the Parole Board
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[2023] PBRA 212

Application for Reconsideration by Robinson

Application

1. This is an application by Robinson (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated 2 November 2023 (the 2023 Panel decision) not to release the Applicant.

2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the Parole Board Rules) provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) either on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair.

3. I have considered the application on the papers. These are:
   a) The 2023 panel decision;
   b) The Parole Board decision in 2021 ("the 2021 panel decision")
   c) The Applicant's revised application for reconsideration of the 2023 panel decision dated 21 November 2023 which replaces an earlier application for reconsideration;
   d) The email dated 24 November 2023 from the Public Protection Casework Section (PPCS) on behalf of the Secretary of State (the Respondent) stating that no representations will be made by the Respondent in response to the earlier application for reconsideration; and
   e) The Applicant's dossier containing 499 pages.

4. The grounds for seeking reconsideration are that the decisions in the decision to decline to recommend the Applicant's return to category D conditions and to determine that he should remain in closed conditions are that:
   a) the Panel irrationally placed insufficient weight on the work that the Applicant has completed on the London Pathways Unit (LPU) at prison A (Ground 1);
   b) the Panel declined the offer of further information about the work the Applicant has completed on his relationship with professionals while at prison B which was procedurally unfair (Ground 2);
   c) in the circumstances of the case, the decision that the Applicant required a further significant period in the closed estate to work on relationships with women was disproportionate and consequently irrational (Ground 3); and that
   d) the Panel acted irrationally in requesting an "*early opportunity*" for a further review of detention (Ground 4).

Background

5. Prior to the commission of the index offences, the Applicant had been fined £50 in 1995 in a Juvenile Court after he had pleaded guilty to possessing cannabis and he had also received a caution for common assault in 2000.

6. The 2021 panel decision recorded that the Applicant had also admitted:
   a) being frequently involved in using violence while dealing in drugs in the past;
   b) being involved in other criminal activity including cash point robberies
   c) committing a knife attack on a rival gang member and was involved in a stabbing when he was aged 15;
   d) he had two convictions for robbery, but they do not appear on his PNC (Police National Computer) record;
   e) to carrying a loaded gun for three years prior to the index offences because of his involvement in serious criminal activity; and also
   f) expressing regret and remorse for his offending.

7. The Applicant admitted using drugs from the age of 13 with his drug use developing at the age of 16 and that his daily drug and heavy alcohol usage affected his ability to deal with problems while increasing his emotional volatility. Indeed, he has admitted to being under the influence when offending.

8. On 29 September 2006, the Applicant, who was then 28 years old, received an indeterminate sentence of life imprisonment for public protection with a specified minimum term of two years and nine month less remand time which meant that the term he had to serve was one year, six months and one day for the index offences which were offences of arson endangering life, five counts of cruelty or neglect of children and assault occasioning actual bodily harm and one count of possessing or imitation firearm with intent

9. The Judge described the Applicant's behaviour as "*a clear pattern of behaviour*" which "*demonstrated the victimisation and sadistic bullying and violence towards young mothers and young boys*" in two families. She referred to the Applicant's extreme brutality and sadistic cruelty and this led to "*the lives of four people have been probably ruined as a result of his behaviour; certainly, two very disturbed little boys have resulted from what the Applicant did to them*." There was psychological evidence which showed the children had been very disturbed as a result of the Applicant's abusive and sustained conduct which was perpetrated over a sustained period of time.

10. The Applicant committed the index offences which included carrying out a series of violent acts against two former partners and their sons.

11. The Applicant had told a panel that considered his case in 2021, first, that in the past he had enacted violent behaviour which he had learned as a result of his own childhood experiences; second, that he admitted that what he did was cruel; and third, that he fully accepted responsibility for the matters for which he had been convicted and that he felt deeply ashamed of his behaviour.

