

[2024] PBRA 186

Application for Reconsideration by Adams

The Application

1. This is an application by Adams ('the Applicant') for reconsideration of a decision of the Parole Board ('the Board') not to direct her release on licence. The decision was made by a 3-member panel of the Board ('the panel') on 5 August 2024 after an oral hearing on 22 July 2024. The Applicant is serving an extended determinate sentence for wounding with intent to cause grievous bodily harm ('the index offence'). The details of that offence will be described below.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) provides that applications for reconsideration of panel decisions may be made, either by the prisoner or by the Secretary of State for Justice, in eligible cases. The Secretary of State is the Respondent to any reconsideration application made by a prisoner, and will be referred to as such in this decision.
3. Rule 28(2) specifies the types of cases in which reconsideration applications may be made. They include cases, like the Applicant's, where the prisoner is serving an extended determinate sentence.
4. A reconsideration application may be made on the ground (a) that the panel's decision contains an error of law and/or (b) that it is irrational and/or (c) that it is procedurally unfair.
5. In this case an application for reconsideration on the ground of irrationality has been made by the Applicant's solicitor. It has been made within the prescribed time limit. It is therefore an eligible case.
6. I am one of the members of the Board who are authorised (as Reconsideration Panels) to make decisions on reconsideration applications, and this case has been allocated to me. I have considered the application on the papers. In addition to reading and considering the papers I have listened to the audio recording of the hearing.
7. The documents which have been provided to me and which I have considered for the purposes of this application are:

(a) The dossier of papers provided by the Respondent for the Applicant's hearing, the dossier now runs to 598 numbered pages and includes the panel's decision;



- (b) A complaint against the Board dated 6 December 2023 by the head of the Offender Management Unit at the prison where the Applicant is detained;
- (c) The response from the Parole Board dated 25 January 2024 rejecting that complaint;
- (d) A letter dated 16 August 2024 from the Applicant's Prison Offender Manager ('POM') to the Parole Board;
- (e) The representations dated 20 August 2024 made by the Applicant's solicitor in support of this application for reconsideration; and
- (f) An e-mail dated 9 September 2024 from the Public Protection Casework Section ('PPCS') of the Ministry of Justice stating on behalf of the Respondent that she does not wish to submit any representations in response to this application.

8. Items (b) and (c) are irrelevant to this application so I will not refer to them again.

Background and history of the case

9. The Applicant is now aged 26. She was aged 19 at the time of the index offence. She had had a difficult family upbringing during which she witnessed domestic violence between her parents. The family were known to children services and to the police. Her parents split up when she was aged 13, and her behaviour was reported to have deteriorated after that. She self-harmed, was involved in fights and became a regular user of drugs and alcohol. In February 2017, at the age of 18, she committed an offence of battery for which she received a community order. At that time she was diagnosed as having personality difficulties.
10. The Applicant and the victim, who was two years younger than her, had known each other for several months. They had had sex on one occasion but then agreed to remain friends. The victim would spend a lot of time at her home and would often stay overnight and sleep in her bed. On the night of the index offence they had drunk a significant amount of spirits and used drugs.
11. The Applicant had negative feelings about men and decided to stab the victim and cause him serious injuries. She led him to believe that she wanted sex with him and asked him if she could put a pillow over his face. He agreed, and she did so. She then stabbed him five times with a knife, causing injuries which might have been fatal.
12. She initially claimed to have been acting in self-defence. She then pleaded guilty, but in a 'Newton hearing' by the judge she gave an account of the offence which differed from the true facts. She and the victim both gave evidence, and the judge believed him but not her. The judge gave her credit for pleading guilty but in view of her false account and the fact that the victim had had to relive the experience he reduced her sentence by only 10 percent.
13. The sentence which the judge passed (on 2 May 2018) was one of 11 years plus an extended licence period of 4 years. In view of the Applicant's age the Court of Appeal reduced it to 9 years plus an extended licence period of 3 years. The effect of this reduction was that the Applicant would become eligible for early release on licence on 31 July 2023.



