

[2023] PBRA 112

Application for Reconsideration by Adams

Application

1. This is an application by Adams (the Applicant) for reconsideration of a decision of a panel (the Panel) of the Parole Board dated 24 April 2023 (the Panel Decision) making no direction for the Applicant's release but instead making a recommendation for a progressive move to open conditions.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended) provides that applications for reconsideration may be made in eligible cases either on the basis that (a) it is irrational; (b) that it is procedurally unfair and/or that (c) there contains an error of law.
3. I have considered the application on the papers. These are the Panel Decision, the application for reconsideration of the Panel Decision, the email from the Applicant's legal representative dated 18 May 2023 to the Parole Board in response to an email from the Parole Board to the Applicant's solicitors dated 17 May 2023, the email dated 22 May 2023 from the Public Protection Casework Section (PPCS) on behalf of the Secretary of State (the Respondent) stating that no representations will be made in response to the application for reconsideration save for one matter set out in paragraph 54 below and the Applicant's dossier containing 576 pages.
4. The grounds for seeking reconsideration are that the Panel erred in not concluding that the Applicant's risk could be managed in the community and that his release should have been ordered because:
 - i. *"The Panel should have adjourned the hearing to allow the Panel to have access to and to review all the relevant material"* and the failure to do so amounted to procedural unfairness (Ground 1).
 - ii. The Panel acted irrationally in not adjourning or deferring the hearing so that the requisite information specified in Ground 1 could be obtained (Ground 2).
 - iii. The Panel acted procedurally unfairly by failing to provide adequate reasons for not accepting the recommendations of the professional witnesses (Ground 3).



Background

5. On 14th June 2007, the Applicant, who was then 40 years old and who had previous convictions, for sexual offences, received 5 mandatory life sentences with a tariff of 90 months for 5 counts of rape of a girl under the age of 13 years.
6. The Applicant had befriended the mother of his victim and sexually abused her daughter over a six-month period having carefully groomed the family by purchasing gifts and holidays. He admitted his guilt and he explained that he would seek out sex with his victim at every opportunity.
7. The Applicant had earlier convictions for sexual offences. In 1996, he had received a 10-month prison sentence for the sexual assault of a 14-year-old girl, although he denies he committed this offence. In 1998, he received a 12-year prison sentence for the rape and indecent assault of his 8-year-old niece, but he maintains his innocence of these offences.
8. The Panel noted that the Applicant had been transferred to open conditions in September 2016. While he was at that prison, the Applicant was told that the police were undertaking a historical sexual abuse inquiry and he was interviewed. The Panel assumed that no further action was taken in respect of those allegations given the amount of time that has now elapsed.
9. The Applicant was returned to prison in May 2017 because there were concerns that he was not managing his own risk. There was a concern that he had been in possession of inappropriate items, that he had been threatening to another prisoner, that he had attempted to obtain adult channels through Freeview, and that he had a sexually explicit DVD in his possession. The Applicant denied these allegations contending that he was sharing a dormitory so that it could have been others who were responsible. A previous panel had attached little weight to these concerns.
10. A previous Panel was much more concerned by attempts made by the Applicant to purchase four DVDs which were blocked by the Applicant's then Offender Supervisor who considered the DVDs to be inappropriate. The previous Panel recorded that all witnesses were of the view that on the balance of probabilities the DVDs the Applicant ordered "*suggested a continuing sexual interest in younger girls indicating that [the Applicant has] a continuing capacity for sexual interest in children*". Since then, he has successfully completed the Healthy Sex Programme (HSP) and is said to have improved his insight into his behaviour which led to his return to closed condition.
11. In June 2021, the Applicant was convicted of charges of attempted buggery of a boy under 16 years of age and indecent assault both committed between May 1982 and June 1983. He received a three-year custodial sentence for these offences.

The hearing before the Panel

12. A three-member Panel of the Board, including a Psychologist, a Psychiatrist and an Independent Member convened for an oral hearing on 12 April 2023, at which the Applicant was legally represented.

13. The Panel heard oral evidence from:

- (a) The Applicant's Prison Offender Manager (POM).
- (b) The Applicant's Community Offender Manager (COM).
- (c) The Prison Commissioned Psychologist (Psych 1)
- (d) The Prisoner Commissioned Psychologist (Psych 2); and from
- (e) The Applicant

14. The evidence before the Panel from the witnesses was that the Applicant's conduct in the closed prison estate had been broadly positive and compliant with his last proven adjudication having taken place in 2017. According to the information in the dossier, the Panel noted that the Applicant had enjoyed Enhanced IEP status since October 2021.

