

[2024] PBRA 126

Application for Reconsideration by Grant

Application

1. This is an application by Grant ('the Applicant') for reconsideration of the decision of a panel of the Parole Board ('the Board'). On 21 May 2024, after oral hearings on 1 December 2023, 17 January 2024 and 14 May 2024, the panel issued a decision (a) not to direct the Applicant's release on licence and (b) not to recommend to the Secretary of State for Justice that she was suitable for transfer to an open prison.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) provides that applications for reconsideration of panel decisions may be made, either by the prisoner or by the Secretary of State for Justice, in eligible cases. The Secretary of State is the Respondent to any application by the prisoner and will be referred to as such in this decision.
3. Rule 28(2) specifies the types of case in which reconsideration applications may be made. They include cases, like the Applicant's, where the prisoner is serving an indeterminate sentence.
4. A reconsideration application may be made on the ground (a) that the panel's decision contains an error of law and/or (b) that it is irrational and/or (c) that it is procedurally unfair.
5. This is an eligible case, and an application for reconsideration has been made by the Applicant's legal representative on her behalf, within the prescribed time limit, on the grounds of irrationality and procedural unfairness. No error of law is suggested.
6. 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.
7. The documents which have been provided to me and which I have considered are:
 - (a) The dossier of papers provided by the Respondent for the Applicant's case, which now runs to 764 numbered pages including the panel's decision letter;
 - (b) The application for reconsideration, and detailed representations made by the Applicant's legal representative in support of the application; and



- (c) An e-mail from the Public Protection Casework Section ('PPCS') of the Ministry of Justice stating on behalf of the Respondent that he does not wish to submit any representations in response to this application.

Background and history of the case

8. The Applicant is aged 64. She is serving a life sentence for her part in the murder in September 1978 of a 90 year old woman. The Applicant was aged 19 at the time of the murder. She and two other young women forced their way into the victim's address with the intention of killing her. Their motive appears to have been revenge for what one of the assailants believed to have been ill-treatment of her grandmother. Once in the victim's address, they subjected the victim to a sustained attack during which she was strangled with an electrical flex and stabbed with a knife. Having killed the victim, the assailants made off with her purse, pension book and two booklets.
9. The Applicant had had an exceptionally difficult childhood and spent much of it in local authority care, living at children's homes where her behaviour was poor. She accumulated a number of convictions for offences of dishonesty, but only one before the murder for an offence of violence (assault occasioning actual bodily harm). In the light of the nature of the murder and the Applicant's active participation in it, she was unsurprisingly described at the time of her conviction and sentence as a '*dangerous woman*'.
10. The Applicant suffers from complex and serious psychiatric and psychological difficulties, and was a regular user of unlawful drugs. It appears that all three of the young women had been using drugs on the day of the murder though the Applicant denies that she had been using them. The three of them had met in prison.
11. All three pleaded guilty to the murder and received the appropriate life sentences. The Applicant's minimum term ('tariff') was set at 11 years. It would have been much longer but for her age and plea of guilty. Her tariff expired in August 1990.
12. The Applicant's progress during her sentence was charted in detail in the panel's decision. It is unnecessary to set out all the details here. It is sufficient to mention some of the salient points.
13. The Applicant was transferred on three occasions from prison to a secure psychiatric hospital. She was always returned after a time to the prison system.
14. After many years of poor (and sometimes violent) behaviour in prison the Applicant seems to have 'turned a corner' in around 2000 and since then, though there have been some blemishes, her custodial behaviour has been, for the most part, acceptable.
15. She has been released on licence by direction of panels of the Board on three occasions. On each occasion probation had done their best to construct appropriate risk management plans including suitable accommodation, but none of those plans turned out to be successful.



