

[2021] PBRA 1

## Application for Reconsideration by Reed

### Application

1. This is an application by Reed (the Applicant) for reconsideration of a decision of an oral hearing decision dated 7 December 2020. The panel did not direct 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 a letter from the Applicant received on 23 December 2020, the dossier consisting of 297 pages, and the decision letter in this case.

### Background

4. The oral hearing panel considered two combined reviews. The Applicant had been recalled in relation to an earlier offence (committed in 2012) and the panel were asked to consider whether he should be released in relation to that recall.
5. The reason for that recall was a further offence. That further offence was committed in May 2016 whilst on licence. The Applicant was convicted of this further offence and became eligible for parole in relation to this offence on 30 October 2020. Accordingly, the oral hearing panel also considered whether the Applicant should be released on licence in connection with this further offence.
6. The original (2012) offence was an extended sentence and the sentence expired on 20 December 2020. The panel, therefore, were concerned with a period of 13 days in relation to this earlier offence in terms of risk.
7. The May 2016 offence resulted in an extended sentence totalling 6 years being imposed. The custodial period was 2 years and 6 months and the extension period 3 years and 6 months. The Applicant's conditional release date (CRD) in connection with this 2016 offence was 31 August 2021, the sentence expiry date (SED) was 28 February 2025. The panel therefore were required to consider the Applicant's risk as between any release date and 31 August 2021.
8. The offence in 2012 was a sexual assault, the offences committed in May 2016 were two sexual assaults. The Applicant had a pattern of sexual offending spanning back to his teenage years.



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



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)



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



@Parole\_Board



0203 880 0885



INVESTORS  
IN PEOPLE | Bronze

## Request for Reconsideration

9. The application for reconsideration was received by the Parole Board on 23 December 2020. The application was in the form of a letter from the Applicant. The application was not made on the published form CPD 2, which contains guidance notes to help prospective Applicants ensure their reasons for challenging the decision of the panel are well-grounded and focused. The document explains how to look for evidence to sustain the complaints and, reminds Applicants that being unhappy with the decision is not in itself grounds for reconsideration. However, that does not mean that the application was not validly made.
10. The grounds for seeking a reconsideration are not specifically itemised in the Applicant's letter, however I have listed below those issues which appear to set out the Applicants concerns:
  - (a) That the Applicant was prepared to undertake offending programmes, but the unavailability of the programs was not his fault.
  - (b) That the psychologist did not suggest any further work in custody and that this was supported by the Prison Offender Manager (POM) in the recommendation for release.
  - (c) That his Community Offender Manager (COM) wanted the Applicant to go to an open prison, but there are no courses or programs available in open prisons.
  - (d) That the Applicant had taken a course which helps with stress which will deal with the risks, which might arise after he has completed his time in approved premises.

## Current parole review

11. As indicated above the oral hearing panel were requested to undertake a combined review, firstly of the Applicant's recall and secondly to review whether the Applicant should be released on licence in relation to the further offence. The Secretary of State specifically excluded any request for a recommendation for open conditions.
12. The panel hearing took place on 16 November 2020. The panel consisted of a judicial chair, a psychologist member and an independent member. The hearing took place by way of video link because of the difficulties relating to the pandemic. The panel considered a dossier consisting of 296 pages and heard evidence from the Applicant's POM, COM and a prison psychologist. The Applicant himself also gave evidence and was legally represented. The panel noted the Applicant's learning difficulties and made adaptations to take account of the difficulties.
13. The panel hearing was adjourned at the conclusion of taking evidence to 30 November 2020 to consider further documents which were set out in the decision letter and to enable the Applicant's legal representative to make representations upon those documents.



14. The Secretary of State was not represented and did not make submissions

### The Relevant Law

15. The panel correctly sets out in its decision letter the test for release.

16. The panel did not specifically note within the decision letter that it was considering the Applicant's risk as between any future release date and the Applicant's CRD. However, the panel make reference to the "at risk" period when analysing the evidence of the POM. The panel noted that the POM '*is confident that any risk of serious harm that you present can be managed until your CRD date in August 2021*'. This reference is an indication that the panel were alive to the relevant consideration period. The Applicant does not specifically complain about the absence of a clear indication of the at-risk period; however, it is a matter of importance that decision letters clearly and unambiguously state the 'at risk' period under consideration.

### Parole Board Rules 2019

17. Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is 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)).

### Irrationality

18. 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."*

19. 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.

20. The application of this test has been confirmed in previous decisions on applications for reconsideration under Rule 28: **Preston [2019] PBRA 1** and others.

### Procedural unfairness



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



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)



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



[@Parole\\_Board](https://twitter.com/Parole_Board)



0203 880 0885



INVESTORS  
IN PEOPLE | Bronze

21. 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.
22. In summary an Applicant seeking to complain of procedural unfairness under Rule 28 must establish 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; and/or
  - (e) the panel was not impartial.
- The overriding objective is to ensure that the Applicant's case was dealt with justly.

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

23. The Secretary of State indicated that contrary to the Applicants assertions, the COM had suggested various interventions which could be undertaken by the Applicant both in prison and in the community.

