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[2021] PBRA 131

Application for Reconsideration by Harris

Application

1. This is an application by Harris (the Applicant) for reconsideration of a decision of a panel of the Board contained in a letter dated 12 July 2021 (the Decision Letter) not to release him This followed an oral hearing held on 17 June 2021 conducted remotely via a video link on account of the COVID 19 restrictions in place at the time.

2. The panel consisted of a judicial chair and two judicial members.

3. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.

4. I have considered the application on the papers. These are the Decision Letter, the Application for Reconsideration and the dossier totalling 497 pages.

Background

5. The Applicant is serving an extended determinate sentence of 10 years made up of a custodial period of 6 years and an extended licence period of 4 years. The sentence was imposed in August 2014 for two offences of arson with intent to endanger life or being reckless whether life would be endangered. The offences were committed on two separate occasions in February 2014. The Applicant was 32 years of age at the time of the offences and at the time of sentencing. He is now 39 years of age. His Sentence Expiry Date is 15 March 2024.

6. The Applicant was automatically released on his Conditional Release Date, which was 4 May 2018, but he was recalled to custody on 11 May 2018 for failing to keep in contact with his supervising officer. He returned to custody on 14 May 2018.

7. A previous panel considered the circumstances of the Applicant's recall at an oral hearing in November 2019 and in its decision dated 1 December 2019 (the 2019 Decision), it concluded that the decision to recall the Applicant was reasonable and appropriate. That panel did not direct the Applicant's release and it explained that during the Applicant's sentence *"the development of [his] interest in arson and [his] use of it to gain attention had not been adequately explored and required core risk reduction work to develop [his] understanding and ability to manage emotions to reduce risk."*

The Current Parole Review

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8. The Secretary of State has referred the Applicant's case to the Parole Board to consider whether to direct his re-release.

9. A first hearing of the panel took place on 9 April 2021, but it was adjourned; it was explained by the panel that "this adjournment has been directed to give [the Applicant] the opportunity to take legal advice and the opportunity to be legally represented at the reconvened hearing". The only evidence taken at the hearing on 9 April 2021 concerned the question of legal representation of the Applicant.

10. At the hearing on 17 June 2021, the Applicant was legally represented. The Secretary of State was not represented, and he made no representations. The written evidence was in a dossier containing 480 pages and no information was withheld from the Applicant.

11. On 17 June 2021, when the adjourned hearing took place, the panel was differently constituted from the one that had been convened on 9 April 2021 because one member of the original panel was not available, and another member joined in his place. No objections were made by the Applicant or by his legal representative to this change in the constitution of the panel.

12. The panel heard oral evidence from:

(i) The Applicant's Prison Offender Manager (POM) who had been the Applicant's POM since October 2020 but prior to that she had knowledge of the Applicant through working on wings where he had resided at a prison establishment.

(ii) The Applicant's Community Manager (COM) who became the Applicant's lead COM in December 2020 but who had had the opportunity to discuss matters with her predecessor as the Applicant's COM and who had been fully involved in the Applicant's release planning proposals. The Applicant's previous COM also gave evidence.

(iii) The Prison Psychologist who had completed a psychological assessment of the Applicant on 12 March 2021 and from,

(iv) The Applicant.

13. The panel in the Decision Letter referred to the 2019 Decision in which it was stated that the Applicant's list of previous convictions commenced when he was a juvenile and that the largest category of the Applicant's previous convictions comprised offences of dishonesty and that he also had convictions for offences of assaulting a constable, using threatening behaviour and being in possession of an offensive weapon. The panel noted that in the 2019 Decision, it was pointed out that the Applicant had breached *"many court orders or other obligations [which] indicates that [he has] a poor attitude towards authority, supervision and compliance".* The Applicant accumulated 99 convictions between October 1998 and September 2015 for 148 offences.

