

[2024] PBRA 168

## Application for Reconsideration by Illingworth

### Application

1. This is an application by Illingworth (the Applicant) for reconsideration of a decision of a panel of the Parole Board following an oral hearing. The hearing was on 9 July 2024 and the panel's decision is dated 24 July 2024. The decision of the panel was not to direct release. The Applicant made his application through his legal representatives.
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 application provided by the Applicant's legal representatives, dated 'August 2024', the dossier available to all parties at the hearing and the decision letter of the oral hearing panel dated 24 July 2024.

### Request for Reconsideration

4. The application for reconsideration is dated August 2024. I have been informed that it was provided in time.
5. The grounds for seeking reconsideration is that the decision of the panel is irrational. Much of the application read more like concluding submissions as opposed to an application for reconsideration, however I have summarised the relevant points for a reconsideration as follows:
  - The panel did not follow the recommendations of the professional witnesses. They confirmed that there was no further risk reduction work and the Applicant's engagement with them was open and honest. Any consolidation work can be undertaken in the community on licence.
  - That although there were adjudications since return to custody, one was a '*mistake*', the other showed insight into his risks. (No reference is made to the third in application). Furthermore, the 5 negative entries by the prison '*do not relate to behaviour*' and were not linked to the Applicant's risk of serious harm. Positive entries should have been taken into account.



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- That the panel (wrongly) linked concerns that the Applicant was unable to recall details from offence focused work to the Applicant's risk of serious harm, or imminence of the same.
- That although the Applicant had initially been against some of the licence conditions recommended, he had accepted them and stated he would comply with all of them, evidencing that he could successfully be managed in the community. He had positive release plans. The risk management plan could manage him until his sentence expiry date.
- That the Applicant had not evidenced any offence paralleling behaviours and the incident that led to recall had not led to any further action against the Applicant and therefore the incident should not be considered when exploring risk of violence.

## Background

6. The Applicant is serving an extended determinate sentence of 10 years overall, consisting of 6 years custody plus 4 on licence. The index offence was grievous bodily harm with intent to cause wounding. The Applicant, having been drinking alcohol all day, was involved in a scuffle with a group of people and punched his victim. He was also seen fighting with another man. He was 27 years of age when sentenced. He was released on licence following a Parole Board hearing in April 2020 and was subject to recall to custody in June 2020. His sentence will expire in November 2025.

## Current parole review

7. This is the third review of the Applicant's recall. Two previous reviews resulted in a Parole Board panel directing no release. The Secretary of State's undated referral asks the Parole Board to consider whether or not the Applicant should be released on licence and to give full reasons for any decision. In November 2023 a single panel of the Parole Board considered the case initially and directed an oral hearing.
8. A three member panel considered the Applicant's case remotely via a video link. The panel consisted of two independent members and a forensically trained psychologist member. The hearing was on 9 July 2024. The panel considered a dossier of 577 pages and took oral evidence from a prison commissioned forensic psychologist, the Applicant's Community Offender Manager (COM) and the Applicant's Prison Offender Manager (POM). The Applicant was legally represented throughout the review process.

## The Relevant Law

9. The panel correctly sets out in its decision letter the test for release.

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

10. 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)).

11. 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*

12. 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.

13. 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.*"

14. In *R(on the application of 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 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).

15. 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.

16. 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.

17. 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.

### *Reconsideration as a discretionary remedy*

18. Reconsideration is a discretionary remedy. That means that, even if an error of law, irrationality, or procedural unfairness is established, the Reconsideration Member considering the case is not obliged to direct reconsideration of the panel's decision. The



Reconsideration Member can decline to make such a direction having taken into account the particular circumstances of the case, the potential for a different decision to be reached by a new panel, and any delay caused by a grant of reconsideration. That discretion must of course be exercised in a way which is fair to both parties.

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

19. The Respondent, by email dated 20 August 2024, declined to make any submissions in response to the application.

### **Discussion**

20. I have considered each part of the Application as summarised in turn. Of necessity there may be some repetition in each point.

21. *The panel did not follow the recommendations of the professional witnesses. They confirmed that there was no further risk reduction work and the Applicant's engagement with them was open and honest. Any consolidation work can be undertaken in the community on licence.*

22. 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. They must make up their own minds on the totality of the evidence that they hear, including any evidence from the Applicant. They would be failing in their duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if they failed to do just that. As was observed by the Divisional Court in DSD, they have the expertise to do it.

23. However, if a panel were to make a decision contrary to the opinions and recommendations of all the professional witnesses, it is important that it should explain clearly its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions, per R(Wells) -v- Parole Board 2019 EWHC 2710.

24. As the application itself states, the panel was very aware that it was departing from the recommendations for release provided by the witnesses. I am satisfied on reading the decision letter that the panel considered all the evidence before it, including that of the Applicant. I am further satisfied that it came to a reasoned and reasonable position with respect to the departure from the recommendations of the witnesses. In doing so, the panel took into account the Applicant's custodial behaviour and determined that certain risk factors remain present. The decision letter notes that although this alone would not prevent release, the risk management plan would need to be capable of monitoring these risks. The panel did not consider that in the Applicant's case risk was imminent, however it stated that in its view the risk was unpredictable and imminence could rise quickly given certain factors. In my view the panel carried out its duty to consider all the evidence fairly. It gave specific reasons for its departing from professional opinions. An example is provided in the following paragraph.

