

[2024] PBRA 109

## Application for Reconsideration by Dott

### Application

1. This is an application by Mr Dott ('the Applicant') for reconsideration of the decision of a panel of the Parole Board ('the Board') who on 22 April 2024, after an oral hearing on 26 March 2024, issued a decision not to direct his release on licence.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) provides that applications for reconsideration may be made, either by the prisoner or by the Secretary of State for Justice, in eligible cases (as specified in rule 28(2)). The Secretary of State is the Respondent to any application by the prisoner and will be referred to as such in this decision.
3. An application may be made on the ground (a) that the decision contains an error of law and/or (b) that it is irrational and/or (c) that it is procedurally unfair. This is an eligible case, and the application was made within the prescribed time limit.
4. I am one of the members of the Board who are authorised to make decisions on reconsideration applications, and this case has been allocated to me. I have considered the application on the papers. The documents which have been provided to me and which I have considered are:
  - (a) The dossier of papers provided by the Respondent, which now runs to 500 numbered pages including the panel's decision letter;
  - (b) The application for reconsideration, which includes detailed representations by the Applicant's legal representative;
  - (c) A letter from the Applicant's Community Offender Manager ('COM') supporting the application; and
  - (d) An e-mail from the Public Protection Casework Section ('PPCS') of the Ministry of Justice on behalf of the Respondent, stating that he does not wish to submit any representations in response to the application.

### Background and history of the case

5. The Applicant is aged 60. He is serving a life sentence for murder. The sentence was imposed in March 1999 when he was aged 35. His minimum term ('tariff') was set at 14 years less the time which he had served on remand. His tariff expired in February



2012, and he was released on licence in March 2020. However, he was recalled to prison in June 2021 and remains in custody.

6. Before committing the murder, he had accumulated a substantial criminal record which included 4 convictions for assault. He had not had any legitimate employment and lived on the proceeds of crime. He has been assessed as having a high level of psychopathic personality traits.
7. He had three long term intimate relationships and many '*one night stands*' with women. The victim of the murder had been his last intimate partner. They had been married in 1995 and the murder appears to have taken place at the end of June 1996. While the Applicant was in prison his wife was in a relationship with another man, but at the time of the murder he had been released from prison and they were together again at their address, where the murder evidently took place. It was not discovered until 6 months later when the victim's body was found in the bath by intruders. Decomposition meant that it was not possible to establish the cause of death. The Applicant denied being responsible for her death, but he was convicted of her murder after a contested trial.
8. He has continued throughout his sentence to deny his guilt. As he is no doubt aware the Board is obliged by law to approach its risk assessment on the assumption that the jury's verdict was correct: the Board has neither the authority nor the resources to re-investigate the case.
9. In prison the Applicant successfully completed two accredited programmes designed to improve his thinking skills and reduce his risk of general violent offending. Because of his denial of the murder of his wife (and the absence of any evidence of any other violence in any of his intimate relationships) he was not offered a place on any programme designed to address his risk of domestic violence. When he was released on licence, he was expected to undertake a programme which was available in the community to improve his relationship skills: he initially failed to attend induction sessions and subsequently was assessed as being unsuitable for the programme because of his denial.
10. Use of drugs has been a problem for him for most of his sentence. Drugs are, regrettably, readily available in prisons. Before being released on licence he had had four unsuccessful periods in open conditions, on each occasion being returned to closed conditions as a result (mainly) of involvement with drugs. After being released on licence, he seems to have managed to abstain from drugs for a while but he then reverted to the use of Class A drugs and his licence was revoked.
11. He has explained that he was released on licence during the lockdown period and therefore there was very little support from probation and he had to change addresses when the victim's brothers discovered his whereabouts. He has acknowledged that he should have asked for help from professionals but was too embarrassed to do so.
12. Something which emerged and was understandably of concern to probation was that the Applicant had apparently had some connection with a female ('S') shortly before his recall. The only evidence about that was that his phone had evidently been used by S from outside his address to make a call but she broke off the call. When asked about that matter the Applicant has said that he knew she was a drug user and a sex worker



but he had not had any sexual or other relationship with her: his flatmate would let her into their flat when he was not there.

