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[2025] PBRA 34

Application for Reconsideration by Huntley

Application

1. This is an application by Huntley (the Applicant) for reconsideration of a decision of an oral hearing dated 13 January 2025 not to direct release.

2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2024) (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 Decision Letter (DL)
   - Reconsideration Representations dated 23 January 2025, prepared by the Applicant's legal representative
   - The dossier, which currently consists of 845 numbered pages, ending with the Decision Letter

Request for Reconsideration

4. The grounds for seeking reconsideration are lengthy, ill-organised and repetitive. I will do my best to set them out in a way which enables clear analysis:

   Issue (1): The relationship with the "on/off partner" SC

   (a) The panel failed to give proper consideration to the evidence about the Applicant's actions over the last 18 months, which ought to have satisfied it that this was an area of risk that could be managed;
   (b) The panel noted evidence that the Applicant had tried to end the relationship several times. It is not clear where that evidence is to be found.

Issue (2): Openness

The panel failed to give proper consideration to evidence that since he began the high intensity programme which he completed in December 2023 the Applicant has been open with professionals.

Issue (3): The adequacy of the Risk Management Plan (RMP), and specifically the lack of a firm proposal for move-on after a period of 12 weeks in hostel accommodation

(a) The panel failed to take sufficient account of the evidence of the Community Offender Manager (COM) that she would seek supported accommodation, which could potentially be rejected because the Applicant has a conviction for arson, she would hope an appeal; would be successful. If it was unsuccessful, the Applicant's sister's address was another potential move-on;
(b) If the panel felt this should have been clarified, it should have indicated that an adjournment might be appropriate.

Issue (4): The panel placed reliance on security information in the dossier which suggested that the Applicant had in the past been involved in the drug economy in the prison, and on information that was considered by security to be "*realistically true*" that he still was, to find that the Applicant was not being open and honest with the panel

(a) There was no evidence to support those suggestions;
(b) The panel placed too much weight on unsubstantiated intelligence, not of high reliability, to make a finding as to the Applicant's openness and honesty.

Issue (5): "*The decision has failed fully to take account of key bits of evidence that professionals had made clear during the hearing. It is clear that evidence has been taken out of context and misinterpreted.*"
I assume that what follows is intended to provide particulars of this sweeping proposition.

(a) The panel was concerned that it is not known how the Applicant would cope with any transition, nor if he would seek to do so through using substances or via his relationship with SC. It is not clear what the concerns are;
(b) The panel had open conditions in mind throughout the hearing, although they did not form part of the Respondent Secretary of State's reference.

Issue (6): The panel's decision was against the weight of the evidence.

(a) All the witnesses supported release;
(b) If the panel had considered the evidence and not ignored it, it would have directed release. The decision is therefore procedurally unfair;
(c) The panel focused on the Applicant's past, not on his progression.

Background

5. The Applicant is now 41 years old. In 2016, when he was 33, he received an extended determinate sentence of 12 years' imprisonment with an extended licence period of 4 years for offences of rape and assault occasioning actual bodily harm. His parole eligibility date was in February 2024. His conditional release date is in February 2028. His sentence expiry date is in February 2032. The victim of the offences was his partner. Their relationship had, almost from the beginning 14 months before, involved violence, humiliation and controlling behaviour by the Applicant. The Applicant admitted assaulting the victim, but denied raping her or kicking her private parts. He maintains these denials. He has a lengthy record, mainly for acquisitive offending and driving, but including offences of battery and harassment against a previous partner. He told the panel that he had assaulted his previous partner quite a few times. He has numerous convictions for non-compliance with court orders.

Current parole review

6. The Respondent referred the Applicant's case to the Parole Board on 23 May 2023 for consideration of release. The panel, consisting of three independent members of the Board, heard the case remotely on 8 January 2025.

7. The panel considered a dossier containing 812 pages, to which were later added details of the Applicant's call log and closing submissions by his representative. The panel heard evidence from the prison-based psychologist, the Prison Offender Manager (POM), the COM, and the Applicant. The Applicant was represented throughout. His representative asked questions of the witnesses, including the Applicant, and made closing submissions in writing.

The Relevant Law

8. The panel correctly sets out in its decision letter 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. This decision not to release is an eligible decision. The extended sentence is eligible for reconsideration.

Irrationality

10. 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.

11. In **R(DSD and others) -v- the Parole Board** 2018 EWHC 694 (Admin) (*Worboys*) 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."*

12. 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).

13. 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.

14. 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.

15. 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

16. 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 focuses on the actual decision.

17. 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.

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

19. It is possible to argue that mistakes in findings of fact made by a decision maker result in the final decision being irrational, but the mistake of fact must be fundamental. The case of **E v Secretary of State for the Home Department** [2004] QB 1044 sets out the preconditions for such a conclusion: "*there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter; the fact or evidence must have been "established", in the sense that it was uncontentious and objectively verifiable; the appellant (or his advisors) must not have been responsible for the mistake; and the mistake must have played a material (though not necessarily decisive) part in the tribunal's reasoning.*" See also **R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions** [2003] AC 295, which said that in order to establish that there was a demonstrable mistake of fact in the decision of the panel, an Applicant will have to provide "*objectively verifiable evidence*" of what is asserted to be the true picture.

