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[2024] PBRA 225

Application for Reconsideration by Ahmed

Application

1. This is an application by Ahmed (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 3 October 2024 not to direct 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 oral hearing decision, the dossier consisting of 969 pages and the application for reconsideration.

Request for Reconsideration

4. The application for reconsideration is dated 24 October 2024. It has been drafted by solicitors acting for the Applicant. It submits that the decision is irrational and was procedurally unfair.

5. The grounds for seeking a reconsideration are that the panel's decision was not sufficiently clear or detailed, that the hearing should have been conducted as a face-to-face hearing and the Applicant's religious and political beliefs were not unclear as said to be by the panel.

Background

6. The Applicant received a sentence of life imprisonment on 19 December 2008 following conviction after trial for an offence of directing terrorist training. He also received concurrent determinate sentences of 9 years for possessing a document or information useful to terrorism and possessing an article for the purpose of terrorism. He pleaded guilty to an offence of belonging to a proscribed organisation and received a concurrent determinate sentence of 6 years. His tariff was set at 10 years and expired on 19 December 2018.

7. The Applicant was aged 33 at the date of sentencing in 2008 and is now aged 49 years old.

Current parole review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in July 2023 to consider whether or not it would be appropriate to direct the Applicant's release.

9. The case proceeded to an oral hearing via video conference on 25 September 2024. An earlier hearing date in June 2024 had been adjourned to enable the panel to receive updated reports from professional witnesses and to receive oral evidence from the religious representative, the Imam, working with the Applicant.

10. The panel at the hearing in September 2024 consisted of a judicial member, a psychologist member and an independent member. The panel heard evidence from the Applicant's Prison Offender Manager (POM), Community Offender Manager (COM), prison psychologist and the Applicant's Imam.

11. The panel did not direct the Applicant's release.

The Relevant Law

12. The panel sets out in its decision letter dated 3 October 2024 the test for release.

Parole Board Rules 2019 (as amended)

13. 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)).

14. 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)).

Irrationality

15. The power of the courts to interfere with a decision of a competent tribunal on the ground of irrationality was defined in Associated Provincial Houses Ltd -v- Wednesbury Corporation 1948 1 KB 223 by Lord Greene in these words: *"if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere".* The same test applies to a reconsideration panel when determining an application on the basis of irrationality.

16. In R(DSD and others) -v- the Parole Board 2018 EWHC 694 (Admin) a Divisional Court applied this test to parole board hearings in these words 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."

17. In R(on the application of Wells) -v- Parole Board 2019 EWHC 2710 (Admin) Saini J set out what he described as a more nuanced approach in modern public law which was *"to test the decision maker's ultimate conclusion against the evidence before it and to ask whether the conclusion can (with due deference and with regard to the panel's expertise) be safely justified on the basis of that evidence, particularly in a context where anxious scrutiny needs to be applied".* This test was adopted by a Divisional Court in the case of R(on the application of the Secretary of State for Justice) -v- the Parole Board 2022 EWHC 1282(Admin).

18. As was made clear by Saini J this is not a different test to the Wednesbury test. The interpretation of and application of the Wednesbury test in Parole hearings as explained in DSD was binding on Saini J.

19. It follows from those principles that in considering an application for reconsideration the reconsideration panel will not substitute its view of the evidence for that of the panel who heard the witnesses.

20. Further while the views of the professional witnesses must be properly considered by a panel deciding on release, the panel is not bound to accept their assessment. The panel must however make clear in its reasons why it is disagreeing with the assessment of the witnesses.

Procedural unfairness

21. 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.

22. 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;
    (e) the panel did not properly record the reasons for any findings or conclusion; and/or
    (f) the panel was not impartial.

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

The reply on behalf of the Secretary of State

24. The Respondent offered no representations in response to the Applicant's application for reconsideration.

Discussion

25. Ground 1 – Procedural Unfairness. The application states that the panel did not explain why it disagreed with the professional witnesses, did not clearly explain the nature of the risk in discussing his brother's mental health condition and discussing offending with another TACT offender or the conclusion regarding grievance thinking. The grounds also submit that as the issue of impression management was raised, the hearing should have been a face-to-face hearing to ensure fairness.

