

[2024] PBRA 92

Application for Reconsideration by Ishaq**Application**

1. This is an application by Ishaq (the *Applicant*) for reconsideration of a decision dated 20 March 2024 of a panel of the Parole Board (the *Panel*) following an oral hearing held remotely by video on 12 March 2024. The Panel decided not to direct the Applicant's release and not to make a recommendation for his transfer to open conditions.
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 following papers:
 - an application for reconsideration dated 2 April 2024 (the *Application*) submitted by the Applicant's solicitors;
 - the Panel's decision dated 20 March 2024; and
 - a dossier of 307 pages.

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

4. The Respondent did not make any submissions.

Background

5. In November 1996, the Applicant murdered his second wife by strangling her with her scarf. He was controlling and violent towards the victim during their marriage as he had been towards his first wife revealing a pattern of unconvicted intimate partner violence and abusive behaviour in relationships. The victim had left the Applicant on about six occasions, usually going with their son to a women's refuge. The day before the Applicant killed the victim, he had managed to trace her and persuade her to return home with him.
6. In May 1997, the Applicant was given a life sentence with a minimum term of 12 years less time spent in custody while on remand. His tariff expired in November 2008.



7. The Applicant progressed to open conditions in August 2005. He has been released twice during his life sentence. He was first released in June 2009. He was recalled some nine months later in 2010 because, in breach of his licence, he failed to disclose an intimate relationship with a woman, which he had developed before he was released.
8. In 2011, the Applicant completed the Healthy Relationships Programme which is aimed at ending violence and abusive behaviour towards intimate partners.
9. The Applicant was released a second time in January 2016. He was given permission to travel to Pakistan on 4 February 2019 to sell land he had inherited. He was expected to return on 21 February 2019, but did not. His licence was revoked in October 2019 because he had not maintained contact with his community offender manager (COM) and had not returned to the UK.
10. The Applicant was unlawfully at large for three years until November 2022, when he returned to the UK. An account of his activity and whereabouts while unlawfully at large is given by his legal representative in representations dated 27 March 2023. This is discussed later.
11. He was returned to custody on 23 November 2022.

Request for Reconsideration

12. The Application is dated 2 April 2024.
13. The Application was not made on the published form CPD 2 but I have accepted it as a valid application.
14. The grounds for seeking a reconsideration are that the Panel's decision (a) is procedurally unfair and (b) is irrational and (c) contains an error of law.
15. The Application sets out a great deal of information but often fails to explain how it reveals a valid ground for reconsideration. The Application also conflates the responsibilities of the COM and the responsibilities of the Panel rather than clarifying how perceived failings by the COM might give rise to a ground for reconsideration. The Application incorrectly submits that an error of fact can be a ground for reconsideration. I have therefore distilled the main arguments presented under each ground for reconsideration.

Ground 1: Procedural Unfairness

16. The key submission under this ground is that the Applicant had an unfair hearing because the Panel did not take reasonable steps to ensure that it had the evidence it needed to reach definitive decisions relevant to risk. It is argued that gaps in the Panel's knowledge about the time the Applicant was unlawfully at large meant that it was unable to make decisions about his current risk and its manageability in the community, to make assessments about his risk of reoffending and his risk of causing serious harm, and to determine whether there was further core risk reduction work to be completed.

17. It is submitted that the Panel should have adjourned the hearing and directed further information about matters such as: (i) the Applicant's time in Pakistan and Belgium; (ii) his mental health issues; (iii) his relationship with his wife and what disclosures he made to her and (iv) the Applicant's brother's knowledge of the Applicant's time in Pakistan, the Applicant's relationship with his wife, and whether he (the Applicant's brother) had had any contact with the Applicant's wife.
18. It is submitted that the Panel should also have directed: (i) disclosure of probation service logs to allow the Panel to make a determination of the level of contact between the Applicant and the COM and what information he provided to the COM while he was unlawfully at large. The Application describes failures by the COM to make further enquiries of the Applicant and others and to disclose information the Applicant claims to have provided to her; and (ii) a psychological risk assessment either before the hearing, or after taking evidence from the COM and the prison offender manager (POM) when it was clear that they were concerned about the gaps in the information available to them and consequently their ability to make assessments of risk. It is submitted in the Application that a psychological risk assessment would allow a better understanding of the Applicant's time when unlawfully at large, his risk of intimate partner violence, his level of insight, and whether all core risk reduction work had been completed.
19. It is submitted that the COM's risk assessments were based on information that was not disclosed to the parties.

