the Parole Board
working with others to protect the public

[2025] PBRA 19

Application for Reconsideration by Jarral

Application

1. This is an application by Jarral (the Applicant) for reconsideration of a decision of an Oral Hearing Panel (OHP) dated 16 December 2024. The decision of the panel was not to direct release, but to recommend a transfer to an open prison.

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 dossier now consisting of 595 pages, the panel decision, the application for reconsideration drafted by the Applicant's legal adviser and the representations by the Secretary of State (the Respondent).

Request for Reconsideration

4. The application for reconsideration is dated 6 January 2025.

5. The grounds for seeking a reconsideration are as set out below.

Background

6. The Applicant is serving a sentence of imprisonment for public protection. He was sentenced on the 10 July 2007. The minimum term set by the court was 30 months. The index offence was robbery. The Applicant stabbed two victims in the course of attempting to rob one of them of a handbag in the street. The Applicant was accompanied by a co defendant. The Sentencing Judge described the index offending as a "*vicious and cowardly attack upon women at night in the city centre*". The Applicant was on licence when the offence was committed. He was 29 years old when sentenced. He has been recalled to prison in breach of his licence on seven occasions. In 2013, 2014, 2017, 2019, 2019, 2021, and 2024.

Current parole review

7. The panel were considering a referral from the Respondent and were requested to consider whether to direct release or in the alternative recommend progression to an open prison. The Applicant was aged 46 at the time of the Oral Hearing (OH).

8. The OH was conducted on 13 December 2024. The parole panel consisted of an independent chair of the Parole Board and a further independent member of the board. The panel heard evidence from a Prison Offender Manager (POM) and a Community Offender Manager (COM). The Applicant gave evidence. The Applicant was legally represented.

The Relevant Law

9. The panel correctly sets out in its decision letter dated 16 December 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.

Error of law

22. An administrative decision is unlawful under the broad heading of illegality if the panel:
    a) misinterprets a legal instrument relevant to the function being performed;
    b) has no legal authority to make the decision;
    c) fails to fulfil a legal duty;

d) exercises discretionary power for an extraneous purpose;
e) takes into account irrelevant considerations or fails to take account of relevant considerations; and/or
f) improperly delegates decision-making power.

23. The task in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the panel. The instrument will normally be the Parole Board Rules, but it may also be an enunciated policy, or some other common law power.

Other

24. The test to be applied when considering the question of transfer to open conditions is the subject of a well-established line of authorities going back to **R (Hill) v Parole Board [2011] EWHC 809 (Admin)** and including **R (Rowe) v Parole Board [2013] EWHC 3838 (Admin), R (Hutt) v Parole Board [2018] EWHC 1041 (Admin)**. The test for transfer to open conditions is different from the test for release on licence and the two decisions must be approached separately and the correct test applied in each case. The panel must identify the factors which have led it to make its decision. The four factors the panel must take into account when applying the test are:

(a) the progress of the prisoner in addressing and reducing their risk;
(b) the likeliness of the prisoner to comply with conditions of temporary release
(c) the likeliness of the prisoner absconding; and
(d) the benefit the prisoner is likely to derive from open conditions.

25. 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

26. 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

27. The Respondent offered no representations.

Grounds and Discussion

Ground 1

28. It is submitted by the Applicant's legal adviser that the test for recall had not been met. The inference being that the panel erred in finding that the recall was appropriate.

Discussion

29. Although panels of the Parole Board are required (**Calder [2015] EWCA Civ 1050**) to consider whether the recall of a prisoner was appropriate. The requirement is not amendable to the reconsideration process. In any particular case, the panel may consider the evidence surrounding the recall in reaching its decision concerning risk and release, however the appropriateness of any recall is a separate consideration to the test for release and not governed by the rules relating to parole reconsideration.

Ground 2

30. It is submitted by the Applicant's legal adviser that the panel placed "*too much weight*" on the taking of drugs by the Applicant and did not properly consider the collateral evidence including the non-commission of criminal offences.

