Neutral Citation Number: [2023] EWHC 1111 (Admin)

Case No: CO/2328/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Bristol Civil Justice Centre
2 Redcliff St, Bristol, BS1 6GR

Date: 11/05/2023

Before:

THE HON. MRS JUSTICE STEYN DBE

- -

Between:

THE KING on the application of STEPHEN ALAN WYNNE	**Claimant**
- and -	
SECRETARY OF STATE FOR JUSTICE	**Defendant**

- -
- -

Michael Bimmler (instructed by **Youngs Law**) for the **Claimant**
Robert Cohen (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 3 March 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 11 May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON. MRS JUSTICE STEYN DBE

Mrs Justice Steyn:

A. Introduction

1. The claimant, Stephen Wynne, is serving a life sentence for the murder of a young woman, Chantelle Taylor, in the early hours of 13 March 2004. He pleaded guilty to murder, and also to an offence of arson reckless as to whether life is endangered, and was sentenced for both offences on 25 January 2006. For the offence of murder, the tariff (as varied by the Court of Appeal on 5 July 2006: *R v Wynne* [2007] 1 Cr App R (S) 68) is 18 years (less 181 days spent on remand). It is due to expire on 27 July 2023. For the offence of arson, a sentence of imprisonment for public protection was imposed, with a tariff of six years which has long since expired.

2. The claimant is currently detained in HMP Berwyn, a category C prison. On 17 February 2022, the Parole Board ('the Board') recommended that the claimant should be transferred to open conditions, a decision which accorded with the written and oral views expressed by all six of the professionals who gave evidence. By this claim for judicial review, the claimant challenges the decision of the Secretary of State for Justice, communicated on 5 April 2022, to refuse to accept the Board's recommendation.

3. Permission to apply for judicial review was granted by Deputy Chamber President Tudur (sitting as a judge of the High Court) on 24 November 2022. The single issue is whether the Secretary of State's decision is irrational (in a *Wednesbury* sense), that is, whether it is outside the range of reasonable decisions open to the decision-maker.

B. The claimant's offences

4. On the night of 12/13 March 2004, at the age of 26, the claimant had been out with friends, drinking alcohol and taking cocaine, ecstasy and cannabis. On his way home, he approached Ms Taylor, a sex worker who was not known to him, and invited her back to his house.

5. At his home, they both took cocaine and cannabis while sitting downstairs, and Ms Taylor went on to smoke heroin. The claimant had not previously taken heroin, but he had heroin at his property, having allowed one of his brothers to store heroin and other drugs there. He gave Ms Taylor a small amount of heroin from his brother's bag. They went upstairs, taking the cannabis and his brother's bag of heroin, and had consensual sex.

6. Ms Taylor then smoked more heroin and the claimant tried the drug for the first time. He started to feel ill and suggested she leave. As Ms Taylor was getting dressed, the claimant noticed his brother's bag of heroin was missing and he started to panic, worried that his young son could find it the next time he stayed. He challenged Ms Taylor who denied taking it. When he noticed part of a bag of heroin sticking out of her clothing, the claimant became angry, feeling she was taking advantage of him. He picked up a meat cleaver (which he kept by his bed for protection against burglary) and swung it with force towards Ms Taylor. The cleaver hit her in the neck, almost severing her head from her body, killing her instantly.

7. In shock and horror at what he had done, the claimant spent several hours pacing around his flat, sobbing and in disbelief. He tried ringing 999 but cancelled the call, believing that as soon as he did he may never see his son again. After several hours, he decided to try to hide the body in a disused water tank in his loft. He dismembered her body, removing her arms and fully removing her head, in order to get her body through the hatch. He placed the meat cleaver and other tools into a wooden mould which he constructed in his backyard, and covered with concrete.

8. No longer than two weeks later, he noticed a smell and decided to get rid of the body. On one night he took her head and arms in a rucksack to a local park, pushing the bags deep into a bush. The following day, he took the rest of her body in a bag to a local landfill site.

9. In November 2004, the claimant went to the police station to confess but he explained to the Panel "*the words wouldn't come out*". He ended up being arrested for driving whilst under the influence of alcohol and driving without a licence or car insurance.

10. In the early hours of the morning on 9 July 2005, less than 48 hours following the 7/7 bombings in London, and 16 months after the murder of Ms Taylor, the claimant set fire to a mosque in his local area. He had been drinking alcohol and taking cocaine while out that night. On his way home, he passed the mosque and decided to set fire to it. He went to a 24-hour garage, bought a can of petrol and filled it, making no attempt to hide his identity. He poured or threw the petrol at the front door of the modest property in which the mosque was housed, and lit the petrol with a lighter. The claimant believed the mosque was empty, as it appeared "*derelict*", but an Imam was inside. It is most fortunate the Imam managed to escape uninjured.

11. The claimant left his jacket and lighter at the scene so that his DNA could be traced. He was arrested seven days later. He confessed to the arson attack and then to the murder. His confession to the murder of Ms Taylor was initially met with disbelief, until he gave details of where the murder weapon was (still) hidden. The claimant took the police to the sites where he had disposed of Ms Taylor's body, but due to the significant time that had passed, her body was never recovered. The police have confirmed that there is nothing more the claimant could do, in the circumstances, to seek the remains of the body.

C. <u>The Board's Recommendation</u>

12. On 4 May 2020, following a sift in which the claimant's case was identified as one which should be referred to the Board pre-tariff (in accordance with the Policy Framework §5.4.1; see paragraph 39 below), the Secretary of State referred the claimant's case to the Board with a request for the Board to advise "*whether the prisoner is ready to be moved to open prison conditions*".

13. A panel of the Board was convened, consisting of one judicial member and two independent members ('the Panel'). The Panel received a 973 page dossier. The dossier included reports from six professionals. Due to the need for updating reports following adjournments, and staff changes, in total 16 reports were gathered by the Panel over a period of more than 19 months:

i) Emma Goodright, the claimant's Prison Offender Manager (or 'POM'), who had known him since 1 November 2018, provided three reports dated 12 June 2020, 31 March 2021 and 1 July 2021.

ii) Ian Wilkins, the claimant's Community Offender Manager (or 'COM') from 11 May 2017, provided a report on 29 June 2020.

iii) Julie Joinson, who took over the role as the claimant's Community Offender Manager on 11 January 2021, provided four reports dated 6 April 2021, 2 July 2021, 9 November 2021 and 4 February 2022.

iv) Sophie Adams, who took over the role of the claimant's Prison Offender Manager on 3 September 2021, provided two reports dated 26 October 2021 and 2 February 2022.

v) Lorraine Hough, a Senior Forensic Psychologist with HM Prison and Probation Service, provided three reports on 6 November 2020, 15 July 2021 and 14 October 2021.

vi) Dr Khyati Patel, an independent forensic psychologist, provided three reports dated 21 November 2020, 16 July 2021 and 16 October 2021.

14. The consensus amongst the professional report writers, across every report, was that the risks presented by the claimant could be effectively managed in open conditions, that he did not present a risk of absconding, and that he should be transferred to open conditions.

15. The Panel held an oral hearing on 8 February 2022. The Panel heard directly from Chantelle's mother, Mrs Jean Taylor, of the deep distress and devastation she and other family members feel in consequence of the murder, and read four victim impact statements. The Panel heard oral evidence from Ms Joinson, Ms Adams and Dr Patel, in which they maintained their recommendations that the claimant should be transferred to open conditions. Ms Hough was unavailable to give oral evidence, but there was no objection to proceeding in her absence (or the absence of any alternative prison psychologist), in circumstances where her assessment of risk and conclusions were similar to those of Dr Patel. The Panel also heard Mr Wynne give evidence.