14. The Applicant's first arson offence occurred in 2009 when he set light to a wheelie bin because he was *"fascinated by fire"* and for which he was sentenced to 16 weeks' imprisonment. His second arson offence was committed in 2010 when he committed the offence of reckless arson when he set fire to his bed whilst barricaded in his room in the hostel where he was staying. He also self-harmed. He received an indeterminate sentence for the offence of reckless arson which on appeal was reduced to a determinate sentence of 3 years' imprisonment.

15. The Applicant's third and fourth arson offences were the two index offences which were committed in his cell at a prison establishment where he was serving a short sentence for dishonestly. On the afternoons of both 18 and 24 February 2014, he set light to items when he was locked in his own cell. On the first occasion, the fire alarm was activated, and the investigating officer saw smoke coming from his call and pieces of a mattress were smoking. On the second occasion, an officer noticed smoke coming from the Applicant's cell with a wastepaper bin on fire. Paper and a blanket were alight in the bin. The Applicant admitted that his purpose of starting these fires was to kill himself and others, but he later said as explained in the July 2021 decision his arson *"was a cry for help".* As has been explained, for these index offences, he received an extended determinate sentence of 10 years' imprisonment.

16. On 23 September 2015, he pleaded guilty to his fifth offence of arson which was committed on 18 June 2015 for which he received a sentence of 4 weeks' imprisonment. There was also evidence from the Prison Psychologist of further incidents in addition to the five arson incidents set out above of the Applicant setting fires throughout 2014, 2015 and 2016 and, according to the panel, *"some of [these incidents] were apparent acts of self-harming".* In this judgment, I will refer to all these incidents of arson committed from 2009 to 2016 as "the Applicant's arson record". The panel noted that at the time of the hearing in June 2021, there had been no recently reported incidents of the Applicant starting a fire.

17. The Prison Psychologist in her evidence stated that the Applicant minimalised the seriousness and dangerousness of his conduct in starting fires. She explained that the Applicant did not regard his acts of fire-setting as being acts of violence. The panel noted that in his evidence to the previous Panel which gave the 2019 Decision, the Applicant had explained that he used arson *"as the most extreme way to get help"* and he expressed similar sentiments to the panel in the present cases explaining *"how at the time of the arson in the [hostel] [his] life was a mess and [he] had no support"*.

18. The Applicant's risk factors, which are things in life that may increase the chances of him reoffending in future, were described by the panel as including *"an interest or a fascination with fire, using fire as a weapon against [himself] and as a threat towards others, using fire to seek revenge against others lacking victim empathy."* The Applicant's POM considered a risk factor arose from the Applicant's difficulties in managing his emotions and his boredom. The Prison Psychologist considered that the Applicant's risks arose from, among other factors, his difficulties in regulating emotions, difficulties in managing interpersonal relationships, problem solving and a tendency to avoid problem. The Applicant's previous COM stated that the Applicant had himself noted that he was unable to manage his risks and to regulate his emotions within a multi-occupancy hostel as was evidenced by his previous fire-setting at the hostel where he had been staying.

19. As for the Applicant's protective factors (which are things in life that may reduce the chances of a person reoffending in future), it was said that the Applicant had family support with his mother, who was regarded as a significantly supportive person. There was, however, evidence that if the Applicant was to live with her, this would *"present challenges".* The Applicant's other family members could provide him with accommodation if there was a need for a break for the Applicant from residence with his mother.

20. In the 2019 Decision, the previous panel concluded that the Applicant's risk had not been sufficiently reduced to justify his release. That panel had concluded that during his sentence, the development of his interest in arson and his use of it to gain attention had not been adequately explored. It considered that this required core risk reduction work to develop his understanding and his ability to manage emotions to reduce his risk. The panel accepted that part of the Applicant's problems leading to his recall arose from the decision to release him to location here he had no support and no fixed abode.

