

[2022] PBRA 85

Application for Reconsideration by Harrison

Application

1. This is an Application (the Application) by Harrison (the Applicant) for reconsideration of a decision by a Panel of the Parole Board not to direct his release dated 7 June 2022. The decision was made following the oral hearing of the Applicant's extended sentence early release review conducted on 6 June 2022.
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases on the basis that the decision is (a) irrational or (b) procedurally unfair.
3. I have considered the Application on the papers. These comprise: the Application, which is in writing with detailed representations; the Decision dated 7 June 2022; an e-mail exchange between the Applicant's legal representative and his Community Offender Manager on 9 June 2022; an email from the Public Protection Casework Section on behalf of the Secretary of State dated 30 June 2022 and the Case Dossier of 300 pages ending with the Decision.

Background

4. On 5 November 2018, the Applicant received concurrent extended determinate sentences, each comprising 86 months' imprisonment and an extended licence period of 60 months, in respect of two counts of robbery (the index offences). He was sentenced to concurrent terms of 18 months' imprisonment for the associated offence of unlawful wounding and 6 months' imprisonment for an unrelated earlier assault occasioning actual bodily harm. He had pleaded guilty to the index offences and the unlawful wounding but not guilty to the assault occasioning actual bodily harm. At the same time, a suspended sentence imposed in June 2015 of 20 months' imprisonment for assault occasioning actual bodily harm was activated.
5. The index offences were committed on 18 September 2015 when the Applicant went to the home of the grandparents of a young woman who was known to him. He pulled a knife on her saying that he wanted gold from the address or he would stab her. When she protested he stabbed her in the buttock. He dragged her by the hair into her grandparents' bedroom where he stabbed her



again. He then stole items of jewellery, ripping gold chains from the grandparents' necks and causing the grandfather to fall to the floor with resultant grazing and bruising.

6. In his evidence at the 6 June 2022 hearing, the Applicant said that the young woman had herself been involved in the robberies and that she had "*set it all up*". There was evidence that after the incident the Applicant sent the young woman messages demanding money which were accompanied by photographs of him holding a gun.
7. The assaults occasioning actual bodily harm had been committed on two different occasions in 2014. The victim of one of these was the Applicant's then partner who received hospital treatment for her injuries and whose daughter had been present when she was attacked.
8. The Applicant was aged 22 at the time of the index offences and had other previous convictions dating from 2007. These included assaulting a police constable, criminal damage, aggravated vehicle taking, robbery, kidnapping and assault occasioning actual bodily harm. On 5 December 2019 he was sentenced to 18 months imprisonment for an affray committed on 21 April 2017 whilst he was in custody. The victim was another prisoner.
9. The Parole Board panel which considered the Applicant's case at the Parole Eligibility stage of the current sentence by way of an oral hearing on 9 March 2021 concluded that the protection of the public from serious harm did not require him to be detained. At that panel's direction, he was released on 18 May 2021 to reside initially at designated Probation Service Approved Premises.
10. The Applicant had not completed any accredited work prior to that hearing in order to address his offending behaviour. It was the view of all the professionals involved in the case that his risks could only be safely managed on the basis of completing substantial accredited work to address his propensity for violence and his lack of victim empathy. Taking into account a reported significant improvement in the Applicant's behaviour while in the Social Responsibility Unit at the prison where he was located, the 2021 panel concluded that such further work could safely be achieved by undertaking the RESOLVE Programme in the community as part of the risk management plan.
11. Reports confirmed that the Applicant actively participated in the RESOLVE Programme with positive feedback and that his behaviour and general engagement with professionals had been positive. There were plans for him to engage with the interventions officer using content from the Building Better Relationships Programme to address any risk of intimate partner violence.
12. On 27 July 2021, the Applicant was issued with a formal warning for breaching the condition of his licence forbidding him to enter a designated exclusion zone unless authorised to do so. He was a passenger in a car which had been within the zone for no longer than 14 minutes. Initially, the Applicant declined to provide more than the driver's first name. However, at the 6 June 2022 hearing his COM confirmed that he told her he had been with his cousin and her partner,



had given her the number of the partner whom the COM then contacted and that the details were verified.

