

[2024] PBRA 205**Application for Reconsideration by Rogers****The Application**

1. This is an application by Rogers ('the Applicant') for reconsideration of a decision of the Parole Board ('the Board') not to direct his release on licence. The decision was made by a 3-member panel of the Board ('the panel') on 2 September 2024 following an oral hearing on 11 June 2024.
2. The Applicant is serving a sentence of imprisonment for public protection ('IPP') for a number of offences against his then partner. The details of those offences (the 'index offences') will be summarised below.
3. 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.
4. 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 IPP sentence.
5. 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.
6. In this case an application for reconsideration (on the grounds of irrationality and procedural unfairness) has been made by the Applicant's solicitor on his behalf. The application has been made within the prescribed time limit. It is therefore an eligible case.
7. 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 not found it necessary to receive any oral evidence and I have considered the application on the papers.
8. 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 431 numbered pages and includes the panel's decision;
- (b) The representations made by the Applicant's solicitor in support of the application for reconsideration;
- (c) An e-mail from the Public Protection Casework Section of the Ministry of Justice ('PPCS') stating on behalf of the Respondent that she does not wish to submit any representations in response to this application; and
- (d) A document which was considered by the panel but withheld from the Applicant (a gist being provided in its place). I asked to see those documents in case there was anything in them which might affect my decision. There was not.

Background and history of the case

9. This is a most unusual case and it is necessary to outline its history in a little detail. The Applicant is now aged 59. He had a very difficult childhood and was not well treated by his mother (it is unnecessary to recite the details). He was then put into care where he has described humiliating experiences and inappropriate behaviour on the part of female care workers. He hoped that his father would come and 'save him' but that never happened.
10. It is not surprising that in those circumstances the Applicant developed mental health difficulties as he grew up and became involved in occasional breaches of the law. He also became a heavy user of alcohol.
11. The offences of which he was convicted over the years were of various kinds. It was not until the age of 38 that his offences were considered sufficiently serious to warrant custodial sentences. Those offences were (a) unlawful possession of various weapons, (b) indecently assaulting a 13 year old girl, and (c) witness intimidation. He has always denied the indecent assault but the Board is obliged to proceed on the basis of the court's verdict: the Board has no authority or resources to reinvestigate a prisoner's convictions.
12. As regards the Applicant's mental health, he evidently suffered from depression as a teenager and was prescribed anti-depressant medication at the age of 17. Later on he was diagnosed with Bipolar Affective Disorder. He has received various forms of medication since then to stabilise his mental health.
13. He has had three long term relationships. The first ended amicably and he and his then partner have remained friends. The second was unhealthy on both sides and ended unhappily. His third long term partner was the victim of the index offences: their relationship was initially successful but its deterioration was described as follows in the dossier:

'Your partner felt that the relationship, which had continued for around two years, was coming to an end. You were angry and frustrated by this, and, after a lengthy period of arguing, launched a sustained series of attacks on your partner. You forced her to give you oral sex, and continued to make sexual demands of her. You now recognise that she would have been terrified, and that



any compliance was the result of you forcing her to perform sexual acts, and not the 'make up sex' that you thought it was at the time.'

