

[2024] PBRA 198

## Application for Reconsideration by Wright

### Application

1. This is an application by Wright (the Applicant) for reconsideration of a decision made by an oral hearing panel dated 4 September 2024 not to direct his 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 that (a) the decision contains an error of law, (b) it is irrational and/or (c) it is procedurally unfair.
3. I have considered the application on the papers. These are the decision, the dossier (consisting of 274 numbered pages), and the application for reconsideration, dated 23 September 2024.

### Background

4. On 30 October 2017, the Applicant received a sentence for offenders of particular concern (SOPC) consisting of a 12 year custodial period with a one year extension period following conviction after trial on two counts of attempted rape of a female child under 16, ten counts of indecent assault of a child and four counts of gross indecency with a child. The index offences were committed around 20 years prior to conviction.
5. The Applicant was 56 years old at the time of sentencing and is now 63 years old.
6. His parole eligibility date passed in December 2023. His conditional release date falls in December 2029 and his sentence ends in December 2030.

### Request for Reconsideration

7. The application for reconsideration has been submitted by solicitors on behalf of the Applicant and argues that the panel's decision was irrational.
8. These grounds are supplemented by written arguments to which reference will be made in the **Discussion** section below.

### Current Parole Review



3rd Floor, 10 South Colonnade, London E14 4PU

[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)

@Parole\_Board



0203 880 0885

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in March 2023 to consider whether or not it would be appropriate to direct his release. This is the Applicant's first parole review.
10. The Applicant's review proceeded to an oral hearing on 16 August 2024, before a three-member panel including a psychologist specialist member. The panel heard evidence from the Applicant, his Prison Offender Manager (POM), his Community Offender Manager (COM), and an HMPPS forensic psychologist. The Applicant was legally represented throughout proceedings.
11. In the professional opinion of all witnesses, the Applicant was suitable for release. The panel made no direction for release.

## The Relevant Law

12. 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)*

13. 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)).
14. 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)).
15. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under rule 28. This has been confirmed by the decision on the previous reconsideration application in *Barclay* [2019] PBRA 6.

### *Irrationality*

16. 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 (CA) 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.
17. In *R(DSD and others) v Parole Board* [2018] EWHC 694 (Admin) the Divisional Court applied this test to Parole Board hearings in these words (at [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."*

18. In *R(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 the Divisional Court in *R(Secretary of State for Justice) v Parole Board* [2022] EWHC 1282(Admin).
19. As was made clear by Saini J in *Wells*, 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.
20. 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.
21. 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.

### **The reply on behalf of the Respondent**

22. The Respondent has submitted no representations in response to this application.

### **Discussion**

23. The application for reconsideration sets out the Applicant's arguments in favour of release (which would have been rehearsed at the oral hearing). It then primarily argues that (a) since all professional witnesses supported release, (b) there is no further risk reduction work for the Applicant to do in custody and (c) the Applicant has developed some internal controls, then the decision not to release him is irrational.
24. On the first point, panels of the Parole Board are not obliged to adopt the opinions of professional witnesses on a prisoner's suitability for release. It is the panel's responsibility to make its own risk assessment and to evaluate the likely effectiveness of any risk management plan proposed. The panel must make up its own mind on the totality of the evidence that it hears, including any evidence from the prisoner. It would be failing in its duty to protect the public from serious harm if it failed to do just that. As was observed by the Divisional Court in *DSD*, panels have the expertise to do it. However, if a panel were to make a decision contrary to the opinions of all the professional witnesses, it is important, following *Wells*, that it should explain clearly its reasons for doing so and its stated reasons should be sufficient to justify its conclusions on the basis of the evidence before it.
25. The panel gave extensive reasons for disagreeing with the professional opinions advanced. It considered there was limited understanding of the Applicant's personal

triggers and motivations for offending. It was further concerned that the presence (and if so, the extent) of the Applicant's sexual interest in children remained unaddressed. It was also concerned by the Applicant's level of minimisation and victim blaming. It was not satisfied that the Applicant has developed sufficient internal controls to manage his risk. When considering the risk management plan, it noted many warning signs of escalating risk would be contingent upon the Applicant's self-report and disagreed with the views of the witnesses on the extent to which he was able to be open and honest (given the minimisation and discrepancies in his accounts, which rendered him potentially an unreliable historian).

26. On the second point, the Parole Board is not involved in sentence planning. The question of whether there is further work available in custody is separate to that of risk and manageability. To conclude otherwise would require the release of every prisoner that had completed all available interventions, regardless of whether those interventions had reduced that prisoner's risk to a level at which release would be safe.

27. The third point is related to the second. While the Applicant may have developed some internal controls, it is for the panel to assess whether those controls are sufficiently well developed to protect the public (in connection with the external controls of the licence).

28. Overall, I find that the panel's reasons are sound, thorough and reflect the written and oral evidence presented to it. I find the panel more than discharged its common law duty to give reasons under *Wells* and consequently find its decision was not irrational on that basis. The legal test for irrationality sets a high bar which this case does not meet. Mere disagreement with the outcome is insufficient to establish irrationality.

## Decision

29. For the reasons set out above, the application for reconsideration is refused.

**Stefan Fafinski**  
**15 October 2024**