13. Problems and delays were encountered in securing suitable move-on accommodation. The Applicant refused to live in anywhere that was shared and made threats to kill himself and to access drugs for that purpose if he were forced to stay at the Approved Premises beyond 18 August 2021. There was a history of attempted suicide and on one occasion in custody it had been necessary to resuscitate him. As a consequence of these threats, a decision was made to withdraw the Approved Premises place and the local council refused to accept him.
14. Alternative addresses provided by the Applicant were deemed to be unsuitable and as he was no longer able to reside in the Approved Premises the Probation Service decided that his risk was unmanageable. His recall was authorised on 10 August 2021 and his licence was revoked on the grounds that he had breached the conditions (a) to be of good behaviour and not to undermine the purpose of the licence period, and (b) to reside permanently at an address approved by the supervising officer and obtain the prior permission of the supervising officer for any stay of one or more nights at a different address.
15. In his evidence to the panel, the Applicant said he not been aware that his licence had been revoked until he heard that police were to arrest him. At that point, he made an impulsive decision to disconnect his trail tag and abscond. The Applicant remained unlawfully at large until his arrest and return to custody on 19 November 2021 after being spotted by police in a public shopping area and running away. He claimed to have been living with family members in the meantime, in particular helping them with problems arising from his mother being unwell and to have been frightened of returning to prison.
16. Since his return to prison, the Applicant has not been given the opportunity to undertake any accredited risk-related work, despite reportedly showing a willingness to do so. However, he did complete in-cell work on drug misuse and conflict resolution. The Applicant has maintained family ties. He planned to live with his father should no other suitable accommodation be found and to work in the father's jewellery business. The COM considered his father to be a positive influence.
17. The Applicant's case was declined by the prison Mental Health In-reach Service but at the time of his hearing on 6 June 2022 he was undergoing assessment for mentalisation-based therapy. In its Decision the panel accepted that the Applicant's behaviour in custody had been relatively good. The COM confirmed that there had been no evidence from the police or any other source that the Applicant had engaged in offending or associating with negative peers when he was in the community on licence or when unlawfully at large.

Request for Reconsideration



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18. The Application for Reconsideration is dated 27 June 2022 and contains detailed representations by the Applicant's Solicitors. The reasons for revoking the Applicant's licence and to recall him are not challenged.
19. It is submitted under **Ground 1** that the Decision is irrational in concluding that the Applicant failed to provide details of who he was with, beyond their first name, when he breached the exclusion zone condition and that this had been an attempt to mitigate a breach which was intentional. It is submitted that the Decision failed to properly record the evidence of the COM which corroborated that of the Applicant which was that he had provided her with sufficient information to verify who they were.
20. It is further submitted under **Ground 2** that it was irrational for the Panel to have concluded that the Applicant's failure to be open with the COM (when in fact he had been) was a reason to be concerned about his activity during the period he was unlawfully at large. It is also submitted that it was irrational for the Panel to have considered that the lack of evidence of re-offending during that period was of little reassurance because of the conclusion it had reached about his lack of openness. The panel had *"noted with concern that [the Applicant] had not been open with (sic) around his associates on the occasion of the breach of an exclusion zone, which is a serious matter of itself and indicates the possibility that he was not open about his associates and other risk related issues during his time on licence and when unlawfully at large"*.
21. Under **Ground 3** it is submitted that the panel failed to justify its decision in the light of the evidence and the test for release, including the previous panel's reasons. It is argued that the current panel disregarded the evidence of both the POM and COM about the Applicant's reflection and excellent custodial conduct including his avoidance of risky situations. The submissions accordingly challenge the conclusion that the Applicant was unable at the hearing to demonstrate more than minimal insight and that there was insufficient evidence that the Applicant would be willing or able to comply with the risk management plan.
22. It is further submitted that the Decision was procedurally unfair because the Panel did not challenge the Applicant or the COM at the hearing on the issue of the Applicant mitigating (or minimising) the exclusion zone breach which it went on to use as a factor in its reasons for concluding that his risk could not be safely managed in the community.
23. The 30 June 2022 email from PPCS confirmed on behalf of the Secretary of State that he does not wish to make any representations in response to the Application.

Current Parole Review



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24. The Applicant's case was referred to the Parole Board by the Secretary of State to decide whether to direct his release following the revocation of his licence and recall to custody.
25. At the hearing, the Panel considered a dossier running to 285 pages. It included reports by the Applicant's Community Offender Manager (COM) and the prison Security Department. The COM report referred to information provided by the Prison Offender Manager (POM) which included both positive and negative C-Nomis entries. There had been no proven adjudications. The COM concluded that the Applicant had reflected on his actions and decision making and expressed the view that he would comply with a further period of licence if re-released. Her report contained an updated resettlement and risk management plan and confirmed that a place had been secured at identified Probation Approved Premises.
26. Oral evidence was given by the POM, by the COM, by the Interventions Officer within the IRiS Integrated Management Team and by the Applicant himself. The COM and the POM recommended release. The COM confirmed the risk management plan proposed by her which provided for a period in Probation Approved Premises. The Applicant would be required to undertake consolidation work in the community in respect of generalised violence and new work in respect of violence within relationships. The POM recommended release on the same basis.
27. It was common ground that there were no formal programmes identified as suitable and available for the Applicant to undertake in custody.
28. The Panel expressly had regard to what it referred to as the Applicant's "*relatively good behaviour*" in prison during the 12 months prior to his initial release and since recall, to the lack of proven violent behaviour since 2019, and to his engagement with one-to-one work, both in the community and in custody up to the present time.

