

[2024] PBRA 102**Application for Reconsideration by Wilkinson****Application**

1. This is an application by Wilkinson ('the Applicant') for reconsideration of the decision of a panel of the Parole Board ('the Board') who on 22 April 2024, after an oral hearing on 26 March 2024, issued a decision not to direct his release on licence.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) provides that applications for reconsideration may be made, either by the prisoner or by the Secretary of State for Justice, in eligible cases (as set out in rule 28(2)). The Secretary of State is the Respondent to any application by the prisoner and will be referred to as such in this decision.
3. An application may be made on the ground (a) that the decision contains an error of law and/or (b) that it is irrational and/or (c) that it is procedurally unfair. This is an eligible case, and the application was made within the prescribed time limit.
4. I am one of the members of the Board who are authorised to make decisions on reconsideration applications, and this case has been allocated to me. I have considered the application on the papers. The documents which have been provided to me and which I have considered are:
 - (a) The dossier of papers provided by the Respondent, which now runs to 229 numbered pages including the panel's decision letter;
 - (b) The submissions by the Applicant's legal representative in support of the application for reconsideration; and
 - (c) An e-mail from the Public Protection Casework Section ('PPCS') of the Ministry of Justice on behalf of the Respondent, stating that he does not wish to submit any representations in response to the application.

Background and history of the case

5. The Applicant is aged 72 and is in poor health. He is serving a life sentence for murder. The sentence was imposed in November 1995 when aged 43. The Applicant's minimum term ('tariff') was set at 15 years, and expired in October 2009. He has remained in prison throughout his sentence. He was housed in a Category A prison for many years but since April 2021 he has been a Category C prisoner in a Category C prison. This is the 10th review of his case by the Board. All previous reviews have resulted in decisions that he should remain in prison in closed conditions.



6. The victim of the murder was the 20 year old daughter of the Applicant's ex-partner. After drinking all day he had gone to his ex-partner's address, to which he still had the keys. He let himself in and went to sleep in the spare bedroom. In due course the victim came to the property and let herself in. It appears that she and the Applicant had consensual sexual intercourse after which he went into a rage and attacked her with a weapon (either an ice pick or carpet tacker). She had extensive defence injuries and two stab wounds to her neck which killed her.
7. This was not the Applicant's first offence of violence. As the panel put it in their decision: *"His record suggests he struggles to manage his feelings and act in a non-violent and appropriate manner. He has demonstrated in his offending a capacity to use extreme violence to exert control in situations where he feels emotionally charged. This, combined with significant alcohol misuse in the community, has meant that [the Applicant] has an established pattern of violent offending within intimate relationships and beyond."*
8. In the early stages of the Applicant's sentence he completed two programmes of the kind designed to reduce an offender's risk to the public. These were, however, generalised programmes and professional witnesses and panels of the Board have consistently been of the view that he needed to complete further programmes to reduce his risk to a level at which it would be safe for him to be released into the community. The Applicant declined, however, to engage in any further group programmes.
9. The present review of the Applicant's case commenced in April 2023. Reports by his Prison Offender Manager ('POM') and Community Offender Manager ('COM') did not support release on licence but recommended that the Applicant should be transferred to open conditions. Their recommendations were, in large part, due to the Applicant's age and poor health and the fact that he was undertaking a series of 1:1 sessions with the POM.
10. The oral hearing was, as noted above, held on 26 March 2024. It was conducted by video link. The panel comprised a Judicial Chair, a Psychologist Member and an Independent Member. The Applicant was legally represented. The dossier at that stage comprised 210 numbered pages. Oral evidence was given by the POM, the COM and the Applicant. The POM and the COM confirmed their previous recommendations but the panel decided not only not to direct the Applicant's release on licence but also not to recommend a move to open conditions.

Request for Reconsideration

11. This request for reconsideration was made by the Applicant's legal representative on his behalf on 9 May 2024. As noted above it is made on the ground of irrationality. The arguments advanced by the solicitor will be explained and discussed below, as will a further point which I have noticed.

The Relevant Law



12. The panel correctly set out in its decision letter the test for release and the issues to be addressed in advising the Respondent about the applicant's suitability for a move to open conditions.

