

[2021] PBRA 112

## Application for Reconsideration by Staniland

### Application

1. This is an application by Staniland (the Applicant) for reconsideration of a decision, dated 5 July 2021, by a Parole Board Panel, refusing to direct his release but to recommend that he be transferred to open conditions.
2. The review was conducted by oral hearing on 22 June 2021 when evidence was given by the Applicant himself, his Prison Offender Manager (POM), his Community Offender Manager (COM) and a Prison Psychologist in training.
3. I have considered this application on the papers. These comprise of the dossier, the decision of the Panel and the application for reconsideration.

### Background

4. On 25 April 2008, the Applicant having, at the age of 20, pleaded guilty to a charge of robbery committed with a co-defendant, was sentenced to an indeterminate sentence for Public Protection with a minimum term of 16 months (the tariff) before he was eligible to apply for parole. The tariff term expired on 25 August 2009.

### Request for Reconsideration

5. The application for reconsideration comprises a 4-page document, prepared by the Applicant's Legal Representative.
6. The application seeks reconsideration on the grounds that the decision was irrational and procedurally unfair. It is not necessary to reproduce the application in full, but all sections have been considered and the aspects relevant to the issues of irrationality or procedural unfairness are dealt with below.
7. The function of the Reconsideration Assessment Panel (RAP) is limited to the reconsideration of the statutory limbs of challenge. It has considered the application on the basis that both limbs are challenged.



8. Any application relating to recommendations as to open conditions is not within the scope of the Reconsideration Mechanism (see **Panasuik [2019] PBRA 2**). The RAP has not, therefore, considered the issues raised in relation to open conditions save in so far as they are relevant to the statutory limbs of challenge. For the avoidance of doubt, however, it is noted that this issue, also, was fully considered by the Panel.
9. In general terms the application does not specifically distinguish between its submissions as to irrationality and procedural unfairness but amongst the matters highlighted are:
- Having established, through questioning, that the Prison Psychologist witness (T) was not yet specifically trained to deliver personality assessments, the Panel then referred to the specific expertise, in that field, of a Panel member and drew its own conclusions as to risky scenarios including a resistance to change and management difficulties, an issue which had not been raised with *"any other stakeholder during the parole process itself."*
  - This approach deprived the Applicant of the opportunity either to question these conclusions or to call his own independent expert witness and breached the principle of open justice.
  - That the Panel did not give sufficient weight to the recommendation of the COM to support re-release.
  - That, having commented on the Applicant's inability to undertake offence-focussed work due to non-availability in his current location and to Covid restrictions, the Panel further commented that he would not be eligible for any further core risk reduction work in closed conditions.

### Response from the Secretary of State

10. The Secretary of State (SoS), by e-mail dated 28 July 2021, indicated that no representations were made in response to the application.

### Current parole review

11. The Panel considered a dossier of 355 pages and, in a comprehensive decision, dealt in detail with the index offence, the Applicant's personal and offending history including his most recent release and recall, the evidence given before it by the COM and POM and, over some three pages, the evidence of T.
12. In relation to the evidence of T, it recorded that T, having discussed with her supervisor the necessity for a personality assessment, had both considered it unnecessary, but that *"in hindsight, it could have assisted the Panel..... she could not comment upon whether [the Applicant's] anti-social traits impacted upon his assessed levels of risk, or not."*
13. Having recorded the views of T that the Applicant's risk had not changed significantly since his last release, the Panel disagreed and found that *"there was a new emerging pattern of risky and abusive behaviours relating to [Intimate Partner Violence] emerging"* and *"the psychologist member of the Panel, who is familiar*



*with the [Diagnostic and Statistical Manual of Mental Disorders] considered that the following factors made a very risky combination that was resistant to change and extremely difficult to manage: [list of A's medical and behavioural difficulties, past and present]."*

## The Relevant Law

14. Rule 28(1) of the Parole Board Rules provides that applications for reconsideration may be made in eligible cases either on the basis that the decision was (a) irrational or that it is (b) procedurally unfair. This is an eligible case.

15. In **R (on the application of 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 uses the same word as is used in judicial review demonstrates that the same test should be applied. This test for irrationality is not limited to decisions whether to release but applies to all Parole Board decisions.

17. Procedural unfairness under the Parole Board Rules relates to the making of the decision by the Parole Board and an assessment is required as to whether the procedure followed by the Panel was unfair.

