

[2022] PBRA 41

## Application for Reconsideration by Sowerby

### Application

1. This is an application by Sowerby (the Applicant) for reconsideration of a provisional decision by the Parole Board under Rule 25(1) of the Parole Board Rules 2019 ("the 2019 Rules") that the Applicant was unsuitable for release ("the Decision"). The notice by which the Decision was communicated is dated 24 February 2022 (the Decision).
2. I have considered the application on the papers comprising:
  - a) A dossier of 437 numbered pages including a copy of the Decision; and
  - b) Written submissions by the Applicant's solicitors, by which reconsideration is requested, dated 20 March 2022.

### Background

3. The Applicant was sentenced to life imprisonment in December 1982 for murder of a 15-month-old child. The minimum tariff expired in July 1994.
4. The Applicant was aged 32 when he received that sentence and is now aged 59.
5. The Applicant has been released on indefinite licence on two occasions, after which he has been recalled to prison. The first such release was on 28 March 2013, with recall being on 25 June 2013. The second such release was on 17 October 2017, with recall being on 15 February 2019. Both recalls resulted from concerns about the Applicant's sexual behaviour, and he was convicted of sexual assault committed during the second period of release on life licence.

### Current parole review

6. The Decision was made on the Secretary of State's referral of the Applicant's case to the Parole Board.
7. The Decision was made by a three-member panel of the Board that considered the Applicant's case at an oral hearing conducted by remote video links in February 2022. The panel comprised of an Independent Member of the Board, who chaired the panel, a Judicial Member, and a Psychologist Member.


### Application and response

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8. The Applicant's submissions assert that the Decision is marred by irrationality.
9. The Public Protection Casework Section has confirmed by email dated 24 March 2022 that the Secretary of State offers no representations in response to the application.

## The Relevant Law

10. Rule 28(1) of the 2019 Rules 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.

### *Irrationality*

11. 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."*

12. 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.
13. 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. 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*

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.

## Consideration

15. The 20 March 2022 submissions assert that the Board failed to afford the appropriate weight to the recommendations of the professional witnesses, who recommended the Applicant's release.
16. It is important that a panel should explain clearly a decision that is contrary to the opinions and recommendations of professional witnesses. That is especially so in the case of unanimity among professional witnesses: **R (Wells) v Parole Board 2019 EWHC 2710**. However, the Parole Board is not obliged to adopt the opinions

and recommendations of professional witnesses and it is a panel's responsibility to make its own risk assessment and to evaluate the likely effectiveness of any risk management plan proposed on the totality of the evidence, which it may be expected to perform with the benefit of its expertise in the realm of risk assessment; see **DSD**, for example.

17. In the Applicant's case, the Board acknowledged that the Applicant had completed a programme targeting the risk of sexual offending but also that he had had difficulty taking responsibility for offending and had been deceitful with those supervising him about an area that it was essential to monitor in his case, namely relationships.
18. The Board's ultimate conclusion was that there is a need for the Applicant to consolidate the learning from the programme targeting the risk of sexual offending and to learn to be open and honest with professionals, and that those needs must be satisfied before the risk to the public could be effectively managed in the community.
19. The Board's reasons are in my respectful opinion clear, coherent and adequately detailed, and cannot correctly be described as irrational.

## **Decision**

20. Reconsideration is not directed.

**Timothy Lawrence**  
**29 March 2022**