

[2023] PBRA 3

Application for Reconsideration by Latham

Application

1. This is an application by Latham (the Applicant) for reconsideration of a decision of a panel of the Parole Board made following an oral hearing on 6 September 2022. The written decision, dated 10 November 2022, set out the panel's decision not to direct the Applicant's release or recommend his progression to open conditions.
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.

Background

3. The Applicant was convicted of robbery and wounding with intent to cause grievous bodily harm, and on 7 July 2000 was given a discretionary life sentence with a tariff of five years, six months and three days. The victim of the robbery was a milkman who was working at the time of the attack. The Applicant threatened him with a screwdriver to force him to hand over the money he had collected, then stabbed him to the side of the head with the screwdriver, kicking and hitting him when he fell to the ground. The victim had been previously robbed by the Applicant, although the Applicant denied recognising him. The Applicant had a history of committing violent robberies using the threat of a weapon.
4. Whilst in prison, the Applicant absconded from a prison in the open estate whilst on day release. Whilst unlawfully at large, he committed three further robberies with the intention of obtaining money to move abroad. In those robberies he used a machete to open cash registers. For these offences, the Applicant received a further determinate sentence of eight years on 27 March 2013.
5. In 2017 the Applicant was released on licence, but recalled less than two months later following a breach of licence conditions and concerns about substance misuse. He was re-released in 2018, but whilst on licence committed a further offence of ABH, threatening behaviour with an offensive weapon, and criminal damage with threats to cause criminal damage in June 2019. The Applicant assaulted a male former friend of the Applicant and his partner by punching him and hitting him with a metal chain, in retaliation him having allegedly made threats to the Applicant's partner. On 13 August 2019 he was sentenced to an extended determinate sentence of three years custodial element and two years extended licence period.

6. The tariff of the Applicant's life sentence expired on 7 January 2006. He was aged 27 at the time of sentence, and is now aged 49.

Request for Reconsideration

7. The application for reconsideration is dated 16 November 2022.
8. The grounds for seeking a reconsideration are as follows:
 - **Irrationality** – the evidence considered by the panel was incomplete. It is submitted that these areas are directly relevant to risk and were challenged by the Applicant. The Applicant's legal representatives made written submissions on 19 October 2022 requesting that further information be asked of the Community Offender Manager and an update from Social Services be obtained before the panel made its decision. The panel declined to do so.
 - **Procedural unfairness** – the panel did not ensure that the required additional information regarding the risk management plan was provided before reaching its decision.

Current parole review

9. The Applicant's case was referred to the Parole Board on 8 January 2021. On 14 May 2021 a single member of the Parole Board directed it to oral hearing. On 3 August 2021 the hearing was deferred at the request of the Applicant following a deterioration in his mental health.
10. An oral hearing was held on 30 March 2022, over video link, with a three-member panel of an independent member, a psychiatrist member and a psychologist member. Limited evidence was taken in relation only to the Applicant's mental health and whether further assessment was required. Following a consultation with his legal representative, the Applicant requested an adjournment so that he could undergo a psychiatric assessment. The adjournment was agreed.
11. The oral hearing was reconvened on 6 September 2022. Two members (the independent member and the psychiatrist member) of the original panel returned, but the third was replaced by a different psychologist member. On the day before the hearing, the panel and parties were informed that a directed psychological addendum report could not be provided, and the psychologist witness could not attend the hearing. The Applicant however decided he wished to proceed with the hearing in the absence of the psychologist witness and the panel agreed.
12. Oral evidence was given by the psychiatrist who had assessed the Applicant, two Prison Offender Managers and the Applicant's Community Offender Manager. The Applicant also gave oral evidence to the panel. The Applicant was legally represented at both hearings. There was an observer from the Parole Board present at the hearing on 6 September 2022.
13. A dossier of 560 pages was considered before the hearing on 6 September 2022.

The dossier included the Trial Judge's Sentencing Remarks in relation to the index offences and the robberies committed in 2013, previous psychiatric and psychological reports, a psychological risk assessment undertaken in January 2022 and a psychiatric assessment undertaken in July 2022. Reports on the Applicant's custodial behaviour and progress were included, as were reports from his Community Offender Manager. Following the hearing, at the direction of the panel, a further 88 pages were added to the dossier, in the form of an updated report from the Community Offender Manager dated 10 October 2022, an updated OASys assessment and written legal representations dated 19 October 2022.

14. Following receipt of the additional material, the panel reached its decision and issued its decision letter.

The Relevant Law

15. **Rule 25** (decision by a panel at an oral hearing) applies to this case.
16. **Rule 28** (reconsideration of decisions) of the Parole Board Rules 2019 applies to this case.
17. 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."

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. This strict test for irrationality is not limited to decisions whether to release; it applies to all Parole Board decisions.

18. 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."*
19. Procedural unfairness has a similar meaning as procedural irregularity does in Judicial Review. It is for me to decide whether I consider the procedure adopted by the panel in conducting the Parole hearing was unfair to either of the parties.