12. The 2021 panel agreed with a previous panel that the Applicant's use of violence towards these children and their mothers was "*instrumental to secure compliance*

and reinforce [his] dominant role within the family and emotional because of [his] jealousy and poor emotional management".

13. The Applicant had a number of previous psychological assessments which indicated that he suffered from several psychopathic traits though falling below a formal diagnosis of psychopathy The 2021 Panel decision recorded that the Applicant accepted that he still needed support and that he was open to further treatment.

14. The 2021 decision also noted that during his time in custody the Applicant had completed a suite of programmes. These programmes included: Healthy Relationships Programme (HRP), Rehabilitating Addicted Prisoners Trust (RAPT) course, Short Duration Programme (SDP), Enhanced Thinking Skills (ETS), Prisons Addressing Substance Related Offending (PARSO) and a victim awareness course (Sycamore Tree). He had also completed a range of work to address his alcohol and drug use.

15. After the 2019 decision, the Applicant was transferred to prison A in March 2020. He had previously been assessed as unsuitable for the London Pathways Unit (LPU) because of "[*his] poor motivation and denial of having any difficulties".* The Applicant's mother had encouraged him to reapply which he duly did and was accepted. He subsequently described his decision to reapply as "*the best decision he had made."*

16. The 2021 panel decision noted that the Applicant had engaged well with the intensive psychological intervention within the LPU and that he had received very positive progress reports from the psychologist and his key worker there. The Applicant told the panel that he had to adjust to the LPU environment and that he had built trust with his key worker at the LPU.

17. According to the 2021 panel decision, the Applicant had engaged well with the intensive psychology intervention within the LPU, and it recorded "*the very positive progress reports from* [the psychologist there] *and* [the Applicant's key worker there]*".* The Applicant told the 2021 panel that he had to "*adjust a lot to the LPU environment*" and that he had succeed in building relationships especially with his key worker. He had been peer mentor on the LPU.

18. It was noted in the 2021panel decision that the Applicant was then in a relationship with a woman [JWP] who according to his account he had met in 2015 "*when she came into the prison as part of a job fair*" and "*the relationship started in 2019*". The Applicant described the relationship as "*protective and supportive*"; It will become necessary to consider this relationship further when considering the evidence adduced to the 2023 Panel.

19. The panel noted that the Applicant posed a high risk of harm to children, to the public and "*a known adult*". The 2021 panel was not satisfied that the Applicant's risk of serious harm could be safely managed in the community and so did not direct release. It recommended his transfer to open conditions as there were "*a number of areas of risk to be tested in open conditions*".

20. The Respondent accepted the recommendation, and the Applicant was transferred to prison C on 3 March 2022. The following were identified among his objectives for his time in open conditions:

a) "Continue working on developing insight into your risks.
b) Develop appropriate coping strategies and effective communication skills.
c) Maintain/develop a positive open relationship with those responsible for working with you".

The 2023 Decision

21. The Panel noted the Applicant's relationship with the woman, JWP, who the Applicant stated that he had met in 2015 through her participation in a prison jobs fair at prison D where he had been located in 2015-2019. The Applicant's evidence was that the relationship had started in late 2019 and he described it as protective and supportive, but the panel noted that that the relationship had not been tested outside of a closed prison environment and "*therefore your partner is currently identified as being the person most at risk*".

22. JWP had provided an undated "*personal reference*" for the Applicant in support of his 2021 parole review in which she had given the "*job fair account*" of when she had first met the Applicant. She set out her employment history with no reference to her working as a prison officer, but she identified in respect of the Applicant "*their developing relationship*", stating that she "*will support [the Applicant] through his transition and moving forward with as much help, advice and training as I can provide".*

23. The Applicant's Community Offender Manager (COM) was unable to state when the Probation Service had first become aware of the Applicant's relationship with JWP. JWP's previous occupation and the basis of her link with the Applicant had come to light *"by chance"* when an officer at prison C who had previously worked at prison D had recognized JWP when the officer was making a "*domestic*" visit to prison C. The Applicant had been transferred to prison C on 3 March 2022.