21. Since November 2019, the Applicant had received adjudications in late 2019 and early 2020 for blocking locks and throwing his television from one landing to another. The Applicant was reported to have said that he was bored when he broke the locks and that he damaged his television out of anger because he was not receiving attention. Since July 2020, the Applicant has not received either any adjudications or any negative National Offender Information System (CNOMIS) entries. Since December 2020, he had earned more privileges through good custodial conduct as well as receiving positive CNOMIS entries for his good behaviour and his attitude on his wing.

22. The evidence of the Applicant's POM and COM was that the Applicant had shown significant improvement with regards to his communication skills, his thinking skills and his behaviour. They both spoke of a marked improvement in the Applicant's relations and interactions with prison staff and his probation officers.

23. The Applicant's POM and COM both recommend his release in accordance with the Applicant's risk management plan (RMP), which contemplated his release to a family member's address and his employment in a family member's business. The panel noted that the Prison Psychologist had concluded that the Applicant's relationship with his mother could be "a destabilising factor" and not a protective factor, but that there was available "respite addresses" of the Applicant's other family members.

24. Part of the RMP entailed the possible involvement in the Intensive Intervention and Risk Management Service (IIRMS). That service delivered individually tailored and psychologically informed interventions directly to offenders as part of its aim to manage the offender's risk of serious harm and reoffending. The Applicant's previous COM suggested that the additional support for Intensive Intervention and Risk Management Service to the Applicant might address his lack of coping strategies and address his risk of arson without necessitating a specialist intervention as recommended by the Prison Psychologist.

25. There were, however, obstacles to be overcome before the Applicant could be accepted on the Intensive Intervention and Risk Management Service and the panel concluded that *"[his] risk might well have to be managed without it being in place."*

26. The Prison Psychologist did not support the Applicant's release as she believed that the Applicant's underlying and interlinked risk factors had not been addressed and that there was core risk reduction work which the Applicant had to complete in custody. She considered that the Applicant's improved custodial behaviour might be due to lockdown conditions where he faced *"few provocations or triggers from others"* and that therefore *"it was difficult in these circumstances to translate improved behaviour in custody to the less restricted environment of the community".*

27. She did not consider any engagement with IIRMS would address [the Applicant's] "underlying risk factors" but without IIRMS, she considered that the Applicant's risk "was even less manageable in the community". She noted that the Applicant "*has reported that his fire-setting is a form of communication to express his frustration, as a means of self-harm and to escape difficult life circumstances such as debts".*

28. As to the current risk posed by the Applicant, the panel accepted the standardised assessment measure using static information which gave the probability of any proven reoffending by the Applicant as "very high". It also accepted the assessment, which was that when dynamic factors are added, the standardised assessment showed that the Applicant's probability of further non-violent offending was "high", and that his probability of further violent offending was "medium".

29. The panel also accepted an assessment of risks and their origin which took into account a range of factors including the Applicant's index offending and it concluded that his risk of causing serious harm in the community to the public and to the staff was "high", while that risk to known adults was "medium" and his risk to children was "low". According to the panel, these risk factors were caused by the Applicant's difficulties in "*regulating [his] emotions*".

30. After consideration, the panel concluded that it could not accept that the Applicant's outstanding risks as*" clearly identified by [the Prison Psychologist] were manageable under the proposed RMP*." It explained that it was to the Applicant's *"credit that [the Applicant] demonstrated a marked improvement in [his] behaviour and attitudes towards the professionals who have been working with [him]".*

31. Nevertheless, the panel noted that he had not undertaken any core risk reduction work since the 2019 Decision. It accepted the assessment of the Prison Psychologist that *"[the Applicant's] underlying risk factors relevant to [his] resorting to fire-setting have yet to be sufficiently addressed and until they are, the panel is satisfied that it would not be safe to release [the Applicant] into the community and it also found [the Prison Psychologist's] evidence compelling".* The panel stressed that *"nothing has fundamentally changed since the last review"*. At that time, it was concluded that "*during this sentence the development of [the Applicant's] interest in arson and [his] use of it to gain attention had not been adequately explored and requires core risk reduction work to develop [the Applicant's] understanding and ability to manage emotions to reduce risk*". The panel having heard the evidence and considered the submissions made on behalf of the Applicant reached the conclusion that that this assessment in the 2019 Decision remained valid at the time

of its deliberations in June 2021. It was well aware of the Applicant's arson record and the reasons given by him for starting the fires intentionally or recklessly.

