the Parole Board
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[2024] PBRA 63

Application for Reconsideration by Williams

Application

1. This is an application by Williams (the Applicant) for an order for reconsideration of a decision of a Panel (the Panel) of the Parole Board dated 13 February 2024 (the Decision) 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)) 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:
   (a) the Decision;
   (b) the Applicant's application for reconsideration dated 6 March 2024;
   (c) the email dated 8 March 2024 from the Public Protection Casework Section (PPCS) on behalf of the Secretary of State (the Respondent) stating that no representations will be made by the Respondent in response to the application for reconsideration; and
   (d) The Applicant's dossier containing 435 pages.

4. The grounds for seeking reconsideration are that:

   (i) The parole process was procedurally unfair as there was a clear misunderstanding on the part of the Panel as to the purpose of open conditions. It was stated in the Decision that when the Applicant moved to the open estate, it was anticipated that he would start to address and reduce his core risks and that the primary basis for the decision to refuse to release the Applicant appeared to be that only limited work had subsequently been carried out. This is said to be erroneous as there was no core risk reduction work that the Applicant could achieve in open conditions beyond abstinence which he had demonstrated for a number of years. Further, it was not the purpose of the Applicant moving to open conditions to undertake core risk reduction work. Indeed, between the present review and the next review, there is no further risk reduction work that he could undertake (Ground 1).
   (ii) The decision was irrational not merely for the matters set out in Ground 1 which showed irrationality but also because it stated that the Applicant was "*over confident about his ability to avoid relapse into alcohol abuse*". The panel also raised concerns at paragraph 4.7 that "*an alcohol tag. ... are not substitute for insight".* It was entirely rejected that the Applicant lacks insight

and the panel acknowledged that the Applicant had abstained from alcohol for *"a sustained and significant period"*, that *"he had been reading the 12 steps book for 10 years and frequently re-reads it"*, that he attends AA meetings *"albeit less frequently because he does not like listening to stories about alcohol"*. The Applicant explained as recorded in the decision that *"he was prepared to tell his story to try and help others".* So it is contended that it is irrational and contradictory that the decision proceeds to state that *"he is not keen to talk about his alcohol misuse".* It was stressed that both professional witnesses gave evidence that the Applicant *"is unequivocal that alcohol is his primary risk factor, that he has a huge amount of insight and that he is absolutely resolute in his intentions to abstain from alcohol in the future".* Further, there was evidence that when the Applicant was offered alcohol during a town visit, he not only rejected it but told his Prison Offender Manager (POM) and he was clearly able to resist temptation. The Applicant denies that there is no relapse prevention plan for him and that alcohol *"has been a coping mechanism in the past "and that he might revert to it in the future if unsettled. It is contended that there is ample evidence that the Applicant has had to deal with unsettling situations in which he has consistently demonstrated an ability to abstain"*. The contention is that *"a further period in open conditions cannot test him any more than he has already been tested for two years and in open conditions [so] there is nothing further that [the Applicant] can do to evidence his abstinence or core risk reduction work so that [the Applicant] will be unable to demonstrate to any future panel any different evidence to that he has already demonstrated"* (Ground 2).

Background

5. On 14 May 2014, the Applicant, who was then 51 years old, was sentenced on a retrial to life imprisonment with the minimum term to be served by the Applicant fixed at 18 years less time spent on remand and time already served for a count of murder.

6. Prior to committing the index offence, the Applicant had *"a significant offending history"* and the police national computer record dated 2 January 2014 recorded that he had 29 convictions for 65 offences and most of his offending was acquisitive and anti-social together with a poor record of compliance with court orders. His only convictions for violence before he committed the index offence were for common assault against intimate partners in 1995 and 2003; the latter offence was committed against the murder victim. The panel noted that the Applicant *"sought to justify his violence and portray himself in a favourable light, and blamed his victims."*

7. The index offence was committed in January 2005 and before the Applicant committed it, on 2 December 2004, he was reported to have smashed a double-glazed window and a metal pole, pinned the victim to the floor, hit her head with the pole and punched her several times.

8. The Applicant had a long history of significant alcohol abuse starting from a young age when both his parents were heavy drinkers. His alcohol consumption led to liver

damage, renal failure and pancreatitis. At the time of the murder, he reported drinking every day between 6 and 9 litres of strong lager and sometimes vodka as well. He also used cannabis and amphetamines between the ages of 19 and 20.