14. The Applicant was charged with three offences of raping his partner and one of threatening to kill her. He pleaded guilty, and on 24 August 2009 he received the IPP sentence which he is now serving. His minimum term ('tariff') was set at three years. It expired in April 2012.
15. In prison the Applicant successfully completed all the appropriate risk reduction programmes. He also spent three years in a therapeutic community where he was assessed to have made good progress in therapy. By 2014 he had made sufficient progress to be transferred to an open prison where he again made good progress. He engaged with the Mental Health In Reach team and was stable on his medication. A panel of the Board held an oral hearing in June 2016 and directed his release on licence. He was duly released on licence in the following month with a robust management plan in place.
16. The Applicant was on licence in the community for nearly 7 years. During that time he committed no further offences. He maintained a good work record. He acted as his mother's carer when he was not at work: their relationship was clearly a volatile one due to their unusual personalities, and there was a good deal of arguing and shouting on both sides.
17. The Applicant was reported to have demonstrated good compliance with supervision. He attended appointments as required, and generally complied with the requirements of his licence. He is said to have demonstrated an ability to reflect on situations and to identify the necessary skills to navigate difficult ones.
18. There were several changes of supervising officers during his time on licence. The Applicant tended to struggle to engage with staff until he felt he could trust them, after which he engaged well with them. This was no doubt a feature of his unusual personality. It appears that his relationship with his last Community Offender Manager ('COM') before his recall was not as positive as his previous ones: he was said by her to have been rather controlling in his attitude towards staff and to have become more defensive in appointments.
19. On 21 April 2023 an anonymous telephone call was made to the police and probation were informed about it. Neither the panel nor I have had the benefit of whatever information the police provided to probation at the time but it was summarised in a report which was later provided at the request of the panel (see paragraph 30 below). It reads as follows:

'On 21/04/2023 we (Thames Valley Police) received an anonymous phone call raising concerns for a person who may be suffering domestic abuse from her son. The suspect named [the Applicant] who also lives with the aggrieved. The circumstances are that on 18/02/23 banging and shouting was heard coming from the address, the aggrieved was seen running from the address in her dressing gown shouting for help. It was reported that there seems to be a history of abuse and the suspect had been in and out of prison. On 23/04/24 officers attended the property and they were refused entry by the aggrieved,



she was spoken to at the door. The OIC has confirmed that there were no PNB entries made. The offence was filed on 06/06/2023. [PNBs are officers' pocket notebooks.]

20. The COM, having been notified of this incident, raised it with the Applicant at their next meeting. The Applicant said that he and his mother screamed and shouted at each other but that was normal. No action was taken by probation or the police as a result of that matter.
21. On 6 June 2023, however, a request was made by probation to the Respondent to revoke the Applicant's licence and recall him to custody. The Respondent agreed and the Applicant was arrested and returned to prison.
22. The grounds relied on by probation for the recall were as follows:
- (a) The Applicant had stopped taking one of two medicines which had been prescribed to help him to manage his mental health problems;
 - (b) The Applicant had told probation that he had drunk alcohol with work colleagues when it had been expected that he would remain abstinent;
 - (c) The incident of 21 April 2023 and concerns about the Applicant's risk to his mother; and
 - (d) The Applicant had admitted some 'concerning attitudes and behaviour' at his workplace.
23. The relevance of these matters to the Applicant's current risk of serious harm to the public will need to be discussed below. The Applicant has been extremely unhappy about his recall and the grounds advanced by probation for it. He was, perhaps understandably, particularly aggrieved that the officers who arrested him were armed. For a significant time he refused to eat food as a protest at what he saw as the unfairness of his situation.
24. On 20 June 2023 the Respondent referred the Applicant's case to the Board to decide whether to direct his re-release on licence and, if not, to advise the Respondent about his suitability for a transfer to an open prison.
25. On 13 October 2023 the case was reviewed by a single MCA member who adjourned it for an assessment of the Applicant's mental capacity.
26. In December 2023 such an assessment was made by a consultant psychiatrist who concluded that the Applicant had full mental capacity and did not require the services of a litigation friend.
27. On 12 January 2024 the MCA member directed that the case should proceed to an oral hearing. The case was then allocated to the panel which was to conduct the hearing. The panel comprised three independent members of the Board, one of whom acted as the Panel Chair.
28. The hearing took place on 11 June 2024. The Applicant was represented by his solicitor. The dossier ran to page 412. Oral evidence was given by the Prison



Offender Manager ('POM'), the Applicant and the present COM. The latter had taken over the case when the previous one had left the service: she knew the Applicant as she had been his COM in the past. The Applicant applied for a direction that he should be re-released, which was supported by both professional witnesses.