16. The Secretary of State was represented throughout the proceedings before the Board. In written and oral submissions the Secretary of State's representative invited the Panel to note the consensus among all "*qualified risk assessors*" who "*continue to recommend a progressive move*", whilst declining (for reasons that were unexplained) to make any submissions for or against the proposed transfer.

17. The Panel issued its recommendation that the claimant be transferred to open conditions on 17 February 2022. The Panel's report runs to 32 pages. At the outset of the report the Panel set out correctly and substantially verbatim the four "*main factors*" the Board is required to take into account when evaluating the risks of transfer against the benefits (in accordance with §7 of the Secretary of State's Directions; see paragraph 40 below):

> "Consideration for a recommendation for transfer to / or continued suitability for open conditions should be based on a

> balanced assessment of risks and benefits. The Parole Board must take the following main factors into account;
>
> - The extent to which the prisoner has made sufficient progress in addressing and reducing risk to a level consistent with protecting the public from harm on temporary release;
> - the extent to which they are likely to comply with any form of temporary release;
> - the risk of their absconding; and
> - the benefits of testing them in a less restrictive environment."

18. The Panel's recommendation includes an analysis of his family background and early years, his army career and dismissal following a positive drugs test, his offending behaviour, and an analysis of the risk factors (Section 1); a detailed summary and analysis of the evidence of change (Section 2); an analysis of the manageability of the claimant's risk the claimant presents (Section 3); a conclusion (Section 4); and a four-page chronology of the proceedings before the Board.

19. The Panel summarised the claimant's risk factors as: "*thinking skills; substance misuse, alcohol and drugs; poor emotional and anger management; impulsivity, use of weapons and reactive violence*" (§1.52).

20. The Panel summarised his protective factors as: "*a supportive family network; high levels of insight and motivation; an ability to use appropriate emotional control to manage emotions in difficult situations; pro-social peers (avoiding negative influences) evidenced by continued good behaviour; educational qualifications and a strong work ethic in prison*" (§1.53).

21. In their conclusion, the Panel stated:

> "4.5 Mr. Wynne has undertaken a great deal of work to address his risk factors. He has spent many years in therapy with positive outcomes, as evidenced by the PPRs. He has been treated (apparently successfully) for PTSD through EMDR.
>
> 4.6 Mr. Wynne has presented the Panel with a sustained period of good behaviour going back many years. The Panel is aware that as an ex-soldier the discipline of a regular routine in a prison is easily assimilated but that does not explain the absence of traits which were apparent in the years leading up to the index offences: the absence of violence in custody; the absence of domineering or controlling behaviour; the absence of substance misuse; the emotional management in times of stress; the absence of offence paralleling behaviour; the wealth of positive reports from those responsible for his management; the positive references from other prison officers who have monitored his workplace skills; the capacity to deal with setbacks and the

desire to make good his earlier deficits – restorative justice; education and solid plans for the future.

4.7 In addition, the evidence of the psychologists cannot be ignored. With each adjournment the Panel asked for further investigation and assessments of emerging information. The opinions and conclusions have not altered.

4.8 As the Secretary of State's representative points out: 'all qualified risk assessors continue to recommend a progressive move to open conditions' adding that the Secretary of State 'relies on the evidence of the witnesses' and thereafter encourages the Panel to apply the relevant statutory tests.

4.9 There is no identified core risk reduction work to be done in the closed estate. … In the judgement of the Panel he has insight and no longer ruminates with feelings of grievance. In all probability he will have to be released at some point. He now needs to put into practice the skills he has acquired. There will be a need to adjust but the Panel takes the view that Mr. Wynne has acquired the skills to do so. … The judgement of the Panel is that he is unlikely to abscond and will seek help in the open estate if he is unsettled, particularly if his mother's health deteriorates or there is excessive media interest. The judgement of the Panel is that he has demonstrated an ability to resist illicit substances if things are going wrong or if he is under pressure in the prison system. …

4.10 The Panel has specifically considered all 4 aspects of the test set out at the commencement to this decision. <u>There is no doubt, as set out in the preceding paragraphs that Mr. Wynne satisfies all aspects of the test.</u> …

4.11 … There is no further core risk reduction work recommended by any professionals involved in the case. (Test 1).

4.12 On any analysis, Mr Wynne has been a calm, resolved and compliant prisoner in the custodial estate. There are no indications or suggestions of any future likelihood of non-compliance with conditions when on temporary release. Mr Wynne has shown personal insights into his risks and the challenges ahead. (Test 2).

4.13 Mr Wynne and all professionals were pressed as to the likelihood of him absconding in the future for any reason. Again, he showed what appeared to be a genuine awareness of the pressures that might be on him and explicitly stated that there was no merit or purpose in him doing so. The professionals all agreed. (Test 3).

> 4.14 The Panel agrees with the professionals that it is essential after a long period in custody that Mr Wynne is tested in open conditions in all aspects of his attitudes; behaviours; emotional resilience; readiness to seek help/support and his copying strategies in the face of difficulty. He has recognised the necessity and benefit of such testing and him further developing social skills in a rehabilitative environment. (Test 4).
>
> …
>
> 4.16 Having regard to the totality of the evidence the Panel has no doubt Mr. Wynne meets the test for a transfer to the open estate and accordingly recommends to the Secretary of State that he be transferred. Finally, the Panel takes the view that it might, in the light of the evidence, both written and oral, be considered perverse to reject the recommendation." (Emphasis added.)

D. The Secretary of State's Decision

22. Documents disclosed during the course of the judicial review proceedings cast light on the decision-making process within the Ministry of Justice. The PPCS Open Recommendation Proforma was completed, first, by a Case Manager, on 2 March 2022. It was noted that the case is of "*Noteworthy status*". In answer to the question, "*Do any of the report writers consider the prisoner should remain in closed?*", the box was correctly marked, "*No*".

23. In answer to the question, "*Is the Panel's recommendation based on inaccurate information?*", the box was marked "*Yes*". The parties were both of the view that this was a typographical error. It is no part of the Secretary of State's case that the Panel's recommendation was based on inaccurate information, and there would be no foundation for such a contention on the evidence before me.

24. In the box headed "*Report writer's recommendations*", reference is made only to the reports of Ms Joinson, dated 4 February 2022, Ms Adams, dated 2 February 2022, and Ms Hough, dated 14 October 2021. It may be in part this is because of the restrictions of the form, although the row marked "*Other (specify)*" has been left blank, with no reference made to Dr Patel's reports (or the recommendations made by Ms Goodright and Mr Wilkins).

25. The Case Manager noted the claimant's risk factors (as identified in the Panel's report, §1.52). In terms of progress, the Case Manager noted that the claimant's behaviour in custody since 15 July 2005 "*has been very good*". He had one proven adjudication for possession of an unauthorised article, dating back to 2006. There was "*no evidence of any violence at all during his time in custody*". There were "*no adverse security records and no negative behaviour entries, only positive records*". The claimant "*has not taken any illegal substances for nearly 17 years*" and he "*has spent many years in therapy with positive outcomes*". The Case Manager noted the various interventions the claimant had undertaken and completed.

