

[2024] PBRA 32

## Application for Reconsideration by Cole

### Application

1. This is an application by Cole (the Applicant) for reconsideration of a decision of a Panel (the Panel) of the Parole Board issued to parties on 3 January 2024 (the Decision) not to direct the Applicant's release and to recommend to the Secretary of State that he should be moved to open conditions.
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)) 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 Decision;
  - (b) the Applicant's application for Reconsideration dated 23 January 2024;
  - (c) the email dated 26 January 2024 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 application for Reconsideration;
  - (d) the email from the Parole Board to the Applicant's legal representative dated 30 January 2024 seeking information concerning the Applicant's application for Reconsideration and the response dated 31 January 2024 from the Applicant's legal representative to the Parole Board; and
  - (e) the Applicant's dossier containing 785 pages.
4. The grounds for seeking reconsideration are that:
  - (a) It was irrational and procedurally unfair not to rely on the evidence of the senior forensic psychologist (Ms B) and the prison instructed psychologist (Ms M) and the psychology report of Ms B to show that the risk assessments of the Applicant had been updated by Ms B and the Community Offender Manager (COM) taking account of the outstanding risk factors and work to be completed showing that this work was completed by the Applicant to show that the Applicant could be safely released (Ground 1).
  - (b) It was irrational and procedurally unfair to rely on the report of a forensic psychologist based at a previous prison (Dr W) (Ground 2).
  - (c) It was irrational to recommend that the Applicant should be recommended for open conditions and not released because in recommending to the Secretary of State that the Applicant should be moved to open conditions shows that that the Panel accepted that all core offending behaviour work

required of the Applicant had been completed thereby addressing the risk factors of the Applicant who therefore should be released (Ground 3).

(d) It was procedurally unfair and irrational for the Panel to refuse to release the Applicant when instead they should have adjourned the hearing for a period of time with a direction that the COM "*undertake to source suitable move on accommodation and complete a further addendum report for the panel to consider*" (Ground 4).

## Background

5. On 5 November 1998, the Applicant, who was then 29 years old, was sentenced to life imprisonment with the minimum term to be served by the Applicant fixed at of 11 years and 1 day for 2 counts of murder.
6. Prior to committing these index offences, the Applicant had displayed emotional and behavioural difficulties from a young age. His problems were described as being "*obsessive*" in nature.
7. As a youth, he apparently became preoccupied with a female in a discotheque before he had a feeling of rejection. He became concerned about an untrue rumour being circulated about him which evidently placed him at risk of harm from others. There followed a period of almost 10 years during which he displayed reclusive behaviour.
8. In November 1995, the Applicant, who was then 26 years old, was admitted to hospital for an assessment pursuant to Section 2 of the Mental Health Act 1983. This is thought to be his first formal contact with potential treatment. During his stay in the hospital which lasted 2 months, he met a woman (FO) who was to become one of the victims of his index offence, who was a fellow in-patient at the psychiatric unit and their relationship continued after his discharge from hospital until April 1996 when she disclosed a relationship with another person. This disclosure apparently created a crisis for the Applicant who admitted himself to a psychiatric ward in hospital for a short period.
9. After the Applicant had discharged himself from the hospital on 30 April 1996, the index offences were committed in the early hours of the morning of 2 May 1996 when he went to FO's property where she and her current partner were spending the night. He broke into the house and savagely attacked both victims who suffered numerous knife wounds and mutilation from which they died. The Applicant then drove his victims' vehicle to a hospital where he admitted that he had committed the murders.
10. At his initial trial and at his retrial, the Applicant's legal advisers contended that he should be convicted of manslaughter on grounds of diminished responsibility, but he was convicted of murder by the jury. The judge at the Applicant's second trial concluded that the jury had found that the Applicant's actions were planned and that they were an act of revenge on the Applicant's part.

