the Parole Board

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[2022] PBRA 24

Application for Reconsideration by Piovesana

Application

1. This is an application by Piovesana (the Applicant) for reconsideration of a decision of a Panel dated 5 January 2022 who after considering the application for parole at a hearing on 21 December 2021 refused to release the Applicant but instead recommended to the Secretary of State that he should be transferred to open conditions.

2. 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.

3 I have considered the application on the papers. These are the decision of the Panel dated 5 January 2022, the application for reconsideration dated 28 January 2022, the Memorandum from the Forensic Psychologist in Training (FP),the notification from the PPCS that the Secretary of State did not intend to make any submissions in response to the Application for Reconsideration save that the FP *"confirmed"* that no consent was provided for the memo to be submitted in support of the [Applicant's] reconsideration application" and the Applicant's dossier comprising of 179 pages.

Background and current parole review

4. On 12 October 2006, the Applicant, who was then 23 years old, was sentenced to imprisonment for public protection with a minimum term of 4 years which expired on 22 February 2012, for an offence of wounding a police officer with intent to do him grievous bodily harm committed on 6 July 2005. He is now aged 38 years.

5. He was first released on 8 December 2014 and recalled on 10 September 2015. He was released again on 9 June 2016 and recalled on 11 April 2019. On both occasions, his recall was the result of further offending. The present application relates to the Applicant's second review since his second recall.

6. The Applicant has a lengthy record of violent offending with his victims frequently being his erstwhile partners or his parents. He also had other previous convictions for theft, arson, threatening conduct, obtaining property by deception, making off without paying, failing to surrender to custody, destroying or damaging property, resisting or obstructing a police constable.

7. On 14 October 2020, the Secretary of State referred the Applicant's case to the Parole Board to consider whether or not it would be appropriate to direct the Applicant's release and if it does so direct, it was asked to advise in relation to any conditions which should be included in the licence. If the Board did not consider it appropriate to direct the Applicant's release, it was asked to advise on the Applicant's suitability for open conditions.

8. A full face-to-face hearing could not be achieved during the Covid crisis. The hearing which is the subject of this Reconsideration application was conducted by a remote video hearing on 21 December 2021 which the Panel considered was the best option in the current circumstances. The legal representative of the Applicant agreed to this procedure. The Secretary of State was not represented at the hearing.

9. The panel was comprised of three independent members of the Parole Board. It heard oral evidence from:
    a. The Applicant's Prison Offender Manager (POM).
    b. The Applicant's Community Offender Manage (COM).
    c. The FP who on the direction of the Board had prepared a Psychological Risk Assessment Report (PRA) dated 10 December 2019 and an addendum dated 9 November 2021; and
    d. The Applicant himself.

Request for Reconsideration

10. The application for reconsideration is dated 10 December 2021.

11. The grounds for seeking a reconsideration are as follows:

    a. Procedural Unfairness
    The Applicant states that he found the manner of questioning by the panel as *"aggressive and interrogatory rather than probing and challenging"* and *"this effected [his] ability to process the questions aimed at him, consider and deliver an answer and present himself effectively*". (Ground 1)

    b. Irrationality

There were inaccuracies in the decision letter which causes real concern that facts have been misunderstood and evidence misinterpreted resulting in an irrational decision not to direct release (Ground 2).
There were inaccuracies in the decision letter which had been explained by the FP and which have led to an irrational decision (Ground 3).

Background and Current parole review

12. Between 27 February 1998 (when the Applicant was 14 years of age) and 26 October 2015, he was convicted on 10 occasions for 16 offences. Many of those convictions related to violent offending against his erstwhile partners and his parents.

13. His convictions started when the Applicant was convicted for offences of violence from 1999 onwards. In that year, when he was 15 years old, he was sent to a Young Offenders Institution (YOI) for 4 years for an offence of wounding with intent to do grievous bodily harm (which was the same offence as the index offence) and arson These offences were committed when the Applicant was on bail.

