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[2024] PBRA 97

Application for Reconsideration by Knowles

Application

1. This is an application by Mr Knowles ('the Applicant') for reconsideration of the decision of a panel of the Parole Board ('the Board') who on 28 March 2024, after an oral hearing on 22 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 set out 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 454 numbered pages and now includes the panel's decision letter;
   (b) The application for reconsideration;
   (c) The detailed arguments advanced in support of the application; and
   (d) An e-mail from the Public Protection Casework Section of the Ministry of Justice ('PPCS') 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 37 and is serving an indeterminate sentence (detention at His Majesty's Pleasure) for his participation in a murder committed when he was 16 years old. The sentence was imposed in December 2003. The Applicant's minimum term ('tariff') was set at 9 years and 6 months and expired in December 2012. He has remained in prison throughout his sentence. This is the 10th review of his case by the Board.

6. The background to the Applicant's offending was conveniently summarised as follows in a 2015 psychological report. His attitude towards violence was influenced at a young age by witnessing the impact of his father's violence towards his mother. He then became involved with an older anti-social peer group who were a key influence on him. He is said to have looked up to them and admired the status that they enjoyed as a result of their criminal behaviour and violence. He has admitted that he was often involved in group violence without being convicted of it but has also said that he was sometimes the victim of the group's violence because he was the youngest and smallest of them. He himself had only one conviction before the murder but had been reprimanded for one non-violent crime and cautioned for another.

7. The murder occurred one night outside a nightclub. The victim was in a vulnerable state and had apparently been attacked by others before he was attacked by the Applicant and another youth who was a couple of years older than him. They committed a sustained attack on the victim, which included several kicks to the head. The Applicant was said to have used a penknife in an unsuccessful attempt to stab the victim. The victim died of his head injuries.

8. The Applicant pleaded guilty to the murder. In sentencing him the judge described the attack as sustained, vicious, remorseless and cowardly, but took into account his plea of guilty and his young age.

9. In the first few years of his sentence the Applicant progressed quite well, completing the appropriate risk reduction programmes and doing valuable work in two projects aimed at turning young people away from crime. He was evidently deeply ashamed of his own part in the murder. There were two blemishes in his progress, of kinds which are all too common in the cases of young offenders. He was involved in more than one fight with other prisoners, and he was introduced to the illegal use of Class A drugs (to which he became addicted).

10. Despite these blemishes, in May 2013 a panel of the Board decided, after an oral hearing, that he had made sufficient progress to justify a recommendation for a move to open conditions. The Respondent agreed with that recommendation and the Applicant was duly moved to an open prison.

11. There he was reported to have been highly motivated but after a time he was found to have used illegal drugs and was therefore returned to a closed prison. He has remained in closed prisons since then.

12. In December 2015 his case was reviewed by another oral hearing panel. He was not seeking a progressive move and asked for the review to be completed on the papers (which it was). In June 2017 he was moved to his present prison where he has remained since then.

13. In September 2018 he engaged in a psychological risk assessment ('PRA') by a prison psychologist (Ms C) who concluded that he had some outstanding *'treatment needs'* and recommended that he should engage in 1:1 sessions with a psychologist.

14. There was a further review of his case by the Board in 2019. As will be explained below, he had by that time largely isolated himself and spent most of his time in his cell. It appears that he was fearful for his own safety.

15. The 2019 oral hearing of his case was adjourned twice. On the first occasion, in February of that year, it was adjourned to allow the Applicant to complete some motivational work with Ms C. He seems to have engaged well in that work.

16. There was an incident in March 2019 when the Applicant was involved in some kind of a fight with another prisoner. It was the other prisoner (apparently a drug dealer) who had instigated the fight and was removed to the segregation unit afterwards. That incident will be discussed in more detail below.

17. In May 2019 the oral hearing was adjourned again. It had been anticipated that the Applicant would move to the progression unit at the prison where he was detained and that he would engage in a further PRA. In fact he declined to do either of those things.

18. The 2019 hearing finally took place in November of that year. There was no support from the professional witnesses for a progressive move. The view of the professionals was, as before, that the Applicant needed to complete some further risk reduction work before he could move to an open prison or be released into the community. The 2019 panel shared that view.

