

[2023] PBRA 38

## Application for Reconsideration by Goldspink

### Application

1. This is an application by Goldspink (the Applicant) for reconsideration of a decision of and oral hearing panel dated 16 January 2023 not to direct release.
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 dossier consisting of 650 pages, the oral hearing decision, the representations by the Applicant's legal adviser and the response by the Secretary of State.

### Background

4. The Applicant is serving an indeterminate sentence of imprisonment for public protection. The Applicant was sentenced in September 2006. The Applicant was 43 years old at the time of sentence. The applicant's tariff expired in June 2011. The Applicant was aged 60 at the time of the decision.
5. The Applicants index offences related to sexually assaulting 11 young males between the ages of 9 and 17. The offences occurred between the years 1990 and 2005.

### Request for Reconsideration

6. The application for reconsideration is dated 27 January 2023.
7. The grounds for seeking a reconsideration are set out below.

### Current parole review

8. The Applicant's case was referred by the Secretary of State to the Parole Board for review on 9 August 2021. The Parole Board were requested to consider whether the Applicant should be released. If the Applicant were not released the Parole Board were asked to consider whether a recommendation for a transfer to open conditions should be made.



9. The oral hearing was originally listed to be heard in August of 2022. The hearing was adjourned on that day at the request of the Applicants legal representative to enable further details and evidence to be secured. The hearing was rescheduled for January 2023 and was heard in January 2023.
10. The oral hearing panel consisted of an independent chair, accompanied by two independent members of the parole board. Evidence was received at the hearing from the applicants Prison Offender Manager, his Community Offender Manager, and two prison psychologists. The Applicant was legally represented at the hearing.

### **The Relevant Law**

11. The panel correctly sets out in its decision letter dated January 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*

12. Under Rule 28(1) of the Parole Board Rules 2019 the only kind 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)).
13. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**.

#### *Irrationality*

14. 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."*

15. 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.



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

#### *Procedural unfairness*

17. 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.

18. 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.

19. The overriding objective is to ensure that the Applicant's case was dealt with justly.

20. Justice must not only be done but be seen to be done and so procedural unfairness includes not only an unfairness of process, but also the perception of unfairness (for example, failure to deal with the arguments or evidence advanced in an appropriate manner or not at all).

21. 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.

22. 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.*"

23. Omitting to put information before a panel is not a ground for procedural unfairness, as has been confirmed in the decision on the previous reconsideration application in **Williams [2019] PBRA 7**. This is the case even where the information, had it been before the panel, would have been capable of altering its decision, or prompting the panel to take other steps such as putting the case off for an oral hearing where the new information and its effect on any risk assessment could be examined. This is because procedural unfairness under the Rules relates to the making of the decision by the Parole Board, and when making the decision the panel considered all the evidence that was before them. There was nothing to indicate that further evidence was available or



necessary, and so there was nothing to indicate that there was any procedural unfairness.

### **The reply on behalf of the Secretary of State**

24.The Secretary of State made no representations.

### **Grounds and Discussion**

*Ground 1 'The panel failed to address the fact that the prison had not fully responded to requests for further information.'*

25.This ground arises in circumstances where the oral hearing panel had made a request to the prison for further information about two issues. One related to a recent adjudication and the other related to allegations by two prisoners (recorded as B and C). Those representing the Applicant made a submission, before the panel hearing, arguing that the responses by the prison to the request for further information were inadequate and that the issues should be pursued further.

26.So far as the adjudication matter was concerned, the Applicant's concerns were substantially related to a dispute between the Applicant and the prison as to whether he was provided with the appropriate papers to mount an appeal against the adjudication. The Applicant's solicitors acknowledged that the Parole Board could not be involved in any internal dispute relating to an appealed adjudication. At the date of the Panel hearing the adjudication remained in place.

27.So far as the matters relating to prisoners B and C were concerned no further information beyond the recorded allegations was secured.