14. After his release for that offence, the Applicant was convicted of the offences of assault occasioning actual bodily harm and common assault against his then partner (AL) for which on 22 March 2004 he received sentences totalling 7 months detention in a YOI after he hit his partner in the face with her bag in his hand knocking out a tooth of his victim who also received a black eye.

15. The Applicant was convicted of the index offence after he had wounded a police officer by striking him in the face on 4 August 2004. Although the Applicant denied using a weapon, the trial judge, who had heard the evidence at the trial, explained when sentencing the Appellant on 12 October 2006 that he was "*entirely satisfied on the evidence that some kind of weapon was used"* by the Applicant. He quoted medical evidence which suggested that the Applicant had used "*a hammer, metal bar [or] fence pole" to strike the police officer and cause injuries which required constructive surgery and the insertion of metal plates and screw".*

16. At the time when he committed the index offence, the Applicant was on bail for offences of assault occasioning actual bodily harm and battery committed on 4 August 2004 which were dealt with in his absence because he was unlawfully at large until he was arrested in December 2005 for the index offence. On 12 October 2005, he was sentenced to 52 months' imprisonment for those offences of assault occasioning actual bodily harm and battery. The sentence for the index offence was consecutive to that sentence.

17. In 2014, the Applicant explained to a psychologist that he had used violence towards his parents when he was still a child, and this led to the Applicant giving his mother a black eye and kicking his father

18. In September 2015, during the Applicant's first period of release on licence he was charged with battery with his victim being his erstwhile partner who sustained a cut lip. On 26 October 2015, he received a sentence of 20 weeks' imprisonment for this offence which led to his recall. On the same occasion, he was made subject to a Conditional Discharge Order for 12 months for being in possession of cannabis/cannabis resin.

19. As has been explained, the Applicant was released for a second time on 9 June 2016. He explained that during his second period of licence his relationship with his erstwhile partner had become difficult and he returned to live with his parents. Unfortunately, there were difficulties and he assaulted his parents.

20. On 11 April 2019 he was sentenced to 16 weeks in custody for 2 offences of common assaults against each of his parents who suffered injuries in consequence. These attacks led to the Applicant's recall and the termination of his second period on licence.

21. The Panel noted that following his second recall a previous panel had carried out a review at an oral hearing held on 10 September 2019 before concluding on 15 January 2020 ("the previous review") that his second recall was appropriate and the Applicant had not challenged that conclusion. The Panel on that occasion accepted that the Applicant had been successful in the community for significant periods on his two releases, but it noted that on both occasions he had been recalled for being violent within the context of close relationships. The panel on the previous review agreed with the professionals that the Applicant needed to complete further core work in closed conditions.

22. The panel noted that the Applicant had undertaken several interventions during his period in custody between 2009 and 2015. The Applicant has earned more privileges through good custodial conduct under the Incentives and Earned Privileges scheme at the prison where he has been since April 2019. He has no recorded adjudications or warnings and has been described as an exemplary prisoner. The Applicant was described as "*an individual who causes little or no concern and is polite and respectful to staff*". He has worked in the prison as a gym orderly which occupies him for the best part of each day.

23. All these reports reflect well on the Applicant who is reported to have adapted well to the rigid restrictions imposed because of the Covid pandemic. He contracted the virus which he managed without intervention or support.

24. He received support from evidence from his POM, his COM and the FP, all of whom recommended the release of the Applicant. His POM explained that the Applicant had addressed his childhood trauma with therapy and had exhibited exemplary conduct in prison since recall. His COM explained that the Applicant now had insight into how trauma had impacted on intimate partner violence and he appreciated the impact of his violence on others. She noted a change in his attitude to violence and regarded his protective factors as including increased maturity and his compliance in prison. The COM thought that risk was not imminent, but that it would increase if stress increased such as with contact issues with his daughter or relationship issues. She "*could not see any benefit [for the Applicant] in open conditions*".

