Neutral Citation Number: [2025] EWHC 472 (Admin)

Case No: AC-2024-LON-000035

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/03/2025

Before :

LORD JUSTICE EDIS

MR JUSTICE DOVE

- -

Between :

The King (on the application of the Secretary of State for Justice)	**Claimant**
- and -	
The Parole Board for England and Wales	**Defendant**
- and -	
Abdal Raouf Abdallah	**Interested Party**

- -
- -

Sir James Eadie KC and **Andrew Deakin** (instructed by **The Treasury Solicitor**) for the **Claimant**
Tom Forster KC and **Naomi Parsons** (instructed by **The Treasury Solicitor**) for the **Defendant**
Jude Bunting KC and **Tim James-Matthews** (instructed by **Birnberg Pierce**) for the **Interested Party**

Hearing date: 29 January 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 3 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE DOVE

Mr Justice Dove:

1. In this claim the Secretary of State for Justice seeks to quash an order of 5 October 2023 by which the Duty Member of the Parole Board ("the Board") directed that some of the sensitive material ("the contested material") supplied to the Board by the Secretary of State should be served on the Special Advocate so that he could make submissions in CLOSED as to its relevance. The Secretary of State had supplied the material to the Board at its request but asserted that it was irrelevant to the issue before the Board. That issue was whether the Interested Party, Mr Abdal Raouf Abdallah ("Mr. Abdallah"), was suitable for release or whether the public interest required that he should be detained until his sentence expiry date.

The substantive proceedings before the Board

2. On 11 July 2016, Mr Abdallah was convicted of terrorism offences. On 15 July 2016, he was sentenced to an extended determinate sentence of 9½ years and a sentence of 2 years imprisonment (to run concurrently). Mr Abdallah was released on licence on 26 November 2020. His licence was revoked and he was recalled to custody on 18 January 2021. As a recalled prisoner not suitable for automatic release under s.255A of the Criminal Justice Act 2003, Mr Abdallah's case was referred to the Board by the Secretary of State in accordance with s.255C of the Criminal Justice Act 2003.

3. On 30 June 2021 the Secretary of State applied to the Board to withhold material from Mr Abdallah and his legal representative, pursuant to Rule 17 of the Parole Board Rules 2019/1038 ("the 2019 Rules"). The Board granted that application on 4 August 2021 and Mr Abdallah was provided with an 'OPEN gist' of the withheld material. Mr Abdallah appealed that decision and filed grounds of appeal dated 27 August 2021.

4. On 13 September 2021, the Parole Board upheld the decision of 4 August 2021, and directed the appointment of a Special Advocate.

5. The Panel Chair made a direction for further disclosure on 5 January 2023. This included the contested material which is the subject of these proceedings.

6. The Secretary of State responded on 28 April 2023 making the contested material available to the Board and providing submissions on the relevance of that material. The Secretary of State's position was that the material was irrelevant; and accordingly, the Department did not serve the material and submissions on the Special Advocate.

7. The Duty Member invited further submissions. The Secretary of State filed submissions on the approach to relevance on 24 July 2023. The Duty Member considered the Secretary of State's July submissions and, on 7 August 2023, directed further submissions. The Special Advocate filed submissions on 22 September 2023 and the Secretary of State filed submissions in response on 3 October 2023.

8. In a determination dated 5 October 2023 the Duty Member held that the Board had the power to direct the production of potentially relevant material and "that the starting point is that material directed to be produced must be served upon the Special Advocate". The Duty Member accordingly directed that the material in issue be served on the Special Advocate by 13 October 2023 with consequential directions for submissions on relevance. This is the first ruling challenged in these proceedings.

9. On 20 October 2023 the Secretary of State applied pursuant to Rule 6(5) of the Parole Board Rules to revoke the 5 October 2023 direction on the basis that the Duty Member had erred in law. The Special Advocate filed submissions in response to that application on 31 October 2023. On 30 November 2023, the Duty Member refused the Secretary of State's application. This is the second ruling challenged in these proceedings.

10. The rulings of 5 October and 30 November were based on the same reasoning and the submissions filed in the context of the revocation application were in substance the same as those filed prior to the first ruling. The issue before us is whether the ruling of the 5 October 2023 directing disclosure of the contested material to the Special Advocate was within the power of the Duty Member who made it and, if so, whether he erred in his discretion when making it such that it should be quashed. The ruling of 30 November stands or falls with the October ruling.

