

[2024] PBRA 108**Application for Reconsideration by Laidlaw****Application**

1. This is an application by Laidlaw (the Applicant) for reconsideration of a decision of a panel of the Parole Board who on 11 April 2024, after an oral hearing on 9 April 2024, issued a decision not to direct release but to recommend a transfer to open conditions.
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 840 pages including the oral decision letter.

Request for Reconsideration

4. The application for reconsideration is dated 7 May 2024.
5. The grounds for seeking a reconsideration are that the decision is irrational in its analysis of risk and procedurally unfair in refusing to grant an adjournment to obtain additional evidence. These submissions are supplemented by written arguments to which reference will be made in the Discussion section below.

Background

6. The Applicant received a sentence of life imprisonment on 23 February 2007 for offences of three counts of attempted murder, possession of a firearm with intent to endanger life and possession of a firearm when prohibited for life. The tariff was set at 15 years less time spent on remand and expired on 28 May 2021.
7. The Applicant was 24 years old at the time of sentencing and is now 41 years old. This is his second parole review.

Current parole review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in January 2023 to consider whether or not it would be appropriate to direct his release. On 27 July 2023 the case was directed to oral hearing by a single member, Member Case Assessment (MCA) panel.

The Relevant Law

9. The panel correctly sets out in its decision letter dated 11 April 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)

10. 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)).
11. 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)).
12. 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

13. 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.
14. 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.*"
15. In *R(on the application of Wells) -v- Parole Board* 2019 EWHC 2710 (Admin) 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).

16. 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.
17. 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.
18. 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

19. 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.
20. 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.
21. The overriding objective is to ensure that the Applicant's case was dealt with justly.
22. Reconsideration is a discretionary remedy. That means that, even if an error of law, irrationality, or procedural unfairness is established, the Reconsideration Member considering the case is not obliged to direct reconsideration of the panel's decision. The Reconsideration Member can decline to make such a direction having taken into account the particular circumstances of the case, the potential for a different decision to be reached by a new panel, and any delay caused by a grant of reconsideration. That discretion must of course be exercised in a way which is fair to both parties.

The reply on behalf of the Respondent

23. The Respondent has offered no representations in response to this application.



Discussion

24. The Applicant submits that the panel was unfair in refusing to grant an adjournment in order to obtain the minutes of the MAPPA meeting and submits that no reasons were given for that decision. The Applicant disputed that he had been told not to have contact with the female described as "N" or "NF" and that the information presented at the hearing that he should not have contact with N had meant that he was ambushed at the hearing. He submits that contrary to her evidence at the hearing, the Community Offender Manager (COM) was aware of his contact with N and an adjournment to obtain the minutes would have informed the decision as to whether he was aware of the prohibition on contact and whether he purposely disregarded the instructions of the Prison Offender Manager (POM).
25. It is not correct to say, as the Applicant does in his application, that the panel gave no reason for its refusal. The decision letter clearly gives a reason, at paragraph 2.3 "*[an adjournment for the minutes] would not confirm whether or not he had been told, just what the decision about the matter had been, and the panel did not consider it necessary to adjourn for the information*". Even if the panel had granted an adjournment, whatever the minutes said, the panel was satisfied that the COM had told the Applicant not to have contact with N. There was therefore no necessity for an adjournment. An adjournment to obtain the minutes would have made no difference to the decision, the important consideration being whether the Applicant had been told not to have contact with N and the panel accepted that he had been told.
26. The Applicant's representative raises a further concern which does not appear to have been raised at the hearing. That is the apparent discrepancy between the account given by the COM at the hearing as to whether she was aware of the Applicant's continued contact with N. The COM is reported (paragraph 2.3) to have said that she was not aware until the hearing that the Applicant continued to call and meet N on escorted leave, the COM was said to be shocked by this information. However, the decision of the previous panel in August 2022 (at page 326 of the dossier) records that the Applicant said that he was not supervised closely on the releases although staff were nearby and on occasion, he met N. The COM was at that hearing and would have heard the response and would have read the decision letter afterwards. She does not appear to have raised that particular concern at the first review hearing and since she was not challenged on this discrepancy during the recent hearing she provides no explanation for it. It is said that she advised the Applicant not to contact N, however it is not clear from the decision when this advice was given or whether it was given before or after the Applicant was meeting N on the escorted visits.
27. I have carefully considered whether to allow the application on the basis of this discrepancy in the COM's evidence, but taking into account all the matters considered in the decision I do not do so. The Applicant was legally represented in the hearing, and it is to be expected that the representative would deal with the questioning of witnesses and raise any differences in their account at the hearing, rather than through the reconsideration mechanism after the event. The decision does not rely solely or even mainly on this discrepancy.



28. Whilst the Applicant argues that the panel put undue weight on the flawed evidence of the COM, that is not reflected in the decision letter. It is clear that the panel's decision is based on many factors and reliance on this aspect of the COM's account is only one of the factors. Other reasons the panel gave were not dependent on the COM and were sufficient by themselves to support the panel's conclusion. The panel did not agree that the escorted leaves from National Top End made the Applicant ready for release and considered that he needed to be properly tested, without which his risk of harm could not be safely managed in the community.
29. For those reasons I am satisfied that there was no procedural unfairness in the proceedings.
30. The second ground raised is irrationality. The Applicant's representative submits that the panel disregarded without adequate reasons the opinions of the professionals recommending release and considered that the Applicant had not been tested in the community. The panel did not disregard the opinion of the professionals, the panel acknowledged the work that the Applicant had completed and took into account the recommendations of the professionals. However, the panel noted that the Applicant lacked insight into his personality traits and had not been fully tested in the community. As the panel stated, (paragraph 4.3) "*There is a marked difference between being tested on escorted shopping trips and spending longer times in the community either through employment or on overnight resettlement leaves*". The decision is reasoned and the conclusion based on the matters presented to the panel was one open to the panel. The grounds amount to an attempt to seek to re-argue matters already considered in order to secure a different conclusion. I am satisfied that there was no irrationality in the decision.

Decision

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

Barbara Mensah
03 June 2024

