

[2023] PBRA 132**Application for Reconsideration by Madsen****Application**

1. This is an application by Madsen (the Applicant) for reconsideration of a decision of the Parole Board dated 13 June 2023 following an oral hearing.
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) 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, the decision letter issued by the Parole Board and the dossier.

Background

4. On 20 May 2019 the Applicant was sentenced to an extended determinate sentence of 12 years', comprised of a custodial period of 7 years', and an extended licence period of 5 years for an offence of wounding with intent to cause grievous bodily harm, affray and possessing an offensive weapon.

Request for Reconsideration

5. The application is made on the basis that the decision is irrational, and the hearing was procedurally unfair.

Current parole review

6. This was the first oral hearing to consider whether to release the Applicant on parole.

The Relevant Law

7. The panel correctly sets out in its decision letter dated 13 June 2023 the test for release.



Irrationality

8. 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."

9. 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.

Procedural unfairness

10. 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.
11. 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.
12. The overriding objective is to ensure that the Applicant's case was dealt with justly.

Response from Secretary of State (the Respondent)

13. The Respondent has made no representations in response to this application.

Discussion

14. While the application is made on the basis of procedural unfairness as well as irrationality, no procedural unfairness is identified in the application. The application is made mainly on the basis that the Applicant disagrees with the decision which he argues was irrational.

15. The first ground for reconsideration is that the conclusion of the panel that the Applicant "*was unable to explain the triggers for his violence in any detail*" was irrational. That claim is made on the basis that the Applicant did give evidence of what he said were the triggers for the index offence. The conclusion of the panel was not that he didn't give any evidence of the triggers but that he wasn't able to explain his triggers in any detail. They were entitled to reach that conclusion. That contributed to the Panel's finding that he does not have good insight into his offending and that further work is needed to ensure that he can exercise sufficient internal controls to prevent further violence. They reached that conclusion on the basis of all the evidence that it heard.
16. Complaint is made that the assessment made by the panel that the risk management plan was insufficient to protect the public is based on an assumption. This complaint is misconceived. That was the assessment of the panel based on their consideration and view of the evidence. They were entitled in my view to come to that conclusion. An additional factor in their decision was that the Applicant had not been tested in less secure conditions. The Panel were entitled to take that into account when weighing up whether the risk management plan was sufficient to protect the public. The Prisoner Offender Manager set out the limited options for ROTLs (Release on Temporary Licence-p.264 of the dossier).
17. The Panel acknowledged the progress made by the Applicant but considered nevertheless that there was core risk reduction work to be completed before the Applicant could be safely released. They were entitled to come to that conclusion on the evidence.
18. I have been referred in the application to the decision of the High Court in **Gill [2010] EWHC 364 (Admin)**. That case relates to the need for the Prison Service to provide extra help to ensure that prisoners with learning difficulties can get access to courses which would assist them to achieve release on licence. It does not mean that a Panel cannot conclude that in relation to a particular prisoner at a particular time, there is a need to do core risk reduction work.
19. It is not arguable sensibly that the decision was irrational. It is regrettable that the Applicant has not had access to appropriate courses through no fault of his, but that does not mean that the Panel can direct release if they are not satisfied it is safe to do so.

Decision

20. For all those reasons the application for reconsideration is refused.

John Saunders
21 July 2023