9. The Applicant murdered his partner MM in January 2005 "*by strangling her to death with his hands".* The sentencing judge described the Applicant's offence as:

   "*a particularly brutal killing, set against a backdrop of regular and routine domestic violence committed by [the Applicant] against the deceased, who was much smaller than [the Applicant], and partially disabled, and culminating in this dreadful act of manual strangulation, which may well, on the evidence, have taken up to 2 minutes to execute".*

10. The post-sentence report described that the victim of the index offence as a 40-year-old woman who was a heavy drinker and whose right leg had been amputated below the knee when she was about 15 years old. The Applicant explained that he had been her full-time carer. According to the Applicant, he and the victim of the index offence drank large amounts of cheap cider daily. They had been in a relationship for about 3 years. The Applicant told the author of the post–sentence report that on the day of the murder, he and the victim had argued, that he had grabbed her around the throat and in response she hit him. When the Applicant pushed the victim away from him with some force, she fell on the mattress pulling the Applicant down with her. According to the Applicant, the victim died due to his leg falling against her neck and he denied deliberately strangling her to death although as has been explained the sentencing judge concluded that the Applicant had murdered his victim "*by strangling her to death with his hands*". The Applicant explained that he had been intoxicated after drinking approximately 9 litres of strong cider and that he had woken in the morning to find the victim dead.

11. The panel explained that in spite of the Applicant's protestations that there was no violence in his relationship with the victim, he admitted to the author of the post-sentence report that the victim was *"the only woman he has ever hit".* The panel concluded that the Applicant "*had been violent to the victim almost from the beginning of their relationship*" with friends and relatives of the victim describing how violent the Applicant was towards her particularly when they had both been drinking. Information from the domestic violence unit "*indicated that there had been an escalating pattern of intimate partner violence in the relationship*". Indeed, the sentencing judge had mentioned that the Applicant had been on bail for violence against the victim involving an act of strangulation or choking and there had been previous acts of strangulation.

12. There was also evidence that before meeting the victim of the index offence, the Applicant had had 2 serious relationships. One such relationship was with KC, who gave evidence at the trial of the previous violence to which she had been subjected during her relationship with the Applicant with whom she had 4 children all of whom were placed in care with the Applicant's violence cited as the reason. The Applicant denies this and says that "[*KC] did not want children and used him to free himself of them*". Eighteen police call outs are recorded in relation to the Applicant's relationship with KC which the Applicant maintains were the result of verbal altercations not physical violence.

13. A 2019 WAIS assessment which is an adult intelligence test found that the Applicant's intellectual functioning fell in the borderline range with his verbal comprehension and reasoning abilities to be in the low average range. The Applicant is reported to have completed an alcohol awareness course early in his sentence, but it is not clear when this occurred and there is no post-programme report. He also completed a thinking skills programme in 2009.

14. A psychological assessment of the Applicant was carried out by a forensic psychologist in September 2021 and this included a programme needs assessment which identified two areas where the Applicant needed further support; those areas were positive relationships, *"not having a close relationship with an adult"* and healthy thinking, *"thinking violence in relationships is ok"*. The assessment concluded that *"[the Applicant] would benefit from using his time in open conditions to develop a trusting professional relationship with his Community Offender Manager ("COM") and begin the work of exploring and addressing his outstanding offence–related needs*".

15. The Secretary of State (the Respondent) accepted the Board's recommendation that the Applicant should be moved to open conditions in October 2021 and the Applicant moved to open conditions in June 2022. His sentence plan objectives in the open estate included engaging with one-to-one work on intimate partner violence with the COM and Prison Offender Manager (POM) (either on Release on temporary license or release) "*addressing his alcohol issues by accessing support in custody to maintain abstinence and to develop strategies to avoid relapse and maintaining positive and compliant behaviour in custody*".

16. The Applicant has several health conditions including problems with his mobility and eyesight. He was discharged from the prison's mental health team "*due to a lack of meaningful engagement, including being late to and missing appointments".*

17. The panel noted that the Applicant's resettlement and release plans have been "*hindered*" by the Applicant's uncertainty about where he wishes to resettle on release.

18. The Applicant has completed 4 overnight releases to Approved premises (AP) between June 2023 and December 2023 and "*no concerns or issues have been raised by AP staff about the Applicant [while he was on overnight release]".* He told the panel that "*he had been able to walk into [the town centre] independently, to shop for himself and to find his way back to the AP*".

19. The Applicant's custodial behaviour has been very positive and he has held Enhanced Status under the Incentives and Earned Privileges Scheme since September 2018. He has one proven adjudication for returning to prison with unauthorized items and he said that he could not remember that it was something that he was not permitted to do. The COM considered that the Applicant's explanation was plausible. No importance can be attached or will be attached to this adjudication.