14. The Applicant's behaviour in prison was initially poor. However, it improved significantly after she was moved to a special unit for female offenders with personality difficulties who pose a risk of serious harm to the public. She was there for more than 4 years, during which she undertook a lengthy high intensity programme designed to reduce her risks to the public.
15. She was still in that special unit in October 2022 when the Respondent referred her case to the Board to decide whether or not to direct her release on licence when she became eligible for it. If the Board does not direct her release at this time, there will be annual reviews by the Board until she is automatically released on licence in July 2026. Her sentence will not expire until July 2029.
16. In January 2023 the Applicant completed the high intensity programme and was moved to an ordinary wing at the prison, where her behaviour initially continued to be good. In April 2023 her case was reviewed by a single member MCA panel of the Board who directed that the case should proceed to an oral hearing: he made various other directions including one that a psychological risk assessment ('PRA') of the Applicant's risks should be carried out by a prison psychologist.
17. The Applicant's behaviour on the normal wing was acceptable for a time but it then deteriorated. She was evidently struggling to adapt to her new location. She was found in possession of illegal substances. She was also found in possession of a razor blade with which she evidently intended to harm herself. She has admitted that during that period of poor behaviour she obtained and used an illegal drug (Subutex, a heroin substitute) on many occasions. She was abusive to staff and for a time she withdrew from engagement with them.
18. In June 2023 she was moved to another special unit where she remains. This one is designed to prepare offenders with personality difficulties for a possible release on licence (usually to a special probation hostel for offenders with difficulties of that kind). The Applicant's behaviour at that special unit has been generally good.
19. A panel was appointed to conduct the oral hearing, which was initially scheduled to take place in December 2023. The panel comprised an independent Chair, a psychologist member and another independent member.
20. Everyone attended for the hearing but there had been two recent adverse developments which were understandably of concern to the panel, and there was an initial discussion about those between the panel members and the Applicant's solicitor.
21. One of those developments was that Applicant had been tested for drugs and whilst awaiting the result of the test she had admitted using Subutex again. When the test result came through it was negative. The Applicant said that she had only used Subutex once since she had been moved to her current unit.
22. The other development was that the Applicant had used clown make-up and presented herself wearing it to other prisoners. Some people are frightened of clowns (the fear is known as Coulrophobia and it is a specific phobic disorder). The victim of the index offence suffered from it and the Applicant knew that. On the



evening of the index offence (but before the offence took place) she had put on clown make up to frighten him. He had asked her to remove it and she did. Other prisoners evidently knew about that feature of the index offence. It is not clear exactly why the Applicant showed herself to other prisoners wearing the clown make-up, but it was evidently something to do with the other prisoners saying things about the index offence. It was certainly a misguided thing to do.

23. After the discussion between the solicitor and the panel, the solicitor had a private discussion with the Applicant. Then, at the solicitor's request, the hearing was adjourned for more information to be obtained.
24. The hearing was rescheduled to take place in March 2024. Shortly before that date the Applicant's solicitor requested a further adjournment. She informed the panel that a recent report by the prison psychologist who had assessed the Applicant's risks had indicated that more time was needed before she could make an updated recommendation: she felt that there needed to be (a) some consolidatory work (specifically targeting impulsive decision making), (b) further re-engagement with the drugs team and (c) more regular drug testing so that professionals could be confident that any drug use was not problematic. The panel agreed to the adjournment.
25. Between 21 May and 14 June 2024 the Applicant completed six 1:1 sessions with a psychologist (not the one who had assessed her risks). There is a detailed report of that work in the dossier. The aim of the work was to explore the Applicant's experience of intense emotions and provide her with emotion management skills that could be utilised in both custody and community settings. The psychologist reported that the Applicant had engaged very positively in those sessions and commented that she was an intelligent young woman (as was obvious to me when I listened to the recording of the hearing).
26. The Applicant re-engaged with the drugs team but unfortunately the prison has only limited financial resources to pay for drug tests, so it was not possible to carry out the regular tests which the psychologist had recommended.
27. The hearing finally took place on 22 July 2024. The composition of the panel was as before. The Applicant was represented by her solicitor. The dossier at that stage contained 563 numbered pages. Oral evidence was given by:
- The POM
 - The Applicant herself
 - The prison psychologist and
 - The Applicant's Community Offender Manager ('COM').
28. It was agreed that the Applicant's solicitor should submit closing submissions in writing, which she duly did.
29. The professional witnesses all recommended release on licence to the special probation hostel. The Applicant would be able to reside in the hostel for as much as 6 months.