25. The panel explained in detail its differing view as to the risk assessment carried out by the forensic psychologist witness in their psychological risk assessment report (PRA). I



do not consider it necessary to provide the full details here, but the panel was careful in its examination of the risk scores provided by that risk assessment and gave reasons for disagreeing with any scores in its decision letter. For example, in relation to the assessment of existence of *violent ideation*, the PRA author had marked this as currently *'absent'*. The panel noted that this was despite the recent adjudication for threatening an officer with a pool cue. The decision letter notes an exploration of this with the psychologist witness, following which the letter indicates that the panel remained concerned that the threatening behaviour did give rise to a concern of evidence of current violent ideation. I find that the panel discharged its duty to explore any issues it had with the witness's evidence appropriately and came to a reasoned decision.

26. As I stated above, the decision letter provides other examples that I have considered fully. There was no irrationality in their decision not to accept the recommendations of the witnesses.

27. *That although there were adjudications since return to custody, one was a 'mistake', the other showed insight into his risks. (No reference is made to the third in the Application). Furthermore, the 5 negative entries by the prison 'do not relate to behaviour' and were not linked to the Applicant's risk of serious harm. Positive entries should have been taken into account.*

28. The *'mistake'* referred to in the Application was in relation to the Applicant drinking vodka in January 2024, which led to an adjudication as well as removal from open conditions back to closed conditions. I cannot see how a misuse of alcohol could be classed merely as a mistake made by the Applicant. The panel, as reflected in the decision letter, was concerned about this misuse as well as the fact that alcohol was related to his risk factors, also noted by the panel's decision letter. I cannot see any particular reliance on the second adjudication (submitted by the Applicant as showing insight into his risks) by the panel. The third adjudication was for threatening the officer, referred to in an earlier paragraph above. In my view it is entirely reasonable that the panel was concerned about this third adjudication and any finding that it was linked to risk. In relation to the 5 negative entries, they are referred to in the letter but I see no reliance on them in relation to the decision of the panel. The panel was clear that there were improvements in the Applicant's recent behaviour. On the evidence before me the panel was diligent in ensuring they considered all relevant evidence and explained their conclusions.

29. *That the panel (wrongly) linked concerns that the Applicant was unable to recall details from offence focused work to the Applicant's risk of serious harm, or imminence of the same.*

30. The decision letter notes that it was one of the professional witnesses that expressed concerns that the Applicant was unable to recall *'any specifics'* from the programmes undertaken in 2019 and in 2022. In their conclusion, the panel expresses concerns about this inability to recall the work, and I accept that the decision letter goes no further in explaining these specific concerns. However taking the panel's conclusion as a whole it is apparent that this was one part of a number of concerns the panel had about the Applicant's insight, behaviour and management of risk and I do not consider that the omission of a full explanation on this one point renders the decision irrational. The test of irrationality is a high bar: *"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."*

31. *That although the Applicant had initially been against some of the licence conditions recommended, he had accepted them and stated he would comply with all of them, evidencing that he could successfully be managed in the community. He had positive release plans. The risk management plan could manage him until his sentence expiry date.*

32. The panel took evidence about the risk management plan and heard from the COM that the Applicant did not want to wear an alcohol tag as he would still like to drink in the community. Alcohol was a factor in the index offence and a risk factor for the Applicant. The decision letter indicates that the Applicant told the panel that he did not want to wear either the alcohol tag or the trail monitoring tag, which the COM had also proposed as a proportionate and necessary means of managing his risk. At some point during the hearing the Applicant indicated he would comply with all the licence conditions. The panel in its consideration of the risk management plan as a whole was concerned about the Applicant's attitude towards his licence, taking into account the evidence of rule breaking in prison and statements made by him during the parole process that he did not want to engage with the parole process and would prefer to be released at the end of the sentence to avoid the need to comply with licence conditions. I consider it entirely reasonable under these circumstances for the panel to have concerns about the Applicant's likely compliance on a future licence. It was one of the issues but by no means the only one that led to the decision not to release.

33. *That the Applicant had not evidenced any offence paralleling behaviours and the incident that led to recall had not led to any further action against the Applicant and therefore the incident should not be considered when exploring risk of violence.*

34. There is no evidence that the panel relied on the events leading to recall in its decision. On the contrary, in a paragraph in its conclusion, the decision letter states: *"Having taken evidence of the events leading to recall, the panel considered that (the Applicant's) explanation lacked credibility. However, despite the case against him the panel is aware that (the Applicant) has consistently denied involvement in (the assault) and no charges relating to the assault were brought against him; the panel put very limited weight on the matter as a result."*

35. Having considered the application, I find that the panel carried out its duty to scrutinise the evidence, come to a conclusion based on the evidence and explain its reasons diligently. The decision is not irrational, and therefore stands.

## Decision

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



**Chitra Karve**  
**06 September 2024**