11. The Panel accepted that the Applicant's offences, although "*entirely unpredictable and exceptionally brutal in nature...indeed the presence of equipment were clear indicators of premeditation*". To the Panel, the Applicant's extremely troubled childhood and extreme psychological difficulties were clearly factors "*underpinning the murders*". The Applicant had had no previous convictions.
12. According to the Panel, professionals have struggled over the years to find a specific diagnostic label to describe the Applicant's psychological difficulties. The position appears to be that he shows traits of a personality disorder but insufficient evidence to support a diagnosis. Indeed, the Panel accepted the conclusion of the professionals that "*at the present time no diagnosis of a firm nature in the area of neuro diversity is available*", but the professionals "*appear to be aware of the challenges which face [the Applicant] and which have clear similarities to neuro diverse traits*".
13. In April 2013, a panel of the Mental Health Tribunal concluded that it was no longer necessary for the Applicant to be detained in hospital for treatment. Parole Board hearings led to a decision to release the Applicant in October 2015 which led to the Applicant residing at an approved premises (AP) which specializes in providing accommodation for those with complex mental health needs.
14. During his time at the AP, the Applicant had regular weekly sessions with a chartered clinical forensic psychologist for a period of two years. The Applicant was reported to have had difficulty in trusting staff with the consequence that he had retreated and isolated himself at times while at the AP. According to the Panel, the Applicant "*was apparently concerned about being negatively judged*".
15. He was recalled because of his failure to disclose the development of his strong feelings for a female member of staff (X) at the AP. He denied reports that he had placed his arms around X when on a walking trip in 2017. The Applicant had also taken photos of X without her permission and shown them to some staff members.
16. The Applicant's recall followed an incident on 12 June 2018 when he had asked X to join him outside to vape which according to the Panel "*was not an unusual request at the time*", and while outside, the Applicant asked X why she would not be his key worker and he explained that he was disappointed that she was not his key worker. When he asked X whether she was single, she told him that this was not an appropriate question and when he asked her again, he was alleged "*to have lunged at [X] placing his arms around her and attempting to kiss her cheek*".
17. X pulled away, and the Applicant grabbed her hand and kissed it before X returned to an office with the Applicant shouting after her asking her not to "*humiliate me*". X described the Applicant as being "*in desperation*" with his eyes filling with tears. It was alleged that he stated that he was "*in love*" with her and thought about her all the time. He also said that he thought about who she was with, and that she was only the fourth woman he had ever loved.
18. X asked the Applicant to stop, but he asked her to keep it a secret and not to humiliate him. The Applicant later explained that he had had feelings for X for 18 months, that he loved her and that he wished she felt the same. He stated that he

had not meant to threaten her, and it was noteworthy that he had not been violent to X and that he had not had a loss of emotional control, but his behaviour showed that he thought that his feelings might well be reciprocated.

19. When the Applicant's Probation Officer learnt of these matters, the major concerns were that the Applicant had not disclosed or revealed his feelings towards X. There were concerns that *"there was a parallel link between the index offence and the current situation"* and that the Applicant had not disclosed any of these feelings to any professional despite being involved in supervision by his COM and intensive work at the AP including individual sessions with a psychologist.
20. The Applicant's position was that the matter *"had been blown out of proportion"* and he did not consider that there was any need for him to disclose anything to professionals and so he had not done so. As the Applicant's recall had been *"determined as appropriate"* at an earlier Parole Board hearing, the present Panel did not revisit this issue.
21. On the issue of the Applicant's failure to disclose his feelings towards X, the Panel concluded that this was a matter of concern as:

*"either the failure to disclose showed a continuing lack of understanding of the concerns by those supporting [the Applicant] about his risks, or, alternatively, [his] account of the reasons for his nondisclosure may not have been entirely honest. In either case the panel identified serious concerns about the ability to manage [the Applicant's] risks. In simple terms the panel took the view that either he lacked insight, or he was deliberately avoiding being honest, in either situation, given [the Applicant's] history, the matter was one which required extremely serious consideration in terms of risk management in the future."*

### Evidence of the Applicant's Present Risk

22. The Applicant's Prison Offender Manager (POM) explained that there were no concerns about the Applicant's behaviour or his ability to manage in the structured environment of the prison. The Panel accepted that all reports of the Applicant's prison behaviour were supportive of this conclusion, but the Panel concluded that his behaviour in a structured environment was not a helpful measure of risk or behaviour outside prison.
23. In February 2019, the Applicant was assessed by a forensic psychologist based in the prison who concluded that he needed a complex range of support to manage his future risk and these included further psychological intervention to manage his risk. Her evidence was that he had not improved his insight into his risk at the time of her report. Dr W noted that the monitoring of warning signs in the Applicant's case was *"complicated by the fact that he is able to mask his feelings towards others and, despite engaging in intensive therapy and support, had not chosen to discuss his feelings in relation to [X] with others"*. Dr W did not give oral evidence at the hearing.
24. In April 2023, an updated psychological risk assessment was prepared by a registered forensic psychologist, Ms. M who was concerned that potential warning

signs were limited, that the Applicant was not able to be open with professionals about increasing risk factors and identified outstanding treatment needs he would benefit from addressing prior to being considered for progression. She recommended that the Applicant engage in bespoke 1-1 work with a forensic psychologist in closed conditions to work on his identity, self-worth, develop a positive sense of self and explore and develop skills to manage increased feelings of distress or hopelessness.