30. The panel did not agree that the Applicant's risk would be safely manageable if she was released to the hostel. They therefore did not recommend release on licence.
31. Since the Board was not asked by the Respondent for their advice about the Applicant's suitability for a move to an open prison, the panel gave no such advice. If I refuse this application for reconsideration of the panel's decision, the Respondent will no doubt consider that matter and invite the views of the professional witnesses about it.

The Relevant Law

The test for release on licence

32. The test for release on licence is whether the Applicant's continued confinement in prison is necessary for the protection of the public.

The rules relating to reconsideration of decisions

33. Under Rule 28(1) of the Parole Board Rules 2019 (as amended in 2022) a decision is eligible for reconsideration if (but only if) it is a decision that the prisoner is or is not suitable for release on licence. The grounds on which an application may be made are as set out above (error of law, irrationality or procedural unfairness). A decision not to recommend a move to an open prison is not eligible for reconsideration.
34. A decision that a prisoner is or is not suitable for release on licence is eligible for reconsideration whether it is made by:
- (i) A paper panel (Rule 19(1)(a) or (b)) or
 - (ii) An oral hearing panel after an oral hearing, as in this case (Rule 25(1)) or
 - (iii) An oral hearing panel which makes the decision on the papers (Rule 21(7)).

The test for irrationality

35. The power of the courts to interfere with a decision of a competent public authority on the ground of irrationality was defined in **Associated Provincial Houses Ltd -v- Wednesbury Corporation 1948 1 KB 223** by Lord Greene as follows: "*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 Parole Board is a public authority for that purpose, and the Wednesbury test therefore applies to applications to the High Court for judicial review of a panel's decision. It also applies to applications to Reconsideration Panels of the Board for reconsideration on the ground of irrationality.
36. In **R (DSD and others) -v- the Parole Board 2018 EWHC 694 (Admin)** ('the Worboys case') a Divisional Court applied this test to parole board decisions in these words: "*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.*" The same test of course applies to 'no release' decisions.



37. In **R (on the application of Wells) -v- Parole Board 2019 EWHC 2710 (Admin)** Mr Justice Saini set out what he described as a more nuanced approach in modern public law. This approach is: *“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 formulation of the 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)**.

38. As was made clear by Mr Justice Saini, this is not a different test from the Wednesbury test. The interpretation of (and application of) the Wednesbury test in parole hearings (as explained in the Wednesbury and DSD cases) was of course binding on Mr Justice Saini. It is similarly binding on Reconsideration Panels.

39. It follows from these principles that in considering an application for reconsideration a Reconsideration Panel cannot substitute its own view of the evidence for that of the panel who heard the witnesses. It will only direct reconsideration on the ground of irrationality if the Wednesbury test is satisfied.

40. A panel is of course obliged to take account of the recommendations of professional witnesses but it is not bound to follow them. However, if it is going to reject them it must give adequate reasons for doing so. If it fails to give adequate reasons, or if its reasons do not stand up to close examination, its decision may be regarded as irrational.

The request for reconsideration in this case

41. The application was submitted on 23 August 2024 by the Applicant’s solicitor on her behalf. A number of grounds for a finding of irrationality were set out in the application.

The position of the Respondent

42. As noted above, as a party to parole proceedings the Respondent is entitled to submit representations to the Board in response to an application by a prisoner for reconsideration of a panel’s decision, but PPCS have indicated on behalf of the Respondent that she does not wish to submit any representations in this case.

Discussion

43. For the purpose of my decision I need to examine the reasons given by the panel for departing from the recommendations of the professional witnesses. I will then need to examine the representations made by the Applicant’s solicitors. Finally I will need to consider whether the panel’s reasons are adequate and stand up to close examination.

