

[2025] PBRA 17**Application for Reconsideration by Asante****Application**

1. This is an application by Asante (the Applicant) for reconsideration of the decision of a Panel of the Parole Board (the Panel) which on 17 December 2024, after an oral hearing on 11 December 2024, declined to direct his release. The decision was provisional because it was eligible for reconsideration under Rule 28(1) of the Parole Board Rules 2019.
2. The case has been allocated to me as one of the members of the Board who are authorised to make decisions on applications for reconsideration.
3. 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)) 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.
4. I have considered the following documents for the purpose of this application:
 - The dossier provided by the Secretary of State (the Respondent) which now contains 420 numbered pages;
 - the Panel's decision letter;
 - the application for reconsideration (the Application) submitted on behalf of the Applicant by his solicitors dated 30 December 2024.

Background

5. The Applicant is now 51 years of age. On 23 October 2013 he received an extended determinate sentence of imprisonment totalling a custodial element of 15 years and an extended licence period of five years for eight counts of robbery, four counts of attempted robbery, 10 counts of possessing an imitation firearm when committing an offence and three counts of having an imitation firearm with intent to commit an indictable offence ("the index offences"). The Parole Eligibility Date is given as 23 October 2023, the Conditional Release Date as October 2028 and Sentence Expiry Date as October 2033.
6. The index offences comprised a series of commercial robberies and attempted robberies of, for the most part, betting shops. The Applicant entered the premises and used an imitation gun to threaten staff for cash. The offences were committed shortly after his release in 2013 and whilst on licence from a 9 year sentence also



3rd Floor, 10 South Colonnade, London E14 4PU

www.gov.uk/government/organisations/parole-boardinfo@paroleboard.gov.uk

@Parole_Board



0203 880 0885

imposed for offences of robbery. The index offences were committed over a two month period whilst he was unlawfully at large, having absconded from an Approved Premises. The Sentencing Judge noted that the offences involved wearing a disguise and were committed late at night, often involving female members of staff and the use of imitation weapons which the victims were intended to believe were real.

7. The Applicant has a criminal record of convictions for 40 offences committed against a backdrop of a longstanding Class A drug dependency which was the main driver behind his prolific offending.
8. The Panel identified the risk factors which made it more likely that the Applicant would offend as a lack of finances, drug and alcohol use, negative associates, anti-social lifestyle, poor coping, a lack of consequential thinking skills, poor victim empathy and problematic personality traits.

Current parole review

9. This was the Applicant's first review which was referred to the Parole Board by the Respondent in January 2023 to consider whether or not it would be appropriate to direct his release.
10. The hearing was conducted by a Panel comprising two independent members of the Board who heard evidence from the prison offender manager, the community offender manager, a forensic psychologist and the Applicant who was represented throughout by Counsel and sought a direction for release.

Request for Reconsideration

11. The Application for reconsideration is said to be based solely on the grounds of procedural unfairness. I will consider the Applicant's submissions below but it should be said that it is difficult to discern any aspect of procedural unfairness being urged on his behalf.

The Relevant Law

The test for release on licence

12. The test for release on licence is correctly set out by the Panel in its decision.
13. Under Rule 28(1) of the Parole Board Rules 2019 a decision is eligible for reconsideration if (but only if) it is a decision that the prisoner is or is not suitable for release on licence.
14. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases 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.
15. In this case the Applicant is serving an extended determinate sentence and a decision was made by the Panel at an oral hearing not to direct his release on licence. It is thus eligible for reconsideration.

Irrationality

16. 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.*"
17. 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.
18. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: *Preston* [2019] PBRA 1 and others.

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; and/or
 - (e) the panel was not impartial.
21. The overriding objective is to ensure that the Applicant's case was dealt with justly.
22. It is for me to decide whether I consider the procedure adopted by the Panel in conducting the Parole hearing was unfair to either of the parties.

The reply on behalf of the Respondent

23. On behalf of the Respondent, PPCS have provided a response dated 10 January 2025 in relation to the following assertion made in para. 1 of the Application:

"[The Applicant] has made it clear that both his Prison Offender Manager (POM) and Community Offender Manager (COM) have confirmed that the 1:1 psychological support and work necessary for his rehabilitation cannot be effectively completed in a closed prison setting.

"PPCS confirm that they have liaised with [the Applicant]'s POM and COM to verify this claim. The POM responded and has confirmed that they have not informed [the Applicant] that the above-mentioned work is not available within a custodial setting. The 1:1 psychological work is considered to be core risk reduction work and not something which could be achieved in 6 joint working sessions via the OPD pathway in the community, given the complexity of [the Applicant]'s case."

Discussion

24. In dealing with the grounds for reconsideration, it is necessary to stress certain matters of basic importance. The first is that the Reconsideration Mechanism is not a process by which the judgement of the Panel when assessing risk can be lightly interfered with. Nor is it a mechanism in which the member carrying out the reconsideration is entitled to substitute his/her view of the facts in place of those 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.

25. The second matter of material importance is that when deciding whether a decision of the Board was irrational, due deference has to be given to the expertise of the Board in making decisions relating to parole.

26. Third, where a Panel arrives at a conclusion, exercising its judgement based on the evidence before it and having regard to the fact 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.

27. I move now to consider the grounds put forward by the Applicant.

28. The Applicant's solicitors very frankly describe their submissions in this way:

"We acknowledge the panel's concerns about [the Applicant]'s risk factors, his history of offending, and his recent prison behaviour. However, we would like to address some key points and provide additional information that may offer a clearer understanding of his current situation and future prospects for rehabilitation and risk management."

and they conclude with,

"Therefore, we urge the panel to reconsider its decision based on the availability of these more suitable conditions for rehabilitation."

29. This request, taken together with a reference to the Applicant's *"willingness to engage in any programs [sic] or conditions that the Parole Reconsideration Board deems necessary for his release"*, points to a fundamental and worrying

misunderstanding of the reconsideration mechanism and the criteria which I must apply.

30. The application does not, I find, rely on any element of procedural unfairness in the Panel's conduct of the review. What it does do is to indicate that the Applicant is willing to undertake appropriate risk reduction work and his "*proposed transition plan*" involves a combination of a move to open prison conditions and release into the community to Approved Premises.
31. The referral by the Respondent does not request that the Board consider transfer to open prison conditions and this was therefore not an option before the Panel which was only asked to consider the question of release. In any event, a decision as to suitability for open conditions is not eligible for reconsideration.
32. The Applicant suggests that certain psychological work may not be available in closed conditions but this is specifically denied by the POM via the Respondent's representations. However, in any event, the Panel was not invited to consider the Applicant's treatment needs or the offending behaviour work required as sentence planning and the identification of a treatment pathway are matters for the Respondent and/or the Prison Service.
33. The Panel obviously gave careful consideration to all the evidence before them, both written and oral, and were aware that it was the view of all professionals that, until the Applicant completed appropriate risk reduction work to increase his insight into his risk factors, release could not be supported.
34. The Panel concluded that the Applicant did have outstanding areas of risk and needed to undertake further work in closed conditions. In addition, the Panel did not consider that the Applicant's high risk of harm could be managed in the community and found that he did not meet the test for release.

Decision

35. I am satisfied that the Panel set out their concerns and conclusions with considerable clarity and took proper account of the evidence and views of the professionals, which they analysed with care in reaching the conclusion that the Applicant did not meet the public protection test for release.
36. I find that the application is misconceived and entirely without merit and, for the reasons I have given, I do not find that the decision was procedurally unfair and, accordingly, the application for reconsideration is refused.

Peter H F Jones
22 January 2025