[2020] PBRA 8

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Application for Reconsideration in the case of Samra
Decision of the Assessment Panel

Application

1. This is an application by the Secretary of State (the Applicant) for reconsideration of the decision of a three-member panel to direct the release of Samra (the Respondent), following an oral hearing which convened on 12 November 2019.

2. I have considered this application on the papers. These were the dossier, the provisional decision letter of the panel dated 14 November 2019, a licence variation requested by the Applicant on 14 November and approved on 22 November 2019, the application for reconsideration dated 5 December 2019, the response of the Respondent's solicitor dated 12 December 2019 and a supplemental directed submission from the Applicant dated 19 December 2019.

Background

3. The Respondent is now 20 years old. She is serving an extended sentence imposed on 26 January 2018 after pleading guilty to engaging in conduct in preparation for acts of terrorism. The charge covered the period between June 2017 and her arrest in July 2017. The sentence comprised a custodial term of 3½ years and an extended licence period of 12 months. The Respondent became eligible for parole in April 2019. If not directed by the Parole Board before then, she can expect to be conditionally released in January 2021. The 'at risk' period for the attention of the panel when it convened was therefore 14 months.

Request for Reconsideration

4. The request for reconsideration contends that the provisional decision of the panel which convened on 12 November 2019 to release the Respondent was irrational. There is no suggestion of procedural unfairness.

Current parole review

5. In June 2018 the Applicant referred the Respondent's case to the Parole Board for her first review. The terms of reference asked the panel to consider whether it was appropriate to direct her release.

6. The dossier contained detailed reports from two experienced forensic psychologists employed by HM Prison & Probation Service. The panel constitution also included a psychologist member of the Board.

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Bronze

7. Prison Psychologist A first assessed the Respondent in May 2018. She used an assessment concerning extremist offending to aid the understanding of the factors and circumstances that may have contributed to the index offence. This assessment is designed to guide assessors in considering factors which research indicates are relevant to extremist offending rather than to try to predict such offending. The guidelines help to assess contextual circumstances and personal attributes which may contribute to individuals committing extremist offences or adopting a cause.

8. Prison Psychologist A prefaced her first report with the caveat that information relating to the Respondent's life, offending and previous contact was largely based on this young offender's own self-report. That warning was heeded in subsequent reports and, in due course, by the panel.

9. Prison Psychologist A recommended that the Respondent complete an intervention programme which addresses the underlying causes of extremist offending and ways of disengaging. This was delivered one-to-one by Prison Psychologist B between July and October 2018. This intervention is also designed for those individuals who have offended because of their identification with a group or ideology that propagates extremist views and actions and justifies the use of violence in pursuit of its objectives. Its aim is to make individuals less prepared to commit such offences in the future (to desist). It also encourages participants to reconsider their identification with such causes that espouse violence in order to prevent future offending (i.e. disengagement). The Respondent was said to have engaged positively with the intervention over 17 sessions and was responsive to the exercises completed.

10. Prison Psychologist A undertook another assessment of the Respondent in November 2018 concerning extremist offending. The evidence suggested that she had gained some useful learning. There were no current concerns that indicated that she was (still) engaged with an extremist ideology or cause, or that she had intent to cause harm.

11. That positive view accorded with the prison intelligence reports disclosed into the dossier - the last with an adverse assessment is dated 20 August 2018. The security department provided a report on 13 September 2018.

12. Directions were given by a member of the Board for both Prison Psychologists A and B to attend the oral hearing as witnesses. On 15 October 2019 the Applicant served a Stakeholder Form asking that psychologist B should be permitted to deal with any questions for Psychologist A, who was on long-term leave of absence for health reasons. The panel chair approved this request with a proviso.

13. At the oral hearing on 12 November 2019 the panel heard oral evidence from the Respondent, her Offender Supervisor, her Offender Manager and Prison Psychologist B. The Respondent's solicitor represented her at the hearing. The Applicant was not represented, nor did he express a written view.

14. There was a consensus amongst the report authors in favour of release. The panel agreed with the professionals that the Respondent's assessed high risk of serious harm to the public could be safely managed in the community. There was a robust

package of external controls in place to reflect the fact that the evidence of change accepted by the panel was largely expressed by the Respondent's own self-reports. The reporting witnesses did not suggest there was any imminent risk of harm.

15. The panel found that the test for release was met and it so directed.

The Relevant Law

16. Rule 25 (decision by a panel at an oral hearing) and Rule 28 (reconsideration of decisions) of the Parole Board Rules 2019 apply to this case.

17. Rule 28(1) provides that applications for reconsideration may be made in eligible cases on the basis that (a) the decision is irrational and/or (b) that it is procedurally unfair. This is an eligible case.

18. In **R (on the application of 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 paragraph 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."*

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. This strict test for irrationality is not limited to decisions whether to release; it applies to all Parole Board decisions.

