

[2023] PBSA 55**Set Aside Decision in the case of Dibble****Initiation**

1. On 3 August 2023, the Parole Board Chair initiated the process for setting aside a decision of the Board dated 21 July 2023 to direct the release of Dibble (The Prisoner) who had been recalled to custody following the revocation of his licence. The decision in question was made by a 3 member panel of the Board (the Panel) which conducted a review on 11 July 2023 at an oral hearing by video-link. It is a decision which is eligible for the setting aside procedure.
2. I have considered the matter on the papers.

Background

3. On 5 June 2017, having pleaded guilty to two offences of armed robbery, the Prisoner was sentenced to a determinate period of 7 years imprisonment.
4. The index offences were both committed on 8 April 2017 when the Prisoner stole money from two shops whilst brandishing a knife and making threats to staff. He tried to conceal his identity under a jacket hood. The Prisoner was 31 years old when the index offences were committed and had been released from prison on licence only a week before. He had numerous previous convictions including convictions for burglary, robbery, inflicting grievous bodily harm, assault occasioning actual bodily harm, threatening behaviour and possession of an offensive weapon.
5. Risk factors referred to in the pre-sentence report included a history of offending behaviour, misusing alcohol and drugs, anti-social attitudes, emotional problems, poor thinking skills and coping strategies, and institutionalised behaviour.
6. The Prisoner is now 37 years old. The current Parole Board review is his second following recall. The panel considering his first post recall review referred specifically to his relapse into the use of drugs quickly after release and the risk of violence arising from his offending to fund that use. The first panel declined to direct release, expressing little confidence that a risk management plan would be likely to be effective in managing his risk in the community.

Set Aside Procedure

7. The Board Chair determined that the procedure for set aside should be initiated as a consequence of reports that the Prisoner had been found under the influence of



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drugs in the prison on 13, 17 and 18 July 2023, after the hearing but before the release decision had been implemented.

8. Application of the criteria for setting aside is considered in the **Discussion** section below.

Current Parole Review

9. The Prisoner was released automatically on licence at the half-way point of his current sentence, namely 15 January 2021. His licence was revoked on 29 January 2021 for breaching the licence condition to be of good behaviour and not to behave in any way which undermines the purpose of the licence period.
10. Under the terms of his licence, the Prisoner was residing at Probation Approved Premises. Almost immediately after his arrival there, he started to use drugs and was given a warning on 20 January for substance use and smoking against hostel rules. Two days later, he was found semi-conscious in his room surrounded by drug paraphernalia including heroin. He was taken to hospital twice but, despite this, he continued to take drugs and failed a test on 25 January. This led to the decision to revoke his licence.
11. Following recall, the Prisoner's case was referred to the Parole Board by the Secretary of State to consider whether or not to direct his release.
12. The first panel noted that the Prisoner had first denied using drugs in the community but then admitted doing so as well as using them in custody. He did not appear to challenge his recall and the first panel concluded that it had been reasonable.
13. Following the first review, the Prisoner completed the Pillars of Recovery programme. He also engaged positively in counselling with a drug and alcohol agency and engaged well with his key worker. There were episodes of drug relapse and on one occasion the Prisoner had been found in possession of 'hooch'.
14. The Panel conducting the current review agreed with the assessments in the latest Offender Assessment System Report (OASys) that the Prisoner posed a high risk of general reoffending, a medium risk of violent reoffending, a medium risk of serious harm to children and adults and a high risk of serious harm to the public. The Risk Management Plan was hostel based and the Panel considered it likely that warning signs would be picked up to allow for contingency action before the Prisoner's risk of harm escalated as it did on the last occasion.
15. The Panel concluded that, as there had been no further drug concerns since the use of drugs by the Prisoner in December 2022, that incident was likely to have been a lapse rather than a relapse. In the light of the robust risk management plan and the support available in the community which could have a long term impact on reducing risk the Panel decided that the Prisoner did not need to be confined for the protection of the public and directed his release.

The Relevant Law

16. Rule 28A(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022), (the Parole Board Rules) provides that certain final decisions may be set aside by the Board (a) on the application of a party or (b) on initiation by the Board Chair.

