

[2023] PBSA 23

## Application for Set Aside by the Secretary of State for Justice in the case of Bramley

### Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision made on the papers by a panel (dated 14 March 2023) not to direct the release of Bramley (the Respondent). This is an eligible decision.
2. I have considered the application on the papers. These are the paper decision, the dossier, and the application for set aside (dated 30 March 2023).

### Background

3. The Respondent received a determinate sentence of imprisonment for a total of two years and eight months on 2 February 2022 following conviction for arson with recklessness as to whether life was endangered.
4. He was automatically released on licence on 24 November 2022. His licence was revoked on 8 December 2022, and he was returned to custody on 3 January 2023.
5. His sentence now expires April 2024.
6. The Respondent was aged 51 at the time of sentencing. He is now 53 years old.

### Application for Set Aside

7. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
8. The application for set aside submits that there has been an error of fact. It is argued that the panel may not have reached the same decision had this new information been known.
9. The content of the application will be considered in the **Discussion** section below.

### Current Parole Review

10. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release. This is the Respondent's first parole review since recall.



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11. The case was considered on the papers on 14 March 2023 by a single-member panel. This panel made no direction for release. In doing so, the panel commented as follows:

*"[The panel] had been minded to progress this review to an oral hearing. However, noting that [the Respondent's] sentence expires on 18/04/23 which makes it impossible to organise an oral hearing, the MCA member is satisfied that it is appropriate to conclude this review on the papers".*

## The Relevant Law

12. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the **Parole Board Rules**) provides that a prisoner or the Secretary of State may apply to the Parole Board to set aside certain final decisions. Similarly, under rule 28A(1)(b), the Parole Board may seek to set aside certain final decisions on its own initiative.

13. The types of decisions eligible for set aside are set out in rules 28A(1). Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for set aside whether 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)).

14. A final decision may be set aside if it is in the interests of justice to do so (rule 28A(3)(a)) **and** either (rule 28A(4)):

- a) a direction for release (or a decision not to direct release) would not have been given or made but for an error of law or fact, or
- b) a direction for release would not have been made if information that had not been available to the Board had been available, or
- c) a direction for release would not have been made if a change in circumstances relating to the prisoner after the direction was given had occurred before it was given.

## The reply on behalf of the Respondent

15. The Respondent has made no representations in response to this application.

## Discussion

16. The application notes that the Respondent's sentence end date is, in fact, 18 April 2024 and not 18 April 2023 as stated on the dossier cover sheet (which is prepared on behalf of the Applicant).

17. I find that the Applicant made an avoidable error of fact upon which the panel relied in reaching its decision not to direct the Respondent's release.

18. This does not wholly exonerate the panel from blame, as the dossier also states that the Respondent's sentence ends on 24 March 2024 in ten other places including the Respondent's licence, the Part A report, the OASys report and the Part B report. (This date appears not to take into account the time the Respondent was unlawfully at large following his recall.)
19. The inconsistencies in dates within the dossier (coupled with some simple arithmetic) were such that the panel should have been curious as to why such significant discrepancies existed and prompted further enquiry for clarification. Instead, the panel took the incorrect cover sheet at face value, and consequently made a decision that was manifestly unfair to the Respondent. Of course, procedural fairness is not a criterion for set aside.
20. Nonetheless, I do find that the panel also made an avoidable error of fact.
21. I also find that the errors of fact were such that the panel's decision would not otherwise have been made (the panel having explicitly said as such) and consider that it is clearly in the interests of justice for the panel's decision to be set aside.

## Decision

22. For the reasons I have given, the application is granted, and the decision of the panel dated 14 March 2023 is set aside.
23. I must now consider two matters under rule 28A(8). First, whether the case should be decided by the previous panel or a new panel and second, whether it should be decided on the papers or at an oral hearing.
24. I direct that the case should be decided by a new panel. The Respondent will be aware of the circumstances surrounding this application which may lead him to conclude (however inaccurately or unfairly) that his confidence in the original review process is fatally undermined. The appearance of fairness requires this case to be reviewed by a new panel.
25. I have also considered whether an oral hearing is necessary considering the principles in **Osborn v Parole Board [2013] UKSC 61**. I direct that the case should be (in agreement with the course of action that the original panel contemplated) reviewed by way of an oral hearing.

**Stefan Fafinski**  
**28 April 2023**