

[2024] PBSA 48

**Application for Set Aside by the Secretary of State for Justice
in the case of Reynolds****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 Reynolds (the Respondent). The decision was made by a panel following an oral hearing. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier (492 pages), the decision (undated, but referring to a hearing on 12 June 2024), and the application for set aside (dated 10 July 2024).

Background

3. On 26 June 2017, the Respondent was convicted of breach of sexual offences prevention order (SOPO), sexual assault of a male (previous suspended sentence activated), five counts of making indecent photo of a child , three counts of distributing indecent photo of a child, seven counts of breaching sexual harm prevention order (SHPO) , two counts of causing child under 16 years to engage in sexual activity, two counts of arranging sexual exploitation of a child , two counts of failing to comply with notification requirements , two counts of attempting/meeting a child under 16 years following grooming, two counts of attempting/paying for sexual services of a child under 15 years. Following an appeal (*R v D* [2018] EWCA Crim 3074) his sentence was amended to a determinate sentence of imprisonment for two years consecutive to an extended sentence of 13 years (comprising a custodial term of imprisonment for eight years and an extension period of five years). He was also made subject to an indefinite sexual harm prevention order.
4. His conditional release date is reported to be in December 2024, and his sentence end date will be in December 2030.
5. The Respondent was aged 65 at the time of sentencing. He is now 72 years old.

Application for Set Aside

6. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
7. The application for set aside submits there is further information constituting a change in circumstances which came to light after the panel made its decision. It is

argued that the panel would not have reached the same decision had this new information been known.

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

Current Parole Review

9. 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.
10. The case proceeded to an oral hearing on 12 June 2024, before a three-member panel including a psychologist specialist member. The panel took evidence from the Respondent, together with his Prison Offender Manager (POM), Community Offender Manager (COM) and a registered forensic psychologist commissioned by HMPPS. The Respondent was legally represented throughout the hearing. The panel directed the Respondent's release. The decision was issued on 18 June 2024.
11. Because the Respondent is serving an extended sentence, the panel's decision was preliminary for 21 days to permit an application for reconsideration. With no application having been received, the decision became final (and thereby falling within the set aside rule) on 9 July 2024.

The Relevant Law

12. 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.
13. 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)).
14. 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

15. The Respondent has submitted representations in response to the application which will be considered in the **Discussion** section below.

Discussion

16. The Applicant notes the following:

- a) On 16 May 2024, the Respondent admitted that money was being sent to his bank account via relatives of prisoners for vapes and canteen. He said he did not know he was doing anything wrong.
- b) On 17 June 2024, the Respondent made a call to his bank who stated his balance was over £100,000 plus a *"few pending incoming balances"*. His savings account balance was around £1,000. Concern is expressed since his offending history involves paying younger males to engage in sexual activity.
- c) On 22 June 2024, it was alleged that the Respondent is a *"massive bully and manipulator and picks on vulnerable prisoners"*. He was said to hoard vapes and sell them with proceeds coming through an outside bank account. It was alleged that the Respondent was working with another prisoner to *"make as much money as they could in prison through outside bank accounts and cover stories"*. It was also alleged that the Respondent would *"force young and vulnerable prisoners to take part in sex acts and favours in return for something else"*.
- d) On 23 June 2024, it was alleged that the Respondent sexually assaulted another prisoner by grabbing his penis. The matter has been referred out to the police.

17. On 9 July 2024, a further (low reliability) piece of intelligence alleges that several prisoners have approached the complainant in the sexual assault matter and asked him to drop the allegation. It was further alleged that another prisoner asked, *"how much he would need to be paid in order to drop the allegation with the police"*.

18. The Respondent's POM and COM no longer consider the proposed risk management plan would be sufficient to manage his risks in the community and no longer support release. They raise concerns about the Respondent's openness and honesty, together with behaviour and areas of associated risk that had not yet been considered by the Probation Service (and therefore not raised with the Parole Board). Moreover, while acknowledging that matters are unproven, the Respondent's involvement in potentially illicit activities within the prison estate should be explored.

19. It is noted that, should the application for set aside be unsuccessful, the Probation Service would consider requesting a bespoke licence condition for the Respondent to disclose full financial information.

20. Representations on behalf of the Respondent dispute the allegation that he sexually assaulted another prisoner. It is noted that although the matter has been referred to the police, no investigation has taken place and there has been no interview under caution. As such, the prospects of any prosecution being concluded in advance of the Respondent's conditional release date are low to non-existent. It is also argued

that the incident would not increase risk to the public, but may increase the risk of harm to prisoners.

21. It is also submitted that the significant sum in the Respondent's bank account resulted from his divorce settlement. He admits to selling and swapping vapes, but stopped doing so in May 2024, and there has been no income from this since. He says the pending payments related to his pension.

22. The Respondent denies being a bully or a manipulator and disputes forcing young and vulnerable prisoners to take part in sex acts in return. It is noted that the security information is ungraded, and this places the Respondent at a disadvantage.

23. Turning to each of the new pieces of information in turn:

- a) The information regarding trading vapes predates the decision. The panel considered that there was no hard evidence to connect the Respondent to the usual day-to-day bartering between prisoners. It noted there was only low level security evidence in support of this. I do not find that the Respondent's acknowledgement of incoming funds for vape sales would have made any difference to the panel's decision.
- b) The Respondent has given an explanation of the source of the funds in his account. There is no evidence to suggest that these funds were obtained unlawfully. I do not find that having access to money increases risk of future sexual reoffending. To find otherwise would mean unnecessarily penalising the Respondent for having financial means. His risks are well known and would not change materially even if the Respondent was penniless. It is not for me to consider the necessity and proportionality of any proposed additional licence conditions.
- c) The intelligence relating to taxing and bullying is ungraded. In the hearing, the Respondent's POM dismissed security intelligence suggesting he had demanded sexual favours in lieu of payment for bartered items. Her view stemmed from the low grading of the intelligence and the absence of any other evidence of inappropriate behaviour towards fellow prisoners. The new information appears to be more of the same content that had already been considered by the panel (and dismissed by the Respondent's POM).
- d) The allegation of sexual assault is of concern. I note that it has been referred out to police. However, I also note that no investigation has taken place and there has been no interview under caution. I do not, however, accept the Respondent's assertion that the allegation, if true, would only increase risk to prisoners: grabbing another person's penis does not become materially less serious just because that other person is incarcerated. The allegation is relevant to risk (since it is an allegation of sexual assault made against a prisoner serving a sentence for sexual offences), and it is therefore the sort of allegation which a reasonable panel would want to examine in order to decide how much weight to give it in its overall assessment of the Respondent's risk. Pragmatically, however, it is unlikely that any re-review of the Respondent's case would take place prior to his conditional release

date. That is not, of itself, a reason not to grant this application. However, at present, it is a mere allegation with very limited evidence other than the word of the complainant. Although it relates to potential sexual reoffending, this is not a new area of risk, neither is it one which is unknown to the Probation Service nor left uncovered by the extensive list additional licence conditions. If an investigation takes place and the Respondent is eventually arrested and charged, then it will be a matter for the Probation Service to decide whether to recall him to custody at that point.

24. In conclusion, there is insufficient evidence of increased risk for me to find that the panel would have made a different decision based upon the currently available information within the application for set aside.

Decision

25. For the reasons I have given, the application is refused.

Stefan Fafinski
24 July 2024