16. The Applicant's first release on licence was in May 2019, to an establishment which provides high intensity supported accommodation for individuals who require mental health support. In March 2020 she had to be recalled to prison because of her unacceptable behaviour to staff and other residents.
17. Her second release on licence was in November 2020 to a specialist probation hostel, and despite some problems she was moved in March 2021 to supported accommodation of her own. However, in May 2021 she had to be recalled to prison because of her abusive and aggressive behaviour towards a neighbour.
18. Her third release on licence was in March 2022 to accommodation provided by a Safer Communities Scheme (which does valuable work in helping to create opportunities to change people's lives for the better). In November 2022 she again had to be recalled to prison, this time because she had allowed a man to use her address for drug dealing and when arrested she was found to be in possession of a knife. For those matters she received short determinate sentences, to run concurrently with her life sentence. Those sentences have now expired.
19. The present review of the Applicant's case commenced in November 2022 when, shortly after the Applicant's latest recall, the Respondent referred her case to the Board to decide whether to direct her re-release on licence and, if not, to advise the Respondent about her suitability for a move to open conditions.
20. An oral hearing was directed, and the case was allocated to a panel of the Board which comprised an Independent Chair, a Psychiatrist Member and an Independent Member.
21. On 1 December 2023 the oral hearing was commenced but was adjourned for further information to be obtained about the accommodation in which it was proposed the Applicant should be housed if she was to be released.
22. On 17 January 2024 the hearing was resumed. The Independent Member had been replaced on the panel by a Judicial Member. For technical reasons the Prison Offender Manager ('POM') was unable to attend the hearing. The Applicant herself declined to attend because she did not wish to move to a probation hostel ('AP') pending the finding of suitable supported accommodation through the Safer Communities Scheme, as was proposed by the professionals. Her legal representative requested another adjournment so that she could take the Applicant's instructions. The panel granted the adjournment and the Applicant subsequently agreed to attend the next hearing.
23. On 14 May 2024 the oral hearing was finally completed. The Applicant attended it. The panel again comprised the Independent Chair, the Psychiatrist and the Judicial Member. The Applicant was legally represented. The Panel had read and considered all the documents in the dossier, which at that stage contained 729 pages. Oral evidence was given by the following witnesses:
 1. The Applicant's POM, who is responsible for managing her case while she is in prison;
 2. Her Community Offender Manager ('COM') who will be responsible for managing her case if and when she is released on licence; and
 3. The Applicant herself.



24. The Applicant and the POM were present at the prison, as was an officer who was there to support the Applicant. The panel members, the COM and the Applicant's legal representative all participated remotely by video link.
25. The POM and the COM both supported release on licence, as did the COM's superiors in Probation. The Applicant had been accepted by the Safer Communities Scheme but there was an acute shortage of suitable supported accommodation in which the Applicant could be housed: the proposal thus remained, as in January, that the Applicant should be released to AP where she would remain until suitable supported accommodation could be found for her.
26. The Applicant appears not to have presented herself very well at the hearing. Her legal representative provides the following account of her presentation and the difficulties which she seems to have encountered:
- '[The Applicant] had a few outbursts in the hearing but the hearing was suspended at these points for her to calm down. [The Applicant] was clearly extremely nervous at this hearing and had become distressed as she did not appear to understand some of the questions that she was asked. We have been in numerous hearings with [the Applicant] in the past and had never seen her behave in this way and can only assume that she did not understand some of the questions she was asked. The video link also appeared to be troublesome as it was unclear when panel members had stopped asking her their questions so she would interrupt them not knowing that they had not finished.'*
27. Despite the recommendations of the professionals the panel decided, on considering the whole of the evidence, that the Applicant did not meet the test for release on licence (or that for a move to an open prison).

The Relevant Law

The test for release on licence

28. The test for release on licence is whether the Applicant's continued confinement in prison is necessary for the protection of the public.