The Evidence of the Applicant's POM

15. The Applicant's POM explained that he had taken on that role since April 2022, and he confirmed that there had been no recent concerns about the Applicant's conduct and compliance in custody. The Applicant had suffered some mental health problems, but he had sought and received the support he needed with the consequence that he avoided any negative coping strategies.

16. As he did not have a personal support network, the Applicant was assessed to be socially isolated. At the time of the hearing, the Applicant was 'Enhanced Two' on the IEP Scheme, meaning the Applicant earned more privileges through good custodial conduct, which was the highest level of conduct possible at the prison. He was, however, unable to work because of an injury to his wrist, but when he was able to work, he had been in employment and receiving positive reports for his work ethic. There had been no recent evidence of any kind of substance misuse or gambling within custody.

17. The POM concluded that the Applicant's release could not be supported at the time of the hearing *"given the lack of clarity around the release and resettlement plans and the lack of a personal support network [and that he] could also struggle with constructive challenge from his professional support network, which was a further concern."*

18. The Applicant also *"appeared to acknowledge that he may retain a capacity to be sexually aroused by a child although he asserted that he would no longer allow himself to act on any such thoughts"*. The Applicant had reported no inappropriate sexual urges and there had been no recent evidence of any inappropriate attitudes or behaviour shown by the Applicant in custody.

The Evidence of the Applicant

19. The Applicant fully accepted liability for the index offences. He accepted committing an incidental offence against a 14-year-old child when he erroneously thought he was touching his partner, which was not the case. In

addition, he maintains that his innocence of the rape and the indecent assault offences against his niece and his most recent conviction of an offence against a male child. The evidence of the Applicant was that he had been opportunistic rather than predatory and that he did not consider himself to have been a sexual predator in the past.

20. He accepted that his alcohol and substance misuse as well as his sexual preoccupation and his gambling habit were parts of his negative lifestyle in the past. He did not consider the victim of his index offences as being *"a victim at the time"* and nor did he consider the consequences of his actions from her perspective. When giving evidence, the Applicant explained that he was at the time of the hearing *"a very different person who could cope positively with the challenges that he faces"*.
21. The Applicant considered that he had no positive role models in his childhood, and he had *"not benefitted from a positive upbringing [and] had been abused and neglected and had been forced to adapt to the abuse that he suffered"*. His present position is that he *"now felt a lot less impulsive and a lot more in control"* which is significant because *"in the past [he] felt he had no control over his own life and so took control over others such as [the young female victim of the index offence]"* who he *"could recognize now was looking for a father figure in her life and not a relationship that was sexually abusive"*.
22. When giving evidence, the Applicant explained that when he was last released from custody for the previous offence he felt *"lonely, isolated and unsupported and at that time struggled with PTSD"*- PTSD is classed as an anxiety disorder caused by very stressful, frightening or distressing events. However, he now felt he was *"ready for release"* as *"he had done everything asked of him in custody and jumped through 'every hoop'"*. He accepted that children could not be part of his future and *"he denied having enduring sexual thoughts about a child"*. He believed that *"his early experiences of sexual abuse might have normalized that behaviour to a degree although he did not 'blame' anyone else for the offences he committed"*.
23. The Applicant did not consider at the time of the hearing that he was any longer *"manipulative towards the victim and others although he recognized that at times in custody one would have to be persistent in trying to get what one wanted"*. He explained that he believed that he had then found *"a more productive way of working with others and managing his emotions and past negative beliefs"* and he *"now considers the consequences of his actions far more and is aware of his impact on others"*. The Applicant believed that by the time of the hearing *"he could avoid creating any further victims"* explaining that he did not struggle with any sexual preoccupation anymore and that at that time, he had a greatly reduced level of sexual interest.
24. The evidence of the Applicant was that in the light of his better attitude towards authority figures at the time of the parole hearing, he *"would engage and comply [with them] if released [and] he felt that he was more likely to ask for help if he needed it and he would welcome any support provided for him"*.
25. The Applicant believed that he could cope with the release at the time of the panel hearing, and he could still telephone the identified support service in his

release location although he hoped to spend as little time as possible in this location before looking to settle elsewhere as he hoped for a fresh start. It was pointed out by the Panel that the Applicant does have financial security to be able to secure independent accommodation and he was determined to avoid a return to custody.

