

[2024] PBRA 194

## Application for Reconsideration by Mapp

### Application

1. This is an application by Mapp (the Applicant) for reconsideration of a decision made by an oral hearing panel dated 27 August 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 decision, the dossier (consisting of 820 numbered pages), and the application for reconsideration, dated 5 September 2024. I have also listened to the audio recording of the hearing (which is five hours and 40 minutes in length).

### Background

4. On 3 August 2007, the Applicant received a sentence of imprisonment for public protection following conviction for causing grievous bodily harm with intent to do grievous bodily harm. On the same occasion he received a determinate six-month sentence for possession of an offensive weapon in a public place. His tariff was set at two years less time spent on remand and expired in February 2009.
5. The Applicant was 27 years old at the time of sentencing and is now 44 years old.
6. He was released (following a Parole Board hearing) in January 2021. His licence was revoked in October 2022, and he was returned to custody in January 2023 after a period unlawfully at large. This is his second recall on this sentence, having been previously released in January 2019 and recalled in January 2020.

### Request for Reconsideration

7. The application for reconsideration has been submitted by solicitors on behalf of the Applicant and argues that the panel's decision was irrational.
8. These grounds are supplemented by written arguments to which reference will be made in the **Discussion** section below.

### Current Parole Review



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9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in January 2023 to consider whether or not it would be appropriate to direct his release. This is the Applicant's second parole review since his recall.
10. Following an adjournment to allow further development of the risk management plan, the Applicant's review proceeded to an oral hearing on 16 August 2024, before a three-member panel including a psychologist specialist member. The panel heard evidence from the Applicant, his Prison Offender Manager (POM), his Community Offender Manager (COM), an HMPPS forensic psychologist and a forensic psychologist commissioned on behalf of the Applicant. The Applicant was legally represented throughout proceedings.
11. In the professional opinion of all witnesses, the Applicant was suitable for release. The panel made no direction for release (and no recommendation for open conditions).

## The Relevant Law

12. 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)*

13. 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)).
14. 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)).
15. 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.

### *Irrationality*

16. 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.

17. 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."*
18. 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).
19. 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.
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.
21. 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

22. The Respondent has submitted no representations in response to this application.

## Discussion

23. After rehearsing the background to the parole review, it is submitted that (while correctly acknowledging the panel is not bound by the professional opinions of witnesses), the decision is irrational as *"all four professional witnesses in this case cannot be wrong"*.
24. It is further submitted that the Applicant *"takes the view that any other panel would have released him"* and therefore that the decision is irrational. It is requested that I listen to the recording of the hearing and determine whether the decision is irrational.
25. It is for the Applicant to make his case, not for me to make it for him. However, in fairness to him, I have listened to the lengthy recording in its entirety.
26. As the application acknowledges, panels of the Parole Board are not obliged to adopt the opinions of professional witnesses on a prisoner's suitability for release. It is the panel's responsibility to make its own risk assessment and to evaluate the likely

effectiveness of any risk management plan proposed. The panel must make up its own mind on the totality of the evidence that it hears, including any evidence from the prisoner. It would be failing in its duty to protect the public from serious harm if it failed to do just that. As was observed by the Divisional Court in *DSD*, panels have the expertise to do it. However, if a panel were to make a decision contrary to the opinions of all the professional witnesses, it is important that, following *Wells*, it should explain clearly its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions on the basis of the evidence before it.

27. The argument that all four professional witnesses cannot be wrong is equivalent to saying that all three panel members cannot be right. If I were to accept this argument, it would be tantamount to finding that a panel cannot disagree with the unanimous views of a number of witnesses. Such a finding would fetter the discretion of a panel to make its own independent assessment and would fundamentally undermine the statutory role of the Parole Board as an independent assessor of risk. Moreover, risk assessments are much more nuanced than a blunt 'right' or 'wrong'. A panel can, as already stated, depart from the professional opinions of witnesses if it wishes, but in doing so, must give justifiable and sufficient reasons for doing so.
28. The panel gave extensive reasons for disagreeing with the professional opinions advanced, including its view of the Applicant's insight into substance misuse, including the links between substance misuse, mental health and future offending. It also disagreed with the view that the Applicant has shown willingness to work on substance misuse, citing limited work after recall and lack of consistent engagement while in the community. It also explained concerns regarding the importance of compliance with licence conditions, acknowledging the views of witnesses that risk management would depend on the Applicant's willingness to comply and engage with his licence. It correctly assessed risk over an indefinite period. It disagreed with the COM's view about the Applicant's future openness and honesty.
29. I find that the panel's reasons are sound, thorough and reflect the written and oral evidence presented to it. I find that the panel more than discharged its common law duty to give reasons under *Wells* and consequently find that its decision was not irrational. The legal test for irrationality sets a high bar which this case does not meet.

## Decision

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

**Stefan Fafinski**  
**30 September 2024**