The Views of the Professionals and the Applicant

20. The Professionals agree that the Applicant's principal risk factors are intimate relationships and alcohol abuse with other risk factors including negative attitudes to women, poor conflict resolution skills and poor problem-solving. It was agreed that his risk of violence in relationships would be likely to increase when he entered an intimate relationship particularly if his new partner has her own substance misuse problems or is vulnerable in another way. Both the POM and the COM believed that relapse into drinking alcohol by the Applicant would be noticeable allowing steps to be taken to address it and they were confident that the Applicant would disclose any developing intimate relationship to allow safeguarding measures to be put in place, such as disclosures to his new partner.

21. The Panel noted that the Applicant had not completed any offending behaviour intervention to address his risk of intimate partner violence. In addition, no further work had been carried out to address the Applicant's alcohol misuse or to develop a relapse prevention plan. It is noteworthy that the Applicant self-referred to the substance misuse service at HMP Hollesley Bay on two occasions in July 2022, but he then decided that he did not wish to engage with the team and so he has had no further contact with the service. The panel considered that the Applicant may be overconfident in his ability to remain abstinent given his limited testing in the community.

22. The Applicant's POM considered that the triggers to the Applicant's abusive behaviour in relationships were the result of his lifestyle and alcohol misuse. Surprisingly, his discussions about relationships with the Applicant had been limited and he had not discussed the police callouts with him. The Applicant's POM *"was not aware that [the Applicant] had been on bail for an alleged offence involving the strangulation of the victim when the index offence was committed"*. The POM accepted that these matters should have been explored further and he should have challenged the Applicant who denies any violence in his relationship with the victim.

23. The POM said that the Applicant considered alcohol abuse to be his biggest risk factor and that he intended to be abstinent in the community. The Applicant told the Panel that he had been reading the book *"The 12 Steps of AA"* and that he frequently re-read it as he found it difficult to retain the information. He said that he only occasionally attended AA meetings because he did not like listening to stories about alcohol or talking about alcohol although he was prepared to tell his own story to try and help others.

24. The COM noted that the Applicant had shown a willingness to be abstinent when spending time in the community on day release and ROR. She felt that the Applicant recognized the importance of disclosing any developing intimate relationship but *"she acknowledged that this was untested."*

25. The Applicant's previous COM had anticipated that intimate partner violence could be addressed by using exercises from the programme New Me Strength, A programme for inmates with learning difficulties to develop optimism and plan for a life free of offending as recommended by the psychologist and one-to-one work on the Integrated Domestic Abuse Programme. The present COM had said that due to her workload she had been unable to spend sufficient time with the Applicant to

carry out structured work or to have in depth discussions on relationships particularly given his needs.

26. The COM recognized that the core risk work that had been undertaken with the Applicant was limited and that there were gaps in what had been explored, but she believed that sufficient work had been done and that his risk was manageable in the community while "*essential work"* on risk was completed. She said it was difficult to carry out detailed work because of his limited recollection and other needs. She said it was a question of finding the correct approach that worked for the Applicant and that took time.

27. The COM acknowledged that the Applicant was likely to present a risk to intimate partners when sober that linked to his emotional regulation or conflict in the relationship. She assessed that the risk would be lower than when he was drinking alcohol which meant that his risk to intimate partners was greater when he had been drinking alcohol. She agreed that possessiveness and sexual jealousy might play a role in his risk to intimate partners and that the Applicant's view that he only presented a risk to intimate partners when intoxicated potentially showed a lack of insight into the nature of his risks but that this could be addressed with him.

28. The Applicant gave evidence and the panel considered that he was able to communicate well and coherently with them. When he was unsure about a question, he asked for a further explanation. He was also offered regular breaks and remained engaged. Very significantly, he believes that he only presented a risk to intimate partners when he's drinking alcohol and he does not consider himself to be a risk outside an intimate relationship, but in the opinion of the panel *"this could be addressed with him".*

29. The Applicant's evidence was that his relationship with the victim was fine unless he was experiencing a black out. He said he experienced blackouts "*nearly every day*" for several years before he committed the index offence. His evidence was that he had tried to seek help but it was not clear what steps he had taken. He explained that blackouts meant he had no memory of what had happened although to those around him he had appeared to be fine. He said that he had no recollection of being violent and abusive to the victim. He could not say whether anger about his victim having had sex with his son had been a trigger to the index offence as he "*was in a black out*". The Applicant explained that the victim had admitted to having sex with his son after his son had left. He accepted responsibility for killing the victim since "*he had woken up next to her*".

