

[2021] PBRA 97

## Application for Reconsideration by Jackson

### Application

1. This is an application by Jackson (the Applicant) for reconsideration of a decision of an oral hearing panel dated 21 May 2021 not to direct release.
2. Rule 21 (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 this application on the papers which consist of a dossier of 394 pages, the application for reconsideration and the panel decision.
4. The Secretary of state has made no representations.

### Background

5. The Applicant was sentenced on 3 May 2012 to an extended sentence of 11 years imprisonment. The Applicant was released from custody on 12 January 2016 on licence. He was recalled and returned to custody on 10 February 2018. He was recalled as a result of committing further offences. For those further offences, which consisted of a conviction for battery, threats to kill, and possession of a firearm, he was sentenced to a further period of 37 months imprisonment. He is now aged 39. He was 30 at the date of sentence.

### Request for Reconsideration

6. The application for reconsideration is dated 7 June 2021. The application refers to both irrationality and procedural unfairness.

#### *Irrationality*

7. In brief the grounds for the Application are as follows:



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- a. The panel placed greater weight on an assessment for suitability to undertake a particular training programme, than on a psychological risk assessment.
- b. The panel did not include a psychologist member *'and it was unreasonable for them to act in a capacity they did not possess'*.
- c. There was no evidence that the Applicant's risk was at a level that was too high to be managed in the community.
- d. The panel failed to take reasonable account of the Applicant's offending history.
- e. The panel dismissed the risk management plan despite a number of listed conditions.
- f. The panel failed to take account of the fact that the Applicant had been in employment prior to recall.

### *Procedural unfairness*

- a) The panel failed to include a psychology member.
- b) The panel failed to direct a second psychological assessment of risk at the outset of the hearing.
- c) The panel failed to secure a post programme report relating to the completion of a training programme to reduce violence that the Applicant had completed.
- d) The panel failed to secure further information relating to a second behavioural programme.
- e) The panel's decision was in conflict with an earlier panel decision on the issue of the risks posed by the Applicant and who might be at risk.
- f) The Panel failed to recognise the importance, in terms of risk, between protection of an individual and protection of the public generally.
- g) The Panel failed to take proper account of earlier decisions relating to any required behavioural work which had been made prior to the assessment for suitability to undertake training programmes.
- h) The Panel took account of a 2002 conviction inappropriately.
- i) The Panel attempted to interpret the evidence of the psychologist, despite the fact that the panel were not *"qualified to appropriately interpret the evidence of the psychologist"*.
- j) The Panel failed to vacate or adjourn the hearing because there were differences between the assessment for suitability to undertake particular training programmes, and the view of the independent psychologist.
- k) The Panel relied on the assessment for suitability to undertake particular training programmes, which did not take into account the risk management plan.
- l) The Panel mistakenly recorded a minor difference in the account given by the Applicant as to an incident in prison.

### **Overall complaint**

8. As set out above the Applicant's solicitors have individualised a number of matters which are submitted to be supportive of the application that the matter should be reconsidered. In my view, the fundamental submission in this case relates to whether the panel explained clearly within their decision their reasons for departing



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from the recommendations of the professionals as to release and whether those recorded reasons are sufficient to justify the panel's conclusions.

## The Relevant Law

9. 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 paragraph 16: *'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'*. 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 Board in making decisions relating to risk. The Board when considering whether or not to direct a reconsideration will adopt the same high standard for establishing *'irrationality'*.
10. It is not unknown for a panel to decline to follow the recommendations of the professional witnesses. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility to make their own risk assessments and to evaluate the likely effectiveness of any risk management plan proposed. They must make up their own minds on the totality of the evidence that they hear, including any evidence from the Applicant. They would be failing in their duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if they failed to do just that. As was observed by the Divisional Court in **DSD**, *"they have the expertise to do it"*.
11. However, it is incumbent on a panel to explain clearly the reasons for departing from the recommendations of the professionals and its recorded reasons should be sufficient to justify its conclusions. In this regard, 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."* (**Oyston [2000] PLR 45**)

## Discussion

12. The panel members were able to listen to and observe and question the witnesses before deciding what weight to put on the evidence placed before them.
13. The panel correctly recorded the test for release.
14. The Panel noted that the index offence was one of wounding with intent and involved a stabbing outside a public house in circumstances where the Applicant had taken non-prescription drugs and alcohol.
15. The panel noted that following release on licence in January 2016 the Applicant had, in May of 2018, committed further offences. These offences involved battery,



threats to kill and possession of a firearm and resulted in a further substantial sentence of 37 months imprisonment.