13. Following his recall the Applicant's case was referred by the Respondent to the Board to decide whether to direct his re-release on licence. An oral hearing was held in August 2022. The Applicant's progress since his recall was conveniently summarised as follows in the decision of the panel which conducted that hearing:

*"There have been no concerns about [the Applicant's] custodial behaviour since recall. He is an enhanced prisoner and a red band which is a trusted position. There have been no adjudications, negative behaviour entries or adverse security intelligence. He has completed an Anger Management course and a Decision Making course. He has worked 1:1 with his POM [Prisoner Offender Manager] based on the Skills for Relationships Toolkit to help him understand his risk factors and the impact of his life experiences in intimate and professional relationships and highlighting potential problematic situations in the future. He has also completed work sheets with her. He successfully completed the substance misuse Therapeutic Community and followed this up with a short substance free living refresher course. All drug tests have been negative."*

14. The professional witnesses (the COM and a prison psychologist who had assessed the Applicant's risks) supported his application for release on licence on the basis of his improved attitudes and behaviour and engagement with professionals. The panel decided that he did not meet the test for release on licence but did meet the test for a recommendation to the Respondent that he should be moved to an open prison. The panel's reasons will be discussed in detail below.
15. It was not until January 2023 that the Respondent decided whether or not to accept the panel's recommendation. When he eventually made that decision it was that the Applicant should remain in prison. The reasons for his decision were set out as follows:

*"As is his right, the [the Respondent] has reached a different conclusion to that of the Parole Board panel. [The Respondent] had in mind when reaching this conclusion his published criteria and found the following criteria were not met:*

- *a period in open conditions is considered essential to inform future decisions about release and to prepare for possible release on licence into the community; and*
- *a transfer to open conditions would not undermine public confidence in the Criminal Justice System.*

*Evidence considered to support the conclusion that the criteria is not met is as follows:*

- *You have had multiple unsuccessful periods in open conditions, primarily because of drug use. A further period of abstinence whilst in closed conditions would be beneficial, prior to a transfer to open conditions. It would evidence that you are able to continue your progress, without the input/oversight of the drug TC [Therapeutic Community].*



- *You have not completed any work on relationships. Prior to recall, there was an incident with a female which the psychologist “was concerned that his relationship with [S] might have been a paralleling scenario”. You should undertake work with your POM or COM on the relationship areas identified by the Psychologist.*
- *The panel conclude that you had not been honest in your evidence regarding the potential relationship whilst on licence, and which contributed to your recall, which is linked to your risk. This undermines the public confidence.*
- *A longer period of openness and compliance needs to be demonstrated, as well as a further period of working alongside your POM and COM.”*

16. The present review of the Applicant’s case commenced in January 2023. Reports by the POM, the COM, the prison psychologist and an independent psychologist instructed by the Applicant’s solicitors all recommended release on licence. The Applicant’s behaviour and attitudes had remained good, he had continued to abstain from drugs and he had engaged well with the POM and the COM in a substantial amount of 1:1 work on relationships. He had achieved a longer period of openness and compliance.

17. The oral hearing was, as noted above, held on 26 March 2024. As before the panel, comprised a Judicial Chair, a Psychologist Member and an Independent Member. The Panel Chair was the same one who had chaired the 2022 panel. The Applicant was legally represented. The dossier at that stage comprised 487 numbered pages. Oral evidence was given by the POM, the COM, both psychologists and the Applicant. The professional witnesses all confirmed their recommendations. The panel decided not to direct release on licence. It also decided not to make another recommendation for a move to an open prison.

## The Relevant Law

18. The panel correctly set out in their decision letter the test for release and the issues to be addressed in advising the Respondent about the applicant’s suitability for a move to an open prison.

### *Parole Board Rules 2019 (as amended)*

19. Rule 28(1) specifies the types of decision which are eligible for reconsideration. Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for reconsideration whether 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)). Decisions concerning the termination, amendment, or dismissal of an IPP licence are also eligible for reconsideration (rule 31(6) or rule 31(6A)).

20. Rule 28(2) specifies the types of sentences which are eligible for reconsideration. These are indeterminate sentences (Rule 28(2)(a)), extended sentences (Rule 28(2)(b)), certain types of determinate sentence subject to initial release by the Parole Board Rule 28(2)(c) and serious terrorism sentences (Rule 28(2)(d)).



21. The decision of the panel in this case not to direct release on licence is thus eligible for reconsideration. As will be explained below the Applicant is seeking reconsideration of that decision on the grounds of procedural unfairness and irrationality. No error of law is suggested. The panel's decision not to make another recommendation for a transfer to open conditions is not eligible for reconsideration.

