

**[2024] PBRA 227**

## Application for Reconsideration by Nash

### Application

1. This is an application by Nash (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated 4 October 2024 making no direction for release following an oral hearing on 27 September 2024.
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. This is an eligible case, and the application was made in time.
3. I have considered the application on the papers. These are the application for reconsideration; the decision of the panel and the dossier.

### Request for Reconsideration

4. The application for reconsideration is dated 30 October 2024.
5. The grounds for seeking a reconsideration are that the decision was irrational and the procedure adopted by the panel was unfair in that the panel should have adjourned the hearing for more information before reaching a decision.

### Background

6. The Applicant is serving an extended determinative sentence of 7 years imposed on 25 June 2020 for an offence of sexual activity with a child. The custodial part of the sentence was 6 years with an extended licence period of 1 year.

### Current parole review

7. The Applicant's case was referred to the Parole Board on 12 June 2023. This was the first referral of his case. The Applicant was 39 at the time of the hearing before the Parole Board.
8. The panel on 27 September 2024 included a psychologist. The panel heard evidence from the Community Offender Manager; the Prison Offender Manager and a prison psychologist.



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## The Relevant Law

9. The panel correctly sets out in its decision letter dated 4 October 2024 the test for release.

### *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)).

### *Irrationality*

12. The power of the courts to interfere with a decision of a competent tribunal on the ground of irrationality was defined in *Associated Provincial Houses Ltd -v- Wednesbury Corporation* 1948 1 KB 223 by Lord Greene in these words "*if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere*". The same test applies to a reconsideration panel when determining an application on the basis of irrationality.
13. In *R(DSD and others) -v- the Parole Board* 2018 EWHC 694 (Admin) a Divisional Court applied this test to parole board hearings in these words 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. In *R(on the application of Wells) -v- Parole Board* 2019 EWHC 2710 (Admin) Saini J set out what he described as a more nuanced approach in modern public law which was "*to test the decision maker's ultimate conclusion against the evidence before it and to ask whether the conclusion can (with due deference and with regard to the panel's expertise) be safely justified on the basis of that evidence, particularly in a context where anxious scrutiny needs to be applied*". This test was adopted by a Divisional Court in the case of *R(on the application of the Secretary of State for Justice) -v- the Parole Board* 2022 EWHC 1282(Admin).
15. As was made clear by Saini J this is not a different test to the *Wednesbury* test. The interpretation of and application of the *Wednesbury* test in Parole hearings as explained in *DSD* was binding on Saini J.



16. It follows from those principles that in considering an application for reconsideration the reconsideration panel will not substitute its view of the evidence for that of the panel who heard the witnesses.
17. Further while the views of the professional witnesses must be properly considered by a panel deciding on release, the panel is not bound to accept their assessment. The panel must however make clear in its reasons why it is disagreeing with the assessment of the witnesses.

#### *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 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;
  - (e) the panel did not properly record the reasons for any findings or conclusion; and/or
  - (f) the panel was not impartial.
20. The overriding objective is to ensure that the Applicant's case was dealt with justly.

#### *Reconsideration as a discretionary remedy*

21. Reconsideration is a discretionary remedy. That means that, even if an error of law, irrationality, or procedural unfairness is established, the Reconsideration Member considering the case is not obliged to direct reconsideration of the panel's decision. The Reconsideration Member can decline to make such a direction having taken into account the particular circumstances of the case, the potential for a different decision to be reached by a new panel, and any delay caused by a grant of reconsideration. That discretion must of course be exercised in a way which is fair to both parties.

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

22. The Secretary of State (the Respondent) has made no submissions in response to this application.

#### **Discussion**

23. The Applicant complains that it was revealed during questions asked by the psychologist member during the hearing that the professionals who gave evidence



did not fully understand the cognitive difficulties that the Applicant faced. Accordingly their opinions that the Applicant should not be released were flawed and the panel should have adjourned for further test to be carried out to assess the Applicant's cognitive abilities and, in the light of the results, the professionals should re-assess their conclusions.

24. While I accept that the professionals may not have used the necessary skills to ensure that the Applicant fully understood what was being asked during interviews, the panel themselves questioned the Applicant during the hearing. There is no complaint about the way the Applicant was questioned during the hearing.
25. The panel were not bound to follow the recommendations of the professionals and made its decision on all the evidence that they heard. In the end they agreed with the recommendations of the professionals but in doing so they were well aware of the difficulties that the Applicant had in understanding and responding to questions.
26. Panels are encouraged not to adjourn hearings unless it is really necessary in the interests of justice. That is sound guidance. To adjourn for an assessment followed by a re-assessment of their recommendations by the professionals would take a very long time.
27. The panel concluded that they should deal with the case on the evidence they had and that they had enough information to make a fair decision. That was not an irrational decision; they were entitled to reach that conclusion on the evidence they heard.
28. It was also not procedurally unfair. The Applicant's evidence was considered in great detail by the panel as is evident from the decision. The panel took into account his cognitive difficulties. By inference, the panel concluded that they did not need further evidence in order to enable them to reach a fair decision. That was not procedurally unfair and the Applicant had a fair hearing.
29. Assuming that it is correct that the Applicant's advocate suggested in his closing submissions that the panel should adjourn for further enquiries to be made before reaching a decision, then it would have been helpful if that had been referred to in the decision letter and the reasons for refusing it. That does not of itself render this decision irrational or procedurally unfair.

## Decision

30. 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.

**John Saunders**  
**21 November 2024**