26. Having referred to the recommendations in favour of a transfer to open conditions made by the prison psychologist, an independent psychologist, the prisoner offender manager and community offender manager, the Case Manager recommended:

> "Having assessed the case and taken into account the above information, I have not found any reason for the Secretary of State not to accept the panel's recommendation.
>
> Mr Wynne's behaviour in custody has been very good and he has been fully compliant with the prison regime and appears to be held in high esteem by the prison authorities. He has remained drug free during his entire time in custody and he has completed all core risk reduction work required of him in the closed estate.
>
> Despite a couple of adjournments and significant delays with his review (all of which were beyond his control) he has not displayed any kind of negative reaction and report writers believe this demonstrates 'robust emotional control'.
>
> He appears to be remorseful for the index offence and has shown victim empathy. …
>
> The judgment of the panel considering his case at the hearing is that he is unlikely to abscond and will seek help in the open estate if he is unsettled, particularly if his mother's health deteriorates or there is excessive media interest.
>
> All agencies believe he is ready for a move to open conditions. There appears to be little else for him to achieve in the closed estate and the next step towards his rehabilitation will be for him to move to an open prison and test his abilities in a less secure environment.
>
> For these reasons I recommend a move to open conditions at this juncture."

27. On 7 March 2022, the case was reviewed by the Team Leader who agreed with the Case Manager that the Panel's recommendation should be accepted. The Team Leader gave detailed reasons for his view, writing:

> "The Panel's decision is particularly thorough. Mr Wynne's risks has been examined in great detail. I believe the panel has set out a justifiable case for why they believe Mr Wynne is suitable for open conditions at this time. The Panel have clearly outlined how each part of the test for progression to less secure conditions has been met.
>
> With regards to Mr Wynne's progress in addressing and reducing his risk to a level consistent with protecting the public from harm on temporary release, there is clear and strong support for his progression from all report writers. Mr Wynne has taken

> part in a significant level of therapy and offending behaviour related work with positive outcomes and reports. The index offences were closely tied to Mr Wynne's drug and alcohol use. For close to 17 years now, Mr Wynne has been free of illegal substances. Mr Wynne's past offending has been violent in nature. Evidence outlined in the Panel's recommendation notes that in the same 17 years, there have been no adjudications for violence, no evidence of violence during his time in detention and no negative entries for violence. Mr Wynne has reached a point where there is no core work remaining for him to complete.
>
> All report writers and the panel are of the view that Mr Wynne's risk of harm to the public remains high. A number of protective factors are outlined that would support Mr Wynne should he be granted access to less secure conditions and the community. … Given the level of insight and compliance report writers believe Mr Wynne is displaying it would appear there is a level of evidence, as well as his own self reporting, that he would comply with temporary release. This would of course be subject to risk assessment and it is noted that in his case there is a general consensus that Mr Wynne's risk of harm is not considered to be imminent.
>
> In relation to Mr Wynne's risk of absconding the panel explored in detail the incident that led to him being AWOL from the Army. The panel addressed this with all report writers and it is noted that his actions were believed to be the result of a misplaced one-off decision. Report writers agree that Mr Wynne has shown, what appeared to be, a genuine awareness of the pressures that might be on him and explicitly stated that there was no merit or purpose in him absconding.
>
> The Panel's recommendation outlines a great deal of progress and a significant period of sustained positive behaviour, free from drug use or violence. There appears to be no offence paralleling behaviours reported for a significant amount of time …
>
> On the basis of the information available, I do not believe the criteria for rejection has been met in this case. I do believe there is a wholly persuasive argument at this time, for accepting this open recommendation and allowing Mr Wynne to progress to open conditions for further testing."

28. The decision to reject the Board's recommendation was made by a senior civil servant, Gordon Davison, who is described on the proforma as the "*Head of Casework*". On 29 March 2022, Mr Davison sent an email in the following terms:

> "Thank you for your analysis. I have read the decision letter and the reports. I agree that some credible arguments have been advanced for accepting the recommendation. However, I have

> decided to reject it as I do not think a wholly persuasive case has been advanced to transfer Mr Wynne to open conditions at the current time.
>
> He has completed significant work to address his risk factors, but the following have led me to conclude that his risks cannot be effectively managed in open conditions: the extreme violence of his murder of [redacted], together with its impulsivity and the impulsivity of his other offences; his tendency to justify his actions (there can be no justification for almost decapitating [redacted] with a meat cleaver); and his unconvincing account of the arson offence.
>
> Please produce a draft letter, to articulate my reasons for rejecting the Board's recommendation. Please let me then clear the reply, since it will be conveying my decision." (Emphasis added.)

29. The decision letter itself, dated 5 April 2022, contains 15 paragraphs. The first eight paragraphs refer to the claimant's sentence and tariff, the outcome of the referral to the Board, and the criteria for rejecting a Board recommendation (i.e. §§5.8.2 and 5.8.3 of the Policy Framework; see paragraphs 42-43 below). The ninth paragraph of the letter states:

> "I can confirm that the Secretary of State has decided, exceptionally, that there is not a wholly persuasive case that you transfer to open conditions at this time. The decision maker carefully considered the information contained in the dossier, the Parole Board's recommendation, the views of your Community Offender Manager (COM), Prison Offender Manager (POM) and prison psychologist in reaching this decision and the Secretary of State has reached a different conclusion to that of the Parole Board, as is his right." (Emphasis added.)

Again, it is noticeable that no reference is made to the view of the independent psychologist, and the references to the Community Offender Manager and the Prison Offender Manager are singular, whereas the Panel had received the views of two COMs and two POMs. However, Mr Davison is bound to have been aware of those reports as they were referred to by the Panel and contained in the dossier.

30. The decision letter continued:

> "[10] The Secretary of State when reaching this decision did acknowledge the very positive progress you have made during your sentence and took into account the following:
>
> - You have no core risk reduction work outstanding
> - You have engaged in substance misuse specific courses, as well as ETS, CALM, The Sycamore Tree (Victim Awareness)

- You have a Relapse Prevention plan in place
- You have spent two periods on a TC [Therapeutic Community]. You are said to have consolidated the considerable work you have completed in the TC's
- You have completed EMDR for your PTSD. You are said to have been treated successfully for PTSD. That said, there is no formal diagnosis of PTSD but 'signs of PTSD'
- There is no evidence of you committing any violence in custody since your arrival in 2005
- There is no evidence to suggest you have misused substances since your initial remand period
- Despite the numerous adjournments to your hearing, you have managed the difficulties well and your emotions. You are said to have offered a mature response
- Your risk of harm is not considered to be imminent
- There is no evidence of offence paralleling behaviours towards women in custody, although the Secretary of State believes this would need further testing in a more realistic setting
- In addition, you appear to be thinking proactively about your resettlement, and are:
    - Engaging in a law degree
    - Engaged heavily with charities working with service veterans: Veterans in Prison and the Soldiers, Sailors, Airmen and Families Association (SSAFA)
- You are lined up for work upon release with a Property Development company owned by your brother

[11] We have also considered your thoughts towards the victim and her family, and note:

- Whilst less relevant at this stage of your sentence, you have no objections to the very wide exclusion zone requested and have no plans to resettle anywhere near where the victim's family resides, in your original hometown
- You have been keen to engage in Restorative Justice but withdrew due to media interest around the time of your

> sister's death. You did write to the victim of the arson offence but gained no response.
>
> - You have engaged in the Sycamore Tree programme.
>
> - On the contrary however, the Secretary of State is concerned by the delay in you confessing to the murder, which caused significant and prolonged distress to the victim's family." (Numbering added.)