Ground 2: Irrationality

20. It is submitted that the Panel's decision was irrational because it failed to properly consider risk by placing significant reliance on the COM's evidence when the COM had failed to make enquiries to assist the Panel to make an informed decision. It is submitted that the COM failed to provide accurate information about the nature and level of her contact with the Applicant and that misleading evidence from the COM brought the Applicant's credibility into question.
21. It is submitted that the Panel was unable to make a proper assessment of risk based on the lack of information about the Applicant's time while unlawfully at large.
22. It was stated in the Application that the professional witnesses considered that the Applicant had completed all core risk reduction work and that any further offending behaviour work could be completed in the open estate or in the community. It is submitted that the Panel should have given reasons for disagreeing with the professional witnesses on the Applicant's suitability for a transfer to open conditions.

Ground 3: Illegality

23. It is submitted that the Panel's decision was unlawful because it failed in its legal duty to adjourn the review to ensure that it was conducted fairly and justly. It is argued that the Panel should have adjourned the review: (i) to direct information about the Applicant's time when he was unlawfully at large so that the professional witnesses could make informed recommendations; (ii) to allow information about the Applicant's contact with the COM to be properly evidenced by emails and

probation service logs; and (iii) to direct that a full risk management plan was available.

24. It is submitted that the Panel permitted the COM to make reference to undisclosed information namely emails and probation service logs.

Current parole review

25. The Respondent referred the Applicant's case to the Parole Board in December 2022. The case was directed to an oral hearing in May 2023. A remote hearing by video took place on 12 March 2024. This was the Applicant's first review following his recall in October 2019. The Applicant was unlawfully at large outside the UK until November 2022.
26. The Panel comprised an independent member as chair and a psychiatrist member. Evidence was taken from the POM and the COM. The Applicant also gave evidence to the Panel.

The Relevant Law

27. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined. The test is automatically set out in the Parole Board's template for oral hearing decisions. The decision also sets out the correct issues to be addressed in making a recommendation to the Respondent for a progressive move to open conditions.

Parole Board Rules 2019 (as amended)

28. Under Rule 28(1) of the Parole Board Rules 2019 the only types of decisions which are eligible for reconsideration are those concerning whether 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)). Decisions concerning the termination, amendment, or dismissal of an IPP licence are also eligible for reconsideration (Rule 31(6) or Rule 31(6A)).
29. Rule 28(2) of the Parole Board Rules provides the sentence types 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)).
30. 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**.

Procedural unfairness

31. 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.

32. 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.
33. The overriding objective is to ensure that the Applicant's case was dealt with justly.

Irrationality

34. 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 paragraph 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."

35. 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.
36. The application of this test has been confirmed in previous decisions on applications for reconsideration under Rule 28: **Preston [2019] PBRA 1** and others.

Illegality

37. An administrative decision is unlawful under the broad heading of illegality if the panel:
- (a) misinterprets a legal instrument relevant to the function being performed;
 - (b) has no legal authority to make the decision;
 - (c) fails to fulfil a legal duty;
 - (d) exercises discretionary power for an extraneous purpose;
 - (e) takes into account irrelevant considerations or fails to take account of relevant considerations; and/or
 - (f) improperly delegates decision-making power.



38. The task in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power on the Panel. The instrument will normally be the Parole Board Rules, but it may also be an enunciated policy, or some other common law power.

Discussion

39. **Ground 1: Procedural unfairness** – it is submitted that the Applicant had an unfair hearing because the Panel did not take reasonable steps to ensure that it had the evidence it needed to reach definitive decisions relevant to risk. It is argued that the Panel should have adjourned the hearing and made directions to obtain (or attempt to obtain) information to address the gaps in its knowledge about the Applicant's three years and nine months outside the UK, three years of which were spent unlawfully at large.
40. I am easily persuaded that this is a valid argument.
41. The Panel stated that although the Applicant had provided a detailed account of his time outside the UK from February 2019 to November 2022, most of it was unverified. It was a dramatic saga which included the theft of the Applicant's inherited land by his two older brothers, his ejection from his home, the seizure of his passport and possessions, legal proceedings to recover his inheritance, death threats by his family who were said to have paid for him to be killed, an arranged marriage in 2019 (the COM said that she was not informed by the Applicant that he was married until March 2021, the Applicant disputes this), and being kidnapped by men with guns while in the Punjab in 2020. There were also journeys to Saudi Arabia and to Belgium twice. In Belgium, he spent time in a homeless shelter. He also reported spending a month in a psychiatric hospital in Brussels before being assisted by the British Embassy to travel to the UK in November 2022. The Panel said that there were inconsistencies in the Applicant's account and that it considered him to be an unreliable historian.
42. The only third party documents in the dossier were a letter signed by a clinical psychologist working in a homeless shelter in Brussels, which stated that the Applicant had been living there from December 2021 to May 2022, and a copy of an email from the British Embassy advising that the Applicant had contacted them in October 2022 to ask for assistance to return to the UK.
43. The Panel justifiably raised concerns about the Applicant's behaviour and decision making. It pointed out that he had not disclosed his marriage to the COM until March 2021, there was uncertainty about the disclosures he had made to his wife about the index offence, he had not informed his wife that he had returned to the UK or that he was in prison, and there were ambiguities in his future plans for the relationship. He had not provided the COM with his wife's contact details so that the COM could contact her, and the telephone number he had given the COM for his brother was unobtainable. The Panel noted that despite claiming that he had no access to funds while he was unlawfully at large, he had travelled from Pakistan to Saudi Arabia and from Pakistan to Belgium twice. He had also been able to fund legal proceedings to recover land stolen from him and also police protection when he was facing death threats from his family.



