

[2022] PBRA 79

Application for Reconsideration by Hobbs

Application

1. This is an application by Hobbs (the Applicant) for reconsideration of a decision by a Parole Board Panel, made on 16 May 2022, following an oral hearing on 8 April 2022, refusing to direct his release.
2. The review was finally concluded following the submission of written submissions, from the Applicant's Legal Representative on 14 April 2022, and delay caused by the ill-health of the Chair of the Panel.
3. I have considered this application on the papers. These comprise of the dossier, currently consisting of 1127 pages, the post-hearing written submissions comprising a 5-page document, the decision of the Panel dated 16 May 2022, the application for reconsideration, dated 31 May 2022, and supplementary reconsideration representations, dated 14 June 2022, made in response to a request from the Reconsideration Assessment Panel (RAP). I have further had sight of a copy of the Chair's notes of the proceedings which constitute the Official Record of the evidence in the absence of a Recording.

Background

4. On 23 January 2013, following guilty pleas to offences of sexual assault, the Applicant was sentenced to an extended sentence of imprisonment, comprising 4 years 6 months custody with an extended period of a further 6 months. His Sentence Expiry Date (SED) is in December 2022 meaning that release would, in any event, take place in approximately 6 months' time.
5. The Applicant had, previously, been released on 23 January 2015 but recalled within a matter of days, on 28 January 2015.
6. The post hearing written submissions were stated to "*supplement the oral submissions made for release on the day*":



- a. They emphasised a significant change of behaviour on the Applicant's part and completion of risk reduction work but indicated that he would not engage in any further assessments or complete any further offending behaviour work in custody and stated – *"in any event given the length of time left between now and the SED it would not be possible for this to occur"*
- b. They indicated that the Applicant did not accept the circumstances of his recall.
- c. They specifically submitted that further assessments suggested by the Community Offender Manager (COM) were unnecessary as, having regard to a psychologist's findings as to personality disorder traits, *"the evidence of sustained good behaviour is evidence enough of change."*
- d. The Applicant accepted the need for support and assistance from Probation and that *"given this focus (the Applicant) will not present a risk of harm during the at risk period."*
- e. The Applicant did not present *"a risk to life and limb from which the public needs protection and (the Applicant) meets the test for release."*

Request for Reconsideration

7. The Application for Reconsideration comprises a 9-page document and the Supplementary Submissions a 5-page document, both prepared by the Applicant's legal representative.
8. It is not necessary to reproduce the applications in full, but all sections have been considered and the aspects relevant to the issues of irrationality or procedural unfairness are dealt with below.
9. From the wording of the applications, it is difficult to clarify separate submissions relating to the statutory limbs of challenge to irrationality and procedural unfairness. The document, however, concludes (P5):

"Therefore, in conclusion, for the reasons stated above we would request that this matter be reconsidered on the basis the decision is both irrational and procedurally unfair".

10. The function of the RAP is limited to the reconsideration of the statutory limbs of challenge. As already indicated, it is unclear from the wording of the submissions as to how the application is directed at the separate aspects, but the RAP has considered the application on the basis that both limbs are challenged.
 - (a) *Irrationality*: No separate aspect appears specifically to suggest irrationality in the decision.
 - (b) *Procedurally unfair*:

i) The application speaks of 2 "Grounds of Review" :

- "Disregarding relevant considerations/giving them insufficient weight" but is then followed immediately by submissions suggesting procedural unfairness by failure to accurately record evidence and failure to give accurate reasons. In the supplementary reconsideration representations this aspect is identified as the panel's failure to consider the written submissions.
- "Failure in duty of enquiry – amounting to procedural unfairness" by not adjourning/deferring to allow for a Programme Needs Assessment (PNA) or Psychological Risk Assessment (PRA) to be prepared and for an assessment of the Applicant's suitability for any accredited behaviour work addressing sexual offending.

ii) The supplementary reconsideration representations specifically suggests two failures of procedural fairness – failure accurately to record evidence and failure to give accurate reasons. It outlines details of evidence said to have been given by the Applicant and by other witnesses and seeks to suggest that these reflect a more accurate picture than evidence as outlined in the Panel decision.

Response from the Secretary of State

11. The Secretary of State (the Respondent), by e-mail dated 14 June 2022, indicated that no representations were made in response to the application, nor to the further representations submitted.