26. Although the Applicant hoped that there would not be media coverage of his case, he felt that he could cope if it occurred and that he would discuss the situations with a professional if it occurred. The Applicant explained that he had no plans to return to a previous location in the light of past threats made against him there. He had no issues with the proposed license conditions. His intention was to be a social drinker as he felt that there was no need for him to abstain altogether.
27. He explained that when he was last in open conditions, he felt "*let down*" and he noted that there was a lack of support within the open estate both generally and for his mental health. So, the Applicant considered a return to the open estate to be "*pointless*", especially as he did not consider that he needed further "*testing*" in the open estate. He denied seeking out inappropriate DVDs when last in the open estate. He accepted that he had not spent any time in the community unescorted in the open estate and he had only completed one open hospital visit.

The Evidence of the Applicant's COM

28. The COM explained that she had only relatively recently returned to work with the Applicant who she had previously managed and with whom she felt that she had a good and positive relationship. She appreciated the potential benefits of the Applicant being released to access specialist support. The local Approved Premises (APs) had been applied to, but none of them would accept the Applicant for release as he had no local connections to that area.
29. At the time of the hearing, the COM could not support the Applicant's release as he did not have a personal support network and he had not then developed extensive plans for release and resettlement. She did not consider that the Applicant had any core risk reduction work outstanding.
30. The COM considered that the Applicant had completed extensive work to change himself and had made much progress "*in developing an understanding of his past problematic patterns of behaviour and their relevance to risk*".
31. The COM could see benefits in the Applicant progressing through the open prison estate to further develop his release and resettlement plans, to become more confident in the community and to start to develop his release and professional support network. In addition, the COM considered that the Applicant's capacity to avoid gambling, alcohol consumption and any other poor coping skills could also be tested in a less structured environment. The COM noted that the Applicant had been unable to access periods of temporary day or overnight release when he was last in open prison conditions.
32. The COM did not feel confident in making a formal recommendation in relation to the Applicant's classification at the time of the oral hearing.

The Evidence of Psych 1 and Psych 2

33. The evidence of Psych 1 and Psych 2 was taken together, and they agreed on some issues including that:
- (a) Nothing had happened at the hearing to change their assessment of the risk posed by the Applicant.
 - (b) Neither of them considered the Applicant *"to present as posing an imminent risk of causing serious harm currently."*
 - (c) Core risk reduction work was not assessed to be outstanding.
 - (d) The Applicant *"was considered to have developed an understanding of his triggers for offending"*.
 - (e) The Centre was considered to be *"a useful potential resource [for the Applicant]"* although that particular facility was not considered *"to be essential to future management [of the Applicant]"* and alternative agencies, such as Circles of Support and the Lucy Faithful Foundation could be applied to;
 - (f) Neither of them considered that the Applicant posed a *"predatory risk to a child he saw on the streets and saw the circumstances of the index offences where [he] groomed a victim over a period of time to be a more likely risk scenario for [the Applicant]"*.
 - (g) They both endorsed the risk management plan (RMP) and could think of no legitimate way to enhance the plan although Psych 1 was less confident about the clarity of the RMP.
 - (h) Neither psychologist considered the Applicant *"to pose an elevated risk of abscond"*.
 - (i) They both supported the direct release of the Applicant.
34. Psych 1 considered that there was a potential risk of destabilization should the Applicant be released and if he was unable to make the kind of progress that he had hoped to achieve and had expected to, but she considered that there would be warning signs before the Applicant's risks escalated. Psych 1 felt able to support direct release at the time of the hearing considering that the proposed RMP should be able to identify evidence of risk escalation. She did, however, accept that the RMP was *"still not entirely clear and there was currently no confirmed support in place"*. Psych 1 accepted that *"there was a degree of conflict in that decision"* and she *"accepted that it was not yet known how [the Applicant] would cope in the community but she considered that there should be evidence of poor coping manifesting before he potentially reverted to inappropriate sexualized behaviour"*.

The Approach of the Panel

35. The Panel was initially told that there was no Victim Impact Statement to consider in relation to the index offences, but during the hearing, the panel was notified that the victim had reengaged with the Victim Liaison Officer and reportedly wished to submit a statement. The VLO is responsible for keeping victims informed about key stages or events in the offenders' sentence. The Panel made a commitment to consider the statement before reaching a decision in this case, if it could be submitted within 10 days of the oral hearing. Having allowed that period to pass, no such statement had been received.

