

[2020] PBRA 27

Application for reconsideration by Cheshire

Application

1. This is an application by Cheshire (the Applicant) for reconsideration of a decision of a single-member MCA panel dated 11 December 2019 not to direct release.
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.
3. I have considered the application on the papers. These are the decision letter, the dossier and the application for reconsideration.

Background

4. On 15 March 2018, the Applicant received an extended sentence of three years imprisonment with a four-year licence period following conviction for making and possessing indecent images of children and breach of various sex offender orders.
5. His parole eligibility date is 14 March 2020 and his conditional release date is 14 March 2021. This is his first parole review. On 11 December 2019, a single member MCA panel considered his case on the papers and made no direction for release.
6. Following the issue of a negative MCA decision, a prisoner may apply for consideration at a full oral hearing within 28 days. This period expired on 8 January 2020 and the Applicant made no such application.
7. On 14 January 2020, with no response having been received, the Parole Board wrote to the Applicant to inform him that the MCA decision had become provisional for 21 days and, in the absence of a request for reconsideration, would then become final.

Request for reconsideration

8. The application for reconsideration is dated 28 January 2020.
9. The grounds for seeking a reconsideration are that the decision was procedurally unfair as 'vital paperwork' relevant to the prisoner was not submitted.

10. The Parole Board sought clarification of the grounds for reconsideration, and in an undated letter received by the Board on 12 February 2020, the Applicant stated that his solicitor is holding an independent psychiatric assessment report which he believes will provide a much clearer indication of his risk than the reports submitted by other agencies.
11. The application was not made on the published form CPD 2. Whilst this is not a mandatory requirement, it does contain guidance notes to help prospective applicants ensure their reasons for challenging the decision of the panel are well-grounded and focused. The document explains how I will look for evidence to sustain the complaints and, reminds applicants that being unhappy with the decision is not in itself grounds for reconsideration. However, although the application was not made on the CPD2 form, I am satisfied that the application is valid.
12. I can find no evidence in the application to suggest that reconsideration is being sought on the ground of irrationality. This application is therefore being considered on the ground of procedural unfairness alone.

Current parole review

13. The Applicant's case was referred to the Parole Board by the Secretary of State in April 2019 to consider whether or not it would be appropriate to direct his release.
14. The case was considered by a single-member MCA panel on 18 October 2019. It was noted that he was unrepresented, that no professionals were supporting release, that it was considered that he had core risk reduction work outstanding, and that there were differing views about the most appropriate treatment pathway for him to address his risks. The preferred pathway was not clear; neither was it clear which, if any, pathway the Applicant was prepared to take.
15. The case was deferred for clarification of which programmes were necessary, suitable and appropriate. It was explicitly noted that the Applicant may choose to take legal advice.
16. Updated reports were provided as directed and the case was returned to a single-member MCA panel which made no direction for release. In the decision, the panel noted that the dossier contained no legal or personal representations.

The relevant law

17. The panel correctly sets out the test for release in its decision letter dated 11 December 2019.

Parole Board Rules 2019

18. Under rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that 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)). This is an eligible decision.

Procedural unfairness

19. 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.
20. In summary, an applicant seeking to complain of procedural unfairness under rule 28 must satisfy me that either:
- (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.

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

21. Omitting to put information before a panel is not a ground for procedural unfairness, as has been confirmed in the decision on the previous reconsideration application in **Williams [2019] PBRA 7**. This is the case even where the information, had it been before the panel, would have been capable of altering its decision, or prompting the panel to take other steps such as directing an oral hearing where the new information and its effect on any risk assessment could be examined.

The reply on behalf of the Secretary of State

22. The Secretary of State has submitted no representations in response to this application.

Discussion

23. The application for reconsideration is made on the ground that the Applicant's solicitor was in possession of an independent psychiatric report that gave a different view of risk to professionals.
24. There was no indication in the dossier that such a report existed nor that the Applicant was legally represented.
25. Procedural unfairness under the Rules relates to the making of the decision by the Parole Board, and when making the decision the panel considered all the evidence that was before it.



26. There was nothing to indicate that further evidence was available or necessary, and so there was nothing to indicate that there was any procedural unfairness.

Decision

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

Stefan Fafinski
25 February 2020