

[2025] PBRA 5

Application for Reconsideration by Dyer

Application

1. This is an application by Dyer (the Applicant) for reconsideration of a decision of an oral hearing panel dated 29 November 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 627 pages and the application for reconsideration.

Request for Reconsideration

4. The application for reconsideration is dated 11 December 2024. It has been drafted by legal representatives on behalf the Applicant. It submits that the decision was irrational as the panel had misdirected itself when considering the question of risk and had misapplied the public protection test.

Background

5. The Applicant was sentenced in July 2014 to an extended sentence of imprisonment which, following appeal comprised a custodial element of 14 years and an extended licence period of 5 years in respect of sexual offending against 3 victims. Those offences were attempted rape of a male under 16, three counts of sexual assault, two counts of sexual activity with a male under 16, causing/inciting a male under 16 to engage in sexual activity.
6. The Applicant was 50 years old at the time of sentencing and is now 60 years old.

Current parole review

7. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in January 2023 to consider whether or not it would be appropriate to direct his release.

8. The case proceeded to an oral hearing via videoconference on 19 November 2024. The panel consisted of two independent members. It heard oral evidence from the Applicant, together with his current and previous Prison Offender Managers (POM), Community Offender Manager (COM) and prison commissioned psychologist. The Applicant was legally represented throughout the hearing. The Respondent was not represented by an advocate.
9. The panel did not direct the Applicant's release.

The Relevant Law

10. The panel correctly sets out in its decision letter dated 29 November 2024 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.

The reply on behalf of the Secretary of State

19. The Respondent has submitted no representations in response to this application.

Discussion

20. The application notes that all the witnesses recommended release and that no further offender behaviour work was required in custody. The panel's contrary view was described in the application as not adequately reasoned and irrational. The application disagrees with the panel's assessment of risk and its imminence and manageability in the community and submits that the panel misapplied the public protection test and its conclusion was therefore irrational.
21. Having read the decision letter, I am satisfied that there was clearly material the panel had which justified the decision made and that decision cannot be described as irrational. The panel clearly and fully considered all the evidence presented and took into account the submissions made on the Applicant's behalf. 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. This panel did that and gave clear reasons for its conclusion.
22. Whilst the panel noted the positive recommendations of the witnesses, the panel also noted that the prison commissioned psychologist considered that the Applicant lacked insight into his risks. The panel also noted and took into account as they were entitled to do, that the Applicant's maintenance of innocence meant that it was not possible for the professionals to explore the triggers for offending against young boys and men. Contrary to the view held in the application, the panel was entitled to question the Applicant regarding this type of offending, about relationships and sexuality as his views could have provided some insight regarding the offences. The panel noted that the professionals lack of understanding of the offending made it difficult to confidently assess his risk.



23. There was no misapplication of the public protection test which, from the reasons in the decision letter was correctly applied. As the panel noted, all the professionals expressed some caution about the risk presented. In the decision letter the panel notes at paragraph 4.3 that the POM acknowledges that the risks are not fully understood, the psychologist reports that it is difficult to accurately assess risk as she is uncomfortable with the gaps in his assessment and the COM also considered that it was hard to understand the risks in the light of the Applicant's denial of offending.
24. The panel considered whether nevertheless the risk management plan was robust enough to manage risk. The panel noted that its effectiveness was dependent to a large extent on external controls. However, the panel concluded that the risk management plan was not sufficiently robust as the Applicant had not been fully open in his account, lacked insight into his risks and the professionals had insufficient understanding of the risks he posed. These were conclusions open to the panel on the evidence presented and are far from being described as irrational.
25. The professionals may have concluded no core risk reduction work outstanding, however the panel disagreed and set out the further areas in which work could and should be done before release. These areas of further work identified by the panel are set out in paragraphs 4.5 and 4.6 of the decision letter.
26. The Applicant, no doubt relying on the recommendation of the professionals, was expecting or hoping for a positive outcome. However, that is not the test for the panel who are obliged to consider the evidence themselves and reach their own conclusion on all the evidence presented. The conclusion of the panel is based on reasons which are soundly based on evidence as well as being rational and reasonable and that conclusion is certainly not outrageous in the sense expressed above.

Decision

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

Barbara Mensah
8 January 2025