

[2025] PBRA 10

Application for Reconsideration by Pope

Application

1. This is an application by Pope (the Applicant) for reconsideration of a decision of an oral hearing dated the 20 November 2024 not to direct release.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2024) (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. This is an eligible case, and the application was made in time.
3. I have considered the application on the papers. These are the oral hearing decision, the dossier consisting of 505 pages and the application for reconsideration. I have also had access to the audio recording of the hearing.

Request for Reconsideration

4. The application for reconsideration is dated 20 December 2024. It has been drafted by solicitors acting for the Applicant. It submits that the decision was procedurally unfair as there was a change in solicitor representation during the period of an adjournment and the panel should have re-started the case so that all parties heard all the evidence.
5. The submission is supplemented by written arguments and a chronology to which reference will be made in the Discussion section below.

Background

6. The Applicant received a sentence of life imprisonment in October 2000 following conviction for an attempted rape of the first victim and two rapes of a second victim two days later. He also received a concurrent sentence of 18 months imprisonment in respect of an assault arising from the first incident. His tariff was set at 4 years 6 months and expired in April 2005.
7. The Applicant was 30 years old at the time of sentencing and is now 54 years old.

Current parole review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in April 2023 to consider whether or not it would be appropriate to direct his release. If the Board did not consider it appropriate to direct release, it was invited to advise the Respondent whether the Applicant should be transferred to open conditions.
9. The case proceeded to an oral hearing via videoconference on 20 June 2024. The panel consisted of three independent members. It heard oral evidence from the Applicant together with his Prison Offender Manager (POM), prison psychologist and Community Offender Manager (COM). The future COM attended as an observer. The Applicant was legally represented throughout the hearing. However just before she was due to question the COM the representative asked for time to speak privately to the Applicant and then asked for a longer adjournment as she believed that evidence from the COM regarding the Applicant's recall needed to be clarified. The panel agreed to the adjournment request, issued directions with deadlines and agreed a reconvened date for the hearing to continue. The panel also noted that as this was a part-heard hearing "the witnesses and panel should remain the same".
10. The reconvened hearing took place on 11 November 2024 by videoconference. The same panel members and witnesses attended save for the replacement of the COM by the new COM who had been in attendance on the occasion of the first hearing. The Applicant however was represented by a new representative from a different firm of solicitors. No explanation was given as to why there had been a change of representative which was said to have occurred about two weeks prior to the hearing. The Applicant and his new representative confirmed that they wished the hearing to continue.
11. The panel did not direct the Applicant's release nor make a recommendation for open conditions. It is only the release decision that is open for reconsideration.

The Relevant Law

12. The panel correctly sets out in its decision letter dated 20 November 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)

13. Rule 28(1) of the Parole Board Rules provides 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)).

Procedural unfairness

14. 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.

15. 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;
- (e) the panel did not properly record the reasons for any findings or conclusion; and/or
- (f) the panel was not impartial.

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

17. Reconsideration is a discretionary remedy. That means that, even if an error of law, irrationality, or procedural unfairness is established, the Reconsideration Member considering the case is not obliged to direct reconsideration of the panel's decision. The Reconsideration Member can decline to make such a direction having taken into account the particular circumstances of the case, the potential for a different decision to be reached by a new panel, and any delay caused by a grant of reconsideration. That discretion must of course be exercised in a way which is fair to both parties.

The reply on behalf of the Respondent

18. The Respondent has submitted no representations in response to this application.

Discussion

19. I have set out above the chronology of events leading to the two hearings. The application submits that the conclusions of the panel depending so heavily on the evidence from the first hearing when the present representatives were not instructed made the hearing unfair and the panel should not have allowed the hearing to proceed.

20. I do not agree with this submission. It is difficult to understand on what evidence the Applicant and his new representative thought the decision would be based if not on evidence from the Applicant and the professionals the vast majority of which had been heard at the first hearing. If the Applicant had not realised that, his professional representatives should have done so. The Panel Chair also drew attention to the fact that the panel had no further questions to ask of any witness. Yet, the Applicant and his representative not only informed the panel that they were ready to proceed but confirmed that there would be no unfairness in doing so. I set out the exchange between the Panel Chair and the representative and Applicant.

"Chair (noting the change in legal representative and solicitors): When was the change done?"



Representative: In the last 14 days.

Chair: Are you happy to go ahead?

Representative: It is not ideal at all because it is a part-heard hearing, but bizarrely these situations have arisen before for example, people gone on maternity leave, people furloughed during Covid and the prison kindly arranged a lengthy face-to-face conference with the Applicant last week and so I was able to see him for a lengthy period of time and go through everything as much as I can and I obviously am aware that I missed a wealth of evidence. That said I knew we were going to hear some evidence today, I also had the benefit of the reports that have been provided by all the professionals so my instructions are to carry on as opposed to starting again whenever that may be.