36. After having considered the written and oral evidence, the Panel concluded that there were *“significant risk factors linked to [the Applicant’s] offending history”* which included:
- (a) A sexual attraction to, if not preference for children.
 - (b) Emotional congruence with children.
 - (c) A capacity to groom and manipulate others.
 - (d) A degree of sexual preoccupation and a sense of sexual entitlement.
 - (e) The lack of fulfilling adult intimate relationships.
 - (f) Experiences of repeated childhood sexual abuse and a legacy of trauma from these experiences.
 - (g) Feelings of low self-esteem and self-worth.
 - (h) Alcohol and substance misuse, which can disinhibit [the Applicant].
 - (i) A history of gambling, which was indicative of *“poor coping in the past.”* (These risk factors will hereinafter be collectively referred to as *“the specified significant risk factors”*)
37. The Panel considered that the protective factors in the Applicant’s case were *“based around the extensive work that [the Applicant] has completed since conviction, his generally positive and compliant custodial conduct of late and his avoidance of any proven sexually inappropriate behaviour for a sustained period.”*
38. On the issue of risk, the Panel noted that the most recent risk assessment within the dossier showed that the Applicant *“was assessed as posing a high risk of causing serious harm to children and a medium risk to the public”*. Offender Group Reconviction Scale (OGRS) scores *“indicate that he belongs to a group of offenders who present with a low likelihood of reoffending within two years.”* The indication from the Offender Assessment System (OASys) after *“taking dynamic factors into account indicates a low likelihood of further general offending and a low likelihood of further violent offending”*.
39. According to OSPC, a static assessment of the likelihood of further contact sexual offending, the Applicant constituted a medium risk, while OSP1 which was a static assessment of further internet sexual offending stated that the Applicant posed a low risk- both OSPC and OSP1 are used as predictors of sex offending risks. The Spousal Assault Risk Assessment, which assessed the likelihood of the Applicant being violent towards a partner in the future assessed him as posing a low risk. The Applicant was assessed as posing a low risk of serious recidivism according to Risk of Serious Recidivism.
40. After considering the oral and written evidence, the Panel concluded that these assessments were *“broadly fair and accurate assessments of [the risks posed by the Applicant].”* The Panel noted that the last of his offences likely to cause serious harm or fear of serious harm to others were committed *“a long time ago”*, and that he has spent a very lengthy period in custody since conviction and significantly *“his capacity to cope appropriately and pre-socially in the community remains unknown”*. The conclusion of the Panel was that the Applicant should be managed as a *“high risk offender particularly as he has still to be tested effectively outside the closed prison estate since conviction”*.
41. The RMP was considered by the Panel, and it was explained by the COM that if released, the Applicant would have a placement lasting 8 weeks in an AP. The

COM did not believe that the Applicant would be eligible for a placement in a Psychologically Informed Planned Environment while in the longer term, the Applicant's access to resources would allow him to obtain private rented accommodation. Significantly, the COM's other demands on her time would mean that she would only have limited contact with the Applicant if he were to be released there.

42. The Panel was concerned whether there would be adequate oversight of the Applicant if released. There were no local services in operation in the area to which the Applicant would be released at the time of the panel hearing to provide services for released sexual offenders although an active intensive service was in the process of being developed.
43. The Panel had to determine the significant question of whether it was necessary for the protection of the public for the Applicant to remain in custody. The Panel took into account the points made on the Applicant's behalf by his legal representative including the extensive offending behaviour work completed by the Applicant in custody, his positive custodial conduct and his avoidance of substance misuse in any form. In addition, the panel took account of the facts that first, the Applicant was not assessed as posing an imminent risk of causing serious harm; second, there was no core risk reduction work outstanding for him to complete; third, that the professionals *"should be able to identify warning signs if his risks were escalating"*; and fourth that he *"had avoided sexually inappropriate behaviours in custody for some time"*.
44. The professionals gave *"very mixed recommendations"* in this case with the two prison psychologists supporting release but with the Psych 1 being uncertain about some parts of the RMP while the COM did not feel confident in making a formal recommendation in relation to the Applicant's classification at the time of the oral hearing. The POM asserted that the Applicant's release could not be supported at the time of the hearing *"given the lack of clarity around the release and resettlement plans and the lack of a personal support network [and that he] could also struggle with constructive challenge from his professional support network, which was a further concern."*
45. The Panel explained that it was concerned about:
- (a) *"The very serious nature of the index offences and various other elements of [the Applicant's] offending history"*.
 - (b) The fact that *"on the basis of convictions, [the Applicant] has a serious history of offending against children"*.
 - (c) *"The index offences established [the Applicant] to have the capacity to groom, manipulate and deceive others [for] the purpose of meeting his sexual needs"*.
 - (d) *"The concerns about [the Applicant] potentially attempting to access inappropriate DVDs within the recent past and the reports of [the Applicant's] conduct and compliance deteriorating when he was last in the open prison estate"*.
 - (e) *"The Applicant's capacity to cope within the community was unknown, given the absence of any testing within open prison conditions to date and the risk management plan appeared to be inadequate and incomplete"*.

