

## Application for Reconsideration by Bellamy

### Application

1. This is an application by Bellamy (the Applicant) for reconsideration of a decision of a Panel of the Parole Board dated 20 December 2022 (the 2022 Panel Decision) making no direction for the Applicant's release but recommending that he should be moved to open conditions.
2. 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.
3. I have considered the application on the papers. These are the 2022 Panel Decision, the Application for Reconsideration of the 2022 Panel Decision dated 8 January 2023, the handwritten statement of the Applicant with further Grounds of Application for Reconsideration dated 3 January 2023 (the Applicant's handwritten Grounds), an email dated 23 January 2023 from the Public Protection Casework Section (PPCS) on behalf of the Secretary of State stating that no representations will be made in response to the Application for Reconsideration of the 2022 Panel Decision dated 8 January 2023 and the Applicant's dossier containing 451 pages.
4. The grounds for seeking reconsideration are that: -
  - (a) The 2022 Panel Decision is irrational as "*the evidence the panel have taken into account is not directly linked to the risk of serious harm [and] the statutory test has not been met*" (Ground 1).
  - (b) The Panel was irrational as the Panel failed to take account or give adequate weight to the facts that:
    - (i) The Applicant had been imprisoned for over 2 years;
    - (ii) During this time he had completed a significant number of Release on Temporary Licence (ROTLs) both work related and Resettlement Day Release (RDR) together with 8 Resettlement Overnight Release (ROR)s;
    - (iii) His serious risk of serious harm is not regarded as imminent; (iv) he could be safely managed with the proposed "*robust risk management plan*";
    - (v) The Applicant "*self-disclosed his drug misuse*" which demonstrated a "*significant shift in his thinking and attitudes ... thereby reducing the risk of serious harm in the community*";
    - (vi) The Applicant's explanation to the Panel explaining why he felt unable to plan;



- ( ) The Panel could have adjourned the review process “*for the issues raised during the hearing*” so that the issues during the hearing “*could have been addressed within a relatively short period of time*” (Ground 2).
- (c) The Panel was irrational as “*not all the facts were taken into account prior to [making its decision]*” which are set out in the Applicant’s handwritten 2023 statement and these matters included, but were not limited, to his progress in addressing his substance misuse problem, his relationship with a female, his employment record while in prison and his plan for release (Ground 3).

## Background

5. On 13 March 2007, the Applicant, who was then 30 years old, received a prison sentence for Public Protection with a tariff of 2 years, 6 months and 25 days for the offence of conspiring to commit a robbery.
6. The Applicant and his co-defendants were said to be involved in a series of robberies of residential premises which occurred at night in the course of which jewellery, valuables including cash and expensive motor cars to a total value in excess of £750,000 were stolen. The victims of the robberies feared for their lives and the lives of other family members as they were surprised in their homes by the robbers who were wearing dark clothing, gloves and balaclavas and who threatened and overpowered their victims.
7. The Applicant’s basis of plea was that he was only involved in two of the robberies. In one case, he gave a lift to one of the active participants to the scene of the robbery where he terrorised a victim in her own bedroom. In the second robbery when “*things were not going to plan*”, the Applicant was called in and held a hammer and a knife at a time when threats were being made to the victim who later said that he feared his life was coming to an end. The sentencing judge found that the Applicant played a “*full and influential role*” in this robbery. The Applicant also admitted carrying a plasma television to a Range Rover which had been stolen from the location of the robbery in which he drove away to a pre-planned place. The Applicant claimed to have been paid £1500 for his role in this robbery and he described himself as a “*middleman*” admitting his involvement in the organisation and logistics of the robberies.
8. The Applicant had 6 previous convictions for 10 offences since March 1997. In May 1997, he was sentenced to 12 months in a Young Offenders’ Institution spending part of his sentence in Open Conditions. In June 1998, he was sentenced to 2 years’ imprisonment for assault occasioning actual bodily harm and this offence was committed when he was under the influence of alcohol on the date of his release from a previous custodial sentence. As will be explained, when the Applicant was released on licence for the index offence, he was sentenced in August 2014 to 15 years’ imprisonment for an offence of conspiracy to rob committed between 1 January 2013 and 7 June 2013.



