the Parole Board
working with others to protect the public

**[2024] PBSA 46**

# Application for Set Aside by Nobes

## Application

1. This is an application by Nobes (the Applicant) to set aside a decision issued on 20 June 2024 (the Decision) not to direct his release. The decision was made by a panel after an oral hearing by video link on 18 June 2024. This is an eligible decision.

2. I have considered the Application on the papers. These are the dossier (now consisting of 1499 pages including the Decision), the Decision, and the application for set aside made by the Applicant and received on 11 July 2024 (the Application).

3. The respondent to the Application, although stated to be the Parole Board in the Application, is, of course, the Secretary of State (the Respondent).

## Background

4. On 15 October 2010, when aged 52 years, the Applicant received a determinate sentence of 19 years imprisonment (less time spent in custody) for a number of offences (some 26), mostly, but not all, involving sexual offences of various kinds (including indecent assault on females under 16 and attempted rape of a female under 16). The sentence expiry date (SED) is in August 2028. The Applicant is now 66 years old.

5. He was automatically released on licence on 26 June 2020 but was very shortly thereafter recalled (on 23 July 2020) and he was returned to custody the following day. This was his first recall on this sentence, and this is his second parole review since recall, the first being in February 2021 when the panel did not direct release (and at which the Applicant told the previous panel he did not wish to challenge the legality of the recall even though he felt it inappropriate). He is also subject to a confiscation default sentence but while the panel noted the concern this caused to him, it accepted the submissions made on his behalf at the hearing that this did not in any way prevent the Applicant from being entitled to his parole review nor did it preclude the panel from making a direction for release if so resolved.

6. The Applicant has maintained his innocence of much of the offending and there appears to be still an outstanding appeal against conviction, but the panel clearly and rightly expressly proceeded on the basis that the Applicant must for the purposes of the review be considered as guilty of the offences of which he had been convicted. It also noted the trial judge described the Applicant as a manipulative, dominating and thoroughly evil man.

**Application for Set Aside**

7. Although the Applicant was represented by counsel and solicitors at the panel hearing, the Application appears to have been drafted and submitted by himself. Having had the advantage of reading the written representations dated 10 June 2024 (contained in the dossier) and made on his behalf for the purposes of the hearing I note, the Application does, however, make many of the same points raised in those representations.

8. The basis of the Application is that the panel was provided with factually incorrect information. Four grounds were specifically numbered and mentioned though there appear to be five in total which may be summarised as follows:

    a) Ground 1: A report provided by the Prison Psychologist referred to a named psychologist who, the Applicant contends, does not exist.

    b) Ground 2: This ground sought to criticise the evidence given at the hearing: first on the basis that the Community Offender Manager (COM) is said to have told the panel the Applicant refused to sign a declaration admitting responsibility for his offending which, it was argued, was factually incorrect and secondly on the basis there was an inconsistency in evidence given by the Prison Offender Manager (POM) at the previous panel hearing and that at the present as to the availability of courses in the community.

    c) Ground 3: When no sufficiently detailed robust risk management plan was provided to the panel, it should have challenged the absence of any such plan or adjourned to allow one to be provided.

    d) Ground 4: The specialist reports provided to the panel (Psychological Risk Assessment (PRA), or Offender Assessment System (OASys)) did not consider risk reduction for each year the prisoner remains in custody over the age of 60.

    e) Ground 5: (The additional ground) complained that an addendum report that the Applicant had displayed inappropriate behaviour in May 2023 when a National Offender Management Information System (NOMIS) report of July 2023 confirmed no such inappropriate behaviour had taken place.

9. I develop these points in the discussion below.

**Current parole review**

10. The case proceeded before a three-member panel, which included an independent chair, a psychologist, and a judicial member. The panel heard evidence from the Applicant, the POM, his COM, the Prison Psychologist referred to above and a psychologist commissioned on behalf of the Applicant. The Applicant was legally represented throughout the hearing as noted above. The Respondent did not appear and was not represented.

