

[2024] PBRA 132

## Application for Reconsideration by Marshall

### Application

1. This is an application by Marshall (the *Applicant*) for reconsideration of a decision dated 3 June 2024 of a panel of the Parole Board (the *Panel*) following an oral hearing held remotely by video on 23 May 2024. The Panel decided not to direct the Applicant's release.
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 that: (a) the decision contains an error of law; (b) the decision is irrational; and/or (c) the decision is procedurally unfair. This is an eligible case, and the application was made in time.
3. I have considered the application on the papers. These papers are:
  - an application for reconsideration dated 25 June 2024 submitted by the Applicant's solicitors;
  - the Panel's decision dated 3 June 2024; and
  - a dossier of 454 pages.

### Request for Reconsideration

4. The application for reconsideration is dated 25 June 2024.
5. The ground for seeking a reconsideration is that the Panel's decision is irrational.
6. The application submits that the Panel's conclusion that the Applicant would not be open and honest if released is irrational. The application argues that, "*there can be no substantiated concerns at this stage*". In support of this argument, the application states that the Applicant has demonstrated that he is able to comply and that there have been no reports of him being dishonest or hiding information which has presented as an unmanageable in the community. Although the drafting is ambiguous, I believe the application also submits that the Panel's concerns about the Applicant's future plans are irrational on the basis that he will have a firmer idea of his plans and resettlement area once he has secured his release. The application points out that there have been no threats of or actual physical violence for a significant period, and submits that if the Applicant's risk was unmanageable, the warning signs would have been evident in open conditions and he would have been returned to the closed estate. The application submits that the Applicant will be



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much more closely monitored in the community because he will be fitted with a GPS tag and will be subject to additional licence conditions.

7. In further support of its argument that the Panel's decision is irrational, the application states that: (a) there was support from the all witnesses for the Applicant's release; (b) it was accepted by the witnesses that the Applicant had completed all core risk reduction work; (c) the Applicant had completed a number of periods of temporary release without any reported concerns; (c) all the witnesses, and the Panel, agreed that the Applicant's risk of causing serious harm was not imminent; (d) the witnesses considered that there would be warning signs [*of an increase in the risk of causing serious harm*] that would be picked up; (e) the witnesses agreed that the risk management plan would manage the Applicant's risk of serious harm; (f) the witnesses considered that there was nothing further to be gained by the Applicant remaining in open conditions and that the Applicant had successfully completed his period of testing. The application states that it is not a requirement for an extended determinate sentenced prisoner to be tested in open conditions.
8. In conclusion, the application argues that the Panel has "*refused release on a baseless reason being that [the Applicant] will not be open and honest, despite there being no evidence of the same. We reject that this links to serious harm or that it presents an unmanageable risk in the community*".

## Background

9. In October 2013, the Applicant was given an extended determinate sentence of 18 years comprising a custodial term of 15 years and an extended licence period of three years for wounding with intent to do grievous bodily harm. The same sentence, to run concurrently, was imposed for possession of a firearm with intent to endanger life, and he was given a concurrent sentence of six years for possession of a prohibited weapon, and a concurrent sentence of 10 weeks for possession of cannabis with intent to supply. The parole eligibility date was in April 2023, the conditional release date is in April 2028, and the sentence expires in March 2031.
10. The circumstances of the index offences were that the Applicant fired a semi-automatic pistol at the doorman of a club in London injuring him in the leg. An hour or so earlier, the victim had intervened to deal with an argument in which the Applicant was involved. The Applicant had left the club to obtain a gun and changed his clothes before returning to shoot the victim in what was a premeditated attack. The Applicant was 26 years old at the time the index offences were committed. He has a history of violent and drug-related offending.

## Current parole review

11. The Secretary of State referred the Applicant's case to the Parole Board in July 2022. The case was directed to an oral hearing in January 2023. A remote hearing by video took place on 23 May 2024. This was the Applicant's first review and he was seeking release.
12. The Panel comprised three independent members. Evidence was taken from the Applicant's prison offender manager (POM), the Applicant's community offender



manager (*COM*), and the prison psychologist in training (*Psychologist*). The Applicant also gave evidence to the Panel.

13. The Applicant had completed several interventions during his sentence including RESOLVE (an accredited programme designed to reduce violent offending in men with violent convictions). He had progressed to the open estate in June 2023 and had completed Sycamore Tree (a volunteer-led victim awareness programme) in February 2024.