20. 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.*"

Reconsideration as a discretionary remedy

21. 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 Secretary of State (the Respondent)

22. The Respondent has indicated that she does not wish to respond to this application.

Discussion

23. It is important to bear in mind that, as is the case with any panel, this panel's ultimate decision was based on a number of factors and a holistic view of the evidence, resulting in a 'yes or no' answer to the fundamental question, whether it is no longer necessary for the protection of the public that the prisoner remain confined. The Application does not mention the first of the grounds the panel gave for its answer to that question, namely, that it is indeed necessary that the Applicant remain confined: the Applicant has always denied the rape; he does not evidence

any insight into sexual violence; he committed the index offences after completing a programme directed at healthy relationships; accordingly, the panel considered there to be minimal evidence that his risk of sexual violence has decreased since the index offence, notwithstanding his completion of the high intensity programme referred to above. That finding, which is not challenged, is itself sufficient to justify the panel's decision not to direct release.

24.I will discuss the grounds for this application as I have set them out above.

25. Issue (1): The relationship with SC

(a) Bearing in mind the nature of, and background to, the index offences, and the previous history of intimate partner violence, this was plainly a proper matter of concern for the panel.

(b) SC is considered to be a vulnerable female who has mental health issues. Throughout 2022 and 2023 the Applicant's calls with SC were monitored due to concerns about abusive behaviour on the part of the Applicant. Those concerns were not fanciful. He made a very large number of calls to SC, in excess of 15 a day. The logs of those calls evidenced numerous examples of the Applicant attempting to manipulate, gaslight and control SC over a sustained period of time. On 13 April 2023 SC requested a no-contact for herself and her son. She asked for contact to be reinstated on 4 May 2023.

(c) At some point SC's daughter became aware of the Applicant's offending and asked SC to end the relationship. In January 2023 children's social care became involved. Support for the Applicant to have contact with the children was withdrawn.

(d) The panel noted that over recent months the number of calls between the Applicant and SC had reduced, and there has been no intelligence to suggest that he has resumed his abusive behaviour. The calls were ongoing when the Applicant was completing the high intensity programme mentioned above, the number of calls sometimes exceeding 40 a day.

(e) In November 2024 the Applicant told the psychologist that he had had a video visit with SC during which he told her he did not want to be in a relationship with her. Since then he has continued frequent contact with her: in October 2024 46 calls, in November 9, and in December 2024 45, all but 10 being in the first two weeks of the month. Several of the December calls lasted up to an hour. He last spoke to her on 10 December 2024 for 6 minutes. Since the call-monitoring stopped the content of the calls is not known.

(f) The Applicant told the panel that he had decided to let the relationship go in August 2024. He accepted that the relationship with SC could be a risk factor.

(g) The POM said the relationship was no longer on-going. She said the Applicant had been thinking about ending the relationship for some time. The COM said it was likely he would resume the relationship if released, due to him needing support coping with life in the community.

(h) The panel was understandably concerned about this relationship. Its discussion of this aspect of the case takes up 3 pages of the DL. The panel's conclusions about the relevance of the relationship to risk and risk management are set out in detail at Paragraph 4.2.2. of the DL. The panel accepted the psychologist's view that, if there were stress in the relationship, the Applicant could resort to "*old me*" behaviours very quickly. The Applicant accepted that he was concerned about the potential stress of release and that

there were risks within a relationship, including the potential for him to be overwhelmed.

(i) The panel's conclusions on this aspect of the case were justified on consideration of the whole of the evidence, and not irrational.

26. Issue (2): Openness

The panel acknowledged the evidence that the Applicant had made good progress with regard to self-disclosure, openness and honesty. The panel questioned how far he was open and honest with the panel in the light of the security information about drugs, which I discuss below. The question of openness was only a part of the panel's decision-making process.

27. Issue (3): The adequacy of the Risk Management Plan

(a) The panel's conclusion that the lack of any clear proposals for the Applicant's accommodation after 12 weeks in a hostel was a weakness in the RMP is one to which it was entitled to come on the evidence. The Application refers to evidence from the COM that move-on accommodation would be sought, that it could potentially be rejected, but she hoped that an appeal would be successful. A potential move-on to a relative's address was also mentioned. That evidence demonstrates that there was a lack of clear proposals for move-on accommodation.

(b) There is no suggestion that the Applicant's legal representative asked the panel to consider an adjournment to remedy any perceived weakness in the RMP. The Submissions make no reference to any such possibility. It cannot be irrational or procedurally unfair for a panel not to grant an application for an adjournment that was never made.