(f) "[The Applicant] had been clear about not wanting to settle in a particular location and would now be compelled to do so, which was a further concern".

(g) "There would be limited oversight of [the Applicant] if he was released and his capacity to share any struggles with professionals could not currently be evidenced".

(h) The specified significant risk factors set out in paragraph 36 above.

46. Having taken those factors into consideration and the points made on the Applicant's behalf by his legal representative as well as the written and oral evidence, the Panel decided that it could not order release as it was not satisfied that it was no longer necessary for the protection of the public that the Applicant should be confined and refused release.

47. The Panel then proceeded to consider whether to recommend the Applicant for a progressive move to open conditions and it did make such a recommendation, but that recommendation is not the subject of the present reconsideration application.

The Relevant Law

Irrationality

48. In **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)**, the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said at para. 116,

"The issue is whether the release decision was so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

49. This test was set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374**. The Divisional Court in **DSD** went on to indicate that in deciding whether a decision of the Parole Board was irrational, due deference had to be given to the expertise of the Parole Board in making decisions relating to parole. The Board, when considering whether to direct a reconsideration, will adopt the same high standard for establishing 'irrationality.' The fact that Rule 28 contains the same adjective as is used in judicial review shows that the same test is to be applied. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

Other

50. It is possible to argue that mistakes in findings of fact made by a decision maker result in the final decision being irrational, but the mistake of fact must be fundamental. The case of **E v Secretary of State for the Home Department [2004] QB 1044** sets out the preconditions for such a conclusion: "there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter; the fact or evidence must have been "established", in the sense that it was uncontroversial and objectively verifiable; the appellant (or his advisors)

must not have been responsible for the mistake; and the mistake must have played a material (though not necessarily decisive) part in the tribunal's reasoning." See also **R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2003] AC 295**, which said that in order to establish that there was a demonstrable mistake of fact in the decision of the panel, an Applicant will have to provide "*objectively verifiable evidence*" of what is asserted to be the true picture.

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

Procedural unfairness

52. A party seeking to complain of procedural unfairness under Rule 28 has to establish that either:
- (a) Express procedures laid down by law were not followed in the making of the relevant decision.
 - (b) They were not given a fair hearing.
 - (c) They were not properly informed of the case against them.
 - (d) They were prevented from putting their case fairly; and/or
 - (e) The panel was not impartial.
53. The overriding objective is to ensure that the Applicant's case was dealt with unjustly.

The reply on behalf of the Respondent

54. PPCS stated in an email dated 22 May 2023 that the Respondent was not making any representations in response to the Applicant's reconsideration application save to assert that the victim in this case had previously engaged with the Victim Contact Service as recorded in the PAROM dated 25 May 2022. Internal management systems record that contact with the victim was lost in 2021 despite the Victim Liaison Officer sending several re-engagement letters. The victim re-established contact with their VLO on 23 May 2022 after the hearing had begun. PPCS submitted that the panel was entitled to decide whether to adjourn or to defer a hearing based on the evidence produced to them during the course of the hearing.

Discussion

55. In dealing with the grounds for reconsideration, it is necessary to stress five matters of basic importance. The first is that the Reconsideration Mechanism is not a process by which the judgment of the Panel when assessing risk can be lightly interfered with. Nor is it a mechanism in which the member carrying out the reconsideration was entitled to substitute his view of the facts in place of those found by the panel, unless, of course, it

is manifestly obvious that there was an error of fact of an egregious nature which can be shown to have directly contributed to the conclusion arrived at by the panel.

