

[2025] PBRA 27**Application for Reconsideration by Edwards****Application**

1. This is an application by Edwards (the Applicant) for reconsideration of a decision of an oral hearing panel dated 20 December 2024 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 oral hearing decision, the dossier consisting of 297 pages and the application for reconsideration.

Request for Reconsideration

4. The application for reconsideration is dated 13 January 2025. It has been drafted by legal representatives on behalf of the Applicant. It submits that the decision was irrational.
5. The submission is supplemented by written arguments to which reference will be made in the Discussion section below.

Background

6. The Applicant received an extended sentence for offences of wounding with intent to cause grievous bodily harm, conspiracy to supply class A drugs and possessing ammunition for a firearm without a certificate. The sentence comprised 8 years in custody extended by 4 years on licence.
7. The Applicant was 19 years old at the time of sentencing and is now 25 years old.


Current parole review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in February 2023 to consider whether or not it would be appropriate to direct his release. This is his first review.

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9. The case proceeded to a full oral hearing via videoconference on 10 December 2024. The panel consisted of two independent and one psychologist member. It heard evidence from two Prison Offender Managers (POMs) from two prisons as the Applicant had recently been transferred, evidence from his Community Offender Manager (COM), a prison psychologist and a security intelligence manager. The Applicant was legally represented throughout the hearing. The Respondent was not represented by an advocate.
10. The panel did not direct the Applicant's release.

The Relevant Law

11. The panel correctly sets out in its decision letter dated 20 December 2024 the test for release.

Parole Board Rules 2019 (as amended)

12. 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)).
13. [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)).]
14. [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

15. 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.
16. 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.*"



17. 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)*.
18. 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.
19. 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.
20. 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.
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

22. The Respondent has submitted no representations in response to this application.

Discussion

23. The grounds in the application amount in effect to a disagreement with the panel's conclusion and a desire for a different outcome. The Applicant agrees with the conclusion about his possession of illicit substance and puts forward an explanation for the use of his mobile phone. He submits that weight should not be attached to the evidence from the security intelligence officer who does not know him as well as his POM and COM. The professionals noted improvement in his behaviour and attitudes and identified ongoing work that could be completed in the community. The Applicant submits that in those circumstances the decision not to direct release is irrational.
24. The submissions in the application were put forward and recorded in detail by the panel in its decision letter. The panel noted the positive progress being made by the Applicant but also noted that there had not been a reasonable period of consistent



compliance to indicate compliance in the community. Panels of the Parole Board must make their own risk assessments on the basis of the evidence presented and are not obliged to simply follow the recommendation of the professionals. In this case for the reasons given, based on an analysis of the evidence including evidence from the Applicant, the panel conclude that there was relevant learning to be undertaken or sustained practice to be exhibited before the Applicant could be released.

25. The Applicant's frustration at the delays in his case is understandable, having been moved from one institution to another before the first scheduled date for a hearing. The panel has acknowledged the good progress he has made however it could not ignore his recent adjudications. He himself accepts, whatever the mitigation, his possession of illicit items. The panel, in fairness to him did not place weight on his most recent adjudication. The panel noted the recommendations of his offender managers, carefully considered the risk management plan and gave reasons for placing more weight on the conclusion of the psychologist. It was not the conclusion the Applicant had been hoping to receive but having regard to the legal test set out above it could not be described as irrational.

Decision

26. 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
4 February 2025

