

## Application for Reconsideration by Healey

### Application

1. This is an application by Healey (the Applicant) made under Rule 28 of the Parole Board Rules 2019 (SI 2019 No. 1038) for reconsideration of a decision of an oral hearing panel dated 24 July 2019 not to direct his release or recommend open conditions.
2. Rule 28(1) provides that applications for reconsideration may be made in eligible cases either on the basis that the decision is (a) irrational or that it is (b) procedurally unfair. Eligible cases extend to offenders serving a sentence of Imprisonment for Public Protection (IPP).

### Background

3. On the 29 February 2008 the Applicant was sentenced for an offence of wounding with intent to do grievous bodily harm to imprisonment for public protection with a minimum period to serve of 2 years and 99 days (the tariff) before he was eligible to apply for parole. This minimum period expired on 8 June 2010.
4. The 2019 parole review was the Applicant's fifth review and followed his third recall to custody during his current sentence following excessive alcohol consumption and aggression and rudeness to staff in breach of his licence conditions. It was noted that the Applicant blamed staff for tampering with the alcohol testing equipment.
5. The two previous recalls involved, respectively, unauthorised absence from approved premises and again excessive alcohol consumption and argumentative behaviour towards staff.
6. The panel noted the Applicant's behaviour caused no concern in custody, and his Enhanced status under the Incentives and Earned Privileges Scheme. They also noted that the Applicant displayed a pattern whereby he blamed others for what happened to him and took little or no responsibility for himself. He had a history of mistrust of officers of the probation service.
7. The Offender Supervisor did not recommend release or progress to open conditions and took the view that the Applicant needed to do more work on his thinking skills and to tackle his problems with alcohol. The Offender Manager recommended release.



## Request for Reconsideration

8. The application for reconsideration is dated 12 August 2019.
9. The grounds for seeking reconsideration were substantially as follows:

*"... the opinion given by [the Offender Manager] whom I have worked with for three years now was largely overlooked, instead the evidence given by [the Offender Supervisor] was taken more seriously even though I have only had two full meetings with her, in which she told me that she can only go on the information supplied by her predecessors, information that I can prove is largely untrue and without foundation. When trying to provide this information my solicitor and myself were told by [the Chair of the panel] that this information would not be excepted [presumably the word intended was "accepted"]. I have sat oral hearings before and apart from one other, I have always been allowed to speak afterwards. ... I believe the decision was already made before I entered the room by [the Offender Supervisor and Chair] largely because of [the Offender Supervisor's] refusal to listen to anything I have been falsely accused of, most of which is completely untrue. I have also been told by many ... that I should always be given the opportunity to speak at parole hearings, this was denied."*

10. Although the Applicant nowhere uses the terms "irrational" or "unfair" it seems readily apparent from the foregoing that this is the gist of his application.
11. Brief representations on behalf of the Secretary of State have also been provided which simply confirmed the written evidence of the Offender Manager and Offender Supervisor was included in the dossier before the panel and that both gave evidence.

## Current parole review

12. The Secretary of State referred the Applicant's case to the Board in February 2019 to decide whether to direct release or if that was not so directed, to consider whether the Applicant was ready to be moved to open prison conditions. The panel met on 24 July 2019 and heard evidence from the Applicant (who was legally represented), the Offender Manager (who had recently taken up the post), and the Offender Supervisor. They were also provided with relevant documents by way of a dossier.
13. The panel's decision letter was given after hearing and reading the evidence before them (including seeing the witnesses) and no doubt after due and proper consideration. For the reasons set out in their decision, they recommended neither release nor progression to open conditions.

## The Relevant Law

14. As to the meaning of "irrational" in Rule 28(1)(a), in order to satisfy this criterion, the decision in question must be so outrageous as to defy logic, accepted moral



standards or one at which no sensible person could have arrived. Moreover, in considering the assessment of the decision, due deference is to be given to the expertise of the Parole Board in making decisions relating to parole. It will also be borne in mind that in the case of oral hearings it is the panel members who saw, heard and assessed the evidence of witnesses before them: see **R (on the application of DSD and others) -v- the Parole Board [2018] EWHC 694 (Admin), CCSU -v- Minister for the Civil Service [1985] AC 374** and **Preston [2019] PBRA 1**.

15. It is obvious, too, that in cases where an offender is over tariff, the panel must always exercise anxious scrutiny to the level of risk involved to ensure the offender spends no more time in custody than is necessary.
16. As to Rule 28(1)(b) and “procedural unfairness”, this essentially 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.

## Discussion

17. The panel had the advantage of an extensive dossier of reports and other material. They had the advantage, too, of seeing and hearing the Applicant as well as the Offender Manager and Offender Supervisor. The Applicant was also legally represented throughout. Where there is a conflict of opinion, it was plainly a matter for the panel to determine which opinion they preferred, provided the reasons given are soundly based on evidence, as well as rational and reasonable or at least not so outrageous in the sense expressed above.
18. The Applicant complains that he had no opportunity of being heard or contradicting the facts as presented to the panel. I cannot accept this. The Applicant and his solicitors would have received copies of the dossier. The Applicant gave evidence to the panel and had opportunities to cross examine the other witnesses and put his case and his version of events to them. His solicitor would also have had the last word. Subject to the norms of basic procedural fairness (such as ensuring proper disclosure of evidence, the opportunity to give evidence and to cross-examine other witnesses), it is for the panel to determine how matters proceed before them.
19. Given the Applicant was legally represented at the hearing, I have seen nothing beyond his assertion to suggest that he was not given a proper opportunity to present his case, to be heard, to give evidence and to cross-examine. The panel decision letter makes it plain he did give evidence. There was ample material in the dossier and in the evidence given to the panel to justify them reaching the decision and conclusions they did. These conclusions were, and are, perfectly rational and sensible in light of the Applicant’s history. It was the panel’s task to assess the risk and the risk factors and whether that risk and those factors could be managed under the proposed risk management plan. It was well within their remit to accept and prefer the opinion of the Offender Supervisor and there was ample material to justify it.



## Decision

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

Roger Kaye QC  
4 September 2019



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