The rules relating to reconsideration of decisions

29. Under Rule 28(1) of the Parole Board Rules 2019 (as amended in 2022) a decision is eligible for reconsideration if (but only if) it is a decision that the prisoner is or is not suitable for release on licence. The grounds on which an application may be made are set out above (error of law, irrationality or procedural unfairness).
30. A decision that a prisoner is or is not suitable for release on licence is eligible for reconsideration whether it is made by:
- (i) A paper panel (Rule 19(1)(a) or (b)) or
 - (ii) An oral hearing panel after an oral hearing (Rule 25(1)) as in this case; or
 - (iii) An oral hearing panel which makes the decision on the papers (Rule 21(7)).



31. The decision of the panel in this case not to direct release on licence is thus eligible for reconsideration. The panel's decision not to recommend a move to open conditions is not eligible for reconsideration.

The test for irrationality

32. The power of the courts to interfere with a decision of a public authority on the ground of irrationality was defined in *Associated Provincial Houses Ltd -v- Wednesbury Corporation* 1948 1 KB 223 by Lord Greene in these words: *'If a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere.'* The Parole Board is a public authority and a decision of a panel of the Board can therefore be challenged by an application for judicial review in the High Court on the ground of irrationality. It can also be challenged by an application to a reconsideration panel on the same ground. In either case the test for irrationality is the same.

33. In *R(DSD and others) -v- the Parole Board* 2018 EWHC 694 (Admin) ('the Worboys case') a Divisional Court applied this test to Parole Board hearings in these words: *'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.'*

34. Another case in which the test was applied was *R (on the application of Wells) -v- Parole Board* 2019 EWHC 2710, in which Saini J in the Admin Court set out what he described as a more nuanced approach in modern public law, which was *"to test the decision maker's ultimate conclusion against the evidence before it and to ask whether the conclusion can (with due deference and with regard to the panel's expertise) be safely justified on the basis of that evidence, particularly in a context where anxious scrutiny needs to be applied"*. This test was then adopted by a Divisional Court in the case of *R(on the application of the Secretary of State for Justice) -v- the Parole Board* 2022 EWHC 1282 (Admin).

35. As was made clear in the cases this is not a different test from the 'Wednesbury test', and it follows from the established principles that in considering an application for reconsideration the reconsideration panel will not substitute its own view of the evidence for that of the panel who heard the witnesses. It will only uphold an application on the ground of irrationality if the Wednesbury test is met.

36. Furthermore, while the views of professional witnesses must be properly considered by a panel deciding whether to direct a prisoner's release, the panel is not bound to accept their assessments. However, if the panel is disagreeing with the assessments of the witnesses, it must give its reasons for doing so. If it fails to give any reasons, or if its reasons are inadequate or do not stand up to close examination, its decision may be found to be irrational.

The test for procedural unfairness

37. 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 from the issue of irrationality which focuses on the actual decision.

38. The kind of things which may 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.
39. Other things may amount to procedural unfairness: the overriding objective in any consideration of a prisoner's case is to ensure that the case is dealt with fairly.

The request for reconsideration in this case

40. This request for reconsideration was made by the Applicant's solicitor on her behalf on 10 June 2024. The detailed arguments advanced by the solicitor will be explained and discussed below.

The position of the Respondent

41. As a party to parole proceedings the Respondent is entitled to submit representations to the Board in response to an application for reconsideration of a panel's decision. As indicated above PPCS have indicated on behalf of the Secretary of State that he does not wish to submit any representations in this case.

Discussion

42. Before discussing the submissions made by the Applicant's legal representative, I need to consider the reasons given by the panel in this case for rejecting the recommendations of the professional witnesses (see paragraph 36 above).
43. The panel's decision in this case is very detailed and it includes a number of reasons for not accepting the recommendations of the professionals. Those reasons were summarised as follows in the 'Conclusion' section of the panel's decision:

"The panel carefully considered all available evidence, both written and oral. [The Applicant's] legal representative urged the panel to direct [the Applicant's release on licence] on the basis that the witnesses recommended release rather than Open Conditions; [the Applicant] has engaged extremely well and exhibited good behaviour in custody; accommodation underpins everything and in that regard [the Applicant] has accommodation within the [risk management plan]; she does not intend to have contact with previous associates; she has a positive working relationship with the COM and an exceptionally positive relationship with [the Community Mental Health Team]: [the Applicant] now accepts that others may have taken advantage of her in the community ('cuckooed') and her Risk of Serious Harm is medium.

