

[2022] PBRA 174

Application for Reconsideration by Lee

Application

1. This is an application by Lee (the *Applicant*) for reconsideration of a decision of a panel of the Parole Board (the *Panel*) following an oral hearing on 3 October 2022. The Panel decided not to direct release and not to make a recommendation for open conditions.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the *Parole Board Rules*) provides that applications for reconsideration may be made in eligible cases (as set out in Rule 28(2)) either on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair. This is an eligible case.
3. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. The Panel's decision not to make a recommendation for the Applicant's transfer to open conditions will therefore not be considered in this decision.
4. I have considered the application on the following papers:
 - a) a dossier of 389 numbered pages
 - b) an application for reconsideration submitted by the Applicant's solicitors
 - c) the Panel's decision dated 8 October 2022.

The reply on behalf of the Secretary of State

5. The Secretary of State did not offer any submissions.

Background

6. The Applicant is now 44 years old. On 25 May 2005, when he was 26 years old, he committed a series of unprovoked attacks, armed with a machete, against innocent members of the public. The Applicant had spent the evening watching a football match and drinking alcohol at a friend's house. On his way home, he saw a group of local men with whom he had a long-standing feud and felt at risk from them. He returned home, drank more alcohol, put on a stab vest, and armed himself with a machete. Outside, he came across four men who had no links to the group of local men he had seen earlier in the evening. He threatened to harm one man (who was in the company of another) while holding the machete to the man's neck. He chased



a second man, who was forced to run from the Applicant in fear for his life, while threatening to cut him with the machete. He swung the machete at the head of a third man, who avoided being hit by ducking. In the struggle that followed, the Applicant tried to stab the third man in the back and then struck him on his cheek. Serious injury did not occur because fortuitously the Applicant struck him with the blunt side of the machete.

7. The Applicant was given a concurrent sentence of two years for possession of an offensive weapon, and a concurrent extended sentence of three and a half years, comprising a custodial sentence of 18 months and an extended licence period of two years, for affray. The custodial element of the extended sentence appears to be incorrectly recorded in the Applicant's Police National Computer (PNC) record. The Applicant had pleaded guilty to both offences. He pleaded not guilty to attempted wounding with intent to commit grievous bodily harm under section 18 of the Offences Against the Person Act 1861. He was found guilty and given a sentence of imprisonment for public protection (IPP) with a minimum term of three years less time spent on remand.
8. The trial judge's sentencing remarks and reports at the time paint a picture of the Applicant as a troubled man, and, at the trial, the Applicant was described by his counsel as a '*Jekyll and Hyde*' character. The Applicant was said to have witnessed violence in the family home as a child and to have spent time in care due to his mother's inability to look after him. His mother, his brother, and his grandfather had all died in 2004 (some reports say 2005) and this had contributed to an increase in his alcohol consumption. As well as being a perpetrator of violence, the Applicant had also been a victim of at least two serious assaults. This had made him sensitive to the possibility of being assaulted again and as a result he had armed himself with a machete and owned a stab proof vest. His paranoid and distorted thinking led him to believe that he should attack before being attacked, and this belief was intensified by alcohol misuse. The Applicant's PNC record shows a history of anti-social, threatening, aggressive, and violent offending as well as repeated non-compliance with court orders.
9. Before the Applicant was released from open conditions on 6 March 2012, he had completed TSP (Thinking Skills Programme), and CALM (Controlling Anger and Learning to Manage it) as well as courses on alcohol awareness, victim awareness, and anger management.
10. The Applicant was on licence for over three years but his behaviour started to deteriorate noticeably from December 2014. Around Christmas 2014, while intoxicated and behaving recklessly, he damaged a car windscreen and was found in possession of a small amount of cannabis. He was convicted of causing criminal damage, cannabis possession, and failing to surrender. In April 2015, the Applicant was arrested on suspicion of driving under the influence of substances. He refused to take a breathalyser test at the roadside and later at the police station. He was convicted of failing to provide a specimen and failing to surrender. In May 2015, the police were called after reports were received about the Applicant behaving anti-socially. The Applicant was shouting racist abuse and, while being arrested, he grabbed one of the police officers around the neck and would not release him until he had been hit several times with a police stick. The Applicant was again found to be in possession of a small amount of cannabis. He was convicted of cannabis



possession, two counts of committing an offence while a community order was in force, and a racially aggravated offence. In June 2015, he was arrested and later convicted for two further racially aggravated offences. The Applicant's licence was revoked in June 2015. Leading up to recall, the Applicant demonstrated: a capacity to act recklessly; threatening and violent behaviour; a propensity to turn to alcohol and drugs to cope with stressors; and entrenched anti-social and non-compliant attitudes.

