

**[2021] PBRA 74**

**Application for Reconsideration in the case of Coombs**

1. This is an application by the Secretary of State for reconsideration of a decision of a Panel given after a paper hearing dated the 22<sup>nd</sup> April 2021 that it was no longer necessary for the protection of the public from serious harm for Coombs (the Respondent) to be confined and it directed his release upon certain conditions.
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 Paper Hearing Decision Letter dated 22<sup>nd</sup> April 2021, the Reconsideration Representations dated 22<sup>nd</sup> April 2021 the representations in reply made by the Respondent's legal representatives dated 4<sup>th</sup> May 2021 and the Respondent's dossier consisting of 360 pages

**Background**

4. On 25<sup>th</sup> March 1980, the Respondent was sentenced to imprisonment for life for the murder of a 14-year old boy. His tariff was set at 16 years and 1 day less time spent on remand and his Tariff Expiry Date was 1 September 1995.
5. The Respondent was 18 years old when he committed the index offence and was 59 at the time of this review.
6. In 1979, the Respondent "groomed" the 14-year-old boy for sex but a point was reached when the boy refused further advances. The Respondent wanted the boy to promise to keep his approach secret.
7. The Respondent perceived that the boy was reluctant to make that promise and he decided to kill the boy.
8. The Respondent had no previous convictions.
9. He was released for the first time on this sentence by a Parole Board oral hearing from an open prison, in August 2012. He later received some warnings from his Community Offender Manager (COM) once for frequenting a public toilet which was known to the police as a meeting place for gay men to have sexual contact. He also



allowed a 23-year old man, who he had met in Designated Accommodation and was considered vulnerable to share his accommodation.

10. The Respondent's Offender Manager explained that the Respondent chose not to provide that information to her as he should have done, but that it only came to light when the young man gave the Respondent's address to officials as his own address.
11. His COM considered that the Respondent had been dishonest with her when he said that he did not want a gay relationship when at the same time he was accessing gay websites such as "Grindr", "Scruffs" and "Romeo". His explanation was that he used the websites for sexual gratification on his own and that he had no intention of physically meeting other men because he did not have the confidence to do so.
12. The Respondent was recalled after 7 years on licence in September 2019 when it was discovered that he had sent indecent pictures of himself by a dating or social messaging App in the form of an "adult gay" website to a "paedophile hunter" posing as a 14-year-old-boy. The Respondent had asked the "paedophile hunter" to send him naked pictures of himself.
13. This application relates to a decision made on the first review of the Respondent's case since his recall. This hearing was deferred on three occasions and the deadline for directions was extended five times due to an ongoing police investigation for an offence of attempting to have sexual contact with a child which relates to the event leading to his recall.
14. Eventually on 31<sup>st</sup> March 2021, a single-member Panel of the Parole Board considered the Respondent's case on paper and issued a release decision. It was noteworthy that the qualified prison and professional staff were not supporting his release. They recommended that the Respondent should not be released until he had completed core risk reduction work.

### **The Grounds for Reconsideration**

15. The grounds for seeking a reconsideration include grounds that it was irrational for the Panel:

(a) Not to have accepted and/or appreciated the significance of the unchallenged evidence of professional witnesses that although the Respondent had in the past completed two training courses addressing sex offending by the time of the hearing those programmes did not have any positive effect in deviating him from sexual offending behaviour especially as the Panel failed to put forward any or any proper reasons justifying its failure to accept this evidence (Ground 1).

(b) Not to accept and/or appreciate the significance of the unchallenged evidence from professional witnesses to show that it would not be safe to release the Respondent until he completed recommended core risk reduction work prior to release especially as the Panel failed to put forward any or any proper reasons justifying its failure to accept this evidence (Ground 2).

(c) To fail to consider appropriately the professional witnesses' assessments of the risk of serious harm posed to children by the Respondent on release into the community as being high and instead found that the risk level was medium by failing to consider significant matters such as his offending behaviour on release, including the link between his behaviour in the recall matters and the index offence (Ground 3); and

(d) Not to have held an oral hearing at which the recommendations of the writers of the report could have been explored and tested (Ground 4).

