

Application for Reconsideration by Rowland

Application

1. This is an application by Rowland (the Applicant) for reconsideration of a decision of an oral hearing dated the 24 September 2022 not to direct release or to recommend progression to open 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 dossier (including the decision letter) running to 653 pages and the representations on behalf of the Applicant.

Background

4. The Applicant is aged sixty-seven. On the 24 January 2003, he was sentenced to life imprisonment with a minimum specified term of five years following his conviction by a jury of three counts of wounding with intent to cause grievous bodily harm. The offences arose out of extremely violent attacks on two of his former partners.
5. The Applicant maintains he is unable to remember what took place. The case against him was that during the first offence, he broke the victim's arm by placing it over a box and stamping on it.
6. The second offence consisted of the Applicant breaking the victim's jaw with a blow from his fist. In the third offence he forced both sides of the victim's face on to a hot cooker ring. He was described by the sentencing judge as a vicious and cold-blooded man.
7. The Applicant's previous convictions included burglary, possessing a firearm without a certificate, unlawful wounding driving with excess alcohol and carrying a firearm with intent to commit an arrestable offence.

Request for Reconsideration

8. The application for reconsideration was received on the 10 October 2022.
9. The application is brought under both irrationality and procedural unfairness. The grounds for seeking a reconsideration under irrationality are as follows:



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- a. The Panel placed overly significant weight on the fact that [the Applicant] was in possession of a photograph of his ex-partner and that he has not completed any one-to-one work to explore risk.
- b. The Panel disregarded the opinion of the Psychologist that [the Applicant] had demonstrated risk reduction.
- c. The Victim Impact Statement was considered by the Panel which included false information.
- d. [the Applicant] has been assessed as posing a medium risk of harm towards staff.

10. The ground for seeking a reconciliation under procedural unfairness is as follows:

- a. The Prison prevented a Prison Officer from attending the Oral Hearing to support [the Applicant]
- b. The Panel returned a decision within an extremely short timescale.

Current parole review

11. The Secretary of State referred the Applicant's case to the Parole Board in April 2019.

12. The hearing was subjected to a number of deferrals. It took place remotely by video link on the 3 September 2020. The panel consisted of two independent members and a psychologist member.

13. The panel heard from the Applicant, the Prison Offender Manager, the Community Offender Manager, a prison psychologist, a psychologist instructed on behalf of the Applicant and the Applicant's solicitor.

14. This was the Applicant's seventh review.

The Relevant Law



15. The panel correctly sets out in its decision letter dated the 24 September 2022, 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.

Parole Board Rules 2019

16. 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)).
17. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**.

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

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 satisfy me 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 did not make any representations in this case.

Discussion

24. I will deal with submissions in turn.

25. *Possession of a photograph and weight given to the non-completion of programmes.*

26. In January 2022, the Applicant was found to be in possession of a photograph of one of his two victims. It had been taken some thirty-three years previously. It is submitted that during the evidence, the panel discussed the photograph in detail with a specific focus on whether it related to the risk of harm.

27. A panel may spend a considerable time exploring a particular topic in evidence, but it is the decision letter which will indicate the extent, if any, the panel placed significance on the evidence.

28. At paragraph 2.9, the decision letter notes the finding of the photograph and the Applicant's alleged but disputed observation that he "should have killed her".

29. At paragraph 2.16, the prison offender manager said he had been surprised at the possession of the photograph but did not consider it indicative of rumination. The panel recorded the Applicant's case at paragraph 2.20. The psychologist said the Applicant's explanation could be credible and she did not consider it evidence of rumination or indicative of him potentially seeking con-



tact on release. The community offender manager was not clear if the photograph incident was linked to risk and she would want to explore this with the Applicant.