31. The Secretary of State's reasons for rejecting the Board's recommendation appear in a single paragraph:

> "[12] Whilst your positive progress should be commended and it is acknowledged that report writers support your transfer to open conditions, the Secretary of State does not consider that at this juncture there is a wholly persuasive case for transferring you to open conditions for the following reasons:
>
> - Your offence demonstrates your capability to cause significant harm. Your offence was particularly violent and led to the loss of the victim's life in the most brutal of circumstances. You then went to the effort of concealing her body over numerous days. In addition, your offences have been impulsive rather than pre-meditated which does heighten concern given some of the differing stressors you will face as you move towards a possible release
>
> - Your description of the arson offences [sic] is said by the Panel of the Parole Board 'not to be convincing' and there is, therefore, some evidence of possible ongoing dishonesty as well as previous dishonesty following the offence. You did not confess to the murder for over 16 months when you were subsequently arrested for an arson offence, where you made no attempt to conceal your identity. It is said this was an attempt to finally confess to the murder. Trust, honesty and openness is going to play a key part in your ongoing risk management, and it is therefore assessed that this requires further monitoring in the lead up to your on-tariff review.
>
> - There is a concern that at times you seek to readily explain your actions or justify them and this is identified as an area that needs monitoring
>
> - You remain a high risk to the public

- Report writers rely on your self-report that abscond poses you no risk or merit. Given your dishonesty in this past this [is] a concern." (Numbering and emphasis added.)

32. The decision letter then stated that it was necessary for the claimant "*to engage with those who work with you in order to assist you in demonstrating through evidence that you have reduced your risk to a point that can be safely managed in open conditions*".

E. The legal and policy framework

33. Section 12(2) of the Prison Act 1952 ('the 1952 Act') provides:

> "Prisoners shall be committed to such prisons as the Secretary of State may from time to time direct; and may by direction of the Secretary of State be removed during the term of their imprisonment from the prison in which they are confined to any other prison."

34. Section 47(1) of the 1952 Act provides, so far as relevant:

> "The Secretary of State may make rules for the regulation and management of prisons …, and for the classification, treatment, employment, discipline and control of persons required to be detained therein."

35. Rule 7(1) of the Prison Rules 1999/728 (as amended) provides:

> "Subject to paragraphs (1A) to (1D), prisoners shall be classified, in accordance with any directions of the Secretary of State, having regard to their age, temperament and record and with a view to maintaining good order and facilitating training and, in the case of convicted prisoners, of furthering the purpose of their training and treatment as provided by rule 3."

36. Currently, adult male prisoners are classified into four categories, A to D, of which categories A to C denote closed custody, whereas category D denotes custody in open conditions.

37. Section 239(2) of the Criminal Justice Act 2003 ('the CJA 2003') provides:

> "It is the duty of the Board to advise the Secretary of State with respect to any matter referred to it by him which is to do with the early release or recall of prisoners."

38. The Secretary of State has a discretion in determining to which prison a prisoner shall be allocated: s.12(2) of the 1952 Act. As a transfer to open conditions is a matter which is relevant to the early release of a prisoner, s.239(2) of the CJA 2003 gives the Secretary of State a power to ask the Board for advice on whether a prisoner is suitable for transfer to open conditions. Whereas the Parole Board has the power to 'direct' the *release* of an indeterminate sentence prisoner, they do not have the power to direct that a prisoner is transferred into a different security category, only to make a 'recommendation'.

39. As a matter of policy, the Secretary of State ordinarily seeks the advice of the Board before deciding whether an indeterminate prisoner, such as the claimant, should be moved to open conditions. In accordance with §5.4.1 of the Generic Parole Process Policy Framework (as re-issued on 30 August 2021; 'the Policy Framework'):

> "Pre-Tariff ISPs [Indeterminate Sentenced Prisoners] are eligible to have their case referred to the Parole Board to consider their suitability for transfer to open conditions up to three years prior to their TED. In order to target Parole Board and HMPPS resources effectively, the Secretary of State only refers those pre-tariff cases to the Parole Board where there is a reasonable prospect of the Board making a positive recommendation. …" (Emphasis added.)

(I note that the Policy Framework has subsequently been amended but it is the version that was current when the Secretary of State's decision was made that is relevant to this claim.)

40. At the relevant time, the Secretary of State had given directions to the Board, pursuant to s.239(6) of the CJA 2003, as to the matters to be taken into account by it in deciding whether to recommend transfer to open conditions. Those directions, entitled *Transfer of indeterminate sentence prisoners to open conditions* (issued in April 2015) ('the Directions'), stated:

> "1. A period in open conditions can in certain circumstances be beneficial for those indeterminate sentence prisoners (ISPs) eligible to be considered for such a transfer.
>
> …
>
> 5. A move to open conditions should be based on a balanced assessment of risk and benefits. However, the Parole Board's emphasis should be on the risk reduction aspect and comment, in particular, on the need for the ISP to have made significant progress in changing his/her attitudes and tackling behavioural problems in closed conditions, without which a move to open conditions will not generally be considered."

Paragraph 7 of the Directions required the Board to take into account four "*main factors*" when evaluating the risks of transfer against the benefits (see paragraph 17 above).

41. The Policy Framework provides, so far as relevant:

"ISPs ['Indeterminate Sentenced Prisoners'] transferring to open conditions		**…**
3.8.17	Upon receipt of the Parole Board decision, PPCS are responsible for ensuring that all papers considered by the panel are considered when making a decision on the prisoner's transfer to open.	…

3.8.18	PPCS are responsible for deciding whether to accept or reject the Parole Board's recommendation for an ISP to move to open conditions, taking into account the Secretary of State's directions for the Parole Board. This decision must take place within 28 calendar days of receipt of the Parole Board decision.	…
3.8.19	PPCS may consider rejecting the Parole Board's recommendation for open conditions if the criteria in constraint paragraph 4.6.1 are met. See further guidance at 5.8.2." (Emphasis added)	…

42. It is common ground that §4.6.1 is not relevant in this case, and nor does the Secretary of State contend that any of the criteria in §5.8.2 apply:

> "5.8.2 PPCS may consider rejecting the Parole Board's recommendation if the following criteria are met:
>
> - The panel's recommendation goes against the clear recommendation of report writers without providing a sufficient explanation as to why;
> - Or, the panel's recommendation is based on inaccurate information"

43. The paragraph of the Policy Framework on which the Secretary of State relies is §5.8.3 which states:

> "The Secretary of State may also reject a Parole Board recommendation if it is considered that there is not a wholly persuasive case for transferring the prisoner to open conditions at this time." (Emphasis added.)

44. This ground for rejecting the Board's recommendation was first introduced in Prison Service Instruction 22/2015. In *R (Kumar) v Secretary of State for Justice* [2019] EWHC 444 (Admin), [2019] 4 WLR 47, Andrews J rejected a challenge to the lawfulness of §5.8.3 of the policy. A critical element of her reasoning was that the purpose of this ground was not to widen the "*very limited parameters*" for departure from the recommendation of the Board,

> "…but to preserve the ability of the Secretary of State (or the person to whom he has delegated the power to make the decision on his behalf) to exercise his discretion to reject a recommendation which does not strictly fall within either of the preceding grounds, but which appears to him (for good reason) to be unjustified or inadequately reasoned." (*Kumar,* [53]; emphasis added.)

