

**[2024] PBRA 41**

## Application for Reconsideration by Woodbine

### Application

1. This is an application by Woodbine (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 18 January 2024. The decision of the panel was not to direct 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, and/or (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 dossier consisting of 639 pages; the application for reconsideration submitted by the Applicant; and the response by the Secretary of State (the Respondent).

### Background

4. On the 10 March 2003 the Applicant was sentenced in relation to two offences of rape and one of indecent assault. The Applicant was sentenced to life imprisonment. His minimum tariff expired in August of 2007.
5. The facts of the offences were that the Applicant posed as a taxi driver. A female victim was being carried in his car. The victim was raped on two occasions. The incident lasted for two hours. The Applicant had earlier convictions recorded, including a conviction for serious physical assault.

### Request for Reconsideration

6. The application for reconsideration is dated the 27 January 2024. I also considered a duplicate of the application which was sent on the 8 February 2024.
7. The grounds for seeking a reconsideration are set out below.

### Current parole review

8. This was the Applicant's seventh review by the Parole Board.

### Oral Hearing



3rd Floor, 10 South Colonnade, London E14 4PU

[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)

@Parole\_Board



0203 880 0885

9. The review was conducted by a three-member panel of the Parole Board, the panel included a psychologist member.
10. Oral evidence was given at the panel hearing by two Prison Offender Managers (POM), a prison instructed psychologist and a Community Offender Manager (COM). The Applicant was represented by a barrister.
11. A dossier consisting of 613 pages was considered.

### The Relevant Law

12. The panel correctly sets out in its decision letter dated 21 November 2023 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*

13. Pursuant to Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is 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)).
14. 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*

15. In **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)**, the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said 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."*

16. This test was set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374**. The Divisional Court in **DSD** went on to indicate that in deciding whether a decision of the Parole Board was irrational, due deference had to be given to the expertise of the Parole Board in making decisions relating to parole. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing 'irrationality'. The fact that Rule 28 contains the same adjective as is used in judicial review shows that the same test is to be applied.
17. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.


#### *Procedural unfairness*

 3rd Floor, 10 South Colonnade, London E14 4PU

 [www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)

 [info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)

 @Parole\_Board

 0203 880 0885

18. 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.
19. 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; and/or
  - (e) the panel was not impartial.
20. The overriding objective is to ensure that the Applicant's case was dealt with justly.]
21. In **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said: "*It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship.*"
22. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility to make their own risk assessments and to evaluate the likely effectiveness of any risk management plan proposed. They must make up their own minds on the totality of the evidence that they hear, including any evidence from the Applicant. They would be failing in their duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if they failed to do just that. As was observed by the Divisional Court in **DSD**, they have the expertise to do it.

### *Adequate Reasons*

23. It is well established now, by decisions of the courts, that a failure by a panel to give adequate reasons for its decision is a basis on which its decision may be quashed, and reconsideration directed. Complaints of inadequate reasons have sometimes been made under the heading of irrationality and sometimes under the heading of procedural unfairness: whatever the label, the principle is the same. The reason for requiring adequate reasons had been explained in a number of decisions including:
- **R v Secretary of State for the Home Department ex parte Doody (1994) 1WLR 242;**
  - **R (Wells) v Parole Board (2009) EWHC 2710 (Admin);**
  - **R (PL) v Parole Board and Secretary of State for Justice (2019) EWHC 306;**
  - **R (Stokes) v Parole Board and Secretary of State for Justice (2020) EWHC 1885 (Admin).**

24. The principal reason for the duty to give reasons is said to be the need to reveal any error which would entitle the court to intervene. Without knowing the panel's reasons, the court would be unable to identify any such error, and the parties right to challenge the decision would not be an effective one. In **Wells** Mr Justice Saini pointed out that the duty to give reasons is heightened when a panel of the Board is rejecting expert evidence.

### The reply on behalf of the Respondent

25. The Respondent offered no representations.

### Reconsideration grounds and discussion

#### Ground 1

26. Error of law - It is submitted by the Applicant that there was an error of law in that the oral hearing panel (OHP) wrongly took account of an incident regarding the Applicant's handling of a urine sample in prison. This, it is submitted, was unfair because a prison adjudication in relation to the urine sample had been dismissed and therefore the matter should not have been taken into account.

#### Discussion

27. The background to this complaint is as follows. The Applicant is serving two sentences of life imprisonment for offences of rape. Having served a period of time in a closed prison, the Applicant appeared before a parole board panel in August 2020 and was recommended for a transfer to open conditions. He was transferred to an open prison in May 2021. He was transferred back to a closed prison in August 2022. The report from the open prison, indicated that the reason for the Applicant being transferred back to a closed prison was that there had been a number of concerns about the use of an illegal drug. In addition to these concerns, a search was conducted of the Applicant while he was in his room at the open prison. The search revealed that the Applicant had concealed a urine bottle in his underwear. In addition, a further search of his room revealed two further bottles containing approximately 2 litres of urine. This discovery was coupled with earlier concerns about urine testing for illicit drugs. The Applicant had, on an earlier occasion, undertaken a urine test, however staff had noted that the urine being tested was marginally under the maximum temperature, which raised suspicion that the urine had not been provided in the appropriate manner.