## The Relevant Law

14. The Panel correctly sets out the test for release in its decision letter dated 3 June 2024.

### *Parole Board Rules 2019, as amended*

15. Rule 28(1) of the Parole Board Rules provides the types of decision which are eligible for reconsideration. Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for reconsideration whether 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)). Decisions concerning the termination, amendment, or dismissal of an IPP licence are also eligible for reconsideration (Rule 31(6) or Rule 31(6A)).
16. Rule 28(2) of the Parole Board Rules provides the sentence types which are eligible for reconsideration. These are indeterminate sentences (Rule 28(2)(a)), extended sentences (Rule 28(2)(b)), certain types of determinate sentence subject to initial release by the Parole Board (Rule 28(2)(c)), and serious terrorism sentences (Rule 28(2)(d)).

### *Irrationality*

17. The power of the courts to interfere with a decision of a competent tribunal on the ground of irrationality was defined in **Associated Provincial Houses Ltd v Wednesbury Corporation 1948 1 KB 223** by Lord Greene in these words, "*if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere*". The same test applies to a reconsideration panel when determining an application on the basis of irrationality.
18. In **R(DSD and others) v the Parole Board 2018 EWHC 694 (Admin)**, a Divisional Court applied this test to parole board hearings in these words at paragraph 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."*

19. In **R(on the application of Wells) v Parole Board 2019 EWHC 2710 (Admin)** Saini J sets out what he described as a more nuanced approach in modern public law which was, "*to test the decision maker's ultimate conclusion against the*



*evidence before it and to ask whether the conclusion can (with due deference and with regard to the panel's expertise) be safely justified on the basis of that evidence, particularly in a context where anxious scrutiny needs to be applied)".* This test was adopted by a Divisional Court in the case of **R(on the application of the Secretary of State for Justice) v the Parole Board 2022 EWHC 1282 (Admin)**.

20. As was made clear by Saini J, this is not a different test to the Wednesbury test. The interpretation of and application of the Wednesbury test in parole hearings as explained in **R(DSD and others) v the Parole Board 2018 EWHC 694 (Admin)** was binding on Saini J.
21. It follows from those principles that in considering an application for reconsideration the reconsideration panel will not substitute its view of the evidence for that of the panel who heard the witnesses.
22. While the views of the professional witnesses must be properly considered by a panel deciding on release, the panel is not bound to accept their assessment. The panel must however make clear in its reasons why it is disagreeing with the assessment of the witnesses.
23. The overriding objective is to ensure that the Applicant's case was dealt with justly.

### **The reply on behalf of the Secretary of State**

24. The Secretary of State did not make any submissions in response to the application.

### **Discussion**

25. References to paragraphs are to paragraphs in the Panel's decision.
26. The application submits that the Panel's decision is irrational principally because it "*refused release on a baseless reason being that [the Applicant] would not be open and honest, despite there being no evidence of the same*". The application argues that this issue does not link to causing serious harm and does not present an unmanageable risk in the community.
27. I cannot agree with any of the arguments advanced in the application and I have outlined my reasons below.
28. The Panel decided to examine the Applicant's history of violent and drug-related offending, including the index offences, in considerable detail. It explained that the reasons for doing so were that it was concerned about the Applicant's limited accounts of his offending and that it needed a clear understanding of his offending to make a current assessment of risk.
29. The Panel questioned the Applicant at length about his offending, violent incidents in which he was involved, his lifestyle, and his attitudes, and the Applicant was given an opportunity to give an account of each offence or violent incident the Panel explored, and had the benefit of being legally represented. The Panel considered that the Applicant's responses demonstrated a reluctance to be fully open and



honest; he was repeatedly unable to recall (or unwilling to provide) the names and surnames of friends and associates involved in criminal activity, and he was vague about the details of several offences and ambiguous about why they might have been committed. Notably, he had been involved in three shootings but told the Panel that he did not know why he or his associates had been targeted. The Panel also expressed concerns about the Applicant's insight into the risks inherent in his former lifestyle.

