

[2022] PBRA 36

## Application for Reconsideration by Wiles

### Application

1. This is an application by Wiles (the Applicant) for reconsideration of a decision of a Panel of the Parole Board dated 3 February 2022 following an oral hearing on 2 February 2022.
2. The hearing was conducted remotely via video-link, due to current Covid-19 restrictions on face-to-face hearings.
3. The Panel made no direction for release or recommendation for a move to open conditions.
4. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.
5. I have considered the application on the papers. These are the dossier of 230 pages (that includes the decision letter) and the application for reconsideration.

### Background

6. The Applicant was aged 17 at the time of sentence and is now aged 26 years old. He was sentenced to Detention for Public Protection on 23 April 2012 for an offence of manslaughter. The tariff was set at 6 years (with allowance for time on remand) and expired on 12 June 2017.
7. The Applicant was released on 7 September 2020 and recalled on 22 February 2021. This was the first review since the recall.

### Request for Reconsideration

8. The application for reconsideration is undated, but it is not suggested that it was not submitted in time.
9. The application sets out two grounds, that can be summarised as follows :
  - a) The Panel placed too much weight on an email provided to the Panel
  - b) The Panel failed to consider the question of open conditions



## Current parole review

10. The Applicant's case was referred to the Parole Board in March 2021. An oral hearing was directed in October 2021.
11. The oral hearing was conducted remotely on 2 February 2022. The Panel heard evidence from the Applicant, as well as from the prison probation officer and the community probation officer.

## The Relevant Law

12. The panel correctly sets out in its decision letter the test for release.

### *Parole Board Rules 2019*

13. Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is 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)).
14. 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*

15. 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."*

16. 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.
17. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

### *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

 3rd Floor, 10 South Colonnade, London E14 4PU  [www.gov.uk/government/organisations/parole-](http://www.gov.uk/government/organisations/parole-board)

 [info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)

 @Parole\_Board

 0203 880 0885

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.

21. 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.*"

### **The reply on behalf of the Secretary of State**

22. The Secretary of State has stated that he does not wish to make any representations.

### **Discussion**

23. I shall consider the grounds in turn.

#### **Ground (a) – assessment of an email received**

24. The background to this is that an email was provided by the prison probation officer at the end of the evidence. This was said to have been sent to the Applicant by his former partner and, on one view, incriminated the Applicant in criminality.

25. This ground for reconsideration is as follows :

*"We submit that the Parole Panel have applied too much weight to the email and the allegations of his recall which are unfounded".*

26. This is not elaborated on in the grounds.

27. In the decision letter, the Panel state "*However, bearing in mind that s[the Applicant] was the recipient of the document, not its maker, and that the original was not available, in fairness to [the Applicant] , the panel did not make any adverse finding from the email.*"
28. The grounds do not explain why it is that the remainder of the decision shows that that clear statement from the Panel is incorrect.
29. It is not unusual (in fact, it is extremely common) for material to be served on Parole Board members outside the required time frame r18(2).
30. It is also not uncommon for irrelevant or prejudicial material to be provided to a Panel.
31. In this case, the Panel concluded that they would place it from their minds. That is something that members are more than capable of doing, and is not an infrequent occurrence.
32. I note that the Panel was chaired by a Judicial Member (sitting with an independent member who is also a qualified lawyer) who will be especially well used to carrying out that exercise.
33. It is not suggested that there was an application at the time (or after the hearing) for the Panel to recuse themselves, or for an adjournment to investigate this email. This cannot be determinative, but it would be expected that if there were concerns on behalf of the representative then this would be done.
34. For those reasons, I do not consider that this ground is made out.

### **Ground (b) – failure to consider open**

35. As has been confirmed, the question of a recommendation for a move to open is outside the scope of the reconsideration mechanism.
36. In those circumstances, I do not have any jurisdiction to consider this ground.

### **Decision**

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

**Daniel Bunting**  
**9 March 2022**