19. The present review of the Applicant's case commenced in January 2023. A number of changes had taken place by then. The Applicant had agreed to move to the progression unit and to engage in a further PRA. He did both of those things. Whilst remaining largely isolated from other prisoners, he had been engaging positively with the professionals: these were:
    - a different prison psychologist (Ms P);
    - his Prison Offender Manager ('POM') Ms W;
    - his Key Worker Officer W; and
    - his Community Offender Manager ('COM') Mr C.

20. The very clear view of all the professionals was that the Applicant had completed all necessary risk reduction work and that he could safely be released on licence to his mother's address. They acknowledged that release direct to that address would be an unusual step but they provided clear reasons why a move to open conditions or to a probation hostel ('Approved Premises') would not be appropriate in this particular case. The COM provided an exceptionally robust and detailed risk management which was supported by senior probation officers.

21. The oral hearing took place, as noted above, on 22 March 2024. It was conducted by video link. The panel comprised an Independent Chair, a Psychiatrist Member and a Psychologist Member. The Applicant was represented by his solicitor. The dossier provided by the Respondent at that stage comprised 422 numbered pages. Oral evidence was given by the POM Ms W, the psychologist Ms P and the COM Mr C.

22. The Applicant did not give oral evidence at the hearing. Because of his mental health difficulties it had been agreed, at the suggestion of his solicitor, that the panel would

provide a list of questions and he would provide his answers in writing. That duly took place. The solicitor explained the reason for this unusual course as follows:

> *"The history is lengthy and [the Applicant] is complex. He has been unable to participate in the parole process for some years and had suffered significantly with his mental health. There is no doubt that imprisonment from a young age has impacted [the Applicant] significantly. The COM and POM are working collaboratively with him ….. I will be in the prison on the day of the hearing to support him further. At the present time [the Applicant] is very apprehensive of the parole review and has currently expressed the wish not to give evidence. This may change and support is being provided by professionals. In the event that [the Applicant] is either unable to attend the OH, or in fact attends but feels unable to give evidence, I am of the view that this would impact his application for release."*

23. The Applicant did attend the hearing but did not feel able to give oral evidence.

24. The panel decided, for reasons which they set out in their decision, that the Applicant did not meet the test for release on licence (or the test for recommending a move to open conditions).

Request for Reconsideration

25. This request for reconsideration was made by the Applicant's solicitor on his behalf on 12 April 2024. As noted above it is made on the ground of irrationality. The detailed arguments advanced by the solicitor will be explained and discussed below.

The Relevant Law

26. The panel correctly sets out in its decision letter dated 22 March 2024 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

Parole Board Rules 2019 (as amended)

27. 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)).

28. 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)).

29. 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 ground of irrationality. No procedural unfairness or error of law is suggested.

Irrationality

30. 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."*

31. 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.

32. 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.

33. 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**.

The Reply on behalf of the Respondent

34. 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

35. It is convenient to set out in turn each of the detailed arguments advanced by the solicitor in support of the application, and my comments about each of them.

36. By way of introduction the solicitor refers to the case of **R (Wells) vs Parole Board 2019 EWHC 2710** and the unanimous evidence of the psychologist, the POM and the COM. She stated that *"all three professionals gave very clear evidence that they recommended release, risk of serious harm in this case was not considered to be imminent, and there would be clear warning signs in the community if risk was escalating".*

37. In the decision of the High Court in **Wells** it was stated that: *"If the Panel were to make a decision contrary to the opinions and recommendations of all the professional witnesses, it is important that it should explain clearly its reasons for doing so and that*

its stated reason should be sufficient to justify its conclusions. Moreover, the duty to give reasons is heightened when expert evidence, implicitly at least, is rejected by the Panel."

38. The solicitor then refers to the various reasons given by the panel for rejecting the evidence of the professional witnesses in this case, and sets out her arguments for the submission that those reasons were unfounded or insufficiently supported by the evidence.

1. "The panel [stated that they] found it difficult to find evidence of risk reduction"

39. **The Solicitor's submissions:** *"[The Applicant] has been in custody having been sentenced in 2003. He received a recommendation from the Parole Board in 2013 that he had reduced his risk sufficiently to allow him to be moved to open conditions, and indeed he was moved to open conditions. He was removed from open conditions in 2014 due to a lapse into drug misuse.*

"His last positive drug test was in January 2018 which resulted in an adjudication and there was ample evidence since that date of drug abstinence. There was an incident on 27 March 2019, over 5 years ago, in which [the Applicant] admitted assaulting another prisoner. This adjudication was not proven. In addition, there was no evidence before the Panel or, indeed a previous Panel, that any serious harm was caused and indeed what [the Applicant] actually accepted was throwing a punch that did not land. There was a suggestion in the reasons that the last time [the Applicant] was mixing with other prisoners this happened. This is not the case, he did not start to isolate himself until March 2020 (the pandemic) and there was a further year when [the Applicant] was not isolating and no issues arose.