Parole Board Rules 2019 (as amended)

13. Rule 28(1) specifies 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)).
14. Rule 28(2) specifies the types of sentences 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)).
15. The decision of the panel in this case not to direct release on licence is thus eligible for reconsideration. As will be explained below the Applicant is seeking reconsideration of that decision on the ground of irrationality. No procedural unfairness or error of law is suggested. The panel's decision not to recommend a transfer to open conditions is not eligible for reconsideration.

Irrationality

16. In **R (DSD and others) v the Parole Board** [2018] EWHC 694 (Admin) (the "Worboys case"), the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It stated at paragraph 116 of its decision:

"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 was the test which had been set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374** and applies to all applications for judicial review.
18. The Administrative 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 Board in making decisions relating to parole.
19. The Parole Board, when deciding whether or not to direct a reconsideration, adopts the same high standard as the Divisional Court for establishing 'irrationality'. The fact that Rule 28 uses the same adjective as is used in judicial review cases in the courts shows that the same test is to be applied. The application of this test to reconsideration applications has been confirmed in previous decisions under Rule 28: see, for example, **Preston [2019] PBRA 1**.



The Application for Reconsideration

20. As noted above the application for reconsideration was made by the applicant's legal representative on his behalf. The application was based on admirably concise grounds which I will discuss below.

The reply on behalf of the Respondent

21. The Respondent is entitled to submit representations in response to the application. As indicated above PPCS have indicated on his behalf that he does not wish to submit any representations in this case.

Discussion

22. The following are the grounds for reconsideration which are advanced by the legal representative:

"It is submitted that the decision not to release [the Applicant] was irrational based on the evidence before the Panel because insufficient consideration was given to various factors which greatly reduce and/or otherwise impact his risk factors. It is also submitted that there is an insistence to stick to previous Panel decisions rather than looking at the case afresh and in light of developments since the last review. The following elements are relied on:-

"[The decision lists] risk factors prevalent in [the Applicant's] life at the time of the index offence (and other previous offending) and conclude that should they be present again, they might increase his likelihood/motivation/frequency to re-offend. It is submitted that too much weight was given to these risk factors given that the index offence was committed 30 years ago, his long term serious health issues and his long term good behaviour in custody.

"[The Applicant] is now 72 years of age and suffers with constant leg pain and severely impaired mobility due to a football injury many years ago, as well as varicose veins in both legs. He walks with a stick and can manage a maximum of 100 yards 'on a good day'. [He] takes 13 tablets per day which include treatment for low blood pressure, high cholesterol and depression. He has been suffering with dizzy spells since an illness which resulted in hospitalisation... and finds these are becoming more frequent with a fall happening usually every day. [He] has shown himself to be content in his own company spending the majority of his time in his cell listening to music and reading.

"In light of these factors too much weight was given to risk factors which may well have existed in [the Applicant's] life some 30 years ago but now either do not exist or are greatly reduced and there is little evidence to suggest they may return on release or will not be 'noticed and addressed under the risk management plan'. These factors include pro-criminal attitudes, alcohol misuse, intimate relationships, sexual jealousy, lack of employment or meaningful activity. There is no contact with his past which may raise concerns about former partners.



"... it is submitted that the 1:1 work completed by [the Applicant] recently has not been given sufficient regard nor has the need to treat each prisoner as an individual and find alternative ways of reducing risk for some ... The 1:1 work was spoken very highly of by his COM and POM. It is submitted the panel were wrong to dismiss it as merely a 'stepping stone' to further intensive work. The POM felt no further core risk reduction work was required and it is submitted that if the result has been achieved it should not matter that it was not through the previously recommended route of group work.

"It should also be noted that... the panel confirmed they agreed with the various risk assessments which range from low probability of re-offending to high risk of serious harm to the public. Given that the overall risk of re-offending and serious recidivism is low it is submitted the RMP was clearly sufficient to manage any risk [the Applicant] did pose to the public on release."