26. I am satisfied that the panel arrived at a conclusion, exercising its judgement based on the evidence before it and having regard to the fact that it saw and heard the witnesses. 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. The panel must make up its own mind on the totality of the evidence that it hears, including any evidence from the Applicant. The panel is entitled to disagree with the views of the witnesses and in this case gave fully considered reasons why it did so.

27. All the matters claimed in the application not to have been clearly explained were in fact thoroughly and clearly explained in the decision letter. It is not necessary for me to set out all the detailed reasons here, it is only necessary for the Applicant and his representative to read it for themselves at section 4 of the decision letter.

28. The panel did not find the Applicant's account plausible that he did not discuss his brother's mental health or his own offending with the other TACT offender, conclusions which were clear, unsurprising and understandable. In the absence of credible explanations for those and the many other matters set out in section 4 of the decision letter the panel concluded that a risk remained.

29. The panel did not ignore the interventions undertaken by the Applicant or the views of the professionals but made its own assessment, as it is obliged to do, and reached a conclusion that was open to it which cannot be said to be unfair or irrational. The application seeks to reargue matters already properly dealt with by the panel and fails to identify any unfairness in the reasoning or the conclusion.

30. The Applicant was not correct in stating that none of the witnesses were of the opinion that there was any current evidence of impression management. The question of impression management was dealt with by both the prison psychologist and the POM. The prison psychologist in her risk assessment ERG22+ identifies elements of impression management still being presented by the Applicant. The psychologist interviewed the Applicant for many reports over a period of time and therefore had ample time to observe the Applicant in order to draw her conclusions. The panel also, for the reasons set out in the decision letter, identifies aspects of impression management in the Applicant's presentation and responses.

31. The application states that the issue of impression management is difficult to assess remotely especially in a complex case such as this but fails to explain why that should be the case. There is nothing in the psychological reports or in the Applicant's application to suggest that the question of impression management is best or better

assessed during face-to-face contact. There was nothing in the evidence, on the papers or in the submissions to suggest that there was evidence that the panel would not be able to interpret other than by face-to-face. The ways in which people attempt to control, consciously or unconsciously, the way they are perceived by others can be done by behaviour or by words. In this case the panel's conclusions were based on the Applicant's oral account. Those conclusions did not require the panel to have face-to-face contact with the Applicant. The grounds did not identify what difference a face-to-face hearing could have made with regard to the conclusion regarding impression management.

32. Even if the panel had not found any impression management it found many other reasons for not directing release. The panel had concerns about the Applicant's evidence including the fact that some aspects were being admitted for the first time in the hearing, his inconsistent and fluctuating accounts, his relationship with the other TACT offender, the lack of clarity regarding his religious and political views, his sense of grievance regarding his custodial treatment and his treatment at the hands of the British government whilst imprisoned in India and his compliance, to name just some of the concerns raised in the decision letter.

33. I am satisfied that there was no procedural unfairness in the panel's consideration of the Applicant's case and this ground must therefore fail.

34. Ground 2 – Irrationality. The Applicant argues that the reports submitted by the professionals, the evidence of the Imam and the co-operation of the Applicant provide the clarity and information as to how his beliefs might develop if he is released. The Applicant submits that his religious and political beliefs having been detailed in the dossier could not be said to be unclear.

35. The panel heard oral evidence from the Imam who gave extensive and detailed evidence during the hearing. The Imam is reported to have expressed surprise at the Applicant's lack of detailed knowledge about his faith. The panel also considered the Imam's written report and evidence from the Applicant himself. The panel having seen and heard the witnesses and having considered the significant amount of evidence presented and examined was best placed to draw conclusions about the Applicant's beliefs. Those conclusions are clearly and soundly reasoned and based on the evidence presented. Whilst the conclusions are no doubt disappointing to the Applicant, they cannot be said to be irrational. Accordingly, this ground also fails.

Decision

36. For the reasons I have given, I do not consider that the decision was irrational or procedurally unfair and accordingly the application for reconsideration is refused.

Barbara Mensah
20 November 2024