

[2024] PBRA 180

Application for Reconsideration by Deghayes

Application

1. This is an application by Deghayes (the Applicant) for reconsideration of a decision of an oral hearing panel (OHP) dated 5 August 2024 not to direct 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 (a) that the decision contains an error of law, (b) that is irrational and/or (c) that it 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 are the dossier, the OHP decision, and representations by the Applicant.

Request for Reconsideration

4. The application for reconsideration is dated 20 August 2024 and was received 23 August 2024. The Applicant applied in person for reconsideration and drafted the reconsideration grounds himself.
5. The grounds for seeking a reconsideration are set out in numbered paragraphs below. I have summarised each ground as set out by the Applicant in his application.

Background

6. The Applicant was convicted of encouraging terrorism contrary to section 1 of the Terrorism Act 2006. The facts related to a speech given by the Applicant in 2020. The speech was made after evening prayers at a mosque. The speech included phrases which the prosecution alleged encouraged a terrorist act. The Applicant was convicted by a jury after a trial. The judge made a finding in connection with the conviction, namely that the words spoken were reckless rather than intentional. The applicant was 54 years old at the time of the conviction. The applicant appeared before a Parole Board panel who reviewed his sentence pursuant to a referral from the Secretary of State (the Respondent).

Current parole review

7. The Parole Board decision was issued in August 2024. The Applicant was then 56 years old. The OHP made no direction for release. The Applicant was represented by a solicitor. The OHP consisted of a judicial chair, a psychologist member and an independent member. Evidence was heard from a prisoner instructed psychologist, a prison instructed psychologist, a Community Offender Manager and a Prison Offender Manager.

The Relevant Law

8. The panel correctly sets out in its decision letter dated 5 August 2024 the test for release.

Parole Board Rules 2019 (as amended)

9. 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)).
10. 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

11. 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.
12. 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."*
13. 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).

- 14.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.
- 15.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.
- 16.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.

Procedural unfairness

- 17.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.
- 18.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;
 - (e) the panel did not properly record the reasons for any findings or conclusion; and/or
 - (f) the panel was not impartial.
- 19.The overriding objective is to ensure that the Applicant's case was dealt with justly.

Error of law

- 20.An administrative decision is unlawful under the broad heading of illegality if the panel:
- a) misinterprets a legal instrument relevant to the function being performed;
 - b) has no legal authority to make the decision;
 - c) fails to fulfil a legal duty;
 - d) exercises discretionary power for an extraneous purpose;
 - e) takes into account irrelevant considerations or fails to take account of relevant considerations; and/or
 - f) improperly delegates decision-making power.



21. The task in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the panel. The instrument will normally be the Parole Board Rules, but it may also be an enunciated policy, or some other common law power.
22. In **Oyston [2000] PLR 45**, at paragraph 47 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."*
23. Reconsideration is a discretionary remedy. That means that, even if an error of law, irrationality, or procedural unfairness is established, the Reconsideration Member considering the case is not obliged to direct reconsideration of the panel's decision. The Reconsideration Member can decline to make such a direction having taken into account the particular circumstances of the case, the potential for a different decision to be reached by a new panel, and any delay caused by a grant of reconsideration. That discretion must of course be exercised in a way which is fair to both parties.

The reply on behalf of the Respondent

24. The Respondent indicated that no negative comments were made or implied in connection with the death of the Applicant's son. The Respondent noted that had any such indications been made the panel chair would have immediately intervened.
25. The Respondent notes that the comments relating to the Applicant's presentation were in relation to the professional witnesses' evidence, arising from their own assessments of risk. The Respondent acknowledged that challenging evidence would be difficult for the Applicant to hear and may not be accepted by the Applicant himself.

Grounds and Discussion

Ground 1

26. The Applicant argues that because his actions in the index offence were accepted by the sentencing court as within the legal definition of "*reckless*", defined by the Applicant as "*accidental*", the future risk to the public would not apply because the speech was an accident.

