

OFFICIAL-SENSITIVE**[2023] PBRA 156****Application for Reconsideration by Harrison****Application**

1. This is an application by Harrison (the Applicant) for reconsideration of a decision of the Parole Board dated 26 July 2023 following an oral hearing refusing his application for release and declining to recommend to the Secretary of State that he should be transferred to open conditions.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the Parole Board Rules) provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair.
3. I have considered the application on the papers. These are: the application, the decision letter issued by the Parole Board and the dossier.

Background

4. On 4 December 2014 the Applicant was sentenced to life imprisonment for an offence of attempted murder. The minimum term to serve before an application for parole could be considered was set at seven years and seven months.

Request for Reconsideration

5. The application for reconsideration is dated 15 August 2023 and is made on the basis that the decision is irrational, and the hearing was procedurally unfair. It is submitted in brief that the decision was irrational and unfair as the Panel disagreed with the recommendations of the professional witnesses without having, or giving, proper reasons for doing so.

Current parole review

6. This was the first parole review since the Applicant's sentence.

The Relevant Law

7. The panel correctly sets out in its decision letter dated 26 July 2023 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

Parole Board Rules 2019 (as amended)

8. Under Rule 28(1) of the Parole Board Rules 2019 the only types of decisions which are eligible for reconsideration are those concerning whether the prisoner is or is not suitable for release on licence.
9. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28.

Irrationality

10. 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."

11. 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.

Procedural unfairness

12. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result. These issues (which focus on how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.
13. In summary an Applicant seeking to complain of procedural unfairness under Rule 28 must satisfy me that either:
 - (a) express procedures laid down by law were not followed in the making of the relevant decision;
 - (b) they were not given a fair hearing;
 - (c) they were not properly informed of the case against them;
 - (d) they were prevented from putting their case properly; and/or
 - (e) the panel was not impartial.
14. The overriding objective is to ensure that the Applicant's case was dealt with justly.

The reply on behalf of the Secretary of State (the Respondent)

15. The Respondent has made no representations in response to this application.

Discussion

16. The essence of this application is set out in paragraph 63 of the application where it is said: *"It is therefore our overall submission that the panel's decision in this case has been entirely irrational. Evidence has been ignored that would amount to procedural unfairness and there are entirely insufficient reasons given to refuse the professional assessments of so many witnesses."*
17. While I understand the basis of the submission that the decision is irrational, I do not consider that there is any basis for the submission that the decision was procedurally unfair in the context of what is meant by that term in Paragraph 28 of the Parole Board Rules as explained in paragraph 13 above. I have therefore considered the application on the basis of irrationality. If, contrary to my view, there is a basis for suggesting that there was procedural unfairness that does not add to the submission that the decision was irrational.
18. The High Court has made it clear in its decisions that the Board is entitled to disagree with the views of the professionals expressed during the hearing. The test for release is only met if the panel *"is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined"*. It is not the professionals that have to be satisfied but the panel. If the panel are not so satisfied then they must refuse the application. Further the panel have had the opportunity to see and assess the witnesses. They have been able to question them and make up their own minds as to the validity of their views. That should not be underestimated and has to be given significant weight in deciding whether a decision is irrational.
19. The High Court has made it clear where a panel disagrees with the evidence of the professionals the panel must make it clear in its decision letter the reasons that it has disagreed with the professionals. A prisoner is entitled to know why their application for parole has been refused. This does not mean that the decision letter needs to deal in detail with every aspect of the evidence, but the prisoner needs to have sufficient detail to understand why the decision has been made. Where a panel disagrees with the evidence of the professionals more detail is likely to be required to enable the decision to be understood.
20. In relation to the application to release, the panel did not disagree with the evidence of all the professionals. The two Community Offender Managers (COM's) who gave evidence were of the opinion that further testing was required before it would be safe to release the Applicant. Unlike the panel, the COM's believed that that testing could be carried out in open conditions, but they nevertheless did not recommend release. Similarly, the prison psychologist considered that further testing in open conditions was required before the Applicant could be safely released.
21. The panel were perfectly entitled to disagree with those professionals who recommended release. They had reasons for that which having read the decision letter

with care they made clear. The panel took into account the nature of the attempted murder and the previous history of violence in intimate relationships. Everyone accepted that the Applicant presented a risk of intimate partner violence in the community. The panel assessed that that would rise to high in the event that the Applicant entered an intimate partner relationship.

22. Those that recommended release believed there would be warning signs before any violence happened so that it could be prevented if the Applicant was in an intimate partner relationship. The panel did not agree as they considered that the early warning would depend at least to some extent on the Applicant's self report and the panel did not consider that that could be relied on. The panel considered that the Applicant's failure to report to his therapist and his COM his developing relationship with a female prisoner was an indication that the Applicant might not make early disclosure if in a similar situation either if released or in open conditions. The panel felt that they needed to be confident that any increase in risk would be recognised in order to ensure the protection of the public. They were entitled to take that view. The panel also took into account that the Applicant had been deceptive in his dealings with the authorities in the past. For example, he admitted that he had exaggerated the symptoms of his mental illness at the time of his initial trial. The panel were entitled to take that into account.
23. The panel did not consider the family support to be protective, as some of the professionals did, because of the involvement of an uncle who had been abusive to him in the past. Those supporting release had considered the family support to be protective but had not been aware of the uncle's involvement with the Applicant. They also were not aware of the nature of the correspondence with the female prisoner in reaching their views. The panel considered this to be important as they were entitled to.
24. The panel indicated that they had not considered the risk management plan in detail. The reason for that is that whatever the risk management plan it would have to rely at least in part on internal controls and the panel were not satisfied that the Applicant appreciated the risk that he presented to intimate partners. In those circumstances their failure to consider the risk management plan in detail does not affect the rationality of their decision as it could make no difference.
25. As set out in Rule 28 of the Parole Board Rules (as amended), a failure to recommend open conditions is not eligible for reconsideration. I shall not therefore go on to consider the Panel's refusal to recommend a move to open conditions in detail save to say that they seem to me to have given adequate reasons for not making a recommendation and the decision cannot be said to be irrational.
26. Having considered the decision letter in detail and the criticisms made of it in the application for reconsideration, I consider that the panel have given adequate reasons for their decision and that the decision is rational on a proper consideration of the letter. I also do not consider that the suggestion that the panel did not consider all the evidence is supported by the decision letter. It is more that the Applicant disagrees with the conclusions that the panel reached on the evidence.

Decision

27. Accordingly for the reasons that I have given the application for reconsideration is refused.

Sir John Saunders
11 September 2023