"Through [her] index offending, [the Applicant] and her co-defendants subjected her victim to the most terrifying attack and gruesome murder. This will undoubtedly have



caused lifelong emotional and psychological harm to the victim's family, friends and her community. The panel is also mindful of prison staff, patients, inmates and professionals who have been assaulted, threatened, abused or intimidated by [the Applicant] at various institutions throughout her sentence.

"Fundamental to managing [the Applicant's] risk of serious harm to the public, known adults and staff is a combination of both internal and external controls.

"The panel took into account that:

- (a)The index offending took place over 45 years ago;*
- (b)[The Applicant] last displayed physical harm in 2016;*
- (c)[The Applicant's] positive custodial behaviour."*

"Set aside that was the following:

- (a)[The Applicant] has not undertaken any accredited offending behaviour programmes;*
- (b)Since undertaking the [Offender Personality Disorder] work in 2016, there have been three unsuccessful releases;*
- (c)The panel analysed [the Applicant's] behaviours during her three direct releases from prison. It was concerned that there was clear evidence of her risk factors emerging and not diminishing;*
- (d)Despite being released subject to a comprehensive Risk Management Plan in 2022, this plan was unable to prevent [the Applicant] carrying a knife for a period and accruing further criminal convictions;*
- (e)From [the Applicant's] three periods of time in the community, there is no evidence of sustained change and internal controls;*
- (f) [The Applicant] does not always meaningfully engage with professionals;*
- (g)[The Applicant] can be very rigid in her thinking, for example not attending her own oral hearing and outrightly refusing to comply with parts of her proposed [risk management plan].*

"Taking all the above into account, the panel is not persuaded that [the Applicant's] risk has reduced to a level that is commensurate with release.

"In undertaking its own independent risk assessment the panel considered that the POM and the COM may have placed an over-reliance upon [the Applicant's] positive custodial behaviour as well as the AP, and the Safer Communities initiative, to provide accommodation and manage [the Applicant's] risk. The panel is concerned about risk in both the short and medium term.

"The panel is not satisfied that it is no longer necessary for [the Applicant] to be confined for the protection of the public."

44. Other passages in the panel's decision amplified these points but it is unnecessary to quote them all here. I can now turn to the submissions advanced by the Applicant's legal representative. It is convenient to deal in turn with (1) the submissions made by the legal representative in respect of points (a) to (g) above; then (2) the panel's view of the reliance of the professional witnesses on the Applicant's custodial behaviour in



recent times and the support proposed to be provided by AP and the Safer Communities initiative; and finally (3) the Applicant's presentation at the hearing.

(1) The submissions made by the legal representative in respect of points (a) to (g) above

(a) [The Applicant] has not undertaken any accredited offending behaviour programmes.

45. The legal representative does not, of course, dispute that this is the case. Completion of accredited programmes is however, as the panel will have been well aware, not a pre-requisite to demonstrating that a prisoner's risk is manageable on licence in the community: prisoners may be able in other ways to demonstrate that they have sufficient understanding of their risk factors and possess sufficient internal controls to enable the panels considering their cases to decide that that it is safe to release them into the community.

46. The panel made it clear that they did not believe that to be the case here. Earlier in their decision they stated:

"[The Applicant] did not consider herself to have any risk factors. Taking into account the professionals who have worked with [her] over the years and her experience of previous parole hearings, the panel was surprised by this answer. [The Applicant] was asked directly if she was a risk and replied: "I am not a risk, not a risk to society, people like that, got to play them at their own game; fight fire with fire". The panel was concerned by [the Applicant's] stated strategy of fighting "fire with fire". The panel reminded itself that [the Applicant] has never undertaken any accredited offending behaviour programmes, which may explain her limited insight into her risk."

