

**[2024] PBRA 151****Application for Reconsideration by Sullivan****Application**

1. This is an application by Sullivan (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated 1 July 2024 not to direct release or recommend open conditions following an oral hearing on 2 May 2024.
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 for reconsideration, the decision and the dossier.

**Background**

4. The Applicant was sentenced to life imprisonment on 23 July 2001 for the murder of a sex worker. He was ordered to serve a minimum period of 13 years before he was eligible to be released on parole. He served 18 years 9 months before being released on licence on 16 July 2019. He was recalled on 15 October 2019 for making threats to kill, which was not proceeded with and attempting to contact sex workers. He was re-released on 1 September 2021 and recalled on 3 February 2022 after it was discovered that he had contacted dating websites on a large number of occasions. Because he had used an alias when contacting the websites the Applicant was convicted of failing to comply with notification requirements under the Sexual Offences Act 2003 and was sentenced to a further 9 months imprisonment.

**Request for Reconsideration**

5. The application for reconsideration is dated 19 July 2024.
6. The grounds for seeking a reconsideration are that the decision was irrational. While the grounds are lengthy the essence is a complaint that the decision of the panel that the Applicant had a sexual preoccupation was one that could not properly be reached on the evidence.

**Current parole review**

7. The case was referred to the Parole Board on 22 December 2022 to consider whether to direct release or, if release was not directed, to consider whether to recommend a transfer to open conditions.
8. On 2 May 2024 the panel heard evidence from the Applicant; a stand in Prisoner Offender Manager; a prison psychologist and the Community Offender Manager. The panel then adjourned to obtain more information from the police about the Applicant's conviction on 18 May 2022 for breach of the sex offender notification requirements. After that submissions were made in writing by the Applicant's legal representative.

### **The Relevant Law**

9. The panel correctly sets out in its decision letter dated 1 July 2024 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

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

10. 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)).
11. 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)).
12. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under rule 28.

#### *Irrationality*

13. 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.
14. 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 para 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."*

15. In R(on the application of Wells) -v- Parole Board 2019 EWHC 2710 (Admin) Saini J set 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).
16. 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 DSD was binding on Saini J.
17. 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.
18. Further 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.

### **The Reply on behalf of the Secretary of State (the Respondent)**

19. The Respondent has made no submissions in response to this application.

### **Discussion**

20. The panel refused the applications for release or transfer to open conditions because they concluded that the Applicant was preoccupied with sex and accordingly required core reduction work to be carried out before he could safely be released. The Applicant denied that he was preoccupied with sex and argues that the panel could not properly have reached that decision.
21. In my judgment it is not arguable that the decision of the panel was irrational. The Applicant's index offence was for killing a sex worker with whom he had just had sex. At the time of the Applicant's first recall he was found to have been trying to contact sex workers. He admitted at the time that he did that to satisfy his sexual needs. On his second recall it was discovered that he had contacted online dating sites on very many occasions in a short time before his recall. While the Applicant said that he was trying to find someone with whom he could have a genuine emotional relationship and the contents were not related to a desire to have sex, the panel did not believe him. The panel considered the evidence; they heard from

the Applicant and on considering all the evidence that they had they were entitled not to accept his explanation.

22.The evidence of all the professionals including, importantly, the psychologist was that the Applicant was sexually preoccupied. The Applicant did not understand that and needed core risk reduction work to help him deal with that. There was no professional evidence to contradict this view.

23.The Applicant is correct that there are some errors of fact in the decision; for example there was no evidence that the Applicant used multiple aliases when contacting dating sites. The evidence was only of one alias being used. Despite that I am satisfied that none of the mistakes of fact affected the central finding which was a conclusion that the panel were entitled to reach.

### **Decision**

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

**John Saunders**  
**19 August 2024**