24. Having been made subject to pin phone monitoring on 24 May 2022, the Applicant was noted to be phoning JWP several times daily and to be "*abusive, swearing, lecturing, belittling and controlling towards her*" with JWP being "*very subservient*" towards him.

25. Various examples of this conduct were cited in security entries.

26. The Applicant was considered to have *"evidenced collusive behaviour*" and to have "*attempted to deceive professionals*" so that his relationship with JWP was thus "*deemed as not being a protective factor*".

27. Security staff at prison D received information that JWP had been a prison officer at prison C and had been the Applicant's personal officer as evidenced by positive entries she had made about him in 2017-2018 before leaving that employment in 2018.

28. The Applicant's calls were subjected to pin phone monitoring on 24 May 2022, and it was discovered that he was phoning JWP several times daily and to be "*abusive, swearing, lecturing, belittling and controlling towards her*" with JWP being "*very subservient*" towards him. Various examples of this conduct were cited in security entries.

29. JWP gave an account of her having known the Applicant for 20 years which was inconsistent with earlier accounts. She also said that was in sending the Applicant "*approximately £50 every six months*" while into prison records indicated that she had sent him £500 in the period from March to May 2022. The 2023 panel noted that "[JWP] *was considered to have evidenced collusive behavior and to have attempted to deceive professionals*". The relationship between JWP and the Applicant was thus "*deemed as not being a protective factor*" by the 2023 panel.

30. Staff at prison D "*agreed that* [the Applicant's] *abusive/ controlling behavior towards his partner could not be managed in open conditions and his progression into ROTL* [release on temporary licence] *could not be supported due to the risks presented to* [JWP]*"* By a letter dated 22 December 2022, the Respondent informed the Applicant that he was no longer suitable for open conditions and he was then designated as a category C prisoner in March 2023.

31. After an initial stay in prison E, the Applicant was moved to prison B on 24 March 2023 lodging initially on the PIPE (Psychologically Informed Planned Environment) Unit while awaiting a placement with the Progression Regime which he joined on 11 August 2023. A letter to the Applicant on 20 July 2023 from the PIPE clinical lead stated that "*at this time, a placement on the PIPE, though it could be beneficial, does not present as necessary*". In evidence to the 2023 panel, the Applicant was frank that his time at prison B "*could not offer him very much*" as it was "*just another prison*."

32. In his interview with his psychologist, the Applicant accepted that his communications with JWP had not been "*great*", that his directness and aggression could appear "*paralleling*" and that his partner was "*not good at taking instructions*". In a recent interview with the Applicant's new COM, the Applicant was reported to have accepted that establishing a relationship with JWP without reporting the full truth about it to his COM or Prison Offender Manager (POM) *"had been a mistake*" and that his way of talking to JWP had "*not been appropriate*". At the hearing before the panel, the Applicant said that the reason why he had failed to disclose the circumstances in which he and JWP had got to know each other was that he had been "*scared*" and "*frightened*" of doing so "*for her sake because of the possible consequences for* [JWP]*".*

33. In her evidence, the Applicant's POM reported that the Applicant had accepted that he had been "*demanding*" and "*borderline controlling*".

34. The Applicant had also been maintaining links with two other women, namely CG and DG.

35. The Applicant poses a high risk of spousal assault under the SARA (spousal assault risk assessment) rating. In the light of this assessment and the gravity of the

Applicant's offending which led to his IPP sentence, the panel interpreted cautiously the assessment that he poses a low probability of different types of reoffending as it believes that the Applicant posed a high risk of the Applicant causing serious harm to the public and known adults. OASys (Offender Assessment System) has identified a large number of circumstances which are likely to increase the high risk of the Applicant causing serious harm such as an unstable lifestyle.