### **Discussion**

28.It is not uncommon in Parole Board hearings for a panel and the parties to be required to make assessments of evidence which has limitations. Security information creates particular difficulties in this regard. Prisons are often reluctant to provide detailed information, arguing that disclosure may compromise systems or individuals. Panels and prisoners are therefore often obliged to make a judgement upon the evidence presented and available. Panels are often reluctant to continue adjourning cases in the hope of securing information as this inevitably causes delay and may create an injustice so far as the prisoner is concerned. In my judgment the panel made every effort in this case to secure information. The panel were well aware of the limitations of the evidence and took account of its limitations in reaching their decision.

29.So far as the prison adjudication was concerned. The panel relied upon the undisputed fact that the Applicant had been in the cell of a vulnerable prisoner in breach of prison rules.

30.So far as "B and C" were concerned the panel again took account of the fact that two prisoners had made allegations of inappropriate sexual behaviour by



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the Applicant. The panel were aware that it was not possible to investigate the detail of these allegations. The panel therefore proceeded on the basis of the fact of an allegation being made and the fact that the allegations related to sexual misbehaviour, the panel made no factual finding as to the detail of the allegation. Whilst, in an ideal world, every piece of evidence would be before a panel, all parties are fully aware of the limitations of any adjudicating body in this regard.

31. In this case the panel acted reasonably fairly and proportionately in attempting to secure evidence. The panel were aware of the limitations of the evidence available to them. The panel, in my determination took account of those limitations. I therefore find no basis for arguing that their decision to proceed with this case was procedurally unfair.

*Ground 2 The panel could not rely on unsubstantiated allegations of low intelligence rating.'*

32. Solicitors acting on behalf of the Applicant, in their submission, have set out the legal position relating to the assessment of the detail of allegations by Parole Board panels in oral hearings. The Board publishes guidance in relation to this topic. In general terms the requirement is that any assessment be evidentially based, that a standard of proof is applied, and that the decision is explained.

## Discussion

33. So far as the prison adjudication mentioned above was concerned. The panel were fully entitled to rely upon the finding of the prison Governor and did so. The panel also had an obligation to consider any explanation given by the Applicant. I do not accept that the panel would have been entitled to relitigate the adjudication itself. The panel were entitled to draw fair and reasonable inferences from the facts of this adjudication as they found them.
34. So far as the B and C allegation were concerned the panel accepted that the only evidence that could be relied upon was the fact that allegations had been made and that they were associated with inappropriate sexual behaviour.

## Patterns of behaviour

35. In closing remarks at the conclusion of this oral hearing, the Applicant's solicitor submitted as follows;

*"The particular issue that arose in this case was that he had faced a number of unsubstantiated allegations of inappropriate behaviour to male prisoners over a number of years across the prison estate. These had occurred on an intermittent basis and covered a plethora of different circumstances ranging from the provision of vapes, over familiarity with younger inmates, allegations of minor contact or touching to allegations of sexual contact. It was not disputed that almost all allegations were based on "low intelligence "and unsupported by any independent evidence."*