47. The panel were, I believe, fully entitled to take into account the Applicant's limited insight and the deficiencies in her internal controls which can be seen from the evidence.

(b) Since undertaking the [Offender Personality Disorder] work in 2016, there have been three unsuccessful releases.

(c) The panel analysed [the Applicant's] behaviours during her three direct releases from prison. It was concerned that there was clear evidence of her risk factors emerging and not diminishing.

(d) Despite being released subject to a comprehensive Risk Management Plan in 2022, this plan was unable to prevent [the Applicant] carrying a knife for a period and accruing further criminal convictions.

45. I will consider these three points together as they are closely linked. Inevitably the panel were concerned about the three failures on licence and in particular the criminal offences.



46. The legal representative makes a number of points directed to the submission that the panel should not have attached as much weight as they evidently did to the failures.
47. As regards the first recall the legal representative submits that the panel mistakenly stated that as a result of the Applicant's abusive behaviour to staff and other residents at the establishment at which she was residing she was arrested and charged with public order offences. The legal representative has checked this point with probation records which state that the Applicant was arrested but never charged because probation initiated the recall process. This point was apparently made clear in the relevant probation report (which was not included in the dossier so the panel would not have seen it).
48. I acknowledge this point but I do not think it carries much weight for present purposes. It is, I am afraid, all too common for there to be no prosecution for a matter which has resulted in a recall. What matters is what were the matters which led to the recall. There is no evidence to contradict the information about the Applicant's behaviour which led to probation taking the view that the Applicant's risk to the public had become unmanageable (hence the recall). The panel which directed the Applicant's re-release on licence after this recall was of the view that the recall had been justified but they believed that, with a new release and risk management plan in place, the Applicant's risk to the public would be manageable on licence. Unfortunately that turned out not to be the case.
49. As regards the second recall, the panel's summary of that was that the Applicant was given a warning after she had been arrested following a dispute with a neighbour; it was reported that she had lapsed into alcohol misuse and was acting in an abusive and aggressive manner towards her neighbour; and the then COM was concerned that in the event of further conflict the Applicant could react in a violent manner, so a recall was instigated.
50. The legal representative points out that that was an incomplete account of the matter and that the full extent of the circumstances surrounding the arrest was set out in the COM's evidence and in documents in the dossier. It was believed that the Applicant was the victim of a sexual assault (through a spiked drink) by a person known to the police. Although she was alleged to have damaged a plant pot and was taken to the police station, the police were understandably more concerned that she had been sexually assaulted: the allegation of criminal damage to the plant pot was not investigated. The Applicant's behaviour deteriorated following this incident. Her recall was triggered by the fact that she was outside her property in unsuitable clothing and got into an argument about that with her neighbour, who called the police.
51. This would certainly have been a more complete account of what happened, providing as it does an element of mitigation for the deterioration in the Applicant's behaviour. Again the panel which directed her re-release on licence regarded the recall as being justified but believed that, with a new release and risk management plan in place, the Applicant's risk would be manageable on licence. Again that turned out not to be the case.



52. It does not appear to have been disputed that the Applicant was using alcohol and indeed drugs, and it is only too likely that she was misusing both to a dangerous extent. Her own evidence to the panel supports that. The panel recorded her evidence as follows:

"[The Applicant] was asked about a police report dated 10 November 2022 and in particular the following that is recorded: "She said she likes weed, alcohol and crack and that she does like a pipe." [The Applicant] responded that weed is "okay" but she prefers alcohol and will occasionally have a pipe. As stated, [she] was asked about her risk factors ... In relation to alcohol, [she] stated that 'I am allowed to drink, I am an adult, it's up to me to decide how far... I can have a drink if I want, I don't drink that much'. The panel was concerned by this attitude to alcohol as substances are considered a risk factor for [the Applicant]."