16. The panel noted that, before his release on licence in January 2016, the Applicant had completed a training programme to reduce violence.
17. The Panel noted that both the Prison Offender Manager (POM) and Community Offender Manager (COM) had initially supported the findings of an assessment for suitability to undertake particular training programmes, which suggested that various areas of risk remained and that they should be addressed by a further high intensity training programme. These professionals revised their view at the hearing on the basis of a report of an independent psychologist. By the time of the hearing these two professionals were supportive of release, followed by the undertaking of a relationship based programme in the community.
18. The panel noted that the independent psychologist had accepted that further intervention work was indicated, however the view of the independent psychologist was that the work should be directed towards partner violence, rather than '*generalised*' violence. Further the independent psychologist took the view that this work could be safely completed in the community.

## **Oyston**

19. Matters noted by the Panel pointing against reoffending.
20. The panel identified important elements of the risk management plan namely, initial residence in designated accommodation, engagement in offending work, reporting relationships and their breakdown, non-contact zones, and drug testing.
21. The panel noted that intervention work in terms of a training course relating to relationships was available in the community.
22. The Panel referred to an '*exit plan*' being developed (as suggested by the independent psychologist) to allow for partners to safely leave any relationship with the Applicant.
23. The panel noted that within supervision it had been suggested that more direct questioning (of the Applicant) might be necessary to manage the Applicant's risk and secure disclosure of risk factors.
24. The Panel noted that the Applicant's recent prison behaviour was settled and there had been no violence or drug issues in prison in recent times.
25. The panel acknowledged that the Applicant's Prison Offender Manager thought the Applicant had become more open, compliant and motivated.

## **Matters Pointing towards reoffending**

26. The panel were concerned that the plans for intensive supervision and monitoring of the Applicant predominantly covered the short period of the Applicant's proposed stay in a probation hostel.



27. The panel indicated a concern that the Applicant would be exposed to substance misuse within a short time following release but would not commence addressing the issue of partner violence for many months after moving from the designated accommodation.
28. The panel were not persuaded that future partners of the Applicant could be adequately protected on the basis of reliance upon the Applicant's self disclosure and any new partner's willingness to engage with the probation service to manage the relationship.
29. The panel determined that the Applicant minimised his responsibility for the recall offences and lacked insight into the risk he posed within intimate relationships.
30. The panel determined that the Applicant had minimised the rapidity of his return to drug and alcohol use and minimised the risk of substance use in terms of its link to future violence.
31. The panel took the view that the Applicant's risk of violence should be taken as a whole and therefore rejected the proposition of the independent psychologist that the Applicant's risk of violence could be divided between that involving partner violence and 'general' violence. By extension the panel rejected the proposition that only the partner violence aspect of the Applicant's risk necessitated intervention.
32. The panel noted that the Applicant's risk remained 'untreated'. The risk management plan proposed a treatment intervention which was scheduled to begin some months following the Applicant's possible release date. In essence the panel concluded that those risks could not be safely managed in the community.
33. Upon analysis I am satisfied that the panel correctly applied the court decision in **Oyston**. The panel identified the factors pointing towards and against the continuation of risk.
34. The panel rejected the proposition that the Applicant's risk of violence could be realistically compartmentalised into partner violence on the one hand and general violence on the other.
35. The panel rejected the proposition that the Applicant's acknowledged risks could be managed in the community for some months while awaiting the commencement of a training course directed towards partner violence.
36. I am therefore satisfied that the panel's decision was based upon a balanced weighing of the competing evidence and that the decision letter adequately summarised the basis of arriving at the decision.

## Other Complaints

*The panel placed greater weight on an assessment for suitability to undertake particular training programmes, than upon the psychological risk assessment.*

37. The independent psychologist reported that the treatment needs identified by the assessment for suitability to undertake particular training programmes, were accepted. The independent psychologist, however, concluded that the '*emphasis*'



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for treatment should be to address partner violence rather than generalised violence. The panel also accepted the suitability assessment but rejected the proposition that those needs would be sufficiently addressed by a training course relating to relationships and emotions commencing some months after release. The panel indicated that the proposal by the independent psychologist would result in the release of the Applicant 'untreated' for a number of months. I do not find this to be an irrational conclusion, particularly in the light of the fact that the offences committed on licence were in the context of partner violence.

