

**[2024] PBRA 231****Application for Reconsideration by Cassidy****Application**

1. This is an application by Cassidy (the Applicant) for reconsideration of a decision of an oral hearing panel dated 14 October 2024 not to direct his 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 it 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 oral hearing decision, the dossier consisting of 509 pages and the application for reconsideration.

**Request for Reconsideration**

4. The application for reconsideration is dated 30 October 2024.
5. The grounds for seeking a reconsideration are irrationality and procedural unfairness. In particular it is said that the panel failed to give adequate reasons and that the panel failed to follow proper procedure when dealing with allegations.

**Background**

6. The Applicant received a sentence of life imprisonment following conviction for murder. His tariff was set at 13 years, 11 months and 17 days and expired on 28 April 2016. He was released by the Parole Board on 7 May 2019 and recalled on 17 June 2019. He was released again on 25 January 2023 and recalled on 6 September 2023. He was aged 24 at the time of sentence and is now 47 years old. This is his first review after his recent recall.

**Current parole review**

7. The Applicant's case was referred to the Parole Board in September 2023 to consider whether or not it would be appropriate to direct his release. If the Board did not consider it appropriate to direct release, it was invited to advise the Secretary of State whether the Applicant should be transferred to open conditions.

8. The case proceeded to an oral hearing via videoconference on 1 October 2024. The three member panel consisted of two independent members and a psychologist member. It heard oral evidence from the Applicant, his Prison Offender Manager, his Community Offender Manager and a prison psychologist. The Applicant was legally represented throughout the hearing. The Respondent was not represented by an advocate.
9. The panel did not direct the Applicant's release and did not recommend a transfer to open conditions.

### The Relevant Law

10. The panel sets out in its decision letter dated 14 October 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)*

11. 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)).
12. 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)).
13. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**.

#### *Irrationality*

14. 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.
15. 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.*"



16. 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)*.
17. 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.
18. 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.
19. 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*

20. 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.
21. 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.
22. The overriding objective is to ensure that the Applicant's case was dealt with justly.

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

23. The Respondent offered no representations in response to the Applicant's application for reconsideration.

#### **Discussion**



24. The Applicant submits that the panel's decision is irrational/procedurally unfair as it failed to provide sufficient reasons for its rejection of the three professional witnesses' unanimous recommendations in support of release. The Applicant submits that the panel has failed to note the recommendations of the professional witnesses which were repeated in closing submissions "*so if there was some confusion as to the recommendations, this could have been raised by them*".
25. The decision letter sets out the evidence of the professional witnesses (paragraph 3.2), there is no evidence that the panel was confused about the recommendations. Whilst it may have been clearer and more helpful for the decision letter to have set out the recommendations of the professionals it was not essential for the panel to do so. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility to make their own risk assessments and to evaluate the likely effectiveness of any proposed risk management plan. The panel must make up its own mind on the totality of the evidence presented, including any evidence from the Applicant. It is clear that the panel did so in this case.
26. The panel noted the seriousness of the index offence, that despite engaging in programmes and treatments to address his offending behaviour the Applicant's releases into the community had been for relatively short periods before recall, he appeared to lack awareness into his behaviour, he continued to present a risk of verbal and physical aggression. In those circumstances the panel concluded that further work was required before the Applicant could be re-released.
27. Whatever the recommendations of the professionals the panel gave reasons which justified its conclusions and which did not give rise to any unfairness or irrationality.
28. The Applicant submits that the panel failed to follow the correct procedure when dealing with allegations. The Applicant had been recalled on the basis of several allegations which he disputed. The recall included allegations of violence towards a partner.
29. The panel was in a position to make a finding of fact when it had a reasonably sufficient body of information in respect of which it could properly make a finding of fact on the balance of probabilities and the Applicant had the opportunity to test and/or make submissions about the information. The panel had details of the complaints in the reports before it and the panel also heard evidence from the Applicant. On the basis of the evidence before the panel including oral evidence from the Applicant challenging the allegations, the panel was in a position to make findings. Whilst it may have been helpful for the panel to have set out the test and approach to be derived from Pearce [2023] UKSC 13 in its decision letter, its failure to do so did not amount to an irregularity or unfairness nor support a claim that it had not followed the correct procedure. The panel's findings on these matters were in relation to the question of recall. The panel concluded after taking all matters into consideration that the recall was appropriate and necessary. This was a conclusion open to the panel on the basis of a correct and fair consideration of the allegations presented.
30. It was necessary thereafter for the panel in a separate analysis to consider if the Applicant should be re-released. The panel did so and its reasons were based on



many other factors which are set out in the decision letter. There was no irrationality or unfairness in the panel's approach and decision.

**Decision**

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

**Barbara Mensah**  
**26 November 2024**