32. The panel concluded that it continued to be necessary for the protection of the public that the Applicant should remain confined. Therefore, the panel did not direct the release of the Applicant.

Request for Reconsideration

33. The application for reconsideration is dated 31 July 2021. The grounds for seeking a reconsideration are as follows:

(i) At no time prior to the hearing on 17 June 2021 was the Applicant or his POM or his COM informed that there was going to be a change to the panel between the initial hearing on 9 April 2021 and the substantive hearing on 17 June 2021 in that one panel member was replaced. It was said that he received no notification whereas "*normally all members would have been informed of this decision*". (Ground 1)

(ii) It was unfair not to order the Applicant's release when his POM and his COM recommended release and they had spent much more time working with the Applicant and talking to his family than the Prison Psychologist who did not recommended the Applicant's release. It is contended that although the Prison Psychologist stated that she had spent four to five hours working with him, *"but realistically the period was no more than two and a half hours".* (Ground 2)

(iii) The Applicant and the POM were asked "multiple times "*why the Applicant had not completed any offender behaviour courses or had any mandatory drug tests between [the Applicant's] paroles*" even though because of the Covid 19 lockdown, "*no programmes were being delivered in the jail during this period or and there were no drug tests being done due to non-contact rules in place due to the pandemic"*. (Ground 3)

(iv) The Prison Psychologist is asking the Applicant to complete fire-related courses which are not offered at the Prison Establishment or any other prisons "*to [the Applicant's] knowledge" but they are being delivered in the community so that they could be delivered and completed there so that it is "extremely doubtful that [the Applicant] would ever get to do these courses in custody."* (Ground 4)

(v) The Applicant has a proactive attitude and could access any accredited programme during lockdown if released as he would have accommodation and employment in the family business and he had the relevant IT skills. (Ground 5)

The Relevant Law

34. The panel correctly sets out in its Decision Letter dated 12 July 2021 the test for release.

Parole Board Rules 2019

35. Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is made by a paper panel (Rule 19(1)(a) or (b)) or by an oral hearing panel after an oral hearing (Rule 25(1)) or by an oral hearing panel which makes the decision on the papers (Rule 21(7)).

Irrationality

36. 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."*

37. 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.

Procedural unfairness

38. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result. These issues (which focus on how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.

39. In summary an Applicant seeking to complain of procedural unfairness under Rule 28 must satisfy me 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 properly; and/or
(e) the panel was not impartial.

The overriding objective is to ensure that the Applicant's case was dealt with justly.

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.

The Reply on behalf of the Secretary of State.

41. The Secretary of State has not replied to the grounds for reconsideration.

Discussion

42. 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.

43. The second matter of material importance is that when deciding whether a decision of the Parole Board was irrational, due deference has to be given to the expertise of the Parole Board in making decisions relating to parole.

44. 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

45. Fourth, cases in which the party to Parole Board cases have been represented by a lawyer are highly unlikely to generate a successful appeal based on an irregularity if there had been no challenge made to the irregularity by the applicant.

46. Fifth, the background to this application is a series of convictions recorded against the Applicant for five separate arson attacks against different property and various fires started by him. The reason why he started the fires remain uncertain. It is of great importance for those reasons to be established in order to understand what his risk factors are and how they can be treated and handled.

Ground 1

47. It is contended that neither the Applicant nor his POM nor his COM had been notified that there was going to be a change to the composition of the panel between the initial hearing on 9 April 2021 and the substantive hearing on 17 June 2021 as one panel member of the original panel was unavailable on the later date and was replaced.