29. The panel adjourned the hearing for two further documents to be obtained: (1) a report detailing a recent allegation that the Applicant *'had continued to manipulate his mother financially'* and (2) a police report about the incident of 21 April 2023.
30. Document (1), as provided, was simply a copy of a document dated the day before the hearing which had already been added to the dossier, and Document (2) was the police report referred to in paragraph 19 above.
31. On 2 September 2024 the panel issued its decision, which was not to direct the Applicant's re-release on licence but to recommend that he should be transferred to an open prison.

The Relevant Law

The test for re-release on licence

32. The test for re-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 of a panel's decision 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 must 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. This application was submitted on 24 September 2024 by the Applicant's solicitor on his behalf.

The position of the Respondent

42. As noted above, as a party to any 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. PPCS have indicated that the Respondent does not wish to submit any representations in this case.

Discussion



43.I need to start by examining the reasons given by the panel in their decision for departing from the recommendations of the professionals and declining to direct the Applicant's release on licence.

The panel's expressed reasons for departing from the recommendations of the professionals

44.In the 'Conclusion' section of their decision the panel stated:

'The index offence was a very serious matter committed in the context of a relationship. [The Applicant] appears to have made good progress whilst in the community. However underlying that progress were concerns about his relationship with his mother and his need to control the agenda. At the oral hearing he showed this trait to some extent and in his evidence he talked past the point and tended to miss the point.'

'He blamed labels and diagnoses and did not necessarily understand the drivers that underpinned his behaviour. [He] has exhibited grievance thinking about his sister. Whilst [he] does not have outstanding core risk factors, his behaviour towards his mother needs closer monitoring from less secure conditions before the panel could be satisfied that his risk to her could be safely managed.'

'The panel was mindful that the professionals recommended release. However it did not share their confidence that [the Applicant's] risk towards his mother can be safely managed in the community. As a result it concluded that [the Applicant] needed to remain confined for the protection of the public and made no direction for release.'

'[The Applicant] has addressed and reduced his risk factors to a level where they can be safely managed in the community if [he] were on temporary licence. There is no evidence to suggest that he presents a risk of absconding. The panel recommended that [the Applicant] be transferred to open conditions.'

45.It is clear from the above that it was the panel's concerns about the risk which the Applicant might pose to his mother which drove their decision to reject the recommendations of the professionals and to decline to direct the Applicant's re-release on licence. Although they mentioned the Applicant's tendency to want to 'control the agenda', that was not a matter which in itself would have justified keeping him in prison.

46.Earlier in their decision the panel explained the reasons why they were concerned about the Applicant's risk to his mother. They stated:

'The panel concluded that [the Applicant] presents a risk of serious harm to his mother. There have now been a number of concerns including:

- *May 2020 His mother fleeing from her home and spending the night at her daughter's;*
- *February 2023 His mother fleeing from the home in a dressing gown;*



- April 2023 [The Applicant's] mother refused to allow the police to enter her home;
- June 2023 [The Applicant] reported that he had CCTV all over the home; and
- June 2023 Allegations that [the Applicant] has been financially abusive towards his mother with either him expecting her to or her wish to cover some of his expenses whilst he is in custody. [The Applicant] told the panel that his mother is paying for his car because of the amount of money that he had put into it. The allegation of financial abuse had been reported by a third party.

'[The Applicant's] explanation is that he and his mother have a fiery relationship. This does not explain why a third party was sufficiently concerned to call the police and why [the Applicant's] mother was so fearful that she spent the night away from her home.

'The panel reminded itself of the Guidance on Allegations. Where there is a serious possibility that an allegation is true and this causes sufficient concerns as to the risk posed by the prisoner, in those circumstances the panel may treat the allegation as relevant and attach some weight to it. The panel concluded that there was a serious possibility that the allegations that [the Applicant] was abusive and controlling towards his mother were true. It went on to conclude that this caused sufficient concerns about the risk that [the Applicant] presented to his mother and so treated the allegations as relevant.

'It was concerned that [the Applicant] appeared to place some blame on his mother, suggesting that she may be bipolar. He added that he would 'Grendonise her' and come at her with the intensity that he had on groups but she 'couldn't comprehend my force of nature'. He took responsibility for this.'

