

[2023] PBSA 82

**Application for Set Aside by the Secretary of State for Justice
in the case of Wood****Application**

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision to direct the release of Wood (the Respondent). The decision was made by a panel on the papers. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier (357 pages), the paper decision (dated 27 October 2023), and the application for set aside (dated 16 November 2023).

Background

3. On 9 February 2021, the Respondent received a determinate sentence of imprisonment for three years following conviction for fraud by false representation. His sentence end date is reported to be in February 2024.
4. The Respondent was aged 46 at the time of sentencing. He is now 49 years old.
5. The Respondent was automatically released on licence on 29 March 2022. His licence was revoked on 23 June 2022 and he was returned to custody the following day. This is his first recall on this sentence and his first parole review since recall.

Application for Set Aside

6. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
7. The application for set aside submits there is further information constituting a significant change in circumstances which came to light after the panel made its decision. It is argued that the panel may not have reached the same decision had this new information been known.
8. The content of the application will be considered in the **Discussion** section below.

Current Parole Review

9. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release.



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10. The case was decided by a single-member panel on the papers under rule 21. The panel directed the Respondent's release to designated accommodation.

The Relevant Law

11. Rule 28A(1)(a) of 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.

12. The types of decisions eligible for set aside are set out in rule 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)).

13. 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 given if information that had not been available to the Board had been available, or
- c) a direction for release would not have been given 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

14. The Respondent has submitted representations in response to this application to which I will refer in the **Discussion** section below.

Discussion

15. The Applicant submits that the Respondent was advised that the designated accommodation would be available on 12 January 2024. The Respondent is said to have refused to reside at the designated accommodation and would rather remain in custody until his sentence ends in February 2024.

16. The Applicant argues that release was contingent upon a period of residence in designated accommodation and that the Respondent's refusal to do so fatally undermines the risk management plan.

17. The panel's decision to direct release clearly states that it was reassured by the proposal for the Respondent to reside in designated accommodation and that release was directed on the basis that all parts of the proposed risk management plan would need to be in place. The new information calls all those matters into question and represents a clear change in circumstances.

18. I am satisfied that the panel would not have made a direction for release had it been aware of the change in circumstances relating to the prisoner. I am also satisfied that it is in the interests of justice for the decision to be set aside, since those interests would not be served by releasing a prisoner to no fixed abode after a panel (and the Probation Service) considered designated accommodation to be essential for risk management.

19. In any event, the Respondent has submitted that he does not object to the application and wishes to remain in custody until the end of his sentence.

Decision

20. For the reasons I have given, the application is granted, and the decision of the panel dated 27 October 2023 is set aside.

Stefan Fafinski
30 November 2023