

[2024] PBSA 86

**Application for Set Aside by the Secretary of State for Justice  
in the case of Ahmed****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 Ahmed (the Respondent). The decision was made by a panel after an oral hearing. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier (656 pages), the decision (dated 15 October 2024), a prison security intelligence report (dated 5 December 2024), and the application for set aside (dated 11 December 2024).

**Background**

3. On 12 September 2008, the Respondent received a sentence of imprisonment for public protection following conviction for robbery to which he pleaded guilty. His tariff expired in July 2010.
4. The Respondent was aged 20 at the time of sentencing. He is now 36 years old.
5. He was released in March 2020 following an oral hearing. His licence was revoked in March 2021, and he was returned to custody. This is his second review since recall.

**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 to direct his release.
10. The case was considered by a two member panel at an oral hearing on 15 October 2024. The panel heard evidence from the Respondent, his Prison Offender Manager



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(POM), his Community Offender Manager (COM) and a HMPPS forensic psychologist. The Respondent was legally represented throughout the proceedings. The Applicant was not legally represented.

11. The panel directed the Applicant's release. This was a provisional decision. As no application for reconsideration was made by either party, the decision became final on 11 November 2024. The Applicant was due to be released on 9 December 2024.

## The Relevant Law

12. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended 2024) 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 also be considered in the **Discussion** section below.

## Discussion

16. The Applicant submits the following:

- a) The Respondent has been moved to the segregation unit as it is believed he is in a relationship with a female prison officer.
- b) The alleged relationship is under investigation, although the Deputy Governor has advised "*it might be difficult to prove*".
- c) When the Respondent was told why he was being moved to the segregation unit, he is said to have responded by saying "*prove it*".

- d) The COM is of the view that the alleged relationship *"increases [the Respondent's] risk and/or has an impact on whether this can be managed in the community"* and has led them to question *"his honesty and general response to the accusation"*.
- e) The COM highlights a risk of *"violence or sexually aggressive behaviour towards staff to insight fear"*. (I take this to mean 'incite').

17. The prison security intelligence report which accompanied the Application notes the following matters since the oral hearing:

- a) Intelligence suggests the Respondent supplied drugs to other prisoners (low reliability)
- b) Intelligence suggests the Respondent is running drugs (low reliability)
- c) Intelligence suggests the Respondent has been asking staff for personal details (high reliability)
- d) Intelligence suggests the Respondent made threats to other prisoners with a weapon (low reliability).

18. Submissions on behalf of the Respondent note:

- a) The Respondent has been told the allegation referred to the summer of 2024, but was not given specific dates or times.
- b) The Respondent has not been told who the officer in question is.
- c) The Respondent admitted to saying *"prove it"* but this was out of frustration.

19. In summary, the Respondent submits that there is insufficient evidence on which to set the decision aside.

20. Put bluntly, there is nothing within the evidence provided with the application which is sufficiently substantial for me to even consider setting the decision aside. There is an allegation of a relationship with a prison officer, but no detail as to when this allegedly occurred. The intelligence since the hearing is predominantly of low reliability and, on the face of it, entirely unrelated to any alleged inappropriate relationship. Based on the evidence before me, I can see no basis on which the COM would conclude that risk had increased, and community management had become more difficult. In addition, I cannot see how the COM could conclude – again on the basis of the evidence before me – that there is a risk of sexually aggressive behaviour or violence towards staff.

21. The application is therefore without foundation and must fail. There is no evidence of new information relating to an alleged relationship, and (other than the Respondent being taken to the segregation unit on what appears to be very little evidence) no change in circumstances.

**Decision**

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

**Stefan Fafinski**  
**19 December 2024**