44. The Panel highlighted the “*significant gaps*” in its knowledge, and in the knowledge of the professional witnesses, about the time the Applicant had spent outside the UK and about his relationship with his wife. The Panel made it clear that after hearing evidence from the professional witnesses, the information it required to make robust and defensible assessments of risk was not available. The Panel was correct in my view to determine that it could not rely on the Applicant for a complete and reliable account of his activities outside the UK. The Panel was also correct in my view to conclude that it could not rely on the Applicant for an open and honest account of his marriage, what disclosures had been made to his wife, and whether there was any abusive or violent behaviour during their marriage. The Applicant had not disclosed his marriage to the COM for approximately 18 months and had not provided her with any contact details so that she could speak to his wife directly.
45. The Panel repeatedly stated that these gaps were barriers to it being able to make any assessments of risk with confidence.
46. In paragraph 2.34 of its decision, the Panel stated, “*Taking account of all the evidence, the panel agreed with [the COM] and [the POM] that due to the significant gaps in knowledge about the period of 3.5 years spent overseas and his relationship with [his wife], the panel could not be confident that risk has reduced to a level that could safely be managed in the community. The panel further concluded that it could not be confident in the assessments of risk nor confident that all core risk reduction work has been completed. There simply remain too many unknowns. The panel concluded that further exploration of the period overseas and his relationship with [his wife] is required. As [the Applicant] is an unreliable historian and provides vague and contradictory information it is important that this exploration involves external sources.*”
47. In paragraph 4.3 of its decision, the Panel stated: “*Whilst those gaps remain, the panel was unable to be confident in the assessments of risk. The panel was unable to be confident that there is no outstanding core risk reduction work that must be completed in custody. The panel was unable to be confident that [the Applicant] would comply with his Licence Conditions given the serious breach on his last release. The panel was unable to be confident that [the Applicant] would disclose developing intimate relationships in order to allow appropriate disclosure and safeguarding measures.*”
48. Having made these findings, the Panel does not explain why it did not consider adjourning the hearing to obtain, or attempt to obtain, some of the information which would have enabled it to make evidence-based assessments of risk, and therefore to consider whether the Applicant met the test for release. The Panel appears to imply that the onus was on the Applicant to obtain information and whilst I would agree that it was his responsibility to provide the COM with contact details for his wife and his brother, the Panel is responsible for obtaining directly or through others the information it requires to undertake, in a fair and just way, a review of the Applicant’s case.
49. It is the Panel’s responsibility, and specifically that of the panel chair, pursuant to rule 6 of the Parole Board Rules, to make any direction necessary in the interests of justice, to effectively manage the Applicant’s case, including directions relating



to the submission of evidence. I am surprised that the Applicant's legal representative did not seek an adjournment when making her closing submissions to the Panel.

50. At the end of its decision, the Panel sets out a carefully considered list of the information that would be required by the next panel to properly review the Applicant's case without seemingly recognising that it is precisely this information that was needed for it to undertake a proper review of the Applicant's case. The information includes evidence from the Applicant to support his account of the period between February 2019 and November 2022, evidence from the COM about her contact with the Applicant's brother, evidence from the COM about her contact with the Applicant's wife, evidence from the COM and/or the police in liaison with the authorities in Pakistan about the Applicant's marriage, evidence from the COM and/or the police in liaison with the authorities in Belgium about any offences committed there and any allegations of domestic violence. Information from the psychiatric hospital in Brussels is also likely to have been of value and it would have been pertinent for the Panel to consider the Applicant's risk not only in the UK but also in Pakistan.
51. It is worth addressing the submissions made in the Application about the COM's evidence and that some of it was based on undisclosed information. It would be unusual for the Panel to direct that email exchanges between the COM and the Applicant and copies of the probation services records or logs should be produced. Good cause must be shown for such a direction. The Applicant's legal representative would have had an opportunity during the hearing to ask the COM to access her records and give evidence from them directly. In the event of a dispute, it would have been open to the Applicant's legal representative to make an application for the records to be disclosed but there is no evidence that such an application was made.
52. I need not discuss the grounds for reconsideration which are based on irrationality and illegality as they principally arise out of the same issues as the ground based on procedural unfairness which I have already addressed in detail.

Decision

53. Accordingly, I consider, applying the test as defined in case law, that the Panel's decision was procedurally unfair. I do so solely for the reasons set out above. The application for reconsideration is therefore granted.

Hedd Emrys
13 May 2024