

[2023] PBRA 110**Application for Reconsideration by Bennett****Application**

1. This is an application by Bennett (the Applicant) for reconsideration of a decision of an oral hearing panel (the panel) dated the 12 May 2023 not to direct his release.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended) (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:
 - a) The Decision Letter dated the 12 May 2023;
 - b) A request for reconsideration from the Applicant's legal representative, dated the 25 May 2023; and
 - c) The dossier, numbered to page 475, of which the last document is the Decision Letter.

Background

4. The Applicant is now 78 years old. In 2009, when he was 64 years old, he received a sentence of imprisonment for public protection (IPP) following his conviction for sexual offences against children committed in the 1970s and between 2003 and 2008.
5. In 2010, the Court of Appeal varied the minimum period that the Applicant should serve before he could be considered for release. That term was set at seven years (less the time served on remand). The Applicant completed that minimum term in November 2015.
6. On the 19 May 2022, the Secretary of State referred the Applicant's case to the Parole Board for the Board to decide whether or not his release could be directed. On the 8 July 2022, the case was considered by a member of the Parole Board on the papers and an oral hearing was directed.
7. The oral hearing took place before the panel on the 14 April 2023. The panel heard evidence from the Applicant, his probation officer and the official supervising him in custody. The Applicant was legally represented at the hearing, the Secretary of State (the Respondent) was not represented by an advocate. The hearing was the fourth review of the Applicant's case by the Parole Board. Witnesses at the oral



3rd Floor, 10 South Colonnade, London E14 4PU

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hearing supported the Applicant's release. In its Decision Letter of the 12 May 2023, the panel refused to direct the Applicant's release.

8. The panel noted the serious nature of the Applicant's offending and it questioned the likely effectiveness of coursework completed in custody to address the Applicant's level of risk. The panel noted the proposed release plan and considered it to rely on the Applicant's compliance with it. The panel doubted the Applicant's commitment to compliance with the proposed licence conditions and determined that his risk would not be manageable in the community.

Request for Reconsideration

9. The application for reconsideration is that the panel's decision was irrational, in that:
 - a) The Applicant and his wife had made preparations to move out of the exclusion zone area, contrary to the panel's note of the evidence;
 - b) The Applicant suffered from ill health which made him incapable of concentrating on courses in custody;
 - c) The panel placed weight on the victim personal statements, which it should not have done in terms of assessing risk;
 - d) The Applicant's age means that his risk of reoffending is reduced;
 - e) The panel's decision was contrary to the recommendations of the witnesses at the oral hearing and was in '*stark contrast to the evidence*'; and
 - f) The Applicant has done everything that he is capable of in custody.

The Relevant Law

10. The panel correctly sets out in its decision letter dated the 12 May 2023 the test for release.

11. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.

Parole Board Rules 2019 (as amended)

12. 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)).



13. Rule 28(2) of the Parole Board Rules provides the sentence types which are eligible for reconsideration. These are indeterminate sentences (rule 28(2)(a)), extended sentences (rule 28(2)(b)), certain types of determinate sentence subject to initial release by the Parole Board (rule 28(2)(c)) and serious terrorism sentences (rule 28(2)(d)).

Irrationality

14. 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."

15. 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.

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

17. In **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said:

"It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship."

The reply on behalf of the Respondent

18. The Respondent has confirmed that he has no representations to make.

Discussion

Ground a

19. The panel noted that the Applicant's wife remained supportive of him. She had expressed a willingness to move so that she and the Applicant could live together away from the exclusion zone identified on the proposed release licence. Presently she lives within the exclusion zone.



20. The panel noted that it appeared that no preparations had been made for a move despite the Applicant and his wife *'being fully aware of sentence dates'*. The probation officer told the panel that the Applicant had always argued with her about the proposed exclusion zone and it was the first time (at the oral hearing) that she had heard the Applicant indicate a willingness to comply with it.
21. Prior to the oral hearing the Applicant was to be excluded from an entire county. The area was subsequently refined to four specific areas, which included the area where the Applicant and his wife own their family home.
22. In his representations, the Applicant states that he and his wife have registered with estate agents for move on accommodation but given rising rents had felt that it was too early to rent any property prior to any direction for the Applicant's release. The Applicant is clear that both he and his wife are aware that they would not be allowed to live together in the exclusion zone, although the area itself had not been clarified until the oral hearing.
23. In July 2020, a psychological risk assessment was produced about the Applicant. In that report it was noted that the Applicants *'current home is within the exclusion zone and he has spoken with his [probation officer] to have this restriction changed to enable him to go back there'*.
24. In June 2022 and September 2022, reports from the official supervising the Applicant in custody noted that he still held the hope that the exclusion zone would be removed meaning he could return to his home address.
25. In June 2022, the probation officer spoke to the Applicant's wife who said that she planned to buy or rent a property dependent upon what the exclusion zone would be. She also indicated a plan for them to downsize to a smaller house.
26. In the probation officer's reports to the Parole Board in June 2022 and January 2023, it was noted that the Applicant was unhappy with the proposed exclusion zone and had wanted to be able to return to the family home, and that he *'had his fingers crossed that he would be able to return if only for a short period of time to his home address so as to be able to pack everything up'*. It seems that although he was unhappy with the restriction, he was showing some acceptance of the situation.
27. It is clear from the evidence that the Applicant was, at best, reluctant to leave the family home and had held hopes that he might be allowed to reside there with his wife in the future. It may be that he has come to accept that this cannot happen and has begun investigations into alternative housing options. However, at the time of the panel's review, he was in an open prison and able to spend time on temporary release in the community. He had no definitive plans for his longer term accommodation and that was a matter for him to address. The panel was entitled to consider this and it reached its own view on the situation. Other panels may have viewed things differently, however, there was nothing irrational about the panel's conclusion.

Ground b



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28. The panel had written evidence of the coursework completed in custody by the Applicant to address his level of risk. The difficulties the Applicant experienced with his health are within the written reports. Those difficulties may help to explain the level of progress made but it does not make it irrational that the panel subsequently found that *'the extent of any change appears to be uncertain'*. It was a conclusion the panel was entitled to reach on the evidence before it.

Ground c

29. There is nothing to this ground. The panel references the victim personal statements but, in reading the entire Decision Letter, it is clear that the statements were not an influencing factor in assessing the current level of risk. The statements quite properly assisted the panel in understanding the impact of the Applicant's offending so that the panel could consider appropriate licence conditions to protect victims should the Applicant be released. The Applicant's attitude towards his offending and any empathy he may have for his victims are detailed within reports in the dossier.

Grounds d and f

30. I have taken these grounds together because they simply argue an alternative view. The Applicant's age has a relevance in the assessment of risk of future offending but it is not the only factor. It was for the panel to assess risk and it properly did so in its review of the Applicant's case. Whether or not the Applicant has done all he can in custody is not relevant to the test for release. It was for the panel to determine whether the Applicant should remain confined for the protection of the public or whether he could be released. The panel decided not to release, it was a conclusion it was entitled to reach on the evidence before it. There was nothing irrational in terms of that decision.

Ground e

31. Any reading of the Decision Letter establishes that the panel was not satisfied that the Applicant met the test for release. It had concerns about his likely compliance on licence and the likely effectiveness of coursework completed in custody. The witnesses at the oral hearing may have supported the Applicant's release, however, the panel was required to make its own assessment of risk, based on all available evidence. It did just that. The Applicant may disagree with the decision, but it does not follow that it was irrational.

Decision

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

Robert McKeon
12 June 2023

