

[2024] PBSA 23

## Application for Set Aside by the Secretary of State for Justice in the case of Trayers

### Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision to direct the release of Travers (the Respondent). The decision was made by a panel on the papers. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier (183 pages), the paper decision (dated 26 March 2024), and the application for set aside (dated 9 April 2024).

### Background

3. On 24 October 2019, the Respondent received a number of determinate sentences for five offences to which he pleaded guilty: possession of class A drug (heroin) with intent to supply (40 months), possession of class A drug (cocaine) with intent to supply (40 months concurrent), dangerous driving (8 months consecutive), driving whilst disqualified (3 months concurrent) and using vehicle while uninsured (no separate penalty). His sentence ends in July 2024.
4. The Respondent was aged 24 at the time of sentencing. He is now 28 years old.
5. In April 2021, he received a further 12 month consecutive sentence for aggravated vehicle-taking, 6 months concurrent for possession of a knife/pointed article in a public place, and 6 months concurrent for possession of an offensive weapon in a public place. All these offences took place in 2018.
6. In January 2023, he received further convictions for possession of a mobile phone and Class B drugs while in custody (in February 2022) and received a further one year sentence.
7. The Respondent was automatically released on licence on 8 April 2022. His licence was revoked on 30 May 2022, and he was returned to custody the same day. This is his first recall on this sentence and his first parole review since recall.

### Application for Set Aside

8. The application for set aside has been drafted and submitted by the Public Protection Casework Section (**PPCS**) acting on behalf of the Applicant.



3rd Floor, 10 South Colonnade, London E14 4PU

[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)

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9. The application for set aside submits there is further information constituting a significant change in circumstances which came to light after the panel made its decision. It is argued that the panel may not have reached the same decision had this new information been known.

10. The content of the application will be considered in the **Discussion** section below.

### Current Parole Review

11. The Respondent's case was referred to the Parole Board by the Applicant to consider whether or not it would be appropriate to direct his release.

12. The case was decided by a single-member panel on the papers under rule 19. The panel directed the Respondent's release.

### The Relevant Law

13. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended) provides that a prisoner or the Secretary of State may apply to the Parole Board to set aside certain final decisions. Similarly, under rule 28A(1)(b), the Parole Board may seek to set aside certain final decisions on its own initiative.

14. The types of decisions eligible for set aside are set out in rule 28A(1). Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for set aside 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)).

15. A final decision may be set aside if it is in the interests of justice to do so (rule 28A(3)(a)) **and** either (rule 28A(4)):

- a) a direction for release (or a decision not to direct release) would not have been given or made but for an error of law or fact, or
- b) a direction for release would not have been given if information that had not been available to the Board had been available, or
- c) a direction for release would not have been given if a change in circumstances relating to the prisoner after the direction was given had occurred before it was given.

### The reply on behalf of the Respondent

16. The Respondent has submitted a statement in response to the application which will be considered in the **Discussion** section below.

### Discussion

17. The Applicant reports significant concerns regarding the Respondent's custodial behaviour after he was informed of the release decision. He has been subject to seven adjudications (four proven, three adjourned), for destroying/damaging property, barricading himself in his cell, refusing to relocate and possession of

unauthorised articles. He has also received seven negative entries (some of which relate to the adjudications).

18.The Respondent's Community Offender (**COM**) is also said to have received new information which suggests that risk to his ex-partner has increased: he is assessed as posing an imminent risk if released. The Respondent is alleged to have made two direct threats to his ex-partner, both of which have been reported to police as threats to kill.

19.The COM has stated that, if the new information had been available at the time of completing their most recent report their professional opinion would have been that the Respondent was not suitable for release.

20.The Respondent says that 'a whole situation happened' in relation to a wing move which he does not deny. He denies making threats to kill his ex-partner which he describes as 'blatantly a lie' designed to keep him in custody.

21.In assessing the Respondent's risk, the decision states (at 3.1):

*"The OGRS3 scores in the most recent OASys indicate that his antecedents (that is static risk factors such as number of previous convictions and age at first conviction) place him in the group of offenders with a medium risk. His OGP score (that is, the risk of non-violent re-offending) also places him as a medium risk. His OVP score (that is, the risk of violent reoffending) places him in the low category."*

22.This is incorrect. The OASys of 26 January 2024 in the dossier shows the Respondent's OGRS3 as high, his OGP as very high and his OVP as high.

23.Notwithstanding the panel's misstatement of the Respondent's risk assessments, I am satisfied that it would not have made a direction for release had it been aware of this new information relating to the prisoner. I am also satisfied that it is in the interests of justice for the decision to be set aside, since those interests would not be served by releasing a prisoner who has admitted to violence in custody and is subject to police investigation for alleged threats to kill (without the veracity of those allegations being tested and determined).

## Decision

24.For the reasons I have given, the application is granted, and the decision of the panel dated 26 March 2024 is set aside.

**Stefan Fafinski**  
**18 April 2024**