9. The Panel noted that *"this history raises concerns about [the Applicant's] capacity to cause serious harm to others through his use of violence, which has predominantly been instrumental in nature [and] he has also demonstrated a capacity for poor compliance, which is of concern regarding the manageability of his risks, should he be re-released"*.

### **The Applicant's Life Since Sentence for the Index Offence**

10. The Applicant was transferred to Open Conditions in September 2010 before being released on licence in November 2011. He was recalled on 30 August 2013 after an incident at a night club on 27 August 2013 when he became involved in a fight with a bouncer and a barman. His version was that he "caught the barman in the face" with his hand by accident. This matter was not pursued but the Applicant failed to attend a supervision appointment on 21 August 2013. In early September 2013, the police tried to arrest the Applicant following his recall, but he was not living at the approved Licence address.
11. On 24 October 2013, the Applicant was arrested on suspicion of conspiracy to commit a robbery at a store in, London. This was said to have taken place on 6 June 2013 and was committed by 6 men wearing black clothing to conceal their identities. The seriousness of the offence is shown by the fact that it resulted in the theft of expensive watches with a total value of £1.5million and by the tactics used in the robbery because to carry out the robbery, the 6 men used axes and sledgehammers intimidating employees and customers in the process.
12. The Applicant was linked to the robbery by mobile phone evidence and DNA evidence which linked him to items recovered from the scene of the offence. The Applicant said that he had been involved in the planning of this robbery, including carrying out a reconnoitre of the location beforehand, acquiring the getaway car and clothing together with purchasing sledgehammers which were used to break open display cases. He also admitted to driving the other assailants to and from the scene. In August 2014, the Applicant was sentenced to 15 years' imprisonment for his role in the conspiracy to rob the London store in June 2013.
13. The Applicant was at Prison A between December 2014 and July 2015, and he has said that he did not progress from the assessment phase as it was felt that he had a number of issues as a result of his bereavement from the recent loss of his mother. He completed Resolve-Moderate intensity accredited programme at Prison B in 2016.
14. In December 2016, the Applicant was transferred to Prison C. Reports from that prison indicated that the Applicant had not adequately addressed his outstanding risks by the time he withdrew from core therapy in February 2018. Areas highlighted included anti-social values and attitudes, minimisation of offending, poor coping and problem solving, reckless/risk-taking behaviour and lifestyle and controlling/aggressive behaviour to others. The Applicant had been found in possession of a mobile phone during an intelligence led search of the library where he worked in an orderly position. The Applicant denied the allegation and it was not proceeded with. There was



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



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)

 [info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)



@Parole\_Board



0203 880 0885

also an allegation that the Applicant had been involved in a fight with another prisoner in April 2018 just before his transfer to Prison D.

15. The early reports on the Applicant from Prison D showed that his behaviour was compliant. In January 2019, he was referred to Phoenix Futures for drug and alcohol intervention although it was later reported that he had declined to work with them. Following a recommendation from the Board that the Applicant should be transferred to open prison conditions, this was accepted by the Secretary of State and the Applicant transferred to Prison E in July 2020. COVID restrictions limited the Applicant's opportunities to have access to temporary release. He received a proven adjudication for using a mobile phone in prison in October 2020 and was reduced to Basic on the IEP Scheme although he was later able to regain his Enhanced IEP Status. He was found to be positive in a MDT for Cocaine in December 2020.
16. The Applicant's POM reported that the Applicant admitted misusing another prisoner's prescription medication (Pregabalin) and he was considered to lack commitment to engage with substance misuse and mental health support services. The Prison and staff became aware in October 2021 that the Applicant had developed an intimate relationship during his time in prison which he had not previously disclosed, but "that *relationship did not endure*". The Applicant was able to secure employment in a local café but he left it after a few weeks as he found the work "boring". He then secured employment on a pig farm but he left that employment after a couple of months as he did not like the way he was spoken to by the some of the staff there. He later secured work at a wholesalers in February 2022 which he sustained until October 2022 "although with some mixed reports about his work ethic at times".
17. The Applicant was able to have periods of overnight release but he provided a positive drug test for cocaine during his first overnight leave in February 2022, but the test level was very low and a corroboration test proved negative. He had completed eight periods of overnight leave by the time of the hearing in December 2022.

