

**[2024] PBRA 111****Application for Reconsideration by Wild****Application**

1. This is an application by Wild (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 3 May 2024. The decision of the panel was not to direct release.
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, and/or (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 dossier consisting of 330 pages; the Application for Reconsideration submitted by the Applicant's legal representative; and the response by the Secretary of State (the Respondent).

**Background**

4. On the 27 April 2018 the Applicant was sentenced in relation to offences of sexual assault of a child. The Applicant was sentenced to an extended sentence consisting of a custodial period of 5 years and an extension period of 3 years. He also received concurrent sentences for two counts of making indecent photograph or pseudo photograph of children, taking indecent photograph or pseudo photograph of children and causing or inciting a boy under 13 to engage in sexual activity (no penetration). He was released at his Conditional Release Date (CRD) on licence in February 2023 and recalled in June of 2023. His sentence expires in February of 2026.
5. The Applicant groomed and sexually assaulted a young male child.

**Request for Reconsideration**

6. The application for Reconsideration is dated the **23 May 2024**.
7. The grounds for seeking a reconsideration are set out below.

**Current parole review**

8. This was the Applicant's first review by the Parole Board following his automatic release at his CRD.

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9. The review was conducted by an independent Chair of the Parole Board, and a psychologist member of the Parole Board. Oral evidence was given by the Prison Offender Manager (POM), and a Community Offender Manager (COM). The Applicant was represented by a solicitor.
10. A dossier consisting of 312 pages was considered.

### The Relevant Law

11. The panel correctly sets out in its decision letter dated 3 May 2024 the test for release. The panel also considered the test for release in the light of the case of **Sim v Parole Board [2003] EWCA Civ 1845** requiring the panel to be positively satisfied that continued detention is necessary for the protection of the public.

#### *Parole Board Rules 2019 (as amended)*

12. Pursuant to Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that 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)).

#### *Irrationality*

13. 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."*

14. 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.
15. 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*

16. 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.

17. 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.

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

19. In **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said: "*It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship.*"

### Adequate Reasons

20. It is well established now, by decisions of the courts, that a failure by a panel to give adequate reasons for its decision is a basis on which its decision may be quashed and reconsideration directed. Complaints of inadequate reasons have sometimes been made under the heading of irrationality and sometimes under the heading of procedural unfairness: whatever the label, the principle is the same. The reason for requiring adequate reasons had been explained in a number of decisions including:

- **R v Secretary of State for the Home Department ex parte Doody (1994) 1WLR 242;**
- **R (Wells) v Parole Board (2009) EWHC 2710 (Admin);**
- **R (PL) v Parole Board and Secretary of State for Justice (2019) EWHC 306;**
- **R (Stokes) v Parole Board and Secretary of State for Justice (2020) EWHC 1885 (Admin).**

21. The principal reason for the duty to give reasons is said to be the need to reveal any error which would entitle the court to intervene. Without knowing the panel's reasons, the court would be unable to identify any such error, and the parties right to challenge the decision would not be an effective one. In **Wells** Mr Justice Saini pointed out that the duty to give reasons is heightened when a panel of the Board is rejecting expert evidence.


### The reply on behalf of the Respondent

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22.The Respondent made representations which have been considered. The representations relate to post hearing evidence concerning the dates of meetings between the Applicant and his former COM. They do not, in my determination, impact upon the decision

### Reconsideration Application and discussion

23.The Applicant is serving an extended sentence for offences involving the grooming and subsequent sexual assaulting of a male child. He was also convicted of making indecent photographs of a male child and of inciting a child to engage in sexual activity.

24.The Applicant was released from custody and on release was subject to various licence conditions. One of which was a prohibition against unsupervised contact with children *"except where that contact is inadvertent and not reasonably avoidable in the course of lawful daily life"*.

25.Whilst on licence the Applicant was required to undertake a polygraph test. During the course of that test, the Applicant disclosed that he had had contact with a child in a shop and had had contact with the child of a neighbour.

26.These disclosures had led to him being recalled.

27.At the oral hearing the circumstances of these contacts were considered. The Applicant submitted to the panel, firstly that the contacts were inadvertent and not reasonably avoidable and therefore not a licence breach.

28.Secondly the Applicant argued that he had disclosed these contacts to his COM before they were discovered in the polygraph process.

29.The panel assessed the submissions, they took evidence from the Applicant and his current COM and considered the written evidence in the dossier. Having considered the entirety of the evidence the panel concluded that the contact with the neighbour's child was one where the Applicant failed to take steps to immediately remove himself from the situation without engagement with the child. This contact, in the view of the panel, amounted to a situation which was reasonably avoidable. The Applicant had said that failing to speak to and engage with the child may have amounted to rudeness and caused difficulties with the child's father. The Panel rejected this contention pointing to the rationale behind the condition and the nature of the Applicant's risk to children. The panel therefore determined that the Applicant had breached this crucial licence condition.

30.The panel were entitled and obliged to reach a conclusion about these matters. The panel gave the Applicant and his legal adviser the opportunity to adduce evidence and make submissions. The panel followed the guidance relating to allegations published by the Parole Board. I do not determine that their findings on this issue were either procedurally unfair or irrational.

31. A further issue raised in the hearing was whether the Applicant had disclosed the meetings with children to his COM before their discovery in the polygraph test. Clearly, an early and full disclosure would have gone to the understanding that the Applicant had of his licence conditions and the general concerns about risk. It would have been an indicator of the Applicant's understanding of the nature of his behaviour in circumstances which may elevate risk.
32. The panel assessed the available evidence upon this point. The panel also directed an adjournment to analyse probation records and to receive a report from the COM who was supervising the Applicant at the time. The panel were told that no written record of a disclosure was found and that the COM concerned had no recollection of any disclosure being made. Further the COM asserted that, so important would have been such a disclosure, that it would have been a matter which would have been recorded and would possibly have been the subject of further risk assessment (in the light of the fact that the child was said to be a neighbour).
33. Again the panel appropriately investigated this matter and concluded that on balance the evidence indicated that no disclosure had been made by the Applicant to his COM.
34. There was also an additional assertion that the disclosure may have been to a police officer managing the Applicant's risk, however, again the panel found that the evidence did not support that contention.
35. Post event disclosure was accepted by the panel to be a relevant issue, the panel again appropriately assessed this aspect of the evidence and reached a conclusion that, on balance, the Applicant had not disclosed the child contacts before the polygraph test. The panel again gave every opportunity for the matter to be challenged and tested within the hearing. I find no evidence that their conclusion was irrational or procedurally unfair in the sense set out above. The panel's final conclusion was that licence breaches had occurred, and had not been appropriately and promptly disclosed.
36. As to the decision generally, the panel noted other issues of concern which formed the basis of their decision not to order release.
37. Firstly, the Applicant had asserted that the behavioural work he had undertaken in prison was of no or little value. The panel took the view that the Applicant continued to demonstrate little insight into his risks and to have gained little from the treatment interventions he had undertaken in the past.
38. Secondly, he had adopted a position of refusal to discuss his recall or offending and risk with his COM and prison staff. Whilst the Applicant was at liberty to maintain this position, the effect was to undermine the ability of professionals to manage or assess risk. A key component of risk management being a full, open and honest relationship with supervising COM's.

## Decision

39. In all the circumstances therefore I conclude that the decision in this case was not irrational in the legal sense set out above and that the decision was not procedurally unfair. I refuse the application for Reconsideration.

**HH S Dawson**  
**07 June 2024**