11. The psychologist who assessed the Applicant in early 2016 (*2016 Psychologist*) was of the view that his critical risk factors for violence were: a perceived threat from others; paranoid personality traits; social isolation; an inability to communicate feelings and/or problems; and a deterioration in emotional stability. The 2016 Psychologist considered that the Applicant's presentation could be explained by mental illness or personality disorder, and recommended that he should be assessed by a psychiatrist whose assessment would guide any decision-making by professionals about future treatment. A psychiatric assessment was completed in 2016. The psychiatrist concluded that there was no evidence of any major mental illness but that the Applicant may have personality traits and therefore he recommended a personality assessment was undertaken.
12. In 2018, an IPDE (International Personality Disorder Examination) assessment was undertaken by a psychologist (*2018 Psychologist*). The Applicant was found to meet the full diagnostic criteria for both paranoid personality disorder and anti-social personality disorder. The 2018 Psychologist considered that the Applicant's personality difficulties appeared to be functionally linked to his risk and to perpetuate his risk of violence. The 2018 Psychologist assessed that the Applicant needed to continue to develop robust coping strategies to help him manage his risk behaviours and to reduce his risk of violence. She assessed his outstanding treatment needs as linked to emotional regulation, his insight and unhelpful thinking patterns, and the development of robust relapse prevention plans.
13. The 2018 Psychologist's view was that the Applicant would benefit from engaging in psychological intervention aimed specifically at individuals with personality difficulties. However, due to the Applicant's lack of motivation and inability to tolerate change and new environments, the 2018 Psychologist thought that a move to a specialised personality disorder treatment unit was likely to destabilise him and that he would disengage rapidly. The 2018 Psychologist suggested instead that the Applicant should work with his community offender manager (COM) and the Resettle team to prepare for release. One of the aims of the work was to develop and maintain a positive trusting relationship with the Resettle team, so that the Applicant would be more likely to seek the Resettle team's support in the community, should it be needed.
14. Resettle describes itself as a community-based intensive intervention programme for individuals with personality related difficulties. It works with individuals principally after release but also before release. There are two reports from Resettle in the dossier describing the Applicant's work with the Resettle team which focused on building rapport and trusting relationships. The Applicant worked with the Resettle team from May/June 2018 for approximately 18 months. In November 2020, Resettle asked if the Applicant could move to another prison to engage with them. The proposed move was affected by the Covid lockdown restrictions. By the



time the move was supported around June 2021, the Applicant had decided not to engage further with the Resettle team.