### **The Evidence to the Panel of the Applicant's Progress in Custody**

18. The Applicant's POM, confirmed in her evidence to the Panel that there had been no recent negative developments in the Applicant's case. She explained that "at times, [the Applicant] can struggle to be fully honest with professionals" and he "failed to disclose substance misuse and misuse of other prisoner's prescription medication", which the Applicant was able to sustain without professionals identifying the issue which was "a concern". He also failed to disclose a developing intimate relationship earlier in his time in the prison. On one occasion, the Applicant had suggested that he had been given time off his employment which was then contested by the employer.
19. The Applicant's POM considered that the Applicant's "deception and capacity to deceive was as much of a concern as the reliance on non-prescribed medication to manage anxiety". She was of the opinion that in relation to the positive drug test referred to in paragraph 17 above, it was not possible



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



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)



[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)



@Parole\_Board



0203 880 0885

to determine what had happened as the second negative test was completed a significant time after the first positive test and the Applicant denied misuse.

20. The Applicant's engagement with the substance misuse had according to the Applicant's POM *"been sporadic at times which was a slight concern"*. She considered that the Applicant has had *"issues with negative influences in the past and has cited friends and peers as leading him astray at times."* She was also concerned that the Applicant had not sustained a job for an extended period and recorded that the Applicant *"has reported making the wrong work choices"*. She considered that employment *"could have been a core protective factor"* for the Applicant but his lack of clear employment plans was therefore *"a concern to [the POM]"*. In her opinion, she *"would have hoped that he had more advanced plans than he currently has to offer reassurance to professionals that he will not be tempted to commit further acquisitive offences to fund his lifestyle."*
21. The Applicant's POM was concerned that there was *"some evidence of [the Applicant's] increased maturity since [his] last offence although it was accepted that he may be tempted to revert to past patterns of behaviour if he is re-released."* She believed that although *"there should be warning signs before risk escalates. [his] past level of deception did raise concerns as to whether he could mask those warning signs"*. The Applicant's POM considered that future relationships needed to be monitored carefully *"given his experiences when last released."*
22. The Applicant's COM stated in her evidence to the Panel that she considered that there was some evidence of positive change in the Applicant, who had avoided a proven adjudication *"for some time "*, but he *"has pushed boundaries at time and shown a vulnerability to misuse illicit substances but these concerns appear to have reduced during the period he has been in the prison"*. She considered that as it is possible that he will continue to push boundaries if released, *"his evidence to professionals will need to be tested and probed during supervision."*
23. She regarded the Applicant's substance misuse and his misuse of non-prescribed medication as *"a concern"* and considered that he *"does appear to need sustained support with substance misuse and with his mental health as anxiety appears to be an enduring risk for him"*. There was no outstanding core risk reduction work for him to complete at the time of the hearing.
24. To the Applicant's COM, alcohol and substance misuse were *"core risk factors"* for the Applicant who will need to be monitored closely on those matters. She regretted that the Applicant *"had not been able to sustain employment in and out of prison"* although she accepted that *"there had been context to some of his decisions to change roles"*. She believed that as boredom could be a risk factor for the Applicant, *"it would be important for [him] to find purposeful activity if he is released"*.
25. The Applicant's COM considered that for the Applicant *"there were enduring risks around negative associations, substance misuse, poor financial regulation, a lack of employment and a deterioration in emotional well-being"*





and she “remained concerned that his risks could escalate quite quickly if he was struggling and if he failed to access appropriate support”.