The panel’s reasons



44. In the concluding section of their decision the panel started, as is normal, by stating that they had carefully considered the information they had read in the dossier, the evidence they had heard and the written submissions from the solicitor on the Applicant's behalf.

45. They then helpfully summarised, as follows, the closing representations made by the Applicant's solicitor:

'[The solicitor] said that the POM has known [the Applicant] for a long time and had evidenced the change in her over the years. She said that [the Applicant] has goals in place and her direction now is pro-social.

'She reminded the panel that the drug used by [the Applicant], Subutex, is not a drug which she had come into contact with in the community and that she was highly unlikely to in the future. The issue with drugs would be managed within a hostel setting, more so than in custody, and the fact that [the Applicant] knows she will be recalled if she breaches her licence which is something far removed from the direction that she is currently going in.

'[The solicitor] says the licence conditions are extremely robust, that [the Applicant] has completed all core risk reduction work and has come as far as she can with regards to addressing her risk factors, while she accepts that she can progress with more work in the community.

'She describes recent behaviour as 'some silly decisions made of late' but correctly states that 'none of those resulted in harm or violence'. She submits that with the current risk management plan in place, [the Applicant] can be safely managed in the community'.

46. The panel then went on to explain their reasons for their decision, as follows:

'The panel found this a very difficult case to assess. On the one hand, all three professionals were recommending release, whilst on the other hand there were behaviour traits that the panel were very concerned about. In fact, the panel formed the impression that during her evidence [the Applicant] actually gave more information about her behaviour than the other professionals, who couldn't know about her drug taking because she wasn't asked to undertake drug tests.

'[The Applicant] said at one point she had been taking drugs weekly in the latter stages of her time on [the standard wing]. The reasons for that were she took it to 'slow down her thinking as she is very much an over thinker'. This was a coping strategy she used and under pressure she may use this in the community. Between 2022 and 2024 she was only tested twice, and both times she was shown to have used drugs (or admitted use).

'It may just be a coincidence that [the Applicant] was positive (or admitted taking Subutex) on the two occasions she was tested, almost two years apart, and that she hasn't used in between those periods but the panel found this difficult to accept as she has admitted long periods of drug use previously. The panel accepts that since the February 2024 admission, [the Applicant] had taken two voluntary drug



tests, and both were negative. The psychologist said that professionals had to take [the Applicant's] word for it that she hadn't taken drugs for the last 12 months.

'[The Applicant's] own account of the index offence was concerning, she only accepted the true account of the index offence 18 months ago when she realised she had an opportunity for parole. In evidence she said her intention was to hurt or kill her victim. Her anger at the world, and in particular men, is still very evident. The panel give credit to [the Applicant] for her evidence regarding the index offence, it cannot have been easy for her, but she answered all the questions.

'The psychologist explained the reasons for not recommending release until [the Applicant] had done more work due to taking Subutex. However, the panel found it unfathomable that three weeks of refreshing work (that [the Applicant] said she'd done previously) would make that much difference. The COM alluded to this when she said that in a perfect world there was a case for a further adjournment (to evidence what she'd learned over a longer period) but the hearing had already been adjourned a few times.

'The clown makeup part of the index offence was to control the victim and scare him as told by [the Applicant]. The incident in prison where [the Applicant] wore clown makeup was described by the POM as being something to amuse the other prisoners, but [the Applicant] herself said it was to regain control of the situation with the other prisoners, i.e. to 'make it me that was laughing at myself as opposed to them laughing at her'. Her need to control people, to control situations is similar to her state of mind at the time of the index offence and the panel thought this clown makeup situation was potentially offence paralleling behaviour to a certain degree.

'The licence conditions are very helpful but the panel notes that at the time of the index offence [the Applicant] was under a curfew and wearing a tag.

'In summary, the panel did not consider [that the Applicant] had enough time to evidence what she had learned with the recent 1-1 work, that she needed longer time to evidence that she was not using drugs (with the help of regular drug testing), that her need to control people and situations be monitored, that she wasn't concealing things from professionals who had to take her word (like weekly drug use on [the standard] wing) without professionals being aware and only telling the panel during her evidence, and to evidence more consistent management of her emotions without resorting to previous less pro-social coping behaviours.

