

[2023] PBRA 106

## Application for Reconsideration by Uddin

### Application

1. This is an application by Uddin (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated 24 April 2023 not to release the Applicant following an oral hearing on 13 April 2023.
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 application for reconsideration, the response from the Secretary of State and the dossier.

### Background

4. On 24 November 2006 the Applicant was sentenced to an indeterminate sentence for public protection of an offence of robbery, where he used a knife. He was then aged 24. His minimum term of imprisonment of 1 year 7 months and 20 days expired on 13 July 2008.
5. He was released on licence on 19 December 2012 and recalled on 31 December 2012. On 27 January 2014 the Applicant was sentenced to an extended sentence of 5 years, plus a 3-year licence extension, for false imprisonment, committed on 28 December 2012.
6. He was released on licence for a second time on 10 September 2020 and recalled on 19 October 2021. On 7 January 2022 the Applicant was sentenced to 8 weeks imprisonment for offences of dangerous driving, 2 offences of assault of an emergency worker and criminal damage, these offences having taken place on 16 October 2021.

### Request for Reconsideration

7. The application for reconsideration is undated and does not bear the name of its author, it was submitted by legal representatives on behalf of the Applicant on 4 May 2023.

8. The application was not made on the published form CPD 2, which contains guidance notes to help prospective applicants ensure their reasons for challenging the decision of the panel are well-grounded and focused. The document explains how I will look for evidence to sustain the complaints and reminds applicants that being unhappy with the decision is not in itself grounds for reconsideration. However, that does not mean that the application was not validly made.
9. The grounds for seeking a reconsideration are on the basis of irrationality. The representations state that risk can be managed in the community and submit that:
- (a) *The release plan is extremely robust and would identify any warning signs before risk would be imminent and the robustness of the release plan would manage that;*
  - (b) *The risk posed by [the Applicant] is not imminent;*
  - (c) *[The Applicant] evidenced a degree of insight into his offending history, he had great insight into his offending; and internal factors to evidence a reduction in risk;*
  - (d) *[The Applicant] evidenced a willingness and motivation to comply with the requirements of his licence;*
  - (e) *[The Applicant] has evidenced that he is open and honest, and he has built up a relationship with the professionals who would be managing him in the community;*
  - (f) *[The Applicant] has numerous protective factors in place;*
  - (g) *The panel have failed to consider or apply this to their assessment of risk.*

### Current parole review

10. The case was referred to the Parole Board by the Secretary of State on 9 November 2021. The referral was considered by a Member Case Assessment panel on 6 January 2022 when it was deferred to enable further information to be gathered. The referral was considered again by a Member Case Assessment panel on 21 April 2022. The case was directed to an oral hearing. The hearing was adjourned on the day on 6 February 2023 and relisted for 13 April 2023. This was the Applicant's first review after his second recall to custody on 19 October 2021.
11. The oral hearing took place via video link on 13 April 2023 by a three member panel. Oral evidence was heard from the Prisoner Offender Manager (POM), the Community Offender Manager (COM), and a representative from New Connections (an organisation which provides support for prisoners and ex-prisoners with addiction and mental health challenges who are preparing for parole or release after a substantial period of imprisonment) as well as from the Applicant. The Applicant was legally represented during this hearing.

### The Relevant Law

12. The panel correctly sets out in its decision letter dated 24 April 2023 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.



13. 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)*

14. Under Rule 28(1) of the Parole Board Rules 2019 the only types of decisions which are eligible for reconsideration are those concerning whether 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)). Decisions concerning the termination, amendment, or dismissal of an IPP licence are also eligible for reconsideration (rule 31(6) or rule 31(6A)).

15. 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*

16. 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."*

17. 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.

18. 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 (the Respondent)**

19. By email of 16 May 2023 the Respondent offered no representations in response to the application.

**Discussion**



20. The decision letter addresses each of the issues set out within the grounds. It was noted that the release plan had been strengthened but that there was no suitable move on accommodation and that it was largely based on external risk management factors. The panel agreed with the professionals' risk of serious harm assessments when in the community, which were of a high risk of serious harm to the public and medium to staff. The panel expressed concern that there was evidence of deficits in thinking skills and emotional management, as well as to his level of openness and honesty with both the POM and COM having given evidence that he said what he thought people wanted to hear.
21. Whilst the panel acknowledged that the Applicant presented as being motivated to lead a pro-social life, they also noted he had been recalled to custody twice and struggled to use his skills consistently in the community, and to be open and honest in a way that would support effective risk management. The panel identified protective factors which were in place.
22. As set out in **DSD**, panels of the Parole Board are not obliged to adopt the recommendations of professional witnesses. It is their responsibility to make their own risk assessments and evaluate the likely effectiveness of any risk management plan proposed.
23. The panel considered each of the issues raised in the reconsideration application, setting them out in the decision letter, alongside the other evidence they considered relevant. They formed their own view on the totality of the evidence that the test for release was not met, but that the test for a recommendation for transfer to open conditions was. They took that view having considered the dossier and after hearing from the witnesses and the Applicant at the oral hearing. They gave clear and sufficient reasons as to why they reached their decisions. Those reasons were detailed and evidence based and were conclusions they are entitled to reach.
24. It is unarguable that the decision is irrational. Being unhappy with a decision of the Parole Board is not grounds for reconsideration.

## 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.

**Angharad Davies**  
**8 June 2023**