53. As regards the third recall, the Applicant's behaviour was clearly the most serious of the matters which led to the three recalls, including as it did the carrying of a knife in public. Again the legal representative points to an element of mitigation. She points out that (as the panel acknowledged) the Probation Service believed that the Applicant was being 'cuckooed'. She submits that it is likely the cuckooing began when she recommenced a relationship with the man who used her address for drug dealing. She states that he had used her in the past and had been known to assault her. She acknowledges that the Applicant did not disclose the extent of those assaults, but submits that that was due to fear and shame.

54. The Applicant's evidence to the panel on the topic of the third recall was summarised in their decision as follows:

"[The Applicant] described her third recall as the only one where she did something wrong, 'a proper recall' ... [She] justified her behaviour to the panel, in relation to the third recall, on the basis that she had a drug user threatening her and this is why she needed a knife. She stated that the person threatening her was someone that she had known for three months prior to her recall, who had nowhere else to live. [She] agreed that they could stay with her for a night or two ... [She said that] she had the knife in preparation in case something did happen. [She] was asked if she informed Probation that she was worried for her safety to the extent that she was carrying a knife. [She] stated that she did not because she knew that Probation "would not be impressed".

"There appeared to be inconsistencies in [the Applicant's] evidence with the panel noting that in her police interview [she] stated that 'she keeps it [the knife] on her outside the house and has done for a few weeks now.' However, [she] spoke to the panel about having the knife for a few days and that the threat came from someone in her house. On the basis that [she] had been convicted of this matter, the panel considered that little turned on this except noting [her] continued justification as to why it was appropriate to carry a knife."



55. The legal representative acknowledges that there were inconsistencies in the Applicant's accounts but points out that people can be nervous in police interviews and that the Applicant pleaded guilty to the knife charge at the earliest opportunity.

56. I am afraid that despite the Applicant's attempt to justify or minimise her possession of the knife it was a very serious matter. No doubt she was carrying it for her own protection so that she could threaten anyone she believed to be a threat to herself, but the trouble with that is that once you take out a knife in those circumstances one thing often leads to another. The courts (and the Board) are all too familiar with cases where somebody who has been carrying a knife for self-protection has ended up using it to kill or seriously injure somebody else. The Applicant does not seem to have recognised that risk.

57. In all the circumstances I am bound to conclude that the reliance placed by the panel on the three recalls (and in particular the last one) was entirely reasonable.

(e) From [the Applicant's] three periods of time in the community, there is no evidence of sustained change and internal controls.

58. The panel made the following observation in their decision:

"The panel whole-heartedly agreed with the following comment within the OASys [the report undated by probation from time to time]: '[The Applicant] will need to reflect on her part about her own responsibility for the unsuccessful tenancies, what needs to be different next time, genuine and evidenced commitment to change with appropriate external controls, measures and boundaries in place to support her to make those changes.' The panel stated that, having heard from [the Applicant], the panel was not persuaded that [she] has fully reflected upon her own responsibility for her three recalls."

59. This was clearly an entirely reasonable conclusion. It was fully supported by the Applicant's failure to recognise that she did anything wrong to justify her first two recalls and her minimisation of her offending during her third period on licence. In particular her inability to understand the seriousness of carrying a knife was a matter of particular concern.

60. The legal representative's comment on this point is: *"The panel state that there is limited evidence of [the Applicant's] internal change and therefore there is a heavy reliance on external controls. [The Applicant] is very institutionalised having been in prison for over 40 years. This is referred to in the report of [a psychiatrist] so her risk management plan must be adapted to cover this issue."*

61. I agree that the Applicant must be very institutionalised and that that must be taken into account in the risk management plan. It has in fact obviously been taken into account as far as possible by all the professionals, but the Applicant does need to help them by engaging with them and doing her best to recognise her own responsibility for what has gone wrong.