## The Evidence of the Applicant to the Panel

26. The Applicant accepted leading a life of crime for most of his life as his plan was to steal to pay for a lifestyle he could not afford through money that he had earned legitimately. He considered that he had poor emotional management in the past and that he had the capacity to resort to violence and to threaten violence. He accepted that “*his recall behaviour was just as poor as when he committed his index offence, even though he had completed offending behaviour work supposedly to address and reduce his risks*”. The Applicant stated that since recall, he really wanted to change himself and that he was now a different person with improved emotional management.
27. On the subject of substance misuse, the Applicant in his evidence to the Panel accepted when he first arrived in prison, there was much substance misuse and he “*joined in*”. He explained that he engaged with substance misuse support services in custody “*on and off since that time*” and he had also engaged with the Mental Health Team also.
28. He accepted that he did not always attend appointments when “*he could not be bothered*” or when he was busy at work. He said that at the time of the hearing he was motivated not to relapse in the future.
29. On the subject of his misuse of non-prescribed medication, the Applicant admitted that he had engaged in “*poor decision making*” and that his misuse lasted “*for a few months*”. He also accepted going to Phoenix Futures and failing to disclose his misuse “*for a sustained period*”. The Applicant hoped not to repeat those mistakes.
30. He accepted that he was not always honest with professionals and he felt that it was positive that he did eventually disclose his misuse of Pregabalin. The Applicant said that he knew that he would have to make better choices if released.

## The Approach of the Panel

31. A three-member Panel of the Board held an oral hearing on 14 December 2022 at which the panel heard oral evidence from:
  - (a) the Applicant’s POM;
  - (b) The Applicant’s COM; and from
  - (c) the Applicant.
32. The Applicant was represented at the oral hearing by his solicitor. The Secretary of State was not represented by an advocate. A victim impact statement was provided and was read out. There was no evidence which could not be disclosed to the Applicant.
33. The Panel had to determine the significant question of whether it was no longer necessary for the protection of the public for the Applicant to remain in custody.



34.If release was not directed, the Panel then had to consider whether to recommend that the Applicant remains in open conditions and the panel was required to consider whether the Applicant has addressed and reduced his risks to the point that his risks could be managed during periods of temporary release from open conditions, whether it is satisfied that the Applicant poses a low level of risk of absconding and whether a period in open estate is essential to inform future decisions about release.

35.After reviewing the oral and written evidence, the Panel concluded that “*significant risk factors linked to [the Applicant’s] offending history included:*

- *A willingness to resort to violence and to use weapons, which greatly increases his risk of harm to others.*
- *Substance misuse, which can act to disinhibit [the Applicant], making him more likely to offend and increase his need for money from acquisitive crime to fund his substance misuse.*
- *Poor problem-solving skills, impulsiveness and a lack of victim empathy, which can cause him to fail to understand the harm and fear of harm that he causes.*
- *Pro-criminal attitudes and associations, with him demonstrating a willingness to associate with negative peers and live off the earnings of crime,*
- *A lack of regular employment, which limits his legitimate ways of earning money”.*

36.These factors will be referred to as “*the risk factors*” in this Decision.

37.According to the Panel, protective factors “*were based around [the Applicant’s] avoidance of violence in custody of late, his completion of a range of offending behaviour since his original conviction and his positive engagement with professionals at times.*”

38.The Panel noted that:

*“according to the most recent risk assessments within the dossier, the Applicant was assessed as posing a High risk of serious harm to the public. Offender Group Reconviction Scale (OGRS) scores are recorded which indicates he belongs to that group of offenders who present with a Low Likelihood of reoffending within two years. Taking dynamic factors onto account, Offender Assessment Systems (OASys indicates a Medium Likelihood of further general offending (OGP) and a Low likelihood of further violent offending (OVP).”*

39.The Panel concluded after considering the oral and written evidence that those assessments:

*“potentially underestimate the likelihood of [the Applicant] committing a further violent acquisitive offence, given the length of time [the Applicant] has spent in custody and his reversion to committing a further violent acquisitive offence when he was last released. The panel agreed that [the Applicant] needed to be managed as a high-risk offender.”*