17. The types of decision eligible for setting aside are listed in rule 28A(1). They are decisions concerning whether the prisoner is or is not suitable for release on licence whether made by a paper panel (rule 19(1)(a) or (b)) or by an oral hearing panel after a hearing under rule 25(1) or by an oral hearing panel making a decision on the papers under rule 21(7).

18. Under Rule 28A (4), a final decision may be set aside (a) if it is in the interests of justice to do so **and** (b) one or more of the conditions set out in sub paragraph (5) are satisfied. Those conditions are (a) the decision maker is satisfied that a direction to direct or not direct release would not have been made but for an error of law or fact or (b) the decision maker is satisfied that a direction for release would not have been given if:

- (i) Information that was not available to the Board when the direction was given had been so available, or
- (ii) A change in circumstances relating to the prisoner that occurred after the direction was given, had occurred before it was given.

19. Rule 28A (9) provides that, where the decision maker directs that a final decision should be set aside, they must also direct that the case should be –

- (a) decided again on the papers by the previous panel or a new panel appointed under rule 5(1), or
- (b) decided again at an oral hearing by the by the previous panel or a new panel appointed under rule 6(2).

Board Guidelines

20. The current Parole Board Guidelines include the following:

"6.2 If an application to set aside a decision has been granted, the decision-maker can direct:

- a) a further oral hearing or that a decision is to be made on the papers; and*
- b) a decision is to be made by a new panel or the original panel.*

6.3 Where an application to set aside a decision to release has been granted by the decision-maker on the ground that there is new information or a change in circumstances, the setting aside panel can refer the matter back to the original panel. The setting aside panel can direct that the original panel consider the new information and make a new decision in relation to that information".

Responses by the Secretary of State and the Prisoner

21. The Public Protection Casework Section (PPCS) of HM Prison and Probation Service confirmed on behalf of the Secretary of State that they did not wish to make a set aside application and they felt the risk management plan remains robust enough to manage the Prisoner in the community “regardless of the new information”.
22. In their written representations dated 7 August 2023, the Prisoner’s solicitors do not dispute the new allegations. Having taken his instructions, they submit that he had not appreciated the extent of the stress and anxiety he was suffering as a result of the parole process. They further submit there has been immediate engagement by the Prisoner with a substance abuse worker and he is seeking the assistance of the drug team. The solicitors ask that the original release decision be maintained with appropriate licence conditions to address any concerns.

Discussion

23. Drug misuse and poor thinking skills lie at the heart of the Prisoner’s entrenched offending behaviour. He had quickly relapsed into the use of drugs after his release from prison only a week before committing the index offences. Furthermore, his risk of reoffending and serious harm was heightened by persistent drug taking as soon as he was released on licence under the current sentence.
24. Within days of the hearing on 11 July 2023, the Prisoner succumbed to the temptation to take drugs offered by another prison inmate. It further appears he was suspected of taking drugs on more than one occasion after the hearing.
25. I have to consider the position the Panel would have been in if these episodes had occurred before the decision to release the Prisoner was made and the Panel had been aware of them. In that event, the Panel would undoubtedly have questioned him closely about what happened and why. The views of the Prison Offender Manager and Community Offender Manager would have been sought in the light of the evidence and the Prisoner’s response.
26. Such further evidence would have been vital to the issue of whether the Prisoner’s risks had been elevated to the extent that they would not have been manageable under the risk management plan.

Decision

27. I have concluded that, in the circumstances set out above, the Panel’s decision to release the Prisoner would not have been the same had the post-hearing incidents occurred before the hearing. The decision of the Panel dated 21 July 2023 is set aside as being clearly in the interests of justice.
28. I direct that the case should be decided by the Panel which conducted the hearing on 11 July 2023 and, applying the principles in *Osborne v The Parole Board* [2013] UKSC 61, it should be dealt with by way of an oral hearing. This will enable the Panel

to question the Prisoner and professional witnesses about the conduct which has led to the decision being set aside and also about how the concerns arising have been addressed.

HH Judge Graham White
29 August 2023