Discussion

31. In the panel's decision, the identified risk factors relating to the Applicant were recorded as follows:

32. "*After considering all of the evidence that it read and heard, the panel identified risk factors associated with the risk of further offending and of causing serious harm as including: a willingness to use violence and weapons; substance misuse; offending for financial gain; poor decision making and consequential thinking skills; attitudes; lifestyle; lack of responsibility taking; and a lack of victim empathy.*"

33. The evidential basis for these risk factors was sound, the index offence in this case which amounted to street robberies and the use of a knife were recorded as being committed while under the influence of drink and drugs. Prior to the index offending the Applicant had been convicted of an earlier robbery and dwelling house burglaries.

34. The Applicant had been recalled since receiving the sentence of imprisonment for public protection on seven earlier occasions. The majority of the recalls related to misuse of substances and behaviour associated with substance misuse.

35. The current recall also occurred in circumstances where the Applicant had been recalled because of the use of crack cocaine and heroin.

36. The panel's duty in assessing the Applicant was to consider risk. In the light of the history of offending and the Applicant's risk factors, I do not determine that the panel's concerns about drug misuse were unfair or unreasonable. There were clear associations between drug misuse and criminal behaviour in the past. The panel

were justified in determining that concerns about drug misuse were sufficient to conclude that the test for release was not met. In the circumstances therefore I do not conclude that the panel's decision not to direct release was irrational, in the sense set out above.

Ground 3

37. It is submitted, on behalf of the Applicant, that an issue relating to GPS tracking data (raised during the OH) was misleading as there was nothing within the Applicant's licence conditions that suggested that he was prevented from going out with his brother and driving at night.

Discussion

38. Although the panel were concerned about the evidence that the Applicant had been recorded as driving to various parts of a Midlands city in the early hours of a number of mornings, this ground does not carry weight because the panel made it clear that they made no finding in relation to the evidence of late-night journeys and therefore it did not affect their decision.

Ground 4

39. It is submitted that the panel had insufficient evidence to conclude that risk was not manageable in the community.

Discussion

40. The panel had the advantage of an extensive dossier of reports and other material. They had the advantage, too, of seeing and hearing the Applicant as well as the witnesses. The Applicant was also legally represented throughout. Where a panel arrives at a conclusion, exercising its judgement based on the evidence before it and having regard to the fact that 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.

41. The Reconsideration Mechanism is not a process whereby the judgement of a panel when assessing risk can be lightly interfered with. Nor is it a mechanism where I should be expected to substitute my view of the facts as 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.

42. At paragraph 4.4 of the panel's decision, the panel set out the reasons why they had concluded that the Applicant's risk could not be managed in the community. The panel found that the Applicant minimised his drug misuse and placed the blame on others for his behaviour. The panel concluded that the Applicant showed very little evidence of personal responsibility taking. The Applicant offered little in the way of suggestions as to how things may be different (if he were released), in the future in terms of drug misuse and behaviour on licence. The panel indicated that they placed significant weight upon the repeated recalls for substance misuse and

poor compliance and that they adopted concerns regarding risk raised by the POM and COM. The panel concluded that if directed for release, at the time of the hearing, the Applicant would inevitably return to substance misuse which would raise the risk of serious harm in the community. I am therefore not persuaded that the decision of the panel was irrational. The panel explained clearly the reason for its decision. The reasons were supported by evidence.

Ground 5

43. It is submitted on behalf of the Applicant that the panel "*had insufficient evidence to conclude that risk was not manageable in the community*" and should have adjourned to clarify points raised in cross-examination. Not to do so, it is submitted was procedurally improper.

Discussion

44. The panel noted that it had considered whether to adjourn to receive confirmation about a possible placement in a rehabilitation unit. The panel concluded that a place would not have made a difference to their decision. The reason for this view was that there had, in the past, been similar arrangements which had not been successful. The panel, however, did indicate that there may be a point in the future when such a placement would be appropriate. It is noted that no formal application was made on behalf of the Applicant by the Applicant's legal adviser to adjourn the case. Although there was an invitation to the panel to "*consider adjourning if that would affect a release decision*". It is clear that the panel concluded that there was sufficient evidence before them to reach a fair conclusion on the basis of the referral. I do not therefore find that there was any procedural irregularity in not adjourning the matter for further information.

Decision

45. 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.

HH S Dawson
27 January 2025