40. The Panel considered the Risk Management Plan to be proportionate to the Applicant's risks and could think of no legitimate way to enhance its protective qualities.
41. The Panel had the benefit of representations made on the Applicant's behalf by his solicitor, who supported her submission that the Applicant should be released by referring to the lengthy stay the Applicant had spent in Open Conditions, his positive engagement with professionals, his use of professional support networks and his recent avoidance of substance misuse. She also pointed out that the Applicant was not assessed to pose an imminent risk and that there should be warning signs before his risks escalate. The Applicant's solicitor stressed that there were clear and robust plans in place to manage the Applicant, who had shown evidence of greater maturity and positive change.
42. The Panel was *"inevitably concerned by the very serious nature of the index offences and the equally serious nature of the recall offences [and] it was these second set of offences that caused the panel particular concern. Those offences were committed after [the Applicant] had committed [a] range of offending behaviour work supposedly to address and reduce his risks and while he [was] subject to stringent licencing conditions."*
43. The Panel then reached the important conclusion that therefore it *"needed to see **clear evidence of significant change** in order to be able to direct release"*.
44. The Panel was *"therefore significantly concerned by [the Applicant's] substance misuse soon after his arrival at the prison and his sustained misuse of non-prescription medication that was not detected by professionals. The lack of disclosure of a developing relationship was a further concern, as was [the Applicant's] inability to sustain employment. While [the Applicant] was saying the right things to the panel, [his actions] have not consistently evidenced his assertions. [The Applicant] has shown that he can deceive professionals and fail to disclose issues that were directly relevant to risk. He also failed to fully plan for release and failed to sustain employment which could be a critical risk factor."*
45. Having repeated that the Panel considered the Applicant *"to be rightly assessed as posing a high risk of causing serious harm and considered that OVP underestimated the likelihood of a further violent offence"*. It then concluded that it *"did not consider there to be adequate evidence that [the Applicant's] risks could be managed in the community and makes no direction for release"*. It recommended that the Applicant remains in Open conditions.

## The Relevant Law

### *Irrationality*

46. 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,



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



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)



[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)



@Parole\_Board



0203 880 0885



INVESTORS  
IN PEOPLE | Bronze



*"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."*

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

#### Other

48. It is possible to argue that mistakes in findings of fact made by a decision maker result in the final decision being irrational, but the mistake of fact must be fundamental. The case of **E v Secretary of State for the Home Department [2004] QB 1044** sets out the preconditions for such a conclusion: *"there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter; the fact or evidence must have been "established", in the sense that it was uncontested and objectively verifiable; the appellant (or his advisors) must not have been responsible for the mistake; and the mistake must have played a material (though not necessarily decisive) part in the tribunal's reasoning."* See also **R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2003] AC 295**, which said that in order to establish that there was a demonstrable mistake of fact in the decision of the panel, an Applicant will have to provide "objectively verifiable evidence" of what is asserted to be the true picture.

49. 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 craftsmanship."*

#### Procedural Unfairness

50. Procedural Unfairness means that there was some procedural impropriety. In summary, an Applicant seeking to complain of procedural unfairness under Rule 28 has to establish 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.



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



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)



[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)



@Parole\_Board



0203 880 0885

- (d) they were prevented from putting their case fairly; and/or
- (e) the panel was not impartial.

51. The overriding objective is to ensure that the Applicant's case was dealt with unjustly.

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

52. PPCS stated in an email dated 3 February 2023 that the Respondent was not making any representations in response to the Applicant's reconsideration application.

### **Discussion**

53. In dealing with the grounds for reconsideration, it is necessary to stress five matters of basic importance. The first is that the Reconsideration Mechanism is not a process by which the judgment of the Panel when assessing risk can be lightly interfered with. Nor is it a mechanism in which the member carrying out the reconsideration was entitled to substitute his 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.

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

55. Third, where a panel arrives at a conclusion, exercising its judgment 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.

56. Fourth, when considering whether to order reconsideration, appropriate weight must be given to the views of the professional witnesses, but reconsideration cannot be ordered if the panel has put forward adequate reasons for not following the views of the professional witnesses.

57. Fifth, in many cases, there can be more than one decision that a panel can be entitled to arrive at depending on its view of the facts.

### **Ground 1**

58. This ground is that the Panel was irrational as "*the evidence the panel have taken into account is not directly linked to the risk of serious harm [and] the statutory test has not been met*".