25. The Applicant was referred to a forensic treating psychologist, Ms. B, who reported in October 2023 explaining that the Applicant struggles to be succinct in his explanations and *"he is hyper-aware of the perceptions people have about him [and] this impacts his ability to have enough trust in professionals to engage in a more focussed way"*.
26. The Panel noted that some of the treatment goals set by Dr W who also suggested 1-1 work had not been pursued by Ms. M or by Ms. B. The Panel considered that these items included *"balancing his desire for emotional intimacy against obsessional thinking; work on managing obsessional thoughts; managing the distrust of others and how he would work on building trust; exploring and managing [the Applicant's] emotions in relation to intimacy with others; exploring what is okay or not okay in a relationship; exploring the fact that a person may be emotionally close and supportive but this may not equate to sexual intimacy; and learning that simply because he felt emotionally close to someone because they were supportive of him it would not necessarily mean that this was reciprocated on their part."* The Panel took the view that in relation to the matters set out in the preceding paragraph that *"these were critical treatment needs for [the Applicant] and were not covered by the bespoke intervention."*
27. Ms. M gave evidence to the Panel explaining that the Applicant then had the skills to enter a relationship and to cope with rejection. She was also of the opinion that the Applicant then needed *"wrap around support"* which would be available in the PIPE (Psychologically Informed Planned Environment) AP. As for a move on plan, she said that she was *"confident that it will be developed"*. Her opinion was that it was unlikely that any violence will occur in relation to the Applicant's presence in the community and certainly not *"quickly"*. She thought that the Applicant had built up a positive relationship with his probation officer and she was content to recommend his release. So far as a move on plan was concerned, the Panel explained that Ms M said that she was *"confident it will be developed"*.
28. At the hearing, the Applicant's POM gave evidence and explained that he supported the Applicant's moves to a PIPE AP and *"he had no experience of the community"* and *"therefore could not speak of what might be required beyond the PIPE AP"*. He did not think that the Applicant would meet the test for obtaining a recommendation to be moved to open conditions, but there was confusion as to whether the Applicant's POM was applying the earlier test for open conditions which involved the word *"essential"*.
29. The Applicant gave evidence explaining that he had good relationships in the prison. The Applicant was asked about restrictions in the community, and he stated that being managed at MAPPA (Multi Agency Public Protection Arrangements) level 3



"was a concern for him because it might involve many more restrictions that would worry him and make him feel watched and monitored [and] he did not like being watched, but he would cope as best he could". He was asked about his work with the forensic treating psychologist, and he said he tried to keep an "open mind" about this work because he had had negative experiences with psychologists in the past.

30. When the Applicant was asked about his contact with females, he said that he was attracted to women in terms of potential future relationships. He explained that he found it quite "shocking" that he was recalled. When he was asked about warning signs of his risk rising, he mentioned isolation, a crisis, being withdrawn and multiple major stresses. The Applicant implied that the circumstances around the index offences were unlikely to occur again. He said he was concerned about the PIPE AP as it was a restricted environment requiring a number of meetings every week. He said since his recall he was more worried about relationships. On the question of where he would move to when released, the Applicant told the Panel that he was content to live in a PIPE AP for a while and then he would like supported accommodation and then his own independent accommodation. He indicated that he had not selected where he wanted to live. As for the future, the Applicant felt that he was unlikely to be in a relationship for some time.
31. Ms M gave evidence explaining that the Applicant could better cope with rejection and that he now realised that if he entered into a relationship, it needed to be disclosed. Her view was that the Applicant needed "wrap around" support and she hoped that a move on plan would be developed to provide such support. She felt that there was no imminent risk of violence or aggression. She felt that initially she thought that the Applicant had no internal controls, but now she felt that things were different as he had a positive relationship with his probation officer and that he would be able to manage his potential risks.
32. The Applicant's COM, who had only held that position since April 2023, gave evidence explaining that she "had built a more relaxed working relationship with [the Applicant]" and she had "seen a significant shift in [the Applicant's] approach [and] he seemed to be able to communicate much more easily with her". She was recommending release. The COM confirmed that there would be a place in a PIPE AP for a period of up to 6 months from March 2024. She explained that as far as a move on plan was concerned, the Applicant had not made a decision as to where he would wish to live and as the AP placement had only recently been secured, she "had not yet begun exploring options". So the Panel concluded that "in essence at this stage, there were no move on plans save on a very general basis" but the Applicant's COM accepted that "she would not know what support was available until the plans (particularly as to living locations) were formulated". The Applicant's COM was recommending his release.
33. When she was asked about the circumstances when the Applicant's risks might elevate, the Applicant's COM said "in general terms issues such as isolation; a mental health crisis; [the Applicant] withdrawing ...feeling rejected... feeling humiliated would be concerning developments."

