

[2023] PBRA 68

## Application for Reconsideration by Jarral

### Application

1. This is an application by Jarral (the Applicant) for reconsideration of a decision made by a duty member dated 11 March 2023 not to terminate the licence imposed upon him in connection with a sentence of Imprisonment for Public Protection (the **IPP licence**).
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.
3. I have considered the application on the papers. These are the decision, the IPP licence termination dossier, and updated legal submission (dated November 2022). An email dated 12 April 2023 was also provided by those instructed, confirming the dates of all legal submissions provided to the Board.

### Background

4. The Applicant received a sentence of imprisonment for public protection (IPP) in July 2007. His tariff expired on 17 December 2009. He robbed a woman of her handbag in the early hours of the morning and caused injury with a knife.
5. The Applicant has been recalled six times during his sentence. He was first released on licence on 21 November 2012 and so it is now over 10 years since his release. The Applicant was last released on 16 December 2021. The longest consistent period he has spent in the community is reported by probation to have been just over a year on his first release. The Applicant is currently recalled back into prison for allegations of further non-compliance and awaiting an oral hearing.
6. The Applicant's recalls have been for various reasons including concerns around substance misuse, inappropriate sexual behaviour towards women, failing to engage with supervision session and the Probation Service as directed and most recently for breaching curfew requirements.

### Request for Reconsideration

7. The application for reconsideration is dated 3 April 2023 and has been drafted by solicitors acting for the Applicant. It submits that the decision was irrational.



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8. This submission is supplemented by written arguments to which reference will be made in the **Discussion** section below. No submissions were made regarding the decision being procedural fairness or error of law.

### Current Reference

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) on 13 April 2023 under section 31A of the Crime (Sentences) Act 1997 to consider whether or not it would be appropriate to terminate his licence.
10. On the 13 March 2023, a Duty Member dismissed the reference.

### The Relevant Law

#### *Crime (Sentences) Act 1997*

11. Section 31A of the Crime (Sentences) Act 1997 provides the process for consideration of licences by the Parole Board which relate to '*preventative sentences*' after the '*qualifying period*' has passed.
12. The '*qualifying period*' is ten years beginning with the date of release on licence, regardless of whether the prisoner has subsequently been recalled to prison (section 31A(5)).
13. A '*preventative sentence*' is a sentence of imprisonment for public protection or a sentence of detention for public protection (including such a sentence of imprisonment or detention in a young offender institution or detention passed as a result of section 219 or 221 of the Armed Forces Act 2006) (section 31A(5)).
14. If a prisoner has been released on licence (regardless of whether they have been subsequently recalled) and the qualifying period has expired and if Secretary of State has previously referred the case to the Parole Board, the case must be re-referred 12 months from the date of the previous determination (section 31A(3)).
15. The Parole Board shall direct the Secretary of State to make an order that the licence is to cease to have effect if it is satisfied that it is no longer necessary for the protection of the public that the licence should remain in force (section 31A(4)(a)).
16. If the prisoner is in prison having been recalled, the test is different. The Parole Board must decide whether it is not necessary for the protection of the public for the prisoner, when released, to be released on licence in respect of the preventative sentence or sentences (section 31A(4B)(b)(ii)).
17. If the Parole Board directs release under section 31A(4B)(ii), that release is unconditional (section 31A(4C)).



18. Rule 28(1) of the Parole Board Rules provides the types of decision which may be considered for reconsideration, including decisions made in response to a referral by the Secretary of State under section 31A of the 1997 Act (rule 31(6) or rule 31(6A)): specifically, a decision to terminate a licence or a decision to dismiss the Secretary of State's reference.
19. Decisions concerning preventative sentences (as defined in section 31A(5) of the 1997 Act) are eligible for reconsideration under rule 28(2).

### *Irrationality*

20. 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."*

21. 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.
22. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

### **The reply on behalf of the Secretary of State (the Respondent)**

23. The Respondent has submitted no representations in response to this application in an email dated 13 April 2023.

### **Discussion**

24. The Applicant submits that the decision was irrational.
25. Those instructed argue that the Duty Member made 'scant reference' to the representations submitted by the Applicant, and that these representations made reference to several inaccuracies within the report received from the Community Offender Manager (COM) which the Duty Member failed to take into account when completing their assessment. Those instructed argue that due to these inaccuracies an oral hearing ought to have been convened. It is therefore argued that the Duty Member relied too heavily on the COM report which was inaccurate in places.