15. In June 2018, a panel of the Parole Board reviewed the Applicant's case and did not make a direction for release or make a recommendation for a progressive move to open conditions.
16. In October 2020, there was a further review of the Applicant's case by a panel of the Parole Board (*2020 Panel*). The 2020 Panel did not make a direction for release or make a recommendation for a progressive move to open conditions. The 2020 Panel noted that the Applicant had not undertaken any meaningful risk reduction work following his return to custody in 2015, and that there was no evidence of risk reduction. The 2020 Panel found that essential areas of risk remained outstanding and was not satisfied that the Applicant had sufficient insight into his areas of risk or that he possessed the necessary strategies and coping skills to manage his risks.
17. In May 2022, a psychological risk assessment (*2022 PRA*) was completed. The view of the author (*2022 Psychologist*) was that the Applicant's violence appeared to be predominantly driven by poor emotional control and maladaptive coping strategies aimed at protecting himself from real or perceived threats. The 2022 Psychologist thought that the Applicant's paranoid ideations and grievance thinking was likely to be exacerbated when he was experiencing difficult emotions and intensified when he was using substances or was under the influence of alcohol. The 2022 Psychologist believed that the Applicant continued to hold attitudes supportive of violence as a problem-solving strategy and appeared to struggle to manage his impulses. She also noted that the Applicant appeared to have limited insight into his personality traits and into the strategies he could use to assist him in managing them.
18. The 2022 Psychologist assessed that there was outstanding core risk reduction work for the Applicant to complete. She was of the opinion that the Applicant would benefit from intervention at a specialised personality disorder treatment unit (which had been recommended by the 2018 Psychologist). Since the Applicant had told the 2022 Psychologist that he was not willing to move to another prison to complete further intervention work, she outlined options to assist in improving his readiness and motivation for intervention work including motivational work with his prison offender manager (*POM*) and COM or transferring to a preparation PIPE (Psychologically Informed Planned Environment).
19. The Applicant's custodial behaviour has been mixed since his recall but he was regarded as having been "*generally settled*" since his Parole Board review in 2020. He has been adjudicated for violent behaviour twice over the past two and a half years. He assaulted other prisoners in May 2020 and May 2022 in similar circumstances, and on both occasions used an improvised weapon. In 2020, the Applicant used a tin in a pillowcase, and in 2022, he used a broken mop handle. There have also been incidents when the Applicant has been threatening and abusive towards staff and other prisoners.

Request for Reconsideration

20. The application for reconsideration is dated 14 October 2022. It is submitted that the Panel's decision is irrational. Two main arguments are advanced in support of this proposition as follows:
- a) first, it is submitted that the Panel made an error in its assessment by not taking account of work completed by the Applicant. It is submitted that the Applicant undertook work previously suggested for him *"for a significant period of time before he disengaged"* and that the work does *"not have a defined end period and is not something which is signed off upon completion like the usual credited programmes that the Parole Board are used to."* I have added the word *"not"* to make sense of the last sentence as it is clear that it was omitted in error. On that basis, it is submitted that it is irrational and unfair for the Panel to conclude that the first target on the Applicant's recent sentence plan has not been achieved.
 - b) secondly, it is submitted that the Panel's conclusion that there is core risk reduction work yet to be completed by the Applicant is irrational because the Panel has not identified what that work is or *"what it would do in terms of risk management."* It is argued that core risk reduction work *"has been done by virtue of the fact that he [the Applicant] was engaging with the resettlement"*. I have interpreted the reference to *"resettlement"* as work with the Resettle team.

Current parole review

21. The Secretary of State referred the Applicant's case to the Parole Board in September 2021 to consider whether or not it would be appropriate to direct his release. If the Parole Board did not consider it appropriate to direct release, it was invited to advise whether the Applicant should be transferred to open conditions.
22. The Panel, which comprised a psychiatric member and a judicial member, held a remote hearing by video on 3 October 2022. The Panel had considered a dossier of 375 numbered pages which included PRAs from the 2016 Psychologist and the 2018 Psychologist, the 2022 PRA, a PAROM 1 addendum dated 7 June 2022 from the Applicant's COM, and a report dated 20 June 2022 from the Applicant's POM. Oral evidence was taken from the POM, the Applicant, the 2022 Psychologist, and the COM.
23. At the hearing, the POM expressed the view that the Applicant needed to complete core work on his personality disorders but noted that he was unwilling to engage with Resettle or any other services to complete this work in custody.
24. The Applicant told the Panel that he did not want to undertake any further offending behaviour work in custody. However, he recognised that, if released, he would need support for his mental health as he could become anxious and paranoid. The Applicant admitted to assaulting another prisoner in May 2022 and said that the other prisoner had not responded to being asked to keep noise down during the night and had been abusive towards a prison officer. He also admitted calling the other prisoner a *"grass"* before the assault. The Applicant told the Panel that he had



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kept a broken mop handle for his own safety because “*prison was a violent place and prison officers had batons and CS spray so why should he not have a weapon for self-defence*”.

