

[2025] PBRA 12**Application for Reconsideration by Pymont****Application**

1. This is an application by Pymont (the Applicant) for reconsideration of a decision of an oral hearing panel (OHP) dated the 18 December 2024. The decision was not to direct release.
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 dossier now consisting of 307 pages, the OHP decision, the application for reconsideration drafted by the Applicant's legal adviser, and the response by the Secretary of State (the Respondent).

Request for Reconsideration

4. The application for reconsideration is dated 31 December 2024.
5. The grounds for seeking a reconsideration are as set out below.

Background

6. The Applicant is serving a sentence of imprisonment for public protection for attempt/robbery, threatening behaviour and failing to surrender. The sentence was imposed on the 4 August 2006. The minimum term set by the judge was 18 months (less time served on remand).
7. The Applicant was first released in 2014. He was recalled after 18 days following reports of aggressive and threatening behaviour.
8. He was released on the second occasion in October of 2015 and recalled in November of 2015. This recall was triggered by the fact that the Applicant was found to have taken NPS (new psychoactive substance) (commonly known as Spice). There had also been a deterioration in the Applicant's contact with his probation officer.

9. His third release was in October of 2017. He was recalled on this occasion in July of 2023 as noted below.
10. The index offence occurred in the early hours of the morning. The Applicant, and his co accused, approached a young man who was waiting for a train. They asked for money and after being refused became threatening and aggressive. The Applicant and the co accused ran away when a security guard approached.
11. The Applicant's record of convictions included two earlier attempted robberies. The facts of those robberies were similar to the index offence in that a young person was approached and threatened with a demand for money. The Applicant was 18 years old when sentenced in relation to the index offence, he was 37 years old at the date of the OHP.

Current parole review

12. The Secretary of State referred the Applicant's case to the Parole Board, in July of 2023, to consider whether he should be subject to a direction for release, if not released whether he should be the subject of a recommendation for a transfer to an open prison. There had been several adjournments in this case. They had occurred as a result of sickness issues with the appointed Community Offender Manager (COM), and to secure further information generally.
13. The OHP in this case consisted of an independent chair and a second independent member of the Parole Board. The panel heard evidence from the Prison Offender Manager (POM), COM and prison instructed psychologist. The Applicant gave evidence and was legally represented.

The Relevant Law

14. The panel correctly sets out in its decision letter dated 18 December 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)

15. 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)).
16. 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)).



17. 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

18. 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.

19. 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.*"

20. 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)**.

21. 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.

22. 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.

23. 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

24. 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.



25. 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.

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

Error of law

27. 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.

28. 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.

Other

29. The test to be applied when considering the question of transfer to open conditions is the subject of a well-established line of authorities going back to **R (Hill) v Parole Board [2011] EWHC 809 (Admin)** and including **R (Rowe) v Parole Board [2013] EWHC 3838 (Admin)**, **R (Hutt) v Parole Board [2018] EWHC 1041 (Admin)**. The test for transfer to open conditions is different from the test for release on licence and the two decisions must be approached separately and the correct test applied in each case. The panel must identify the factors which have led it to make its decision. The four factors the panel must take into account when applying the test are:

- (a) the progress of the prisoner in addressing and reducing their risk;
- (b) the likeliness of the prisoner to comply with conditions of temporary release
- (c) the likeliness of the prisoner absconding; and
- (d) the benefit the prisoner is likely to derive from open conditions.

30. 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."

Reconsideration as a discretionary remedy

31.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

32.The Respondent offered no representations.

Ground and Discussion

33.The Applicant's legal adviser submits that the OHP in this case failed to sufficiently consider the release recommendations of the POM and COM and placed too much weight upon the views of the prison instructed psychologist, who was not recommending release.

Background

34.As noted above the Applicant is serving a sentence of imprisonment for public protection in relation to an offence of attempted robbery, threatening behaviour and failure to surrender. The offence was committed some years ago. Since the commission of the offence, the Applicant has been released and recalled on three occasions. The OHP noted that the most recent recall had been in circumstances where there had been aggressive and threatening behaviour by the Applicant towards a female partner.

35.The Applicant's last release was in 2017. There had been intermittent difficulties in connection with behaviour between 2017 and 2023, although none had led to a recall. In 2023, the Applicant became involved in an incident relating to a female partner. He was charged with threatening behaviour and violence towards the female. He was subsequently convicted of an assault the facts of which amounted to spitting and throwing items at his partner.