36. The panel concluded that:

(a) The Applicant had "*omitted to disclose the basis on which he had come to know his most recent partner*";
(b) The Applicant and his partner "*colluded in that deception, the extent to which he orchestrated this is not known*";
(c) "[the Applicant's] *explanation now for lying in that way* [was] *vague and unconvincing*";
(d) "*The deceit [of the Applicant in not disclosing the basis on which he had come to know JWP] would probably have persisted indefinitely, but for the chance recognition of his partner by a member of* [prison C] *staff, prompting the monitoring of their phone communications*";
(e) It is agreed by professionals giving evidence to the current panel that exchanges between the Applicant and his partner were "*offence paralleling, strongly suggesting that he still held the view that women in his life should do as they were told*;"
(f) "[the Applicant's] *more recent assertion that* [JWP] *is 'not good at taking instructions' is not in his favour in that regard, casting some doubt on the extent to which he subscribes to respect equality, tolerance, and negotiation as features of healthy relationship;"*
(g) In respect of the Applicant's involvement with other women, namely CG, he has maintained that he has no interest in an emotionally intimate relationship with her or anyone else, "*given* [the Applicant's] *capacity for deceit that assertion must be viewed cautiously;"*
(h) *"By his own acknowledgment, [the Applicant's] time at prison B has not served greatly to promote progress or address risk";*
(i) It "*did not gain a strong sense of [the Applicant's] insight into and associated capacity to self- manage his personality traits and his attitudes towards intimate relationships;"*
(j) The Applicant's case for release was not supported by any of the professionals and the panel concluded that it remains necessary for the protection of the public that he should be confined. In her closing submissions, the Applicant's solicitor does not suggest otherwise;
(k) The Panel "*is firmly of the view that* [the Applicant] *does not meet the statutory test for release;"*
(l) The Panel considered the risk posed by the Applicant to an intimate partner to remain live. The panel were "*unconvinced that the Applicant can currently be relied on either to be transparent with professionals or to exercise sound self-management* [while] *his attitudes and expectations regarding intimate relationships appear to remain in no small degree unreconstructed"* with the consequence that it cannot recommend that he should progress back to open conditions.

37. (These reasons will hereinafter collectively be referred to as *"the Parole Board's Conclusions"*)

The Relevant Law

Parole Board Rules 2019 (as amended)

Irrationality

38. 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."*

39. 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 or not 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

40. 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 uncontentious 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.

41. 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 summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of decision letter and it would be wrong to require elaborate or impeccable standards of craftsmanship."

Procedural Unfairness

42. A party seeking to complain of procedural unfairness under Rule 28 has to establish that either:
(a) express procedures laid down by the 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.

43. The overriding objective is to ensure that the Applicant's case was not dealt with justly.

The reply on behalf of the Respondent

44. PPCS stated in an email dated 24 November 2023 that the Respondent was not making any representations in response to the Applicant's original reconsideration application and the Respondent has failed to make any representations within the prescribed period to the revised reconsideration application.

Discussion

45. 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.

46. 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.

47. 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.

48. 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.

49. 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

50. The first ground of challenge is the panel irrationally placed insufficient weight on the work that the Applicant had successfully completed work at the LPU at HMP Brixton and that they failed to provide adequate reasons as to why "*they effectively discounted it*". It is pointed out that the 2023 panel decision records that the Applicant in 2019 transferred to prison A where he engaged well with intensive psychological intervention within the LPU while receiving "*very positive progress reports from the psychologist and his key worker*". He also addressed work on his experience of traumas, completed work on matters such as his use of violence and attitudes towards women. and relationships. There was a security report for January 2022 shortly before the Applicant's transfer out of prison A recording, he "*is very rude, ignorant and argumentative with both staff and his Peers…Staff did not feel comfortable working with him*."

51. This ground cannot be accepted for six reasons which individually or cumulatively show why this ground fails. First, this ground fails to show why all or any of the Parole Board's conclusions set out in paragraph 36 would no longer apply if the panel had paid sufficient weight on the work that the Applicant had successfully completed work at the LPU at prison A. In those circumstances, the Applicant has failed to show that this is a valid ground of challenge.