"We would suggest the Panel have put too much weight on this incident and failed to appreciate that it was 5 years ago, it was unproven, there was no suggestion or evidence of serious harm being caused and in fact post that incident, [the Applicant] had engaged in six one to one sessions with [Ms C]. This is irrational."

40. **My comments:** There is some force in this submission. There was a great deal of evidence that the Applicant had achieved a substantial reduction in his risk of serious harm to the public by 2013 when he was moved to open conditions (see paragraphs 9-10 above). An important point which does not appear to have been taken fully into account by the panel is that it is recognised that the attitudes and behaviour of an offender as young as the Applicant was at the time of the murder (and especially his attitudes towards the use of violence) can and often do change significantly with maturity and with the assistance of appropriate risk reduction courses in prison. There is clear evidence that that happened in the Applicant's case.

41. His return from open to closed conditions was solely due to his use of illegal drugs, which certainly meant that at that point (and until he was able to demonstrate a substantial period of abstinence from such drugs) his risk to the public was heightened. As the solicitor points out there is ample evidence that the Applicant has successfully abstained from illegal drugs for the past 6 years. He is still dependent on a prescribed low level of methadone but he is well motivated to continue using that until he is able

to come off it. He hopes to do that when he has left prison and has settled in the community. That is clearly a sensible approach.

42. I will discuss the assault in March 2019 in paragraphs 55-65 below.

43. The solicitor is mistaken in stating that the Applicant did not begin to isolate himself until the pandemic in 2000 (though it may be that his isolation became greater at that time). The Applicant himself wrote in his answer to the panel's first question: *"I have withdrawn myself to a large extent for the previous seven years. Two years of this was during the pandemic. This has allowed me to keep myself to myself. I feel that I have had time to reflect. The isolation has allowed my busy mind to settle. I try to avoid other prisoners in the main so that I can avoid any drug misuse and avoid those criminal associates."*

44. The Applicant's statement is consistent with the following passage in the decision of the 2015 panel:

> *"You transferred to [prison A] in February 2014 and you remained there until transferring to [prison B] in April 2015…Reports indicate that you spent much of your time at [prison A] in your cell…When you arrived at [prison B] you came into contact with another life sentenced prisoner who was related to the victim of your index offence [the murder]. You felt threatened and you were unwilling to leave your cell…"*

45. Before leaving this topic I should mention two other written answers given by the Applicant to the panel's questions, which illustrate the change in his attitude to the use of violence:

> *Question: What do you think are the risk factors that meant that you used violence in the past?*
> *Answer: At the time of the index offence, risk factors were alcohol and drugs, being prepared to use violence; I would fight if I had to. I mixed with the wrong crowd. I did not manage my emotions. I did not make good decisions when I was child and had a lot to learn. Boredom was a problem for me. I would show off from the age of 13 as I was bullied so I tried to act bigger, stronger and braver. I never thought of any consequences.*
>
> *Question: What is your current attitude to use of violence?*
> *Answer: I am completely and utterly against it. I do not feel I have a fight in me. I feel that I would run away. I am not good at confrontation.*

46. Of course this does not mean that there is no risk of the Applicant being provoked into the use of some violence in the future, especially in times of stress, but there is no doubt that his maturity and changed attitudes have resulted in a substantial reduction in his risk of serious harm to the public.

2. "Low stress tolerance"

47. **The solicitor's submissions:** *"The panel stated that stress tolerance appears to be very low and the risk management plan continues to rely predominantly on [the Applicant] avoiding social situations. The Panel have taken [the Applicant's] isolation and avoidance tactics entirely negatively when all three professionals spoke about isolation as being a protective factor for [the Applicant], and indeed the Prison Psychologist confirmed that he was in fact isolating less now than he had been 4 years ago. The Panel failed to take this into account. This is irrational."*

48. **My comments.** It is certainly correct that the Applicant is isolating less than he had done for a long time, in that he is able to engage positively with the professionals. He is, however, largely avoiding much contact with other prisoners. There are pros and cons to this strategy of avoidance. I agree with the solicitor that it is not entirely negative.