## The Relevant Law

16. The Panel correctly sets out in its decision letter dated 22<sup>nd</sup> April 2021 the test for release.

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

20. It is possible to argue that mistakes in findings of fact made by a decision maker result in the final decision being irrational, but the mistake of fact must be fundamental. The case of **E v Secretary of State for the Home Department**

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**[2004] QB 1044** sets out the preconditions for such a conclusion: *“there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter; the fact or evidence must have been “established”, in the sense that it was uncontentious and objectively verifiable; the appellant (or his advisors) must not have been responsible for the mistake; and the mistake must have played a material (though not necessarily decisive) part in the tribunal’s reasoning.”* See also **R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2003] AC 295**, which said that in order to establish that there was a demonstrable mistake of fact in the decision of the panel, an Applicant will have to provide *“objectively verifiable evidence”* of what is asserted to be the true picture.

### The Representations in reply by the Respondent’s Legal Representative

21. The Respondent’s Legal Representative contends that:

- (a) in relation to the grounds put forward in support of the claim for reconsideration that *“we do not depart from that analysis but instead make reference to the fact that the panel’s decision was premature, and probably arose as a result of a misreading of the situation presented them(sic) at the time”*; and that
- (b) *“in our view, the decision to direct release flows from a procedure which was flawed which thereby thwarted [the Respondent’s] right to have written representations submitted on his behalf, which was due to be provided by the Offender Manager”*.

### Discussion

22. It will be noted that the dispute in this case relates to a substantial extent to the way in which the Panel should have treated the opinions of the professional witnesses in this case and whether they have given adequate reasons for not accepting the evidence of those witnesses. There are two principles which show how the evidence of professional witnesses should be approached on this reconsideration application.
23. First, the Reconsideration Mechanism is not a process whereby the judgment of a panel when assessing risk can be lightly interfered with at the reconsideration stage. Nor is it a mechanism where it should be expected to substitute its view of the facts for those found by the panel, unless, of course, it is manifestly obvious that there was an error of fact of an egregious nature which can be shown to have directly contributed to the conclusion arrived at by the panel.
24. Second, if a panel were to make a decision contrary to the opinions and recommendations of 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 (see **R (Wells) v Parole Board [2019] EWHC 2710**).

## Ground 1

25. The Panel noted in the Decision Letter as a factor in favour of releasing the Respondent the fact that he had completed two courses addressing sex offending which are and were intended to eliminate or reduce substantially the risks he, as a sex offender, would pose on release. In making that decision, the Panel failed to consider properly the evidence of the professional witnesses which was that even though the Respondent had completed these courses, he had not retained any knowledge from the courses which could and should have prevented him from engaging in sexual offending behaviour at the time of the hearing. This was an essential obligation on the Panel especially in the light of the Respondent's conduct when on release as is explained in paragraphs 9 to 12 above, including the matters which led to his recall and which had common features with the index offence.
26. A Consultant Clinical and Forensic Psychologist noted in his 2020 report that the Respondent *"could not recall anything from the [sex offending] course"*. He also recorded that the Respondent *"did not link [his] reasons for recall to his index and previous known sex offences, nor did he appear to fully realise the significance of him engaging in sexual communications with someone whom he believed to be 14 years old"*.
27. The Respondent's Offender Supervisor observed that *"it is evident by [the Respondent's] behaviour on licence that [completion of the sex offending courses] have not had any positive impact on deviating him from sexual offending behaviour"*.
28. The Respondent's COM, interviewed the Respondent and stated in her report dated 14 December 2020 in relation to the events that led to his recall that the Respondent admitted to engaging in a "sexual dialogue" with a male contending that he was 14 years old and explaining that *"his level of sexual arousal overrode any internal mechanisms of self-control"*.
29. The Respondent's COM concluded that the Respondent *"has only partial understanding of his behaviour... [that] he is consistently secretive and at times tends to play down the harmful effect of his behaviour on others"*.
30. In the absence of contrary evidence, the Panel should have found that the Respondent has not retained any knowledge from the two courses he undertook which would have prevented him from engaging in sexual offending behaviour and so reduce the risk he poses to the public. In other words, the treatment which he completed would not have had any positive effect in deviating him from sexual offending behaviour.
31. Instead, the Panel ignored this evidence of the professional witnesses for reasons which it failed to explain when it found, as has been explained, that one of its main

reasons to justify its decision that the Respondent should be released was as it informed him in the Decision Letter that "you have completed what was then considered to be adequate treatment for your sexual offending needs". The Panel clearly incorrectly considered that at the time of the hearing, these treatments would have prevented him from committing sexual offending behaviour.