(f) [The Applicant] does not always meaningfully engage with professionals.



62. There was certainly evidence that in the past the Applicant had chosen not to engage with professionals. As regards more recent times, the panel stated:

"The latest report from the POM (countersigned 30 April 2024) states that [the Applicant] is not engaging with the POM because [she] is choosing to focus on the COM, 'otherwise she finds it too overwhelming'. The POM report confirmed that [the Applicant] does have periods of non-interaction with staff.

"The POM told the panel [the Applicant] prefers to focus on one thing at a time, rather than multiple things, and is currently focussing on the COM as [the Applicant] is expecting to be released and wishes to develop her relationship with the COM. [The Applicant] has only met her current COM on one occasion, in April 2024, via a video link. The panel struggled to understand why, because of a single video link appointment, [the Applicant] was unable to engage with her POM, whom she knows well and possibly with other staff with whom she is familiar.

"In the community there is an expectation that [the Applicant] will engage with a wide range of professionals who will offer support and manage her risk: her COM; care-taking COM; Approved Premises key worker; the Community Mental Health Team; the police; Safer Communities staff; OPD professionals; and a community substance misuse service."

63. The legal representative states:

"Regarding the evidence of [the POM], it is implied in the results letter that [the Applicant] would not engage with [the POM]. Her attitude was described as isolated. We would submit that [the Applicant] is no longer as isolated as she was during her 40-year imprisonment or her first return to custody. She no longer wishes to be in the [Care and Separation Unit] and lives on the House Block. She engages well with the staff that she knows; some she has known for many years and in evidence it was clear that she had engaged with other prisoners including a lady that had moved to [another prison]."

64. It is encouraging that the Applicant is less isolated than she was at one time. However, the panel was entitled to accept the POM's evidence that the Applicant declined to engage with her. The panel was also entitled to express a concern that, as the Applicant declined to engage with the POM, she might well decline to engage with some of the professionals who would be responsible for helping to manage her risks in the community, thus reducing the effect of the risk management plan.

65. The Applicant told the panel that she liked her new COM and that she has liked all her Probation officers and that her real favourite was her original COM. She also told the panel that when she was on licence probation officers would come to her home and she would tell them everything. As the panel pointed out, this was clearly not the case, as she did not inform probation that someone had moved into her home and was using it for drug dealing, and that she was concerned about that to such an extent that she carried a knife for her own safety.



66. Engagement with professionals is an important part of a risk management plan and the panel were entitled to have doubts about the Applicant's willingness to engage effectively with the professionals if she was released on licence.

(g) [The Applicant] can be very rigid in her thinking, for example not attending her own oral hearing and outrightly refusing to comply with parts of her proposed risk management plan.

67. There was ample evidence in the dossier and in the Applicant's own evidence that she is sometimes rigid in her thinking: that is unfortunately a feature of her personality and mental health difficulties.

68. As regards the Applicant's decision not to attend the January hearing the legal representative states:

"We think that it is wrong of the panel to essentially hold [the Applicant's] non-attendance at the hearing on 17th January 2024 against her. [She] had sat in a hearing 6 weeks before and heard [her then COM] say she would not be assessed for an AP and would be released back to [supported accommodation] and then just prior to this hearing she is informed by us that this has completely changed and she must now go to an AP before she can be found suitable accommodation."

"[The Applicant has mental health and personality difficulties which are well controlled by medication] but can sometimes can lead to her reacting negatively to good alternative suggestions made by the COM but as [a psychologist] explains in her reports if you speak with [the Applicant] she becomes more accepting. She also could not understand why [her COM] was no longer dealing with the case and that [her supervisor] had replaced her. Once this was fully explained to her and contact was made to [the Applicant] by [the AP] to send her a leaflet showing their services, she changed her view on this point and stated she would live there until appropriate accommodation was found."

