were entitled to reach an opinion about the Applicant's behaviour with professionals. In the light of the evidence of historical behaviour with professionals I am not persuaded that the conclusion of the panel in this regard could be considered to be unfair or irrational in the legal sense set out above.

Ground 3

32. Factually incorrect – It is submitted on behalf of the Applicant that the panel placed too much emphasis to an incident at a prison in April 2022 which had not led to an adjudication.

Discussion

33. I note that, in the decision letter, the panel acknowledged that the Applicant had paperwork confirming that there had been no prison adjudication in relation to this (April 2002) incident. The panel also noted that the Applicant had given his own explanation for the incident. I can find no evidence that the panel relied upon this incident, in connection with their decision. I also note that the description of this matter at paragraph 2.14 of the decision letter does not appear to be factually inaccurate. The panel, in that paragraph, described the Applicants view of the incident as he gave it in the hearing. This is not therefore a matter which could be said to be irrational in the sense set out above.

Ground 4

34. The Applicant's legal adviser submits that the panel were mistaken in concluding that the Applicant had given a different explanation of the index offence at the panel hearing than had been given in earlier hearings and elsewhere, thus implying inconsistency.



Discussion

35. It is not entirely clear how this complaint is said to amount to an irrational decision. There is no evidence to indicate that the Applicant's account of the index offence, whether new or more detailed had any material effect upon the final decision. The panel were obliged to accept the conviction as recorded, the detail of any surrounding circumstances, whilst of importance to the Applicant, had no material effect upon the decision in this case.

Ground 5

36. The Applicant's legal adviser submits that the panel failed to take account of work which had been undertaken by the Applicant in relation to illicit substances.

Discussion

37. At paragraph 2.11 of the panel's decision, the panel specifically noted that the Applicant was continuing to engage with a substance misuse team and had worked well with them. The panel also noted at paragraph 4.6 of the decision that there had been some concerns about substance misuse, but the panel noted that the Applicant had not relapsed and was continuing to work on abstinence. It is clear therefore that the panel did in fact take account of the work that the Applicant was undertaking in relation to substance misuse and commented favourably in relation to the Applicant's most recent work. I do not therefore find that there was any element of unfairness or irrationality in relation to the panel's assessment of the topic of substance misuse.

Decision

38. I conclude that the decision in this case was not irrational in the legal sense set out above and that the decision was not procedurally unfair. I refuse the application for reconsideration.

HH S Dawson
18 January 2024