52. Second, this ground has to be rejected as it fails to identify each and every aspect of the work completed by the Applicant at the LPU to which the panel allegedly irrationally paid "*insufficient weight*" stating when the Applicant completed it. It is more than surprising that this work has not been described because without such a full description of it or any description of it, it is not possible to ascertain if the panel "*irrationally placed insufficient weight*" on it and so this ground fails.

53. Third, the essential and crucial task of the panel at the hearing was to consider if the prisoner could be safely released and that entailed ascertaining the risk he posed at and after the date of the hearing; that exercise entailed looking at all aspects of his conduct during these periods. Any relevant work that he had done previously at the LPU has had to be considered in the light of his subsequent conduct to ascertain what he had learnt. After all, a prisoner should not be released merely because he had in the past done admirable and impressive courses or work in custody, but for other reasons still remained a serious risk on release at and after the time of the Board's hearing. The task of the panel on this parole application was to consider the risk posed by the prisoner at and after the date of the hearing. In fact, that is what the panel considered before concluding that he could not be safely released or recommended for open conditions. The panel was not required to look at courses he had undertaken years earlier if it was concluded that he could not be safely released.

54. Fourth, the Applicant has failed to contend, let alone explain, why if the Panel had actually considered the work completed by the Applicant at the LPU, which of the

Parole Board's conclusions set out in paragraph 36 above would no longer apply. Consequently, this ground must be rejected.

55. The fifth reason why this ground must be rejected is that the Applicant's case on this issue fails to reach the high threshold for a finding of irrationality which is in the words of the Divisional Court in the **DSD case** set out in paragraph 37 above that the panel's 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*." After all, Panel Board's conclusions in paragraph 36 above consisted of an analysis of the evidence and the Applicant has failed to contend, let alone establish, that those conclusions were "*so outrageous*" in not attaching weight to the unspecified work done by the applicant in the LPU which had not prevented the Applicant from failing to satisfy the requirements for being released or being suitable for release to open conditions.

56. A sixth reason why this ground cannot be accepted is that in determining whether a decision of a Parole Board panel was irrational, due deference has to be given to the expertise of the panel in making decisions relating to parole. That deference extends to deciding what weight it attaches to evidence, which is what the panel did when it reached its conclusions set out in the Parole Board's conclusions.

57. For all these reasons, this ground must be rejected.

Ground 2

58. This ground is that the panel acted procedurally unfairly when it declined the offer of further information about the work that the Applicant had completed on his relationship with professionals while at prison B. The panel had been informed that the Applicant had done work with Phoenix Futures on his relationship with professionals but at the time of the hearing, no memorandum or record was available to corroborate the work. In the closing submissions of the Applicant's solicitor, it was said that the Applicant has engaged with Phoenix Futures while at prison B and that the Applicant has "*shared details of some of the work he had done within the hearing [and] should the panel wish to see the memorandum (which we do not yet have) we would invite the direction to be made*". The panel did not request that information and it is that omission which is the basis of this ground. This ground must be rejected for four reasons which individually or cumulatively show why this ground has no merit.

59. First, it is the duty of all parties to supply to the panel all information which they consider relevant to the decision and their case so that a party cannot delegate to another party that duty to supply information to the panel and then complain if the panel do not obtain it. No reason has been put forward as to why the Applicant's advisors did not ensure that the Panel were supplied with the memorandum.

60. Second, there is no evidence to show that the memorandum contained any information relevant to the parole application and so there is no procedural unfairness in the panel not having the memorandum. It is surprising that the Applicant's solicitors had not obtained a copy of the memorandum so as show why

it contained relevant and probative evidence. In the absence of such information, I cannot find that it contained relevant evidence.

61. Third, to succeed in a claim for procedural unfairness, it must be shown that the Applicant's case was dealt with unjustly which cannot be the case when the Applicant's solicitors could easily have obtained the memorandum and sent it to the panel if they considered it relevant and probative.

