

[2023] PBRA 176

## Application for Reconsideration by Khunti

### Application

1. This is an application by Khunti (the Applicant) for reconsideration of a decision of 31 August 2023 of an oral hearing dated 22 August 2023. The decision of the panel was not to direct release nor to advise the Secretary of State to transfer the Applicant to open conditions.
2. 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.
3. I have considered the application on the papers. These are the application, the dossier and the decision of the panel. I have also considered a response to the application from the Secretary of State (the Respondent).

### Background

4. The Applicant is serving a sentence of life imprisonment for the offence of manslaughter. His minimum term was set at 4 years and 200 days, and his tariff expired on 11 March 2022. This is the first review of his sentence by the Parole Board. The circumstances of the offence, in brief, were that the Applicant had gone to a property known to be used by misusers of illicit drugs. He took both drugs and alcohol. During his time in the property, he became involved in altercations with others, and was both threatened and punched. The victim tried to keep the peace, and left with the Applicant. At some point the Applicant stabbed the victim with a knife, which went through his arm into his chest leading to the victim's death. The Applicant has a history of violent offending.

### Request for Reconsideration

5. The application for reconsideration is dated 19 September 2023.
6. The single ground for seeking a reconsideration is procedural unfairness: The application submits that the panel was not provided with information that would have put a more positive light on the Applicant's engagement and behaviour. It is also submitted that his family had asked to observe the hearing but the application had



not been made to do so, therefore they were not there to support the Applicant during the hearing.

7. It should be noted that although the Applicant was legally represented throughout the hearing and made concluding submissions on his behalf, the application for reconsideration has been drafted by the Applicant with the aid of a family member.

### **Current parole review**

8. The Respondent referred the Applicant's case to the Parole Board in June 2021 under Section 28 of the Crime (Sentences) Act 1997. The referral asks the Parole Board to consider whether or not it would be appropriate to direct the prisoner's release on licence. Failing that, the Parole Board is asked to advise the Respondent as to whether the prisoner should be transferred to open conditions.
9. The dossier of 559 pages was considered by the Parole Board panel on 28 August 2023. The panel consisted of two independent members and one psychological member of the Parole Board. Evidence was taken from the Applicant's Prison Offender Manager (POM), his Community Offender Manager (COM) and a Psychologist in training, who had written a Psychological Risk Assessment. The Applicant also gave evidence, and he was represented at the hearing by a legal representative.

### **The Relevant Law**

#### *Parole Board Rules 2019 (as amended)*

10. 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)).

#### *Procedural unfairness*

11. 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.
12. 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.

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



## The reply on behalf of the Secretary of State (the Respondent)

14. On 29 September the Respondent provided written submissions with respect to the application. The submissions point out a number of documents referenced in the application (as missing) were in fact in the dossier, and also submitted that the POM's evidence provided further information about the Applicant's (positive) status at the hearing. The particular digital logs referred to in the application, according to the submissions, were not provided to the POM for submission. The submissions also indicate that the POM was not aware of the request for family members to attend and therefore took no action in relation to that.

## Discussion

15. I will deal first with the complaint that the Applicant was unable to have his family there as observers. There is no evidence before me that the panel chair refused any application for the family to attend. Such an application has to come from the prisoner or their representative, or sometimes from the POM. There may have been some miscommunication that resulted in the application not being made, which is regrettable, but does not constitute procedural unfairness.

16. I turn to the substantive complaint. The Applicant refers to the following pieces of information that he says were not presented or presented unfairly/incorrectly by the witnesses in the hearing:

- One positive behavioural comment from October 22;
- A wing report from a prison officer;
- Incorrect list of medication that he self-administers;
- Copies of logs (I understand these are logs completed by prisoners following a programme that may illustrate further reflection) and feeling 'silenced' when he was not permitted (according to the application) to go through them at the hearing;
- Certificates of 'New Me Skills' courses completed were not added to the dossier; and
- A course feedback report ('Becoming New Me' + Objectives feedback).

17. In relation to all the documents I make the following general observation: Had there been any material that the Applicant considered important for the panel to take into account and that was missing from the dossier, his legal representative could have raised this at the start of the hearing. There is no evidence that any preliminary application of this sort had been made. Indeed, even before the hearing itself there is plenty of time for a prisoner, especially one that has legal representation, to ensure that the dossier has material in it that the Applicant wishes the panel to consider. These documents can be attached as exhibits to any legal representations or more informally added through the dossier building process if asked for by the prisoner/their representatives.

18. Having made that general point, I then went on to consider the decision letter carefully. In my view, the decision of the panel did not in any event hinge on the



matters that it is stated were omitted from the dossier (if they were, see below). With respect to any post-programme material, when a Psychological Risk Assessment is carried out following a significant programme having been undertaken by a prisoner, this provides a thorough review of any learning and progress since undertaking that programme. Panels therefore do not always ask for the post-programme report, especially as these are often written to the prisoner in a manner that is designed to be positive and encouraging, and may not assist in the assessment of change of risk. This would include the post-programme review and the logs referred to in the Application.

19. It is however apparent that a significant amount of the material that the Applicant has indicated was not in the dossier is, in fact in the dossier. Perhaps not everything that he would have liked, but sufficient in my opinion for the panel to consider given that they took oral evidence at the hearing. I note the Programme Review Meeting minutes, the 'My Journey Record' amongst other documents.

20. I note that the panel took extensive evidence from the Applicant and witnesses about this work and the learning from this work. The panel records that the witnesses considered that the Applicant had engaged well with his recent intervention and had learnt from it. The decision letter also records the Applicant's own extensive evidence on change since his index offence. Furthermore, I note a number of pages in the dossier are logs with the Applicant's input, as noted in the decision letter itself. There are also copies of certificates of work undertaken. I also note that there is what appears to be a 'Becoming New Me Objectives' and feedback report in the dossier.

21. Following the hearing, had the Applicant considered that further information needed to be provided to the panel, I have no doubt that the panel would have considered it as long as it was provided in a prompt manner.

22. I note that the Applicant felt that he was being silenced when he (according to the Application) wanted to go through the logs as stated above. There were, as I indicated, copies of various documents that appear to be learning logs in the dossier and I think it is entirely understandable that a panel may wish to focus on matters that they do not have full evidence on, or want further evidence to make their decision. Managing time in a parole hearing is important, and while it is regrettable that the Applicant felt silenced, I am satisfied that he was invited to give evidence extensively. If the Applicant was not being allowed to give relevant evidence, he had his legal representative at the hearing who could have either intervened, or invited the Applicant to provide any further evidence when invited to ask questions of the Applicant themselves.

23. The only point not covered in this discussion yet are the list of medications and the absent wing officer report. Had the Applicant wanted a wing officer report to be added to the dossier, as I have already indicated, this could have been done. I do not



consider the absence of this information to have an impact on the panel's consideration, indeed they do record that the Applicant's behaviour has been more positive recently. In relation to medication, I note that the panel record that compliance with medication is assessed by one of the professional witnesses to be a protective factor for him. There is no indication that any error in list of medications has impacted on the panel's decision.

24.The final point I should make is to note that none of the professional witnesses recommended release at this point. A decision in relation to recommendation for open conditions is not within the scope of a reconsideration.

25.Having carefully considered the Applicant's application, I cannot find that there was any procedural unfairness in the manner in which the panel reached its decision.

## **Decision**

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

**Chitra Karve**  
**09 October 2023**