The Applicant's mother's side of the story

47. The panel made no mention in their decision of the only document in the dossier which contains any reference to the Applicant's mother's side of the story. It is a message which, at the request of the Applicant's solicitor, had been added to the dossier. It reads:

'Good afternoon, Please can this email be added to the dossier.

'I had a video link appointment with [the Applicant] yesterday ahead of his oral hearing next week and we discussed the updated reports ... where it states that he will not be allowed to return to his mother's address following his stay at the AP. [The Applicant] was quite puzzled by this and certainly disputes any domestic violence in the home.

'I have now spoken with [the Applicant's] mother who has confirmed that she does not have any issue with him returning to her home. In fact, she advised that she felt that they were getting along a lot better prior to his recall. She suggested that [the Applicant] has mellowed over the last few years, especially since he made contact with family members on his father's side.



'Whilst she does accept that there were arguments, she suggested that this was nothing more than "normal family stuff" and at no time whatsoever has there been any violence / threats, nor has she ever felt at risk from harm in any way.

'She has attempted numerous times to contact [the Applicant's] probation officer but feels she has been ignored. She wishes to have this added to the dossier so that the panel can see she is very supportive of [the Applicant] and is more than happy to have him reside with her again.'

48. It is unfortunate that no contact was made between probation and the alleged victim of domestic abuse.
49. The Applicant's then COM stated in her recall report that she had tried to contact the Applicant's mother with no success, which might indicate that the Applicant's mother did not wish to speak to her (for whatever reason).
50. On 10 October 2023 the Applicant's present COM had a lengthy video link discussion with him. He was in a wheelchair and was clearly very unwell having refused food as a protest against his recall (in fact after that discussion he spent a period in hospital). He said that he and his mother spoke on the telephone every day and she wanted him home. The COM asked him if he would consent to her speaking with his mother. He gave his consent but was concerned that his mother should not know how unwell he was. Perhaps understandably, in those circumstances, the COM did not attempt to have any discussion with his mother. According to the Applicant's solicitor's reconsideration representations, on each occasion when the Applicant's mother attempted to make telephone contact with the COM she was given a different reason why she was not available.
51. A further point made by the solicitor is that the Applicant's mother at some point after the recall instructed her own solicitors to consider taking legal action against the prison service, complaining that a member of staff had falsely suggested that she did not wish her son to return to live with her. The solicitor has provided a copy of a letter from the Applicant's mother's solicitors confirming that they had been instructed in that matter.

My task in assessing the evidence

52. Given that the two professional witnesses both supported the Applicant's re-release on licence and were of the opinion that his risks could be safely managed in the community, I have to evaluate the evidence to decide whether the panel gave adequate reasons, which could stand up to close examination, for rejecting their recommendations.
53. The evidence of the Applicant's mother, if accurate, would afford a strong reason for deciding that the panel's reasons, though adequately explained in their decision, did not stand up to close examination. I am of course aware that victims of domestic violence are sometimes reluctant to reveal what has been happening. However, I have significant doubts about whether that is the case here. As the Applicant has said, he and his mother are both strong characters and his mother is quite capable of speaking her own mind.



