

**[2024] PBRA 202****Application for Reconsideration by Crawford****Application**

1. This is an application by Crawford (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated 3 September 2024 not to direct release or recommend a transfer to open conditions following an oral hearing on 26 June 2024.
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 for reconsideration, the decision of the panel and the dossier.

**Request for Reconsideration**

4. The application for reconsideration is dated 24 September 2024.
5. The grounds for seeking a reconsideration are as follows:
  - (i) There was an error of law in that the panel by refusing to release the Applicant was effectively increasing the length of the prison sentence the Applicant had to serve because he has taken drugs in prison. This was not in accordance with the intention of the Judge when he passed sentence and breaches the Applicant's reasonable expectation.
  - (ii) The decision was procedurally unfair in that the panel were biased and have not acted impartially because they have labelled the Applicant a drug user and linked this to risk to the public. There was no evidence to establish this link.
  - (iii) The decision was irrational in that there was no sufficient evidence that the Applicant's drug misuse would create a risk to the public of serious harm if he were to be released.

**Background**

6. The Applicant was sentenced to imprisonment for public protection (IPP) on 16 March 2007 for three robberies. The minimum period he was ordered to serve before he could be considered for parole was 3 and a half years. He is 14 years over tariff.



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He has never been released on licence. He has been transferred to open conditions on two occasions and returned to closed on both occasions for using drugs.

### Current parole review

7. The Applicant's case was referred to the Board on 3 April 2023. This was the eighth review by the Board. The Applicant was 48 at the time of the hearing. The Applicant had taken drugs after the hearing, so the decision was delayed to give his advocate an opportunity to submit written representations about that. There were further delays due to ill health.
8. At the hearing on 26 June 2023 the panel heard evidence from the Community Offender Manager (COM) and the Prison Offender Manager (POM).

### The Relevant Law

9. The panel correctly sets out in its decision letter dated 3 September 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)*

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)).
12. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under rule 28.

#### *Irrationality*

13. 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.
14. 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."*

15. 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).
16. 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.
17. 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.
18. 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.

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

#### *Error of law*

22. An administrative decision is unlawful under the broad heading of illegality if the panel:



- a) misinterprets a legal instrument relevant to the function being performed;
- b) has no legal authority to make the decision;
- c) fails to fulfil a legal duty;
- d) exercises discretionary power for an extraneous purpose;
- e) takes into account irrelevant considerations or fails to take account of relevant considerations; and/or
- f) improperly delegates decision-making power.

23. The task in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the panel. The instrument will normally be the Parole Board Rules, but it may also be an enunciated policy, or some other common law power.

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

24. The Respondent has made no submissions in response to this application.

### **Discussion**

25. I can well understand the frustration of the Applicant and his legal representative. The Applicant is a very long time over tariff and he has never been released on parole. He has spent 17 years in prison for an offence which on grounds of retribution and deterrence the Judge considered merited a 7 year sentence. While IPP has been abolished as a sentence, those who are still serving them can only be released by the Parole Board if they satisfy the test for release. The Board has to apply that test however long over tariff the prisoner is. Only Parliament can change that. I will deal with the different grounds of the application individually.

26. The suggestion that there was an error of law is misconceived. The Judge passed an IPP sentence. While he set a minimum period that was on the basis that after that period had elapsed the Applicant would only be released if the Parole Board decided that it was no longer necessary for the safety of the public that he remained confined. The Applicant cannot have had any other legitimate expectation. It is stated in the application that the Applicant is not a risk to the public. That was the matter for the panel to decide and they did carry out a proper assessment of risk in my judgment. The panel's duty was to only direct release if they were satisfied that the release test was met.

27. I am also satisfied that there was no procedural unfairness. It is suggested that the panel were not impartial and did not have an unbiased mindset. There is no evidence whatsoever to support that suggestion except disagreement with the decision. It is not a suggestion that should have been made. The Applicant himself accepted that he was a drug user and the panel found that there was a link between his drug using and his offending. Making that finding is not evidence of bias.

28. For similar reasons it is suggested that the decision was irrational. It is suggested that there is no proven connection between the Applicant's offending and drug taking. On the evidence there is. His offending, such as the robberies, were connected with drug use and some of his earlier offending has been drug related either because of the consumption of drugs or to obtain money to buy more drugs. The risk is set out in many of the reports in the dossier. While the COM and the



POM, supported release both recognised the risk of relapse into drug taking and the risk of re-offending if that happened. They set out measures they proposed to take after release to try and prevent this happening, but the panel were entitled to consider that this was core risk reduction work which should be completed in custody and that it would only be safe to release the Applicant when he had overcome his addiction.

29. In my view it cannot be sensibly argued that the decision was irrational.

## **Decision**

30. I have considered each ground of application for reconsideration individually and also cumulatively and for the reasons I have given, I do not consider that the decision was irrational, procedurally unfair or that there was an error of law in the decision and accordingly the application for reconsideration is refused.

**John Saunders**  
**21 October 2024**