

[2020] PBRA 35

Application for Reconsideration in the case of Ahmed

Application

1. The Secretary of State (the Applicant) submitted an application for reconsideration of the decision of the Parole Board dated 8 February 2020 to direct the release of Ahmed (the Respondent).
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, the representations made on behalf of the Secretary of State and the representations made by the Respondent's legal representative.

Background

4. On the 12 September 2008, the Respondent was sentenced to Imprisonment for Public Protection for an offence of robbery with a minimum period to serve of 2 years 6 months less time spent in custody on remand before he could apply for parole.
5. The minimum period expired on the 28 July 2010.

Current Parole Review

6. The hearing took place on the 2 July 2019 when all the oral evidence was heard. The hearing was adjourned for further information to be obtained and on the 10 February 2020 the Panel, after considering the papers, issued a Decision Letter directing the Respondent's release.

Grounds for Reconsideration

7. The Applicant's first ground for seeking reconsideration is based on procedural unfairness, namely that relevant evidence was missing from the dossier. The basis for suggestion is that the Decision Letter states there were 533 pages in the dossier whereas the dossier actually contained 620 pages. The Secretary of



State submits that this is *"perhaps evidence that the dossier has not been reviewed in full by the panel as part of their decision-making."*

8. The second ground is based on irrationality, namely the Panel gave "improper (insufficient) weight to security intelligence and extremism concerns" and the Panel gave "improper weight to risk assessments."

Response by the Respondent's legal representative

9. The Respondent complains that the application to reconsider was made at the very last moment; this is not relevant. The Respondent submits the panel considered all the pages in the dossier. As to irrationality, the Respondent contends that the Panel approached the case correctly and came to a Decision entirely within its discretion, having placed proper weight on the significant evidence. Interestingly the written submissions at paragraph 22 state *"They [the Applicant's representatives] hypothesise that insufficient weight was not placed on the evidence as the conclusion does not reject [the Respondent's] application for release."*

The Relevant Law

10. The test for irrationality within the meaning of Rule 28 (1) (a) *"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"*. Moreover, in considering the assessment of the decision, due deference is to be given to the expertise of the Parole Board in making decisions relating to parole: see **R (on the application of DSD and others) v the Parole Board [2018] EWHC 694 (Admin), CCSU v Minister for the Civil Service [1985] AC 374**.
11. 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."*
12. 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.
13. It seems all the Applicant's grounds may come under irrationality.

Discussion

14. I deal first with the allegation of procedural irregularity. Pagination in electronic dossiers can be confusing. Frequently, and the present case is an illustration, the electronic pagination at the top of the screen does not coincide with the printed pagination. So, in the present case, page 620 (as printed) appears as page 624 at the top of the screen. The addition of paper documents at the hearing can also affect the consistency of the page numbers.
15. Curiously, page 533 (as printed) in the dossier occurs some five pages before the end of an intelligence document. The overwhelming likelihood is that the Panel had the entire document. The representations from the Respondent's Legal Representative make it clear the Panel considered all the documents. As the Applicant was not represented at the Hearing, the Applicant is not in a position to contradict that assertion.
16. For the following reasons, I find that there were in fact no missing pages from the dossier and the allegation of procedural irregularity is therefore misconceived.
17. At the Hearing on the 2 July 2019, the Panel and the Respondent's Legal Representative agreed their dossiers all had the same number of pages.
18. The Hearing did not conclude on the 2 July 2019 because the Panel wanted more information. A number of documents were filed to the dossier after the 2 July 2019 and before the 8 February 2020 when the adjourned Hearing was reconvened and concluded on the papers.
19. The additional documents comprised:
 - (a) The adjournment letter dated the 17 July 2019 (2 pages);
 - (b) A further report from the Offender Manager which was referred to in the Panel's Decision Letter; the report is dated the 2 August 2019 (5 pages);
 - (c) A further assessment of the risks posed by the Respondent dated the 8 August 2019 (54 pages); the Panel relied on this document;
 - (d) An addendum Security Report dated the 17 January 2020 (3 pages);
 - (e) The provisional Decision Letter, the subject of the present application, dated the 8 February 2020 (12 pages);
 - (f) A document from the Joint Extremism Unit which is undated but had been received by the Offender Manager on the 14 January 2010 (3 pages).