Discussion

19. Ground 1 of the application submits that it was irrational to rely on an offender's self-reports as evidence of change when there was evidence of inconsistency and dishonesty in her previous self-reports. No authority is cited in support of this bold and broad proposition. The Applicant did not object before or at the oral hearing to the admissibility of any of the reports in the dossier, for whose compilation and maintenance he was in any event responsible. He did not warn the panel against relying on them. All the report authors and the experienced panel were well aware of the danger of self-serving statements by the Respondent and approached her evidence with due caution. Such matters go to weight, not admissibility. The panel saw the Respondent and questioned her at length. It was entitled to accept her evidence of change as sincere and genuine, as had the reporting professionals. It was consistent (for example) with an absence of adverse intelligence reports since she completed the relevant course in October 2018. The risk management plan was fortified with robust external controls to ensure that it did not depend on the Respondent's own evidence of change to be effective. Ground 1 is not made out.

20. Ground 2 of the application contends that it was irrational for the panel not to give the security report adequate consideration nor to explore adequately the correspondence with the **TACT**[1] offender. The last prison intelligence report highlighted at paragraph 11.2 of the application is dated 20 August 2018. As the panel noted, there was no evidence of correspondence with the **TACT** offender during 2019. A prison intelligence assessment dated 12 July 2019 said that there were no concerns with the Respondent's recent behaviour or associations.

21. The primary duty of the panel was to make the judgment asked of it in its terms of reference from the Applicant. It was for the parties to gather and present the evidence which would help the panel perform that demanding task. The panel was entitled to rely on the assessments that concluded each intelligence report. These were added late to the dossier and appear to be the product of a recent search, as they were contained in a document printed out for the prison security department analyst on 25 October 2019. If there were additional security concerns after Autumn 2018 that were not reflected within this long printout, it was the responsibility of the Applicant – as custodian of these confidential prison records – to examine them and decide whether to disclose to the Board any other intelligence reports and to refresh the September 2018 security report in the dossier. I can see no fair basis for the Applicant's strong criticism of the panel's analysis; it took care and did its best with the available material. Ground 2 is rejected.

22. Ground 3 of the application argues that the panel gave improper weight to the risk assessments by the Offender Manager. The Respondent's solicitor rightly points out that an assessment that a prisoner poses a high risk of serious harm to the public is not a bar to release – nor is the grave nature of the index offence. Both are relevant and important considerations, but they are not conclusive. The panel's duty was to apply the legal test for release in the light of all the evidence it had read and heard. The Respondent's solicitor tells me – and I accept – that the issue of imminence of risk was aired when the panel questioned the professionals. He confirms that their shared oral view is accurately summarised by the statement in the provisional decision letter that *"the panel was not persuaded that there would be any imminence of risk should you be released".* The lack of imminence was a finding supporting the decision, as the "at risk" period before the Respondent would in any event be conditionally released was only 14 months. I see no basis for impugning the rationale of the panel's approach and findings. Ground 3 fails.

23. Ground 4 of the application has been revised in the Applicant's further written submission dated 19 December 2019. More detail is given on its first limb, which I address below. The second part of Ground 4 has been withdrawn.

24. It is said in revised Ground 4 that the panel should have sought further evidence from the local deradicalisation support team. The Applicant now submits that thorough exploration of this work in 2015-16 might have led to the identification of more risk or protective factors, an enhanced risk management plan and a better understanding on why the Respondent went onto commit the index offence despite this early engagement. The work of the team with the Respondent in 2015 and 2016 was known to and referenced by the report authors who gave oral evidence. Section 4 of the provisional decision letter contains a clear analysis of the key risk factors.

[1] TACT is the acronym used in HMPPS and other official guidance for a convicted Terrorism Act offender.

The risk management plan contained 15 additional licence conditions. If direct evidence on this pre-offence work had been thought by the Applicant to be relevant in advance of the oral hearing then he should have obtained the extra evidence and added it to the dossier. No direction was sought for a member of the local deradicalisation support team to attend the hearing. There was no steering intervention on the day of the kind advised by Sir John Saunders in the reconsideration case of ***Dowe* [2019] PBRA 14**, in which he said (at paragraph 26):

> *"… In the absence of any legal representation, it falls to the Offender Manager to represent the Secretary of State and if she or he does not think the Secretary of State's case is being properly considered, then he or she needs to make that clear to the panel."*

25. The Applicant fairly acknowledges that hindsight must be avoided when assessing the merits of the decision of the panel. Likewise, it would be wrong for me to speculate on whether the evidence of an unknown witness might have improved the scope of the factual base and the quality of the risk assessments in this review.

26. The detail contained within the provisional decision letter and the balanced manner in which the panel's reasons were expressed shows that it clearly understood and carefully weighed the evidence of all the witnesses from whom it heard. Nothing of note was missed. The conclusion of the panel was a succinct and well-rounded summation of the relevant matters. The panel stated and applied the right test. It was correctly focused on risk throughout and fully appreciated the inherent gravity of the index offence. The panel was reasonably entitled to adopt the risk assessments and the joint recommendation of the Offender Manager and Offender Supervisor for the full reasons it gave in the provisional decision letter. The legal test of irrationality is a very strict one. This case does not meet it.

Decision

27. The complaints of irrationality are not sustained on the papers before me. Accordingly, this application is dismissed.

Anthony Bate
9 January 2020