Current parole review

12. The Panel considered a dossier of 1104 pages and, in the template box, indicated that it had not received "Additional pages after the hearing." It took oral evidence from the Applicant, his Prison Community Manager (POM) and his Community Offender Manager (COM). It recorded a significant criminal record including an earlier sentence of 4 years' imprisonment for sexual and violence offences and that he had a poor response to supervision and trust in the community. A 2015 release had been terminated in less than a week when Police had been called to Approved Premises to deal with allegedly aggressive and violent behaviour. Although previously, he had not completed work to address his sexual offending behaviour, since recall he had completed RESOLVE (a training course addressing the tendency to use violence). His behaviour, however, was said often to be poor although "more recently" there had been an improvement in his behaviour, attaining enhanced status and recategorization to Category B to C whilst declining to undertake risk reduction work in prison "seeing no benefit in doing so." Professionals offered no support for release and despite professionals continuing to suggest that he should undertake risk focussed intentions, the Applicant had denied he had any risk factors,

stated he would not be a risk of serious harm if released and made it clear he would not engage in interventions in the community.

13. In analysing manageability of future risk, the Panel indicated lack of progress in addressing all areas of risk through accredited interventions and the view of professionals that he had limited insight. It summarised the evidence of the COM to include a view that risks remained outstanding, and that core risk-reduction work needed to be completed and that in the absence of clear evidence of internal strengths the Risk Management Plan (RMP) would be reliant on external controls. At that stage no place had been agreed for a place in Approved Premises and, at best, should be available within 12 weeks of release being directed but, after a maximum there of 8 weeks, "move-on" plans remained unclear and he had indicated that, even if available, he could not be compelled to undertake appropriate interventions. He continued to pose a significant risk.
14. In its conclusion, the Panel indicated that it was concerned with a risk period until the SED (Sentence Expiry Date), that it had considered "all available evidence" and that the legal representative had "*submitted that (the Applicant) met the test for release*". It stated it had given the Applicant credit for "*recent more stable behaviour*" and improved compliance, "*if less than full engagement*", in custody but emphasised the views of professionals that he had not addressed all his risks, in particular sexual offending or behaviours within intimate relationships, and required work to ensure manageability of problematic personality traits. It found that his risks of further offending were directly linked to unaddressed risk factors and that the test for release was not met.

The Relevant Law

15. 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.
16. 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".

17. 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.

18. 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.

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 and heard detailed evidence gave a clear and reasoned decision on that basis, and adopted a correct test for its decision. The supplementary submissions include an outline of some evidence said to support release. Reconsideration is not a review of evidence and, so long as the RAP is satisfied, which it is, that the decision provides a fair overview of evidence, there can be no reconsideration on that basis.

Procedural Unfairness

21. The issue of procedural unfairness provides more difficulty. The template sections of the decision indicate that no additional papers were received after the hearing. There is a general statement that all available evidence had been considered but was no mention of any written submissions. Despite its being highly unlikely that a Panel, having specifically granted leave for written submissions, would have proceeded without sight of them, the RAP must proceed on the basis that the written submissions had not been considered and that the only post-evidence submissions on the Applicant's behalf were those made orally on the day, to which the written submissions were stated to be supplementary.

22. In the view of the RAP, the written submissions basically consist of emphasis on the assertion that the focus of the Panel's decision should be the Applicant's recent behaviour and conduct. It refers to evidence, including that of the Applicant, suggesting progress had been made. Submitting that the relevant test was risk to life and limb from which the public needed protection it concluded that such risk did

not exist, and that the Applicant met the test for release. On the separate issue as to whether further assessments might be required into management of personal conflict, it submitted that further assessments were not needed and that evidence of what was described as a sustained period of good behaviour was sufficient.

23. The RAP finds that what must be accepted as a failure to consider the written representations has not resulted in any injustice to the Applicant. The Chair's notes of evidence, although extremely concise, make reference to matters highlighted in the two Reconsideration submissions and, in terms, the salient points form part of the Panel's decision. Findings of fact and conclusions to be drawn from them are matters for the Panel and do not form part of issues of procedural unfairness. The RAP finds that the Panel's decision reflects both a proper consideration of the evidence given and to be properly justified by it.

24. The RAP similarly does not accept the submission that the Panel ought to have considered a PNA, PRA or other similar investigation to enable it to make a decision on risk in circumstances where the COM had agreed that he could not make a considered view as to matters such as imminence, the formal identification of risk and the benefit to be gained from further programmes. In the written submissions, the Legal Representative had specifically suggested that further assessments were unnecessary. In any event, it is a matter specifically for the Panel to decide whether, in order to make a decision on a review it is necessary to seek additional information. In the view of the RAP the Panel had ample evidence upon which to make its decision.

Decision

25. For the reasons I have given, I do not consider that the Panel's decision was irrational or procedurally unfair and accordingly the application for reconsideration is refused.

Edward Slinger
29 June 2022.