Discussion

27. The Parole Board OHP noted at paragraph 1.4 that the sentencing judge in this case concluded that the comments made by the Applicant were considered reckless rather than intentional. In his sentencing remarks, the judge defined recklessness as follows: *"Reckless is defined as you being aware that there was a serious and obvious risk that members of the public would be directly or indirectly encouraged or otherwise induced by your statement to commit, prepare or instigate acts of*



terrorism and, in the circumstances known to you, it was unreasonable for you to take that risk. There was in fact no need for the prosecution to prove that any person was so encouraged".

28. Although the legal terminology is complex, the sentencing judge and the panel did not find that the speech was "*accidental*"; the finding of the court specifically relates to the legal definition of reckless behaviour as set out above. The panel was bound by the decision of the court. The panel therefore appropriately considered that reckless behaviour could result in future risk to the public. I do not therefore find that this ground amounts to an irrational decision as defined above.

Ground 2

29. The Applicant argued that he had lived in the community for his teen and adult life and always "*kept his cool*" despite matters which angered others like the Iraq war and therefore the decision was irrational.

Discussion

30. The panel noted in its decision that it had considered all the written and oral evidence in the dossier. It is clear therefore that the panel took account of the fact that the Applicant had only one previous conviction recorded in 2018 relating to the attempted intimidation of a witness. It could not therefore be argued that the Applicant had always "*kept his cool*". However, the panel, when considering the issues in the case, took account of the Applicant's background. As noted in the panel's conclusion, the panel's determination was that the Applicant continued to display an absence of insight into his behaviour, his risk factors, and the potential impact of his behaviour on others, particularly young people. The panel's concern was that this could lead to influencing others by his words to engage in violent activity. The panel therefore focused upon future risk. The panel appropriately took account of historical behaviour, but concluded that that risk remained such that the Applicant should be detained for the protection of the public. I do not therefore find that this ground amounts to irrationality in the meaning set out above.

Ground 3

31. The witnesses, rather than making factual findings, put unrelated matters and questions to the Applicant, for example saying that he "*thinks big of himself*" and he "*displayed an overwhelming sense of self righteousness and rigidity*" and had "*the need for status and respect*".

Discussion

32. The panel in this case heard evidence from a number of professionals including a prisoner instructed psychologist. The panel also had an opportunity to hear evidence from the Applicant himself and to make a judgement. The panel concluded that the Applicant had displayed an overwhelming sense of self-righteousness and rigidity in his evidence and expressed a need for status and respect. The panel had the advantage of seeing and hearing the Applicant, as well as the witnesses. In Parole Board hearings it is a matter for the panel to determine their view of the evidence, including their view of the prisoner himself. In this case it is understandable that



the Applicant disagrees with the view of the panel about his presentation and approach, however, it would be inappropriate to direct that a decision be reconsidered, unless it is manifestly obvious that there are compelling reasons for interfering with that decision. In this case, I determine that the panel have reached a balanced and considered view of the Applicant's presentation and views from the evidence presented by witnesses, and the panel's observations at the hearing itself. I do not therefore find that the decision was irrational in the sense set out above.

Ground 4

33. The panel inappropriately relied on allegations made in the prison rather than facts. They relied on prison NOMIS (National Offender Management Information System) comments and prison adjudications which had been quashed.

Discussion

34. Parole Board panels are routinely presented with evidence relating to behaviour in prison by prisoners. In this case, the panel noted that the Applicant had been adjudicated in relation to refusing an order in April 2024. Subsequently, the panel noted that a document was produced, indicating that the adjudication had been successfully appealed. There is no evidence therefore that the panel relied upon unsuccessful adjudications. The panel did note a number of entries relating to poor behaviour, however, in general terms, the panel's decision was based upon the wider issue of the Applicant's lack of insight into his risk in the community rather than prison based behaviour. I do not therefore find that this ground amounts to an irrational decision in the sense set out above.

Ground 5

35. The panel failed to recognise that the Applicant frequently spoke for "*peace and harmony*" and was not someone who could or would influence young people into violent activity.

Discussion

36. The panel and the sentencing judge in this case took the view that the Applicant's conviction indicated that there was potential for him to influence others (particularly young people). The panel was bound by the conclusion of the jury and the judge in this case. The findings in relation to the index offence were that the Applicant acted recklessly within the definition set out above. For that reason, I do not find that irrationality arises in relation to this ground.

Decision

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

**HHS Dawson
XX September 2024**