62. Fourth, the Applicant was frank that his time at prison B "*could not offer him very much*" as it was "*just another prison*" and "*by his own acknowledgment,* [the Applicant's] *time at* [prison B] *has not served greatly to promote progress or address risk*". This admission shows that it is highly unlikely that the memorandum would have been of value, and nothing has been put forward to show that this is not the case.

63. A fifth reason why this ground cannot be accepted is that in determining whether a decision of a Parole Board panel was irrational, due deference has to be given to the expertise of the panel in making decisions relating to parole.

64. For all these reasons, this ground must fail.

Ground 3

65. This ground is that in the circumstances of the case, the decision of the panel requiring that Applicant should spend the next period of his confinement in closed conditions is irrational especially as his relationship with women (notably his partner JWP and to a lesser extent his friendship with another female) could not reasonably be tested in the closed estate.

66. This ground must be rejected for four reasons which individually or cumulatively show why this ground has no merit.

67. First, this ground fails to appreciate that the task for the panel was to determine first whether it could direct that the Applicant should be released and then if his release could not be directed, the second task for the panel was to decide whether it could recommend to the Respondent that the Applicant should be transferred to open conditions. If such recommendation could not be made, the Applicant would have to go to closed conditions and there was nothing irrational about that conclusion and there is no basis for stating that in those circumstances, the Applicant should not be sent to closed conditions.

68. The Panel applied the correct tests and explained clearly why the Applicant could not be released and then gave clear reasons why they could not recommend to the Respondent that the Applicant should be transferred to open conditions as explained in the Parole Board's conclusions in paragraph 36 above. In consequence, this ground must be rejected.

69. A second reason why this ground fails is that contrary to the Applicant's grounds, the panel was not empowered to release him just so that his relationship with women could be tested irrespective of whether he could be safely released. As has

been explained, the panel could only have released the Applicant or recommended his transfer to open conditions if the appropriate tests had been satisfied but as has been explained, the Applicant failed to satisfy those appropriate tests.

70. A third reason why this ground cannot succeed as nothing has been put forward to show that the panel was not entitled to reach the panel's conclusions which are set out in Paragraph 36 above.

71. A fourth reason for rejecting this ground is that in determining whether a decision of a Parole Board panel was irrational, due deference must be given to the expertise of the panel in making decisions relating to parole.

Ground 4

72. This ground is that the panel acted irrationally in requesting an "*early opportunity*" for a further review of detention. It is said that the panel's concern about the extent to which the Applicant had exceeded his tariff expiry date and their request for "*his detention to be further reviewed at an early opportunity*" whilst authorizing a significant period of further detention is irrational.

73. This ground fails for at least 3 reasons. First, nothing has been put forward to show that the panel was not entitled to reach the panel's conclusions which are set out in Paragraph 36 above and this ground does not undermine those conclusions or the decision to refuse to release the Applicant or to refuse to recommend that the Applicant is moved to open conditions.

74. Second, this contention fails to appreciate the significance of the fact that the Applicant is fifteen and a half years post tariff and the fact that Lord Reed giving the judgment of the Supreme Court explained in **Osborn v Parole Board** [**2013] UKSC 61 and [2014] 1 AC 1159 [83]** that *"it has been said more than once that the board should scrutinize ever more anxiously whether the level of risk is unacceptable, the longer the time the prisoner has spent in prison following the expiry of his tariff"* (**R v Parole Board, Ex p Bradley** [**1991] 1 WLR 134, 146; R v Parole Board, Ex p Wilson [1992] QB 740, 747**).

75. A further or alternative reason why this ground fails is because deference is owed to the panel over matters such as whether to request an "*early opportunity"* for a further review of detention. In any event, nothing has been put forward to show that the request was irrational.

Conclusion

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

Sir Stephen Silber
20 December 2023