Chair: I don't know how much you are aware that we virtually finished the hearing last time.

Representative: I know.

Chair: The panel had finished, the panel had asked every question we wanted to ask and it was clearly down to the legal representative to ask the last questions of the COM so we don't actually have that much today.

Representative: I was aware it wasn't going to be a long hearing today at all. I understand the recommendations were from the evidence that was heard. I hadn't got questions of the POM or the psychologist unless there is a dramatic shift in terms of their stance. I've seen the updated reports and I anticipated them although stranger things have happened before and I've just got questions of the COM, that is it.

Chair: In terms of fairness you are happy to continue today bearing in mind what I've just said?

Representative: Yes.

Chair: You don't need to speak to the Applicant about that? You've already discussed that with him?

Representative: That was one of the first things we discussed two weeks ago.

Chair: Can I just confirm with you (the Applicant), that you are happy for this hearing to go ahead with a new legal representative although most of the evidence has been heard when you were represented by somebody else at the time?

Applicant: Yes, I'm happy for it to go ahead."

21. The panel was not informed until just prior to the reconvened hearing that there had been a change in representation. The panel having, presumably inadvertently, left the recording running I was able to hear from their discussion that they were only aware of the change of representation when they received an updated timetable. The representative states that the firm were instructed just two weeks prior to the hearing, however there is no evidence that they sought a further adjournment or made any request for a summary of the evidence presented at the first hearing or request to re-examine any of the witnesses again. This experienced firm could be assumed by the panel to know their professional duties and responsibilities – they had taken instructions from the Applicant and should have been aware of whether or not matters relating to the first part of the hearing needed to be clarified with the panel. Having listened carefully to the tape, particularly the start of the reconvened hearing which I have transcribed above, I am satisfied that the panel gave the Applicant and his representative every opportunity to request



an adjournment or request that the hearing be re-started afresh. They chose not to take that opportunity.

22. The application does not state what is unfair about the decision or the reasoning. The same POM and psychologist attended both hearings and the future COM who had been present at the first hearing but not questioned was available at the resumed hearing and was questioned. The Applicant was in a position to ask the witnesses anything again by way of clarification or information. It is difficult to understand the argument in the application that the Applicant and his representative "*would not have known that the Parole Board were going to rely upon the evidence (at the first hearing) so heavily*". The submission that the panel relied heavily on the evidence of the Applicant given at the first hearing, is without merit. The Applicant is the one witness in respect of whose evidence the representative was able to consider in detail. The other witnesses all spoke to their various reports and it was open to the representative to ask the panel at the outset whether the witnesses had or had not maintained the accounts and recommendations in their written reports and/or to revisit any areas about which they were uncertain.
23. In the light of the submissions at the start of the resumed hearing on behalf of the Applicant by professional representatives (set out above) the panel was not acting unfairly in following those submissions and proceeding with the hearing. As the representative noted there are many cases in which there may have to be a change of representation through no fault of an applicant. In this case no explanation was offered to the panel as to why there had been a change of representation so late in the process or whether there had been a hand-over of notes of the evidence from the first hearing to the new representative. It is the duty of the representative to make the application in the light of the knowledge that he has and which the panel is not in the position to know about.
24. The Applicant's representative himself noted that there was no procedural impropriety caused by the change of representation nor any unfairness in the hearing proceeding. The panel considered all the evidence presented, the representative had an opportunity to re-question witnesses and make submissions. The Applicant knew the case against him and nothing prevented him from putting his case properly. The position regarding the evidence of witnesses was known to the Applicant and his representative at the start of the resumed hearing but they nevertheless, despite being given the opportunity to make submissions to the contrary, invited the panel to continue.
25. The application appears to blame the panel for not adjourning the proceedings. The Applicant was legally represented in both hearings. In cases where a prisoner has the benefit of legal representation, even or especially one that has been instructed late, it would ordinarily be expected that any perceived deficiencies with the conduct of the hearing would be raised at the time, rather than via the reconsideration mechanism after the event when the result is a negative one.
26. The application does not identify any irrationality or error of law. The decision is fully and properly reasoned and the conclusions are clearly based on the evidence presented. There is no submission that any evidence was omitted or unfairly taken into account or misinterpreted or misunderstood. The conclusion is based on



evidence carefully considered. Even if there were procedural unfairness, I would not exercise a discretion to order reconsideration in the light of the circumstances of the case and the lack of potential for a different decision to be reached by a new panel. I cannot see how the panel's conclusions would have been different if the entire case had been dealt with by same representative.

Decision

27. For the reasons I have given, I do not consider that the decision was procedurally unfair and accordingly the application for reconsideration is refused.

Barbara Mensah
21 January 2025