36.The OHP concluded that the background and history of the Applicant raised *"concerns about [the Applicant's] capacity to cause serious harm to others through his use of instrumental violence, including the carrying of weapons, in part for financial gain. He has also demonstrated a capacity for poor compliance (offending on bail, escape from lawful custody, breach of conditional discharge, failing to surrender and three recalls during this sentence) which is of concern regarding the manageability of his risks, should he be re-released."*



Discussion

37. The panel heard evidence at the oral hearing from the POM, COM and a prison instructed psychologist. As noted above the POM and COM were recommending release and the prison psychologist was not.
38. The panel accepted that the Applicant had demonstrated positive and compliant conduct in prison since recall and had engaged with prison staff. The panel also noted that there were measures within the risk management plan to manage the Applicant's risk in the community.
39. This was a case, therefore, where the panel had received evidence of mixed views so far as managing the Applicant's risk in the community was concerned. The panel reflected on the evidence that had been presented. The panel took account of the fact that the Applicant had the capacity (on the basis of the historical evidence) to cause serious harm to others.
40. The relevant risk factors they identified included; substance misuse, negative associations, emotional instability and the capacity for violence.
41. The panel, however, also noted the fact that the Applicant had been recalled because he had committed further offences of a violent nature.
42. The panel's conclusion, after reflecting on this evidence, was that the Applicant was not able to manage the critical risk factors that they identified and could not (in their determination) consistently apply any learning that he might have gained from offending behaviour work in the past.
43. The panel also noted two issues which were of concern and which affected their decision.
44. The first was the fact that the Applicant's partner who had drug misuse difficulties had been threatened by drug dealers because of a dispute about debt. This matter was concerning as it was ongoing and the police had provided a note to the OHP of their concern about the safety of the Applicant's partner, and the threats that were currently being made towards her. The concern was that the Applicant, if released, would be placed in an immediate situation of potential conflict and violence associated with this drug debt issue. The panel therefore took the view that one issue to consider was the risk of retaliatory violence in the light of the Applicant's background.
45. A second concern was the lack of stability in relation to probation support. The probation officer who gave evidence at the hearing was a temporary officer employed on an agency basis. There was no clear information as to who would be managing the Applicant's risk in the community in the future. The Applicant was someone who had been identified by the professionals as requiring intensive support to manage his risk in the community, part of that intense support necessitated a good working relationship with a probation officer in order to protect the public and support the Applicant. Whilst the absence of consistent probation support was not the fault of the Applicant, the panel were obliged to look at public safety and to apply the public protection test, as at the date of the hearing.



46. In my determination the panel clearly set out the reasons why they rejected the recommendations of the POM and COM and how they reached their conclusion that the Applicant's risk could not be managed in the community. In essence, they concluded that the COM and POM had not fully assessed the likelihood of risk to the public resulting from the issues that had been given in evidence at the hearing.
47. The panel had the advantage of an extensive dossier of reports and other material. They had the advantage, too, of seeing and hearing the Applicant as well as the witnesses. The Applicant was also legally represented throughout. Where there is a conflict of opinion, it was plainly a matter for the panel to determine which opinion they preferred, provided the reasons given, for preferring an opinion, are soundly based on evidence, as well as rational and reasonable or at least not so outrageous in the sense expressed above. I am satisfied that reasons were given and that they were not irrational or unreasonable, in the sense set out above.
48. 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.
49. However, as noted above where a panel makes a decision contrary to the opinions and recommendations of some or all the professional witnesses, it is important that it should explain clearly its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions, per **R (Wells) v Parole Board 2019 EWHC 2710**.
50. The Reconsideration Mechanism is not a process whereby the judgement of a panel when assessing risk can be lightly interfered with. Nor is it a mechanism where I should be expected to substitute my interpretation and view of the facts as found by the panel, unless, of course, it is manifestly obvious that there was an error of an egregious nature which can be shown to have directly contributed to the conclusion arrived at by the panel.
51. The panel accepted that there were mixed views in this case, and accepted much of the positive evidence relating to the Applicant. As noted, the panel's task was to balance those views and then consider the evidence, apply the statutory test, and reach a determination.
52. In this case as noted above, I am satisfied that the panel explained clearly its reasons for reaching the decision not to direct release and made it clear why they did not accept the views of the POM and COM. Having considered all the issues raised on behalf of the Applicant in this case, I do not find that the OHP's decision was irrational in the sense set out above.

Decision



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



www.gov.uk/government/organisations/parole-board



info@paroleboard.gov.uk



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

HH Stephen Dawson
16 January 2025