

[2025] PBRA 41**Application for Reconsideration by Ulcay****Application**


1. This is an application by Ulcay (the Applicant) for reconsideration of a decision of an oral hearing panel (OHP) dated the 3 January 2025. The decision was 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 dossier now consisting of 564 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 5 February 2025.
5. The grounds for seeking a reconsideration are set out below.

Background

6. The Applicant was convicted of offences of rape and attempted rape. The offences occurred in circumstances where the victim was an employee of the Applicant. The sentencing judge made the following finding *"you engaged in predatory sexual offending for your own sexual gratification with little or no regard for the impact and you were targeting women who you considered vulnerable because of their status as economic migrants"*.
7. The Applicant was aged 47 at the time of sentencing. He was 56 at the time of the oral hearing (OH). The Applicant was sentenced to concurrent extended sentences of imprisonment comprising of a custodial period of 10 years 6 months and an extended licence period of 2 years 6 months. He was eligible for parole in May of 2022. His conditional release date is in November of 2025.

Current parole review 3rd Floor, 10 South Colonnade, London E14 4PU www.gov.uk/government/organisations/parole-board info@paroleboard.gov.uk @Parole_Board 0203 880 0885

8. The Applicant was detained in an open prison at the time of the OH. The referral from the Respondent requested the Parole Board to consider whether it would be appropriate to direct the Applicant's release.
9. The OHP consisted of a judicial chair, a psychologist member and an independent member of the Parole Board. Evidence was given at the hearing by a former prison offender manager (POM), the Applicant's current POM, the Applicant's community offender manager (COM) and a prison instructed psychologist. The Applicant was supported by a language interpreter.

The Relevant Law

10. The panel correctly sets out in its decision letter dated 3 January 2025 the test for release.

Parole Board Rules 2019 (as amended)

11. 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)).
12. 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

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. 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

25. 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

26. The Respondent offered no representations.

Grounds and Discussion

Ground 1

27. It is submitted on behalf of the Applicant that the panel failed to follow the recommendation of both the POM and COM, in that the Risk Management Plan was said to be capable of managing the Applicant safely in the community. Instead, too much weight was placed on the evidence of the psychologist, whose opinion, it is submitted, was based on inaccurate information provided by the interpreter.

Discussion

28. The panel had the advantage of an extensive dossier of reports and other material. They also had the advantage of seeing and hearing the Applicant as well as the witnesses. The Applicant was also legally represented throughout. Where there is a conflict of opinion, it was plainly a matter for the panel to determine which opinion they preferred. That opinion must be based upon reasons which are soundly based on evidence, as well as rational and reasonable or at least not outrageous in the sense expressed above.



29. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility to make their own risk assessments and to evaluate the likely effectiveness of any risk management plan proposed. They must make up their own minds on the totality of the evidence that they hear, including any evidence from the Applicant. They would be failing in their duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if they failed to do just that. As was observed by the Divisional Court in **DSD**, they have the expertise to do it.
30. However, if a panel makes a decision contrary to the opinions and recommendations of all or some of the professional witnesses, it is important that it should explain clearly its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions, **per R (Wells) v Parole Board 2019 EWHC 2710**.
31. Where a panel arrives at a conclusion, exercising its judgement based on the evidence before it, 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.
32. In this case the panel gave clear reasons for their decision. They took the view that the Applicant did not demonstrate a sufficient understanding of his risk and that he had not developed sufficient learning from interventions to ensure that his risk of serious harm was manageable in the community. I am not persuaded therefore that there are grounds to support the contention that this is a case where the decision was irrational in the sense set out above.
33. 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. There was no error of reasoning or fact in this case. The panel conceded that there was a difference in view as to the manageability of risk. The panel clearly set out its reasons for reaching the decision that they did.

Ground 2

34. It is submitted by the Applicant's legal adviser that the panel placed insufficient reliance on the fact that the Applicant had not been understood because of his language difficulties.

Discussion

35. The Applicant was legally represented throughout these proceedings. The Applicant also had a level of understanding in terms of language. He had been in the UK for some years and had worked and run a business in the past. There is no credible evidence in this decision that the Applicant misunderstood the evidence or that he had not had the opportunity to fully explain any earlier discussions he had undertaken (in this case with the psychology witness). I am not persuaded that this ground amounts to procedural irregularity.



Decision

36. For the reasons I have given, I do not consider that the decision was irrational and/or procedurally unfair and accordingly the application for reconsideration is refused.

HH Stephen Dawson
21 February 2025