30. When asked about his reflections on his relationships more generally, the Applicant felt unable to answer the question as he has not been asked the question before. The Applicant asked for a short break to enable him to speak to his legal representative. This request was granted and on reconvening the legal rep said that the Applicant had not expected such a degree of focus on his past as the panel in 2021 had explored relationships in depth.

31. The Applicant was willing to answer further questions on relationships and he admitted that he had hit DF and that they had remained together for 5 or 6 years after his 1995 conviction. He repeated his denial that he had been violent to KC as

he was not experiencing blackouts at the time and he denied being possessive, jealous or unfaithful to her. The Applicant accused KC of being controlling and said that she controlled the money and food adding that "*she didn't cook for me in ten years*" which was inconsistent with his statement in both social care assessments that his partners had done all the cooking. The Applicant said that in addition to having relationships with DF, KC and the victim, he had also had relationships with 10 to 15 women and they had been relatively short relationships of about 1 to 2 years' duration and in his opinion, they had been problem-free. The panel was unclear why the Applicant had not been able to be more reflective about relationships in general in the light of his extensive relationship history.

32. The Applicant's COM said that the Applicant had been asked his reflections on relationships, but she felt unable to explain why the Applicant had found it difficult to answer the panel's questions. She also thought "*he might have felt overwhelmed but there was also potentially some minimization on his part*." She also thought that the Applicant's "*statement that he could not identify the triggers to his violence and abusive behaviours (sic) towards the victim all occurred in periods of blackout might be a defence mechanism*."

33. Although both the POM and the COM describe the Applicant as quite insular, he told the panel he enjoyed interacting with people, but he was "*a bit choosy*". He said while on ROR he had had proper conversations with men and women while sitting on a bench but the COM was unaware of this.

34. The Applicant told the panel that he would not be actively seeking to form an intimate relationship on release because he said he thought about the victim and the harm caused to her every day. He thought that he was ready for release.

The Applicant's Risk

35. The Applicant's Risk Management Plan (RMP) took account of a number of assessments including that:
    (a) His risk of future intimate partner violence under SARA (Spousal Assault Risk Assessment) was assessed as "*high*". The Applicant murdered his partner MM in January 2005 "*by strangling her to death with his hands".*
    (b) If the Applicant reoffended, his COM assessed him as presenting a high risk of serious harm to the public and a low risk of serious harm to currently known adults and to children.

    The Panel considered that these assessments were "*a fair reflection of [the Applicant's] risks*" after taking account of the Applicant's history of offending behaviour (both convicted and unconvicted), the nature of the index offence, his progress during his life sentence and current reports. The Panel also recorded that the Applicant has "*a significant history of intimate partner violence (much of which is unconvicted) not only in relation to the victim of the index offence but also towards previous partners*". The Panel noted that "*since his imprisonment, the Applicant's relationship skills and attitudes towards female partners are wholly untested in the community*".

36. The panel explained that the Applicant had no social support in the community and that the COM recognized that he would need support to make appropriate connections. The Applicant had limited protective factors and none were well established in the community. While the Applicant is able to identify that alcohol and intimate partners are areas of risk, he has limited insight into his risk to partners and what underpins his violent and abusive behaviour towards them.

37. The panel noted that *"[the Applicant] has expressed a motivation to comply with his license conditions and has shown compliance with the prison regime in less restrictive conditions however, his compliance record before his life sentence is very poor and it is largely untested in the community".*

The Panel' s Conclusions

38. In determining whether to order the release of the Applicant, the Panel took account of the opinion from the Applicant's POM and COM whose recommendations were to support release, his good conduct in custody, all the written evidence in the dossier and the oral evidence given at the hearing as well as the representations made on the Applicant's behalf by his legal representative advocating an order that he should be released and the nature of the index offences. The Panel then explained why the test for release was not satisfied and that was because:

