

[2024] PBRA 248

Application for Reconsideration by Clay

Application

1. This is an application by Clay (the Applicant) for reconsideration of a decision made by a panel member dated 15 October 2024 not to terminate the licence imposed upon him in connection with a sentence of imprisonment for public protection (IPP).
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 decision dated 15 October 2024, the application produced by the Applicant's legal representative and the dossier of 121 pages.

Request for Reconsideration

4. The application for reconsideration is dated 13 November 2024. The application submits that the decision is irrational as the Applicant will remain on licence in respect of further offences until 2026. The application places emphasis on the future changes in respect of IPP licences and on the fact that the Applicant remained in the community for 6 years before recall.

Background

5. On 19 August 2008 the Applicant received a sentence of imprisonment for public protection (IPP) following his conviction for attempted murder and possession of a firearm with intent to endanger life. The Applicant was aged 22 years at the time of sentence. The tariff expiry was set as 4 years and 112 days and he was first released on 18 August 2014. He was recalled in July 2019 and sentenced to 66 months imprisonment for possession with intent to supply cocaine and dangerous driving. He was re-released in February 2024. He is currently in the community.

Current parole review

6. The Applicant submitted legal representations dated 5 August 2024 and a personal letter in support of his application for termination. Both those documents provided reasons as to why the IPP licence should be terminated.



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7. On 15 October 2024, having considered all the documents presented, a duty member of the Parole Board decided not to terminate the IPP licence.

The Relevant Law

8. The panel correctly sets out in its decision letter dated 15 October 2024 the test for licence termination.

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. 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)).
10. [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)).]

Irrationality

11. 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.
12. 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.*"
13. 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).



14. 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.
15. 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.
16. 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.

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

17. The Respondent confirmed that no submissions would be provided in response to this application.

Discussion

18. The application sets out the Applicant's history on the IPP licence and notes that if the IPP licence is terminated he will remain on licence in respect of his subsequent offending until May 2026. The Applicant submits that the decision is irrational.
19. The panel member considered the correct test and considered all the matters raised in the application. The panel member noted the Applicant's period in the community but concluded that the Applicant posed a continuing risk and that eight months of supervision (the period he had been in the community since release) was not adequate to support a conclusion that the licence should be terminated. This was a conclusion soundly based on the evidence before the panel. It was not necessary and would have been unfair and wrong for the panel member to consider provisions not yet in force.
20. The test for irrationality, as set out above is a high one. Having considered the decision carefully I am satisfied that there was no irrationality in the reasoning or the conclusions reached. The application is in effect an attempt to re-argue matters already carefully, fairly and accurately considered by the panel.

Decision

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

Barbara Mensah
16 December 2024



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