45. The effect of §5.8.3 is not to enable

> "the substitution of the views of a civil servant for the views of an expert body without justification. Nor does it involve

> challenging the Board's findings on credibility or any other findings in respect of which an oral hearing would give it an advantage over the ultimate decision-maker." (*Kumar,* [57]; emphasis added.)

46. Andrews J was considering an earlier version of the Policy Framework than that which is relevant in this case. Although "*Annex Y*", and the express statement that the discretion not to follow a recommendation should be exercised within very limited parameters, to which Andrews J referred (*Kumar,* [12]), do not appear in the version that is relevant in this case, the grounds for such a departure contained in 5.8.2. and 5.8.3 are wholly unchanged. The Secretary of State did not contend that any amendments to other aspects of the Policy Framework had in any way altered the scope of §5.8.3. See, too, *R (Oakley) v Secretary of State for Justice* [2022] EWHC 2602, [2023] 1 WLR 751, Chamberlain J, [24].

47. Andrews J observed:

> "54. … Cases such as *Banfield* [2007] EWHC 2605 make it plain that the Secretary of State may lawfully disagree with the Parole Board's view that the time has arrived to transfer a prisoner to open conditions, and that he may ascribe different weight to material factors in the risk/benefit balancing exercise. …
>
> 55. In my judgment, the Secretary of State is entitled to adopt a Policy which enables the ultimate decision-maker to explore the question whether the Board's recommendation was reached after a proper evaluation of the evidence and application of the Secretary of State's Directions. The Secretary of State must have due regard to the justification given for the Board's recommendation, but he is entitled to adopt a Policy which enables the decision-maker to explore that justification and to form a view as to whether it, and the reasoning behind it, is cogent. This does not undermine or fail to pay sufficient regard to the advantages that an oral review may confer on the Board in its assessment of the relevant risks and benefits. The decision-maker is not proceeding on the basis of the written reports alone. He or she is bound to take into account any aspects of a report writer's oral evidence that the Board has referred to in its decision, and the fact-findings it has made, including any relevant findings on credibility. As *Hindawi* [2011] EWHC 830 makes clear, the decision-maker cannot depart from those findings without good reason and nothing in the Policy would enable that to happen."

48. Andrews J held that the decision not to accept the Board's recommendation was lawful, in circumstances where:

> "the recommendation appears on its face to run counter to the views of the professionals who have had direct experience of and contact with the prisoner over a far longer term than the members of the panel, and whose function in this context is to bring that

> experience and knowledge of the individual to bear in assisting the Board in advising the Secretary of State." (*Kumar*, [56]; emphasis added.)

49. As Chamberlain J observed in *Oakley* at [25]:

> "One circumstance in which the Secretary of State can properly conclude that a Parole Board decision is unjustified or inadequately reasoned is where it fails to follow directions made by the Secretary of State under section 239(6) of the 2003 Act and, in consequence, fails to apply the correct test or address the correct criteria: *R (Stephens) v Secretary of State for Justice* [2021] EWHC 3257 (Admin) at [37]–[39] (Whipple LJ)."

In this case, the Secretary of State does not, and could not, contend that the Panel failed to follow his directions. On the contrary, they identified the correct test at the outset and applied it properly.

50. Chamberlain J continued at [26]:

> "More generally, the circumstances in which the Secretary of State may depart from findings and recommendations made by the Parole Board have been considered on many occasions in the authorities."

In this regard, in addition to *Kumar, Oakley* and *Stephens* my attention has been drawn to a series of first instance decisions (*R (Banfield) v SSJ* [2007] EWHC 2605 (Admin), *R (Hindawi) v Secretary of State for Justice* [2011] EWHC 830 (QB), *R (Adetoro) v Secretary of State for Justice* [2012] EWHC 2576 (Admin), *R (John) v Secretary of State for Justice* [2021] EWHC 1606 (Admin), [2021] 4 WLR 98), as well as one decision of the Court of Appeal (*R (Gilbert) v Secretary of State for Justice* [2015] EWCA Civ 802). However, it seems to me unnecessary to address each of them in light of the review undertaken by Chamberlain J in *Oakley* and the conclusions he expressed, with which I respectfully agree.

51. In *Oakley,* as in this case, the Secretary of State's decision to depart from the recommendation was taken on the basis set out at §5.8.3 (that there was not a "wholly persuasive case" for transferring the prisoner to open conditions) ([23]). The Panel had concluded that there was no further work for the prisoner to undertaken in closed conditions. Chamberlain J stated:

> "46. Mr Grandison accepted that this was a finding of fact, with the consequence that very good reason was required for departing from it. For my part, I doubt that it is helpful to seek to classify parts of a Parole Board recommendation as either findings of fact (to which the approach in *Hindawi* [2011] EWHC 830 (QB) applies) or assessments of risk (to which lesser weight attaches).
>
> 47. The issue on which the Secretary of State disagreed with the Parole Board in *Hindawi* was whether the prisoner was telling

the truth when he said he had renounced violence. This was, quintessentially, the type of question on which a panel (whose members have heard oral evidence from the prisoner) would enjoy a significant advantage over the Secretary of State (who has not). It is for this reason that appellate courts are typically very reluctant to disturb findings of fact by first instance courts which turn on the credibility of witnesses who have given oral evidence.

48. There may be other questions which do not turn on the credibility of oral evidence, where, for other reasons, the panel has an advantage over the Secretary of State. Contested questions of diagnosis are likely to fall into this category. For example, if a Parole Board panel found that particular behaviours were best explained by a prisoner's personality disorder (rather than, say, mental illness), or that a particular treatment was likely to be effective in substantially reducing risk, the Secretary of State would no doubt need a very good reason to depart from such a finding. This is because the Parole Board's process (in which experts are questioned by representatives for the prisoner and the Secretary of State and by tribunal members who are themselves experts) is well suited to resolving issues of this kind, even ones where reasonable experts differ. On questions such as these, the Secretary of State could depart from Parole Board decisions if the Parole Board has overlooked or misunderstood some key piece of evidence or failed to give adequate reasons for its view, but not simply because he would have resolved the dispute differently.

49. Disputes about the level of risk posed by a prisoner will often turn on precisely these kinds of questions on disputed issues of fact or prediction. Where they do, the Secretary of State will need to show a very good reason for taking a view that differs from the Parole Board on the disputed question. But, as the reasoning in *Hindawi* shows, "risk assessment" will generally involve a further and qualitatively different exercise that falls to be undertaken against the background of the facts as found and the predictions as made by the Parole Board. This is the evaluative assessment required when reaching the ultimate decision whether to recommend transfer to open conditions.