    (a) The Applicant is serving a life sentence and the panel therefore was obliged to consider the management of his risks over his lifetime;
    (b) he has "*a history of intimate partner violence against previous partners, all of whom were vulnerable";*
    (c) "*despite [the Applicant's] protestations that there was no violence in [his relationship with the victim of the index offence] (although he admitted to the post-sentence [report] author that [the victim of the index offence] was the only person he has ever hit), it is clear that [the Applicant] had been violent towards [his partner who was the victim of the index offence] almost from the beginning of their relationship".*
    (d) *"Friends and relatives of the victim [of the index offence] described how violent [the Applicant] was towards her, particularly when they had both been drinking, and information from the domestic violence unit indicated there had been an escalating pattern of intimate partner violence in the relationship."*
    (e) the Applicant "*continues to deny that he was repeatedly violent towards his partner, and violent to previous partners, although at the hearing he tentatively accepted that he may not be able to recall being violent to the victim due to his reported blackouts*";
    (f) he "*minimises his convicted violence and attributes blame to his victims. He claims that the that the high incidence of police calls in relation to the victim [of the index offence] and one of his previous partners were for verbal alternations (sic) and showed limited understanding that verbal aggression represents abusive behaviour*".
    (g) The Applicant murdered his partner MM in January 2005 *"by strangling her to death with his hands*". She *"had left [the Applicant] because of his*

violence and "their debilitating and degrading lifestyle", but had returned to him a few weeks before he killed her".

(h) The sentencing judge described the Applicant's index offence as*:*
"a particularly brutal killing, set against a backdrop of regular and routine domestic violence committed by [the Applicant] against the deceased, who was much smaller than [the Applicant], and partially disabled, and culminating in this dreadful act of manual strangulation, which may well, on the evidence, have taken up to 2 minutes to execute".

(i) The Applicant said that "*he has been unable to recall much about the circumstances leading up to the index offence due to the damaging effects of serious alcohol abuse over a prolonged period, but he has admitted that he 'lost his rag' when the victim is reported to have told him that she had had sex with his teenage son."*

(j) "*Although [the Applicant] says he does not wish to pursue an intimate relationship on release, the panel is conscious that in the past he has entered into relationships very quickly and does not appear to have spent much time outside a relationship when in the community."*

(k) The Professionals agree that the Applicant's principal risk factors are intimate relationships and alcohol abuse with other risk factors including negative attitudes to women, poor conflict resolution skills and entering an intimate relationship particularly if his new partner has her own substance misuse problems.

(l) The panel considered as fair assessmen<u>ts</u>:
  (i) The assessment of the Applicant's risk of future intimate partner violence under SARA (Spousal Assault Risk Assessment) as being "*high*"; and
  (ii) the assessment of the Applicant's COM that the Applicant presented a high risk of serious harm to the public and a low risk of serious harm to currently known adults and to children.

(m) *"Since his imprisonment, [the Applicant's] relationship skills and attitudes towards female partners are wholly untested in the community*".

(n) The panel noted that *"[the Applicant] has expressed a motivation to comply with his license conditions and has shown compliance with the prison regime in less restrictive conditions, his compliance record before his life sentence is very poor and it is largely untested in the community"*.

(o) The Applicant "*has not completed any offending behaviour to address his risk of intimate partner violence*".

(p) "*No further work has been carried out to address [the Applicant's] alcohol misuse or develop a relapse prevention plan*."

(q) The Applicant "*self-referred to the substance misuse service at [a Prison] on two occasions in July 2022 [but] he decided that he did not wish to engage with the team and has had no further contact with the service*."

(r) The panel considered that the Applicant "*may be overconfident in his ability to remain abstinent given his limited testing in the community*".

(s) "*it was anticipated when [the Applicant] moved to the open estate in June 2022 that he would start to address and reduce his core risks. The Psychologist made recommendations about the areas that should be addressed on a one-to-one basis and [the Applicant's previous COM] outlined how that could be achieved using existing programs. However, limited work has been carried out and there are gaps in the understanding*

of the professionals about [the Applicant's] risk to intimate partners which the panel considers are significant."

(t) *"It is clear to the panel that the absence of core risk reduction work is evidenced by [the Applicant's] limited insight into his risk to intimate partners. While the panel accepts that there will be gaps in [the Applicant's] memory, his full relationship history, his attitudes toward women, his understanding of healthy relationships and of violence and abusive behaviour in relationships have not been explored in any depth. [The Applicant] told the panel that he had been in countless positive relationships but this had not been verified".*

(u) *"Both [the POM and the COM] believed that core risk reduction work could be undertaken in the community and that during this time [the Applicant's] risk could be undertaken in the community and during this time [the Applicant's] risk could be safely managed. The Panel does not agree".*

(v) The reasons why the Panel does not agree that the Applicant's core risk reduction work could be undertaken in the community and not in custody are that:

(i) "[the Applicant] has spent 18 years in custody and only 18 months in less restrictive conditions with limited opportunities to test his skills and emotional resilience thoroughly"

