

[2019] PBRA 70

Application for Reconsideration by Halliday**Application**

1. This is an application by Halliday (the Applicant) for reconsideration of the decision of a panel of the Board not to recommend his release following an oral hearing on 31 October 2019.
2. I have considered the application on the papers. These comprise of the dossier, the provisional decision letter, the application for reconsideration dated 8 November 2019.
3. The Secretary of State did not make any formal representations in response to the application.

Background

4. The Applicant is serving a sentence of Imprisonment for Public Protection (IPP) for the offence of inciting a child into sexual activity. The minimum term expired in June 2014.

Request for reconsideration

5. The application was made by the Applicant in person (he was not legally represented). He indicates that he wishes the application to be taken as a complaint and a challenge to the decision made against him. A Reconsideration Assessment Panel cannot consider a complaint but can consider a challenge to the decision not to release. I have therefore considered this application as one which either relates to procedural unfairness and/or which is irrational.

Current Parole Review

6. In April 2018 the Secretary of State referred the Applicant's case to the Parole Board for its 3rd review.
7. The Applicant was in closed conditions and the terms of the reference asked the panel to consider firstly whether it was appropriate to direct the Applicant's release. If not, the panel was invited to advise the Secretary of State on whether the Applicant should be transferred to open conditions.

8. The panel heard oral evidence from the Applicant, his Offender Supervisor, a second (Open Prison-based) Offender Supervisor, his Offender Manager, a prison psychologist, and an independent psychologist.

The Relevant Law

9. Rule 25 and Rule 28 of the Parole Board Rules 2019 apply in this case.
10. Rule 28 (1) provides that applications for reconsideration may be made in eligible cases on the basis that (a) the decision is irrational and/or (b) that it is procedurally unfair. This is an eligible case.
11. In **R (on the application of DSD and others) -v- the Parole Board [2018] EWHC 694 (Admin)** the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said at paragraph 16:

'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'.

The Divisional 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 risk. The Board when considering whether or not to direct a reconsideration will adopt the same high standard for establishing 'irrationality'.

12. Procedural unfairness has a similar meaning as procedural irregularity does in Judicial review. It is for me to decide whether I consider the procedure adopted by the panel in conducting the parole hearing was unfair to either of the parties.

Applicant's Representations

13. The Applicant raises a substantial number of matters which he submits are either factually or interpretationally inaccurate. To assist with each discrete issue I have listed them below with brief comments.
 - a) Age at which Applicant had contact with the daughter of a female friend (incorrectly recorded as 17).
14. The dossier does not provide an accurate date of first direct contact by the Applicant with the daughter of the friend. The assessment of risks and their origin record indicates that the daughter was aged 14 when first contact was made with the mother. The contact with the mother was halted by the prison because of the age of the daughter. Contact was resumed with the mother by the Applicant when the daughter became 18. It is likely that the Applicant is correct therefore in pointing out that he did not have contact with her when she was aged 17 but when she was aged 18.
15. The Decision Letter indicates that the concern about this relationship was related to paralleling behaviour and contact with young women in the context of the



Applicant's offence history. The exact age of the daughter was less important than the context and nature of the relationship with mother and daughter.

b) Applicant's family member has no convictions for sexual offence.

16. The dossier evidence confirms that the Applicant himself told a psychologist that a family member of his was detained in a psychiatric hospital. The background of the detention is reported to be sexual offences. There is no evidence that the family member had been convicted of any offences in a criminal court. The Applicant himself acknowledged that it was important to distance himself from this family member.
17. There is no evidence that the panel's decision was influenced by a belief that the family member had convictions rather than allegations, or that this issue had any bearing on their decision.

c) Not being offered a three and a half day ROR (resettlement overnight release)

18. The Applicant submits that the Decision Letter is incorrect in noting that he was offered a 3 ½ day ROR. The dossier indicates that whilst in open conditions the Applicant had been offered the opportunity to take temporary releases, prison procedure dictated that temporary releases had to be preceded by accompanied 'town visits'. The Applicant had applied for permission to make phone calls to his partner during the town visits. This had been refused by the prison. The Applicant then withdrew from the process on the basis that he needed to be in regular contact with his partner during the day.
19. The relevant issue relates to the refusal of the Applicant to consider prison arrangements which did not allow for telephone calls to his partner. In particular how this might impact upon compliance with requirements, such as licence conditions in the future.

d) Not offered supervised work.

20. The Applicant submits he was not offered supervised work as indicated in the Decision Letter. The dossier indicates that the Applicant had told prison staff that supervised work would not be of value to him as he intended to be a full-time carer when he left prison and therefore work experience was not necessary.
21. It is unclear whether work was actually offered to the Applicant. It appears likely that it was discussed and refused by him. The relevance again relates to compliance and working with professionals.

e) That the Applicant does not work on the wing.

22. The Decision Letter indicates that the Applicant would 'prefer to work on the wing' to facilitate regular calls to his partner. This reflects various comments in the dossier. The Applicant was not working on the wing at the time of the decision. It is unclear whether the panel understood the Applicant to be actually working on the wing or not.



23. The comment in the Decision Letter appears to accurately reflect the Applicant's view. However, the decision of the panel was not dependent upon the place of work of the Applicant. This issue did not affect risk assessment.

f) The monthly cost of phone calls.

24. The Applicant submits that the panel incorrectly estimated the monthly cost of his calls. The panel estimated call costs at 'around' £100 per month.

