

## Application for Reconsideration by Grant

### Application

1. This is an application by Grant (the Applicant) for reconsideration of a decision made by a panel of the Parole Board on the 31 August 2020 and issued on the 1 September 2020 which declined to direct his release.
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.
3. I have considered the application on the papers. These are the dossier of 283 pages (including the decision letter) and the representations made by the Applicant's legal representative.

### Background

4. On the 22 June 2011, the Applicant, then aged 47, was sentenced to an indeterminate sentence of Imprisonment for Public Protection for offences of robbery and causing grievous bodily harm with intent. The tariff, which was set at 6 years, expired in June 2017.
5. The offences arose from the robbery of a delivery driver transporting a cargo of expensive electrical items; he was assaulted with a hammer and sustained serious head and facial injuries. The Applicant had denied involvement but was convicted after a trial. During his sentence, he has admitted he drove his accomplices and they actually carried out the attack.
6. The Applicant was transferred to open conditions in July 2019 following a recommendation from the panel conducting an oral hearing on the 5 March 2019.

### Request for Reconsideration

7. The application for reconsideration was received on the 21 September 2020.
8. The grounds for seeking a reconsideration are extracted from the narrative of the representations. They are based on irrationality and appear to be as follows:
  - i. The panel failed to put due weight on the fact both the professional witnesses supported the Applicant's release;



- ii. The opinion shared by those professional witnesses was that the risk management plan was capable of managing his risk;
- iii. The finding that the Applicant showed inadequate insight into his risks "*was in clear contradiction from his previous hearings*";
- iv. The panel failed to set out in sufficient detail the Applicant's risk of serious harm and why this could not be managed;
- v. The panel was in error when it stated the Applicant's risks needed to be tested further; and
- vi. The panel should have adjourned the hearing, if it entertained concerns about the Applicant's risk, in order to enable discussions with the professional witnesses to take place, rather than refusing release.

### Current parole review

9. Because of the Covid-19 restrictions, the oral hearing took place remotely by video. It was conducted by two members of the Parole Board one of whom was a psychiatrist member. The panel heard evidence from the Applicant as well as from the Offender Supervisor and the Offender Manager. The Applicant was legally represented.

### The Relevant Law

10. The panel correctly sets out in its decision letter 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.

### *Irrationality*

11. In **R (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 para. 116,

*"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."*

12. This test was set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374**. 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 Parole Board in making decisions relating to parole. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing 'irrationality'. The fact that Rule 28 contains the same adjective as is used in judicial review shows that the same test is to be applied.

13. The panel had the advantage (not shared by the reconsideration panel), of seeing and hearing the Applicant as well as the Offender Supervisor and the Offender Manager. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is the responsibility of the panel members to make their own risk assessments and to evaluate the likely effectiveness of any risk management plan proposed. They must make up their own minds on the totality of the evidence that they hear, including any evidence from the Applicant. They would be failing in their duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if they failed to do just that. As was observed by the Divisional Court in **DSD**, they have the expertise to do it.
14. However, if a panel were to make a decision contrary to the opinions and recommendations of all the professional witnesses, it is important that it should explain clearly its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions, per **R (Wells) v Parole Board 2019 EWHC 2710**.
15. In **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said: "*It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship.*"
16. Where a panel arrives at a conclusion, exercising its judgement based on the evidence before it and having regard to the fact that they saw and heard the witnesses, it would be wrong to direct that the decision be reconsidered unless it is manifestly obvious that there are compelling reasons for interfering with the decision of the panel.

### The reply on behalf of the Secretary of State

17. The Secretary of State has indicated that he does not wish to make representations in response to this application for reconsideration.

### Discussion

18. Dealing with the grounds in support of the application in turn, the panel was entitled not to follow the opinions of the two professional witnesses. A good illustration of a panel's decision not to follow a unanimous recommendation is the Applicant's oral hearing of the 5 March 2019 where the numerous professional witnesses supported release, and none considered a period in open conditions necessary. The panel, by contrast, decided that the Applicant did not meet the statutory test for release and did not release him.

19. The panel gave reasons for their decision which included

(a) The Applicant presented as highly superficial and something of a charmer with some narcissistic traits.

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

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 [info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)

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- (b) Those personality traits were linked to the triggers for his violent offending.
- (c) The Applicant's choice of future career as a gemmologist possibly travelling to where diamonds are mined to act as an intermediary, purchasing diamonds for wholesalers was a potentially risky employment which raised concerns about the Applicant's lack of insight into the need to manage his risks.
- (d) The Applicant's failure to accept things might go wrong in the future was further evidence of lack of insight.
- (e) The Applicant did not have realistic plans for the future, which would be critical if he were to be able to avoid making a decision to offend.
20. I do not agree that the findings about inadequate insight were in clear contradiction of the findings made in 2017 and 2019. The 2017 panel had concerns about the Applicant's lack of openness and honesty and the extent to which he had insight into his offending behaviour and whether his criminal attitudes had changed.
21. The decision letter of the 2019 panel said this "*There is a general consensus that you have developed insight and recognition of your risk factors. However, the panel remained concerned that there was evidence that you continue to fear being perceived as weak. The panel was also concerned that you did not anticipate difficulties upon release ...*"
22. Implicit in the decision of the 2019 panel not to direct release was the finding that the Applicant's insight into his risks had developed but not sufficiently for his risk to be managed safely in the community. The present panel simply found, for the reasons given, that this remained the situation.
23. The panel did set out in detail the Applicant's risk of serious harm by adopting the analyses of the two earlier panels which were then reproduced in section 4. Again, for the reasons set out in in section 8, the panel was not persuaded the Applicant had changed or had made the decision to change. This is a finding the panel was entitled to make on the evidence before it and particularly, from the evidence given by the Applicant.
24. As I read the decision letter, the panel did not state that the Applicant's risks needed to be tested further; the Applicant was already in open conditions and the application before the panel was for release. The panel came to the decision that the Applicant still did not reach meet statutory test for release and refuse the application. The level of detail provided in the decision letter is consistent with that envisaged by Lord Bingham in **Oyston**.
25. The submission that the panel should have adjourned the hearing is a novel one and, as far as I am aware, not founded on the practice of any court or tribunal. A tribunal hears evidence and then rules on it; it does not hear the evidence and then consults with the witnesses about areas where it does not accept their evidence.

## Decision

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

**James Orrell**  
**16 October 2020**