*The panel did not include a psychologist member 'and it was unreasonable for them to act in a capacity they did not possess'.*

38. The role of the Parole Board panel is to analyse and assess all evidence presented, both orally and in written form. Parole Board panels are comprised of members from a number of backgrounds and disciplines. There is no evidence within the decision letter that any technical issue relating to the psychological report, or the psychological evidence was misunderstood. The panel clearly understood the nature of the psychological evidence and reflected upon that evidence in reaching their decision. The Applicant points to no particular misunderstanding of a technical nature relating to the psychological evidence. Disagreeing with a conclusion of a technical or other witness cannot amount to an irrational decision unless that conclusion is unsupported by explanation and argument. In this case the Panel adequately explained the basis of its conclusion.

*There was no evidence that the Applicant's risks were at a level that was too high to be managed in the community.*

39. The panel correctly addressed the statutory criteria, namely that it remained necessary in order to protect the public from harm that the Applicant be confined. The panel had, within the dossier, evidence of the index offence and of the subsequent offence, both of which were serious. The panel also noted that no formal intervention work had taken place since the second offence had been committed. The independent psychologist also noted that the conclusion of the assessment for suitability to undertake particular training programmes, was accepted, and that further work was necessary. As indicated above, I am satisfied that the conclusion reached by the panel was rational and evidenced and there existed credible evidence that it remained necessary, in order to protect the public, that the Applicant be confined.

*The panel failed to take reasonable account of the Applicant's offending history.*

40. In addressing the Applicant's offending history, the panel referred to the Applicant's history of offences and poor compliance generally with sentences. The index offence was addressed. In general terms, the panel indicated that its decision took account of the fact that the Applicant had a history of possessing weapons and engaging in threatening behaviour which were linked to problems in resolving conflict. The panel



also took account of the history of acting impulsively resulting in putting members of the public at risk of serious harm, particularly when under the influence of substances. The panel's assessment of the Applicant's offending history was measured, and I therefore reject the assertion that the panel acted irrationally or unreasonably in addressing that history.

*The panel dismissed the risk management plan despite a number of listed conditions.*

41. The panel addressed the risk management plan within the decision letter. Despite the conditions, the panel concluded that the risk management plan was not sufficient to protect the public from harm. Again, the reasons for the panel's decision were clearly set out in the decision letter. I do not find that the panel acted irrationally in relation to the consideration of the risk management plan.

*The panel failed to take account of the fact that the Applicant had been in employment prior to recall.*

42. In its decision letter, the panel indicated that they took account of all the evidence within the dossier and the oral evidence. Within the dossier is an indication that the Applicant had told the independent psychologist that he had been in employment prior to his arrest on licence. I am not satisfied that this complaint is supported by evidence within the decision letter.

*The panel failed to include a psychology member.*

43. This complaint is addressed above.

*The panel failed to direct a psychological assessment of risk at the outset of the hearing.*

44. The panel had before it, an independent psychological risk assessment as well as a substantial amount of evidence within the dossier. The duty of the Panel was to assess the evidence presented at the hearing and reach a balanced conclusion. I am not satisfied that a procedural irregularity arises in relation to this complaint.

*The panel failed to secure a post programme report relating to the completion of a training programme to reduce violence, which had been undertaken by the Applicant.*

45. The panel made some effort to secure a post programme report. It is often the case that evidence cannot be secured for the purposes of hearings. The panel, however, took account of the fact that the programme had been undertaken. It is also noteworthy that the independent psychologist was able to prepare a full psychological risk assessment, despite the absence of the post programme report. Whilst the availability of the post programme report would have been desirable, this



is not a matter which amounts to a procedural irregularity. It is clear that the concern of the Panel was that, despite the completion of a training course, there had been an offence involving violence whilst on licence. It is also the case that no application was made by the Applicant to adjourn to conduct a further search for this document. Such an application would have been available to the Applicant at the outset or during the hearing.

*The panel failed to secure further information relating to a second behavioural programme.*

46. See above.

*That the panel's decision was in conflict with an earlier panel decision on the issue of the risks posed by the Applicant and who might be at risk.*

47. Panels of the Parole Board cannot be bound by any particular finding of an earlier panel. The decision under review was based upon up-to-date information, in particular the report of the independent psychologist. The panel appropriately addressed the evidence within the dossier, which was their duty.

