

[2021] PBRA 183

Application for Reconsideration by Hamilton

Application

1. This is an application by Hamilton (the Applicant) for reconsideration of a decision made by an oral hearing panel dated 16 November 2021 not to direct his release.
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.
3. I have considered the application on the papers. These are the decision letter, the dossier and the application for reconsideration.

Background

4. The Applicant is serving a sentence of imprisonment for public protection imposed on 21 July 2006 following conviction for robbery. His tariff expired on 21 January 2009.
5. He was most recently released on licence on 9 July 2020 following an oral hearing. His licence was revoked on 2 December 2020. He was not returned to custody until 22 February 2021 having spent time unlawfully at large. This was his third recall on this sentence and his first parole review since recall.
6. The Applicant was aged 36 at the time of sentencing. He is now 52 years old.

Request for Reconsideration

7. The application for reconsideration is dated 6 December 2021 and has been submitted by solicitors acting on behalf of the Applicant.
8. It is submitted that the panel's decision was irrational as it was contrary to the recommendations of the three professional witnesses who attended, and the panel should have adjourned the case for the deficiencies in the risk management plan to be addresses.
9. This submission is supplemented by written arguments to which reference will be made in the **Discussion** section below.
10. No matters of procedural unfairness are raised.



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Current Parole Review

11. The Applicant's case was referred to the Parole Board by the Secretary of State in March 2021 to consider whether to direct his immediate release or, if immediate release was not directed, to consider whether he was ready to be moved to open prison conditions.
12. The case proceeded to an oral hearing before an independent member and a judicial member on 4 November 2021. It was held by video conference. Oral evidence was taken from the Applicant, his Prison Offender Manager (POM) and his two Community Offender Managers (COMs). The Applicant was legally represented throughout.
13. The POM and the COMs supported the Applicant's release. The panel did not direct the Applicant's release (nor make a recommendation for open prison conditions).

The Relevant Law

14. The panel correctly sets out the test for release in its decision letter dated 16 November 2021.

Parole Board Rules 2019

15. Under rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is 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)).
16. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**.

Irrationality

17. 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."

18. 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.

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

The reply on behalf of the Secretary of State

20.The Secretary of State has submitted no representations in response to this application.

Discussion

21.It is first submitted that the panel's decision was irrational as it was contrary to the recommendations of the three professional witnesses.

22.Simply disagreeing with professional recommendations is not sufficient to establish irrationality. If it were, there would be no need for a panel to exercise any judgement in cases where professional witnesses were all in agreement. This would extinguish the panel's purpose as an independent risk assessor and decision-making body.

23.That said, if a panel makes a decision contrary to the opinions and recommendations of all the professional witnesses, it is important that it should explain clearly its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions, following **R (Wells) v Parole Board [2019] EWHC 2710**.

24.While the common law duty to give reasons is a matter of procedural unfairness not raised in the application, the panel nonetheless gives clear and cogent reasons for its disagreement with the recommendations of the professional witnesses. It cannot be said in view of the panel's stated reasons that its decision is outrageously illogical in the sense expressed above. There is no irrationality on this point.

25.It is also submitted that the panel's decision not to adjourn for an updated risk management plan was irrational after having decided the current risk management plan was deficient. The application notes that, after the decision was issued, the possibility of residential drug rehabilitation has been proposed and an adjournment would have allowed the Applicant's COM to investigate further and make referrals as appropriate.

26.If a panel decides that a risk management plan cannot manage a prisoner's risks in the community, it cannot be irrational to decide that the prisoner must remain in custody to protect the public. The fact that other possibilities have arisen after a decision has been made cannot render that decision irrational as those possibilities would not have been in the panel's contemplation when it reached its decision. Parole reviews cannot be allowed to drift and if a panel considers it has enough evidence on which to make its decision, then it must do so. In any event, there is nothing to prevent the Applicant's COM making further enquiry and reporting back to his next parole review accordingly. The timing of that review is a matter for the Secretary of State.

27.The application also includes a letter from the Applicant and one of the COMs complaining about the conduct of the panel at the hearing. However, the application

raises no matters of procedural unfairness and therefore the complaints have no bearing on this application. The Parole Board has a published complaints procedure to deal with any such matters.

Decision

28. For the reasons I have given, I do not consider that the decision not to direct the Applicant's release was irrational and accordingly the application for reconsideration is refused. No matters of procedural unfairness were raised.

Stefan Fafinski
17 December 2021