26. It is further submitted that the Duty Member relied too heavily on the Parole Board's decision letter of 21 October 2021 and that in consequence the Duty Member did not provide adequate analysis, detail, or justifications in relation to their own decision making. In particular, the Duty Member failed to make an assessment of the fairness of the Applicant's recalls in their assessment.
27. In relation to the latter submission, that the Duty Member relied too heavily on documented information, including the previous decision of the Parole Board 13 October 2021, and did not provide sufficient justification for their decision, I reject this proposition based on the evidence before me. I note that the Duty Member's decision spans some three typed pages. It includes, as would be expected, an analysis of the Applicant's offending behaviour, evidence of change, and of manageability of risk. The conclusion notes, in terms, that since the Applicant's initial release *'over ten years ago'* he has *'spent only 2 years and 4 months in the community on licence (plus a further 5 months spent unlawfully at large)'*. The Duty Member also cites that *'on his last release the Applicant was recalled after 5 days'*. This information appears to me to be factual and not in dispute. The Duty Member also sets out the Applicant's current risk assessments (HIGH risk of harm to the public) and the opinion of the Probation Service that the Applicant is not suitable for licence termination or suspension of supervision at this time. In my view the Duty Member's decision is sufficiently detailed and does provide a careful analysis of the information available.
28. Furthermore, I do not accept that the Duty Member relied too heavily on the previous decision letter from 2021, or other documented information. In this case there is a clear recommendation from the Probation Service and the Applicant's multiple recalls are of themselves compelling evidence against revocation or suspension. The Duty Member is entitled to rely on the information provided in the Termination of IPP Licence dossier, and to form their own opinion about the sufficiency of that evidence when deciding next steps. The Duty Member plainly considered the benefits to the Applicant of convening an oral hearing, it is mentioned in terms, however, they were *'satisfied there is sufficient evidence in the dossier with which to make a decision'*. I do not criticise this approach based on the particular characteristics of the Applicant's case and the nature of the evidence provided in Termination of IPP Licence dossier.
29. In respect of the Applicant's second submission, that the Duty Member made *'scant reference'* to the Applicant's representations, and that these representations *'made reference to several inaccuracies within the reports received from the Community Offender Manager (COM)'* which were not adequately considered by the Duty Member, I have carefully considered the submissions provided. However, again I must reject this proposition based on the evidence before me.
30. Having carefully reviewed the representations provided in the Applicant's Termination of IPP Licence dossier (9 March 2023) I noted that there is reference to some inaccuracies within the COM report. Those instructed do not state in terms what these inaccuracies are, although it appears to me that they largely relate to the circumstances of the Applicant's recall, not the recalls per se. However, notwithstanding these inaccuracies, the Applicant does not dispute that, as a matter of fact, he has been recalled six times *'during the 10 years*



*since he was first released*'. Nor does the Applicant dispute remaining unlawfully at large abroad for some five months in 2019. Whilst mitigation is offered for this behaviour, it is entirely reasonable, in my view, for the Duty Member to form a different view about the seriousness of the Applicant's past breaches and balance that information against other evidence including the reported inaccuracies in the legal representations. It appears to me that the Duty Member simply preferred the evidence contained within the Termination IPP Licence Dossier and did not consider the inaccuracies cited in the legal representations to be of sufficient significance to necessitate an oral hearing, when balanced against the other extensive evidence available in the papers (much of which is factual and accepted by the Applicant). In coming to this decision, the Duty Member has clearly considered fairness to the Applicant before confirming their decision to conclude the Applicant's case on the papers, stating in terms *'...there is sufficient evidence in the dossier with which to make a decision and the Duty Member concluded that an oral is not required in fairness to the Applicant, or for any other reason'*. In summary based on the evidence before me, I find the Duty Member's conclusions to be entirely reasonable, including their decision to make a finding on the papers alone.

## Decision

31. For the reasons I have given, I do not find the decision was irrational and accordingly the application for reconsideration is refused.

**Heidi Leavesley**  
**17 April 2023**

