

[2025] PBRA 29

Application for Reconsideration by Roberts

Application

1. This is an application by Roberts (the Applicant) for reconsideration of a decision of an oral hearing dated 19 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 524 pages and the application for reconsideration.

Request for Reconsideration

4. The application for reconsideration is dated 10 January 2025. It has been drafted by solicitors on behalf of the Applicant. It submits that the decision was irrational and procedurally unfair.
5. The grounds for seeking a reconsideration are that the panel decision was based on over-reliance on allegations of no evidential value, failure to take into account the risk assessment which identified the Applicant in the lowest security classification and over-reliance on risk of IPV. The grounds further submit that the panel gave undue weight to matters of low relevance to the assessment of risk and insufficient weight to work undertaken by the Applicant to address his risk.

Background

6. The Applicant received an extended sentence for robbery. The sentence comprised 12 years and 6 months in custody extended by 3 years on licence.
7. The Applicant was 26 years old at the time of sentencing and is now 36 years old.

Current parole review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in September 2022 to consider whether or not it would be appropriate to direct his release.



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9. The case proceeded to a full oral hearing via videoconference on 16 December 2024 following an adjourned hearing on 15 January 2024. The panel consisted of three independent members. It heard oral evidence from the Applicant, together with evidence from four Prison Offender Managers from the prisons in which he had been located, a security officer, two HMPPS commissioned psychologists and his Community Offender Manager (COM). 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 19 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)).

Irrationality

14. 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.
15. 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.*"
16. 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).

- 17.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.
- 18.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.
- 19.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

- 20.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.
- 21.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.
- 22.The overriding objective is to ensure that the Applicant's case was dealt with justly.

The reply on behalf of the Secretary of State

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

Discussion

- 24.Security Intelligence – The Applicant is mistaken in submitting that the panel based its decision on an over-reliance on the security intelligence reports. The panel specifically gives him the benefit of the doubt stating that there is insufficient evidence to make a finding on the question of his continued engagement in criminal activity. However, the fact remained that by his own admission he was in possession



of an illegal mobile phone and at least during the earlier part of his sentence he kept in contact with criminal associates. The panel clearly took into account all the evidence presented and explained its reasons, which were balanced and fair.

25. Risk to Partner – The Applicant sets out in some detail the nature of the calls between him and his partner and repeats the evidence which was before the panel. The panel took into account the matters accepted by the Applicant such as the use of derogatory language. The panel may not have agreed with the COM as to the manageability of risk in the community but that does not undermine its conclusions which were clearly based on a thorough analysis and consideration of all the evidence presented, not only that relating to his relationships. It is of note that some of the other professionals did not agree with the COM that release could be recommended. This ground disagrees with the panel's decision without identifying any irrationality or procedural unfairness. I am satisfied there was none.
26. Matters relevant to risk and weight – The Applicant sets out the matter relating to information about ROTLs and the alleged threats made to assault an officer. He notes in the former case that he was provided with incorrect information and in the latter case that he did not hit the officer nor request that that was passed on to the officer. He accepts that he needs to do work on emotional management but submits that can be done with the risk management plan. These matters were dealt with in the hearing and were addressed by his representative in her submissions. The panel appears to have accepted his account of lack of violence in custody. The panel has taken into account the work undertaken by the Applicant to address his risk. This ground is re-arguing matters that were already argued before the panel and which the panel has analysed and reached reasoned conclusions upon. It is a matter for the panel, who saw and heard from the witnesses, to assess the weight to be given to the evidence considered. There is no evidence of unfairness or irrationality in the panel's reasoning.
27. Other matters of concern – The Applicant raises a number of other matters which are described in the application as matters of concern. I have carefully considered all those matters and am satisfied that none meet the test set out above of irrationality or are procedurally unfair. The panel clearly considered the risk management plan and set against the risks posed by the Applicant did not conclude that it was robust enough. The panel took into account the conclusions of professionals that the risks were not imminent but noted that they could be unpredictable and escalate quickly thus placing the public at more than a minimal risk of harm. The panel was aware that the Applicant had not been convicted of any domestic related offences. There was nothing unfair in the panel conclusion that the current relationship created concerns as, by the Applicant's own admission, he accepted using derogatory language when arguing with his partner. Whilst risk reduction work may be available in the community the panel concluded for reasons given that the Applicant's risk was currently most appropriately managed in custody and that there was outstanding consolidation work to be undertaken.
28. The Applicant is clearly disappointed with the panel decision in the light of the efforts he feels he has made and progress achieved with regard to risk reduction and positive custodial behaviour and the recommendation of his COM. However, it is of note that three of the professionals did not recommend his release and the conclusion of the panel followed very detailed and careful analysis of the evidence



presented. The Applicant had legal representation and submissions were made on his behalf at the conclusion of the evidence. Those submissions are repeated in the application. The reconsideration process is not an opportunity for Applicants to re-argue matters of disagreement. Set out in the paragraphs above under The Relevant Law are the tests which will be applied by a reconsideration member. None of the matters raised by the Applicants satisfies any of those tests and his application must therefore be refused.

Decision

29. 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
04 February 2025