50. As encapsulated in paragraph 7(a) of the Directions, the Parole Board has to consider "the extent to which the [prisoner] has made sufficient progress during the sentence in addressing and reducing risk to a level consistent with protecting the public from harm". Reaching a conclusion on this involves something beyond the resolution of disputes about the factual and expert evidence. It involves a judgment, balancing the interests of the prisoner against those of the public. On this kind of question, the expertise and experience of the Parole Board entitles it to

> “appropriate respect” (as Thomas LJ put it in Hindawi), but not to presumptive priority over the view of the Secretary of State. Constitutionally, the Secretary of State, who is accountable to Parliament, must form his own view about where the balance of interests lies.
>
> 51. In my judgment, the correct approach is therefore as follows. When considering the lawfulness of a decision to depart from a recommendation of the Parole Board, it is important to identify with precision the conclusions or propositions with which the Secretary of State disagrees. It is not helpful to seek to classify these conclusions or propositions as “questions of fact” or “questions of assessment of risk”. The more pertinent question is whether the conclusion or proposition is one in relation to which the Parole Board enjoys a particular advantage over the Secretary of State (in which case very good reason would have to be shown for departing from it) or one involving the exercise of a judgment requiring the balancing of private and public interests (in which case the Secretary of State, having accorded appropriate respect to the Parole Board's view, is entitled to take a different view). In both cases, the Secretary of State must give reasons for departing from the Parole Board's view, but the nature and quality of the reasons required may differ.” (Emphasis added.)

F. The parties’ submissions

52. The claimant submits that in rejecting the Panel’s recommendation, the Secretary of State has taken the wrong approach. He has not identified any way in which the Panel’s decision fell short. Instead, he has taken a blank sheet of paper, listed the factors for and against transfer, and substituted the view of a senior civil servant for that of the Panel and all the professionals who gave evidence, based on their work with and direct knowledge of the claimant.

53. The Panel’s recommendation was not binding on the Secretary of State. The decision was, of course, for him. But the claimant submits he had to recognise that this was not a finely balanced recommendation. On the contrary, it was unusually strong and underpinned by a consensus of opinion amongst all the professionals.

54. The decision letter mentions that “*report writers support your transfer to open conditions*”, but there is no sign of any weight being given to the views of the experienced professionals involved, or any genuine engagement with their views. The claimant contends the decision is irrational in circumstances where the Secretary of State failed to give any explanation for giving no or little weight to the consensus of opinion among the professionals who had given evidence, and worked closely with the claimant.

55. The claimant submits that the Secretary of State’s reasoning, particularly in comparison with that of the Panel and the professional witnesses, was conspicuously brief, superficial and unpersuasive. The Secretary of State focused excessively on the circumstances of the index offence (the character of which is an immutable historical

fact), without giving any proper consideration to the claimant's development in the course of his sentence. The Secretary of State's assertion that there were ongoing concerns about the claimant's honesty, openness and trustworthiness was not supported by the evidence or any findings of the Panel. The assertion that the claimant would at times seek to explain or justify his actions was not particularised or linked to any evidence, and the court should not permit retrospective amplification of the Secretary of State's reasons: *R v Westminster City Council, ex parte Ermakov* [1996] 2 All ER 302. In relying on the assessment that the claimant's risk remains assessed as "*high*", the Secretary of State engaged in circular reasoning given the clear evidence that it cannot be downgraded until he has been tested outside closed conditions. The assertion that the professionals' assessment of the claimant's risk of absconding was purely based on "*self-report*" lacked any foundation. The conclusion that he presents a risk of absconding was not rationally open to the Secretary of State on the evidence.

56. The claimant submits that the Secretary of State has taken a different view on issues on which, applying *Oakley*, the Panel had a particular advantage, most notably on the question of the claimant's trustworthiness and the risk of him absconding.

57. The Secretary of State emphasises that this is not a situation where the Board has the final say. In contrast to circumstances where the Board directs release, in this context their role was to give advice, and no more. The Secretary of State accepted the Panel's factual findings, and deferred to their conclusions on a large array of issues, basing his conclusion on findings the Panel itself had made. Within a reasonable band, the Secretary of State was entitled to reach a different conclusion. This was within the category of cases where the Secretary of State, having accorded appropriate respect to the Board's view, was entitled to take a different view: *Oakley* [51]. This is not a case in which "*very good reason*" for departure from the Panel's recommendation has to be shown.

58. The question is simply whether the decision was rational. That is a high threshold which the Secretary of State submits is not met. Based on the Panel's own findings, it was reasonable for the Secretary of State to be far less convinced of the claimant's reliability. The conclusion that he should not be transferred into open conditions prior to the expiry of his tariff was a rational one.

G. <u>**Analysis and decision**</u>

59. The Secretary of State's reasons for rejecting the Panel's recommendation all concern the following overlapping areas: (a) the risk presented by the claimant; (b) the claimant's trustworthiness; (c) the claimant's risk of absconding; and (d) the claimant's tendency to justify his actions.

(a) The risk presented by the claimant

60. The Secretary of State noted that the murder offence demonstrates the claimant's "*capability to cause significant harm*"; his offences were "*impulsive*", heightening concern given some of the stressors he will face; and he "*remain[s] a high risk to the public*". Although, on the Offender Assessment System (OASys), the claimant's risk of serious harm to the public was assessed as "*high*", the Secretary of State's bald statement, "*You remain a high risk to the public*", does not fully or fairly encapsulate

the totality of the risk assessments made by the professional witnesses and accepted by the Panel.

61. The Panel noted that the claimant's levels of risk "*have been assessed over the years and are currently assessed as follows*":

> "3.1. … In the most recent OASys assessments (dated the 10th November 2021) the OGRS3 [the revised Offender Group Reconviction Score] predicted likelihood of re-offending is assessed as **Low**. When dynamic risk factors are taken into account the likelihood of violent and Non-Violent re-offending is also assessed as **Low**. The RSR [Risk of Serious Recidivism] score is assessed as **Low**. Using the OASys violence predictor Ms. Joinson has assessed the current Risk of Serious Harm ['ROSH'] as **High** towards the Public and **Low** in regard to all other categories in the community. Mr. Wynne's former OS, Ms. Goodright had assessed the ROSH to the Public as **Medium** (see above) but more recent assessments have taken the proper view, in the opinion of the Panel, that the risk remains **High** until there is appropriate testing which might support a lower assessment.
>
> 3.2 Ms. Hough has undertaken several assessments and has concluded that the risk is **moderate**, as has Dr. Patel.
>
> 3.3 Having considered the psychology reports in detail and having listened to Dr. Patel the Panel agrees with the various assessments." (Original emphasis.)

62. The assessment that the claimant presents a "*high*" risk of serious harm to the public reflects the risk of serious harm to the public should further offences occur. It is an important part of the risk assessment but it has to be viewed alongside the assessed "*low*" likelihood of violent (or non-violent) re-offending. The psychologists, Ms. Hough and Dr. Patel, both assessed the claimant as presenting a "*moderate*" and "*not imminent*" risk of violent re-offending using the HCR-20v3 [Historical-Clinical-Risk] assessment (§§3.2, 3.3, 3.7, 3.11 and 3.24).

63. The Secretary of State highlighted the claimant's impulsivity. That was a risk factor identified by the Panel (§1.52). The Panel noted that the sentencing judge had described the murder as unpremeditated, reactive violence (§1.45). The Panel observed the claimant's actions in both the index and arson offences were "*impulsive and excessively violent*" (§1.37), and they recognised that his conduct in attacking the mosque raised additional issues of risk (§1.24). However, this factor had to be considered in light of the Panel's analysis of the evidence of change, of the manageability of future risk and their conclusions.

