

[2022] PBRA 152

## Application for Reconsideration by Webb

### Application

1. This is an application by Webb (the Applicant) for reconsideration of a decision of an oral hearing panel dated 28 September 2022 not to direct her 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, (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 oral hearing decision 29 September 2022 , the dossier, and the application for reconsideration dated 7 October 2022

### Background

4. The Applicant received a sentence of life imprisonment on 2 February 2012 following conviction for murder, to which she pleaded guilty. Her tariff (of 12 years less time spent on remand) expired on 7 July 2022. The Applicant was 34 years old at the time of sentencing and is now 45 years old.

### Request for Reconsideration

5. The application for reconsideration is dated 7 October 2022 and has been drafted by solicitors acting on behalf of the Applicant.
6. It submits that the decision was irrational. These submissions are supplemented by written arguments to which reference will be made in the Discussion section below. No submissions were made regarding procedural unfairness or error of law.

### Current Parole Review

7. The Applicant's case was referred to the Parole Board by the Secretary of State in November 2021 to consider whether or not it would be appropriate to direct her release. If the Board did not consider it appropriate to direct release, it was invited to advise the Secretary of State whether the Applicant should be transferred to open conditions.
8. The case proceeded to an oral hearing on 14 September 2022 before a three-member panel consisting of a judicial chair, a psychiatrist specialist member, and an



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

independent member. Oral evidence was taken from the Applicant's Prison Offender Manager (POM) and Community Offender Manager (COM). The Applicant was legally represented throughout. The panel did not direct the Applicant's release.

## The Relevant Law

9. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.

### *Parole Board Rules 2019 (as amended)*

10. 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)).
11. 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)).
12. 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*

13. 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."*

14. 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.
15. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1 and others**.

## The reply on behalf of the Secretary of State

16. The Secretary of State has submitted no representations in response to this application.

### Discussion

17. The panel's decision was made under rule 25(1) and is therefore eligible for reconsideration under rule 28.

18. The application sets out three reasons why it considers the panel's decision to be irrational.

19. First, in its conclusion, the panel stated that it considered the Applicant "*still has some way to go to achieve acceptable management of her emotions*" and "*recent events had indicated a lack of stability which in certain circumstances could escalate into violence*" especially as she did not "*seek the help and support of professionals*". It is submitted that this finding led to the decision not to direct release to be irrational. The application notes that the Applicant had not been violent during two traumatic periods in an Open Unit and her risk assessment was such that she was unlikely to cause serious harm unless there was a change in circumstances.

20. The panel's conclusion seems to be (in other words) that although the Applicant had not resorted to violence in the Open Unit, even when under some stress, it was still possible that a change in circumstances could escalate into violence. The panel's statement is aligned with the risk assessment in that there was a risk of future violence if there was a change in circumstances. It was not irrational for the panel to conclude this, even in the face of evidence of non-violent custodial behaviour, given its view that acceptable emotional management had yet to be achieved: a view that it was entitled to reach. Indeed, the application concedes that the Applicant agrees she needs to undertake counselling to address her emotional management issues.

21. Second, it is submitted that it was irrational for the panel, having concluded that work needed to be done to achieve acceptable emotional management, recommended open conditions and not release, given that the identified deficiencies cannot be addressed further in custody.

22. The test the panel must apply is whether it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined in prison. Following **R (Secretary of State for Justice) v Parole Board [2022] EWHC 1282 (Admin)** the statutory test to be applied by the panel does not entail a balancing exercise where the risk to the public is weighed against the benefits of release to the prisoner.

23. If the panel considers a prisoner's risk to be such that they need to remain confined for public protection that is the end of the matter.

24.Third, it is submitted that the Secretary of State may not agree to the recommendation for open conditions which will deprive the Applicant of the opportunity for further testing or development. While that may or may not be the case, it is not a matter for the panel or a factor in the rationality of its decision.

## **Decision**

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

**Stefan Fafinski**  
**31 October 2022**