54. There is no doubt that the relationship between the Applicant and his mother was highly unusual and certainly volatile, and there was evidently quite a lot of shouting and screaming between them when they had arguments. There is however no evidence of any actual or threatened physical violence. It should not be assumed that, on the two occasions when the Applicant's mother 'fled the house' and went elsewhere, she did so as a result of any physical violence or threat of violence. The probability is that she had simply had enough of the Applicant's insensitive behaviour in 'Grendonising her' (as he put it) or something similar.
55. The neighbour who rang the police may well have assumed from hearing loud arguments in the Applicant's mother's house on previous occasions that some form of abuse had occurred. The vague suggestion of 'previous abuse' is, however, unsubstantiated. The neighbour is likely to have been unaware of the peculiar dynamics of this unusual household. There is certainly no evidence of any injury which the Applicant's mother might have sustained on either of the two occasions when she 'fled from the house' (or on any other occasion). The fact that she did not want the police to come into her house on the second occasion does not necessarily mean that she was being influenced in any way by the Applicant: it is equally likely that she just did not want to cooperate with them. As noted above the police did not even make any entry about the incident in their pocket books, which does not suggest that they felt that any offence had been committed.
56. There seems clearly to have been a misunderstanding between the Applicant and his then COM about there being CCTV 'all over the house'. There is no evidence that that was the case and it is much more likely that what the Applicant was referring to was, as he explained, a Ring doorbell system where the sound of the doorbell could be heard anywhere in the house.
57. Equally the allegation of 'financial abuse' is not substantiated (as the panel themselves noted in their decision) and is of an entirely different nature from anything likely to cause serious harm to the Applicant's mother.
58. In these circumstances I have come to the conclusion, on balance, that the panel's reasons for departing from the recommendations of the professionals do not stand up to close examination. I do not think that the panel had sufficient evidence to conclude (even on the basis that it was 'a matter of concern' as opposed to something proved on balance of probabilities) that the Applicant presented a risk of serious harm to his mother.
59. In reaching that conclusion I have borne in mind the lengthy period which the Applicant spent on licence, caring for his mother, without there being any real evidence that she was at any stage in danger of serious harm from him.

Other matters

60. Having reached that conclusion, I need not go into any detail in discussing the other allegations which have been made against the Applicant (primarily in the grounds for his recall) and which did not form part of the panel's reasons for their decision.



Nor do I need to go over all the arguments deployed by the Applicant's solicitors in support of this application.

61. It is understandable that probation regarded the Applicant's failure to notify them that he was no longer taking one of the two medicines which had been prescribed to stabilise his mental health as a matter increasing his risk to the public. However, it has now become apparent that his withdrawal from the use of that medicine had no adverse effect on his mental health, and indeed he is better off without it.
62. The current view of the doctors is that he was probably 'overprescribed' in the first place. This is no criticism of the doctors who prescribed it: the case is complex and difficult. It appears that the medicine which the Applicant stopped taking (because of its side effects) had been prescribed to deal with any hallucinations which the Applicant might have had. Presumably he had made some mention of hallucinations, but he has not had any for many years even when he stopped taking the medicine. The psychiatrist who carried out a very detailed assessment of the Applicant's mental capacity (see paragraph 25 above) did not detect any signs of hallucinations or similar mental problems.
63. The Applicant does accept that he should have kept probation informed of the steps he was taking (which apparently included reducing the dosage by stages), and the COM accepts that he would do so in future if the situation arose.
64. It was also understandable that probation should have been concerned that the Applicant had consumed alcohol (which had been one of his significant risk factors) but he readily admitted consuming modest quantities with work colleagues and there is no evidence that the consumption of those modest quantities affected his behaviour.
65. The Applicant's 'concerning attitudes and behaviour' at work might have been the subject of some valid criticism but I cannot think that they had any bearing on his risk of serious harm to the public.
66. The panel rightly did not attach any weight to these matters in their assessment of the Applicant's risk to the public.

Decision

67. It will be apparent from the above discussion that I have been persuaded that this case should be reconsidered. I do not think there was any procedural unfairness but I do think that the panel proceeded on the basis that the Applicant presented a risk of serious harm to his mother when the evidence available to the panel (when considered as a whole) did not support that view.
68. I am satisfied, therefore, that the Wednesbury test is satisfied and that the Applicant's solicitor has made out her case for reconsideration on the ground of irrationality.
69. This decision means, of course, that when the case is reconsidered the next panel may have significantly more evidence on which to base a decision about the



Applicant's risk (if any) to his mother. The Applicant's solicitor states that she is in the process of obtaining a detailed statement from the Applicant's mother, and she may even consider applying for her to give oral evidence at the next hearing. It may also be sensible, if the Applicant's mother agrees, for the COM to have a discussion with her which may give a much more complete picture of the relationship between the Applicant and his mother.

Jeremy Roberts
21 October 2024