### *Irrationality*

22. In **R (DSD and others) v the Parole Board** [2018] EWHC 694 (Admin) (the "Worboys case"), the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It stated at paragraph 116 of its decision:

*"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."*

23. This was the test which had been set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374** and applies to all applications for judicial review.

24. The Administrative 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.

25. The Parole Board, when deciding whether or not to direct a reconsideration, adopts the same high standard as the Divisional Court for establishing 'irrationality'. The fact that Rule 28 uses the same adjective as is used in judicial review cases in the courts shows that the same test is to be applied. The application of this test to reconsideration applications has been confirmed in previous decisions under Rule 28: see, for example, **Preston [2019] PBRA 1**.

### *Procedural unfairness*

26. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed, thereby producing a manifestly unfair, flawed or unjust result. These issues (which focus on how the decision was made) are entirely separate from the issue of irrationality (which focuses on the actual decision).

27. The kind of things which might amount to procedural unfairness include:

- (a) A failure to follow established procedures;
- (b) A failure to conduct the hearing fairly;
- (c) A failure to allow one party to put its case properly;
- (d) A failure properly to inform the prisoner of the case against him or her; and/or
- (e) Lack of impartiality.

28. Other things may also amount to procedural unfairness, and the overriding objective in any consideration of a prisoner's case is to ensure that his case is dealt with fairly.

## **The Application for Reconsideration in this case**



29. This request for reconsideration was made by the Applicant's legal representative on his behalf on 13 May 2024. The arguments advanced in support of the application will be explained and discussed below, as will be the letter from the COM which also supports the application.

### **The reply on behalf of the Respondent**

30. The Respondent is entitled to submit representations in response to the application. As indicated above PPCS have indicated on his behalf that he does not wish to submit any representations in this case.

### **Discussion**

31. As indicated above this application for reconsideration is made on the grounds of procedural unfairness and irrationality. The legal representative makes a number of submissions about the panel's decision, some under the heading of procedural unfairness and some under the heading of irrationality. There is, as is often the case, something of an overlap between the two.

32. The two principal submissions are that (a) the panel provided inadequate reasons for rejecting the unanimous recommendations of the professional witnesses and (b) the panel attached disproportionate weight to the connection between the Applicant and S.

33. I am going to consider these submissions first. If I uphold both of them I am bound to grant this application for reconsideration and it will be unnecessary to consider the other submissions.

### ***The panel's rejection of the recommendations of the professionals***

34. A panel is not obliged to follow the recommendations of the professional witnesses, even if they are unanimous. However, if they are going to reject those recommendations, they need to give adequate reasons for doing so.

35. The panel expressed their reasons for rejecting the recommendations of the professionals in this case as follows:

*"There is extremely limited information about [the Applicant's] relationship history which means it is impossible to establish whether there is any pattern of intimate partner violence.*

*[The Applicant] has consistently denied using violence in any other relationship, although he has admitted to being controlling and jealous of previous partners. If that is the case, it is even more important to fully understand why he visited his wife with such extreme violence other than acting out of anger and vengeance.*

*Professionals agree that [the Applicant's] critical risk lies within the context of intimate relationships. They maintain that [the Applicant] has insight into his risk factors and has strategies to manage them. His plan seems to be to avoid entering*





*into a new relationship. This is totally inadequate and suggests to the panel that he does not possess sufficient insight.*

*A need to address relationships has been identified. This has resulted in 1:1 work conducted by the POM with the assistance of the COM. The panel regarded this work as a helpful stepping stone towards further work but not of sufficient breadth or intensity to be adequate to address; in particular sexual jealousy, grievance thinking, violent thoughts and using sex as revenge. [The Applicant] had started to open up about issues generally in relationships and the work was probably most helpful in improving his relationships with professionals. It is positive that after 20 years he has started to engage.*

*The panel credits [the Applicant] with his positive conduct in prison and notes his efforts to address his drug use. However, the custodial environment cannot replicate the situation and risk factors in the community, particularly within an intimate relationship.*

*On the basis of the reports in the dossier and having closely questioned all witnesses, including [the Applicant], the panel reached the conclusion that [the Applicant] had not fully addressed his core risk factors and had lacked understanding and insight into them. It is of concern that nobody fully understands his risk factors and consequently proposed risk scenarios can only be hypothetical.*