18. Under the principles expressed in **Osborn**, the key test is whether the fairness to a prisoner requires an oral hearing, bearing in mind the facts of the case and the importance of the issue at stake. Factors to be considered include:

- Whether the evidence can be considered without the need for it to be tested orally or in person;
- Despite the duty of the Parole Board to provide a swift review, the test is not the likelihood (or otherwise) of release or the need to save time, expense or trouble;



- All evidence must be given the appropriate scrutiny with particular care in relation to issues of fact which may be disputed or open to explanation or mitigation;
- Whether the prisoner wishes to have an oral hearing and the legitimate interest in being able to participate in a decision which has important implications for him;
- The evidential effect of the conclusion of pending criminal proceedings;
- Whether there are psychological issues which need to be tested;
- The decision is not confined to a determination of whether or not to direct release (or recommend a transfer to open conditions) but includes other aspects, such as comments or advice in relation to the prisoner's treatment or offending behaviour work which may be required, which will, in practice, have a significant effect on his management in prison or on future reviews.

19. The common law duty to act fairly, as applied in this context, is influenced by the requirements of article 5(4) as interpreted by the European Court of Human Rights. Compliance with the common law duty should result also in compliance with the requirements of article 5(4) in relation to procedural fairness. Article 6 is relevant to criminal trials but does not impinge on this duty.

## Discussion

### Irrationality

20. In my judgment, the decision to refuse release cannot be said to meet the test of irrationality. The Panel, having clearly considered, with care, the documents in the dossier gave a clear and reasoned decision, on that basis, and adopted a correct test for its decision.

21. In the light of my decision in relation to procedural fairness, it is not necessary to scrutinise further the details of the decision.

22. I find that the detailed complaints made in the Applicant's lengthy application do not affect the rationality of the decision.

### Procedural Unfairness

23. I am, however, concerned about the decision of the Panel in terms of procedural unfairness. I preface my findings, however, by expressing considerable sympathy with the Panel which, in my view, conducted both the hearing itself with great professionalism and prepared the most conscientious of decisions. It examined the minutiae of the evidence both factually and in relation to the legal effect of the evidence.



24. It is clear, however, that the Panel had the great advantage of an expert Psychologist Member allowing itself to identify and assess areas of personality disorder traits and risk which the Prison Psychologist was not qualified to address or to deal with the Panel's concerns. In any event, these concerns were not specifically raised at the hearing and became apparent only on promulgation of the decision.
25. I find that the concerns raised by the Applicant's Legal Representatives as to deprivation of his legal rights to an open hearing at which his representative could have challenged the issues and have the opportunity given to seek an Independent Psychological report and witness, to be valid. It is arguable that, in circumstances in which all the witnesses had indicated that they were satisfied that the Applicant could be managed in open conditions, the Panel's concerns could have been met and, therefore, conclude that their finding that it was not necessary for the Applicant to remain in the closed conditions could have been extended to a direction for release. It is significant, in my view, that in considering next steps to assist future Panels, the decision stated that "*a future Panel may benefit from an up-dated psychological risk assessment to address those issues, the impact on [the Applicant's] risk and how [he] managed them. They may also benefit from a personality assessment.*" I consider that as the specific concerns had been raised only in the decision and not in the hearing, the proper course would have been to give the Applicant the opportunity, himself to seek an assessment and then, if so advised, have then directly considered and examined in an oral hearing.

## Decision

26. For the reasons I have given, I find that there was procedural unfairness, requiring reconsideration of the Panel's decision. Accordingly, I have decided that this application be granted.

## Directions

27. I have no doubt that the original Panel would be fully capable of approaching the matter conscientiously and fairly, but fundamental principle of justice being seen to be done arises. If the re-appointed Panel were to adhere to the previous decision, there would inevitably be room for suspicion, in the mind of the Applicant, that it had been reluctant to admit that the original decision was wrong, and that the Psychologist member had undue sway in the decision process. However, inaccurate or unfair that suspicion might be, it should be avoided, and I direct that the case be reheard by a fresh Panel. In the particular circumstances of this case, I take the view that the case should be chaired by a Judicial or otherwise experienced chair and the Panel contain a psychologist member.



**Edward Slinger**  
**6 August 2021**



3rd Floor, 10 South Colonnade, London E14 4PU



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)



[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)



[@Parole\\_Board](https://twitter.com/Parole_Board)



0203 880 0885