

[2024] PBRA 69

Application for Reconsideration by Mills

Application

1. This is an application dated 4 March 2024, although not in fact made until 19 March 2024, (the Application) by or on behalf of Mills (the Applicant) for reconsideration of a decision dated the 28 February 2024 (the Decision) of a parole board panel (the Panel) 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 usual Reconsideration Proforma (containing the essential summary), the Application, the Decision, and the parole board Dossier relating to the Applicant (the Dossier), now consisting of 1046 pages. I have also seen an email on behalf of the Respondent (Secretary of State) to the effect that no representations are made.

Background

4. The Applicant was sentenced to an extended sentence of 15 years (10 years custody and a 5-year licence element) on 25 October 2010 for attempted murder (the index offence) following a guilty plea. He was aged 62 at the time of the offence (April 2010) and when sentenced and is now aged 76. His sentence expiry date (SED) is in June 2025.
5. The briefly stated circumstances giving rise to the index offence were that after a relatively short relationship of some 6 weeks, his partner indicated that she wished to leave the Applicant as she felt smothered by him. After a no doubt intense evening and night when they discussed matters and he apparently attempted to get her to change her mind, even threatening to take his own life, when about to leave the following morning, he threatened and stabbed her with a knife.

Request for Reconsideration

6. The grounds for seeking a reconsideration are based on irrationality and procedural unfairness and may be summarised as follows:

a. Irrationality:

- i. The principal ground is that the Decision to refuse release realistically means that the Applicant will not now be released until his SED in June 2025 with no further intervention work to undertake in custody and no monitoring or licence conditions in place to support him or protect the public on release. This, it was submitted, defies logic and common sense and was and is irrational and unreasonable.
- ii. Other grounds for contesting that the Decision was irrational and unreasonable include:
 1. Failing to follow the release recommendation of the Community Offender Manager (COM).
 2. Failing to give sufficient weight to the Applicants' willingness to engage with the proposed licence conditions (as evidenced by his cooperation with the prison authorities in the two years preceding the hearing).
 3. Placing too much weight on the Applicant not completing therapeutic work to satisfy the Panel that risk has been reduced despite the proposed licence conditions designed to achieve successful rehabilitation in the community with support.

b. Procedural Unfairness:

- i. Substituting a new Prisoner Offender Manager (POM) at the last minute before the panel convened, resulting in the new POM being unable to make any recommendation about the Applicant's potential release;
- ii. Unfairly criticising the Applicant for using an aide-memoire at the hearing which he was accused of not having written himself (despite the evidence of the COM who believed the contrary), causing him unnecessary anxiety and stress at the hearing.

Current parole review

7. The current Panel hearing followed a recall of the Applicant in September 2016 and the subsequent referral to the Panel on that recall (though the date of the referral was not stated). The Applicant had been released in June 2015, his most recent release on the current sentence.
8. The Panel conducted a video hearing on 27 February 2024 and comprised three independent members. The Applicant was legally represented. The Panel had the Dossier (then 1032 pages) and heard evidence from the COM, POM and the Applicant.
9. Although this was his first review on the current sentence, the Applicant's history of offending goes back to 1977 with offences for damage to property. Between then and the index offence in 2010 there were cautions for harassment and theft and a conviction for harassment earlier in 2010 followed by the index offence which the Panel considered "*a marked escalation in his risk of serious harm*".
10. More recently there had been a succession of short-term relationships resulting in 19 complaints of harassment or concerning behaviour but with further action only being taken in respect of one (presumably giving rise to the earlier conviction in



2010). The allegations involved publication of naked photographs of an ex-partner, theft of credit cards, abuse (physical and verbal), damage to property and threats.

11. The main risk factors identified by the Panel included not coping with emotions, especially at the end of a relationship; limited insight; grievance thinking; controlling behaviour within intimate relationships; poor thinking skills. The Applicant himself identified relationships and lending people money are high-risk situations.
12. To address these risks, the Applicant had completed the High Intensity Healthy Relationships Programme (HRP) in 2014. In 2015 he was released on licence. He engaged with the Building Better Relationships (BBR) Programme. Nevertheless, he was recalled in September 2016 (after having met and formed a relationship with another woman) following allegations to the police (ultimately not pursued) that he was engaging in controlling behaviour. The relationship continued beyond his recall (including her visiting him in custody) until 2017 when terminated by him.
13. Since his recall, there have been no concerns about his behaviour. He is on enhanced regime. The Panel acknowledged that the POM had only recently met the Applicant although he did have a handover from the previous POM.
14. The Panel probed the Applicant about his controlling behaviour and its impact on others. He accepted, according to the Decision, that some of his partners might have been afraid of him and that the short duration of his (more recent) relationships was in part due to his own behaviour. He wanted to help others, which accounted for allegations of smothering behaviour. The Applicant thus accepted some but not all of the allegations about his controlling behaviour.
15. The Panel found his evidence and insight regarding the impact of his behaviour on others "*generic and superficial and not reflective of the written document he submitted*" (which may be a reference to the aide-memoire referred to above – it is not otherwise identified) and, moreover, lacking in depth. He had, they found, limited insight, understanding or acceptance of unhealthy behaviour. He posed, the Panel accepted, a high risk of serious harm to a known adult and a high risk of violence towards a partner within an intimate relationship, a risk which would quickly increase if that relationship ended. Despite the work he had completed to address areas of risk, the Panel remained concerned about his limited insight, his tendency to get into new relationships quickly, the speed at which complaints were made against him, the high risk he posed to partners, and his limited ability to articulate behaviours of concern as well as the need for further work to be done.
16. The COM (who plainly impressed the Panel as a witness, having "*an excellent appreciation of [the Applicant's] risks*"), considered that the Applicant did not fully understand his risks. He had a low level of insight. Work to address his risks, particularly to intimate partners, remained outstanding and had not been completed. Whilst he had met some of the psychologists he had not engaged with any psychological or therapeutic work. It was possible for him to engage with a programme to develop emotional resilience which would be available beyond the end of his sentence, if first accessed whilst on licence. The Applicant, the Panel noted, stated that he would be keen to work with the service in the community and to comply with the proposed licence conditions.