25. The 2022 Psychologist said that the Applicant was hypervigilant and paranoid. She said that he responded to stress and anxiety with violence and needed to develop alternative strategies. She said that the Applicant needed to complete core work on thinking patterns and interpersonal skills such as suspicion of others, self-regulation, and self-esteem. The 2022 Psychologist considered that ideally this would be done in a PIPE unit either individually or in a group but that the Applicant might need to go to a PIPE preparation unit first because he was reluctant to engage with a PIPE unit. The 2022 Psychologist commented that the Applicant’s risk would be difficult to manage in PIPE approved premises in the community.
26. The COM had limited knowledge of the Applicant because she had been appointed to manage his case two weeks before the hearing. Having reviewed the dossier, she considered that progression to a specialised personality disorder treatment unit was a good option so the Applicant could address his outstanding risk. The COM was concerned that if released, the Applicant would disengage as he had a tendency to adopt “*a siege mentality due to his paranoia*”.

The Relevant Law

27. The Panel’s decision dated 8 October 2022 correctly sets out 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. These are automatically set out in the Parole Board’s template for oral hearing decisions.

Parole Board Rules 2019 (as amended)

28. Under Rule 28(1) of the Parole Board Rules 2019 the only types of decisions which are eligible for reconsideration are those concerning whether 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)). Decisions concerning the termination, amendment, or dismissal of an IPP licence are also eligible for reconsideration (Rule 31(6) or Rule 31(6A)).
29. Rule 28(2) of the Parole Board Rules provides the sentence types which are eligible for reconsideration. These are indeterminate sentences (Rule 28(2)(a)), extended sentences (Rule 28(2)(b)), certain types of determinate sentence subject to initial release by the Parole Board (Rule 28(2)(c)) and serious terrorism sentences (Rule 28(2)(d)).
30. 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

31. 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."

32. 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.

Duty to give reasons

33. There are classes of cases in which there is a duty on decision makers to give reasons for their decisions. One such category of cases is where the subject matter is one that engages personal liberty, such as applications considered by the Parole Board.
34. The giving of reasons by a decision maker is "*one of the fundamentals of good administration*" see **Breen v Amalgamated Engineering Union [1971] 2 QB 175**. When reasons are provided they may indicate that a decision maker has made an error or failed to take a relevant factor sufficiently into account, hence their importance. An absence of reasons does not give rise to an inference that the decision maker has no good reason for a decision. Neither can it be necessary for every factor to be dealt with explicitly for the reasoning to be legally adequate in public law.
35. The importance of giving adequate reasons in decisions of the Parole Board has been made clear in cases such as **Wells v The Parole Board [2019] EWHC 2710 (Admin)** and **Stokes v The Parole Board [2020] EWHC 1885 (Admin)**.
36. 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.*".

Discussion

37. In considering an application for reconsideration where it is submitted that the Panel was irrational, it is necessary to highlight the following matters of importance:
- a) the reconsideration mechanism is not a process by which the judgment of the Panel when assessing risk can be interfered with lightly. It is also not a means by which the member carrying out the reconsideration is entitled to substitute his or her view of the facts for the view of 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;
 - b) due deference must be given to the expertise of the Panel in making decisions relating to parole;
 - c) where the Panel arrives at a conclusion, exercising its judgment based on the evidence before it and having regard to the fact that it 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;
 - d) in many cases, there can be more than one decision that the Panel can be entitled to arrive at depending on its view of the facts.
38. I will address the two grounds which were advanced in support of the submission that the Panel's decision was irrational.
39. First ground: it is submitted that the Panel did not take account of the work completed by the Applicant or recognise the open-ended nature of the work. It is further submitted that in light of the work completed by the Applicant, it is irrational and unfair for the Panel to conclude that the first target on the Applicant's current sentence plan has not been achieved.
40. There is no basis for the submission that the Panel did not consider the work already completed by the Applicant and did not understand the nature of the work. The Panel refers to the Applicant having engaged with Resettle from May 2018 to June 2021 and notes that the Applicant refused to transfer to a different prison to enable him to engage with Resettle in more depth. The work undertaken by the Applicant is described in detail in the reports submitted by Resettle and is considered by the 2022 Psychologist in the 2022 PRA. These reports form part of the dossier which the Panel confirms it reviewed.
41. In its decision, the Panel sets out the three targets on the Applicant's most recent sentence plan. The first target is stated to be, "*to engage with and comply with the assessments and treatment to benefit his psychological functioning and to improve his emotional well-being.*" The second target is stated to be, "*to achieve emotional stability*". The third target is stated to be, "*to secure employment within the prison*".
42. The Panel's view was that the first and second targets had not been met. There is ample evidence to justify the Panel's conclusion. The Panel refers to the 2022 PRA



