

**[2024] PBRA 243****Application for Reconsideration by Heywood****Application**

1. This is an application by Heywood (the Applicant) for reconsideration of a decision dated 1 November 2024 not to direct his release. The decision was made by a panel after an oral hearing.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022, 2023 and 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.
3. I have considered the application on the papers. These are the decision, the dossier (consisting of 291 numbered pages), and the application for reconsideration.

**Background**

4. The Applicant received an extended sentence for offenders of particular concern (SOPC) comprising a custodial period of 14 years with an extended licence period of one year on 11 January 2017 following conviction after trial for sexual assault of a female under 13 (x8), engaging in sexual activity in the presence of a child aged 13-15 (x10), causing or inciting a girl aged 13-15 to engage in sexual activity (no penetration), assault of a girl under 13 by penetration (x3) and sexual assault of a female. The offences took place against two sisters and over a period of more than six years. The Applicant maintains his innocence.
5. The Applicant was 35 years old at the time of sentencing and is now 43 years old. He has no other convictions.
6. Key dates relevant to his sentence are reported to be:
  - a) Parole eligibility date: January 2024;
  - b) Conditional release date: January 2031; and
  - c) Sentence expiry date: January 2032.

**Request for Reconsideration**

7. The application for reconsideration has been submitted by solicitors on behalf of the Applicant and submits that the 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

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) on 21 April 2023 to consider whether or not it would be appropriate to direct his release. This is the Applicant's first parole review.
10. The case proceeded to an oral hearing on 21 October 2024, before a two-member panel. The panel heard evidence from the Applicant, his current and former Prison Offender Managers (POMs), his Community Offender Manager (COM) and a forensic psychologist commissioned by HMPPS. The Applicant was legally represented throughout proceedings; the Respondent was not legally represented.
11. In the professional opinion of both POMs and the COM, the Applicant was not suitable for release. In the professional opinion of the forensic psychologist, the Applicant was suitable for release "*despite the lack of offence-related interventions*". The panel did not direct the Applicant's release.

### 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 advised that no representations will be submitted in response to this application.

### **Discussion**

23. Submissions on behalf of the Applicant argue that the decision was irrational because it was based upon the panel's view on whether the Applicant would comply with the stringent proposed conditions of his licence. It is argued that there is no evidence to suggest that he would not comply, and notes that his custodial compliance has enabled him to progress to the open estate. It also argues that if there had been concerns about the Applicant's ability to form professional working relationships he would also have not progressed to open conditions. It notes the difference in professional opinions presented at the hearing and submits that if another panel had been presented with the same evidence, it would have offered a positive outcome.
24. The legal test for irrationality requires more than this. In order to find the panel's decision to have been irrational, it must be so unjustified that every other panel would have found otherwise. It is clear that a finding of irrationality requires a

manifestly fatal error of logic on behalf of the panel and that I should only interfere with the decision if it is so wrong that it absolutely necessary for me to do so. I must also consider whether the panel has discharged its common law duty to give reasons for its decision.

25. Where there is a conflict of opinion between witnesses, it is a matter for the panel to determine which opinion it preferred, provided the reasons given are soundly based on evidence, as well as rational and reasonable or at least not so outrageous in the sense expressed above.
26. The panel's view aligns with that put forward by the POMs and the COM: specifically, that there is concern about the limited understanding of the Applicant's risk and further concern about his ability to comply with very stringent licence conditions over the next seven years. The panel's decision was not, as the Applicant argues, solely based on compliance: limited understanding of risk was also a material factor.
27. The HMPPS forensic psychologist acknowledged that an assessment of risk factors and triggers was difficult and was unsure (for example) whether the Applicant's maintenance of innocence was a protective function of shame. The HMPPS forensic psychologist did, however, form a view on risk from collateral information and the Applicant's evidence during assessment.
28. Moreover, the panel did not consider that the Applicant evidenced any internal controls and that there was not a full understanding of whether he would engage with restrictions that would reaffirm his guilt.
29. It cannot be said that the panel's decision not to direct release was based on future compliance concerns alone. Even if it was, the panel gives rational and sustainable reasons for its decision to the extent that I am not persuaded that its decision meets the high bar necessary for a finding of irrationality.

## Decision

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

**Stefan Fafinski**  
**4 December 2024**