*The panel failed to recognise the importance in terms of risk between protection of an individual and protection of the public generally.*

48. The panel within the decision letter addressed the question of generalised violence which was associated with the index offence and the question of violence towards known individuals which was more relevant to the offence committed while on licence. The panel rejected the contention that a clear distinction could be made between the Applicant's violence generally and the Applicant's violence relating to partners. The reasons for the panel's view were set out in the decision letter. I am not satisfied that this amounts to any procedural irregularity.

*Failing to take proper account of decisions relating to any required behavioural work which had been made prior to the programme needs assessment.*

49. In reaching its assessment. The panel took account of the evidence within the dossier and the oral evidence received at the hearing. It is not uncommon for differences to arise in relation to the views concerning risks and behavioural interventions. The role of the panel was to take account of all evidence presented at the particular hearing and to reach a conclusion on the basis of the test. The panel set out in the decision letter the matters which were taken into account, and the basis upon which it reached its conclusion. The fact that an assessor at some an earlier stage may have reached a different conclusion about a required intervention would be unlikely to be of pressing significance in the light of the availability of an up-to-date independent psychological report and a programme





needs assessment and other recent evidence of behaviour. I reject the contention that any procedural irregularity arises in relation to this point.

*Taking account of the 2002 conviction inappropriately.*

50. The Applicant was convicted of dangerous driving and excess alcohol in 2002. The panel appears to have referred to the potential risks in relation to alcohol and referenced this when addressing the issue of the risk of returning to drug and alcohol use. The reference related to general impulsive offending behaviour rather than violence. However, the Applicant himself had accepted in evidence a link between drug and alcohol use and his use of violence. There had also been evidence of the Applicant telling the independent psychologist that he had, after work, drunk eight cans of alcohol on a daily basis and that he had relapsed into drug use within two weeks of release on licence. Although recorded in the independent psychological report, the Applicant indicated to the Panel that he could not recall having told the independent psychologist that he was drinking alcohol and taking substances in the way set out in the report. However, there existed credible evidence of the potential risk that the applicant could return to drug and alcohol misuse based both upon his historical behaviour and the admissions that the applicant had made to the independent psychologist. I am not satisfied that there is evidence of any procedural irregularity in relation to this point of complaint.

*Attempting to interpret the evidence of the psychologist, despite the fact that the panel were not "qualified to appropriately interpret the evidence of the psychologist".*

51. This issue is dealt with above

*Failing to vacate or adjourn the hearing because of the differences between the programme needs assessment and the view of the independent psychologist - this is not an issue relating to procedural irregularity.*

52. A panel of the Parole Board is obliged to consider the evidence before it and reach a conclusion. Panels of the Parole Board are frequently in a position where there is a difference of view between the panel and specialist witnesses. As set out in some detail above the panel's duty is to assess the evidence, reach a conclusion and to set out the basis upon which the conclusion has been reached. I can find no procedural irregularity in relation to this complaint

*Relying on the programme needs assessment which did not take into account the risk management plan.*

53. I reject the contention that the decision letter indicates that the panel relied upon the programme needs assessment. The panel set out the evidence upon which it relied in order to reach its conclusion. The panel disagreed with the view of the



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independent psychologist that the Applicant's risk could be managed in the community such that the statutory test was met.

*A minor difference in the account given by the Applicant as recorded by the panel.*

54. This point is unlikely to have had any significance so far as the panel's decision is concerned, and I therefore reject it as a procedural irregularity which affected the decision.

55. The panel's duty in considering this case was to address and engage with the evidence, of the independent psychologist, the community Offender Manager, the prison Offender Manager and the Applicant. I am satisfied that within the decision letter, the panel clearly set out its reasons for concluding that it remained necessary, in their view, in order to protect the public, for the Applicant to be confined. As indicated above, it is not unusual for a panel to take a different view to that of the professional witnesses. The duty of the panel was to set out the reasons why it reached its conclusion. In such a way to ensure that the Applicant fully understood the decision.

56. I am satisfied that there is no evidence in this case of an irrational decision or of procedural irregularity. I therefore refuse the application for reconsideration.

**HH Stephen Dawson**  
**07 July 2021**