

[2024] PBRA 156

## Application for Reconsideration by Ratledge

### Application

1. This is an application by Ratledge (the Applicant) for reconsideration of a decision of a two-member panel dated 28 June 2024 (the Decision) not to direct the release of the Applicant.
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. This is an eligible case, and the application was made in time.
3. I have considered the application on the papers. These are the Decision, the Application for Reconsideration dated 18 July 2024, the Email from Public Protection Casework Section (PPCS) on behalf of the Secretary of State (the Respondent) to the Parole Board dated 5 August 2024 stating no representations were being submitted in response to the Applicant's reconsideration application and the Dossier totalling 328 pages.

### Request for Reconsideration

4. The application for reconsideration is dated 18 July 2024
5. The grounds for seeking a reconsideration are as follows:
  - a) there was procedural unfairness in the handling of the Applicant's claim because on 25 June 2024, which was the day of his hearing, it became apparent that the Applicant, who had chosen to represent himself, had not been supplied with a copy of his dossier and "*had not had the time to consider the same and therefore was in an impossible position*" which was wholly unfair especially given "*his very clear ASD diagnosis*". So it is contended that the Applicant's case should not have been heard on 25 June 2024, but instead it should have been adjourned for a suitable period in order for the Applicant to be allowed to consider the Dossier and take legal advice as he had recently instructed the solicitors who were acting for him in the present claim for reconsideration. (Ground A).

- b) the Decision of the Panel was irrational for the reasons set out in Ground A. (Ground B).

## Background

6. On 31 October 2013, the Applicant, who was then 51 years old, was sentenced to an extended sentence with a 12-year custodial element and a 3-year licence period for an offence of inflicting grievous bodily harm with intent against his then partner. The case against the Applicant was that he committed a sustained attack against his erstwhile partner with blows to her head and body. She was knocked to the floor and was punched and kicked by him. Her injuries included three separate brain injuries as well as damage to her kidneys and multiple bruises. He did not seek medical attention for her despite the fact she was severely injured.
7. The Applicant has previous convictions from 1981 including for burglary and theft offences, using threatening and abusive words or behaviour, possessing a prohibited weapon, possessing controlled drugs, destroying property and harassment and non-compliance with court orders. The index offence represented a marked escalation in the Applicant's risk of serious harm to a partner.
8. The Panel was not prepared to proceed with the hearing on 25 June 2024 as the Applicant had not received a copy of his dossier and was not legally represented. He told the Panel on 25 June 2024 that he was content to remain in custody till his CRD.
9. The Panel stated at the start of its Decision that they felt it was unfair to proceed and that the Applicant had indicated that he did not want another Parole Board hearing.
10. The conclusion of the Panel was that:

*"Given its concerns about the serious nature of his index offence and whether his risk of serious harm could be safely managed in the community, the panel could not justify directing his release on the papers. Given that he does not want an oral hearing, the panel was satisfied that it remains necessary for him to be confined in custody in order to protect the public and so it did not direct his release."*

## The Relevant Law

11. The Panel correctly sets out in its decision letter dated 28 June 2024 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

### *Parole Board Rules 2019 (as amended)*

12. 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)).

13. 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)).

#### *Procedural Unfairness*

14. 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.
15. 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;
  - (e) the panel did not properly record the reasons for any findings or conclusion; and/or
  - (f) the panel was not impartial.
16. The overriding objective is to ensure that the Applicant's case was dealt with justly.

#### *Irrationality*

17. 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.
18. 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.*"
19. 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). 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.*

20. 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. 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**

21. By an Email from PPCS on behalf of the Respondent to the Parole Board dated 5 August 2024, PPCS offered no representations in response to the Applicant's reconsideration application.

### **Discussion**

#### **Ground A**

22. This Ground is that there was procedural unfairness in the handling of the Applicant's hearing because on 25 June 2024, which was the day of the hearing, the Decision records that the Applicant "*chose to represent himself*" and that "*at the outset of the hearing, it became apparent that [the Applicant] had not received a copy of his dossier.*" The Applicant's POM "was newly allocated and so could not confirm whether it had been issued to him."

23. The Decision then records that "*Given [the Applicant's] ASD diagnosis and the absence of legal representation, the panel considered that it would be unfair to proceed on 25 June 2024.*" No criticism is made of this account of events or the attitude of the Panel in deciding it would be unfair to proceed to deal with the Applicant's hearing on 25 June 2024.

24. The next development as recorded in the Decision was that the Applicant "*indicated that he did not want another Parole Board hearing and was happy to remain in custody until his CRD*". The Panel noted that the Applicant's Community Offender Manager (COM) "*requested a discussion with [the Applicant] following the termination of the video link but the panel did not receive any further information.*" So the position at the end of these discussions was that the Panel considered it unfair to proceed on 25 June 2024 and that the Applicant did not challenge that conclusion, but said that he did not want another parole hearing and that he was happy to remain in custody until his CRD, which was a view which he apparently did not change after such discussions which he had with his COM. The Panel concluded that "*given its concerns about the serious nature of his index offence and whether his risk of serious harm could be safely managed in the community, the panel could not justify directing his release on the papers. Given that he does not*



*want an oral hearing, the panel was satisfied that it remains necessary for him to be confined in custody in order to protect the public and so it did not direct his release."*

25. The issue is whether it was procedurally unfair for the Panel to take this stance bearing in mind that the Applicant was happy to remain in custody till his CRD and did not want another Parole Board hearing. I have come to the clear conclusion that it was not procedurally unfair for the Panel to reach the conclusions which it did because there was clear evidence first, that the hearing could not go ahead on 25 June 2024 because the unrepresented Applicant did not have the dossier, second, that the Applicant did not want another hearing, third, the Applicant was content to remain in custody until his CRD and fourth, the Panel could not justify directing the release on the papers. Nothing has been put forward to show that it was procedurally unfair for the Panel to reach these conclusions which will hereinafter be referred to as "*the four conclusions*".

26. Indeed, it is clear that the case of the Applicant was treated justly as his concerns had been considered fairly in the light of the four conclusions.

### **Ground B**

27. This ground is that the Decision of the Panel was irrational for the reasons set out in Ground A.

28. As I have explained in paragraph 18, the issue on this Ground based on irrationality is whether the release decision not to release the Applicant "*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.*"

29. This requires consideration of the four conclusions, and they were all supported by clear evidence. Indeed, nothing has been put forward, let alone established, to show that any of these conclusions approaches the threshold of being irrational.

### **Decision**

30. For the reasons set out above, I have concluded that the Decision of the Panel to refuse to release the Applicant was neither procedurally unfair nor irrational and accordingly the application is refused.

Sir Stephen Silber  
16 August 2024