11. These proceedings were then commenced by the Secretary of State. A request for interim relief was made staying the implementation of the order pending the determination of this claim. It was refused. The contested material was disclosed to the Special Advocate who agreed that it was irrelevant. No CLOSED proceedings in relation to the contested material were ever held. The Board determined that Mr Abdallah should not be released after OPEN and CLOSED hearings (involving other sensitive material with which we are not concerned). He remained in prison until his sentence expiry date which was the 26 November 2024. The issue which we have to decide is academic from his point of view since he is no longer serving the sentence, and he does not challenge the decision not to release him in these proceedings. Specifically, no party suggests that the contested material was relevant to the issue before the Board, which was whether Mr Abdallah should be released before 26 November 2024.

The Ruling of 5 October 2023

12. The Duty Member produced a written ruling of exceptional clarity. He rejected the Secretary of State's argument that he had no power to direct service of the contested material on the Special Advocate until he had determined that it was relevant for seven reasons. He set out his conclusions in this paragraph:-

> "33. Drawing these threads together, I am satisfied that:
>
> (a) The Parole Board does have a power to direct the production of potentially relevant material.
>
> (b) That material must then be served on the Board and the parties or their representatives, unless rule 17 provides otherwise.
>
> (c) In CLOSED proceedings the relevant representative is the Special Advocate who, once appointed must be served with the CLOSED material.
>
> (d) That the Board then has to decide whether or not the material is relevant before making any decision about disclosure.
>
> (e) That there is no bar to the Special Advocate being provided with the material or making submissions on what or is not relevant.
>
> (f) That in doing so there will be no risk of disclosure to the prisoner, as the Special Advocate cannot communicate with them without

the Secretary of State's consent or the authorisation of the Parole Board of a communication request.

(g) That procedural fairness and equality of arms favour such submissions being made and considered, and that when such submissions are directed disclosure will be a necessary precursor."

The 2019 Rules

13. As in force at the time, Rule 6 of the 2019 Rules provided as follows:-

> **Case management and directions**
>
> 6.—(1) A panel chair or duty member may be appointed in accordance with rule 4 to carry out case management functions and may at any time make, vary or revoke a direction.
>
> (2) The panel chair or duty member appointed under paragraph (1) may make any direction necessary in the interests of justice, to effectively manage the case or for such other purpose as the panel chair or duty member considers appropriate.
>
> (3) Such directions may in particular relate to—
>
> (a) the timetable for the proceedings;
>
> (b) the service of information or a report;
>
> (c) the submission of evidence;
>
> (d) the attendance of a witness or observer;
>
> (e) holding a directions hearing or case management conference.

14. Rule 16 of the 2019 Rules provides as follows:

> **Referral and service of reports**
>
> 16.—(1) A case is deemed to be referred to the Board on the date that the Board receives the referral letter and the information and reports required under paragraph (3) from the Secretary of State.
>
> (2) The Secretary of State must serve the information and reports required under paragraph (3) on the prisoner (and the prisoner's representative if they are represented) at the same time as service on the Board.
>
> (3) Subject to rule 17, the Secretary of State must serve on the Board and the prisoner (and the prisoner's representative if they are represented)—
>
> (a) the information specified in the Schedule;
>
> (b) any further information which the Secretary of State considers relevant to the case, and

(c) where a case relates to a request for advice, any information which the Secretary of State considers relevant to the case.

15. Rule 17 provides as follows:

Withholding information or reports

17.—(1) The Secretary of State and any third party authorised by the Secretary of State ("authorised third party") may apply to the Board for information or any report ("the material") to be withheld from the prisoner, or from both the prisoner and their representative, where the Secretary of State or the authorised third party considers—

(a) that its disclosure would adversely affect—

(i) national security;

(ii) the prevention of disorder or crime, or

(iii) the health or welfare of the prisoner or any other person, and

(b) that withholding the material is a necessary and proportionate measure in the circumstances of the case.

(2) An application under paragraph (1) may not be made later than 8 weeks before the date allocated for an oral hearing under rule 22.