17. As to the Risk Management Plan (RMP), that was robust, the Panel found, but largely reliant on external controls and would not be sufficient to manage his risk of serious harm in the community.
18. The Panel grappled the point that the Applicant was near to his SED. The COM, it was recorded, had submitted time was running out and the Applicant would be more likely to engage with the BBR programme in the community than in custody. Hence the COM recommended it was better for him to be released on licence subject to monitoring than released at end of sentence with no support.
19. The Panel recognised the strength of this recommendation. Nevertheless, the conclusions reached by the Panel in light of the foregoing were as follows:
- a. The Panel carefully weighed the strength of the COM's recommendation for release against the high risk of causing serious harm that the Applicant presented to an intimate partner. They specifically kept the legal test at the forefront. His insight into his behaviour and impact on others was limited and superficial; there were outstanding treatment needs.
 - b. He had a history of engaging in relationships very quickly and his problematic behaviour emerged very quickly; the stabbing of the index offence victim occurred after a 6-week relationship. There was some 15 months (then) remaining on his sentence. He had completed the High Intensity HRP prior to release but was still subsequently recalled due to behavioural problems within an intimate relationship. The Panel concluded:

"The panel would be very concerned about his risk of serious harm to a partner, especially if they tried to end the relationship. The panel could not justify directing his release in order for him to access offence focussed work, especially given his history of prioritising his own needs over engaging with work to address his risks. The panel was not confident that he would meaningfully engage with the risk management plan."
20. Accordingly, the Panel did not direct his release.

The Relevant Law

21. The panel correctly set out in the Decision the test for release, and plainly had it, as they noted, at the forefront, namely in order to be able to direct release, is the Panel satisfied that it is no longer necessary for the protection of the public that the Applicant should be confined?

Parole Board Rules 2019 (as amended)

22. 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)).

23. 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 (as here) (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

24. 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."

25. 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.
26. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and many others.

Procedural unfairness

27. 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.
28. 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.
29. The overriding objective is to ensure that the Applicant's case was dealt with justly.



30. 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."*

The reply on behalf of the Respondent

31. I have indicated above that the Respondent declined to make any representations.

Discussion

32. It is convenient to deal first with the submissions as to procedural unfairness.

33. As to the late substitution of the POM there is, in my judgment, nothing in this point. The Panel accepted the POM had only recently met the Applicant but there had been a handover. Nothing turns on this nor was any suggestion made as to how it impacted on the Panel's decision or produced a manifestly flawed or unjust result.

34. As to the aide-memoire (see above), I was not invited to listen to the tape, nor have I done so. If the aide-memoire in question was that referred to above, then the Panel seem to have regarded his evidence as not reflective of the written document. As such it was a matter for their judgment, no doubt preferring his oral answers which were to be given greater weight than any pre-prepared written material. It was a matter for them. Of course, any applicant appearing before a panel, whatever his or her circumstances, is entitled to be treated with courtesy and respect. That does not mean that the Panel has to refrain from careful probing or analysis of the evidence given and of its provenance. Again, apart from causing the Applicant anxiety and stress (especially given his age), nothing is suggested as to how this impacted, or might have impacted on the actual result.

35. In my judgment neither of these points amounts to procedural unfairness in the sense mentioned above.

36. In relation to the central point regarding alleged irrationality, the Panel have a legal duty and a legal test to apply. This they discharged, and this they applied. They focussed on the core problem of the Applicant's imminent release. This does not mean that the legal test somehow has to be ignored or becomes weaker the nearer the release date. It is, as noted above, a balancing exercise and the Panel carefully noted and considered certain key factors that could apply even in the 15 or so months remaining before the SED: the speed with which the Applicant entered into relationships, the quickness of emerging complaints as to his behaviour, the escalation of risk of serious harm if the relationship was ended, all in the context of accepted overall risk assessment, the incomplete work to address those risks, the circumstances of his recall following completion of the High Intensity HRP, his lack of understanding or insight and the insufficiency of the RMP. I see nothing irrational or unfair in the conclusion reached by the Panel in light of these and all the factors mentioned by the Panel.



37.As to the other factors in support of the application (failing to follow the COM's recommendation, too little weight attached to the Applicant's expressed willingness to engage with the proposed licence conditions; too much weight on the lack of therapeutic work), again there is nothing in any of these. It is entirely for the Panel, acting judicially, to determine what recommendations are followed or not followed and what weight is given to what evidence. There was more than ample evidence and reasons given to justify the conclusions of the Panel.

Decision

38.Accordingly, for the reasons I have given, I do not consider that the decision was irrational/procedurally unfair and accordingly the application for reconsideration is refused.

HH Roger Kaye KC
02 April 2024

