

[2025] PBRA 18

## Application for Reconsideration by Grant

### Application

1. This is an application by Grant (the Applicant) for reconsideration of a decision of an oral hearing dated 03 December 2024 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 oral hearing decision, the dossier consisting of 337 pages and the application for reconsideration.

### Request for Reconsideration

4. The application for reconsideration is dated 22 December 2024. It has been drafted by solicitors acting on behalf of the Applicant. The application submits that the decision was procedurally unfair. The submission is supplemented by written arguments to which reference will be made in the Discussion section below.

### Background

5. The Applicant received a sentence of imprisonment for public protection following his conviction for robbery, and two assaults of police. The tariff, which was set at one year, five months and 18 days, expired on 11 March 2009.
6. The Applicant was 19 years old at the time of sentencing and is now 36 years old. This is his eighth review. He has never been released.

### Current parole review

7. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in October 2023 to consider whether or not it would be appropriate to direct his release. If the Board did not consider it appropriate to direct release, it was invited to advise the Respondent whether the Applicant should be transferred to open conditions.



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

8. The case proceeded to an oral hearing via videoconference on 28 November 2024. The panel consisted of an independent member, a judicial member and a psychologist member. It heard oral evidence from the Applicant, together with Prison Offender Manager (POM), Community Offender Manager (COM) and a prison psychologist. The Applicant was legally represented throughout the hearing. The Respondent was not represented by an advocate.
9. The panel did not direct the Applicant's release nor make a recommendation for open conditions. It is only the release decision that is open for reconsideration.

### The Relevant Law

10. The panel correctly sets out in its decision letter dated 03 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)*

11. 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)).
12. 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)).
13. 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**.

#### *Procedural unfairness*

14. 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.
15. 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.

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

### The reply on behalf of the Respondent

17. The Respondent has submitted no representations in response to this application.

### Discussion

18. The Applicant submits that the decision was procedurally flawed as the panel failed to adequately set out reasons or adequate reasons to support its decision. The application states that the professionals all provided reports and gave evidence and the panel have failed to provide a rationale to depart from the professional analysis of risk. The application states that the panel have made no reference to the narrative of professionals and what they reject and why they do so in order to formulate its own decision.

19. All the matters set out in the application are in fact dealt with in the decision letter. At the risk of repeating the decision letter I set it out here for the Applicant to note. The previous review and the Respondent's response to it are also of relevance and referenced below.

20. The Applicant's seventh review took place on 26 May 2023. Following an oral hearing the panel in a decision dated 8 June 2023 made no direction for release but recommended a move to open conditions. The Respondent on considering the decision rejected the panel's recommendation. The Respondent in the rejection letter agreed with the POM's assessment at that time that the Applicant needed to show a period of sustained positive behaviour in closed conditions and show positive self-management before release could be considered. The Respondent also considered that the Applicant needed to demonstrate that he could "*seek help before resorting to negative coping strategies*".

21. The application states that the starting point for the panel was the last decision which recommended open conditions. The panel noted that and set out the developments since the previous review at paragraph 2.2 of its decision. The panel noted that the list of negative entries and adjudications set out was not an exhaustive list of behavioural concerns. The panel also fairly notes that there have been positive developments (paragraph 2.5 of the decision).

22. The panel noted the positive recommendations from all the professionals, the POM's evidence is summarised at paragraph 2.6, that of the psychologist is at paragraph 2.7 and that of the COM at paragraph 2.8. The Applicant's position is set out at paragraphs 2.4 and 2.5. The panel considered the risk management plan and the Applicant's attitude to it at paragraph 3.1. The closing remarks of the Applicant's representative are set out at paragraph 4.1. Credit is given to the Applicant for all



the risk reduction work he has done and for his motivation and engagement. The positive recommendation of all the professionals is acknowledged at paragraph 4.3.

23. Thereafter the decision letter sets out the reasons for the decision of the panel. The panel considered that the Applicant's continued and regular use of Spice, in particular whilst the parole review process was ongoing was a poor reflection of his thinking skills (paragraph 4.4). The panel noted the regular incidents of threatening and abusive behaviour continuing since the previous review (paragraph 4.5). In the light of all the evidence it had considered the panel clearly came to the conclusion that the Applicant could demonstrate, with little prior warning, aggressive potentially violent behaviour if he could not get what he wanted such as medication or drugs. The panel was concerned that the Applicant's failure to exercise self-control or self-management in custody would be replicated in the community or open conditions (paragraph 4.6). For those reasons the panel concluded that the level of risk could not be managed in the community (paragraph 4.8).
24. In addition, the panel took into account that the Applicant had not achieved the objectives the Respondent had outlined in the rejection letter following the previous review, set out above. That is, he had not shown a period of sustained positive behaviour, he had not shown positive self-management and he had not shown that he could seek help before resorting to negative behaviour.
25. All those reasons were clearly set out in the decision letter, they are based on the evidence presented, they explain why the panel departs from the position of the professionals. There is no irrationality in the conclusion (although that is not a ground relied upon by the Applicant) and no procedural unfairness. The Applicant's case was dealt with justly.
26. The Applicant and his legal representative are no doubt very disappointed with the decision. The Applicant pleaded guilty to the index offences which he committed when he was 19 years old, he is long over tariff, the IPP has been abolished as a sentence, he has never been released on parole, a recommendation for him to move to open conditions was rejected by the Respondent. He has spent 17 years in prison for an offence which the sentencing judge considered merited a tariff of just under a year and a half in custody, he has undertaken core risk reduction work and his professional team all recommend progression from closed conditions. However, the panel has to apply the test for release and having done so cannot be satisfied for the reasons given (use of illicit substances, many negative behaviour entries, inability to manage his behaviour or seek help before resorting to negative behaviour) that the Applicant satisfies the test for release. That was a reasoned conclusion properly open to the panel on the evidence and not procedurally unfair.

## Decision

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

**Barbara Mensah**  
**22 January 2025**