32. Crucially, the Panel failed to comply with its duty to explain clearly its reasons for ignoring this evidence of the professional witnesses that completion of the courses addressing sexual offending had ceased to have any positive impact on deviating the Respondent from sexual offending behaviour as at the time of the hearing
33. I have concluded that even after giving due deference to the expertise of the Panel, its failure to take into account the evidence from the professional witnesses that the sex offending courses that the Respondent had undertaken had not reduced the risk he posed to children was irrational especially in the light of the Respondent's conduct when on release (which is explained in paragraphs 9 to 12 above) including the conduct which led to his recall.

## Ground 2

34. The professional witnesses considered that the Respondent had to be required to complete risk reduction work before he could be safely released. This is consistent with the conclusion of the professional witnesses set out above that the courses the Respondent had undertaken would not have prevented him by the time of the Panel's decision from engaging in sexual offending behaviour and so reduce the risk he poses to children.
35. The Clinical and Forensic Psychologist explained in his "summary provisional opinions" in his report dated 27 April 2020 that the Respondent would pose a "high" risk (rather than a "moderate" or "low" risk) of committing future acts of sexual violence were he to be released into the community on licence at the present time. He also concluded that:

*"[The Respondent's] present level of sexual violence risk required the completion of core risk reduction work, in order to address his apparent treatment needs" and that "the level of risk identified allied to the core risk-reduction work indicated suggests that the Respondent should undertake such offending-behaviour in custody."*

36. The Psychologist recommended that the Respondent should initially undertake a training course addressing the use of violence and sex offending treatment programme and he subsequently recommended an intervention addressing sex offending as a means to meaningfully and comprehensively control "his range, frequency and chronicity of sexual offending, better manage his sexual urges, and to develop healthier sexual relationships".

37. The Respondent's Offender Supervisor in a report dated 29<sup>th</sup> May 2020 explained that she agreed with an assessment that the Respondent *"would likely pose high risk of committing sexual violence in the future"*. She observed that *"he would benefit from intense interventions to address his sexual offending and the risk factors that underpin his behaviour"*. Her conclusion was that his risk was likely to be at the greatest if he *"is released into the community without having been assessed and treated within the [regime to help people recognise and deal with their problems] and the underlying deficits leading to his offending are not treated"*. In other words, she considered that the Respondent had to participate in courses before he could be safely released.
38. She also agreed with a recommendation made by the Respondent's COM that the Respondent requires interventions in the regime to help people deal with their problems to address his sexual deviances and other factors which underpin his sexual offending behaviour. It was proposed that the Respondent would complete a period at a therapeutic unit with a progressive move to a custody psychological unit enabling the Respondent to continue his interventions through the above-mentioned regime Pathway.
39. The Respondent's Prisoner Offender Manager, stated in his report dated 14 December 2020 that the Respondent *"presents a high risk of harm to children and requires further interventions pre-release."*
40. The Respondent's solicitors instructed a psychologist, to prepare a Psychological Risk Assessment of the Respondent and on 17 August 2020, he recommended that the Respondent *"very much needs to be assessed for the [intervention addressing sex offending] noting that it is provided mainly in the prison estate, but it can I understand, be provided in the community"*. He concluded that, *"I am not at all sure that [the Respondent's] risk of serious violence can only be managed by his detention in prison, although I am unable to provide the Parole Board with a definitive opinion at this stage."*
41. As explained above, it is clear that if a panel were to make a decision contrary to the opinions and recommendations of all the professional witnesses, it was important that it should explain clearly its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions. Unfortunately, the Panel in the decision letter did not address the need for the Respondent to undertake the intervention addressing sex offending or any other risk reduction work either before release or as a condition of release or give any reasons for not doing it other than saying that there was a robust risk management plan (RMP).
42. The Panel does not explain in the decision letter how the RMP would or could adequately mitigate these risk factors bearing in mind the core risk reduction work which the professional witnesses consider the Respondent should undertake.

Indeed, the licence conditions did not contain any requirement for the Respondent to do any of the specific risk reduction work referred to by the professional witnesses.