28. These concerns, and matters relating to general behaviour, led to the Applicant being transferred from the open prison to a closed prison. Later the Applicant was subject to a prison adjudication in relation to the possession of the sample in his underwear. The Applicant submitted to the adjudicating governor that he had the small urine bottle in his pocket, rather than in his underwear and that he'd kept it in his pocket, having been given the bottle by the healthcare department. He had retained the urine sample in order to give to the healthcare department and therefore was not attempting to evade testing for illegal drugs. As far as the two large bottles of urine in his room were concerned, the Applicant submitted to the adjudicating governor that the bottles were kept at the side of his bed to use at night to urinate.

29. The adjudication resulted in a dismissal. It appears that the healthcare department were able to confirm that the Applicant was being requested to provide urine for health care testing. Accordingly, the prison governor found that the adjudication allegation of being in possession of an unauthorised substance was not proven to the required standard.
30. The panel were entitled to assess the evidence relating to urine samples and urine bottles. They would not be entitled to go behind the adjudication decision, however, they were entitled to look at the surrounding circumstances and the evidence, indirectly associated with the adjudication, and to reach a conclusion. The panel's assessment of the evidence relating to the discoveries in the open prison were that the Applicant's explanation for having two large bottles of urine beside his bed were unconvincing, particularly in circumstances where untainted urine is considered to be a currency within the prison system. Additional evidence was that an earlier urine sample that the Applicant had presented for testing had been found to be of an abnormal temperature. The panel also were satisfied, on balance, that the smaller sample was in fact found in the Applicant's underwear (rather than his pocket), which added to their view that the Applicant's account of the presence of the small urine bottle lacked credibility. Additionally, prison staff had reported a strong smell of cannabis coming from the Applicant's room and the Applicant had returned a positive test for cannabis on an earlier occasion.
31. In the light of all the surrounding circumstances. I am not persuaded that the panel's conclusion, that the evidence relating to cannabis use and an attempt to disguise it, was credible and was an issue which could be taken into account in connection with assessing risk. For this reason, I reject this ground.

### **Ground 2**

32. Procedural unfairness-the panel should not have taken evidence from the POM in this case.

### **Discussion**

33. Both the panel and the Applicant were at liberty to examine all the witnesses in the oral hearing. It is not uncommon, in parole board hearings, for evidence which amounts to hearsay, to be adduced. The Parole Board rules allow for evidence to be taken in various forms. It was for the panel to assess the weight and quality of the evidence. It is clear from the panel's decision letter that a fair assessment of the evidence did take place. I therefore reject this ground.

### **Ground 3**

34. The panel were wrong to accept the evidence of a prison official relating to the reasons for the Applicant's transfer from an open prison to a closed prison.

### **Discussion**

35. This complaint relates to a report which was contained in the dossier. That report set out the reasons why the prison service had decided to order the Applicant's transfer from the open prison to the closed prison. It is clear from the decision letter that the panel took account of and weighed all the evidence, including that of the Applicant. The prison service indicated that one of the reasons for the transfer of the Applicant from the open prison to the closed prison was a concern about the Applicant undermining the integrity of the mandatory test process. As noted above,



the panel were at liberty to assess any evidence relating to non-compliant behaviour which would be relevant to risk.

36. In the circumstances, the inclusion of this report from the prison service does not, in my view, amount to procedural unfairness or irrationality.

#### **Ground 4**

37. The panel failed to take account of the positive factors in relation to the Applicant's behaviour in prison when making a decision not to recommend release or a transfer to open conditions.

#### **Discussion**

38. In the decision letter, the panel noted as follows: "*[the Applicant] has demonstrated self-control without recourse to violence during this sentence; he has shown motivation to engage in offending behaviour work; he has developed good working relationships with some members of staff; and he has at times held down employment*".

39. The panel also noted that the Applicant had completed a substantial behavioural programme following advice from the psychology department.

40. There were conflicting views from the professional witnesses as to the Applicant's progress. The Applicant's POM recommended a transfer back to open conditions. The prison instructed psychologist took the view that further time was required in a closed prison to consolidate learning. The COM suggested a move to a prison with a psychologically informed environment.

41. In addition to noting the positive factors. The panel noted in its decision that there remained continuing issues relating to negative prison behaviour. There were also continuing concerns relating to the Applicant's behaviour and comments in the presence of female prison staff.

42. The panel also took the view that the Applicant had disengaged from active and meaningful supervision by prison staff and had retreated into self-isolation and grievance type thinking, resulting in him displaying increasing paranoia and distorted thinking.

43. Having carefully considered the decision in this case it is clear to me that the panel conscientiously took account of the positive factors supporting the Applicant's review. It is clear that the Applicant himself strongly denies many of the allegations relating to behaviour in prison and takes the view that prison staff are deliberately conspiring against him. In the light of the fact that the Applicant had actually moved to the current prison reasonably recently, it appears unlikely that staff had deliberately built up a negative view of him.

44. The Applicant himself, through his legal advisers, was in fact applying for a transfer back to an open prison rather than release. As noted above reconsideration would not apply to the decision not to recommend a transfer to open conditions.

45. However, so far as the decision not to direct release was concerned, I am satisfied that the panel took account of all relevant positive factors and fairly balanced those



against the negative factors which were set out in the concluding remarks of their decision. Having assessed all those remarks and the rationale behind the decision, I do not find that the panels assessment amounted to procedural unfairness or irrationality in the sense set out above, and I therefore decline to order reconsideration in this case.

### **Decision**

46. In all the circumstances therefore I conclude that the decision in this case was not irrational in the legal sense set out above and that the decision was not procedurally unfair. I refuse the application for reconsideration.

**HH S Dawson**  
**20 February 2024**