*The panel noted that all four professional witnesses believed that [the Applicant] met the test for release. The panel would not depart from their views without good reason. It anxiously considered their conclusions and assessments but in the final analysis did not agree with them. All professionals agreed that sexual jealousy and violence were critical risk factors, but it is not known whether the index offence was an isolated incident or if there was a pattern of previous violence, making it difficult to identify risks, triggers and warning signs. Unlike the professionals, the panel considered these uncertainties left a risk too high to be satisfied the public would be protected and that there was outstanding core risk reduction work."*

36. The legal representative's criticisms of these reasons are as follows.

37. First, she submits that the evidence shows that there is no 'core risk reduction work' (of any intensity) available to the Applicant in prison, though there is appropriate work available in the community. She submits that it is manifestly unfair to keep the Applicant in prison indefinitely because he has not completed work which is not likely to be made available to him. In support of that point the COM in her letter to the Board since the hearing states:

*"Since we received the decision, I have liaised with the Psychology to explore this further to establish what intervention, if any, is available to [the Applicant]. I have been advised that in terms of psychology work, it is difficult to suggest or recommend given it is assessed that the 1:1 work [the Applicant] completed with his COM and POM was sufficient and could be built on in the community.*

*The only potential option would be referring [the Applicant] for a 1:1 psychological intervention. This could be bespoke and tailored more specifically to exploring areas*



*the panel were concerned about, such as sexual jealousy/grievance thinking. This would be 6-8 sessions but, due to a clinical prioritisation policy, they have been unable to advise on timescales/availability. Whilst a referral has been made, there has been no response at time of writing. These factors could however be addressed in the community with [the Applicant] engaging with the INSIGHT (OPD) team. [The Applicant] has previously shown his full willingness to engage and has agreed to do so going forward, if necessary."*

38. The legal representative goes on to submit that it was unreasonable for the panel to treat the paucity of evidence about the Applicant's relationship history as supporting the proposition that there might be an undiscovered '*pattern of domestic violence*' in his relationships which needs to be addressed in future work in closed conditions. The legal representative submits that there was no evidence at all to support that conclusion and realistically there is no real prospect of further work (even if it could be arranged) revealing any evidence of such a pattern.
39. Next the legal representative submits that it was irrational for the panel effectively to state that as the Applicant was denying any violence in his relationships (apart from the index offence) he could not be released unless he could provide an explanation for visiting his wife with such extreme violence other than acting out of anger and vengeance. Those would seem to have been the obvious explanations and since the Applicant has consistently denied being responsible for his wife's death he could hardly be expected to provide an explanation for it.
40. Next it is submitted that the panel's view that the Applicant needed to complete '*core risk reduction work*' was inconsistent not only with the views of all the professional witnesses in this review but also with
- (a) the views of the panels which initially recommended transfers to open conditions;
  - (b) the view of the panel which directed his release on licence;
  - (c) the views of the professionals who gave evidence at the 2022 hearing; and
  - (d) the view of the 2022 panel (including the same Panel chair as the one who chaired the present panel) who recommended the Applicant's transfer to an open prison.
41. The legal representative might have added to this list the reasons given by the Respondent for rejecting the 2022 panel's recommendation for a transfer to an open prison. Those reasons are set out in paragraph 15 above. They are significant for present purposes. The Respondent clearly gave a great deal of care and attention to this case, as is always the case when he is considering differing from the views of a panel of the Board. It is noteworthy that the Respondent's reasons in this instance did not include any suggestion that there was any '*core risk reduction work*' which would have required the Applicant's continued confinement in closed conditions. They would clearly have done so if the Respondent had believed that there was outstanding core risk reduction work to be completed.
42. It was certainly the view of the 2022 panel that the Applicant had completed all necessary '*core risk reduction work*'. That panel's reasons for declining to direct the Applicant's release on licence but deciding to recommend a move to open conditions were as follows:





*"In summary, the panel considered there remained gaps in understanding [the Applicant's risks] but the period in the drug TC has satisfactorily addressed the ones which have been identified. However, whereas recent improvement in relationships with professionals is creditable, this needs to be demonstrated consistently over a longer period to exude confidence about openness and compliance. For the above reasons, the panel considered it necessary for [the Applicant] to remain confined for protection of the public from serious harm and so did not direct his release.*

*The panel then proceeded to consider eligibility for open conditions. The panel noted the four previous failures were for drug use but present indications are that [the Applicant] is currently drug free and so the challenge will be for him to prove that he can remain so. In addition, he would have the opportunity to demonstrate continued good behaviour and maintain open and positive relationships with his POM and COM. He could also undertake work with his POM or COM on the relationship areas identified by the psychologist.*

