

## Application for Reconsideration by Charles

### Application

1. This is an application by Charles (the Applicant) for reconsideration of a decision of an oral hearing panel (the panel) dated the 8 November 2022 not to direct his release.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (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:
  - a) The Decision Letter dated the 8 November 2022;
  - b) The Applicant's application for reconsideration in the form of written representations from his legal representative; and
  - c) The dossier, numbered to page 878, the last page of which is the panel's Decision Letter. The panel had a dossier of 858 pages.

### Background

4. The Applicant is now 33 years old. On the 17 March 2008, when he was 18 years old, the Applicant received a sentence of Detention for Public Protection (DPP) following his conviction for robbery, attempted robbery, possession of a firearm when committing an offence and having a firearm with intent to commit an indictable offence.
5. The Applicant had attempted to rob a bookmaker, threatening staff with an imitation firearm, although the weapon was described as being '*entirely realistic*'. Two weeks later, he went to another bookmaker and made threats with the imitation weapon, before seizing money from the till.
6. The Applicant first became eligible for release by the Parole Board in 2012 and was eventually released on the 3 March 2016. He was then recalled to custody on the 29 May 2019. The panel's review of his case was the second review by the Parole Board since his recall to custody.
7. During his time on licence, the Applicant received convictions for failing to provide a specimen and resisting police. There were also concerns about cannabis use and his alleged behaviour in intimate relationships. The Applicant later received a further extended determinate sentence (EDS) following his conviction



for a s20 wounding offence. The court imposed a custodial term of 27 months with an extended licence of 33 months.

8. The background to that matter was that whilst on licence, the Applicant had been at a bar, had left at around 4.30am, became involved in a confrontation and stabbed a male victim in the chest. The relevant dates of the EDS sentence meant that the earliest the Applicant could be re-released was the 14 November 2021, although he would still remain in custody under the DPP sentence unless his release was directed by the Parole Board. His EDS sentence could be considered by the Parole Board on or after the 13 February 2021 but that would require a separate referral to be made by the Secretary of State.
9. On the 20 October 2020, the Secretary of State referred the Applicant's case to the Parole Board to consider whether his release could be directed on the DPP sentence or whether, in the alternative, his move to an open prison could be recommended. If released by the Parole Board in respect of the DPP sentence, the Applicant would also be released automatically under the law on the EDS sentence because, by the time of the oral hearing, he had passed the date of his automatic release (14 November 2021). For the avoidance of doubt, the Secretary of State had not referred the EDS sentence to the Board, although he had been at liberty to do so on or around the 13 February 2021.
10. A review by the Parole Board of the case on the papers on the 29 March 2021 determined that an oral hearing should be directed. An oral hearing had been listed for the 12 August 2021, however, that hearing was deferred because the Applicant had moved prisons and the new prison could not accommodate the hearing on the listed date.
11. The case was then listed to be heard by the panel at an oral hearing on the 5 January 2022, however, the Applicant tested positive for Covid-19 on the day of the hearing and so the case was adjourned at the Applicant's request. It was also highlighted that the Applicant faced further criminal charges in respect of assaults against prison officers in 2021. The panel then kept oversight of the case while the alleged assaults were dealt with at court. The Applicant pleaded guilty to these matters in March 2022 and received a fourteen week determinate sentence.
12. The panel then listed the case and the oral hearing took place on the 3 November 2022. The panel heard evidence from the Applicant, his Probation Officer in the community, the official supervising his case in custody and from a prison psychologist. In its Decision Letter, the panel did not direct the Applicant's release and did not recommend to the Secretary of State that he should be moved to an open prison.

### **Request for Reconsideration**

13. The Applicant submits that the panel's decision was irrational because:

- a) Witnesses had confirmed that further work to address risk would not be core risk reduction work and therefore could be completed away from the closed estate in an open prison;



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- b) Witnesses had confirmed that no further risk reduction work or courses would be available to him within a closed prison. The panel had focussed on the need for work to address the Applicant's behaviour in relationships, however, the prison psychologist was of the view that the level of work necessary could not be established until the Applicant was in a relationship;
- c) The Applicant was a low risk of abscond and professional witnesses had believed that him spending time in an open prison could be of benefit to the Applicant and to future panels when it came to assessment of risk and his possible future release;
- d) A move to an open prison would have allowed for the Applicant's risk to be closely monitored by professionals and provide future panels of the Parole Board with additional information about the Applicant when it came to considering possible release; and
- e) The Applicant sets out the criteria the panel was required to consider in assessing his suitability for a place in an open prison. He submits that the panel unfairly assessed the evidence of the professional witnesses and disregarded their recommendations when making its decision about the Applicant's suitability for a move to an open prison.

### The Relevant Law

14. The panel correctly sets out in its decision letter dated the 8 November 2022 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.

15. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.

*Parole Board Rules 2019 (as amended)*

16. Under Rule 28(1) of the Parole Board Rules 2019 the only types of decisions which are eligible for reconsideration are those concerning whether the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is 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)).

17. 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)).

18. 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**

## *Irrationality*

19. In **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)**, the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said 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."*

20. This test was set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374**. The Divisional Court in **DSD** went on to indicate that in deciding whether a decision of the Parole Board was irrational, due deference had to be given to the expertise of the Parole Board in making decisions relating to parole. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing 'irrationality'. The fact that Rule 28 contains the same adjective as is used in judicial review shows that the same test is to be applied.
21. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

## *Other*

22. 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."*

## **The reply on behalf of the Secretary of State (the Respondent)**

23. On the 9 December 2022, the Respondent confirmed that he would not be making any representations.

## **Discussion**

### *Grounds a, c, d, e*

24. The Applicant's submission is that the panel could and should have recommended to the Secretary of State that he be progressed to an open prison, and he outlines why, in his view, he meets the test set out by the Secretary of State for such a move.
25. As detailed in **Barclay [2019] PBRA 6**, a recommendation to the Secretary of State about a prisoner's suitability for open conditions is not eligible for reconsideration.



## *Ground b*

26. The remaining ground focusses on the panel's assessment of the Applicant's risk in relationships and its view that work would be needed to address this, despite the prison psychologist being of the view that the level of work necessary could not be established until the Applicant was in a relationship.
27. The panel's reasoning for not directing release included its concerns about the Applicant's behaviour when he was last released despite a robust plan in place from Probation to manage him in the community. The panel noted that the Applicant had not been open with professionals and it believed there to be continuing evidence of concern about likely openness and honesty. The panel also noted the s20 Wounding offence on licence and the use of violence in custody, leading to a further conviction. Although the Applicant had completed additional offence focussed work in custody, the panel felt that it was too soon to establish if he would be able to apply the learning from that work consistently.
28. The panel's decision not to direct his release was not confined to his risk in relationships or the need for work to be completed to address that risk. When considering the entirety of its reasons, it cannot be said that the panel's decision not to direct release was irrational.
29. Two crucially important issues I must decide are first, whether I am satisfied that the conclusions reached by the panel were justified by the evidence and secondly, whether their conclusions were adequately and sufficiently explained.
30. I am satisfied that the decision not to direct release was fully justified on the totality of the evidence. In a thorough and carefully reasoned decision which sets out in detail the findings, assessments, operative reasoning and conclusions of the witnesses and takes fully into account all of the evidence given to the panel, including that of the Applicant himself, the panel in my judgment satisfied the public law duty to provide evidence based reasons that in my judgment adequately and sufficiently explained the conclusions they reached.

## **Decision**

31. For the reasons I have given, I do not consider that the decision was irrational and accordingly the application for reconsideration is refused.

**Robert McKeon**  
**3 January 2023**



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