36. The accepted position by the Applicant at the hearing, therefore, appeared to be that, over a number of years, allegations had been made of a similar nature. The allegations related to sexually inappropriate behaviour and what was described as 'grooming'.
37. The panel addressed these allegations. The panel acknowledged that it was not possible to adjudicate upon the detail of each individual allegation. The Parole Board guidance emanating from the decision in **Pearce [2022] EWCA Civ 4** was not therefore applicable. The panel did not seek to make findings of fact upon the detail of the individual allegations recorded over some years.
38. The panel in this case relied upon the fact that a large number of similar allegations from different sources (both prisoners and staff) had been recorded across the prison estate over a period of years.
39. In relying upon a pattern of behaviour, and the inferences to be drawn from such a pattern, the panel were clearly obliged to proceed cautiously. The safeguards which relate to the proof of individual allegations are also relevant to the assessment of a recorded pattern of behaviour.
40. In my determination the panel were obliged to consider issues such as;
- a) The source of the allegations - were they consistent?
  - b) Was there evidence of a source having a motive to act against a prisoner? In this context the number and period of time of the recording of allegations is of importance. Allegations ranging over years which have a consistent theme are likely to be more reliable than a single series of allegations over a short time.
  - c) The context of the allegations - did they accord with known previous behaviour of the prisoner?
  - d) What was the prisoners response? Was it credible? Was there any corroborative similar behaviour?
41. It is clear from the written decision that the panel addressed these factors. The allegations were from multiple sources. They were over a considerable period of time (indicating an unlikelihood of grudges or a motive against the prisoner by a single prisoner, group of prisoners or staff member). The complaints were also consistent with the behaviour associated with the index offences.
42. So far as corroboration was concerned the panel indicated that it made findings in relation to the adjudication incident. The panel found that the Applicant was in the cell of a vulnerable prisoner with the door closed. This was a breach of prison rules, however it was of far more relevance that the Applicant was patently aware of the concerns relating to secretive and inappropriate behaviour. The inference drawn by the panel was that the facts of the adjudication, and the inferences to be drawn from the behaviour, were supportive of the concerns about inappropriate behaviour with vulnerable and young individuals generally. The panel were, in my determination, entitled to consider the facts associated with the adjudication, to draw appropriate inferences, and to apply those findings to corroborate the inferences to be drawn from the pattern of behaviour recorded by the prison over many years.





43. So far as the response by the Applicant was concerned the panel was able to make an assessment themselves of the credibility of the Applicant. They found that he was evasive and reluctant to be forthright and honest in his response to factual questioning in the hearing itself. The panel were therefore entitled to conclude that the Applicant was an unreliable reporter and accordingly reject the Applicant's Final view that the allegations (against him) were consistently untrue and motivated by a desire on the part of those making the reports to act against his interests.
44. Of importance is the fact that the panel's role was risk assessment. The panel was obliged to exercise its judgement upon the totality of the evidence, however the panel was not required to function as a criminal court and to apply similar evidential rules and standards of proof.
45. The psychology witnesses in this case also supported the view of the panel that the assessment of the risk posed by the Applicant would necessarily involve a cautious assessment of the substantial amount of evidence of a pattern of behaviour alleged against the Applicant.
46. Taking all these matters into account, I determine that the panel's decision was both procedurally correct and did not indicate irrationality as defined above.

### Ground 3 *Honesty – Not honest in financial dealings*

#### **Discussion**

47. I have addressed this ground in comments above. The panel considered the evidence, both written and oral and reached a conclusion as to the honesty of the Applicant. The panel made clear that they took the view that the Applicant had not, in their determination, been open and honest in his replies to questioning by them. It was also noted that other professionals had concerns about the Applicant's honesty. The panel made a finding in this regard and set out their reasoning in the decision. I find no irrationality or procedural unfairness in this finding.

### Ground 4 *"The panel failed to acknowledge risk reduction work and risk Management Plans."*

#### **Discussion**

48. Within the oral hearing decision, the panel acknowledged that the Applicant had completed some risk reduction program work. The panel also addressed the Risk Management Plan. In particular the proposed licence conditions were set out and discussed within the decision. However, the panel clearly set out the reasons for their decision. The panel noted that although some (risk reduction) work had been undertaken, no work had been undertaken in relation to a sexual interest in children or in relation to sexual offending.



49. The panel also referenced the concerns that professionals had expressed and their view that the Applicants risk could not be safely managed in the community. The panel indicated that they determined that the Applicant's relationship with his probation officer was not, in their determination, sufficiently or reliably strong enough to enable effective supervision of the Applicants risk in the community.

50. I therefore reject the submission that the panel failed to acknowledge the Applicants risk reduction work or the risk management plan. It was clear from the decision that the panel had considered these factors but had concluded that the Applicants risk could not be managed safely in the community and concluded that therefore he did not meet the statutory test for release.

## **Decision**

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

**HH S Dawson**  
**13 March 2023**

