

Application for Reconsideration by Hill

Application

1. This is an application by Hill (the Applicant) for reconsideration of a decision, dated 19 December 2022, of a three Member Panel of the Parole Board refusing to direct his release. The Panel had further declined to recommend that the Applicant be transferred to open conditions.
2. The review was conducted by video conference on 15 December 2022. Evidence at the hearing was given by the Applicant himself, the Prison Offender Manager (POM), the Community Offender Manager (COM) and a Prison Psychologist (E). For technical and health reasons, a psychologist (H) and former POM (M) were unable to give verbal evidence to the Panel but their reports were considered.
3. I have considered this application on the papers. These comprise of:
 - a) the dossier;
 - b) the decision of the Panel; and
 - c) and the application for reconsideration.
4. 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.

Background

5. On 4 January 2011, the Applicant, at the age of 22, received an Indeterminate Sentence of Imprisonment for the Protection of the Public, with a tariff of 54 months, less time served, having pleaded guilty to an offence of attempted robbery together with concurrent sentences for offences of s.20 GBH and burglary. The 3 separate offences were committed over a period of under three hours the night before his 22 birthday and involved:
 - a) Forcing his way into the home of a middle-aged woman and attacking her, leaving her with serious injuries.
 - b) Breaking his way into a remote cottage, seizing a young woman by the throat, forcing her to the floor and kicking her before stealing her mobile phone and
 - c) Confronting another young woman before entering her home, punching her, placing his hand over her throat and demanding money before she managed to escape. All 3 women suffered deep rooted and lasting psychological damage. After the offences, he admitted to his then partner that he had committed offences and asked her to dispose of evidence.



His subsequent claims not to remember the offences due to drink and drugs, an explanation countered by a pre-sentence Psychiatric report highlighting his disclosures and evasive action which led to report writer to consider the offences sequential and deliberate.

6. At the time of the index offences, the Applicant had a limited criminal record but it included possession of an offensive weapon and, although he had received a suspended sentence of imprisonment, had not previously served a custodial sentence. Alcohol misuse had been a feature of previous offending.
7. The Applicant was said to have admitted to a psychiatrist in September 2010, that he had perpetrated domestic violence on a partner (CH), stalked her and checked her clothing and phone for evidence of other relationships.
8. In the early part of his sentence, the Applicant completed a series of offending behaviour programmes and undertook therapeutic sessions before being transferred to open conditions in 2016, leading to ROTLs progression before being released, in March 2017, after a Parole Board review.
9. Shortly after release, the Applicant began an intimate relationship with KH, resulting in the birth of a son. The relationship was volatile and featured abuse and violence towards her and in April 2019, he was convicted of criminal damage after throwing a paving slab through her window whilst under the influence of alcohol. In the early hours following conviction, again under the influence of alcohol, the Applicant caused trouble, kicking her door, an incident which he described in his reconsideration application as having occurred when he was "*happy drunk singing songs of I love you*". He was recalled within days.

Request for Reconsideration

10. The application for reconsideration comprises a 7-page handwritten document, written by the Applicant, although submitted on his behalf by his Legal Representatives who indicated that no legal representations would be made by them.
11. The function of the Reconsideration Assessment Panel (RAP) is limited to the reconsideration of the statutory limbs of challenge of irrationality, procedural unfairness or error of law. The application seeks reconsideration only on the ground that the decision was irrational. It is not necessary to reproduce the application in full, but all sections have been considered and the aspects relevant to the issue of irrationality are dealt with below.
12. The Application, citing approximately 38 separate challenges, in general terms submits that:
 - a) That the Panel, in assessing individual factual issues had not given due weight to his explanations and other relevant aspects, including acknowledgment by witnesses of aspects which he considered favourable to him.
 - b) The Panel had relied on evidence not tested in a court of law.
 - c) In relation to incidents involving domestic violence, no further action had been taken against him.



Response from the Secretary of State

13. The Secretary of State (SoS), by e-mail dated 20 January 2023, indicated that the SoS had no representations to make in response to the Reconsideration Application.

Current parole review

14. The Panel considered a dossier of 412 pages and in a comprehensive 16-page decision, detailed the index offences, the Applicant's progress prior to release, the circumstances of the recall, an extensive list of serious core risk factors and details of his custodial behaviour since return to custody. It reported, in detail, the Applicant's evidence highlighting areas favourable to him leading to his transfer to open conditions and his marked progress following assistance from PACT (a Prisoners and Families group). His custodial conduct had been described as excellent and he had been selected as a substance misuse peer mentor. He had further progressed to paid employment at a Chicken factory in the community. He had, however, lost this employment following a dispute in which he was said to be verbally aggressive. Subsequently, he obtained warehouse employment with a Logistics Services Company (CR) where after 2 months, a female employee had complained of his behaviour towards her - including sending a picture of his penis and approaching her on a train to work. He justified this by saying she had made overt sexual advances towards him. He had further failed to give a correct PIN number for a mobile phone found in his prison work locker.