28. Issue (4): Reliance placed on security information

(a) The security information from 2023 referred to by the panel is set out in a report from the POM who gave evidence, and the panel was therefore able to explore it, at least to a degree. The more recent intelligence for November 2024 only appears in brief reports.

(b) These were unproven allegations, which fell to be dealt with by the panel in accordance with the decision of the Supreme Court in *R (Pearce) v Parole Board and another* [2023] UKSC 13. The Applicant's legal representative did not assist the panel by referring to that decision in her Submissions. Nor does she do so in the Application.

(c) The Supreme Court summarised its conclusions at Paragraph 87:

i. There is no general legal rule that in making a risk assessment the Board must adopt a two-stage process of making findings of fact on the balance of probabilities and then treating only those matters on which it has made findings of fact as relevant to the assessment of risk.

ii. The Board's task is to address whether the safety of members of the public requires that the prisoner should remain confined. In so doing, the Board must have regard to the consequences of its decision on the interests of the prisoner, and the hardship he may suffer if he no longer needs to be confined in order to protect the public.

iii. There is no rule of substantive fairness, akin to a legitimate expectation, which requires the Board to have regard only to found facts in its assessment of risk.

iv. What procedural fairness requires of the Board in its impartial performance of its statutory remit is determined by the statutory terms of that remit and the wider legal context of the common law.

v. If weight is to be given to an allegation of criminal or other misbehaviour in the risk assessment, the Board should first attempt to investigate the facts to enable it to make findings on the truthfulness of the allegation. If, as may often be the case despite its efforts to obtain the needed information, the Board is not able to make such a finding, it should investigate the facts to make findings as to the surrounding circumstances of the allegation which may or may not point to behaviour by the prisoner which is relevant to the assessment of risk.

vi. In some circumstances, however, the Board may not be able to make findings of fact as to the truth of an allegation either because of an inability to obtain sufficiently reliable evidence or because it would be unfair to expect the prisoner to give an answer to the allegation when he is facing criminal or prison disciplinary proceedings in relation to that allegation.

vii. In such circumstances the Board, having regard to public safety, may take into account the allegation or allegations and give it or them such weight as it considers appropriate in a holistic assessment of all the information before it, where it is concerned that there is a serious possibility that those allegations may be true. But the Board must proceed with considerable caution in this exercise because of the consequences of its decision on the prisoner. Procedural fairness requires the Board to give the prisoner the opportunity to make submissions about how the Board ought to proceed. There may be circumstances where, because of the inadequacy of the information available to the Board, it concludes that it should not take account of an allegation at all. There may also be circumstances where the information is less than would be desired but the allegation causes sufficient concern as to risk that the Board treats it as relevant. Its assessment of the

weight to be attached to an allegation is subject to the constraints of public law rationality.

viii. Thus, a failure to make findings of fact where it was reasonably practicable to do so or an irrational reliance on insubstantial allegations could be a ground of a successful public law challenge.

(d) Had the panel had the benefit of a reference to this authority, it would very probably have expressed its approach to these allegations differently. Having set out the evidence at Paragraph 2.21. of the DL, the panel went on at Paragraph 4.2.4. to conclude that on the balance of probabilities the Applicant was previously involved in dealing spice in the prison. The panel found that very recent intelligence linking him again with such behaviour is of concern, as it was considered by security to be "*realistically true*." The panel then said that the Applicant's history and denial of ever being involved in such behaviour casts significant doubt on the Applicant's openness and honesty at this time.

(e) It may be that not every panel would consider that security information in this form was sufficient to enable any strong conclusions to be drawn from it. However, I cannot find that this panel's decision to make the findings it did is one that no reasonable panel properly directing itself on the evidence could come to. The finding complained of was not, therefore, irrational in the sense discussed above.

(f) Even if I am wrong about this, it is apparent that the panel's findings in this point were a part only, and by no means a decisive part, of its reasoning. Bearing in mind the points I made at Paragraph 23 above, even were I to find this element of the decision irrational as defined, I would exercise my discretion not to grant reconsideration. The panel's overall decision is amply justified by its findings about the absence of evidence of a diminution in the risk of sexual violence and its proper concerns about the relationship with SC.

29. Issue (5): Transition and the question of open conditions

(a) The panel accurately pointed out that the Applicant has never been tested in less secure conditions and it is not known how he would cope with any transition.

(b) The referral did not request consideration of a recommendation for open conditions. It was therefore unnecessary for the panel to give any thought to open conditions. If it did so, it had no effect on the rationality or fairness of the proceedings, and I cannot find anything in the Application that suggests that it did.

30. Issue (6): The weight of the evidence

It is for the panel to decide what weight it gives to any part of the evidence. As I have explained above, it is also for the panel to decide whether to agree or disagree

with any or all of the witnesses, provided the panel explains its reasons. This panel did so.

31. For the reasons I have set out, I have come to the conclusion that the panel's decision not to direct release was neither irrational nor the result of any procedural unfairness.

Decision

32. The application for reconsideration is refused.

HH Patrick Thomas KC
11 February 2025