

[2024] PBSA 60**Consideration of Set Aside in the case of Ratcliffe****Application**

1. The set aside process was initiated by the Parole Board Chair under rule 28A(1)(b) of the Parole Board Rules 2019 (as amended) on 23 August 2024. It falls to me to decide whether to set aside the decision made by an oral hearing panel dated 29 July 2024 to direct the release of Ratcliffe (Prisoner). This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, the oral hearing decision, a stakeholder response form (SHRF) dated 8 August 2024, an email from the Prisoner's Community Offender Manager (COM) dated 9 August 2024, an email from the Panel Chair to the Parole Board Setting Aside team dated 20 August 2024 and an email from the Public Protection Casework Section (PPCS) on behalf of the Secretary of State dated 22 August 2024.

Background

3. On 30 October 2015, the Prisoner received a sentence of imprisonment for nine years following conviction for rape of a female under 16. He was also convicted of engaging in sexual activity in the presence of a child under 13 (one year concurrent), two counts of sexual activity with a female child under 16 (six months concurrent and two years concurrent), and three counts of engaging in sexual activity in the presence of a child under 16 (one year concurrent on each). He pleaded not guilty to all charges.
4. He was automatically released on licence on 1 April 2020. His licence was revoked on 19 June 2020, and he was returned to custody the same day. He was recalled in connection with a breach of his licence conditions after sending a Facebook friend request to one of his victims. He was charged with and subsequently convicted of breaching his sexual harm prevention order and sentenced to a further 39 months in custody.
5. The Prisoner maintains his innocence of the index offences and states he did not send the friend request on purpose.
6. The Prisoner was aged 36 at the time of sentencing. He is now 45 years old. His sentence expiry date (SED) falls in early October 2024.

Current Parole Review

7. The Prisoner's case was referred to the Parole Board by the Secretary of State to consider whether to direct his release. This was the Prisoner's second review since recall.
8. An oral hearing took place on 18 July 2024 before a two-member panel, including a specialist psychiatrist member. Oral evidence was taken from the Prisoner, a forensic psychologist, his Prison Offender Manager (POM), and his COM. The Prisoner was not legally represented but confirmed that he was content to proceed, and the panel was content for him to do so.
9. The panel directed the Prisoner's release on 29 July 2024.
10. In doing so, it noted that he was to be released to designated accommodation with provision for curfew and a daily sign-in.
11. The Parole Board received a SHRF from the PPCS on behalf of the Secretary of State dated 8 August 2024. This SHRF noted the following:
 - a) There was no designated accommodation available until mid-October 2024, after the Prisoner's SED.
 - b) There was an option to apply for an emergency placement via the Community Accommodation Service Tier 3 (CAS3) scheme.
 - c) A CAS3 placement would allow the Prisoner the time to begin community reintegration, with support from the Probation Service and monitoring by police.
 - d) The risk management plan, however, would be "*substantially reduced*" and would not provide the "*close monitoring and support*" provided by the original designated accommodation.
12. The SHRF concluded by asking the panel whether it would consider the alternative arrangements to be an acceptable release plan.
13. The panel asked the following questions for clarification:
 - a) What is the approximate date from which CAS3 could be available and would the Prisoner be able to stay there after SED?
 - b) Could curfew and sign-in be achieved by a police doorstep curfew and sign-in at a probation office or police station (or somewhere similar)?
 - c) Did the COM consider that the Prisoner's risks could still be managed with a vastly altered risk management plan?
14. On 9 August 2024, the COM responded as follows:

- a) A CAS3 placement had been reserved from early September 2024 until SED. The accommodation could not be extended beyond SED.
- b) A doorstep curfew was not possible. The probation service could offer additional contacts and would request more frequent police visits.
- c) There were significant benefits to the proposed plan and the COM *"would therefore suggest that risk is manageable within this outline"*.

15. The panel conferred and advised the Parole Board Setting Aside Team on 20 August 2024 that *"[t]he panel has considered the changes to the release plan very carefully and has concluded that if the plan as now put forward had been proposed at the time of the hearing, the panel would not have directed release."*

16. It set out its reasons in some detail. In summary:

- a) As the Prisoner maintains his innocence the external controls in a release plan are of particular importance and the need for close monitoring was underlined by the circumstances of his recall.
- b) Although the panel could see the benefit of a brief period of early release in terms of the risk management benefits of seeing the Prisoner being settled in the community with maximum support, but the proposed alternatives were nowhere near a direct replacement for the support that would have been available if released to designated accommodation.
- c) Risk in the community would be raised (as is the case on any release) without being offset by any tangible benefits in terms of risk management in the longer term.

17. The Setting Aside Team sought the views of the PPCS who declined to make a set aside application since it agreed that release prior to SED would be more beneficial than being released at SED with no support. The PPCS also noted the COM's view that the Probation Service were willing to proceed with the release with the adjustments suggested.

18. The Parole Board initiated this set aside application.

The Relevant Law

19. Rule 28A(1)(a) of 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.

20. 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)).

21.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.

The reply on behalf of the parties

22.Neither the Prisoner nor the Secretary of State have made any further representations to the application to set aside and the deadline for representations has now passed.

Discussion

23.The first question that must be answered is whether there is new information that was not available to the panel when the direction for release was given.

24.It is clear that there is. The discussion at the oral hearing was predicated on the Prisoner being released to designated accommodation. New information clearly shows that there is no prospect of the Prisoner being released there.

25.The next question is whether the panel would not have given a direction for release if that information had been available to it.

26.It is self-apparent that the panel would not have given a direction for release. It has said so. It has also set out detailed and cogent reasons for its conclusion.

27.Finally, I must consider whether setting aside the panel's decision is in the interests of justice. I find that it is. The interests of justice would not be served in releasing a prisoner under a risk management plan considered to be inadequate by the releasing panel. Doing so would undermine the accountability of the Parole Board for the public protection decisions it is empowered to take by statute.

28.I therefore conclude that all elements required for the decision to be set aside are made out.

Decision

29.For the reasons I have given, the application is granted, and I direct that the decision of the panel dated 29 July 2024 is set aside.

30.I must now consider two matters under rule 28A(8). First, whether the case should be decided by the previous panel or a new panel and second, whether it should be decided on the papers or at an oral hearing.

31. The previous panel has the great benefit of having prepared the case, carefully considering the evidence before it at the time, reaching and documenting its decision. It is best placed to consider the case again, and I direct that it does so.
32. I have also considered whether an oral hearing is necessary considering the principles in *Osborn v Parole Board* [2013] UKSC 61. I do not consider that it is. First, the proximity of the SED means that it would be unlikely for the panel to reconvene before release. Second, I consider there is sufficient evidence before the panel for it to reach a conclusion on the papers.

Stefan Fafinski
06 September 2024