43. Even after giving due deference to the Panel, it was irrational for it not to accept the evidence of the professional witnesses that the Respondent should be required to complete risk reduction work before release especially as the Panel failed to put forward any or any proper reasons justifying its failure to accept this evidence.
44. If (which is not the case) I had any doubts on this conclusion, I would have been fortified in reaching that conclusion by the fact that as I have explained, although the Respondent had completed the course addressing sex offending, those programmes would not now have any positive effect in deviating him from sexual offending behaviour.

### Ground 3

45. As I have explained, there was much evidence from professional witnesses that the Respondent posed a high risk of serious harm on release into the community. The Panel concluded that the Respondent's risk of serious harm to children is no more than medium. In doing so, it relied on a number of factors in favour of holding that the Respondent could be safely released which the Secretary of State contends are mistaken. The Secretary of State also contends that the Panel ignored other factors which undermine its assessment of the risk that would be posed by the Respondent on release into the community.
46. First, the Panel failed to take into account when describing the Respondent's compliance on release as being "good" his conduct which led to him receiving warnings from Probation for his lack of openness about his activities when he was on release and which led to him being recalled to prison and which have been described in paragraphs 9-12 above. This conduct undermined the Panel's conclusion that the Respondent's lifestyle on release was "largely pro-social".
47. Second, a factor relied on by the Panel in support of the Respondent's claim that he could be safely released and that his level of risk was medium and not high was that he had completed "*what was then considered to be adequate treatment for your sexual offending needs*". As has been explained in paragraphs 25 -33 above, the treatment which the Respondent had completed could not be regarded at the present time as now being adequate treatment for his particular sexual offending needs or as having any positive effect in deviating him from his sexual offending behaviour.
48. Third, there was much uncontested evidence from professional witnesses that the Respondent had to be required to complete risk reduction work before he could be released. This is a powerful and cogent reason for showing why it was not safe to



release him without doing this work. This was an important factor which was not considered by the Panel in determining the risk he posed and no reason was given for ignoring this evidence.

49. Fourth, the Panel attached significance to the fact that the Respondent's only conviction was committed over 40 years earlier when he was 18 years old. The Panel failed to take into account that he had spent 33 years of those years in custody before his first release in custody. During that period, there would have been many more obstacles to him committing offences (especially involving boys under the age of consent) than if he had been in the community.
50. These factors show that the panel's decision that the Respondent's risk of serious harm to children is "no more than medium" is irrational as it ignores many factors which the Panel should have taken into account. At the same time, the Panel took into consideration other factors which when examined do not support the Panel's assessment of the Respondent's risk factors.
51. In those circumstances, it is unnecessary to consider many other matters relied on by the Secretary of State relating to the risk posed by the Respondent in the community but which are the matters still under investigation by the police.

#### *Ground 4*

52. In the light of my conclusions on the other issues that reconsideration should be ordered, it is unnecessary to consider this further ground for ordering reconsideration.

#### **Conclusion**

53. Accordingly, I conclude having applied the test for reconsideration as defined in case law, that the decision of the Panel dated 22<sup>nd</sup> April 2021 was irrational and should be reconsidered. I do so solely for the reasons set out above. The application for reconsideration is therefore granted and the case should be reviewed by a fresh panel by way of an oral hearing.
54. I have given careful consideration to whether this case should be reconsidered by the original panel or whether it should be considered afresh by another panel.
55. I have no doubt that the original panel would be fully capable of approaching the matter conscientiously and fairly. However, the question of justice being seen to be done arises again. If the original panel were to adhere to its previous decision, there would inevitably be room for suspicion that it had simply been reluctant to admit that its original decision was wrong. However inaccurate or unfair that suspicion might be, it would be preferable to avoid it by directing (as I now do) that the case should be reheard by a fresh panel.

56. On 15<sup>th</sup> April 2021, the Respondent was charged with 10 further serious sexual offences which were committed in 2018 and 2019. He was duly convicted on all 10 counts receiving further sentences.

57. These matters were not before the Panel and so they were not considered on this Reconsideration decision. The significance and relevance of these matters will have to be considered on a MCA review of the sentences referred to in paragraph 4 above and the sentences referred to in paragraph 56 above.

**Sir Stephen Silber**  
**9 June 2021**