49. Prison life has many risks and difficulties for inmates, and isolation is one way of dealing with them. Learning to handle pressures from anti-social fellow prisoners can help to equip an individual to deal with similar problems if they should arise in the community: however, the best way of avoiding trouble (by walking away from it) is often not possible in prison.

50. It is inevitable that there will be stresses for the Applicant in the community which he may not find it easy to handle. That is always the case when an offender is released after a long time in prison, and there is always a risk that in such a situation he might respond in an inappropriate way, possibly with some form of violence.

51. When an offender (like the Applicant) has not only spent many years in prison but also had no experience of normal life in the community as an adult, adjusting to life in the community is bound to be particularly difficult. Spending most of one's time at home, to begin with, is not a bad way of starting the transition. It is to be expected that as the Applicant gradually settles into a life outside prison, he will make more contacts outside his home.

52. To an extent I agree, therefore, that in emphasising the negative aspect of isolation, the panel do not appear to have taken into account the positive aspect.

3. "Minimal evidence to demonstrate [the Applicant] had the adequate coping skills to actively deal with the likely stresses he will face."

53. **The solicitor's submissions:** Although the panel regarded the Applicant's coping skills as being minimal *"the evidence before the Panel was that he has had significant stresses to deal with in custody over the previous 21 years. There have been no drug relapses for a period of 6 years and no use of violence since 2019. We would suggest that this does show evidence of adequate coping skills to deal with stresses he has encountered. The panel failed to give sufficient weight to these facts and this is irrational."*

54. **My comments:** I agree that up to a point the Applicant has managed to cope well with many of the problems which he has faced in prison. The panel are of course right in pointing out that because of his deliberate isolation he has been unable to

demonstrate other ways of coping with problems in prison. That does not necessarily mean that he will not be able to cope with problems in the community.

4. The incident in 2019

55. **The solicitor's submissions:** *"This adjudication was unproven, [the Applicant] accepted that he had swung a punch that did not land. The Panel said that the situation where [the Applicant] responded with violence seemingly had some parallels in attitude to his index offence in that [the Applicant] felt slighted and the need to react with violence in order to protect himself from further victimisation. These did not parallel the index offence.*

56. *"The risk factor of him being violent towards others as a strategy to avoid being the victim of violence by peers was not said to be present in the Psychological Report from 2018. The difference being that in the index offence, [the Applicant] was raising his profile within his group, whereas in the prison incident in 2019 he was responding to significant provocation from a bully.*

57. *"The Parole Board in the Decision said that in 2019 [the Applicant] had already completed ETS and CALM and has not subsequently participated in any further risk reduction interventions. This fails to take account of the one to one work that [the Applicant] completed with [Ms C] following the incident in 2019 and also fails to take account of any learning he may have gained from the Progressive Regime."*

58. **My comments**: There is force in the solicitor's criticism of the panel's statement that the 2019 incident *"seemingly had some parallels in attitude to his index offence".* The two incidents were entirely different and occurred in entirely different circumstances and for entirely different reasons.

59. Having said that, it was unfortunate that, having changed his attitudes towards the use of violence, the Applicant on this one occasion nevertheless resorted to some violence (albeit of a far less serious kind than in the index offence).

60. I do not regard the fact that the disciplinary charge was dismissed as being of any significance: for some reason the adjudicator was not in possession of the statement of a member of staff who witnessed the latter part of what occurred. Of greater significance is, perhaps, the fact that the other prisoner was regarded at the time by staff as having been responsible for the incident and was therefore removed to the segregation unit.

61. It is necessary to examine the facts of the incident as they were recorded in the decision of the 2019 panel.

62. The staff member said in his statement that he saw the Applicant going up the stairs with a meal. Then he felt something hit his leg, and saw that it was a meal. He looked up and saw the Applicant landing blows on another prisoner. He immediately intervened and moved the Applicant away from the other prisoner but for a brief moment the Applicant tried to carry on the assault. The Applicant let the officer escort him back to his cell. The Applicant told the officer that the incident had arisen over an issue with

the meal that was served on the wing. (Since the Applicant was isolating himself in his cell his meals were brought to him by other prisoners).