## The Panel's Conclusions

34. The Panel took account of the consensus of opinion from the three professionals whose recommendation was to support release and the nature of the index offences, and then explained that:

- (a) The Applicant's risk factors included *"feeling withdrawn and isolating from others; feeling imprisoned or like a recluse; reporting stressors in relation to his mental state or housing and accommodation; grievance feelings about his life; obsessional thoughts about a female; hiding his true thoughts from professionals; discovering that a female for whom he has feelings was in a relationship with someone else; feeling that he loved a female; rejection or humiliation particularly by a partner or a female; a propensity to attribute greater significance to minor interactions with others [and] a severe emotional outburst in response to rejection"*.
- (b) It fully accepted that the Applicant is likely to be aware of all these factors in the sense that he has read the views in reports but *"the continuing concern of the panel is the ability or otherwise of [the Applicant] to address the negative outcomes from these factors and importantly to disclose deteriorating emotions at an early stage to ensure that [the Applicant's] distress is addressed before it becomes overwhelming"*.
- (c) The Applicant's protective factors are *"the suggestions by psychologists of wrap around support and constant overarching support"* which *"would enable [the Applicant] to respond quickly to distress by way of disclosure [and] would also allow those responsible for oversight and support to identify the deterioration in [his] emotional state and possibly to intervene to prevent such deterioration"*. Other *"more concrete protective factors would ... [include] hobbies and interests and possibly employment"*.
- (d) The Applicant is identified as posing a high risk of serious harm to the public, known adults and staff in the community as well as future partners and *"any person associated with the future partner who might be seen by [the Applicant] as being in conflict with any partnership"*. There could also be a risk to staff particularly *"if they have not been properly advised and prepared for a supporting role [in handling the Applicant]."*
- (e) The Applicant *"had not been open and honest about his feelings towards the female member of staff at [the AP]"* when *"it was clear that [the Applicant] must have known this was an area of concern and had failed to be open and honest about it"*. The Panel's major concern was that *"[the Applicant] had numerous opportunities to be open about this developing feeling that he had for this member of staff and in the Panel's view he deliberately avoided making mention of it"*.
- (f) In their opinion *"this lack of honesty [on the Applicant's part ] also impacts on concerns about compliance ... [and] compliance also involves openness about matters which may be challenging, such as the development of relationships"* and *"equally there is concern about [the Applicant's ] ability to build an open relationship with professionals given that he had extremely intense conversations with psychologists at [the AP] and again failed to be open about the possible link with a member of staff"*.
- (g) It accepted that all reports of the Applicant's prison behaviour *"were positive"* but it took the view that *"[his behaviour] in structured environments such as prisons was not a helpful measure of risk or behaviour outside prison"*.

