

**[2023] PBRA 29**

## Application for Reconsideration by Laws

### Application

1. This is an application by Laws (the Applicant) for reconsideration of a decision made by a duty member dated the 16 January 2023 not to terminate the licence imposed upon him in connection with a sentence of imprisonment for public protection (IPP).
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)) either 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:
  - a) The decision dated the 16 January 2023;
  - b) The application produced by the Applicant's legal representative dated the 7 February 2023; and
  - c) The IPP licence termination dossier numbered to page 107.

### Background

4. The Applicant received an IPP sentence on the 10 February 2006 following his conviction for two offences of causing/inciting a female child under the age of 16 to engage in sexual activity. He received a concurrent determinate sentence of three years for an offence of meeting or communicating with a female child under the age of 16 following sexual grooming. The sentencing court set a minimum term of 18 months under the IPP sentence which meant that the Applicant became eligible to be considered for release by the Parole Board on the 27 April 2007.
5. On the 24 February 2012, the Applicant was released on the direction of the Parole Board. He was recalled to custody on the 7 October 2015, spending over three and a half years on licence.
6. He was next released on the 6 November 2019 on the direction of the Parole Board. This was following the third review by the Parole Board after his recall to custody in 2015. The first two reviews had been concluded on the papers



because the Applicant had been angry about his recall and he did not feel in the right frame of mind to engage with the Parole Board or with Probation.

7. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) on the 10 January 2023 under section 31A of the Crime (Sentences) Act 1997 to consider whether or not it would be appropriate to terminate his licence. At this point the Applicant had been on licence in the community for over three years, although over ten years had passed since his initial release in 2012.
8. A report dated the 8 November 2022 was provided by Probation as a part of the application to terminate the IPP licence. In that report it was noted that the Applicant lacked trust in Probation. The Probation report outlined the Applicant's progress in the community. He had secured periods of employment (although unemployed at the time of the application), had engaged with support in the community and had maintained his own accommodation. The report identified work that the Applicant would be required to complete on licence to reduce his risk to low, although it was indicated that the lack of trust he had in Probation may present difficulties with this. The Applicant outlined to Probation that if his IPP licence was terminated he would continue to have support in the community. The Probation report noted that the Applicant would still have contact with his Police Protection Officer if the IPP licence was terminated. The Probation report concluded that the IPP licence should not be terminated because there remained outstanding sentence plan objectives for the Applicant to complete.
9. In his legal representations dated the 9 January 2023, the Applicant provided reasoning as to why his IPP licence should be terminated and asked, if the termination could not be directed on the papers, that the case should proceed to an oral hearing. The Applicant detailed the background to his offending, including the matter for which he received the IPP sentence. He outlined his view of the past recall and submitted that he had not committed further offences during either period of release on licence. The Applicant also detailed the efforts he had made to address the identified risk factors in this case, including an attempt to engage with a service called Talking Therapies in March 2021. However, he states that they declined to work with him following advice from Probation that he would present a risk to others. I note that this is not an entirely accurate reflection of the letter supplied by the Applicant, dated the 22 March 2021, which actually stated that his level of risk meant that he should receive '*specialist services such as Pathways*' and that he should speak with Probation about what might be available to him.
10. The Applicant noted the sentencing planning objectives proposed in the Probation report but he said that no proper reassessment since release had been undertaken to establish if this work remained necessary or whether it had been covered in other ways. He submitted that despite being on licence for over three years there had been no attempt from Probation to complete work with him. I note that this is not entirely accurate because the Applicant did engage with 1:1 work with a psychologist but due to his employment at the time he had not been able to engage effectively and was discharged. Nevertheless, the Applicant submitted that he had not been offered anything



further by Probation.

11. In a decision dated the 16 January 2023, a duty member of the Parole Board refused to terminate the IPP licence and was not persuaded, in the alternative, to vary the Applicant's licence conditions which could include suspending the supervision elements of the licence.
12. The duty member had sight of the Applicant's legal representations and detailed the history of the case, including the progress made by the Applicant since his release in 2019. The duty member noted the sentence planning objectives identified in the Probation report, the assessed level of risk in this case and that Probation did not support the Applicant's application.
13. In deciding not to terminate the IPP licence, the duty member accepted the recommendation from Probation and determined that the licence should remain in place. The duty member then set out the Reconsideration process as outlined within the Parole Board Rules.