30. The submissions do not say how the panel placed undue weight on the evidence of the photograph. Reading the decision letter, it appears that once the professionals had expressed their opinions on the topic, it played no further part in the panel's deliberations.
31. The Applicant also says the panel erred in finding he could not be released because he had not done any one-to-one work. That is a highly selective way of describing the problem.
32. The panel said, correctly, that the previous panel in 2018 concluded there remained core risk reduction work outstanding.
33. The prison offender manager said there was such work outstanding on intimate partner violence and he, the prison offender manager, believed there were areas of risk insufficiently understood as he did not have the benefit of offending behaviour work to assist him. The community offender manager also said there was outstanding risk reduction work. She saw no evidence of change or risk reduction either through the credited programmes or otherwise.
34. A panel decision might well have been stigmatised as irresponsible if it had not taken into account those matters. It is simply incorrect to suggest it was wrong for the panel to take into account among other factors that the Applicant had not engaged in motivation work or one to one work.
35. Some of the other factors taken into account by the panel included grievant views, entitlement attitudes, mistrust of probation, limited internal skills and insight, rigidity of thought and difficulty in maintaining openness with probation.
36. This ground fails.
37. *Disregard of the psychologist's recommendation.*
38. The Applicant argues the panel ignored the psychologist's evidence he had demonstrated a reduction in risk.
39. The psychologist's recommendation was for progression to open conditions rather than release. She said there had been little change since her psychological risk assessment in 2020.



40. The panel allocated a significant portion of the decision letter to outlining the psychologist's findings. At paragraph 4.7, the panel said it could see limited evidence of risk reduction which in general terms coincided with the burden of the psychologist's evidence.

41. This ground fails

42.- Consideration of the victim personal statement.

43. The Applicant complains the panel cited the victim personal statement in the decision letter and that the statement highlighted the impact of the Applicant's offending had on the victim. It is said the statement contained untruths to the detriment of the Applicant.

44. First, there is no evidence at all in the decision letter that the panel took into account the statement as part of its decision making process. Second, the decision letter sets out fully the allegations that the victims themselves had been violent. Third, there is no evidence that the 2011 decision letter which the Applicant says should not have been in the dossier played any part in the decision making process.

45. This ground fails.

46. Medium risk of harm to staff.

47. The Applicant is concerned at the assessment and says there has been no evidence to support it. It is quite correct that the Applicant has not used or threatened violence against members of the prison staff. The finding that his risk is medium is not the panel's scoring but the assessment made by probation. The reasoning is set out in various parts of the dossier and in particular at page 595. This was professional evidence before the panel and evidence it was entitled to accept if it thought it right to do so.

48. In those circumstances, it cannot be said that the panel was acting irrationally.

49. Refusal of a prison officer's attendance.

50. Permission had been given for the officer to attend as a support for the Applicant. This officer was on leave on the day of the hearing. This is recorded in the preamble section of the decision letter.



51. It is said she sought to swap her annual leave days in order to attend but was told this was not possible. She then offered to attend on a leave day but was told she would not be insured to be in the prison.
52. As the officer was not present at the hearing, it is unclear what is the basis for saying she would have attended but for the fact she would be uninsured. It seems very strange that a participant at an oral hearing would be uninsured.
53. It is said that the Applicant "*feels that HMP Highpoint purposefully withheld Officer from the oral hearing*". The reconsideration process is a quasi-judicial one and proceeds on the basis of the evidence before the panel and not on the surmise of the Applicant. There is simply no evidence to support the allegation and no hint as to what the motive for doing it would have been.
54. If the presence of the officer was crucial to the procedural fairness of the proceedings I would have expected the grounds to have indicated whether an application for an adjournment had been made to the panel and on what basis.
55. This ground fails to explain how the Applicant was prejudiced by the officer's absence and is without merit.
56. *Timescale of panel's decision.*
57. The Parole Board is more used to receiving complaints of delay. What is complained of here is that the hearing took place on the 21 September 2022 and the decision letter was issued three days later. The Applicant feels his case was not given sufficient consideration and that the evidence was not fully reviewed. I am afraid this is a nonsense. The decision letter is a tour de force setting out the issues and the evidence in what was quite a complicated case extremely fully and with conspicuous clarity. There is absolutely nothing in the letter to suggest the panel did not act conscientiously. What does emerge from the decision letter is how well this panel understood the difficulties under which the Applicant labours and which impede his progress.

Decision

58. 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.



James Orrell
November 2022



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