- (h) It considered *"again had no doubt that [the Applicant] was capable of managing within the structure of a prison environment. The reality was that [the Applicant] had lived virtually all his life, since the index offences, in some form of structured institutional environment and he was able to manage in those environments, despite his neurodiverse challenges perfectly appropriately"*.
- (i) It took the view that *"outside of a structured institutional environment there was a high likelihood that [the Applicant] would decompensate and possibly become highly stressed by the absence of the support that he had been used to for many years. Again, for that reason, the panel took the view that [the Applicant's possible transition into the community would require more than a six-month period in an [AP]"*.
- (j) It had concluded that it considered with care the evidence of Ms. M, who concluded that the Applicant would be open and honest about matters such as relationships in the future. The Panel took the view that this conclusion of Ms. M was *"over confident and lacked an evidential basis"*.
- (k) It had considered the conclusion of the Applicant's POM that the Applicant could be safely released. This recommendation was based on the fact that the Applicant was a well behaved prisoner and managed in the structured environment of the prison and according to the Panel the Applicant's POM *"himself admitted that he had no idea about facilities or support arrangements in the community"*. For those reasons, the Panel did not accept the evidence of the Applicant's POM.
- (l) It had noted that the Applicant's COM recommended release but noted that she could offer very little in terms of realistic plans or arrangements beyond the six months in the AP but the Panel considered that *"a plan which involved six months or possibly less in a PIPE AP followed by some form of accommodation in the community which could be unsupervised on a day-to-day basis was wholly unrealistic as a risk management plan (RMP)"*.
- (m) It regarded the incident which led to the Applicant's recall and which is referred to in paragraphs 15 to 21 above, was *"in the view of the panel a matter of great concern."*
- (n) It was very concerned with the complexity of the Applicant's case in the light of the gravity of the index offences and the fact that a *"standardized"* release arrangement with unspecified move on arrangements, which was in essence the basis of the recommendation by professionals was *"unrealistic and unsustainable"* as *"firmly established and detailed arrangements would be needed before the Applicant's risk would be able to be considered as manageable in the community"*.
- (o) It concluded that *"none of these crucial arrangements are in any way substantially developed"* and the Applicant's risk was not manageable with the consequence that *"it remains necessary in order to protect the public that [the Applicant] be detained"*. Accordingly, release was not directed.
- (p) It proceeded to consider whether it should recommend to the Secretary of State that the Applicant should be transferred to open conditions even though there was no support for such transfer from the professionals although the professionals together with the Panel concluded that the Applicant did not pose a risk of absconding.
- (q) It then concluded that the Applicant satisfied the second condition of the Secretary of State which was that progress had been made during the



Applicant's sentence to a level consistent with protecting the public from harm in circumstances where in open conditions the Applicant may be in the community unsupervised under licensed temporary release. The reason for that was that when the Applicant was *"in structured environments [he] adheres to the rules of the institution and for that reason, the panel was satisfied that if [the Applicant] were transferred to an open prison, he would adhere to the rules"*. In other words, it is the structured environment of the open prison which ensured that the Applicant will not offend, but will comply to the rules.

- (r) It noted that *"all three professionals giving evidence in this case took the view that [the Applicant's] risk could be managed in an open prison albeit they preferred the more structured and supported environment of the PIPE AP."*
- (s) It concluded that the Applicant's *"case is complex and that his risk is unlikely to be able to be managed in the community unless there are firmly laid plans and a clear pathway for [the Applicant's] future accommodation and living arrangements [and] importantly that pathway would necessarily involve knowledge by those who were working with [the Applicant] of his potential risks"*.
- (t) It *"would hope that an open prison transfer would enable those supporting [the Applicant] to have time and flexibility to work with [the Applicant] and to secure a suitable placement for progression."*
- (u) It recorded that *"at present [the Applicant] has very little notion as to where he wishes to live. Those supporting him have very little understanding of the availability of realistic living arrangements (probably supported accommodation). The plans for [the Applicant] are in an aspirational stage. Matters such as the MAPPA arrangements and any involvement of services, such as IIRMS [intensive intervention and risk management system] are at present depended on where [the Applicant] might decide or wish to live and what sort of accommodation arrangements would be offered by those who are responsible for allocation and funding"*.
- (v) It *"acknowledged that the open prison system has limitations, however in the panel's view, open prison arrangements should offer an opportunity for a prisoner with complex needs, such as [the Applicant], to work with professionals both in the prison and in the community to attempt to finalise realistic and safe arrangements for future progression."*
- (w) It recommended to the Secretary of State that the Applicant be transferred to an open prison and *"the recommendation was respectfully made with a view to encouraging the open prison to provide support and arrangements both within the prison, possibly through a PERS (Pathway Enhanced Resettlement Service) provision, and with the probation service to work towards a possible progression into the community in the future. That work may be a long-term project"*.

