

[2024] PBRA 245

Application for Reconsideration by Casserley

Application

1. This is an application by Casserley (the Applicant) for reconsideration of a decision dated 31 October 2024 not to direct his release. The decision was made by a panel after an oral hearing.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022, 2023 and 2024) (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.
3. I have considered the application on the papers. These are the decision, the dossier (consisting of 276 pages), and the application for reconsideration.

Background

4. On 20 June 2002, the Applicant was sentenced to life imprisonment following conviction for murder to which he pleaded guilty. His tariff was set at nine years, six months and one day (taking into account time spend on remand) and expired in December 2011.
5. The Applicant was 27 years old at the time of sentencing and is now 50 years old.
6. The Applicant was released on licence on 16 March 2020 following an oral hearing before the Parole Board. His licence was revoked on 20 September 2023, and he was returned to custody the following day.

Request for Reconsideration

7. The application for reconsideration has been submitted by solicitors on behalf of the Applicant and submits that the decision was procedurally unfair.
8. These grounds are supplemented by written arguments to which reference will be made in the **Discussion** section below.

Current Parole Review



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9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) on 12 October 2023 to consider whether to direct his release. This is the Applicant's first parole review since recall.
10. The case proceeded to an oral hearing on 7 October 2024, before a two-member panel. The panel heard evidence from the Applicant, his Prison Offender Manager (POM), and his Community Offender Manager (COM). The Applicant was legally represented throughout proceedings; the Respondent was not legally represented.
11. The decision notes that the Applicant had been adjudicated in August 2024 for possession of improvised weapons and possession of an iPhone. The matter had been referred to the police and was reportedly under investigation at the time of the hearing. The POM considered that he could not make a positive recommendation for release while a police investigation remained outstanding. From this the panel inferred that the POM would support release if the matter concluded with no further action. The COM considered that the Applicant's risk could be managed in the community.
12. At the end of the hearing, the Applicant's legal representative sought an adjournment to await the outcome of police investigations into the matter.
13. The panel did not grant an adjournment and set out its reasons for doing so in its decision as follows:
 - a) The Applicant had admitted possession of the improvised weapons which were found in February 2024 and August 2024;
 - b) In relation to the February 2024 matter, he told the panel he intended to use the weapon for self-harm;
 - c) In relation to the August 2024 matter, he told the panel he was holding the weapon under duress on behalf of others with no intention to use it;
 - d) During questioning on the matters, the Applicant's legal representative did not intervene or object, and the Applicant had a number of lengthy opportunities to consult with his legal representative during the hearing;
 - e) The outcome of the police investigation would add little to the panel's understanding of the Applicant's risk; and
 - f) An adjournment would lead to an unreasonable delay (and may precipitate further adjournments).
14. Following the oral hearing, written closing submissions were provided on behalf of the Applicant. These repeated the request for an adjournment in what the decision describes as "*essentially the same basis*" as that put forward in the hearing and that the hearing could not be fair without it.
15. The panel did not grant an adjournment.
16. It concluded (following the principles set out in *R (Pearce) v Parole Board* [2023] UKSC 13) that it could reach a fair finding of fact on the evidence before it. The panel said it was satisfied that, "*over the course of two incidents, six months apart, [the Applicant] was found in possession of three unauthorised bladed or pointed articles which if used as weapons could have caused serious harm*".

17. In consequence, the panel concluded that the finding of any police investigation did not detract from its concern about the Applicant's access to weapons (regardless of their intended use), particularly the evidence which noted the Applicant's comment that he will always be "tooled up".

The Relevant Law

18. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.

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)).

21. 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.

Procedural unfairness

22. 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.

23. 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.

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

The reply on behalf of the Respondent

25. The Respondent has advised that no representations will be submitted in response to this application.

Discussion

26. Submissions on behalf of the Applicant argue that the decision was procedurally unfair because the panel did not adjourn to determine the outcome of the police investigation or to receive statements from prison staff. It is submitted that the failure to adjourn led to the panel reaching its conclusion based on limited evidence about a highly relevant issue relating to risk.

27. This position is essentially a third attempt at eliciting the information which was requested unsuccessfully both at the hearing and in closing submissions.

28. It is also argued that the POM was unwilling to put forward a professional opinion in support of release without the police matter being concluded.

29. It is also submitted that two matters of oral evidence were not reflected in the panel's decision which "*gives a perception of a lack of bias*". Ignoring the obvious error in the submissions (since a lack of bias is wholly desirable), these items are said to be:

- a) the COM said that the Applicant's comment about "*murdering someone to protect himself*" was made "*when he was really stressed*", "*he doesn't make credible threats*" and "*doesn't have any intention to action on it*"; and
- b) the POM said that the Applicant's custodial behaviour "*did not speak to risk in the community*".

30. As such, it is argued that the finding of fact from oral evidence only, when there is further information available in the matter, is procedurally unfair.

31. To be clear, the fact that the panel found was that "*over the course of two incidents, six months apart, [the Applicant] was found in possession of three unauthorised bladed or pointed articles which, if used as weapons, could have caused serious harm*". The panel found this as fact on the balance of probabilities after the Applicant admitted possession of the articles. It is hard to see how it could have reached any other conclusion on that basis. The panel needed no further evidence in order to do so. The panel made no findings about the Applicant's intentions regarding the articles, nor the reasons for which he had the articles (for which additional information may have been pertinent, but, in the panel's view, unnecessary for its decision).

32. Turning to the allegations of bias, actual bias is rare and notoriously difficult to prove (*Broadview Energy Developments Ltd v Secretary of State for Communities and Local Government* [2015] EWHC 1743 (Admin) [47] (Cranston J)), not least because prejudice, and its influence, may well be subconscious. The common law, furthermore, is also concerned with protecting and promoting public confidence in decision-making. Alleging actual bias is a serious allegation and to establish it would require compelling evidence which does not exist here.

33. For these reasons, the law is concerned with not only the possibility of *actual*, but also the presence of the *appearance* of, bias: "...*justice should not only be done, but should manifestly and undoubtedly be seen to be done*" (*R v Sussex Justices, ex p McCarthy* [1924] 1 KB 256, 259 (Lord Hewart CJ)). The House of Lords considered the test for apparent bias in *Porter v Magill* [2001] UKHL 67. The test was held to be whether "...*the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias*" (at [103] (Lord Hope of Craighead)).
34. The matters raised on the Applicant's behalf are not explicitly covered in the decision; however, if the points raised were given in oral evidence (which I have no reason to doubt, but to be clear, I have not listened to the audio recording of the hearing) I do not find that their omission would lead a fair minded observer to conclude that the panel was biased. In my view, the panel's reasoning is very clear, objective and evidence based. The written decision is not a vehicle within which every piece of evidence must be recited or analysed. It would become unwieldy and unnecessarily lengthy if it was. The decision sets out a comprehensive summary of the evidence that the panel found important to weigh in making its decision. The panel was allowed to conclude that possession of weapons for whatever reason and with whatever intent was relevant and pertinent to risk and did so after hearing the oral evidence at the hearing. A failure to write all of it down does not mean the panel is biased in law.
35. Even if I found that the panel had needed to adjourn or had failed explicitly to consider the oral evidence that is said to be missing, reconsideration is a discretionary remedy, and it does not seem to me that its decision would be highly likely to be substantially different, despite the absence of a formal professional opinion from the POM. The panel's reasons are clear, comprehensive and explicitly address the panel's view that an adjournment for further information would have made no difference to its decision. That is a view that the panel was legitimately allowed to take.

Decision

36. For the reasons set out above, the application for reconsideration is refused.

Stefan Fafinski
10 December 2024