(ii) "Given [the Applicant's] victim blaming attitudes, his abusive behaviours, his level of violence in relationships, including strangulation which ultimately resulted in the death of the victim, the panel feels that it is essential that his risk to intimate partners (whether he is intoxicated or sober) is thoroughly explored and addressed while he is in custody"

(iii) "it is agreed that [the Applicant's] risk of intimate partner violence will not become imminent until he enters into a new relationship [and] given his belief that he is not a risk to intimate partners unless he is drinking alcohol, his lack of insight into his abusive behavior, and the alacrity with which he entered into a relationship with the victim, the panel is concerned that he may not be open and honest with the COM about a new relationship. Effective risk management requires a combination of both external and internal risk management strategies in parallel, and currently, it is the panel's view that [the Applicant] lacks insight and skills to control his key risk factors."

39. The Reasons in this Paragraph for the panel's conclusions will hereinafter be referred to as "the panel's paragraph 40 conclusions".

The Relevant Law

Parole Board Rules 2019 (as amended)

Irrationality

40. In **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)**, the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said 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."

41. This test was set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374**. The Divisional Court in **DSD** went on to indicate that in deciding whether a decision of the Parole Board was irrational, due deference had to be given to the expertise of the Parole Board in making decisions relating to parole. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing 'irrationality'. The fact that Rule 28 contains the same adjective as is used in judicial review shows that the same test is to be applied. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

42. Since the **DSD case**, another division of the High Court in **R (on the application of the Secretary of State for Justice) v Parole Board** [2022] EWHC 1282 (Admin) adopted a "*more modern approach*" test set out by Saini J in **Wells** [2019] EWHC 2710 (Admin) in which he stated at paragraph 32 that: -

"A more nuanced in modern public law is to test the decision-maker's ultimate conclusion against the evidence before it and to ask whether the conclusion can (with due diligence 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".

43. As was explained by Judge Topolski in **Rowland** [2024] PBRA 44, the test in **Wells** is not a different test to the Wednesbury test but as Saini J explained in **Wells** at paragraph 33 it is *"simply another way of applying the Wednesbury test."*

Procedural Unfairness

44. A party seeking to complain of procedural unfairness under Rule 28 has to establish that either
    (a) express procedures laid down by the 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 fairly; and/or
    (e) the panel was not impartial.

45. The overriding objective is to ensure that the Applicant's case was not dealt with justly.

The reply on behalf of the Respondent

46. In an email dated 8 March 2024, PPCS on behalf of the Respondent stated that no representations will be made by the Respondent in response to the application for reconsideration**.**

Discussion

47. In dealing with the grounds for reconsideration, it is necessary to stress five matters of basic importance. The first is that the reconsideration mechanism is not a process by which the judgment of the panel when assessing risk can be lightly interfered with. Nor is it a mechanism in which the member carrying out the reconsideration was entitled to substitute his view of the facts in place of those found by the panel, unless, of course, it is manifestly obvious that there was an error of fact of an egregious nature which can be shown to have directly contributed to the conclusion arrived at by the panel.

48. The second matter of material importance is that when deciding whether a decision of the panel was irrational, due deference has to be given to the expertise of the panel in making decisions relating to parole.

49. Third, where a panel arrives at a conclusion, exercising its judgment based on the evidence before it and having regard to the fact they saw and heard the witnesses, it would be inappropriate to direct that the decision be reconsidered unless it is manifestly obvious that there are compelling reasons for interfering with the decision of the panel.

50. Fourth, when considering whether to order reconsideration, appropriate weight must be given to the views of the professional witnesses, but reconsideration cannot be ordered if the panel has put forward adequate reasons for not following the views of the professional witnesses. As Judge Topolski explained in **Rowland** (supra) at paragraph 18 "*the panel's duty is clear and it is to make its own risk assessment [and] that will require a panel to test and assess the evidence and decide what evidence they accept and what evidence they reject.*"

51. Fifth, in many cases, there can be more than one decision that a panel can be entitled to arrive at depending on its view of the facts.

The Grounds

Ground 1

52. As explained in paragraph 4(i) above, this ground of procedural unfairness is based on the contention that the panel misunderstood the purpose of the move of the Applicant to open conditions as it was anticipated that when he moved there, "*he would start to address and reduce his core risks and that the primary basis for the decision to refuse to release the Applicant appeared to be that only limited work had subsequently been carried out [and] this is said to be erroneous* as there *was no core risk reduction work that the Applicant could achieve in open conditions*" . This ground cannot be accepted for each of the following reasons.