63. The Applicant explained the incident in greater detail in his evidence to the 2019 panel. He said that the other prisoner was a stranger to him but he knew that he dealt drugs (no doubt word gets around in prison about anybody who is doing that). When he brought the Applicant a meal the other prisoner offered him a vape. The Applicant knew that that was a prelude to being offered spice (an illegal drug). When he refused the vape the other prisoner stole his fish off his plate. He tried to get it back and followed the other prisoner along the landing. He was prepared to have a fight on the landing. He never landed any blows on the other prisoner because he dodged out of the way. He was charged with the disciplinary offence of assault which he denied, but he would have admitted a charge of attempted assault. (An attempt to strike someone, even if unsuccessful, is an assault in the eyes of the law but the Applicant did not know that and it seems the adjudicator did not know it either - or perhaps just thought that if the blow did not land and the other prisoner had started the incident the matter was not serious enough to warrant a finding of guilt).

64. It is naturally a cause for concern that the Applicant was prepared to have a fight with another prisoner for whatever kind of provocation. However, this was an isolated incident 5 years ago and the solicitor rightly points out that the Applicant subsequently engaged in the 1:1 sessions with Ms C.

65. Whilst this was certainly a matter which the panel were entitled to take into account, there is force in the solicitor's submission that they attached too much weight to it in their assessment of the Applicant's current risk of serious harm to the public in the community.

5. Suitability for standard approved premises

66. **The solicitor's submission:** *"The Panel did not feel [the Applicant] could cope in a standard approved premises and nobody knows how he will react if he could not isolate and encountered issues. The professional witnesses' evidence was that [the Applicant] could cope in a standard approved premises and whilst it would bring challenges, there was no evidence from professionals that [the Applicant] would be unable to cope."*

67. **My comments:** I need not spend much time on this point. The primary opinion of the professional witnesses was that the Applicant should be released to his mother's address. It was only if that was considered inappropriate that the professionals would recommend release to a specific Approved Premises.

6. "Pressure on the Applicant's mother if he was to be released to her address"

68. **The solicitor's submission:** *"It was said that release to his mother's house would put a lot of demand on her. Again, the clear evidence from professionals was that his mother was well able to cope with any of these demands and there was no evidence before the Panel that this would be a problematic situation. No opinion was expressed that his mother would not cope with having [the Applicant] at home.*

69. *"The Panel stated it is not known if issues between [the Applicant] and his stepfather still exist or will rear up again. This is directly in contradiction of the evidence that was heard from [the COM]. He told the Panel in his evidence that he had met [the Applicant's] mother and stepfather on numerous occasions. He said that he had met with [the Applicant's] stepfather and no issues had been identified, he took it as a positive relationship, there was no tension now, and the impression that he got was that it was a joint decision between [the Applicant's] mother and stepfather to have him live there. It is not clear why the Panel have said it is not known if the issues between [the Applicant] and his stepfather still exist when the Panel clearly had evidence from [the COM] who had had contact with him that there were no continuing issues in existence. The panel misinterpreted the evidence and came to a conclusion that is irrational as not based on the evidence of [any] professional [witness]."*

70. **My comments:** There are certainly likely to be some pressures on the Applicant's mother if he is released to her address. That is a matter which the panel were bound to take into account: it was a concern that needed to be addressed. However, there is force in the submission that in the face of the COM's evidence the panel attached too much weight to it. There had not surprisingly been some issues between the Applicant and his stepfather at a different stage of his life but there was no evidence that they still existed.

7. "Potential ruptures in established relationships"

71. **The solicitor's submission**: *"The Panel felt there was limited consideration of how potential ruptures in established relationships would impact and be managed. Again, there was no suggestion that there would be ruptures in the relationships. The COM's evidence was very clear that he would be talking regularly to the family and that he would be undertaking two to three home visits per week whilst [the Applicant] was on licence if he was at the home address. There was therefore clear evidence before the Panel of consideration for the family dynamics and they would be managed according to the COM through close contact with the family and home visits of an enhanced level. The over-reliance on a concern that was not raised by the professional witnesses is irrational."*

72. **My comments:** It is not uncommon for a panel to raise a concern which was not mentioned by any of the professional witnesses: indeed they are under a duty to do so if they believe that is relevant to their assessment of the prisoner's risk of serious harm to the public. The concern was therefore properly raised by the panel but again there is force in the submission that in the face of the COM's evidence they attached too much weight to it.