56. The second matter of material importance is that when deciding whether a decision of the Panel was irrational, due deference has to be given to the expertise of the panel in making decisions relating to parole.
57. Third, where a Panel arrives at a conclusion, exercising its judgment based on the evidence before it and having regard to the fact they saw and heard the witnesses, it would be inappropriate to direct that the decision be reconsidered unless it is manifestly obvious that there are compelling reasons for interfering with the decision of the panel.
58. Fourth, when considering whether to order reconsideration, appropriate weight must be given to the views of the professional witnesses, but reconsideration cannot be ordered if the panel has put forward adequate reasons for not following the views of the professional witnesses.
59. Fifth, in many cases, there can be more than one decision that a panel can be entitled to arrive at depending on its view of the facts.

Ground 1

60. This ground is that reconsideration should be ordered because the Panel *"should have adjourned the hearing to allow the Panel to have access to and to review all the relevant material"* and the failure to do so amounted to procedural unfairness. It is also contended that the panel should have adjourned to allow the psychologist to have access to and to review all the relevant material.
61. I am unable to accept that ground for the following reasons.
62. First, neither the Applicant's legal team nor the Applicant, nor the psychologists asked during the hearing or at any time prior to the service of the Panel Decision for the Applicant's case to be adjourned or deferred for any of the reasons now suggested or for any other similar reason. The fact that an application for an adjournment was not suggested or made by the Applicant or his legal representative or the psychologist at any time before the Panel Decision was made undermines the contentions in Ground 1 that justice required an adjournment, and that the Applicant's case was dealt with unjustly. Significantly, no reason has been put forward so as to explain why any adjournment was not requested at any time before the Panel Decision was made by the Applicant or his legal representative or by the psychologists.
63. A second or alternative reason why reconsideration should not be ordered is that nothing has been put forward to show that if an adjournment or deferment had been ordered for the reasons set out in Ground 1, it would have produced any relevant evidence which would or could have led to an order for the Applicant's release in the light of the powerful case for refusing

his release set out in paragraph 45 above and the specified significant risk factors.

64. A third or alternative reason why reconsideration should not be ordered is that in any event, due deference must be given to the expertise of the Panel in making decisions relating to parole and that expertise would include deciding whether to adjourn the hearing of the Applicant's case for any of the reasons now suggested and that constitutes an additional or an alternative reason for rejecting this ground.

Ground 2

65. This ground is that the Panel acted irrationally in not adjourning or deferring the hearing so that the requisite information specified in Ground 1 could be obtained. I have concluded that this ground must be rejected for the following reasons.

66. First, the failure of the Panel to adjourn or defer the hearing does not meet the test for showing it was irrational set out in paragraph 48 above of being *"so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it"* bearing in mind that it was not suggested during the hearing by the Applicant's legal representative or by the Applicant or Psychologists that the hearing should be adjourned.

67. A second or alternative reason why this ground must be rejected is that nothing has been put forward to show that a decision by the Panel granting an adjournment for the reasons set out in this Ground would have produced any relevant evidence which would or could have led to an order for the Applicant's release in the light of the powerful case for refusing his release set out in paragraph 45 above and the specified significant risk factors.

68. A third or alternative reason why reconsideration should not be ordered on this ground is that any event, due deference must be given to the expertise of the Panel in making decisions relating to parole and that would be an additional reason for rejecting this complaint.

Ground 3

69. This ground is that the Panel acted procedurally unfairly by failing to provide adequate reasons for not accepting the recommendations of the professional witnesses. This ground cannot be accepted for the following reasons.

70. First, contrary to the Applicant's grounds, the professionals gave *"very mixed recommendations"* in this case with the two psychologists supporting release but with the Psych 1 being uncertain about some parts of the RMP, while the COM felt unable to make a clear recommendation and therefore did not, and could not, support release. The POM concluded that the Applicant's release could not be supported at the time of the hearing *"given the lack of clarity around the release and resettlement plans and the lack of a personal support network [and that he] could also struggle with*

constructive challenge from his professional support network, which was a further concern."

71. Second or alternatively, the Panel gave clear and cogent reasons for refusing the Applicant's release which are set out in paragraphs 45 above and in the specified significant risk factors.

72. Third, a further or alternative reason why reconsideration should not be ordered on this ground is that any event, due deference must be given to the expertise of the Panel in providing reasons relating to parole and that would be an additional reason for rejecting this application.

Conclusion

73. For all these reasons, this application for reconsideration must be refused.

Sir Stephen Silber
14 June 2023