and the 2022 Psychologist's findings that the Applicant, *"still has active issues with emotional management and coping, he still has attitudes supportive of violence as a problem-solving solution, he continues to have limited insight into his personality traits and their management"*. In the hearing, the 2022 Psychologist said that the Applicant was hypervigilant and paranoid. She said that he responded to stress and anxiety with violence and needed to develop alternative strategies. The POM, the COM, and the 2022 Psychologist considered that there was further work to be completed by the Applicant.

43. The Panel found that the Applicant's assault of another prisoner in May 2022 demonstrated *"his continued willingness to resort to violence to resolve issues and his willingness to hold weapons"*. Based on the Applicant's evidence, the Panel found that the Applicant justified both his possession of a homemade weapon and his assault of the other prisoner. The Panel commented on the Applicant's *"limited insight into the way his personality drives his behaviour"* echoing the 2022 Psychologist's assessment. The Panel found that the second target on the Applicant's sentence plan had not been met because the Applicant had *"exhibited episodes of emotional lability"*.
44. Second ground: it is submitted that the Panel's conclusion that there is core risk reduction work yet to be completed by the Applicant is irrational because the Panel has not identified what that work is or what impact completion of that core risk reduction work would have on management of the Applicant's risk.
45. The Panel concluded that, *"there is core risk reduction work yet to be completed by [the Applicant] before his risk can be safely managed in the community."* There is no ambiguity in the Panel's decision about what core risk reduction work the Applicant needed to complete and the Applicant can be in no doubt about this. The Panel sets out the opinions of each of the professionals, who are in agreement that the Applicant needs to complete work on his personality disorders. The Panel also records the 2022 Psychologist's view that the Applicant, *"needed to complete core work on thinking patterns and interpersonal skills such as suspicion of others, self-regulation, and self-esteem."*
46. Moreover, the Panel refers to the conclusions of successive psychologists, all of whom have consistently recommended a move to a specialised personality disorder treatment unit or a similar environment. The 2022 Psychologist's recommendation that the necessary work should be completed in a PIPE unit and that the Applicant might need to engage with a PIPE preparation unit first given his lack of motivation to engage with a PIPE unit is also set out.
47. While the Panel's decision could have addressed the risk management issues more coherently, given the description of the Applicant's offence paralleling use of violence with a homemade weapon when under stress some five months before the hearing, and the Panel's findings about his violence supportive beliefs, the implications for the management of his risks in the community are clear. The Panel highlights the views of professionals that the Applicant has a tendency to withdraw and disengage if experiencing stress or paranoia which has significant implications for risk management. The Panel also comments on the Applicant's current, *"limited insight and ability to control his own behaviour in a prosocial way and to comply with restrictions and expectations."*

48. For completeness, it is worth addressing one further point made in the application for reconsideration. It is argued that the Applicant's "unique personality" is "something that is being used clearly against him by all professionals." There is no evidence of this in the decision. To the contrary, the Panel includes an example of its understanding of the Applicant's anxieties and personality style in the decision. The Applicant interrupts the COM's evidence stating that he would not work with her or an approved premises (AP). The Panel states, "At the end of the hearing, [the Applicant] stated that he would in effect engage with [the COM] and an AP. The panel considered this was an outburst due to [the Applicant's] anxiety and illustrated some of the challenges the professionals have in supporting [the Applicant]". In addition, the Panel has been even handed by noting positive aspects of the Applicant's behaviour including his enhanced status, the positive feedback he has received for his work at a prison workshop, his engagement with assessments, the good working relationship he had established with his previous COM, and the POM's evidence that he responded appropriately when threatened by another prisoner.

Decision

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

H Emrys
8 December 2022