

[2024] PBRA 149

Application for Reconsideration by Williams

Application

1. This is an application by Williams (the Applicant) for reconsideration of a paper decision dated 4 June 2024 not to direct his release.
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 paper decision, the dossier (consisting of 224 numbered pages), and the application for reconsideration. The application was dated 11 June 2024, but actually received by the Parole Board on 11 July 2024. I shall treat this as an error on the Applicant's part and take the date of the application as 11 July 2024. This date is material to the validity of the application as will be explained later.

Background

4. The Applicant received three concurrent extended sentences comprising a custodial period of 12 years with an extended licence period of two years on 10 November 2016 following conviction on three counts of rape of a female aged 16 years or over to which he pleaded guilty. On the same occasion he was also convicted of kidnapping and causing grievous bodily harm with intent to do grievous bodily harm. He pleaded guilty to the additional charges and received no separate penalty.
5. The Applicant was 19 years old at the time of sentencing and is now 26 years old.
6. Key dates relevant to his sentence are reported to be:
 - a) Parole eligibility date: August 2024;
 - b) Conditional release date: August 2028; and
 - c) Sentence expiry date: August 2030.

Request for Reconsideration

7. The application for reconsideration has been submitted by solicitors on behalf of the Applicant and pleads grounds of both procedural unfairness and irrationality.



8. These grounds are supplemented by written arguments to which reference will be made in the **Discussion** section below.

Current Parole Review

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) on 6 December 2023 to consider whether or not it would be appropriate to direct his release. This is the Applicant's first parole review.
10. The case was reviewed by a single member Member Case Assessment panel (MCA panel) on 4 June 2024. This panel made no direction for release on the papers.
11. This decision was made under rule 19(1)(b) and, by operation of rule 19(6) was a provisional decision. Rule 20(1) permits a prisoner who has received a provisional negative decision on the papers to apply in writing for his case to be determined by a panel at an oral hearing. Rule 20(2) provides that any such application must be served within 28 days of receipt of the provisional decision. In the Applicant's case, the provisional decision was (according to Parole Board records) issued on 5 June 2024, making the deadline for an oral hearing application 3 July 2024.
12. On 8 June 2024, an in-time application was made for an oral hearing.
13. In accordance with rule 20(5), the application was passed to a duty member who was not involved in the making of the provisional negative decision.
14. On 20 June 2024, a duty member refused the request for an oral hearing. The provisional decision therefore became final on 20 June 2024. The 21-day reconsideration window opened at that point, with the closing date for any reconsideration application being 11 July 2024. I am therefore satisfied that the application for reconsideration was made in time.

The Relevant Law

15. 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)

16. 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)).
17. 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)).

18. 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.

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.

Irrationality

22. 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 (CA) 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.

23. In *R(DSD and others) v Parole Board* [2018] EWHC 694 (Admin) the Divisional Court applied this test to Parole Board hearings in these words (at [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.*"

24. In *R(Wells) v Parole Board* [2019] EWHC 2710 (Admin) Saini J 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 the Divisional Court in *R(Secretary of State for Justice) v Parole Board* [2022] EWHC 1282 (Admin).

25. As was made clear by Saini J in *Wells*, 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.
26. 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.
27. 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 Respondent

28. The Respondent has submitted representations in response to this application. These note that the Applicant is currently engaging in offending behaviour work which should be completed (if there are no setbacks) by the first week in October 2024.

Discussion

29. Submissions on behalf of the Applicant on the ground of procedural unfairness argue that the case should have been directed to an oral hearing. The application sets out a number of reasons why the Applicant should have been granted an oral hearing. It is argued that, in refusing the application to grant an oral hearing, the duty member failed to take the principles of *Osborn, Booth and Reilly* [2013] UKSC 61 into account. It is further argued that the duty member contradicted the MCA panel as to whether the Applicant's risks were understood. The application for reconsideration reiterates many of the points that were raised in the initial application for an oral hearing.
30. The decision not to direct an oral hearing was made under rule 20(6). This decision is not one that can be challenged via the reconsideration mechanism (which only applies to the decision not to direct release). Therefore, the submissions on the ground of procedural unfairness must fail.
31. It is also argued that the decision not to direct release was irrational as the MCA member "*took the view that all risks were not yet understood, yet the member who considered the application for an oral hearing agreed with psychology and stated that all risks were understood*". These submissions relate to the decision not to direct release and, as such, do become subject to potential reconsideration.
32. Relevant passages from the decision not to direct release are as follows:
- a) "*The panel was aware that [the Applicant] has not yet completed risk reduction work and agreed with the [Community Offender Manager] that as a result of this, the risks and triggers for sexual violence are not yet properly understood*" (para. 1.9);
 - b) "*[The Applicant's] risks may not yet be properly or fully understood by professionals*" (para. 3.3); and

c) "...risks and riggers for sexual violence have not been explored in detail and may not yet be fully understood" (para. 4.2).

33.The relevant passage from the decision not to direct an oral hearing is "[t]he PCAN (Psychology Case Advice Note) notes that your risk is understood".

34.It is not correct to say that the member who considered the application for an oral hearing agreed with psychology and stated that all risks were understood. The decision notes the views of psychology without offering any view on whether the member did or did not agree with that viewpoint. While the PCAN within the dossier stated that the Applicant's risk is understood, it also notes that he had an agreed treatment pathway and that a psychological risk assessment may add value to the determination of future risk management strategies after an accredited intervention and a period of consolidation. Taking the Respondent's view into account, that period of consolidation would begin sometime in October 2024.

35.The duty member concluded that the Applicant needed to complete relevant offending behaviour work, as did the MCA member. His Community Offender Manager (COM) was not supporting release. The PCAN offered no view on the Applicant's suitability for release, although it was clear that he had a treatment pathway including an accredited intervention. The Applicant was assessed as presenting a very high risk of future contact sexual reoffending with a very high risk of serious harm to the public (meaning that there was an imminent risk of serious harm with a serious impact). The MCA member gives very clear reasons for not directing his release; not just relating to the lack of progress in terms of risk reduction but also to his volatile, aggressive and unpredictable behaviour in custody. These reasons clearly discharge the panel's duty to explain its decision. The decision not to direct the Applicant's release is far from meeting the legal test of irrationality.

Decision

36.For the reasons set out above, the application for reconsideration is refused.

Stefan Fafinski
08 August 2024