48. The Decision Letter explained that the panel on 17 June 2021 was differently constituted from the one on 9 April 2021 because one member of the original panel was not available and so a new member had joined the panel in his place. Panel composition is a matter for the Board as the appointment of panel members is under rule 5 of the Parole Board Rules a function of the Board Chair which she had in turn delegated to the Secretariat who selected the replacement panel member for the hearing on 17 June 2021. So, the Board was entitled to fix the composition of the panel for the hearing on 17 June 2021 subject to the right of a party to object to the composition of the panel on established grounds such as actual or apparent bias of the proposed new member.

49. It is recorded in the Decision Letter addressed to the Applicant and who was represented by his solicitor on 17 June 2021 that at that adjourned hearing "*no objections were raised on [the Applicant's] behalf to this change in constitution of the panel" at any time*". This statement in the Decision Letter has not been challenged let alone been shown to be wrong. It means that the Applicant must be deemed to have accepted the replacement member. So, this ground must be rejected.

50. There are three further or alternative reasons why this ground has to be rejected which are:

(i) First, as I have explained in paragraph 45 above, where, as in the present case, the Applicant was represented by a lawyer, it is highly unlikely that there will be a successful claim for reconsideration if, as in the present case, there had been no challenge made at the hearing to the alleged irregularity which in the present case was the replacement of a panel member without prior notice.

(ii) Second, there is no allegation, let alone evidence, that the replacement panel member was unable or unfit in any manner to be a member of the panel.

(iii) Third, there is nothing to suggest, let alone establish, that the prospects of the Applicant in obtaining parole were unfairly or wrongfully jeopardised by the appointment of the replacement panel member.

Ground 2

51. The case for the Applicant is that it was unfair for the panel not to order the Applicant's release because his POM and his COM recommended release and according to the Applicant, these officials had spent much more time working with the Applicant and talking to his family than the Prison Psychologist who did not

recommend the Applicant's release. it is contended that although the Prison Psychologist stated that she had spent four to five hours working with him, *"realistically the period was no more than two and a half hours".*

52. In deciding whether to direct the Applicant's release into the community, the panel had to analyse the rival views of, among others, the professional witnesses on the crucial issues of whether the risk that would be posed by the Applicant if released into the community could be safely managed in the light of the relevant evidence including the Applicant's arson record set out in paragraphs 14 to 16 above and the reasons he gave for deliberately or recklessly starting the fires. The mere fact that even if it was the case, the Applicant's POM and COM had spent much more time working with the Applicant and talking to his family than the Prison Psychologist had done did not in itself automatically mean that the views of the Applicant's POM and COM had for that reason to be accepted. Nothing has been put forward to support such contention which fails to consider the quality of the respective submissions.

53. That is not surprising because what was required of the panel was to carry out an analysis of the contention that the Applicant could not be safely released into the community. That exercise entailed considering in the light of the evidence (including the Applicant's arson record) first, what risk would be posed by the Applicant if released into the community and second, whether that risk could be safely managed. In carrying out that exercise, the panel was entitled (if not obliged) to carefully appraise the risk then posed by the Applicant which entailed considering the reasons why the Applicant had previously offended and in particular why he had committed arson on a number of different occasions in order to decide whether that risk could then be managed in the community. The previous panel in the 2019 Decision had taken that approach and had concluded that the development of the Applicant's interest in arson had not been adequately explored and that core risk reduction work was required to develop his understanding and ability to manage emotions to reduce his risk of him committing arson in the future.

54. The conclusion of the panel in July 2021 after hearing all the evidence (significantly including that of the Applicant) and any submissions of the Applicant's solicitor was that the Applicant's continuing lack of insight into his past violence and his minimisation of his fire-setting remained unaddressed. This was an important finding as was its additional conclusion that there then remained the need to explore the Applicant's interest in arson and his use of it to gain attention as well as considering what core risk reduction work was required to develop the Applicant's understanding of his risks of starting fires because without this information, the Applicant's risk of resorting to fire-setting in situations when he found that he could not cope remained in the words of the decision of the panel *"a very real and live one".* There was much support for that conclusion to be found in the Applicant's previous inadequately explained conduct of resorting to starting fires on many occasions particularly when he was confined as has already been explained. The Applicant's RMP required him to be confined to a place where he had to stay and there was a risk that he would be unable to cope with his emotions in that situation in the light of his history of causing fires because he was unhappy about the place where he stayed and his erratic relationship with his mother.