11. As mentioned, the panel did not direct the Applicant's release.

12. In a lengthy and carefully considered decision the panel concluded on the evidence before them that the Applicant's risk had not yet reduced to a level where it could be safely managed in the community and hence release could not be supported. His history of offending for almost all his adult life was "*extremely serious*". He had little or no insight into the impact of his behaviour.

13. The panel noted the improvement in his behaviour, his significant health issues, anxiety and isolation. They also noted a persistent stream of negative security intelligence (much of which the Applicant denied and suspected were malicious), his tendency to fixate on small details, challenge staff, and demonstrate a tendency to exert control. They found the Applicant to be assessed as someone with a high risk of future offending, and a high risk of serious harm to the public and known adults when in the community.

14. By the conclusion of the panel hearing, both psychologists (and the COM) now firmly concluded that core risk reduction work the Applicant needed to undertake remained outstanding and needed to be conducted on a 1:1 basis in prison and not in the community despite the difficulties that attended the possibilities of even arranging such intervention (there being none available at the Applicant's present prison). Whilst the concerns of the Applicant were noted in this respect, questions of availability of courses and treatment were matters for the prison service. The position remained however that until his outstanding treatment needs were met and the core risk reduction work was completed the panel found that the Applicant's risk would not decrease to a level manageable in the community (albeit it noted the evidence that his risk was likely to have decreased with age and because of health issues).

15. Thus, the panel felt, it was not necessary to consider the detail of the proposed risk management plan (though it recognised that if the plan had to be considered in the future, the detail might need further consideration; it was, as the COM recognised, unlikely as presently drafted to be robust enough to offer safe management in the medium to longer term).

**The Relevant Law**

16. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the **Parole Board Rules**) provides that a prisoner or the Secretary of State may apply to the Parole Board to set aside certain final decisions. Similarly, under rule 28A(1)(b), the Parole Board may seek to set aside certain final decisions on its own initiative.

17. The types of decisions eligible for set aside are set out in rule 28A(1). Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for set aside 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)).

18. A final decision may be set aside if it is in the interests of justice to do so (rule 28A(3)(a)) **and** either (rule 28A(4)):

    a) a direction for release (or a decision not to direct release) would not have been given or made but for an error of law or fact, or
    b) a direction for release would not have been given if information that had not been available to the Board had been available, or
    c) a direction for release would not have been given if a change in circumstances relating to the prisoner after the direction was given had occurred before it was given.

19. It is thus of particular importance, in this case, to recognise the "*but for*" requirement of rule 28A(4)(a). It is not simply sufficient to point out that an error of fact has occurred. It must also be shown that "*but for*" that error the decision not to direct release would not have been given and that it is in the interests of justice to set aside that decision.

**The reply on behalf of the Respondent**

20. The Respondent has offered no representations in response to this application.

**Discussion**

21. It is argued in the written Application in support of the grounds summarised above that there were a number of errors of fact. The Applicant uses many epithets to complain about the Decision including that it was unlawful, unfair, a breach of his human rights, disproportionate, inadequate, irrational or failed to give due weight to various matters.

22. There are four main problems with the grounds and this approach so far as the Applicant is concerned. First, nowhere does he address the "*but for*" requirement mentioned above; second, most, if not all of his points were addressed in the written representations made on his behalf to the panel before the hearing (and no doubt at the hearing); third, all of the grounds he has raised were in one form or another dealt with in substance in the Decision; fourth, the Applicant overlooks the panel's paramount task (expressly repeated in the Decision) that it had to determine whether it was necessary for the protection of the public that the Applicant should remain confined. That task was, of course, to be determined on the evidence before them. In short, the Application is simply an attempt to re-run matters before a different panel.