25. The dossier confirms that the cost was likely to be less than £100 per month. However, the issue relates to the high number and frequency of calls in the context of a prison environment, and the nature of the Applicant's relationship with his partner who was the recipient of many of the calls. The exact figure is of less significance.

g) That it is unlikely that the Applicant is not having sexual thoughts.

26. The Applicant submits that commenting upon the likelihood or otherwise of him continuing to have sexual thoughts is unfair. It is not possible to make a determination upon whether the witnesses at the hearing were specifically asked about their views as to whether the Applicant continued to have sexual thoughts (despite his contention that he did not). However, it is noted that the Offender Manager indicated that he felt that the Applicant would struggle to share sexual thoughts (although he was supporting release on licence).

h) That specialist help was not available in the prison estate.

27. It was clear that both psychologists (independent and prison) indicated that although 'core' work was completed, further work was required. The Decision Letter read as a whole makes it clear that the independent psychologist was supporting release and further work in a community context. The prison psychologist was supporting consolidating work in the open estate. In the context of the decision as a whole it appears to me that there is a typographical error in line paragraph 1 page 6. The named psychologist in the penultimate line should clearly have been the prison psychologist (proposing further work being done on temporary releases from open conditions) and the completion of consolidation work, aimed at demonstrating an understanding of the management of risks, which was a key issue in this decision and was carefully considered by the panel.

i) Prison psychologist and further licence conditions.

28. The Applicant indicates that the prison psychologist did not consider any further conditions. In her report the psychologist indicates that the risk management plan was reviewed with the Offender Manager. The psychologist had clearly considered the conditions.

j) Anxieties about the Applicant's Partner.

29. This is a point accepted by the Applicant, although the context of the anxieties disputed.



k) Continuation of relationship.

30. The Applicant challenges the implication that the relationship (with his partner) may or may not continue. In the context of the evidence that the Applicant and his partner divorced and remarried this comment is understandable.

l) Is the Applicant's relationship with his Offender Manager developed or developing?

31. The Applicant indicates that he does not recall the Offender Manager indicating that the relationship was 'developing' and challenges the use of this word. In the Decision Letter the reference to developing a professional relationship is made in the context of a perception that the Applicant might struggle to share sexual thoughts. The panel also noted that the Applicant had telephone contact twice per week and wrote to his Offender Manager. The panel did not appear to misunderstand the nature of the relationship

m) Asking 'hardly anything about my [partner]'.

32. The Applicant submits that not enough was asked of him about his relationship with his partner. The Applicant's Offender Manager confirmed contact with the Applicant's partner and reported to the panel. The Applicant himself gave evidence and was represented. He was in a position to add any further information at the hearing itself.

n) The Applicant wasn't asked for his diaries in advance of the hearing.

33. The Applicant submits that he wasn't asked for his coping diaries in advance of the hearing. Panel Chair Directions in advance of the hearing ordered that the diaries be available one hour before the hearing. The Applicant provided the diaries to the panel at the hearing.

Discussion

34. The Applicant challenges the decision of the panel not to direct release in this case. The Applicant lists the above noted issues in support of the contention that the decision of the panel was irrational and/or procedurally unfair. I have considered each of the discrete issues. As I have noted above, there may have been minor factual inaccuracies in the panel Decision Letter. Factual accuracy is clearly important in reaching a conclusion, however, reflecting on the listed issues as a whole I am satisfied that none of the listed issues, either taken individually or as a whole, is indicative of a failure by the panel to consider or ignore any relevant issue relating to risk.

35. The panel addressed the correct test to apply in considering whether release should be ordered.

36. The panel carefully considered the Applicant's progress in custody, including his move to open conditions. The panel faithfully included the positive points as well as the negative.



37. The panel acknowledged that all core offending behaviour work had been completed. In this case there were differing opinions as to how the Applicant should progress. Panels are not obliged to adopt the opinions and recommendations of any particular professional witness. It is their responsibility to make their own risk assessment, to evaluate the likely effectiveness of any risk management plan proposed and to apply the appropriate test. They would be failing in their duty to protect the public from serious harm if they failed to do just that. As was observed in **DSD**, they have the expertise to do it.
38. If the panel were to make a decision contrary to the opinions of professional witnesses without giving any reasons for doing so, that might be a ground for saying that the decision was irrational. Similarly, if it were to give reasons which were flawed or which did not, on a proper analysis, support their conclusion, that might also be a ground for saying that the decision was irrational.
39. However, in the Applicant's case neither of those situations arose. The panel gave clear and convincing reasons for its own conclusions and for departing from the views of some of the professional witnesses.
40. Having concluded that this was not a case for release. The panel demonstrated its awareness of the test for open conditions and applied it.
41. The panel set out in the conclusion paragraph its reasons for reaching its conclusion, namely: a view that the Applicant's ability to self-manage in the community had not been tested; a view that the Applicant had completed a limited amount of work on his sexual interests and that this aspect of his risk was not well understood by professionals, a view that despite improvements in his emotional self-management that aspect of his character needed to be developed with appropriate coping strategies. The fact that the panel considered the Applicant's partner to be vulnerable and a supportive rather than protective factor.
42. The panel's careful and detailed Decision Letter demonstrates that it took into account all relevant factors. It arrived at conclusions which it was fully entitled to make on the evidence before it.

Decision

43. For the reasons set out above this application must be refused.

HH Stephen Dawson
4 December 2019