55. The panel as the designated factfinder was entitled to conclude that it *"considered that [the Applicant's] risk of resorting to fire-setting in a situation where [he] found*

that could not cope with [his] emotions is a very real and live one and [it]accepts [the Prison Psychologist's] evidence that this is not manageable in the community". Indeed, as has been explained where, as in present case the panel arrives at a conclusion exercising its judgment based on the evidence before it and having regard to the fact that it saw and heard the witnesses, it is 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.

56. There are no such compelling reasons for interfering with the decision of the panel that as the prison psychologist explained, the Applicant cannot be safely released, because even if the Applicant is correct in contending that the his POM and COM had spent much more time working with the Applicant and talking to his family than the Prison Psychologist had done, I fail to see why that constitutes a compelling reason or indeed any reason for interfering with the decision of the panel especially as it appears illogical.

57. In addition, as I have previously explained, in those circumstances, there remains a clear obligation in considering whether to order reconsideration to give due deference to the expertise of Parole Board panel in making its decision in its July decision letter relating to parole and the risk posed by the Applicant in the community. This is a further reason why I cannot accept this ground.

Ground 3

58. It is contended that the Applicant and the POM were asked *"multiple times "why [the Applicant] had not completed any offender behaviour courses or had any mandatory drug tests between "my paroles"*. This was according to the Applicant because of the Covid 19 lockdown, "*no programmes were being delivered in the jail during this period or and there were no drug tests being done due to non-contact rules in place due to the pandemic."*

59. The difficulty about this contention is that the issue for the panel was not whether the Applicant was at fault for not having completed any offender behaviour courses or having had any mandatory drug tests, but it had to resolve the totally different issue of whether he could be safely released into the community. In addition, the panel's decision did not include any criticism that the Applicant had not completed the offender behaviour courses or had not taken the drug tests. So, this ground cannot be accepted.

60. Further, it is not accepted that this ground (even if factually correct) constituted a ground for reconsideration.

Ground 4

61. The Applicant's case is that the Prison Psychologist is asking the Applicant to complete fire-related courses which are not offered at his current prison location or any other prisons "to [the Applicant's] knowledge" but they are being delivered in the community so that they could be delivered and completed there so that it is "extremely doubtful that [the Applicant] would ever get to on these courses in custody". The issue is not what courses had been available to the Applicant at his prison establishment or any other prison but the totally different question of whether

the Applicant can **now** be safely managed in the community before he had completed any fire-related courses. That was the question which the Panel correctly addressed and, as has been explained, it then reached a decision open to it on the facts. So, this ground must also be rejected.

Ground 5

62. The case for the Applicant is that he could access any accredited programme during lockdown if released as he would have accommodation and employment in the family business as well as the relevant IT skills and a proactive attitude. The difficulty about that submission is that it does not undermine the conclusion which the panel was entitled to reach which was that "*the development of [the Applicant's] interest in arson and [his] use of it to gain attention has not been adequately explored and requires core reduction work to develop [his] understanding and ability to manage emotions to reduce risk, remains valid*".

63. Further, as has been explained, the issue is whether the Applicant could **now** be safely released before he completed any accredited programme and so it is not relevant that he might be able to do it in the future. Indeed, once the Applicant has completed core reduction work, he might well be encouraged to make a further application to the Board for his release.

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Decision

64. For the reasons I have given, I do not consider that the decision was irrational/ procedurally unfair and accordingly the application for reconsideration is refused.

Sir Stephen Silber
1 September 2021