

[2024] PBRA 203**Application for Reconsideration by Dockrell****Application**

1. This is an application by Dockrell (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated the 2 September 2024 not to release the Applicant following an oral hearing on 14 May 2024.
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 the application for reconsideration, the response from the Secretary of State (the Respondent), the dossier and the decision letter.

Background

4. The Applicant is serving a sentence of imprisonment for public protection imposed on 17 October 2005 for the offence of wounding with intent to do grievous bodily harm (s18). The minimum term which was ordered to be served before the Applicant could be considered for parole was two and a half years (less time served on remand).

Request for Reconsideration

5. The application for reconsideration is dated 13 September 2024 and has been made by solicitors acting on the Applicant's behalf.
6. The grounds for seeking a reconsideration are that the decision was irrational. The irrationality is said to arise from a lack of balance of the evidence within the decision letter. The relevant evidence which it is said has not been adequately considered is:
 - (i) No offence paralleling behaviours since recall in May 2021, only isolated incidents.
 - (ii) The Applicant having completing all offence focused work in his sentence plan (*'all that was required of him'*).



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- (iii) Professional witnesses, save for the Community Offender Manager (COM), supported release with a robust risk management plan (RMP).
- (iv) Following adjournments for further information there was a fully developed RMP.
- (v) It is also said that the decision to recommend open conditions was irrational as sufficient safeguards were put in place to manage his risks.

Current parole review

7. The case was referred to the Parole Board by the Respondent on 28 October 2022. This was the second review after the Applicant's recall to prison on 13 May 2021. The referral was considered by a Member Case Assessment (MCA) panel on 1 June 2023 when it was adjourned so that key documents could be added to the dossier. The referral was considered again by the MCA panel on 19 June 2023 and directed to an oral hearing, with a prison psychological risk assessment being directed. The oral hearing was scheduled for 14 May 2024.
8. Panel chair directions (PCDs) were issued on 14 April 2024 directing updated reports. On 13 February 2024 a referral had been made to the Parole Board to consider the termination of the Applicant's IPP licence. On 15 April 2024 a duty member direction was made combining the IPP termination review with the original referral.
9. The oral hearing took place via remote video-link on 14 May 2024, before a three member panel with an independent chair, psychologist member and an independent member. The dossier comprised 951 pages. Evidence was heard from the Applicant, a stand-in Prison Offender Manager, a prison psychologist, a prisoner commissioned psychologist and the COM. The Applicant was legally represented.
10. The oral hearing was deferred on the day as the RMP presented at oral hearing was incomplete. PCDs were issued on 15 May 2024 adjourning the review to enable a complete RMP to be provided, with the application to be determined on the papers on 25 June 2024.
11. PCDs were issued on 2 July 2024 adjourning the review and directing further information in respect of the RMP. The case was to be reviewed on 26 July 2024, the panel reserving the right to reconvene the oral hearing. Further PCDs were made on 6 August 2024 adjourning the review due to annual leave, with the case to be reviewed on 23 August 2024.

The Relevant Law

12. The panel correctly sets out in its decision letter dated 02 September 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.
13. 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)

14. 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)).
15. 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)).
16. 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

17. 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."

18. 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.

The reply on behalf of the Respondent

19. The Respondent has offered no representations.

Discussion

20. As set out in *DSD*, panels of the Parole Board are not obliged to adopt the recommendations of professional witnesses. It is their responsibility to make their own risk assessments and evaluate the likely effectiveness of any risk management plan proposed.
21. Here the panel noted that both Intensive Intervention and Risk Management Services (IIRMS) and a Psychologically Informed Planned Environment Approved Premises (PIPE AP) were considered by some witnesses to be integral parts of the

RMP and that these were unfortunately not available to the Applicant, with there being particular concerns about remote management by his COM and the Applicant's mixed views during the hearing about some aspects of his RMP. They recorded his expressed view after the hearing that he would adhere to the RMP.

22. The panel considered each of the issues raised in the reconsideration application, addressing them in the decision letter, alongside the other evidence they considered relevant. They formed their own view on the totality of the evidence that the test for release was not met, but that the test for a recommendation for transfer to open conditions was. They took that view having considered the dossier, after hearing from the witnesses and the Applicant at the oral hearing, with further written clarification on the RMP post hearing and with the benefit of written legal representations.

23. They gave clear and sufficient reasons as to why they reached their decision. Those reasons were detailed and evidence based and were conclusions they are entitled to reach. In those circumstances, there is no basis to determine that the decision was irrational and I do not find so.

Decision

24. For the reasons I have given, I do not find that the decision of the panel was irrational and accordingly the application for reconsideration is refused.

Angharad Davies
15 October 2024