

Reconsideration Applications - Irrationality

This checklist outlines the points a decision maker should consider when reviewing a reconsideration application on the grounds of irrationality.ⁱ These tips should be used in conjunction with the [Reconsideration Mechanism Guidance](#), [Decision Writing Guidance](#) and the [Decision-Making Framework](#). In determining irrationality, the Board has adopted the test set out in the DSD case.ⁱⁱ

Remember: **IRRATIONAL**

I	<p>INSIGHT: It is important to consider whether the panel’s decision was based on observed evidence, insights, or witness testimonies that you have not seen. Think about to what extent did the panel:</p> <ul style="list-style-type: none"> • Consider if there were sufficient warning signs of the prisoner’s risk of serious harm increasing? • Consider the likely success of the Risk Management Plan (RMP)? • Make all reasonable enquiries relating to the risk posed (both of harm and recidivism) by the prisoner? • Draw conclusions on matters relating to the risk posed on release on which they had not heard evidence? <p>If there is a dispute in what evidence was heard at the hearing, the audio recording can be sourced and listened to.</p>
R	<p>REASONING: Have you ensured that appropriate weight was given by the panel to the views provided by professional witnesses? The panel needs to have provided sufficient critical analysis and explained their reasoning in a way that can be understood by the prisoner and others.</p>
R	<p>RECOGNITION: Have you recognised that a panel is entitled to arrive at a different decision based on its view of the facts?ⁱⁱⁱ</p>
A	<p>APPLICATION OF THE TEST: Are you satisfied you have applied the test for irrationality as follows: <i>“the decision in question 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”</i>.</p>
T	<p>TRUST: Have you stated, in terms that, when determining whether a decision was irrational, due deference must be given to the noted expertise of the panel in making parole decisions?</p>
I	<p>IMPARTIALITY: Have you considered that you should not substitute your own view of the facts for those determined by the panel unless you are fully satisfied that the test for irrationality has been properly made out?</p>
O	<p>OBJECTIVE JUDGEMENT: Have you assessed whether the panel provided adequate critical analysis for disagreeing with a professional witness’s assessment and/or opinion. Adequate reasons must be given for rejecting the recommendations of professional witnesses. Remember that you should not substitute your own view unless you are fully satisfied that the test for irrationality has been properly made out.</p>
N	<p>NECESSITY: Are you granting reconsideration only if it is obvious that there are compelling and necessary reasons to interfere with the panel’s decision?</p>
A	<p>ASSERT: Have you considered and clearly stated that the reconsideration mechanism is not intended to allow for easy interference with the panel’s judgement when assessing risk?</p>
L	<p>LOGICAL EVALUATION: Have you ensured that the decision-making process was logical and aligned with the relevant guidance and decision-making framework and provided adequate reasons? For example, did the panel consider adequately, or at all, whether the controls and support provided by the prisoner’s RMP would be sufficient to manage the risk of harm that the prisoner posed?</p>



ⁱ Reconsideration can be ordered on basis of irrationality because a mistake made by the panel satisfies the 4 tests set out in **E v Secretary of State for the Home Department** [2004] 1 QB 2044 which are that "first there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been "established" in the sense that it was uncontentious and objectively verifiable. Thirdly, the appellant (or his advisers) must not have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the Tribunal's reasoning".

ⁱⁱ In deciding on 'irrationality' the Board has adopted the test in the DSD case. In **R (On the application of 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: see 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 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".

ⁱⁱⁱ Irrationality can also include a failure to give adequate reasons. What amounts to adequate reasons can vary; in the case of **Oyston 2000 EWCA Crim 3552 the LCJ Ld Bingham**, it was stated: "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".