## The Relevant Law

*Parole Board Rules 2019 (as amended)*

*Irrationality*

35. 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."*

36. 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

37. 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.

38. 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

39. 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.

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

## The Grounds

### Ground 1

41. This Ground is that it was irrational and procedurally unfair not to rely on the evidence of Ms. M and Ms. B, and the psychology report of Ms. B, to show that the risk assessments of the Applicant had been updated by Ms. B and the COM taking account of the outstanding risk factors and work to be completed and which was completed by the Applicant to show that the Applicant could be safely released.
42. This ground cannot be accepted for six reasons which individually and collectively show that this ground must fail.
43. First, the Panel was entitled to conclude that the RMP fatally failed to include move-on arrangements for the Applicant after he had finished his proposed 6-month stay at the PIPE AP. In the light of the Applicant's conduct which led to the Applicant's recall and which has been described in paragraphs 15 to 21 above, it was vital that there should have been effective move-on arrangements in place because of the reasons stated in paragraph 34(s) above. There were no effective move-on arrangements in the RMP and this showed why he could not be safely released.
44. Second, the reason why the Panel was entitled to be greatly concerned about the lack of move-on arrangements for the Applicant is described in paragraph 34(e) above. This constitutes another reason why he could not be safely released.
45. Third, another reason why the Applicant could not be safely released was that the Panel was entitled to conclude that *"this lack of honesty [on the Applicant's part] also impacts on concerns about compliance [and] compliance also involves openness about matters which may be challenging, such as the development of relationships"* and *"equally there is concern about [the Applicant's] ability to build an open relationship with professionals given that he had extremely intense conversations with psychologists at [the AP] and again failed to be open about the possible link with a member of staff."*
46. Fourth, the Panel was entitled to reject the views of the professionals who recommended the release of the Applicant as those professionals had put forward views which were *"unrealistic and unsustainable"*. It explained that in the light of the Applicant's previous conduct, his transition into being suitable for release would need more than preparation for it in the six-month period in the PIPE AP as he would need *"an environment to allow him to build the resilience and capability to manage his life on an independent or semi-independent basis"*; these requirements would not be met by the Applicant simply being released into the community after the expiry of the six-month stay in the PIPE AP.

47. Fifth, the Panel had arrived at the conclusions in its Decision and indeed all its conclusions in the Decision after exercising its judgment based on the evidence before it and having seen and heard the witnesses. In those circumstances, it would be inappropriate to direct the decision to be reconsidered unless it was manifestly obvious that there were compelling reasons for interfering with the decision of the panel. No such compelling grounds have been pleaded or established.
48. Sixth, it is settled law 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. So if, which is not the case, I had any doubts whether the decision of the Panel was irrational or procedurally unfair, my judicial duty to show deference to the Decision of the Panel would have meant that I would not find that conclusion to be irrational or procedurally unfair.
49. The claim based on procedural unfairness must also fail as it can only succeed if the Applicant's case was not dealt with justly and there is no evidence that this is the case. In fact, the Panel was entitled to make all the decisions under challenge and no unjust treatment of the Applicant's case has been established.

### *Ground 2*

50. This Ground is it was irrational and procedurally unfair for the Panel to rely on the report of Dr W who was not a witness. The Decision makes some reference to her evidence which preceded the work of the other professionals who gave evidence at the hearing, but this ground cannot be accepted for each of the following reasons.
51. First, there is no contention in the Grounds that the Decision expressly or impliedly adopted any of the reasoning of Dr W or indeed relied on it.
52. Second, all crucial findings of the Panel can be shown to be derived from material other than Dr W's evidence – such as the matters and analysis set out in answering Ground 1 set out above and/or the evidence of other witnesses and the findings of the present panel and a previous panel on matters such as the correctness of the Applicant's recall and the Panel's conclusions on the Applicant's honesty and relations with others.
53. Third, there is nothing irrational or procedurally unfair about the way Dr W's evidence was handled.

### *Ground 3*

54. According to this Ground, it was irrational that the Applicant should be recommended for open conditions and not released because in recommending to the Secretary of State that the Applicant should be moved to open conditions, the Panel was accepting that all core offending behaviour work required of the Applicant had been completed thereby addressing the risk factors of the Applicant which meant that there was no reason why he should not be released.