23. These are very reasonable and clearly expressed arguments but I need now to examine the panel's reasons for declining to direct the Applicant's release on licence.
24. One reason is of course that neither of the professional witnesses, whilst recommending transfer to open conditions, supported release on licence. As explained above it is only the panel's decision not to direct release on licence which is eligible for reconsideration.
25. It is also of some significance that the panel recorded the Applicant as having told them that *"he felt he deserved release after 30 years. He knew everything had changed on the outside. He would very much like to go to open conditions. It would be more beneficial than being released. He was afraid of being released into the big wide world."* This was entirely understandable, and the panel concluded that *"A successful risk management plan is reliant upon a combination of external and internal controls. The panel did not feel [the Applicant] has sufficient insight into his risks and how to manage them to provide a satisfactory contribution."*
26. The panel began the 'Conclusion' section of their decision by stating that in arriving in their decision they had regard to the very serious nature of the murder against a history of violent behaviour, particularly within intimate relationships. They went on to state that they considered that *"the Applicant's principal area of risk remained within a current or past intimate relationship."*
27. It is clear that the Applicant's principal area of risk does indeed remain within the field of intimate relationships. There has been no evidence of general violence for a very long time. I cannot see any evidence that the Applicant poses any real risk to any past partner or their family, and he is not currently in a relationship. The real risk of serious harm, if there is one, is therefore a risk to any future partner.
28. The Applicant's age and poor health do not of course mean that if released into the community he will not enter into an intimate relationship, though the chance of that happening is clearly reduced. People of his age and poor health have been known to commit serious offences of violence against intimate partners, especially if the partner is vulnerable and the offender has not completed the appropriate risk reduction courses.



29. The panel pointed out that: *"The offending behaviour work undertaken during his almost 30 years in custody has been extremely limited, yet it is not considered by professionals that there is any outstanding core risk reduction work. The panel disagrees. The 2022 panel expressed itself quite satisfied that core risk reduction work remained to be done and did not accept it could not be done in a group setting if he wished it to. [The Applicant] told the current panel he would undertake group work. He had done no material core offence related work since 2001 and what he did before then was insufficient for the purposes of reducing his risk. The current panel agreed with the 2022 panel's assessment. It did not regard the recent and ongoing 1:1 work with the POM as adequate to address the breadth and intensity of his treatment needs and outstanding risks of violence. At best it is a stepping stone towards further more intense work and may have enhanced his motivation and relationships with professionals."* I cannot see anything irrational in that view.
30. The panel went on to state: *"[The Applicant's] positive and settled conduct in the controlled prison environment is to his credit but is of limited assistance when assessing his risk in the community and particularly within an intimate relationship or following the breakdown of a relationship. Sadly, in evidence [the Applicant] was unable to demonstrate any understanding of the motivation and triggers for the index offence or articulate his learning from the recent 1:1 work or explain his past behaviour. There was no indication that he would be able to manage his risk by identifying problematic situations and triggers and dealing with them."* Again, I cannot see anything irrational in that view. The panel had the benefit of seeing and hearing the Applicant give evidence and it is not for me to attempt to go behind their assessment of his evidence.
31. The panel did make one unfortunate mistake, which the legal representative does not seem to have spotted. As is always the case the panel recited and approved the various risk assessments made by probation. They accurately recorded the results of the statistical risk assessment tools used by probation to assess the Applicant's risks of re-offending, all of which showed those risks as being no higher than medium.
32. They then referred to probation's clinical assessment of the Applicant's risk of serious harm to various categories of people if he were to re-offend. They stated that his risk of serious harm to the public (including future intimate partners) was assessed by probation as high. In fact that was not the case. That risk had for many years been assessed as high but it had been reduced to medium.
33. But for that unfortunate mistake I would have had little difficulty, despite the legal representative's admirable representations, in concluding that the complaint of irrationality had not been established. This is a case where views could and did reasonably differ, not one where one side of the argument could be said to have been irrational.
34. I have given very careful consideration to the question whether the panel's mistake about probation's risk assessment could be said to have rendered their decision irrational. The answer to that question must depend on whether their decision might have been different if they had not made that mistake.



35. At the end of the day I am satisfied that it would not have been any different. The reasons given by the panel for not directing release on licence are unassailable, as are the reasons given by the professional witnesses for not supporting release on licence.
36. I very much hope that the Applicant will agree to engage in an appropriate group programme, as he had indicated he is willing to do. If he does he will find that he has learned many useful techniques to help him to avoid re-offending.

Decision

37. For the reasons which I have explained above my decision must be to refuse this application.

Jeremy Roberts
23 May 2024