15. None of the 5 professionals was supportive of progress:

- a) M referred to her having been contacted about prescribed medication for claimed sexual difficulties - a factor she had taken into account when assessing that he could benefit from completing further work around relationships. He struggled to show perspective taking and minimised his behaviour and associated risks.
- b) H described an admission of a "*casual sexual relationship*" with LM whom he claimed had instigated the affair, a version different from that outlined to M and from that given, by him, to the Panel. H recommended he could benefit from additional work around emotional management, relationship and communication skills. Before release, he needed to provide evidence of stability and develop a more in-depth understanding of his personality traits.
- c) E having highlighted issues such as sexual preoccupation and potentially controlling behaviour. She advised that the Applicant needed to complete Kaizen, followed by a period in open conditions, to help him form stable relationships.
- d) The current POM (following return to closed conditions), evidenced that the Applicant had apologised to her for his behaviour at CR. The witness, having outlined the Applicant's positive behaviour since return to closed conditions considered the Kaizen IPV, although it is not available in the current establishment, to remain core risk work for the Applicant.



e) The COM having expressed concerns about failures to discuss relationships after release was recorded as being in no doubt that the Applicant needed more work on implementing skills and awareness of his risk factors.

16. The Panel's conclusions were that the decision to recall was appropriate, that in intimate relationships, the Applicant continued to display coercive, controlling and jealous behaviour with violent outbursts and blamed the women within the relationships rather than personally accepting responsibility. He was further found to have a preoccupation with sex. The Panel concluded, he needed to show a more positive attitude towards the need for compliance, both in open conditions and if he were to be released.

17. Adopting the required test as to whether it remained necessary for the protection of the public that the Applicant remained confined. It found that the Applicant still needed to remain in custody nor, adopting the test promulgated by the SoS, had his risks been so reduced as to justify a recommendation for Category D.

The Relevant Law

18. Rule 28(1) of the Parole Board Rules provides that applications for reconsideration may be made in eligible cases either on the basis that the decision was (a) irrational or that it is (b) procedurally unfair, (c) contains an error of law. This is an eligible case. The Application is for review only on the grounds of irrationality.

Irrationality

19. 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."

20. 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.

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



22. The decision in **R (Calder) v Secretary of State for Justice [2012] EWCA Civ 1050** made clear that the Parole Board had both the power and the duty to consider a recall decision and that:
- i) The SoS is entitled to recall a prisoner if he/she concludes on reasonable grounds that the prisoner has intentionally breached the terms of his/her licence and that the safety of the public would be at risk if the offender remained on licence;
 - ii) That the Panel in reviewing the decision to recall must make its decision in the light of all facts available to it, including those not available to the SoS;
 - iii) The Panel must then make an assessment of risk to the public on the basis of all the evidence.
23. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. This has been confirmed by the decision in **Barclay [2019] PBRA 6**.
24. It is possible to argue that mistakes in findings of fact made by a decision maker result in the final decision being irrational but the mistake of fact must be fundamental. The case of **E v Secretary of State for the Home Department [2004] QB 1044** sets out the preconditions for such a conclusion: *"there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter; the fact or evidence must have been "established", in the sense that it was uncontested and objectively verifiable; the appellant (or his advisors) must not have been responsible for the mistake; and the mistake must have played a material (though not necessarily decisive) part in the tribunal's reasoning."* See also **R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2003] AC 295**, which said that in order to establish that there was a demonstrable mistake of fact in the decision of the panel, an Applicant will have to provide *"objectively verifiable evidence"* of what is asserted to be the true picture.

Discussion

25. In my judgment, the decision to refuse release cannot be said to meet the test of irrationality. It is entirely clear that the Panel, having clearly considered, with care, the documents in the dossier, the evidence both written and oral and submissions gave a clear and reasoned decision and adopted correct tests for its decision. When considering a substantial dossier and detailed oral evidence, the duty of the Panel is not to identify, with particularity, each and every aspect of relevant issues but to show that both positive and negative aspects of a prisoner's case have been examined and a fair decision taken in accordance with the test required. This, I find to have been done. Reconsideration is not a rehearing of factual matters with which an Applicant may not agree.
26. I find that the requirements of the **Calder** decision were fully met in the Panel's consideration of the recall and a clear finding made.



Decision

27. For the reasons that have been given, I do not consider that the original Panel's decision was irrational or unfair and accordingly, the application for reconsideration is refused.

Edward Slinger
2 March 2023



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