### **Discussion**

24. The Applicant has not specified within his application for reconsideration whether he is relying upon irrationality or procedural unfairness. On the basis of the listed complaints, I have assumed that the Applicant is relying upon irrationality in support of his appeal. I have therefore considered his appeal on that basis.

*10 (a) above – Applicant prepared to do further work, but none was available – not his fault;*

*10 (b) above - The psychologist and the POM recommended release:*

25. In the decision letter, the panel noted that the Applicant had made good progress in prison. He had completed a specialised intervention addressing offending which is designed to develop protective factors and to reduce the risk of sexual reoffending. The panel also, however, noted that the intervention did not target certain offence specific risk factors such as sexual preoccupation or deviant interests for which other more intensive programs are recommended. The panel further noted that when analysing the programme needs which would be relevant to the Applicant's risk, some important questions remained outstanding. The effect of this was that the prison psychologist agreed that a more intensive program of longer duration would have been more suited to the Applicant and would have been recommended. Despite this the prison psychologist took the view that if the Applicant were intensively supported in the community his risk could be managed. The prison psychologist also took the view that his learning could be consolidated through interventions in the community. The POM agreed with this assessment. In essence therefore these two professionals were supporting the contention the



Applicant's risks could be managed in the community subject to intensive support and monitoring and the completion of programs in the community.

26. The COM took a different view. The COM considered that despite completing the specialised intervention addressing offending, the Applicant's stress levels were contained in custody. The COM took the view that the Applicant's risks had not reduced significantly, and that the Applicant's risk would remain high until he had developed enough protective factors and internal strategies. The COM indicated that the reason for this conclusion was that the specialised intervention addressing offending was not focused primarily on sexual offending and that the Applicant's risk required further maintenance programs to consolidate learning and to apply that learning in the future. The COM indicated that the Applicant would have the opportunity to complete a follow-up to earlier interventions while in custody. The COM also anticipated that the Applicant would achieve Category D status which would give an opportunity for spending time in the community through ROTL's and allow for a gradual transition into the community.
27. The panel acknowledged that there were differences in the professional's view of the Applicant's risk. Whilst it was unlikely that there would be sufficient time for the Applicant to complete lengthy core programs in custody. The panel took the view that consolidation work would still be possible and was necessary in order to manage the Applicant's risk.
28. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility 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.
29. However, if a panel makes a decision contrary to the opinions and recommendations of 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**.
30. 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 inappropriate 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.
31. In this case the panel set out the competing views of the COM on the one hand and the POM and psychologist, on the other. Having assessed the opinions of the professionals. The panel set out its reasons for the decision. In essence, the panel concluded that the work completed by the Applicant, although valuable, lacked the intensity which would have been appropriate for his level of risk. Despite that the panel supported the view that consolidation work and a gradual introduction back to the community through temporary releases would be a suitable path to ensure that the Applicant's risks were suitably managed.



32. Whilst it is understandable that the Applicant is disappointed that the panel were not persuaded that his risks could be safely managed in the community, the basis of the panel's reasoning is clearly set out in the decision letter and I find no compelling reasons to interfere with the decision as set out by the panel in the letter.
33. Dealing specifically with the complaint of the Applicant. The panel acknowledge the fact that the Applicant was likely to comply with any requests to complete further work. The panel also accepted that the Applicant had undertaken any work which was requested of him. The fact that his programme needs had not been accurately assessed was not the fault of the Applicant, however the panel's position was to assess risk on the basis of what the Applicant had actually undertaken and completed. I do not therefore determine that the Applicant's willingness or otherwise to undertake work was a relevant factor or that the panel attributed any blame to the Applicant for the absence of completed programmes.

*10 (c) above - the COM wishes the Applicant to go to an open prison, but there are no courses available in open prisons:*

34. The Applicant is correct in noting that the COM was of the opinion that the appropriate route for the Applicant was to complete a program in closed conditions and then to spend a period in open conditions allowing for a gradual step down and transfer into the community. The decision letter points out that the COM acknowledged that any further programme work would have to be on a one-to-one basis after release. However, the panel supported the view that the Applicant's risk could only be managed if there were a gradual step down approach via open conditions. This would also include a newly developed risk management service which would help to build a supportive network in the community. The Applicant is therefore correct in noting that there are no programs delivered in open conditions, however, the panel decision letter points out that the proposal is that open conditions are used as a stepping stone to transition into the community, with a plan to undertake any further programmes after release and on licence in the community.

*10 (d) That the Applicant has taken a course which helps with stress which will deal with the risks, which might arise after he has completed his time in approved premises:*

35. The panel decision letter sets out in detail the matters considered by the panel. The Panel considered all evidence presented within the dossier and orally. I am therefore satisfied that the panel considered all courses and behavioural work undertaken by the Applicant. However, as indicated above the panel concluded that despite the work undertaken, it was not satisfied that, applying the test for release, the Applicant's risk could be safely managed in the community until CRD. The panel concluded that a period of step-down testing was an essential element in the management of risk.

## Decision



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



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)



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



@Parole\_Board



0203 880 0885

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

**HH S Dawson**  
**27 January 2021**



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



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)



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



[@Parole\\_Board](https://twitter.com/Parole_Board)



0203 880 0885