23. As to Ground 1: it was submitted that the report provided by the Prison Psychologist referred to a named psychologist who, the Applicant contends, does not exist. This was based on the fact that his solicitors (and he says he himself) had written to the named psychologist and received no reply or letters were returned as not known at this address. Apart from one letter to the named psychologist from the Applicant's solicitors (which is in the dossier and was sent in May 2024 before the panel hearing), I have seen no others. The purpose of the approach was to enquire as to the availability of 1:1 core risk reduction work within the prison estate. The approach was made because the Prison Psychologist (not the Applicant's) had in her report

disclosed contact with the named psychologist (who covered the area including the prison in which the Applicant was confined) in order to ascertain the availability of such work only to receive a rather discouraging result as set out above.

24. There may, of course, be many perfectly reasonable reasons why the named psychologist did not respond, not least because he was being consulted by a Prison Psychologist and not by the Applicant. But in any event as the panel pointed out in its Decision whilst recognising the Applicant's concerns in this respect, they were precluded from commenting on any specific treatment needs or offending behaviour work required, which thus became irrelevant to their decision (It did not stop the panel from perfectly reasonably commenting that they hoped that the prison and probation service would move to establish a viable pathway to allow the Applicant, if successful, to demonstrate a reduction in risk before his SED).

25. This ground thus does not assist the Applicant.

26. As to Ground 2: as summarised above, this ground sought to criticise the evidence given at the hearing: first on the basis that the COM is said to have told the panel the Applicant refused to sign a declaration admitting responsibility for his offending which, it was argued, was factually incorrect (apparently if there was a refusal it was on the basis as not being a legal requirement) and secondly on the basis there was an inconsistency in evidence given by the POM at the previous panel hearing as to the availability of courses in the community.

27. There were two quite separate points here. The first (the refusal to sign the declaration) does not seem to have been specifically dealt with by the panel but more important they expressly recognised that he was not conceding he was guilty of the offences of which he was convicted nor did he accept the veracity of many of the complaints against him in prison. As to the second part of this ground, the panel was of course concerned with the evidence before them at the hearing. In any event, they, as it turned out, being satisfied the Applicant should remain in custody, were more concerned as to the availability of courses in prison not in the community. These points thus do not assist the Applicant.

28. As to Ground 3: the alleged inadequate risk management plan. Given the panel concluded that the risks posed by the Applicant were not going to lead to his release, as the panel expressly noted, even though they made comments about the plan (referred to above), it was not necessary in view of that conclusion to go into detail. There is no injustice in the circumstances to the Applicant in so deciding.

29. As to Ground 4: the age factor and risk reduction. Again, there is nothing in this point. As noted above the panel specifically drew attention in the Decision to evidence that his risk was likely to have decreased with age and because of his health issues and clearly took the point into account.

30. As to Ground 5: this was a complaint that an addendum report alleged that the Applicant had displayed inappropriate behaviour in May 2023 when a NOMIS report of July 2023 confirmed no such inappropriate behaviour had taken place. This too was considered by the panel when this and a number of incidents and allegations were noted along with his, the Applicant's, response to them including that his

complaint about the May 2023 incident had not been upheld by the Prison Ombudsman although some procedural shortcomings had been identified.

31. I conclude that in my judgment there is no basis for interfering with the careful and reasoned Decision of the panel which had copious material to justify its conclusions. I have little doubt that the Applicant's challenges to the evidence, and the submissions and comments by or on his behalf were all duly and carefully considered and noted by the panel. Even if there were some errors of fact made (and I am by no means satisfied that any were made in any material respect as regards any of the grounds relied on), in my judgment there is no injustice in the result and I am not, on the grounds and basis set out in the Application, remotely persuaded that any such alleged errors had a material effect on the outcome. The panel, as noted, reached a decision on the evidence before them with the legal principles and test firmly and correctly in mind and reached a reasonable and rational conclusion on that evidence.

**Decision**

32. The Application for set aside is accordingly refused.

**HH Roger Kaye KC**
**26 July 2024**