'The panel and the professionals have no clear idea of her drug use in the last few years. Drugs is a huge risk factor for [the Applicant] and the panel are very concerned with this gap in what professionals know of her drug taking.

'Another of her risk factors is alcohol and the fact hooch was found in her cell only days after it had been searched and drugs and vapes had been found shows her decision making to be lacking.

'The panel want to reiterate their gratefulness at the apparent openness and honesty of [the Applicant] during her evidence and commend her for the positive



progress she has made to date but, on this occasion, she is short of meeting the test for release because of all the reasons laid out'.

The submissions made by the POM in her message to the Board and those made by the Applicant's solicitor in her representations

47. Both the POM and the solicitor are highly critical of the behaviour at the hearing of the psychologist member of the panel.

48. The solicitor writes:

'...the witnesses stated that despite the large amount of hearings they had been involved with they felt that the demeanor of one of the panel members in particular was unprofessional in her approach. We did not witness this visually as we attended on a telephone link however we are advised that when she was questioning the witnesses and professionals she was argumentative and rolling her eyes at the responses given. The witnesses reported that they felt their evidence was not being acknowledged. We note that the same panel member caused issues throughout this case.

'All report writers were passionate about [the Applicant's] suitability for release yet the people who knew her best and those who had worked with her consistently were ignored. Despite rigorous and rude responses from a certain panel member all attending witnesses which included a psychologist were adamant that the risk management plan in place, which in fairness was extremely robust in comparison to most RMP's for even indeterminate cases the RMP in place was very strong'.

49. The POM writes: *'The panel focused a considerable amount of the hearing with questions around [the Applicant's] drug misuse and at times the exasperation showed within the body language which made it an uncomfortable experience and unprofessional'.*

50. I listened very carefully to the recording of the hearing. There was a marked difference in style between the questioning of the psychologist member and that of the panel chair and the other independent member. Different members have different questioning styles. The panel chair and the other independent member were models of courtesy and politeness. The psychologist member was much more robust and challenging in her questioning of the witnesses than the other two panel members, but I do not believe that she strayed beyond the limits of what is acceptable. She did not ask the COM any questions about the drug issue.

51. I also noted that the professional witnesses, whilst they may have been uncomfortable, gave their answers firmly and clearly and professionally. The Applicant's case was not therefore disadvantaged by the form of questioning. I suspect that the POM and the psychologist were not accustomed to the psychologist's style (as witness their comments about it).

52. I can turn now to the other criticisms made by the POM and my comments about them. I will refer to each criticism in turn, adding my comments about each.



53. **Criticism 1:** *'The decision summary outlines that [the Applicant] has fallen short of the threshold for release but does not explore why this is or in what way they have assessed her to pose an imminent risk of harm to members of the public. [The Applicant] has not used violence or aggressive, threatening behaviour in custody for many years now and has completed an intensive level of offence focused work, therapy and time consolidating her treatment gains. There is no further work outlined for her to complete in prison.'*
54. **My comments:** The panel did explain very carefully why they believed that the Applicant did not meet the test for release. They were well aware of, and acknowledged, the absence of violence or aggression in recent times.
55. It is correct that they did not specifically address the question whether the Applicant posed an imminent risk of harm to the public, but the absence of an imminent risk (whilst a relevant factor) does not mean that the test for release is not met. The panel were obliged to consider not just the Applicant's short term risk but also the longer term risk (especially after the Applicant leaves the probation hostel).
56. The panel graciously acknowledged the Applicant's progress during her sentence. It is correct that there was no further 'work' (i.e. risk reduction programmes or treatment) for the Applicant to do in prison, but the panel's concern was that the Applicant needs to be able to demonstrate an ability to put into practice her learning from the work which she has already completed.
57. **Criticism 2:** *'The decision also states that the risk management plan is not robust enough for [the Applicant] to be managed in the community but this was not highlighted in the Oral Hearing about what could be added to the plan to strengthen it or give the panel the confidence in which to release her. The hearing itself started late as the panel did not have the Community Offender Manager's Report outlining the proposed licence conditions or the risk management plan which would enable them time to give serious consideration to the prospect of release.'*
58. **My comments:** I do not think the panel were saying that the risk management plan was not sufficiently robust. The manageability of a prisoner's risk is dependent not only on external controls but also on the prisoner's ability to control her own emotions and behaviour. It was that ability which the panel felt needed strengthening, not the external controls.
59. **Criticism 3:** *'In this hearing the questions were dominated by concerns around her drug misuse and the panel's views around the lack of drug testing. This meant that there was insufficient focus upon other areas of [the Applicant's] time in custody where further examples could have been provided to explain why the three professionals involved in this case were all supporting her for release.'*
60. **My comments:** It is correct that there was a good deal of questioning about the Applicant's use of drugs in prison. This was, however, necessary as the Applicant's use of drugs in the community was a major risk factor. I do not agree that the panel did not pay sufficient attention to other aspects of the Applicant's time in prison. They had of course read and considered the dossier, and it was unnecessary for them to ask a lot of questions about matters which were not contentious.