53. First, this ground fails to appreciate that the main basis for the decision to refuse to release was not, as contended by the Applicant, that after he moved to the open estate that "*only limited work has subsequently been carried out",* but instead the main basis for the panel's decision was that *"the test for release is not met".* That test for release is that the Parole Board *"will direct release if it is satisfied that it is*

no longer necessary for the protection of the public that the prisoner should be confined".

54. It is clear that the panel correctly focused on this crucial issue, which required the panel to consider as at time of the hearing before the panel what work (including core risk reduction work) had been completed by the Applicant at different times of his period in prison so as to determine whether it was no longer necessary for the protection of the public that the Applicant should continue to be confined.

55. A second reason why this ground fails is that no reason has been put forward to show why the determination of the Applicant's application for release should depend on the work carried out by him in the open estate and not on whether as at the date of the panel's decision "*it is no longer necessary for the protection of the public that the [Applicant] should be confined".* Indeed, the Applicant's case, if correct, would indicate that this latter test is no longer applicable which is not the case.

56. A third reason why this ground cannot succeed is that, as I have already explained in paragraphs 45 and 46, claims for procedural unfairness are dependent on showing that the Applicant's case was not dealt with justly. I do not consider that anything has been established which shows that the Applicant's case was not dealt with justly particularly bearing in mind that it is necessary that his risk to intimate partners is thoroughly explored in custody because as the panel clearly explained in emphatic terms that:

> *"Given [the Applicant's] victim blaming attitudes, his abusive behaviours, his level of violence in relationships, including strangulation which ultimately resulted in the death of the victim, the panel feels that it is essential that his risk to intimate partners (whether he is intoxicated or sober) is thoroughly explored and address while he is in custody."*

57. Finally, a fourth reason why this ground fails is that it is settled law that when deciding whether a decision of the panel was irrational or procedurally unfair, due deference has to be given to the expertise of the panel in making decisions relating to parole. So if, which is not the case, I had any doubts whether the conclusions of the Panel or any of them set out in the preceding paragraph were procedurally unfair, my judicial duty to show deference to the Decision of the Panel would have meant that my conclusion would have been that the Panel was entitled to reach those conclusions and that they were not procedurally unfair.

Ground 2

58. This ground, which is explained in more detail in paragraph 4(b) above, is that the decision was irrational not merely because of the matters set out in Ground 1, but also because of other matters relating to the Applicant's attitude to alcohol including that:
    (a) it was wrongly stated that the Applicant was "*overconfident about his ability to avoid relapse into alcohol use*";
    (b) it was irrational and contradictory for the Panel to state that the Applicant "*is not keen to talk about his alcohol abuse*" and he lacks insight;

(c) the Applicant did not lack insight and he had abstained from alcohol for *"a sustained and significant period"*, that he had read for 10 years and frequently reread the "12 steps book" and that he had attended AA meetings "*albeit less frequently because he does not like listening to stories about alcohol*";
(d) the Applicant is said to be "*absolutely resolute in his intentions to abstain from alcohol in the future*" and is "*unequivocal that alcohol is his primary risk factor*";
(e) he "*has had to deal with unsettling situations in which he has consistently demonstrated an ability to abstain"* particularly when in custody and that;
(f) "*a further period in open conditions cannot test him any more than he has already been tested for two years [so] there is nothing further that the Applicant can do to evidence his abstinence or core risk reduction work so that [the Applicant] will be unable to demonstrate to any future panel any different evidence to that he has already demonstrated*".

59. I will hereinafter refer to the matters set out in sub-paragraphs (a) to (f) above as "alcohol issues".

60. I will deal first with the ground of irrationality based on the alcohol issues in paragraph 54 and will then comment on the irrationality matters in the Ground 1 issues in paragraph 60 below.

The Alcohol Issues

61. It is contended that the panel erred in concluding that the panel "*was overconfident about his ability to avoid relapse into alcohol use"* if released in the light of the facts that while in custody he had abstained from using alcohol "f*or a sustained and significant period*" and he was said to be "absolutely *resolute in his intentions to abstain from alcohol in the future".* In other words, the task for the panel was to ascertain what the Applicant's attitude would be to using alcohol if released when alcohol would be more readily available than it has been when he has been in custody and where he would be subject to much less supervision than when he was in custody.

