

[2024] PBRA 30

Application for Reconsideration by Cullum

Application

1. This is an application by Cullum (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 2 January 2024 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, (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 275 pages and the application for reconsideration.

Background

4. The Applicant received an extended sentence of 9 years imprisonment with an extended licence period of 5 years on 15 November 2017 for an offence of wounding with intent to cause grievous bodily harm. He was 48 years old at the time of the offence which was committed on his former partner. He is now 54 years old.

Request for Reconsideration

5. The application for reconsideration is dated 15 January 2024. It has been drafted by solicitors acting for the Applicant.
6. The grounds for seeking a reconsideration are that the decision was irrational and that there has been an error of law. The written arguments supplementing the submissions will be referenced in the **Discussion** section below.

Current parole review

7. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in September 2022 to consider whether or not it would be appropriate to direct his release. If the board did not consider it appropriate to direct release it was invited to make a recommendation in relation to any condition which it considers should be include in the licence.



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8. The case proceeded to an oral hearing via video conference on 20 December 2023. The panel consisted of three independent members. It heard oral evidence from the Applicant, his Prison Offender Manager (**POM**) and the Community Offender Manager (**COM**). The Applicant was legally represented through the hearing. The Respondent was not represented by an advocate.
9. The panel did not direct the Applicant's release.

The Relevant Law

10. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined.

Parole Board Rules 2019 (as amended)

11. 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)).
12. 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)).
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**.

Error of Law

14. A decision may contain an error of law. For example, the decision maker may have acted without or outside their jurisdiction, tried to use a power they did not have, or acted in a way which is inconsistent with wider case law. The decision in the case would also have not been made if it were not for the error of law.

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.
18. The reasons why a panel's decision may be found to be irrational include a failure to give sufficient reasons for the panel's decision.
19. The importance of giving reasons was reiterated in **R (on the application of Stokes) v Parole Board [2020] EWHC 1885 (Admin)** in which the court cited the following explanation given by Lord Carnwath in **Dover District Council v CPRE Kent [2017] UKSC 79** for the need to give reasons in public law decision-making:

"I think it important that there should be an effective means of detecting the kind of error which would entitle the court to intervene, and in practice I regard it as necessary for this purpose that the reasoning of the [decision maker] should be disclosed... It is to be noted that a principal justification for imposing the duty was seen as the need to reveal any such error as would entitle the court to intervene, and so to make effective the right to challenge the decision by judicial review."

20. It follows that a panel must provide sufficient reasons to explain its logic and how its conclusion follows from the evidence put before it. There should not be an "unexplained evidential gap or leap": see the decision of Mr Justice Saini in **R (on the application of Wells) v Parole Board [2019] EWHC 2710 (Admin)**.

The reply on behalf of the Respondent

21. The Respondent has submitted no representations in response to this application.

Discussion

22. The Applicant submits that the decision was irrational and contained an error of law. The two grounds relied upon are conflated and not clearly distinguished and are dealt with together. In short the Applicant submits that the panel erred in making their own assessment of risk in contrast to that submitted by both offender managers and that the panel failed to give full and good reasons for departing from the conclusion of the witnesses. The Applicant submits that the panel was wrong to fail to consider testing in the community rather than the closed estate and further that the panel did not adjourn and concluded that the additional work would take time to be completed.
23. The Applicant acknowledges that the panel is entitled to depart from the view of the witnesses; the hearing is not a process for simply endorsing decisions of witnesses. The decision of the panel to draw its own conclusion on the evidence presented does



not amount to an error of law. It is noteworthy that both the POM and the COM had recently taken over the Applicant's case and neither had discussed the index offending with the Applicant. The panel questioned the Applicant about the index offence, an essential step in the consideration of risk as the panel noted in the decision.

24. There does not appear to have been a request to the panel to adjourn to allow the completion of identified work. Nevertheless, the panel, on its own motion considered whether or not to adjourn to allow for the completion of the work. From the evidence presented at the hearing the panel reached the conclusion that the process could be a long one and in those circumstances it was more appropriate to conclude the current review. That was a conclusion open to the panel. The meeting between the Applicant, the POM, COM and the course facilitator post-dated the hearing and post-dated the date of the decision and could not therefore have been taken into consideration by the panel.

25. The decision is clearly and fully reasoned. The panel took into consideration past offending as required as part of their risk assessment, took into account the oral evidence presented, considered the reports in the dossier and set out the reasons for reaching a decision that was open to the panel. The legal test for irrationality, set out above, is not met in this case. The decision letter sets out the reasons why the panel did not agree with the conclusion reached by the OMs and why the panel considered that the work needed to be undertaken in closed conditions as the risk management plan could not at that stage manage the Applicant's risk. The grounds do not identify any error of law or irrationality but amount to a disagreement with the conclusions of the panel.

Decision

26. For the reasons I have given, I do not consider that the decision was irrational or discloses any error of law and accordingly the application for reconsideration is refused.

Barbara Mensah
5 February 2024