30. In relation to the index offences, the Applicant accepted that he had shot the victim but said that he had intended to shoot someone else (*intended victim*) with whom he had a problematic history. When the Panel questioned him with a view to understanding more about his relationship with the intended victim and the reasons for the hostility between them, the Applicant denied knowing the intended victim's name (other than his street name) or the reasons for his animosity and his threat to harm the Applicant. In addition, the Panel found that the Applicant's accounts of being driven away from the scene of the index offence shooting and his disposal of the gun were unsatisfactory.
31. The Panel went on to consider carefully the implications of the Applicant's limited disclosures and his guarded and often evasive approach on the manageability of his risk and likely compliance in the community. In paragraph 3.30, the Panel concluded that it "*could find insufficient evidence to persuade it that [the Applicant] will be open and honest with professionals on licence and this undermined the likely effectiveness of the risk management plan.*" The Panel recognised that professionals would be aware of the need to probe and challenge the Applicant to obtain information however, in light of the Applicant's evidence and "*his tendency to be evasive and not to volunteer information*", the Panel was of the view that even with probing it "*could not be confident that [the Applicant] would be forthcoming and open, in particular about his activities, lifestyle, and associates...*".
32. The Panel's decision evidences that the Applicant's openness and honesty, the gaps in information about his former associates, his compliance on licence, and the role of self-report in his management were discussed thoroughly with the Psychologist, the COM, and the POM. All the witnesses expressed reservations and concerns about the Applicant's willingness to disclose information about his lifestyle and associates but in general they felt that as his professional relationships developed, he would share more information.
33. It is important to note that the Panel is not obliged to accept the opinions and recommendations of professional witnesses. It has a responsibility to make its own risk assessments taking account of the evidence that it has heard, its exploration of the issues with the witnesses, and its own expertise and experience.
34. Where the Panel disagreed with the views or assessments of the witnesses, it set out the area of disagreement and its reasons for disagreeing. For example, in paragraph 3.18, the Panel explained why it did not share the Psychologist's optimism that [the Applicant] would report issues to the COM referring to "*his continued guardedness and reluctance to provide details in a number of areas*". Similarly, the Panel did not have the same confidence as that Psychologist that the lack of detail about the intended victim and its impact was not significant. It said that it assessed that "*the lack of information about the intended victim and the*



*reasons for their difficulties, meant that it was impossible to assess, and therefore manage, any related risks”.*

35. It is my view that the Panel provides clear evidence of a lack of openness and reluctance to share information by the Applicant, and provides an explanation of how, in its opinion, this has an impact on the manageability of the Applicant’s risk in the community and his risk of causing serious harm. The Panel considered that the Applicant’s ability to be open and honest with professionals needed to be tested further, in a custodial setting, and that he would benefit from working with professionals to identify and understand the barriers to openness and honesty. I consider that the Panel sets out its views and assessments in a coherent and reasoned way.
36. I therefore reject the argument advanced in the application that the Panel’s decision not to release the Applicant was based on an irrational and baseless concern about his openness and honesty.
37. For completeness, I would add that the application fails to recognise that a lack of openness and honesty by the Applicant was not the only reason the Panel concluded that the risk management plan was not robust, his risks were not manageable in the community, and that the test for release was not met. The Panel highlighted the following issues:
  - (a) The Applicant lacked insight into the risks associated with his lifestyle, former associates, and relationships with women.
  - (b) There had been insufficient exploration of the large number of friends and associates with whom he remained in contact and whether this gave rise to any risks.
  - (c) The lack of information about the intended victim, and how that risk would be assessed and managed in the community.
  - (d) The difficulties facing professionals in detecting risk-related warning signs (linked to a lack of self-report and a reluctance to share information).
  - (e) The Applicant had made limited progress in improving his employability or finding employment. His plans for employment in the community were vague.
  - (f) Although it was accepted that it would be important for the Applicant to have constructive and purposeful activity to provide routine and structure to his day, he had no plans for how he would spend his time, other than being with his family.
  - (g) The professionals did not appear to have a clear understanding of the Applicant’s finances. His former criminal lifestyle had provided him with a significant income allowing him to make financial contributions to his mother and his then girlfriend. It was not clear how he was proposing to gain an income and how he would adapt to a considerably more modest lifestyle than he had been used to.
  - (h) There was a lack of understanding about how the Applicant would manage the stressors he would undoubtedly face in the community, such as not being able to secure employment, not being financially stable, and not being able to provide financially for his family.





38. Finally, it is important to note that I consider that the Panel was fair and just in its assessment of the written evidence in the dossier and its recording and assessment of the oral evidence presented to it at the hearing. It recognised the progress the Applicant had made towards release, the significant improvement seen in his custodial conduct and his compliance, and outlined how he could develop his release and resettlement plans in open conditions. In paragraph 4.10, the Panel concludes, *"The panel considered that [the Applicant] is currently appropriately located in open conditions where he can continue to be tested on ROTL, to work on his plans for release, to develop relationships in the community including with his COM, and work towards a greater understanding of the requirements for openness and honesty with professionals, and evidencing that by his behaviour."*

## Decision

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

**Hedd Emrys**  
**18 July 2024**