59. This ground cannot be accepted. The first reason for rejecting this Ground is, as has been explained, the Panel took into consideration evidence linked to the risk of serious harm, such as the Applicant's index and recall offence and it was entitled to conclude in the light of the evidence linked to the risk



of serious harm that the Applicant could not be safely released because as has been explained:

- (a) The Panel was *"inevitably concerned by the very serious nature of the index offence and the equally serious nature of the recall offences"*. A very lengthy sentence of 15 years' imprisonment for the recall offences shows the deeply disturbing nature of the recall offences which involved the use of sledgehammers and very disturbing threatening behaviour to customers and staff at a [department] store as well as the high value of the items stolen.
- (b) An extremely disturbing feature of the recall offences was that they were committed after the Applicant had carried out *"a range of offending behaviour work supposedly to address and reduce his risk."* This indicated that the offending behaviour work carried out by the Applicant had not prevented him carrying out the very serious recall offences.
- (c) A further concerning feature of the recall offences was that they were carried out while the Applicant was *"subject to stringent conditions"* which he totally disregarded by committing the recall offences. This showed a serious failure to comply with conditions at the time of the 2022 Panel Decision;
- (d) All those matters were highly relevant to the risk of serious harm posed by the Applicant at the time of the 2022 Panel Decision;
- (e) In the light of these factors, the Panel was entitled to reach the important conclusion that it *"needed to see clear evidence of significant change in order to be able to direct release"*.
- (f) The Panel was entitled to conclude that it *"did not consider that there was adequate evidence that [the Applicant's] risk could be managed in the community and makes no direction for release"*. There was much evidence in support of this such as the paragraph 34 risk factors and the fact after the Applicant transferred prisons, reports from that prison indicated that he had not adequately addressed his outstanding risks by the time he withdrew from therapy in February 2018. Areas highlighted included anti-social values and attitudes, minimisation of offending, poor coping and problem solving, reckless/risk-taking behaviour and lifestyle and controlling/aggressive behaviour to others. There was also an allegation that the Applicant had been involved in a fight with another prisoner in April 2018 before his transfer to another Prison on 10 April 2018. In January 2019, he was referred to Phoenix Futures for drug and alcohol intervention although it was later reported that he had declined to work with them. He received a proven adjudication for using a mobile phone in prison in October 2020 and was reduced to Basic on the IEP Scheme although he was later able to regain his Enhanced IEP Status.
- (g) Further evidence which supported that conclusion that the Applicant could not be safely managed in the community included the fact that *the Panel was "significantly concerned" by the Applicant's] substance misuse soon after his arrival at the prison and his sustained misuse of non-*



*prescription medication that was not detected by professionals". Another matter of concern was that the Applicant had "shown that he could deceive professionals and fail to disclose issues that were directly relevant to risk". All these matters had to be considered in the light of the fact the Panel considered the Applicant "to be rightly assessed as posing a high risk of causing serious harm and considered that OVP underestimated the likelihood of a further violent offence".*

60. A second or alternative reason why this ground cannot be accepted is that it fails to reach the high threshold for finding that the reason was irrational because, as explained previously this ground can only succeed if *"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"*. This ground must be rejected in the light of the nature of the index offence and the factors set out in paragraph 6 and 7 above relating to the index offence and the matters set out in paragraph 59 above relating to the recall offences, the subsequent conduct of the Applicant and the risk factors.

61. A third or alternative reason why this claim fails is that deference is due to the Panel because when deciding whether a decision of the panel was irrational, due deference has to be given to the expertise of the panel in making decisions relating to parole. It is clear that the Applicant disagrees with many of the Panel's conclusions but that does not mean reconsideration should be ordered especially as the Applicant has failed to contend let alone establish that the Panel was entitled to find in the light of the matters set out in paragraph above, *"it needed to see clear evidence of significant change in order to be able to direct release"*.

62. A fourth or alternative reason why this ground has to be rejected is that if a panel arrives at a conclusion, exercising its judgment 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. In this case, there are no compelling reasons for interfering with the decision of the Panel especially in the light of the matters set out above and the risk factors in any event, it is not *"manifestly obvious"* that there are such reasons.

63. Accordingly, I reject the first ground.

## Ground 2

64. This Ground is that the Panel was irrational as it failed to take account or give adequate weight to the facts that:

- the Applicant had been imprisoned for over 2 years;
- during this time he had completed a significant number of ROTLs both work related and RDR together with 8 RORs.
- his serious risk of serious harm is not regarded as imminent;
- he could be safely managed with the proposed risk management plan;



- The Applicant "*self-disclosed his drug misuse*" which demonstrated a "*significant shift in his thinking and attitudes ... thereby reducing the risk of serious harm in the community*";
- The Applicant's explanation to the Panel explaining why he felt unable to plan;
- The Panel could have adjourned the review process "*for the issues raised during the hearing*" so that the issues during the hearing "*could have been addressed within a relatively short period of time*".

