

[2024] PBRA 242

## Application for Reconsideration by Ramchaitar

### Application

1. This is an application by Ramchaitar (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated the 24 September 2024 making no direction for release and no recommendation for open conditions. The decision was made on the papers which was agreed at an oral hearing on 19 September 2024.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2024) (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 1 October 2024.
5. The grounds for seeking a reconsideration are that both the findings made by the panel on the allegations leading to the Applicant's recall and the subsequent final decision were irrational and unfair.

### Background

6. On 13 January 2004 the Applicant was given an automatic life sentence for wounding with intent to cause grievous bodily harm with concurrent sentences for two offences of robbery. The minimum period that the Applicant had to serve before he could be considered for release on licence was 4 years less time spent in custody awaiting trial.
7. The Applicant was first released on licence on 27 January 2020 and was recalled on 3 February 2021. He had served 16 years before his first release. He was released on licence again on 1 March 2022 and recalled on 23 August 2022. The second recall arose out of the Applicant's arrest for offences of assault and coercive behaviour. He was subsequently tried and acquitted of those offences.

### Current parole review



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8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) on 15 September 2022 following his second recall. There were numerous adjournments of the hearing to await the outcome of his criminal trial and for reports to be prepared.
9. The panel held a factual hearing on 12 March 2024 to determine any relevant findings as to risk arising from the second recall. The panel issued their findings as to the facts before holding a further oral hearing on 19 September 2024. At the start of that hearing the Applicant applied for the hearing to be adjourned so that further assessments could be carried out and further information could be obtained. The panel refused the application because of the likely time that it would take before the case could be re-listed.
10. As a result of that the Applicant requested that the Parole Board decision be made on paper without an oral hearing. The panel records in its written decision that the Applicant did not wish to make an application for release on that occasion. Written representations were made by the Applicant's legal representative in which he did not seek a direction for release or a transfer to open conditions.

### The Relevant Law

11. The panel correctly sets out in its decision letter dated 19 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)*

12. 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)).
13. 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)).
14. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under rule 28.

#### *Irrationality*

15. 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.

16. 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."*
17. 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).
18. 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.
19. 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.
20. 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*

21. 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.
22. 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.



23. The overriding objective is to ensure that the Applicant's case was dealt with justly.

#### *Reconsideration as a discretionary remedy*

24. 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**

25. The Respondent has made no submissions in relation to this application.

#### **Discussion**

26. The Applicant's grounds for reconsideration relate to the findings of fact made by the panel as a result of the hearing on 12 March 2024. He complains that those findings impugn the verdicts of the jury when there was no evidence to do so.

27. The arrest which led to the Applicant's recall resulted in charges of assault and violent and coercive behaviour towards a vulnerable woman with whom the Applicant was in a relationship. The jury acquitted the Applicant of all the charges.

28. The panel was perfectly entitled and was required to hold its own hearing to make findings as to how the events which led to the recall could impact on the Applicant's risk of serious harms to future partners. This was in accordance with the guidance of the Supreme Court in the case of Pearce.

29. The panel held as detailed a hearing as was possible and, while they could not hear from the Complainant, they did consider video evidence of her complaint to the police.

30. The panel recorded the evidence it heard and its findings. The panel considered the allegations on the balance of probabilities which is a different standard than would be required to lead to a criminal conviction. It concluded that it was not possible to make a finding of fact on the balance of probabilities.

31. It did however conclude as follows at para 1.49 and onwards:

*'The panel then went on to consider whether there is a serious possibility that the allegations may be true. Whilst the panel could make no findings on the specific allegations of violence or of the application of force upon the complainant, the panel did take account of both these allegations and the fact that on two earlier occasions women in a partnership with [the Applicant] had made allegations of hostile and threatening behaviour. [The Applicant] himself accepted that in the case of his former partner, ..., he had perpetrated violence upon her.'*



*'1.50. The panel therefore came to the conclusion that there was a serious possibility that allegations of hostile and coercive behaviour were present in the relationship with the complainant (CM). The panel were not convinced that CM would have troubled to call the police and to make a substantial statement in circumstances where nothing, save for [the Applicant] requiring CM to leave his flat, had occurred. As indicated, the panel took the view that there was highly likely to have been hostile behaviour towards CM. CM was a vulnerable person who was at the time living in a refuge. The panel therefore make no findings of physical assault for the reasons set out above.*

*'1.51. However, on the basis there was a serious possibility that hostile and coercive behaviour were present in the relationship with the complainant (CM) the panel take the view that a consideration, in relation to risk management, must be the protection of future partners who are in any form of relationship with [the Applicant].'*

32. In my judgment the panel were entitled to reach that conclusion and would have to take into consideration in reaching their decision the risk that the Applicant presented to future partners on the evidence as a whole.

33. In its conclusion at para 4 of the decision the panel said:

*'As indicated in this decision, the panel's overall view is that there remains a high risk of serious harm to those forming partnerships with [the Applicant]. The panel were not satisfied that [the Applicant] has developed insight into his risks, or indeed acknowledges there are risks that he may pose to individuals with whom he forms a relationship. The panel fully acknowledge that there have not been criminal court convictions for violence in relation to [the Applicant's] relationships, indeed [the Applicant] was acquitted of allegations relating to the last recall. However, the panel were firmly of the view that measuring risk, on the basis of criminal convictions in relationships, is not sufficient to ensure the protection of the public and known adults. The requirements of a criminal court conviction impose an extremely high standard upon a jury and do not embrace all areas of risk, but concentrate upon the legal wording of the individual allegations.*

*'4.2. For this reason, the panel take the view that the outcome of criminal court hearings is but one factor to consider in relation to measuring risk. As indicated on a number of occasions in this decision, the panel take the view that there is a highly concerning pattern of allegations of a serious nature associated with [the Applicant]. The panel take the view that [the Applicant's] risk is high and that there is a potential for extremely serious outcomes in the event of [the Applicant] perpetrating violence towards female.'*

34. In my judgment there is nothing irrational in the approach taken by the panel nor was it unfair to the Applicant. It would have been very surprising if the panel had not considered the risk to future partners in the light of the Applicant's history. The Applicant suggests in his application that the panel were biased. There is no evidence to support that suggestion.

35. Furthermore, even if I had reached a different conclusion on the merits of this application, I would not have exercised my discretion to allow the application. The



Applicant had specifically not sought release and had not sought transfer to open conditions. In those circumstances it is difficult to complain if the panel do not direct release or recommend a transfer.

36. The Applicant is many years over tariff so it is not difficult to understand his frustration with his failure to secure release but a reconsideration can only be granted if there are good grounds for it.

## Decision

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

**John Saunders**  
**6 December 2024**