(3) Where the Secretary of State or the authorised third party makes an application for the material to be withheld under paragraph (1), the Secretary of State or authorised third party must serve on the Board—

(a) the material, or a separate document containing the material, and

(b) a written application for non-disclosure, explaining why it is proposed to be withheld.

(4) On receipt of an application under paragraph (3)(b), either a panel chair or duty member appointed for that purpose, must consider the application and may make directions as necessary to enable determination of the application.

(5) Where the panel chair or duty member is satisfied that all relevant information has been served on the Board, they must consider the application and direct that the material should be —

(a) served on the prisoner and their representative (if applicable) in full;

(b) withheld from the prisoner or from both the prisoner and their representative, or

(c) disclosed to the prisoner, or to both the prisoner and the prisoner's representative (if applicable) in the form of a summary or redacted version.

(6) If—

(a) a direction is given under paragraph (5)(a) and the Secretary of State or authorised third party intends to appeal against it in accordance with paragraph (11), or

(b) a direction is given under paragraph (5)(b) or (c),

the Secretary of State, or the Board (where an authorised third party made the application under paragraph (3)), must, as soon as practicable, notify the prisoner and the prisoner's representative (if applicable) that an application has been made under paragraph (3)(b) and the direction that has been made under paragraph (5).

(7) If the panel chair or duty member appointed under paragraph (4) gives a direction under paragraph (5)(b) or (c) that relates only to the prisoner, and that prisoner has a representative, the Secretary of State or authorised third party must, subject to paragraph 11, serve the material as soon as practicable (unless the panel chair or duty member directs otherwise) on the prisoner's representative, provided that—

(a) the representative is—

(i) a barrister or solicitor;

(ii) a registered medical practitioner; or

(iii) a person whom the panel chair or duty member appointed under paragraph (4) directs is suitable by virtue of their experience or professional qualifications; and

(b) the representative has first given an undertaking to the Board that they will not disclose the material to the prisoner or to any other person, other than other representatives also responsible for that prisoner's case.

(8) The panel chair or duty member making the determination in regards to the non-disclosure application, or the panel chair or duty member at a later date, may direct the appointment of a special advocate appointed by the Attorney General to represent the prisoner's interests where the panel chair or duty member appointed under paragraph (4)—

(a) makes a direction under (5)(a) and the Secretary of State or the authorised third party appeals the direction under paragraph (11), or

(b) makes a direction under (5)(b) or (c) that relates to a prisoner and their representative, or the prisoner does not have a representative.

(9) If a direction to appoint a special advocate is made under paragraph (8), the Secretary of State or authorised third party must serve the material as soon as practicable (unless the panel chair or duty member directs otherwise) on the special advocate.

The claim

16. The Secretary of State's challenge to the Ruling is advanced on two grounds:-

i) **Ultra Vires**

The Secretary of State's primary submission is that the Duty Member had no power to order the disclosure of the sensitive material of contested relevance to the Special Advocate before he had first considered and determined the issue of relevance; and found the material to be relevant. This argument rests on the construction of Rule 17(8) and (9) of the 2019 Rules which allow the Board to direct the appointment of a Special Advocate only when deciding that material should be withheld from the prisoner and his representative under the earlier provisions of that Rule. The Rule therefore contemplates that at the time when the relevance decision is made there will be no Special Advocate; and

ii) **Improper exercise of discretion.**

Even if contrary to the above, a Panel Chair/Duty Member did have a power to order that sensitive material be disclosed to the Special Advocate prior to its relevance having been established, the Duty Member's approach to the exercise of his discretion was flawed in principle.

The response of the Board

17. The Board has taken what it describes as a neutral stance to this claim, in line with the approach usually taken by courts whose decisions are challenged. It has, however, made substantive submissions through Tom Forster KC and Naomi Parsons.

18. The Board suggests that the case is now academic and the court should be cautious about deciding academic points for reasons which are well established in authority.

19. It also suggests that the case management powers of the Board are very important to its discharge of its statutory function, and that if they have been misunderstood then clarification would be helpful.

20. Finally, it provides information about the small proportion of its cases which involve Special Advocates. The present case is one of very few cases where there is a Special Advocate, and the only case where counsel to the Board has been appointed to fulfil a role ostensibly similar to that of counsel to the Tribunal in the Investigative Powers Tribunal ("the IPT"). The Investigatory Powers Tribunal Rules SI 2018/1334 rules 7 and 12 mean that in the IPT no Special Advocates can be appointed and Counsel to the Tribunal performs functions which are designed to assist the IPT in ensuring fairness in cases where material is not disclosed to the claimant. The situation which prevailed in these proceedings before the Board was therefore not actually similar to the way the IPT conducts its business.