20. By my calculation, 79 pages were added to the dossier after the Oral Hearing. Both the Decision Letter itself and the representations from the Legal Representative for the Respondent make it clear the Panel did consider those documents before making the final decision on the papers.

21. Turning to the allegation of irrationality, I want to cite in full and adopt what Sir John Saunders said in **Benson [2019] PBRA 46**, another Reconsideration case where the Applicant suggested a panel had acted irrationally.

"There are two matters which apply generally to all these applications. First, it is for the panel to assess the weight to be given to any piece of evidence, including the opinion as to risk given by the professional witnesses. It is for the panel to test the assessment and look at the reasons for it. So, even in a case where every witness is supporting release, it is for the panel to make their assessment taking into account all the evidence. The reverse is also true. If the panel disagrees with the evidence given by the professionals, it must give adequate reasons for doing so. Secondly, a decision letter is directed at the prisoner. While it has to descend to sufficient detail so that everyone, but particularly the prisoner, can understand the reasons for the decision, it is not necessary for every point which has been raised in the hearing to be discussed. What is necessary is that everyone is able to understand the reasons for the decision."

22. The Applicant argues that the Panel should have explored the motive for the Respondent saying incorrectly that he was at a particular prison at the same time as a notorious, convicted terrorist.

23. The intelligence information is minimal: no dates or occasions nor the general circumstances are specified as to when these comments are said to have taken place.

24. The Panel appears to have accepted the assessment of this evidence provided by the Offender Manager who was in the best position to do this. The Offender Manager pointed out that there were only two intelligence reports in respect of the Respondent whilst at the prison and the other report had not been substantiated by evidenced behaviours. The Respondent had remained an enhanced prisoner which is the highest classification under the Incentives and Earned Privileges Scheme used in prisons.

25. The Applicant also suggests that the Panel placed insufficient weight on the Respondent's undoubtedly alarming behaviour in May 2015. The fact that it is not referred to in the Decision Letter cannot lead to the certain inference that the Panel did not consider the conduct. The Applicant's submission seems to ignore both what Lord Bingham said in **Oyston** and what Sir John Saunders said in **Benson**.

26. The same observation can be made about the Applicant's last submission which, put shortly, is that, because the Panel did not mention in the Decision Letter the imminence of the Respondent's risk of causing serious harm, it follows that it did not take that into account.

27. The Panel accepted the current assessments before it and the additional conditions the Panel attached to the Respondent's licence were commensurate both with the level of risk and its likely imminence.
28. The Decision Letter is an impressive document which reviews succinctly but comprehensively what the Panel regarded as the salient factors. It shows that the Panel clearly understood the case; nothing of note was missed. The Panel made clear and sustainable findings of fact and its conclusion was a balanced and fair analysis of the relevant matters. The Panel stated and applied the right test. It was correctly focused on risk throughout and was reasonably entitled to adopt the risk assessments and the recommendations of the Offender Manager, Offender Supervisor and the prison Psychologist.
29. The application for reconsideration is perhaps a little less impressive. It contains a summary which states that, although on paper, the Offender Manager supported release on stringent conditions, the Offender Supervisor did not support release and *"stated that they lacked the confidence to state that [the Respondent's] risk of serious harm is manageable in the community"*.
30. The summary fails to mention that at the Oral Hearing the Offender Manager, the Offender Supervisor and the prison Psychologist supported release. In other words, the Panel's decision was based on the evidence of all the professional witnesses.
31. This selectivity simply serves to strengthen the allegation made on behalf of the Respondent, to which I have referred in paragraph 9, to the effect that the application gives the impression the primary decision was to seek reconsideration and only when that decision had been made was an effort made to find reasons in support.
32. The points made by the Applicant may well have been helpful to the panel had they been made either orally or in writing at the hearing, but they fail to meet the high test of irrationality.

Decision

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

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12 March 2020

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