

[2023] PBRA 107

Application for Reconsideration by Woodfield

Application

1. This is an application by Woodfield (the Applicant) for reconsideration of a decision of 28 April 2023 of a Duty Member. The Duty Member considered an application from the Applicant's legal representatives to terminate the Applicant's IPP licence. The decision was to refuse the application.
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 application, the licence termination dossier (the dossier) and the Duty Member's decision. I have also considered a response to the application from the Secretary of State.

Background

4. The Applicant is serving a sentence of imprisonment for public protection (IPP) for the following offences: meeting or communicating with a female child under 16 after sexual grooming (30 months tariff); 2 counts of causing a child under 16 to watch a sexual act; sexual activity with a female child under 16. He was also sentenced to determinate sentences for several counts of possession of indecent images and theft. He is post-tariff and has been released and recalled on 2 occasions. The last review of his sentence was in December 2022. That panel considered the circumstances of the second recall and decided not to recommend release and not to recommend transfer to open conditions. The Applicant therefore remains in custody in closed conditions.

Request for Reconsideration

5. The application for reconsideration is dated 17 March 2023.
6. The single ground for seeking a reconsideration is procedural unfairness:
The application submits that there have been procedural flaws in the licence termination process. In particular, the Applicant was unable to engage in the process and make timely responses to the position put forward in the dossier by the



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Community Offender Manager (COM). This position was a recommendation not to terminate the IPP licence and not to remove the supervision element of the licence.

Current parole review

7. The Secretary of State referred the Applicant's case to the Parole Board in April 2023 under Section 31a of the Crime (Sentences) Act 1997. The referral was for the Parole Board to consider whether or not it would be appropriate to terminate the Applicant's licence, and if it decided not to do so, to consider whether it would be appropriate to suspend the supervision element of the licence and/or make any changes to the existing licence.
8. The dossier of 43 pages was considered by a Duty Member on 28 April 2023. The Duty Member also considered legal representations dated 26 April 2023. The application indicates that there was some urgency to providing these representations that were due to the legal representatives not being alerted to the timetable for the licence termination process, despite their repeated requests for information.
9. It is relevant that the termination dossier was not put before the Applicant nor their legal representatives. They provided their legal submissions on the basis of the dossier that is on the intranet which many legal representatives have access to. This intranet gives the updated 'GPP' or other dossier that is considered when a case is referred for a review (as opposed to a licence termination process).
10. It is also relevant that the dossier did not contain what is referred to in the dossier as an annex. (The Public Protection Casework Section (PPCS) subsequently refer to it as an Annex A).

The Relevant Law

Parole Board Rules 2019 (as amended)

11. 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)).

Procedural unfairness

12. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result. These issues (which focus on how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.
13. In summary, an Applicant seeking to complain of procedural unfairness under Rule 28 must satisfy me that either:



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- (a) express procedures laid down by law were not followed in the making of the relevant decision;
- (b) they were not given a fair hearing;
- (c) they were not properly informed of the case against them;
- (d) they were prevented from putting their case properly; and/or
- (e) the panel was not impartial.

14. The overriding objective is to ensure that the Applicant's case was dealt with justly.

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

15. On 26 May 2023 PPCS, on behalf of the Respondent, provided a response to the application. In that response PPCS accepts a) that the Applicant's COM did not contact the Applicant prior to submitting the termination review, and that this was not in line with policy, and that b) the COM, after informing the Applicant about the review (and presumably their recommendation with respect to it) should have completed an Annex A.

16. The Respondent also confirmed that should the Parole Board Duty Member require any further information following receipt of the dossier, they can direct this.

Discussion

17. I note from the termination review report completed by the COM that the COM indicates that they had been unable to speak to the Applicant prior to completing the review, and also that there is no Annex A. I further note that the termination review document says this:

"Please note that, unless there are exceptional circumstances, the report must not be submitted without the completed annex".

18. I also note that no reason was given by the COM as to why they were not able to speak to the Applicant. The review was not only signed off as complete by the COM but also the line manager.

19. I also note that the Duty Member, prior to making their decision, did not query the lack of contact with the Applicant or the missing Annex A.

20. I have to come to the conclusion therefore that the process set out for the termination review was not followed.

Decision

21. Granted – Accordingly, I do consider, applying the test as defined in case law, that the decision of the Duty Member was procedurally unfair. I should emphasise here that in doing so I make no determination on the decision itself, just that the process leading up to the decision being made was flawed. I make my decision solely for the reasons set out above. The application for reconsideration is therefore granted.

Chitra Karve
13 June 2023



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