

[2025] PBRA 9

Application for Reconsideration by Wyatt

Application

1. This is an application by Wyatt (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 16 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 836 pages and the application for reconsideration. I have also had access to the oral recording of the hearing.

Request for Reconsideration

4. The application for reconsideration is dated 17 December 2024. It has been hand-written by the Applicant. The application argues that there is an error of law, incorrect process was followed and the decision was irrational.
5. The submission is supplemented by written arguments and an attached victim impact statement dated 30 July 2012. Reference will be made to these in the Discussion section below.

Background

6. The Applicant received a sentence of life imprisonment on 2 July 2002 for murder. His tariff was set at 9 years 2 months and expired on 20 September 2011. This is his 8th review.
7. The Applicant was 33 years old at the time of sentencing and is now 56 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 2023 to consider whether or not would be appropriate to direct his release. If the Board did not consider it appropriate to direct release, it



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was invited to advise the Respondent whether the Applicant should be transferred to open conditions.

9. The case proceeded to a face to face hearing on 4 December 2024. The panel consisted of two independent members and a psychologist member. It heard oral evidence from the Prison Offender Manager (POM), Prison Psychologist and Community Offender Manager (COM). The Applicant represented himself for the proceedings save for relying on using a legal representative to assist with pre-hearing preliminary matters.
10. The panel did not direct the Applicant's release but made a recommendation for open conditions.

The Relevant Law

11. 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)

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.

Procedural unfairness

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

Error of law

24. 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.

25. 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.

The reply on behalf of the Secretary of State

26. The Respondent in a letter dated 3 January 2025 provided representations in respect of one aspect of the application. In reply to the submission that the direction to produce victim impact statements had not been complied with, the Respondent submitted,

27. *“PPCS, on behalf of the Secretary of State, can confirm that [the Victim] is currently engaged with the Victim Contact Scheme and remains in regular contact with his Victim Liaison Officer. PPCS is aware that the historical statement produced by [the Applicant] was discussed within the Oral Hearing on 4 December 2024 on page 13 of the decision. [the Victim] did not submit a recent Victim Personal Statement and therefore this was not included within [the Applicant’s] parole dossier”*

Discussion

28. The Applicant makes several points on the reconsideration form and on additional pages and notes that not being legally trained he may have inadvertently submitted arguments in the wrong section. It goes without saying that he would not be penalised for misdescribing arguments. I have regrouped his submissions to avoid repetition and have considered all the points he raises under each of the reconsideration heads, error of law, irrationality and procedural unfairness.

29. Ground 1. The Applicant submitted that panel members showed little interest in the test for release, were predisposed in their determination showing bias and prejudice and making the hearing unfair and unbalanced. The Applicant argued that there was emphasis placed on his relationship with his COM when the test for release does not require an Applicant to like his COM. He submitted that it was an abuse of power to use the question of whether he liked his COM to the test for release.

30. Having listened to the recording I am satisfied that there is no evidence that the panel members were biased, prejudiced or had pre-judged the case. The relationship between a prisoner and his COM is an important one if there is to be trust and openness on the part of the prisoner and an ability to manage the risk on the part of the COM. The panel were entitled to question the Applicant and witnesses



to ensure that a working relationship existed which would allow for effective risk management.

31. Ground 2. The Applicant submits that during questioning the psychologist panel member "*badgered*" the psychologist witness, despite the intervention of the Panel Chair, until she changed her recommendation from release to open conditions. He further submits that the panel was unfair to concentrate on the non-compliance in 1991 when release lasted 8 days over that in 1994 where the release lasted about 7 years.
32. Having listened to the recording I am satisfied that there was no badgering of the psychologist witness either by the psychologist member or any other member of the panel. Questions were asked properly and respectfully, and the witness was given the opportunity to answer as fully as she required. The questions were necessarily probing regarding the question of risk, none were inappropriate or unfair or badgering. The witness, without prompting changed her position and in the light of some lack of clarity the Panel Chair intervenes, not to prevent badgering, because there was none, but to ask her to clarify her position which she does. She gave evidence without pressure about her changed stance and gave her reasons for the change in her position. She was able to answer completely including making positive points for the Applicant such as the non-compliance being some time ago now and that the Applicant had changed a lot since then.
33. Ground 3. The Applicant submits that the direction to submit a victim impact statement was not complied with correctly. He raises concerns about members of the victim's family who he states are police officers submits that one comes across as vengeful. He submits that the panel were dismissive of his concerns and wrong to conclude that he did not care about the victim's family.
34. The submission of the victim statement was answered in the Respondent's reply. Whilst he is concerned that the victim's family members who are serving police officers make him feel unsafe and insecure there is no evidence that there has been any action on their part towards him to threaten his security or safety. In the event that there are serious or credible threats towards him, there are avenues of protection he can pursue from the police or the courts. In terms of his review, there was no evidence from the papers before me that there was action the part of the victim's family or from the Applicant to them which was relevant to the panel's consideration of risk. The panel dealt with a condition of his licence being non-contact.
35. Ground 4. The Applicant rejects the panel's decision that he has a willingness to use violence to express his emotions, describing that statement as defamatory. He submits that the professionals support release, describe his risk as low and manageable, find that he meets the test for release and conclude that he has completed core work to address his risk and there are no outstanding areas of treatment needed.
36. The Applicant's index offence was for murder. In making reference to the violence that offence obviously carries and his conduct then and since the panel is stating facts and its conclusions drawn from those facts and that does not amount to defamation. The panel was aware of the work done by the Applicant as well as his



custodial conduct which was described in very positive terms. It is not correct to state that all the professionals supported release – they may have done so at other times in the past but at the hearing that was not the case, as can be seen from the psychologist’s changed position set out above. However, even if all the professionals had supported release it is the responsibility of the panel to make its own risk assessment and to evaluate the likely effectiveness of any risk management plan proposed. The panel must make up its own minds on the totality of the evidence that it hears, including any evidence from the Applicant. It would be failing in its duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if it failed to do just that. The panel acknowledge the work the Applicant has undertaken and his custodial behaviour in positive terms.

37. Additional grounds. The application submits that there is documentation omitted by Probation Service, in particular by Hampshire Probation and the OMU department. He states that he wishes to rely on work undertaken and recorded in the missing documentation. Omitting to put information before a panel is not a ground for procedural unfairness. In this case even if the material had been before the panel, it would not have made any difference to its conclusion as the panel had already taken into account, positively, the work undertaken by the Applicant and had other reasons for concluding that he did not meet the test for release. Similar considerations apply in the case of the submission that the panel did not adequately address the work done by the Applicant in relation to Relate.

38. The Applicant’s submission the panel has been casually dismissive, unfair, biased, prejudicial, unbalanced, defamatory and its reasons inadequate and of poor quality are levelled against those conclusions with which he disagrees. I have listened to the entire recording of the hearing and am satisfied there is no evidence of bias or unfairness or pre-judgment. The Applicant chose to proceed without representation and was treated by the panel with same courtesy and fairness a legal representative would have been treated. The panel chair explained the procedure to the Applicant and he was given every opportunity to question witnesses, give evidence himself and present a submission at the end of the hearing. I have read the decision letter carefully, it is accurate in its reporting of the evidence, the panel has considered fully and fairly all the evidence presented and come with reasons to conclusions which are sound, valid and based properly on the evidence. There is no error of law or fact in the reasons, the hearing was procedurally very fair and the decision comes nowhere near meeting the test for irrationality set out above.

Decision

39. For the reasons I have given, I do not consider that the decision was irrational or procedurally unfair or contained any error of law and accordingly the application for reconsideration is refused.

Barbara Mensah
14 January 2025