61. **Criticism 4:** *'With regards to the drug testing the [POM] is not responsible for the frequency of drug testing and it would have been easier if there had been more tests, however, due to the lack of security intelligence submitted about [the Applicant] this has meant that she has not been highlighted for suspicion led mandatory drug testing. By the time of her next parole hearing review [the Applicant] may still not have had sufficient evidence of drug testing to enable them to be satisfied for release. In the community however, there would be a high frequency of drug testing, monitoring and controls whilst living in an Approved Premises.'*
62. **My comments:** All of this is entirely accurate. However, if the panel concluded (as they did) that the Applicant needed a further period in prison to demonstrate an ability to put into practice her learning from the relatively recent 1:1 work before it would be safe to release her into the community, they could not properly direct her release on licence because of the shortage of drug testing in prison
63. Turning to the solicitor's representations, I do not need to go into them in detail as most of them either (a) are irrelevant to the issues which I have to decide or (b) replicate points made by the POM. There are however two points which I must consider.
64. First, the solicitor states: *'[The Applicant] signed up for voluntary drug testing to prove that this was not a regular occurrence. The prison were only able to offer two tests prior to the ... hearing, both were negative. Her risk management plan was to be released to a hostel and it was stated that she would be regularly tested. It was also stated that whilst Subutex is freely available in custody it is not something that is freely available in the community. Following the oral hearing and prior to the decision her instructed solicitors submitted some additional information that [the Applicant] had another test of which was negative, that third test was not referred to at all in the decision and we believe this information was not taken into account'*.
65. It is correct that the solicitor informed the Parole Board that the Applicant had had another test which was negative, and that that was not referred to in the panel's decision. However I am satisfied that it would have made no difference to the panel's decision if they had considered and mentioned that particular piece of information.
66. Second, the solicitor states: *'We believe the decision made by the parole board is one that is unfair and irrational. We are of the opinion that their minds were made up prior to entering the hearing room, this was evident by the way they questioned the witnesses and disagreed with everything they said'*.
67. Having listened to the recording I am satisfied that there is no substance in that allegation. The panel clearly considered all the evidence very carefully. They agreed with a lot of the points in favour of the Applicant but were unable to accept others. Insofar as they were unable to accept some things which the Applicant and the witnesses said, I am satisfied that their views were in no way irrational.



Were the panel's reasons for rejecting the recommendations of the professionals inadequate or not such as to stand up to close examination?

68. This is of course the central question on which my decision must depend.

69. I am satisfied that the panel gave adequate reasons and that those reasons stand up to close examination. Other panels might have reached different conclusions but that is not the test which I have to apply. I must apply the Wednesbury test for a finding of irrationality which I have explained above. This panel's decision was certainly not one which no reasonable panel could have reached.

70. So far from being unfair to the Applicant, as the solicitor suggests, the panel was in fact appreciative of all the hard work which the Applicant had put into the case and it is clear that they hoped that she would continue her good progress and be in a position to make a successful application for release on licence on the next review of her case, and to live a successful and law-abiding life in the future. I share that hope.

Decision

71. It follows from the above that I cannot allow this application for reconsideration.

Jeremy Roberts
23 September 2024

