

[2024] PBSA 73

**Application for Set Aside by the Secretary of State for Justice  
in the case of Simpson****Application**

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision to direct the release of Simpson (the Respondent). The decision was made by a panel after an oral hearing. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier (189 pages), the decision (dated 30 August 2024), and the application for set aside (dated 31 October 2024).

**Background**

3. On 19 December 2016, the Respondent received a sentence of imprisonment for seven years following conviction for selling/transferring a small firearm without authority. He also received a concurrent determinate sentence of 12 months for possession of cannabis with intent to supply. He was also convicted of possessing ammunition without a certificate but received no separate penalty. He pleaded guilty to all charges.
4. On 10 November 2017, the Respondent was further convicted of possession a prohibited item (a mobile phone) in prison without authority, for which he also pleaded guilty. He received a consecutive eight month determinate sentence.
5. His sentence end date is reported to be in January 2025.
6. The Respondent was aged 29 at the time of sentencing. He is now 37 years old.
7. He was automatically released on licence on 11 September 2020. His licence was revoked on 2 August 2023, and he was returned to custody on 24 August 2023 after a period unlawfully at large.

**Application for Set Aside**

8. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
9. The application for set aside submits there is further information constituting a change in circumstances which came to light after the panel made its decision. It is

argued that the panel would not have reached the same decision had this new information been known.

10. The content of the application will be considered in the **Discussion** section below.

### Current Parole Review

11. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release.

12. The case was considered by a two member panel at an oral hearing on 27 August 2024. The panel heard evidence from the Respondent, a Senior Probation Officer (SPO) acting as Prison Offender Manager (POM), and his Community Offender Manager (COM). The Respondent was legally represented throughout the proceedings. Both POM and COM considered that releasing the Respondent on a short period of licence had the potential to reduce his longer term risk of re-offending and of harm. The panel agreed and directed the Respondent's release. In doing so, it noted that release was preferable to the Respondent being released at the end of his sentence without supervision, monitoring, licence conditions, risk-reduction work and resettlement support.

### The Relevant Law

13. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended) 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.

14. 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)).

15. 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 Respondent

16. The Respondent has submitted representations in response to the application which will also be considered in the **Discussion** section below.

## Discussion

17.The Applicant submits the following:

- a) The Probation Service has been informed that the Respondent is subject to Probation Reset.
- b) As such, his designated accommodation has been removed.
- c) Although he could be released to his own address, the Probation Service does not consider this to be suitable since it would not be able to monitor his behaviour while at the property.
- d) A Social Services referral would be completed at the point of release, but the Probation Service would have no further involvement in supervision.
- e) The Probation Service considers that his risk is no longer manageable in the community without the designated accommodation, supervision and intervention work.

18.The Respondent opposes the application and submits as follows:

- a) The information that he would be subject to Probation Reset should have been available to the COM (and therefore the panel) at the time of the hearing on 27 August 2024.
- b) The Respondent's address has previously been assessed as suitable.
- c) The Respondent has had two town visits since his hearing, both without incident.
- d) The Respondent has a reasonable expectation of release.
- e) The Respondent met the test for release at the time of the hearing and the position has not altered.
- f) The Respondent should be released to his home address.

19.For clarity, Probation Reset (Reset) is a nationally mandated organisational policy that has been implemented to alleviate workload pressures on the Probation Service.

20.Before considering the submissions of the parties in detail, it will be helpful to set out the relevant legal framework insofar as the Respondent's potential release is concerned.

21.The Respondent's case was referred to the Parole Board under 255C(4) of the Criminal Justice Act 2003 (the 2003 Act) and his release was directed under section 255C(5) of the 2003 Act.

22. Section 255C(5) of the 2003 Act provides that “*where...the Board directs [a prisoner’s] release on licence...the Secretary of State must give effect to this direction*”.
23. The timing of the release is provided in section 256AZC(2) of the 2003 Act: “*The Secretary of State must give effect to the direction of the Parole Board as soon as is reasonably practicable in all the circumstances including, in particular, the need to make arrangements in connection with any conditions that are to be included in the person’s licence under this Chapter*”.
24. The statutory position is therefore very clear: having given a direction for release, the Applicant has a statutory obligation to effect that release, including the need to make arrangements in connection with any conditions to be included within the Respondent’s licence.
25. In my view, the Probation Reset, being a policy position, cannot override a statutory obligation, and it seems manifestly unfair if it is able to do so.
26. However, my powers are bounded by the provisions of rule 28A of the Parole Board Rules under which this application has been made. Therefore, I do not have the power to enforce the release direction. Neither do I have the power to vary licence conditions (including the address to which release is directed), nor to engage in broader public law grounds of challenge including unfairness or legitimate expectation. I must therefore restrict myself to applying those tests which I am legally bound to apply.
27. First, I must consider whether there is new information and/or a change in circumstances. It is submitted on behalf of the Respondent that the information about Reset should have been available to the COM at the time of the hearing. There is no evidence before me that shows that the information was available to the COM at that time. Indeed, the panel’s decision notes the COM’s evidence that Reset would not apply. Therefore, I must treat the imposition of Reset to be both new information and a change in circumstances relating to the Respondent.
28. Next, I must consider whether the panel would not have directed the Respondent’s release if it had known about the imposition of Reset. I find that to be the case. The panel’s release direction was predicated on a higher level of monitoring and supervision than would be available to the Respondent.
29. However, that is not the end of the matter. In order to grant the application for set aside, I must also be satisfied that it is in the interests of justice to do so.
30. I am far from satisfied that it is in the interests of justice for the panel’s decision to be set aside. In my view, it cannot be just for a prisoner to hear, at his oral hearing, that Reset would not apply to his case, only to find that it does, in fact, later apply with the consequence that the plan upon which the Parole Board – as an independent statutory assessor of risk – directed his release has been fatally undermined. This cannot be just. Reset is a policy decision and policy is distinct from law. Therefore, the Applicant remains obliged to give effect to the direction of the Parole Board as soon as is reasonably practicable in all the circumstances including, in particular, the

need to make arrangements in connection with the conditions that are included in his licence.

**Decision**

31. For the reasons I have given, the application is refused.

**Stefan Fafinski**  
**19 November 2024**