69. This is, I think, a very good explanation for the Applicant's failure to attend the January hearing, and I do not think that failure should be held against her. However, there are other examples of rigid thinking on her part.

70. One example of that was recorded by the panel as follows:

"In terms of substance misuse, [the Applicant] will be assessed by a community substance misuse service who will assess [her] need for intervention and can tailor an intervention plan linked to substance misuse and relapse prevention, if required. During the oral hearing [the Applicant] clearly stated that she would not engage with community substance misuse services because they "bore the arse off me, boring, boring, boring". [She] stated that she wanted to be left alone and to be a "lady of leisure" ."

71. In fairness to the Applicant she has sometimes been capable of changing her mind but she takes a certain amount of persuasion to do so. This is illustrated by another passage in the panel's decision: *"[The Applicant] will be expected to engage with the OPD team*



within the community, through [a special programme], and through less formal sessions. The COM also identified [a Women's Group] - specific work/groups [the Applicant] can attend in order to build her confidence and support network. Initially [she] stated that she did not want to be made to sit in a room of people and that she wanted control of her life. However, [she] was then reminded that she had previously attended such a group and had enjoyed it. [She] then seemed much more agreeable to attending. However, the panel noted that this support was evidently available to [her] during her release into the community but it did not stop her from getting recalled."

72.I think that if 'rigid thinking' had been the only reason for rejecting the recommendations of the professionals, I might well have regarded it as inadequate: however, for reasons which I have explained I find the other reasons to be powerful.

(2) The panel's view of possible over reliance by the panel on the Applicant's custodial behaviour in recent times and the support proposed to be provided by approved premises and the safer communities initiative

73.I believe that the panel were entitled to take the view which they did.

74.It was a fair point that the Applicant's recent good custodial behaviour was of very limited value in assessing her current risk of serious harm to the public in the community.

75.Although this is not a point made by the panel, I have my doubts about whether an AP (where the Applicant would be likely to be in the company of anti-social individuals) would be an appropriate location for a vulnerable woman like her.

76.It was another fair point that the support provided by the Safer Communities initiative had failed to prevent the Applicant from associating with a known drug dealer, permitting him to operate from her address and carrying a knife in public.

(3) The Applicant's presentation at the final hearing

77.As noted above the Applicant does not appear to have presented herself very well at the hearing, interrupting the panel and so on. She may well have had difficulty hearing or understanding the panel's questions, and there may well have been possible problems with the video link (which are not uncommon).

78.This was unfortunate, and I have looked for any clues that the panel may have been unduly influenced by these problems in reaching conclusions (a)-(g) above. I have not been able to find any, and with the possible exception of (g) I cannot fault those conclusions. The panel obviously did their best to assist the Applicant by offering breaks where the Applicant was having any difficulty. It is of note that the legal representative does not seem to have submitted to the panel that the hearing should be aborted or adjourned on account of the Applicant's difficulties.

79.It would, I think, have been necessary to find some compelling evidence that the Applicant was placed at an unfair disadvantage before a finding of procedural unfairness affecting the outcome of the hearing could be made. There is no such evidence so I cannot direct reconsideration of the panel's decision on that ground.



Decision

80. I have given anxious consideration to the question whether there is any ground for directing reconsideration of the panel's decision in this case. I am very conscious that the Applicant has been in prison for an exceptionally long time and it is understandable that professionals have wanted to see her safely reintegrated into the community.
81. Some panels might have accepted the recommendations of the professionals but this is a case where views could and did reasonably differ and, applying the Wednesbury test for a finding of irrationality, I cannot find any evidence to support the submission that the panel's conclusion was irrational. The panel gave a number of detailed and persuasive reasons for departing from the recommendations of the professionals, and with one possible exception I cannot fault those reasons. If the panel had not placed any reliance on point (g), I am satisfied that their decision would have been the same.
82. Equally I cannot make any finding of procedural unfairness. My decision must therefore be to refuse this application.

Jeremy Roberts
10 July 2024