The Relevant Law

29. The Decision Letter correctly sets out the test for release save that it refers to a defined risk period when this is not relevant to the test.

Parole Board Rules 2019

30. Under Rule 28(1) of the Parole Board Rules 2019, the only type 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)).

Procedural unfairness

31. The issue to be decided under this ground would be whether there is evidence that the correct process was not followed either in the application of the Parole Board Rules or in the fair conduct of the hearing.

Irrationality

32. 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,

33. *“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.”*

34. This test had been earlier 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 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 proceedings demonstrates that the same test is to be applied.

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

36. The importance of giving adequate reasons in Parole Board decisions has been made clear in two High Court cases. In **Wells [2019] EWHC 2710 (Admin)** it was suggested that, rather than ask ‘was the decision being considered irrational’, the better approach is to test the decision maker’s ultimate conclusions against all the evidence received and ask whether the conclusions reached can be safely justified on the basis of that evidence, while giving due deference to the panel’s experience and expertise.

37. Panels of the Board are wholly independent and are not obliged to adopt the opinions or recommendations of professional witnesses. A panel’s duty is to make its own risk assessment and to evaluate the likely effectiveness of any proposed risk management plan. That will require a panel to test and assess the evidence and decide what evidence it accepts and what evidence it rejects. Once that stage has been reached, following the guidance provided by cases such as **Wells** and also **Stokes [2020] EWHC 1885 (Admin)**, a panel should



explain in its reasons whether or not it is going to follow or depart from the recommendations of professional witnesses.

38. It follows that, in reaching a decision about irrationality on this Application, I am required to decide first, whether I am satisfied that the conclusions reached by the Panel were justified by the evidence and second, whether I am satisfied that the conclusions are adequately and sufficiently explained.
39. In considering the amount of detail needed to be included in a decision letter, there has been guidance from the High Court, in **Oyston [2000] PLR 45**. At paragraph 47 Lord Bingham said *"It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to require elaborate or impeccable standards of draftsmanship."*

Discussion

40. The Applicant submits that the Decision was irrational on the basis set out in paragraphs 19 to 21 above.
41. Applying the strict test set out in established case law, I have concluded that, on the basis of all the evidence before it, the panel's Decision was irrational.
42. There was unanimous support by the COM and the POM for release. The recommendations of professional witnesses do not bind a panel. They should be taken into account, but a panel is entitled to reach its own conclusions on all the evidence before it.
43. However, in this case the panel failed to acknowledge the evidence of the COM which clearly supported the Applicant's own account of his exclusion zone breach. It then used the resulting erroneous conclusion that the Applicant had not been open about his associates on that occasion as an emphasised justification for deciding that the Applicant's continued detention was necessary for the protection of the public.
44. The panel also applied what it wrongly concluded had been the Applicant's lack of openness about his associates when breaching the exclusion zone to expressly minimise any reassurance which might be derived from the lack of evidence from the police or any other source that he had offended or associated with negative peers when either on licence or unlawfully at large.
45. The Applicant's submission of procedural unfairness is set out in Paragraph 22 above.



46. In the light of the importance which the panel were to attach both to its faulty conclusion about the exclusion breach and to the Applicant's related subsequent conduct, fairness dictated that it should have explored this further with the Applicant himself. It was a core element in its decision when balancing the positive and negative aspects of the Applicant's thinking and conduct.
47. The information before the Panel at the conclusion of the hearing was accordingly inadequate to enable a fair decision to be made.

Decision

48. Based on the evidence which was before the Panel and applying the test set out in case law and the current Parole Board Reconsideration Guidelines, I find that the decision not to direct the Applicant's release was both irrational and procedurally unfair.
49. The Panel's decision was contrary to the evidence in respect of a material particular. The Panel failed to follow a fair procedure, restricting its ability to make a judgment on all the facts, and specifically failed to pursue an essential line of enquiry in respect of the Applicant's exclusion zone breach and issues arising from it.
50. The Application for Reconsideration is accordingly granted and I make the following further directions.

HH Judge Graham White
14 July 2022