*There would be time to plan for employment and accommodation on release, to cement relationships with his sister, and to demonstrate he can comply with conditions of temporary release on licence. For these reasons, the panel considered a period in open conditions was essential to inform future decisions about his release on licence into the community.*

*Having considered all the evidence, the panel considered that [the Applicant] had made sufficient progress in addressing and reducing risk to a level consistent with protecting the public from harm in circumstances where he may be in the community. All witnesses agreed [the Applicant] represented a low risk of abscond and the panel agreed.*

43. I have underlined the passages which are particularly relevant for present purposes.
44. As I have indicated above the Applicant appears to have met the various requirements set out by the 2022 panel in their decision and the Respondent in his reasons for rejecting that panel's recommendation. The present panel regarded the 1:1 work which the Applicant had completed with the COM and the POM as inadequate but the evidence was that it was quite extensive and that it addressed intimate relationships in a way which had not previously been done. It was the view of the professionals that that work could be continued in the community: indeed it is often said that work of that kind is likely to be more effective if it is done in real life as opposed to in theory (as is necessarily the case when it is done in prison).
45. The panel's view that the work was inadequate seems to have been based in large measure on their belief that in order to be effective it would have needed to uncover any 'pattern of previous violence'. As the legal representative points out, that was wholly unrealistic (see paragraphs 38-9 above).
46. All in all I am persuaded that the panel failed to give adequate reasons for rejecting the recommendations of the professional witnesses.

### ***The weight placed by the panel on the incident involving S***



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47. It is clear that the panel attached a good deal of weight to this incident. The legal representative submits that: "*[The Applicant] maintains that he was not involved in an intimate relationship with [S] and has always denied committing any offences against her. The matter did not progress to an investigation or any further and there is no further evidence available. Therefore, it ought not to be presumed either that [the Applicant] engaged in any offending against her or that there will be further evidence in the future to demonstrate that there will be such evidence. Again, it is highly unlikely that this will change*".

48. There is a good deal of force in this complaint. It should be noted that this incident took place at a stage when;

- (a) the Applicant had had to change his address after it was discovered by the victim's brothers;
- (b) he was receiving very little support from probation due to the lockdown; and
- (c) he had reverted to the use of Class A drugs. It is not altogether surprising that in those circumstances he might have had some connection with a woman who was a drug user and sex worker.

However, it does not follow that there is a significant risk that he would do the same if now released on licence with a robust risk management plan, continued abstinence from drugs and receiving the support from probation which was (through nobody's fault) lacking during the lockdown.

49. The legal representative points out that the Applicant was released on licence into the community (after many years in prison) just 7 days after the whole country was placed in lockdown. She also points out that since the incident involving S the Applicant has (a) completed a substantial amount of work on his principal risk factor (use of illegal drugs) and also (b) completed a substantial amount of work with the POM and COM on relationships, which can continue in the community (see paragraph 42 above).

50. In these circumstances I accept the legal representative's submission that the panel placed excessive weight on this incident.

51. Having accepted the legal representative's submissions on the two points discussed in paragraphs 32-50 above, I have not found it necessary to reach conclusions on her other submissions.

## Decision

52. For the reasons explained in paragraphs 35-51 above, I am satisfied that the legal representative has made out her case that the panel's decision should be reconsidered. I think the appropriate ground for reconsideration is irrationality: it is well established that failure to provide adequate reasons for rejecting the unanimous recommendations of the professional witnesses and placing excessive weight on a part or parts of the evidence are both bases for a finding of irrationality. Since I am satisfied that both of those bases are made out in this case, **I am directing reconsideration of the panel's decision on the ground of irrationality.**

## Directions



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53. I have given careful consideration to whether this case should be reconsidered by the original panel or whether it should be considered afresh by another panel. I have no doubt that the original panel would be fully capable of approaching the matter conscientiously and fairly. However, the question of justice being seen to be done arises. If the original panel were to adhere to their previous decision, there would inevitably be room for suspicion that they had simply been reluctant to admit that their original decision was wrong. However inaccurate or unfair that suspicion might be, it would be preferable to avoid it by directing (as I now do) that the case should be reheard by a fresh panel.

**Jeremy Roberts**  
**10 June 2024**

