

[2025] PBRA 32

Application for Reconsideration by Clements

Application

1. This is an application by Clements (the Applicant) for reconsideration of a decision dated 18 December 2024 not to direct his release. The decision was made by a panel after an oral hearing.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended) (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.
3. I have considered the application on the papers. These are the paper decision, the dossier (consisting of 483 numbered pages), and the application for reconsideration.

Background

4. The Applicant received an extended sentence comprising a custodial period of 14 years with an extended licence period of four years on 2 September 2015 following conviction after trial for wounding with intent to do grievous bodily harm. On the same occasion he was also convicted of possession of a knife blade/sharp pointed article in a public place and received a concurrent 12 month determinate sentence (now served).
5. The Applicant was 29 years old at the time of sentencing and is now 38 years old.
6. Key dates relevant to his sentence are reported to be:
 - a) Parole eligibility date: June 2024;
 - b) Conditional release date: February 2029; and
 - c) Sentence expiry date: February 2033.

Request for Reconsideration

7. The application for reconsideration has been submitted by the Applicant and argues that the decision was irrational.
8. These grounds are supplemented by written arguments to which reference will be made in the **Discussion** section below.

Current Parole Review

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) on 29 September 2023 to consider whether or not it would be appropriate to direct his release. This is the Applicant's first parole review.
10. The case proceeded to an oral hearing on 5 August 2024, before a three-member panel. The panel heard evidence from the Applicant, his Prison Offender Manager (POM), and his Community Offender Manager (COM). The Applicant was legally represented throughout the hearing (although not so for this reconsideration matter); the Respondent was not legally represented.
11. At the time of the hearing, the Applicant was in open conditions (and had been so since March 2024).
12. At the hearing, the panel heard that the Applicant was to undertake a period of overnight release on temporary licence (ROTL) and adjourned so that he might complete his stay in designated accommodation. The panel directed an update on the ROTL in order to assist it with its decision-making.
13. During the ROTL, the Applicant reportedly breached his licence conditions and was returned to closed conditions. It is reported that he provided a positive breath test for alcohol. On return to custody, he was found to have an unauthorised article in his possessions. Both matters proceeded to adjudication and were proven.
14. The panel adjourned again to give the Applicant an opportunity to make any representations about his reported behaviour or the adverse development.
15. The Applicant provided representations dated 11 September 2024 which gave his account of the events on ROTL. His legal representative also provided a letter from the Applicant dated 10 September 2024 (received at their office on 18 September 2024).
16. The Applicant was offered an opportunity to reconvene the hearing, which he declined.
17. Following the Applicant's return to closed conditions, neither the professional opinions of his POM or his COM were in favour of release.
18. The panel reviewed all the evidence and concluded the review on the papers with no direction for release.

The Relevant Law

19. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined.

Parole Board Rules 2019 (as amended)

20. 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)).

21. 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)).
22. 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

23. 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 (CA) 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.
24. In *R(DSD and others) v Parole Board* [2018] EWHC 694 (Admin) the Divisional Court applied this test to Parole Board hearings in these words (at [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.*"
25. In *R(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 the Divisional Court in *R(Secretary of State for Justice) v Parole Board* [2022] EWHC 1282 (Admin).
26. As was made clear by Saini J in *Wells*, 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.
27. 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.
28. 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 Respondent

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29. The Respondent has advised that no representations will be submitted in response to this application.

Discussion

30. The Applicant argues that the decision not to release him was irrational.

31. In doing so, the Applicant repeats a number of the points he made to the panel prior to it reaching its decision. He admits to drinking alcohol while on ROTL in response to a close family bereavement. However, he strongly argues that there is no link between alcohol misuse and risk of serious harm and that alcohol has never been a risk factor for him.

32. The panel concluded otherwise, and its decision therefore potentially runs the risk of being irrational if there is insufficient or inadequate evidence to suggest that alcohol has been a factor in the Applicant's offending behaviour history.

33. I note the following from the dossier:

- a) The Applicant's 2005 conviction for assault occasioning actual bodily harm reportedly took place after he had *"consumed a great deal of alcohol, including lager, champagne and sambuca"*.
- b) The Applicant's 2008 conviction for a public order offence reportedly involved him being in a group of youths *"consuming alcohol whilst walking in an...alcohol-free zone"* and becoming *"abusive and threatening"*.
- c) The Applicant's 2009 conviction for assault occasioning actual bodily harm reportedly happened after the Applicant had consumed alcohol although he said *"it was not to excess and...reported that he does not feel that alcohol affected his judgement"*.
- d) The Applicant reportedly said he had consumed *"a can of lager and a double brandy"* prior to the index offence but *"would have acted the same way regardless"*.
- e) The Applicant reportedly said that alcohol use has *"not been helpful, as it would contribute to his loss of temper and feeling wound up"*.
- f) The Applicant's sentence plan included an objective of *"increased awareness of alcohol as a trigger to violence"*.
- g) The Applicant has reportedly said that *"when he was younger he used to get into fights after drinking...[but] it was his ego that caused the fights, not the alcohol"*.

34. It is difficult to see how, when faced with this evidence, the panel was unreasonable in concluding that alcohol was a risk factor. Moreover, it was not unreasonable for the panel to conclude, notwithstanding the circumstances that led to the Applicant choosing to drink while on ROTL, that an identified risk factor was live and therefore not directing his release.

35.I am not therefore persuaded that there are any sustainable arguments to support a finding of irrationality in this case.

Decision

36.For the reasons set out above, the application for reconsideration is refused.

Stefan Fafinski
11 February 2025