The response of the Interested Party

21. Through Mr. Jude Bunting KC and Mr. Tim James-Matthews Mr Abdallah offers "adversarial argument" against the Secretary of State's position in order to assist the court. The outcome is of no interest to the Interested Party.

22. In essence, they submit that the course taken by the Duty Member is not prohibited by the 2019 Rules and is conducive to the achievement of the statutory function of the Board in a fair way.

Discussion

23. As will be apparent from what has been set out above, on the 26th November 2024 at the expiry of his sentence, Mr Abdallah was released from prison. Prior to that, because the judge granting permission, Heather Williams J, refused to stay the order made by the Duty Member, the contested material was in fact disclosed to the Special Advocate. Whether there was jurisdiction to direct that this should happen is now academic because it has happened. It follows that in reality there is nothing in issue in these proceedings because any decision by the Board in Mr Abdallah's case has been overtaken by events and there is no longer any question for the Board to determine. The dispute between the parties over the decision of the Duty Member which is the subject matter of this case is now entirely moot. This is a change of circumstances from when permission to apply for judicial review was granted on 21 February 2024. At that time the hearing of Mr Abdallah's application was in prospect, and the question of the treatment of this material was a live issue. Whilst when granting permission to apply for judicial review the judge referred to the aspiration of the Secretary of State to have a ruling on the point raised in the case for the benefit of other future cases, we have the benefit of additional material and have heard argument on the question of whether we should accept jurisdiction to determine the issues in the current circumstances.

24. In his submissions, Sir James Eadie KC, on behalf of the Secretary of State, submitted that there was a residual discretion for the court to consider academic disputes in appropriate cases. The present case was concerned with a discrete question in respect of the correct construction of the Parole Board Rules 2019, in particular Rule 17, and therefore lends itself to being resolved notwithstanding that Mr Abdallah has been released. The point which was the subject of the dispute was an important one for the Secretary of State and the Board. The provisions of the Senior Courts Act 1981 did not remove the jurisdiction to hear cases where there were no live issues if there was justification for doing so, and there was justification in the present case. The Board has taken a neutral stance in relation to this litigation and Mr Forster KC, having pointed out that the case is now academic, made no further submissions on this issue. Mr Bunting KC in both his written and his oral submissions on behalf of Mr Abdallah, drew attention to the fact that there was no longer any live dispute. He pointed out that, applying the authorities, it was an exacting standard to demonstrate that an academic case should be heard and determined. He noted that the case was a one-off and that it related to a case management decision which, in accordance with the Parole Board Rules 2019, would not be published or otherwise reported. He submitted, therefore, that the court should decline to determine the dispute.

25. The question of whether a court should proceed to hear a judicial review case in which the outcome is academic has been addressed previously, in particular in the case of *R v Secretary of State for the Home Department ex p Salem* [1999] 1 AC 450, in which Lord Slynn recognised that there was a discretion for the court to hear a case even where there was no longer any issue to be decided. That case concerned an appeal by a person seeking asylum who challenged the decision of the Secretary of

State for the Home Department to notify the Department of Social Security that the applicant's claim to asylum had been determined, thereby leading to the cancellation of his benefits. The refusal of his claim had been recorded on an internal file, but not communicated to the appellant. Prior to the case coming on before the House of Lords the appellant's appeal had been allowed and his benefits restored and there was, therefore, no live issue to be determined. Nonetheless the appellant was keen for the court to hear the case on the basis that it raised important points of law of public importance which should be resolved.

26. The House of Lords concluded that the appeal should be dismissed on the basis that there was no longer an issue to be determined. Having reviewed earlier authorities Lord Slynn observed the following in giving the reasons for dismissing the appeal, at 456G-457B:

> "My Lords, I accept, as both counsel agree, that in a case where there is an issue involving a public authority as to a question of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se. The decisions in the *Sun Life* case and *Ainsbury v Millington* (and the reference to the letter in rule 42 of the Practice Directions applicable to Civil Appeals (January 1996) of your Lordships' House) must be read accordingly as limited to disputes concerning private law rights between the parties to the case.
>
> The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (by only way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future."