### **Request for Reconsideration**

14. In his application for reconsideration, the Applicant submits that the decision was irrational because:
  - The decision by the duty member didn't address the substance of the legal representations. There was no evidence that they were considered other than it was noted they were included in the dossier;
  - The duty member erred in giving insufficient or no weight to matters that they should have considered and undue weight to the professional opinion of the Probation Officer in the face of contested evidence; and
  - The duty member appeared to have simply adopted at face value the opinion of the Probation Officer.

### **The Relevant Law**

#### *Crime (Sentences) Act 1997*

15. Section 31A of the Crime (Sentences) Act 1997 provides the process for consideration of licences by the Parole Board which relate to '*preventative sentences*' after the '*qualifying period*' has passed.
16. The '*qualifying period*' is ten years beginning with the date of release on licence, regardless of whether the prisoner has subsequently been recalled to prison (section 31A(5)).
17. A '*preventative sentence*' is a sentence of imprisonment for public protection or a sentence of detention for public protection (including such a sentence of imprisonment or detention in a young offender institution or detention passed as a result of section 219 or 221 of the Armed Forces Act 2006) (section 31A(5)).

18. If a prisoner has been released on licence (regardless of whether they have been subsequently recalled) and the qualifying period has expired and if Secretary of State has previously referred the case to the Parole Board, the case must be re-referred 12 months from the date of the previous determination (section 31A(3)).
19. The Parole Board shall direct the Secretary of State to make an order that the licence is to cease to have effect if it is satisfied that it is no longer necessary for the protection of the public that the licence should remain in force (section 31A(4)(a)).
20. If the prisoner is in prison having been recalled, the test is different. The Parole Board must decide whether it is not necessary for the protection of the public for the prisoner, when released, to be released on licence in respect of the preventative sentence or sentences (section 31A(4B)(b)(ii)).
21. If the Parole Board directs release under section 31A(4B)(ii), that release is unconditional (section 31A(4C)).

*Parole Board Rules 2019 (as amended)*

22. Rule 28(1) of the Parole Board Rules provides the types of decision which may be considered for reconsideration, including decisions made in response to a referral by the Secretary of State under section 31A of the 1997 Act (rule 31(6) or rule 31(6A)): specifically, a decision to terminate a licence or a decision to dismiss the Secretary of State's reference.
23. Decisions concerning preventative sentences (as defined in section 31A(5) of the 1997 Act) are eligible for reconsideration under rule 28(2).

*Irrationality*

24. 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."*

25. 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.

26. The application of this test has been confirmed in previous decisions on



applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

*Other*

27. 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 prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship."*

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

28. The Respondent has not submitted any representations.

### **Discussion**

29. Much of the content of the duty member's decision is descriptive. The reasoning not to terminate the IPP licence is very brief:

*"The duty member agrees that it remains necessary for the protection of the public that the IPP Licence remains in place. Nor does the panel agree to suspend supervision. Licence conditions are therefore unchanged."*

30. In my view, the key issue put forward in support of keeping the IPP licence in place was the identified need from Probation for further work to be completed in the community by the Applicant. The Applicant's position was that he had made good progress, had not reoffended and that nothing had been offered to him by Probation aside from the psychological 1:1 work.

31. The duty member's decision identifies the acceptance of the Probation view but does not provide any real explanation as to why that view is preferred to the view of the Applicant. I have no doubt that the duty member approached the decision made in this case sensibly and had a clear set of reasons in mind when reaching the decision not to terminate the IPP licence. However, it is difficult to establish that reasoning from the written determination.

### **Decision**

32. For the reasons I have given, applying the test as defined in case law, I find that the decision not to terminate the Applicant's licence to be irrational. The application is granted.

**Robert McKeon**  
**02 March 2023**