

## Application for Reconsideration by Stratton

### Decision of the Assessment Panel

#### Application

1. This is an application by Stratton (the Applicant) for reconsideration of the decision of a two-member panel not to direct his release, following an oral hearing which convened at a Scottish prison on 19 August 2019.
2. I have considered this application on the papers. These were the dossier, the provisional decision letter of the panel dated 20 August 2019, the application for reconsideration dated 6 September 2019, the Applicant's letter received on 11 September 2019 and the Secretary of State's response dated 18 September 2019.

#### Background

3. The Applicant is now 76 years old. In 2012 an English jury convicted him of sexual offences against children between 1972 and 1980. He was sentenced to 12 years' imprisonment and was soon transferred to the Scottish prison where he remains. He became eligible for parole in July 2018. If not directed by the Parole Board before then, he can expect to be conditionally released in July 2020. The 'at risk' period for the attention of the panel when it convened was therefore 11 months.

#### Request for Reconsideration

4. The application was drafted by the Applicant's solicitor, who also represented him at the oral hearing. It is said there was both procedural unfairness and irrationality on the part of the panel, mainly arising from its preference of the Offender Manager's view to that of the two social workers who gave oral evidence.

#### Current parole review

5. In March 2018 the Secretary of State referred the Applicant's case to the Parole Board for his first review. The terms of reference asked the panel to consider whether it was appropriate to direct the Applicant's release.
6. In February 2019 the Applicant was assessed as suitable for a programme used in Scotland to address the needs of men convicted of sexual offences. When interviewed for the course, he would not speak about the index offences. This was consistent with his settled stance that they did not occur and he had been wrongly convicted. However, he was motivated to attend and did the work assigned to him



between March and July 2019. He was continuing to participate in the course at the date of the oral hearing.

7. Because the Applicant was serving the sentence of an English Crown Court in a Scottish prison, there were differences in the titles of the professionals responsible for his supervision. Two Scottish Social Workers were allocated to his case, one based in prison and the other based in the community. It was noted by an assessing member of the Board that their reports in the dossier did not contain recommendations as to the Applicant's suitability for release and directions for these were given in July 2018. The two Social Workers provided updated reports in February 2019, having discussed the case. Their shared opinion was that it was difficult to make a positive recommendation for release on licence at that time.
8. On perusing the dossier in April 2019, the Panel Chair could see no mention of an Offender Manager (a Probation Officer who had retained responsibility for the Applicant's case in the area of England where his trial had taken place). The Panel Chair's consequential directions highlighted the key role of the Offender Manager in the management of a released prisoner's risk in the community. The Offender Manager is the only official who can initiate recall action in the event that enforcement action is required.
9. An Offender Manager was appointed on 15 July 2019. Appointments were made for her to interview the Applicant by video link on 5 and 8 August 2019, but each attempt was frustrated and her report was therefore provided on 12 August 2019 having studied the dossier and spoken to the prison based Social Worker, but without meeting the Applicant. A new community based Social Worker was by then in post, in succession to the author of the reports in the dossier.
10. The panel heard oral evidence from the Applicant, a Lifer Liaison Officer, the prison based Social Worker, the new community based Social Worker and the Offender Manager.
11. The panel noted the Applicant's steadfast denial of the index offences, but reminded itself that he must be assessed and dealt with as someone who has been rightly convicted. The panel found that he continued to pose a high risk of serious harm to children. He had yet to complete any work to address the triggers to those proven sexual offences and hence he did not possess the internal controls or strategies to manage his own risk on release. There was also a very high risk of general sexual re-offending.
12. In their oral evidence, the Scottish Social Workers favoured release with the Risk Management Plan that had been submitted. This was a more positive view than the guarded joint opinion that had been given in the February 2019 social work reports. No subsequent written addendum had been placed in the dossier to explain that change of opinion, nor was it made clear to the panel during the oral hearing.
13. The panel found that the Offender Manager was rightly concerned about the Applicant's deceptive behaviour in custody and his lack of internal controls to



recognise and manage his identified risk factors. The Risk Management Plan did not provide sufficient monitoring and could not be said to be robust.

14. The Offender Manager did not support release, for the objective reasons which were documented elsewhere in the dossier. The panel accepted her view within its own evidential analysis. It therefore made no direction as to release.

## The Relevant Law

15. 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.
16. 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.
17. 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 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."*

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

18. The application for reconsideration points out a few apparent errors in the summation and recital of some of the evidence of offending. I do not regard any of these as material when the provisional decision letter is read as a whole. It is a concise record of the written and oral evidence presented, from which the rationale for the decision of the panel can be clearly and fairly understood. The change of the Scottish Social Workers' opinion between the February 2019 reports and the August 2019 oral hearing is accurately reflected in the text of the panel's reasons.
19. It is claimed that the panel had made up their minds before the hearing had commenced. The basis relied on for this strong allegation of unfairness is the supposed lack of "*probing*" questions of the Applicant and the Social Workers, compared with the "*significant*" questioning of the Offender Manager by the panel.



20. The forensic approach of a parole panel will be unique to its own constitution. Each member of the Board has his or her personal style, developed with experience and training towards achieving an effective technique. Questions must be appropriate for the individual witness and relevant to the issues but they do not have to be “*probing*”. The panel starts from an informed position – a question need not be asked if a point covered in the dossier does not require amplification. There is no suggestion within the application that relevant evidence was not adduced because of a perceived lack of questions from the panel. If anything important had been overlooked, the Applicant’s solicitor had the opportunity to remedy this by asking more questions of her own client and the other witnesses.
21. 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. I find no support for the subjective criticism of the panel which is said to amount to procedural unfairness and it is rejected.
22. The next ground is advanced under the headings both of procedural unfairness and irrationality. It is said that the panel was wrong to accept and prefer the opinion and recommendation of the Offender Manager, because she had not met the Applicant. Against that argument three points can be made: first, the interview with a prisoner is only one part of a professional witness’ case assessment. The Offender Manager was careful to show in her recent report the other sources of information upon which she relied, including speaking to the prison based social worker who knew the Applicant well. Secondly, it is not said what actual difference meeting the Applicant would have made to the Offender Manager’s view. He had taken a settled position that was set out within the reports of other professionals. He maintained that stance in his oral evidence to the panel. Third, the Offender Manager based her several objective reasons on material which is well-documented within the dossier. It is not said that she was wrong to have regard to that primary information (such as the Applicant’s deceptive behaviour in prison). The Offender Manager’s evidence was plainly admissible and the panel was right to receive it.
23. The panel explained how it had analysed, weighed and balanced the competing views and facts. The conclusion is 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. The panel was reasonably entitled to prefer and adopt the risk assessment and recommendation of the Offender Manager 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

24. The complaints of procedural unfairness and irrationality on the part of the panel are not sustained on the papers before me.
25. Accordingly, this application is dismissed.



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30 September 2019

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