65. First, there is no evidence or allegation that the Applicant or his representative asked the Panel to adjourn the review for "*the relatively short period*". It is not mentioned in the 2022 Panel Decision or in any of the submissions of the Applicant's legal representative. In those circumstances, it could not be irrational for the Panel not to order an adjournment in the absence of a request, but as will be explained there are other reasons why this ground must fail.

66. A second or alternative reason why this ground must fail is that the Panel no obligation or duty to adjourn the hearing especially as there was no evidence of the necessary period of the adjournment or that any useful purpose would have been served by the adjournment in the light of the matters set out above and the risk factors which showed why the Panel was then entitled to refuse release. In addition, there was no reason to believe that those factors would not continue to prevent it being safe to release the Applicant for the foreseeable future.

67. A third or alternative reason why this ground must be rejected was that bearing in mind that the statutory test had not been met for release, there was no material to show it was not irrational to think that failing to order an adjournment was irrational bearing in mind the high threshold of establishing a finding of irrationality. That threshold is, as has been explained that the decision, has in the words of the Divisional Court judgment set out above to be "*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*".

68. Another reason why this ground must be rejected is that in any event *deference* owed to the Panel as explained in above meant that that even if they should have considered whether to grant an adjournment, they would have been quite entitled to refuse to grant it on account of the factors set out above and the risk factors.

### Ground 3

69. This Ground is that the Panel was irrational as it "*did not fully appreciate or take into consideration the full extent of the matters at hand*" which are set out in the Applicant's handwritten grounds and these matters included his progress in addressing his substance misuse problem, his 8 successful Home Leaves, his relationship with Ms L, his employment record while in prison and his plan for release. I have taken proper account of all the matters set out in the Applicant's Handwritten Grounds, but, as will be ex-





plained, they do not show that reconsideration has to be ordered for a number of crucial reasons which included the deference owed to the Panel who had the great advantage (which I have not had) of seeing and hearing the witnesses and the high threshold required to show irrationality as explained above.

70. First, as has been explained, the Panel reached its decision that the Applicant could not be safely released because of "*the very serious nature of the index offence and the equally serious nature of the recall offences*". The significance of the recall offences is that they were committed after the Applicant had carried out "*a range of offending behaviour work supposedly to address and reduce his risk.*" This showed that the offending behaviour work carried out by the Applicant had not prevented him carrying out the very serious recall offences. Further, at the time of the recall offences, the Applicant had completely disregarded conditions in force which were intended to prevent him committing offences like the recall offences. The Panel was quite entitled to require seeing clear evidence of significant change in the Applicant's conduct in order to be able to direct release but this evidence had not been forthcoming at the time the Panel's decision for the reasons set out above and the risk factors. The complaints of the Applicant do not undermine that conclusion. Indeed, the Applicant's complaints do not challenge fundamental ingredients of the Panel's reasoning such as the nature and significance of the recall offences.

71. A second or alternative reason why this Ground must fail is that it ignores the crucial fact that the Panel were the designated fact finders who reached their conclusion on the basis of the evidence which they heard and saw. Having considered the detailed complaints of the Applicant about the matters in his statement, his complaints fall a long way short of reaching the high threshold required for rejecting the Panel's conclusion as it is most certainly not manifestly obvious that there were any errors of fact of an egregious nature which can be shown to have directly contributed to the conclusion arrived at by the panel.

72. A third or alternative reason why the ground must be rejected was that deference was due to the Panel who saw and heard the witnesses and reached their conclusions and there are no compelling reasons for not accepting their conclusions.

73. For the purpose of completeness, I add that I considered but rejected any suggestion that the Panel acted in a procedurally unfair manner.

## Conclusion

74. For all these reasons, this application for reconsideration must be refused.

**Sir Stephen Silber**  
**6 March 2023**



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



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)



[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)



@Parole\_Board



0203 880 0885