

[2025] PBRA 20

## Application for Reconsideration by Galley

### Application

1. This is an application by Galley (the Applicant) for reconsideration of a decision of an oral hearing dated 4 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 713 pages and the application for reconsideration.

### Request for Reconsideration

4. The application for reconsideration is dated 23 December 2024. It has been drafted by solicitors acting on behalf of the Applicant. The application submits that the decision was irrational, that 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 an offence of sexual assault. The tariff which was set at 18 months expired in December 2008.
6. The Applicant was 42 years old at the time of sentencing and is now 59 years old. This is his seventh review.

### Current parole review

7. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in June 2021 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.

8. The case proceeded to an oral hearing via videoconference on 12 November 2024. The panel consisted of two independent members and a psychologist member. It heard oral evidence from the Applicant, together with his Prison Offender Manager, Community Offender Manager, prison psychologist and a defence instructed 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 4 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)).

### *Irrationality*

13. 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.
14. 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.*"
15. 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).*

- 16.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.
- 17.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.
- 18.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 Secretary of State**

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

### **Discussion**

- 20.The Applicant disagrees with the panel's findings, submits that the panel has placed undue weight on the views of the professional witnesses without conducting its own assessment, submits that the panel has failed to indicate why the decision was a refusal if it had found the case to be a finely balanced one. The application submits that there was a robust risk management plan in place. The application submits that the panel's conclusions were confused and illogical and could not be justified on the basis of the evidence presented and that the proper decision was one of release.
- 21.The panel saw and heard the witnesses, the panel was able to question those witnesses and based its decision on the oral evidence as well as the documentary evidence submitted. Although the application seeks to draw attention to other explanations, the panel was aware of those other views both from the evidence and the subsequent submissions and has given reasons for its conclusions. The application seeks to re-argue matters already properly considered by the panel. Its reasons and conclusions are set out in particular in paragraphs 4.4 and 4.5 of the decision.
- 22.The panel noted the Applicant's minimisation of his offending, his attitude towards professionals making it difficult to assess him and his risk, his lack of engagement and his differing accounts. The fact that those concerns identified by the panel coincide with the conclusions of the professionals does not invalidate them. The panel has logically and thoroughly set out cogent reasons as to why it is necessary for public protection that the Applicant remains confined. The legal test for irrationality sets a high bar which this case does not meet.

### **Decision**



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

**Barbara Mensah**  
**27 January 2025**