27. A similar issue arose in the case of *R (on the application of Zoolife International Limited) v Secretary of State for Environment and Rural Affairs and others* [2007] EWHC 2995 (Admin). Silber J reviewed the relevant authorities and provided the following explanation of the correct approach to determining cases where there was no longer a live issue between the parties for the court to resolve:

> "35. Similar principles have been applied in the Administrative Court, for example, by Munby J in *Smeaton v Secretary of State* [2002] 2 FLR 146, 244 [420] ("the facts remain that the court-including the Administrative Court- exist to resolve real problems and not disputes of merely academic significance") and by Davis J in *BBC v Sugar* [2007] 1 WLR 2583, 2606 [70] ("to grant remedies by reference to a decision made in now outmoded circumstances seems to be to be an arid and academic exercise. It is not something that, as an Administrative Court Judge, I would have been minded to do"). Although these statements indicate that if an issue is academic, the court cannot determine it, these statements must be subject to what was said in *Salem* and which has, as far as I can

> discover, not been disapproved of or qualified in any manner in any later case.
>
> 36. In my view, these statements show clearly that academic issues cannot and should not be determined by courts unless there are exceptional circumstances such as where two conditions are satisfied in the type of application now before the court. The first condition is in the words of Lord Slynn in *Salem* (supra) that "a large number of similar cases exist or anticipated" or at least other similar cases exist or are anticipated and the second condition is that the decision in the academic case will not be fact-sensitive. If the courts entertained academic disputes in the type of application now before the court but which did not satisfy each of these two conditions, the consequence would be a regrettable waste of valuable court time and incurring by one or more parties of unnecessary costs.
>
> 37. These points are particularly potent at the present time where the Administrative Court is completely overrun with immigration, asylum and other cases where it would be contrary to the overriding objectives of the CPR for an academic case to be pursued. After all one of those overriding objectives is "dealing with a case justly [which] includes, so far as is practicable… (e) allotting to it an appropriate share of the court's resources while taking into account the need to allot resources to other cases" (CPR Part 1.1)…"

28. In my view the important principle to take from these and other authorities which could have been cited and which take a similar approach, is that it is necessary for there to be exceptional circumstances to justify a court proceeding to determine a case which is academic or moot. In paragraph 36 of his judgment Silber J was not laying down an exhaustive or comprehensive list of the conditions which might justify hearing cases of this kind: the potential conditions which might amount to exceptional circumstances cannot be sensibly codified. However, it is clear to me that the two factors which Silber J identified as his examples, namely the number of other cases in which the issue may arise and whether the case is fact sensitive, will be matters to which the court will no doubt wish to have regard in considering the issue of whether to determine the case on the merits.

29. The reticence of the courts to determine cases which are academic is not simply the point made by Silber J in relation to the importance of the overriding objective and ensuring the fair and proportionate allocation of resources to litigants, although that is a significant justification for the approach taken in the authorities.

30. In my view it is important to note that since Silber J reached his decision in *Zoolife* important changes to the jurisdiction in judicial review were affected by the Criminal Justice and Courts Act 2015 which introduced new provisions in section 31 of the Senior Courts Act. In particular, section 31(2A) to (2C) were amended to read as follows:

> "31(2A) The High Court –
>
> (a) must refuse to grant relief on an application for judicial review, and

> (b) may not make an award under subsection (4) on such an application, if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.
>
> (2B) The court may disregard the requirements in subsection (2A)(a) and (b) if it considers that it is appropriate to do so for reasons of exceptional public interest.
>
> (2C) If the court grants relief or makes an award in reliance on subsection (2B), the court must certify that the condition in subsection (2B) is satisfied."