64. In view of the "*extreme nature of the index offence of murder*", the Panel was "*anxious to explore the PCL-R [Hare Psychopathy Checklist-Revised] findings*". However, as they explained, Ms Hough's findings did not suggest "*any concerning psychopathy*" (§3.9); and neither psychologist considered there was any evidence of personality disorder (§3.13). The Panel noted that despite the nature of the offence "*there was no evidence of IPV [intimate partner violence] in his relationships with women*" (§1.52).

They investigated whether there was any evidence of "*offence paralleling behaviour towards females in prison*" and concluded there was none (§2.17).

65. The Panel had the benefit of the informed views of those responsible for the claimant's management and the forensic psychologists who examined all aspects of the claimant's history, interventions, risk factors and protective factors (Panel recommendation §4.10). The consistent and unanimous view of all six professionals, which was tested by the Panel at the oral hearing, and with which the Panel agreed, was that the risk presented by the claimant could be safely and effectively managed in open conditions. Indeed, the Panel had "*no doubt*" the claimant met the test for transfer and it is manifest that they considered that was the only rational conclusion open to them on the evidence.

66. Although the Secretary of State expressly identified the test as whether "*the risk of harm which the prisoner represents may be safely and effectively managed in open conditions*", he did not engage with the views of the professional witnesses, and the Panel, all of whom gave a resoundingly positive answer to that question. The Secretary of State has purported to base his decision, in part, on an acceptance of the Panel's findings as to the risk presented by the claimant, but in doing so he has picked out one aspect of the risk assessment and given no reason for departing from the overall assessment that he can be safely and effectively managed in open conditions, save to the extent that he relies on points (b), (c) and (d) (identified in paragraph 59 above).

(b) The claimant's trustworthiness

67. In rejecting the Panel's recommendation, the Secretary of State relied on the claimant's dishonesty in 2004 to 2005, when he concealed Ms Taylor's body over numerous days and did not confess to her murder for over 16 months, and identified "*some evidence of possible ongoing dishonesty*" based on the Panel's findings in relation to his description of the arson offence.

68. The Panel had the opportunity of "*observing and interrogating*" the claimant over "*a sustained period*" (§4.10). As they observed:

> "Mr Wynne gave evidence for the best part of 3 hours and the Panel was able to assess his evidence, <u>in particular his credibility</u>, and form an understanding of the risk he presented in the past and what has been done to address it." (Emphasis added.)

69. The assessment of the claimant's honesty, openness and trustworthiness is, plainly, an area in which the Panel enjoyed a particular advantage compared to Mr Davison conducting a desk-based review. The Secretary of State's conclusion is, purportedly, based on the Panel's findings, so it is important to consider what the Panel said on this issue.

70. In relation to the arson offence, the Panel said:

> "1.17 **Arson**: Following the murder, 16 months later, on the 8th/9th July 2005, in the early hours of the morning, following the 7/7 bombings in London which had occurred less than 48 hours before, Mr. Wynne took the decision to attack a mosque in his

local area. On this night he again had been socialising in the Birkenhead area and again had taken a large amount of alcohol and cocaine. He was with another person he has consistently declined to name when he decided to set fire to a mosque. On his way home he passed the mosque, which has been described by him as a 'derelict' building, and further down the road he went to go past a 24-hour garage when he took the decision to set fire to the mosque. He bought a petrol can and filled it with petrol. It appears he made no attempt to hide his identity.

1.18 Mr. Wynne believed the mosque to be empty but, unbeknown to him, the Imam was inside. It is fortunate that the Imam managed to escape uninjured. It is reported that Mr. Wynne left his jacket and the lighter at the scene so that his DNA could be traced. Mr. Wynne was arrested 7 days later and confessed to both the arson attack and then to the murder.

1.19 Searches later revealed a document in his possession which said, 'English and Proud'. The sentencing judge noted that Mr. Wynne had recorded in papers found by police 'bitter remarks about asylum seekers'. <u>There is other evidence, from therapy reports that at the time he held anti-Islamic views. He has denied these suggestions.</u>

…

1.49 Mr. Wynne was questioned in detail about the arson attack. He said he did not want to be evasive about the person he was with, but he claimed he was not involved in the attack and so did not need to be named. When he saw what Mr. Wynne was doing with the petrol, Mr. Wynne claims he was shouting at him to stop. Again, the offence was preceded by the use of alcohol, cannabis and cocaine. <u>Mr. Wynne claims that this was an impulsive and not a premeditated or pre-planned attack. There is an apparent contradiction between his claims that he set the fire with a view to being caught and arrested with the intent of admitting to the Index Offence. On the other hand, he has on many occasions linked the attack to the events of 7/7 and his views about Islamic terrorism and asylum seekers from the Arab region.</u>

1.50 However, <u>he denied he was a racist and denied that it was a revenge attack. He did admit to feeling aggrieved that 'asylum seekers could receive benefits, when his has [sic] been stopped' (due to his failure to sign on). In the light of the evidence found by the police his answers were not entirely convincing.</u> However, there is no evidence that he was aware the Imam was in the building.

…

> 3.15 Following the first adjournment the two psychologists were directed to prepare additional reports to consider in greater detail issues of extremism, susceptibility to radicalisation (by others and to others) and consider additional warning signs. Ms. Hough undertook a full ERG22+ [Extremism Risk Guidelines]. She concluded that her 'view remains that his intent in relation to the Arson offence reflected such risk factors and was not an extremism intent per se, but a dysfunctional problem solving approach, fuelled in part by substance use and his perceptions of injustice at the time of the July bombings and views around use of terrorist actions outside of a conflict zone'.
>
> …
>
> 4.2 The Panel recognised the severity of the arson offence but has found no other evidence of an interest in fire setting in the past. Equally, there has been no subsequent concern as to his attitude towards those of the Muslim faith or any expressed interest in extreme right wing beliefs. None of the professionals recorded any enduring concerns about these matters." (Emphasis added.)

71. The Secretary of State's letter misquoted the Panel's recommendation in saying they found the claimant's description of the arson offence "*not to be convincing*". The Panel did not cast any doubt on the claimant's description of what happened. What they said was that "*his answers were not entirely convincing*", referring to his denial that at the time of the offence he held anti-Islamic views and his answers concerning his *motivation* for committing the arson offence. That was not a finding that the claimant's evidence to the Panel was dishonest. As Leggatt J observed in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560, [2020] 1 CLC 428, at [18], "*Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs*".

72. In relation to the claimant's trustworthiness, the Panel noted at §3.11 that Dr. Patel used

> "the Paulhus Deception Scales to see if there was evidence of impression management (a matter which concerned the Panel). The assessment suggested Mr. Wynne was not 'faking good'. In this context Dr. Patel told the Panel that what Mr. Wynne says is 'consistent'."

73. The Panel continued at 3.12:

> "Objectively, the Panel did not sense there was evidence of impression management, either in the way he presented to the Panel during the hearing or having regard to the wide body of opinion which has commented favourably on Mr. Wynne's overall prison behaviour, which did not suggest that he was seeking to manipulate. It would be very difficult to please so many people over such a sustained period."

74. The Panel did not identify dishonesty or lack of openness as a risk factor, and nor did any of the professional witnesses, whereas "*high levels of insight and motivation*" were identified as a protective factor (§§1.52-1.53). Professional witnesses noted that he had been honest in describing how he had used violence in growing up, being open about incidents that were not known to the authorities; and that it was important he "*continue ... to work openly, honestly and in a trusting professional relationship both in open conditions and beyond*". The Panel noted that the claimant enjoyed "*a position of trust*" in the prison (§2.2, §3.3). In terms of openness, the professional witnesses felt that the claimant "*would seek out help*", and the Panel concluded that he now had the confidence to speak to his family and professionals when he needed help (§§3.33-3.34). In addition, it is evident from the Panel's lack of any doubt that tests 2 and 3 were met (in respect of risk of non-compliance with conditions on temporary release and risk of absconding), that the Panel did not conclude the claimant was being dishonest in his evidence.

