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[2025] PBRA 21

Application for Reconsideration by Batchelor

Application

1. This is an application by Batchelor (the Applicant) for reconsideration of a paper decision dated 11 November 2024 not to direct his release.

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 paper decision, the dossier (consisting of 227 numbered pages), and the application for reconsideration.

Background

4. The Applicant received an extended sentence comprising a custodial period of 12 years with an extended licence period of eight years on 19 August 2016 following conviction for rape and attempted rape. On the same occasion he was also convicted of sexual assault (no penetration), assault occasioning actual bodily harm, and trespass with intent to commit a sexual offence. He received no separate penalty in respect of the further convictions.

5. The Applicant was 46 years old at the time of sentencing and is now 54 years old.

6. Key dates relevant to his sentence are reported to be:

    a) Parole eligibility date: May 2024;
    b) Conditional release date: May 2028; and
    c) Sentence expiry date: May 2036.

Request for Reconsideration

7. The application for reconsideration has been submitted by solicitors on behalf of the Applicant and pleads grounds of both procedural unfairness and irrationality.

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 25 June 2024 to consider whether or not it would be appropriate to direct his release. This is the Applicant's second parole review.

10. The case was reviewed by a single member Member Case Assessment panel (MCA panel) on 11 November 2024. This panel made no direction for release on the papers.

11. This decision was made under rule 19(1)(b) and, by operation of rule 19(6) was a provisional decision. Rule 20(1) permits a prisoner who has received a provisional negative decision on the papers to apply in writing for his case to be determined by a panel at an oral hearing. Rule 20(2) provides that any such application must be served within 28 days of receipt of the provisional decision.

12. On 5 December 2024, submissions were received seeking an oral hearing. These submissions were considered by a Duty Member on 18 December 2024 and an oral hearing was not granted. The Duty Member concluded that an oral hearing would not be effective until the Applicant had completed an identified intervention to address risk of future sexual reoffending and his progress had been assessed.

13. The provisional decision of the MCA panel has since become final and is therefore subject to reconsideration.

The Relevant Law

14. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined.

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.

Procedural unfairness

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.

Irrationality

21. 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.

22. 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*."

23. 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).

24. 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.

25. 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.

26. 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

27. The Respondent has advised that no representations will be submitted in response to this application.

Discussion

28. Submissions on behalf of the Applicant argue that the decision was both procedurally unfair and irrational. Three grounds are advanced, which I summarise as follows:

    a) The Applicant's custodial behaviour has mainly been positive, and he has completed a number of courses. Therefore, an oral hearing would be the best option to explore his attitude and behaviour and to consider whether any identified work could be completed in the community;

    b) If an oral hearing was directed, it is likely that the identified intervention would be completed before the hearing was listed; and

    c) If would be unfair to make the Applicant wait another 12 months for a parole review.

29. The first two grounds appear to focus on the decision of the Duty Member not to direct an oral hearing. That decision is made under rule 20(5) and therefore falls outside the scope of the reconsideration mechanism afforded by rule 28.

30. In any event, the decision not to direct the Applicant's release is not irrational. There was no professional support for release, and the Applicant is said to be motivated to take active steps to complete the identified intervention. To refuse release on the basis that – as a matter of clear fact – identified risk reduction work is not complete does not even nearly reach the high bar set out for a finding of irrationality. Timings of parole reviews are not within the Parole Board's control: its remit is to assess risk on the basis of the evidence before it. If a panel concludes that a prisoner is not safe to be released, then it is a matter for the Respondent to re-refer that prisoner's case to the Parole Board when it considers it appropriate to do so. The Parole Board does not involve itself in sentence planning.

31. In summary, I am not persuaded that there are any sustainable arguments to support a finding of procedural unfairness or irrationality in the Applicant's parole review.

Decision

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

Stefan Fafinski
23 January 2025