31. It appears clear that these amendments were made in order to ensure that judicial review was purposeful and that relief would not be granted where the "outcome… would not have been substantially different". A case in which there is no live question and the dispute was or has become academic is a paradigm example of such a case since the issue will have been resolved and the question of what, if any, relief should be granted will not be a live issue. This reinforces the caution which has to be exercised in embarking on the determination of academic questions in litigation. Whilst it was pointed out in the course of argument that section 31(2B) permits the hearing of cases where the outcome would not have been substantially different "for reasons of exceptional public interest", in my view that makes clear the high hurdle which needs to be surmounted in cases of this kind. To proceed to determine the case must not simply be in the public interest but an exceptional public interest must be demonstrated. As a further safeguard, section 31(2C) requires the discipline of certification of the reasons of exceptional public interest. Thus, whilst there remains an undoubted discretion for the court to proceed to determine academic cases where there are no live issues between the parties to resolve, these provisions further emphasise the caution and restraint which needs to be exercised in concluding that there are the necessary exceptional circumstances to justify that course being taken.

32. Having set out the legal context the question then arises as to whether exceptional circumstances have been demonstrated in this case. It is true to say that the question which the court is asked to determine in this case is one of construction of the Parole Board Rules 2019. This is a factor which favours the determination of the issues but only in relation to Ground 1, the ultra vires argument. Ground 2 is a fact specific contention in respect of the exercise of discretion by the Duty Member, as to which it was clarified at the hearing that the Secretary of State relied upon the failure to take account of material considerations. As such, I am entirely satisfied that there is no longer any proper basis to resolve Ground 2. Even in respect of Ground 1 there are, however, other aspects of the context of this dispute which in my view strongly suggest that there are no exceptional circumstances which could warrant the determination of questions which are raised in this case in circumstances where the interested party has already completed his sentence and been released.

33. In a witness statement which is before the court Mr Michael Atkins, the Legal Advisor to the Board, explains that since the enactment of the Terrorist Offenders (Restriction of Early Release) Act 2020, which requires prisoners serving sentences for terror crimes and terror related crimes to have their cases referred to the Parole Board before release, eight cases have been considered in which a Special Advocate was appointed and a CLOSED material procedure held. The details of those cases are set out by Mr Atkins in the witness statement and none of them raised the issue which arises in the present case. It appears, therefore, that far from there being numerous cases that might depend on the resolution of the issues before us, this case is presently

unique. In our view that is a factor which weighs very heavily against exercising our discretion to determine it.

34. For the good reason that it is sensitive, there is nothing about the facts of this case before the court to explain the nature of the contentions with respect to relevance with which the Duty Member was concerned. In cases of this kind the factual context of the dispute may be of assistance to a court seeking to address the points of construction that arise for decision. The detail of the facts relating to the dispute about relevance of contested material may be of use to the court by adding context to the construction exercise. In this case there was no such dispute. When the Special Advocate saw it, he agreed with the Secretary of State that it was irrelevant. Construing statutory provisions in a vacuum is a dangerous exercise. This a further reason to decline to determine the dispute.

35. The issue is illustrated by a submission made orally by Sir James Eadie. He submitted that if the Duty Member had needed the assistance of submissions when deciding relevance, he should have asked Mr. Forster KC, as Counsel to the Board, to consider the material and supply that assistance. This is the only case where Counsel to the Board has been appointed. If that is indeed the answer it could not be said to be applicable to a large number of similar cases which exist or are anticipated.

36. Further, this case involved an issue of relevance which arose after the Special Advocate had been appointed for other reasons. It was not necessary to appoint a special advocate at the time when the relevance decision fell to be made, which is the situation contemplated in Rule 17(8) and (9) because there already was one. Thus, the question for the Duty Member was:-

> "In a case where a special advocate has previously been appointed, is it unlawful for the Board to require the Secretary of State to disclose contested material to the special advocate so that they can make submissions to the Board about whether or not it is relevant to the issue before the Board?"

37. The answer to that question does not actually provide the clarification of the Rules which the Secretary of State and the Board seek.

Conclusion

38. Having reflected carefully on the submissions made, I am not persuaded that this case has the qualities which would justify the resolution of the arguments notwithstanding that there are no live issues in dispute in the case. There are not exceptional circumstances demonstrated in this case which would pass the scrutiny required by either the extant authorities or the provisions of Section 31(2A) to (2C) of the 1981 Act. The certified reasons required by section 31(2C) are simply absent. Whilst this case concerns a point of construction of the 2019 Rules, the case is, so far as the evidence discloses, a one-off and there are no others awaiting any outcome from this case. For all of these reasons I have concluded that it would be inappropriate to proceed to resolve the issues which have been raised by the Secretary of State and this application for judicial review must be dismissed.

Lord Justice Edis

39. I agree.