55. It is correct that in order to recommend that the Applicant should move to open conditions, the Panel had satisfied itself that together with other factors that *"the [Applicant] has made sufficient progress during [his] sentence in addressing and reducing risk to a level consistent with protecting the public from harm (in circumstances where the prisoner in open conditions may be in the community, unsupervised under licensed temporary release) and the prisoner is assessed as presenting a low risk of abscond."*
56. This contention fails to appreciate that there still remained a further major problem which had to be resolved before the Applicant could be released which was to ensure that the prisoner would be monitored when released in the form of *"effective-move on"* arrangements after his six-month stay at the PIPE AP. The Panel considered that subjecting the prisoner to open prison conditions would overcome that crucial problem as it would *"offer an opportunity for a prisoner with complex needs such as [the Applicant] to work with professionals both in the prison and in the community to attempt to finalize realistic and safe arrangements for future progression."*
57. The Panel noted that all three professionals giving evidence to the Panel *"took the view that [the Applicant's] risk could be managed in open conditions, albeit that they preferred the more structured and supported environment of the PIPE AP"*. It was also recorded that *"when in structured environments, [the Applicant] adheres to the rules of the institution and for that reason, the Panel were satisfied that if [the Applicant] were transferred to an open prison he would adhere to the rules"*. In other words, the period of being in an open prison would provide effective and secure arrangements which would constitute acceptable move-on arrangements for the Applicant, but those arrangements do not show that he could be safely released as opposed to being in an open prison.

#### Ground 4

58. This ground is that it was procedurally unfair and irrational for the Panel to refuse to release the Applicant after the hearing when instead they should have *"considered whether there was a possibility of such move on accommodation being provided after finding that core behaviour work had been completed and emphasizing move on accommodation meeting the specific risk management needs were lacking"*. It is contended that *"the logical decision would be to adjourn the hearing for a period of time with a direction that the Community Offender Manager undertake to source suitable move on accommodation and complete a further addendum report for the panel to consider"*.
59. The starting point for considering this ground of the application is, as I have explained in paragraph 55 to ensure that the prisoner would have *"effective-move on"* arrangements after his six-month stay at the PIPE AP by which time his risk had been reduced *"to a level consistent with protecting the public from harm in circumstances where the prisoner may be in the community, unsupervised under licensed temporary release."*
60. This ground cannot be accepted for four reasons. First, there is nothing to suggest that even if the direction had been made at or shortly after the time of the Decision



that it would have produced any relevant information or indeed any information; the reason for that conclusion is that the Applicant had not at the time of the Decision made the crucial decision as to where he wished to live and as the Panel concluded "*none of these crucial arrangements are in any way substantially developed*". The significance of this is that the COM needed to know where the Applicant wanted to live before making inquiries about the facilities in his move-on area. In other words, this would be a strong reason as to why it was not irrational or procedurally unfair for the Panel not to have required the adjournment for the COM to obtain this information.

61. Second, the Panel cannot be criticized for not seeking an adjournment of the hearing and not giving a direction for further information to be provided by the COM when the Applicant's legal representatives (whose prime duty task was to protect and advance the Claimant's interest in the Parole Board proceedings) had not considered it necessary to seek such an adjournment or such further information either at the end of the hearing or when the Decision was received. This seriously undermines the suggestion that the failure to seek an adjournment was irrational or procedurally unfair.
62. Third, the Panel had arrived at the conclusions in its Decision and indeed all its conclusions in the Decision after exercising its judgment based on the evidence before it and having seen and heard the witnesses. In those circumstances, it would be inappropriate to direct the decision to be reconsidered unless it was manifestly obvious that there were compelling reasons for interfering with the decision of the panel. No such compelling grounds have been pleaded or established.
63. Fourth, as I have explained, it is settled law 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. So if, which is not the case, I had any doubts whether the decision of the Panel not to adjourn was irrational or procedurally unfair, my judicial duty to show deference to the Decision of the Panel would have meant that I could not find that the conclusion of the Panel not to adjourn to be irrational or procedurally unfair.
64. For the sake of completeness, I should add that the references to the 1:1 psychological intervention as a "*bit of psychology*" in the application, but was not stated in the decision letter, fail to show or indicate in any way irrationality or procedural unfairness on the Panel's part. As explained, the Panel was entitled to reach all the conclusions above.

## Conclusion

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

**Sir Stephen Silber**  
**20 February 2024**