75. In relying on the claimant's "*possible ongoing dishonesty*" as a basis for rejecting the Panel's recommendation, the Secretary of State has misquoted and misunderstood the conclusions that the Panel reached. Very good reasons would be needed to justify departing from the Panel's view as to the claimant's credibility, given the particular advantage they had in making their assessment, and none has been given.

(c) The claimant's risk of absconding

76. One of the factors the Secretary of State relied on in rejecting the Panel's recommendation was that:

> "Report writers rely on your self-report that abscond poses you no risk or merit. Given your dishonesty in this past this [is] a concern."

77. The Panel's conclusions in respect of the risk of absconding are contained in §§4.9 and 4.13 (set out in paragraph 21 above). Earlier in their report, the Panel addressed the risk of absconding in the following terms:

> "1.41 The Panel noted that, whilst stationed in Northern Ireland on an operational tour with his regiment, after being denied compassionate leave as his seriously ill sister was not a nominated Next of Kin, he went Absent Without Leave (using a false name to travel by plane) for a period of a month in December 1997 with the assistance of a friend. He was fined a months' pay on his voluntary return. … His decision to go AWOL was put to all the witnesses as potentially relevant to or indicative of a risk of abscond. The consensus was that the decision he took appears to be a misplaced 'one-off' decision and the Panel has concluded that it is unlikely to be repeated if Mr. Wynne transfers to the open estate.
>
> 1.42 For example, the Panel was concerned about whether he would, if his mother (or another member of his near family, living in Birkenhead) became gravely ill. Would he be prepared to break the terms of his licence? He insisted he would always seek to do things properly and get permission if he wished to see

> anyone in an area he was not permitted to visit as he would not do anything to jeopardise his future release and his family would not wish him to either. This remains, however, an untested future challenge.
>
> …
>
> 3.23 … Dr Patel agreed that he had a history of 'toughing it out', choosing not to seek help but that, she said, appeared to be 'in the past'. She did not think he would be tempted towards 'flight' if the media interest became too great.
>
> …
>
> 3.34 Release does not fall for consideration and a detailed examination of the Risk Management Plan ('RMP') also does not therefore fall for consideration. Nevertheless, the Panel has remarked on Mr. Wynne's personal representations and the Panel questioned him to see if he was realistic. He was questioned about his risk factors and showed a clear understanding of them. He would not abscond because he would be left with 'nothing'. …"

78. It is difficult to understand where the Secretary of State's assertion that report writers rely on the claimant's "*self-report that abscond poses you no risk or merit*" comes from, given that there is no basis for it in any of the reports written by the six professionals. It seems likely that the "*self-report*" referred to is the claimant's evidence on being questioned by the Panel that there would be no merit or purpose in him absconding (§4.13). The report writers had supported the claimant's transfer to open conditions, and advised as to the lack of risk of him absconding, before he gave evidence. Plainly, their views were not solely based (or, in the case of Ms Hough, Ms Goodright and Mr Wilkins, who were not present at the hearing, based at all) on what the claimant said in evidence. They gave their professional assessments based on their knowledge of the claimant.

79. Moreover, the Secretary of State's rejection of the Panel's assessment of the absconding risk, by reference to his "*dishonesty in the past*", was not rational. The dishonesty to which the Secretary of State referred was the claimant's failure to disclose what he had done for over 16 months in 2004-2005, at a point where he feared going to prison for life. In relation to the risk of absconding, that is looking to a point in the future where the claimant has been transferred into open conditions, with a prospect of release on licence at a later point. As the Panel observed, the claimant has "*solid*" plans for the future. He has attained qualifications, including a degree, while in prison, and his plans include the availability of a home and employment (with the help of his brother). Given his prospects, the risk that he would, as he put it, be left with "*nothing*", if he were to abscond, was obviously relevant in assessing the risk he would do so. But it was far from the only factor given, among other matters, his "*very high*" standard of conduct in prison over many years.

80. In my judgment, the Secretary of State's implicit rejection of the Panel's conclusion as to the low risk of the claimant absconding lacked any rational foundation in the evidence or logic.

(d) The claimant's tendency to justify his actions

81. One of the factors the Secretary of State relied on in rejecting the Panel's recommendation was the concern, expressed by the Panel, that "*at times you seek to readily explain your actions or justify them*". The statement in the decision letter is evidently based on §1.55 of the Panel's recommendation where, in the section addressing the claimant's "*risk factors*", they said:

> "There is some concern that he has at times shown a readiness to explain or, in some way, to justify his actions to professionals. This remains an area that will need to be monitored and challenged as appropriate. Mr Wynne told the Panel that he recognised this as a historic trait."

82. In connection with this, the Panel had noted

> "Ms Hough's assessment that Mr Wynne has a schema whereby he feels he needs to act, sometimes with violence when he perceives a wrongdoing ('perceived wrongdoing schema')." (§1.52)

An example of this identified by Ms Hough, to which the Panel referred, was an occasion where the claimant's grandfather was robbed and badly beaten. The claimant said that he and his brother went looking for the assailants, and he said he "*would have killed them if he had found them*" (§1.5). He disclosed this as an example of his use of violence in his youth, although on that occasion it did not result in violence as he did not find those who had assaulted his grandfather.

83. In rejecting the Panel's recommendation, the Secretary of State's decision letter did not identify any occasion when the claimant had sought to readily explain or justify his actions. But Mr Davison's email put this factor as "*his tendency to justify his actions (there can be no justification for almost decapitating [redacted] with a meat cleaver)*". This indicates a misunderstanding of the Panel's findings.

84. There is nothing in any of the professionals' reports or the Panel's recommendation to support the suggestion that the claimant has ever sought to justify his actions in murdering Ms Taylor. On the contrary, the Panel noted that there was "*long term evidence*" of "*a significant amount of victim empathy*" and there was "*no current evidence*" of "*failure to accept responsibility*" (§3.9). In her second addendum report dated 14 October 2021, Ms Hough referred to the claimant's approach "*reflecting his view that he needs to take responsibility for his past actions*". In addition, as the Panel noted, the claimant confessed to the murder when arrested for arson, and he pleaded guilty (§§1.18, 1.20, 1.21).

85. The Secretary of State's reasons do not give any explanation as to why the Panel's finding at §1.55 led him to reject their recommendation. Ms Hough took into account her view of the claimant's perceived wrongdoing schema, in advising that the claimant

could be safely managed in open conditions, as did the Panel in making its recommendation.

Conclusion

86. In my judgment, whether viewing the factors relied on by the Secretary of State individually, or stepping back and considering the decision as a whole, it is clear that the Secretary of State has provided no good reason for rejecting the Panel's recommendation. The lack of any good reason to depart from the Panel's recommendation is particularly striking given the Panel's depth of analysis, the clarity of their conclusion, and the consensus of opinion amongst the panoply of professional witnesses. For the reasons I have given, I conclude that the decision to reject the Panel's recommendation was outside the range of reasonable decisions open to the decision-maker.