Discussion

20. The Applicant relies on the same factors in relation to both grounds of this application.
21. **Irrationality** – the Applicant submits that, having directed further information from the Community Offender Manager following the hearing, the information that was received in the addendum report of 10 October 2022 was incomplete and it was irrational to proceed to make a decision in those circumstances. In support of that submission, the Applicant refers to the representations submitted on his behalf by his legal representatives, dated 19 October 2022, which ask the panel to direct further enquiry into the availability of alternative Approved Premise placements, and to await an update from Social Services in relation to expressed concerns about the Applicant’s relationship with and behaviour towards his partner’s daughter.

22. The panel’s directions following the oral hearing were as follows:

“To confirm if [the Applicant] has been accepted by an Approved Premises, if so, whether this is a conventional or PIPE AP, when this may be available, what support he would receive, and how long he may be allowed to reside there.

Confirmation of whether [the Applicant] has been or could be considered by any IIRMs service for additional support beyond that already identified by the OPD service, in light of the assessment and conclusions of [the assessing psychiatrist].

To confirm the evidential basis for all proposed licence conditions, particularly those relating to [the Applicant’s] partner’s child, following a review with social services.

To confirm if GPS monitoring would be applied on release, or or when Mr Latham moved on from an AP.”

23. I have read the response to those directions. The report of 10 October 2022 answered each of the questions posed in the directions. So far as the Approved Premises referral was concerned, the report confirmed it was a PIPE Approved Premises, and that the manager was “*minded to reject the referral*”. Therefore the level of support he would receive and how long he would be allowed to reside there became irrelevant.

24. So far as whether the Applicant would be able to receive support from any IIRMS service, the report clearly set out that “*the IIRMS service confirmed they cannot offer any additional support beyond that already identified by the OPD service*” despite the conclusions of the assessing psychiatrist.
25. Finally, the report set out the evidential basis for all proposed licence conditions. Those which related to the Applicant’s partner’s child were explained, with references to evidence, but with a caveat that the Community Offender Manager would further discuss the concerns with the child’s social worker on her return to the office from leave.
26. The additional information requested in the legal representations of 19 October 2022 falls into two categories – that which relates to where the Applicant would reside on release, and that which relates to risk of harm to the Applicant’s child.
27. Having considered the addendum report of 10 October 2022, the panel say the following at paragraph 3,9 of their written decision
- “The panel considered this plan to be limited and did not consider that it was currently able to manage the level of risk that [the Applicant] was assessed to pose. The panel did consider further legal representations to further adjourn the review for more clarification of where [the Applicant] may reside, but the panel concluded that it had sufficient information to reach a fair decision.”*
28. It is therefore evident that the panel had considered whether the additional clarification in relation to the Approved Premises placement would be necessary for it to reach a fair decision, and concluded that it was not. Where the Applicant would reside on release is of course only a part of the risk management plan. The panel would first assess the level and nature of risk posed by the Applicant, before deciding whether and how it could be safely managed on release.
29. Whilst the panel make no reference to having considered whether to await the outcome of further discussion between the Community Offender Manager and the Applicant’s partner’s child’s social worker, that in itself is not irrational or procedurally unfair if that area of risk is not of primary concern to the panel. If it were a secondary concern, then it would demand further exploration if the panel was satisfied that all primary concerns relating to risk were met.
30. It is clear from the written decision, that the panel found there was outstanding core risk reduction work following the commission of the 2019 violent offences, and that there were a number of areas of risk which were not manageable at that time if the Applicant’s release was directed. Paragraph 4.4 of the decision states:

“While there has been some evidence of increased stability in custody in the last year, the panel was concerned that [the Applicant] had not completed further accredited offending behaviour work to address or reduce his risks since his conviction for the recall offences, he continues to identify “subversive” influences that pose a threat to himself and his partner, he had a limited relationship with his current COM and a past pattern of poor compliance and engagement, he has limited plans for release and resettlement and there were limited plans available to manage him in the community. Those plans did not equate to the level of monitoring and support that [the assessing psychiatrist] had referenced. The panel also noted the assessment of the COM that [the Applicant] posed a potentially high and imminent risk of causing serious harm if released currently.”

31. In order for me to find that the panel’s decision was irrational, I would have to be satisfied that it *“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”*. The effect of the Applicant’s submission on irrationality is to suggest that by failing to obtain additional information about an alternative proposal for release address and additional information about the view of Social Services on licence conditions relating to his partner’s daughter, the panel’s decision is one that *“no sensible person who had applied his mind to the question to be decided could have arrived at it”*. The panel had a choice, when it received the addendum report of 10 October 2022, whether to direct that additional information. It is evident from the written decision that it considered whether there was sufficient information already before it to make its assessment of risk, and whether the additional information would be determinative or alter that assessment. Its decision not to delay the review by directing the additional information, which it had clearly concluded was unnecessary for its assessment, was not irrational and was entirely logical, particularly given its clearly expressed rationale.
32. **Procedural unfairness** – Having concluded as I have in paragraph 31 above, I have separately considered whether it was procedurally unfair to conclude the review and make a decision without obtaining the further information which was requested in the legal submissions of 19 October 2022.
33. The panel was entitled to refuse the request if it felt the additional information was unnecessary in order for it to be able to fairly and properly conclude its assessment of risk and apply the legal test to the Applicant’s application for release. The decision letter evidences that the panel considered the request and concluded that the information was not necessary. There is nothing within the procedure followed by the panel which was unfair.

Decision

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

Victoria Farmer
4 January 2023