8. "Communication difficulties:

73. **The solicitor's submissions:** *"It was further said that there was limited evidence available to consider whether [the Applicant] would feel able to and how he would communicate issues with his COM due to ongoing shame and fear of returning to custody. The Panel had before it evidence from three professionals, the Prison Offender Manager, the Community Offender Manager and the Prison Psychologist, who all gave evidence that [the Applicant] had engaged with them quite extensively in order for them to undertake their assessments, and further the POM provided evidence that [the*

Applicant] engaged with his key worker on the [Progression Unit] on a regular basis. To say that the evidence of communication was limited is irrational."

74. **My comments**: I do not think the solicitor's argument entirely meets the panel's concern that the Applicant might not feel able to disclose to his COM any problems he is having in the community. There is always some concern that an offender released on licence may be reluctant to disclose problems for reasons of the kind mentioned by the panel. This is something which always has to be borne in mind when considering whether to direct a prisoner's release on licence. I have not seen any evidence that the Applicant is any more likely than any other released prisoner to avoid disclosing things which he should disclose. He has clearly built a good relationship with his COM and the enhanced level of home visits should help to ensure that problems are identified and dealt with as they arise.

9. "No evidence of conflict resolution in any way in prison"

75. **The solicitor's submission**: *"Although the Panel acknowledged that professionals had all recommended release and had worked very hard on the RMP, they were not prepared to accept these recommendations, stating that all professionals used his avoidance techniques to evidence that he is coping but he has not evidenced conflict resolution in any way in prison. The 2019 incident was the last time he could have evidenced it but it ended in allegations of violence.*

76. "[*The Applicant] remained in the mainstream estate for a further 12 months after this incident and no issues were raised …. The Panel say that he has not evidenced conflict resolution "in any way in prison". Again, this fails to take account of the fact that by 2013 recommendations were made for release. There is only one incident, some 5 years ago now, of difficulties for [the Applicant] and this did not result in serious harm and indeed did not result in a finding of guilt. To rely upon this solely to say that he does not have evidence of conflict resolution is too simplistic and therefore, in our view, irrational. There is no doubt that [the Applicant] having been in the prison estate now for 21 years, has been in a variety of situations, both under the influence of controlled drugs and not, and the only incidence of use of violence is the one from 2019 and that is subject to caveats as raised above."*

77. **My comments**: Panels (and psychologists and probation officers) like to see specific evidence of a prisoner being in a conflict situation in prison and using appropriate conflict resolution techniques to deal with that situation. Evidence of that kind is certainly something which assists a prisoner's case when he is up for parole. But the absence of specific evidence of that kind is not in itself evidence of an increased risk of the prisoner causing serious harm to the public in the future. The whole of the rest of the evidence needs to be considered in order to make that assessment. Isolating yourself, as I have pointed out above, has its pros and cons.

78. If the whole of the evidence in this case is examined with care it shows that there is some force in the solicitor's submission that the panel placed too much weight on the 2019 incident and the absence of specific evidence of the use by the Applicant of conflict resolution skills in prison.

Decision

79. I have not found this an easy case to decide. I have reminded myself of the test for reconsideration laid down in **R (DSD and others) v the Parole Board** and other cases, and of the guidance given by the High Court in **R (Wells) v Parole Board.** It is not my task to decide what decision I would have made if I had been in the panel's position. I am solely concerned with the rationality or irrationality of the panel's decision, applying the test in **DSD** and following the guidance of the High Court in **Wells**.

80. That means that I have to decide whether the reasons given by the panel for rejecting the recommendations of the professional witnesses were sufficient to justify that rejection.

81. On very careful consideration I have come to the conclusion that they were not. I can well understand the panel's caution when faced by unconventional recommendations from the professionals in what was a most unusual case. However at the end of the day there were a number of respects (which I have gone through in detail above) in which I believe that the panel were over-cautious and can be said to have placed too much reliance on some matters and not enough on others. The cumulative effect of that happening was, I think, that their decision must be regarded as 'irrational' within the meaning of the cases.

82. I must therefore quash the panel's decision and direct that this case should be reconsidered by another panel.

Jeremy Roberts
16 May 2024