

**[2024] PBRA 229****Application for Reconsideration by Ahmed****Application**

1. This is an application by Ahmed (the Applicant) for reconsideration of a decision dated 24 July 2024 not to direct release. The decision was made by a panel on the papers.
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. This is an eligible case.
3. The application was made in time. The application which contained two grounds in support of reconsideration, sought an extension of time as the Applicant's representative was said to be on leave. However, no further grounds were submitted.
4. I have considered the application on the papers. These are the paper decision, the dossier consisting of 203 pages and the application for reconsideration.

**Request for Reconsideration**

5. The application for reconsideration is dated 4 October 2024.
6. The grounds for seeking a reconsideration are that the decision contained an error of law in applying the wrong legal test for release and that it was procedurally unfair in not holding an oral hearing.

**Background**

7. The Applicant received a sentence of 14 years imprisonment comprising 10 years detention and a 4 year extended licence on 8 May 2012 following conviction for offences of sexual activity with a child under 16. He received on the same occasion concurrent sentences for offences of sexual assault, meeting a child following sexual grooming and possession of indecent photographs. He was aged 39 at the time of sentencing and is now 52 years old.
8. He was released on licence on 22 August 2016. His licence was revoked on 1 March 2024 and he was returned to custody on 9 May 2024.



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## Current parole review

9. The Applicant's case was referred (in an undated document) to the Parole Board by the Secretary of State (the Respondent) to consider whether or not it would be appropriate to direct his release.
10. The case proceeded to a paper consideration before an MCA panel member. The panel did not direct the Applicant's release.

## The Relevant Law

11. The panel sets out in its decision letter dated 24 July 2024 the test for release.

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

12. 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)).
13. [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)).]

### *Procedural unfairness*

14. 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.
15. 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.

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



*Error of law*

17. 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.
18. 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.
19. In the cases of **Osborn v Parole Board [2013] UKSC 61**, the Supreme Court comprehensively reviewed the basis on which the Parole Board should consider applications for an oral hearing. Their conclusions are set out at paragraph 2 of the judgment. The Supreme Court did not decide that there should always be an oral hearing but said there should be if fairness to the prisoner requires one. The Supreme Court indicated that an oral hearing is likely to be necessary where the Board is in any doubt whether to direct one; they should be ordered where there is a dispute on the facts; where the panel needs to see and hear from the prisoner in order to properly assess risk and where it is necessary in order to allow the prisoner to properly put his case. When deciding whether to direct an oral hearing the Board should take into account the prisoner's legitimate interest in being able to participate in a decision with important implications for him. It is not necessary that there should be a realistic prospect of progression for an oral hearing to be directed.

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

20. The Respondent has offered no representations in reply to this application.

**Discussion**

21. The Applicant's first ground submits that the wrong legal test was applied in his case. He submits that as an extended sentenced prisoner, recalled during the extension period of his licence there is a presumption in favour of release.
22. Whilst the decision letter does not make reference to the test in respect of a recalled extended licence prisoner, there is no reason to suppose that the test was not applied. It is unfortunate that the test was not set out by the panel in its decision letter as that may have avoided any uncertainty or confusion. However, having had careful consideration to the decision I am satisfied that there is no evidence that the panel did not apply the correct test.



23. In a case such as this of an extended sentence prisoner who is recalled in the extension period part of his sentence, panels are required to reverse the test, applying a presumption in favour of release. In such cases, the panel should direct release unless positively satisfied that continued detention is necessary for the protection of the public (*R (Sim) v Parole Board [2004] QB 1288*). This presumption is unique to this type of case. The presumption can be disproved by the risk posed up to and beyond the sentence expiry date.
24. The panel found clear risk factors of sexual entitlement and sexual preoccupation that had not abated, including paralleling behaviours between the Applicant's previous offending behaviour and his more recent behaviour. The panel found that the Applicant's accepted use of prostitutes, pornography and contact with children provided evidence that his risk factors had not been fully addressed. The panel found that his engagement in the types of behaviour that had been of concern in his earlier offending and not disclosing the relationships he should have disclosed to those supervising him also presented concerns and risks. The panel considered that core risk reduction work remained outstanding to be completed in custody to address specific areas which remained areas of risk. These were all factors supporting the panel's conclusion that continued detention was necessary and disproving the presumption.
25. I am not therefore satisfied that the application has identified any error of law in the panel's decision.
26. The second ground raises procedural unfairness in not holding an oral hearing. The panel clearly set out that it had considered the principles in the case of *Osborn, Booth and Reilly [2013] UKSC 61*.
27. All the matters raised by the Applicant's representative in their representations of 5 August 2024 were before the panel. The panel was aware of the length of time the Applicant had been in the community. However, the panel also noted his concerning, risk related behaviours and the unchallenged reasons for recall. The panel noted the positive recommendation from the COM. The panel in those circumstances was entitled to conclude the case without an oral hearing. The Duty Member in a very detailed response also considered the question of the necessity and fairness of whether or not to hold an oral hearing. The conclusions were sound and in accordance with the principles set out in *Osborn, Booth and Reilly*.
28. In all the circumstances the Panel was satisfied that it had sufficient information and that it was appropriate to conclude the review on the basis of the documentation in the dossier. I can discern no unfairness in that conclusion. The panel had before it sufficient evidence to make a fair evidence-based decision. Fairness to the prisoner did not require an oral hearing in this case.
29. I am therefore satisfied that there was no procedural unfairness and this ground must fail.

## Decision



30. For the reasons I have given, I do not consider that the decision contained any error of law or was procedurally unfair and accordingly the application for reconsideration is refused.

**Barbara Mensah**  
**22 November 2024**