62. The panel having heard the Applicant give evidence was entitled to conclude after taking account of the Applicant's abstention from alcohol and good behaviour in custody and the alcohol issues set out in paragraph 55 above that:

(a) "*Since his imprisonment, [the Applicant's] relationship skills and attitudes towards female partners are wholly untested in the community*".
(b) "[*the Applicant] has expressed a motivation to comply with his license conditions and has shown compliance with the prison regime in less restrictive conditions, his compliance record before his life sentence is very poor and it is largely untested in the community*".
(c) The Applicant "*has not completed any offending behaviour to address his risk of intimate partner violence*", and "*No further work has been carried out to address [the Applicant's] alcohol misuse or develop a relapse prevention plan."*
(d) The Applicant "*self-referred to the substance misuse service at [a Prison] on two occasions in July 2022 [but] he decided that he did not wish to engage with the team and has had no further contact with the service*."

(e) "*it is agreed that [the Applicant's] risk of intimate partner violence will not become imminent until he enters into a new relationship [and] given his belief that he is not a risk to intimate partners unless he is drinking alcohol, his lack of insight into his abusive behaviour, and the alacrity with which he entered into a relationship with the victim, the panel is concerned that he may not be open and honest with the COM about a new relationship*"
(f) "*friends and relatives of the victim [of the index offence had] described how violent [the Applicant] was towards her, particularly when they had both been drinking, and information from the domestic violence unit indicated there had been an escalating pattern of intimate partner violence in the relationship".*
(g) That even though the Applicant might be resolute in his intentions to abstain from alcohol in the future, he is "*not keen to talk about alcohol misuse and has declined to engage with the substance misuse service to consolidate his learning and develop a relapse prevention plan*".
(h) "[*the Applicant] lacks the insight and skills to control his key risk factors*" which obviously includes the use of violence on intimate partners and that as stated in the assessment, which is set out in paragraph 40 (l) above the Applicant poses a high risk of future intimate partner violence under SARA.
(i) The Applicant "*was overconfident about his ability to avoid relapsing into alcohol use*" in the light of the facts set out above and the test for release was not satisfied.

63. Further or alternative reasons why the Panel was entitled to reach these conclusions in the preceding paragraph and to find the test for release was not satisfied are that:

(a) it has not been shown that the decision not to release the Applicant or that any of the conclusions set out in the preceding paragraph 62 reach the threshold for a finding of irrationality as explained in paragraph 41 above as being *"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."*; and/or
(b) the Panel had arrived at the conclusions in its Decision set out in the preceding paragraph and indeed all its conclusions in the Decision after exercising its judgment based on the evidence before it and having seen and heard the witnesses. In those circumstances, it would be inappropriate to direct the decision to be reconsidered unless it was manifestly obvious that there were compelling reasons for interfering with the decision of the panel. No such compelling grounds have been pleaded or established; and/or
(c) it is settled law that when deciding whether a decision of the panel was irrational, due deference has to be given to the expertise of the panel in making decisions relating to parole. So if, which is not the case, I had any doubts whether the conclusions of the Panel or any of them set out in the preceding paragraph were irrational or procedurally unfair, my judicial duty to show deference to the Decision of the Panel would have meant that my conclusion would have been that the Panel was entitled to reach those conclusions.

The Ground 1 Irrationality Issues in Ground 2

64. First in relation to the Applicant's case of irrationality in Ground 2 based on the grounds set out in Ground 1, this claim cannot succeed for essentially the reasons

why Ground 1 cannot succeed including that a crucial reason for not releasing the Applicant was because of the panel was not satisfied *"that it is no longer necessary for the protection of the public that the prisoner should be confined"*.

65. Second, the Panel was entitled to find the test for release was not satisfied and it has not been shown that the release decision irrational as being *"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."*

66. Further or alternative reasons why this claim for irrationality fails are because:

(a) The Panel had arrived at all its conclusions in the Decision after exercising its judgment based on the evidence before it and having seen and heard the witnesses. In those circumstances, it would be inappropriate to direct the decision to be reconsidered unless it was manifestly obvious that there were compelling reasons for interfering with the decision of the panel. No such compelling grounds have been pleaded or established; and/or because

(b) It is settled law that when deciding whether a decision of the panel was irrational, due deference has to be given to the expertise of the panel in making decisions relating to parole. So if, which is not the case, I had any doubts whether the conclusions of the Panel or any of them set out in the preceding paragraph were irrational, my judicial duty to show deference to the Decision of the Panel would have meant that I would have found that the Panel was entitled to reach those conclusions.

Decision

67. For the reasons I have given, the application for reconsideration is refused.

Sir Stephen Silber
22 March 2024