25. The FP thought that the Applicant *"had a good understanding of his personality traits of impulsivity and recklessness*" with the consequence that he was "*in a better position for release this time [although] warning signs of increased risk would probably be subtle".* Her "*only concern was whether [he] would be able to undertake consolidation work in the community concerning intimate partner violence".* She felt that the Applicant "*had undertaken counselling and that he had had sufficient time to consolidate his learning and demonstrate a period of settled custodial behaviour [and] that he had good insight into recall offences*". Her recommendation was also for release.

26. The Panel set out assessments in the Offender Assessment System dated 23 November 2021 which stated that assessment of the risks of further offending by the Applicant within relationships was high as was his risk of causing serious harm to the public (including future partners) and known adults namely a former partner and the Applicant's parents. The panel considered these assessments to be reasonable "*having regard to the nature and history of [the Applicant's] history and conduct in custody*".

27. Having considered the proposed Risk Management Plan (RMP), the Panel observed that apart from the conditions relating to the Applicant's parents *"the plan is essentially the same as [when the Applicant was released on the second occasion] and, whilst it might have worked for some time, it did not prevent eventual violence*".

28. The Panel then sought to reach its conclusions having considered all the evidence including that of the Applicant and the legal submissions and the fact that the three professional witnesses all supported the Applicant's application for release. The Panel however did not agree with these witnesses explaining to the Applicant (with emphasis added) that it had:

> *"reviewed the details of the index offence and your history of violent offending. It noted that of your significant intimate relationships, the first two involved convictions for violence against your then partners (AL and AW) and*

the third relationship was problematic. In addition, you had assaulted your parents, with whom your relationship had always been difficult. Indeed, you have had no positive relationships in your life".

30. The Panel noted factors in the Applicant's favour, such as that he had been in the community on licence for almost 3 years on the second occasion although it ended in violence and his exemplary conduct in prison. It explained that "*the custodial environment cannot replicate the intimate/family relationships where [the Applicant is] most at risk*".

31. The Panel observed that the Applicant's forensic history included general violence, his current risk arose within relationships "*particularly but not confined to intimate partners [and] significantly since recall [he has] not completed any interventions in relation to healthy relationships or domestic abuse [a training course addressing relationships and the handling of emotions] would be appropriate*"

32. To the Panel, it was a matter of concern that the Applicant "*was unable to provide even a rudimentary definition of what [he] considered to be abusive in a relationship".* The Panel observed that it concerned [them] that the Applicant could not "*identify [his] problematic traits",* adding that it *"did not agree with those witnesses who said that [the Applicant] had sufficient insight into [his] risk factors".* The Panel concluded that the Applicant had "*no tools to enable[him] to manage [his] emotions in a relationship at a time of stress*". The Panel noted that the Applicant had *"completed a course of trauma therapy*" but explained that "*this has clearly been of benefit to [him], but it did not address [his] primary risk factors*".

33.The panel recorded that the POM had been "*effusive in her support for release* so *much so that it did not consider her assessment to be objective in that she gave insufficient emphasis to [the Applicant's] risk in relationships and the absence of any relevant interventions".* She followed the recommendation of the FP and considered that the Applicant had demonstrated an increased insight into the recall offence. The weight to be attached to the evidence of the FP and her criticism of the panel's decision are the subject of one of the grounds of appeal and will be considered when those grounds are discussed later in this document.

34.The panel concluded that the Applicant had not done enough to reduce his risk in relationships and that *"[his] risk within relationships made it necessary for [him] to remain confined for the protection of the public from serious harm and did not direct [his] release".* The panel did recommend to the Secretary of State that the Applicant should be transferred to open conditions.

35. The reasoning of the panel was that:

a. The Applicant's "*conduct in prison has been exemplary [but] the custodial environment cannot replicate the intimate family relationship where [he is] most at risk*"
b. The Applicant's "*record demonstrates an established pattern of violent behaviour and of violence in personal relationships, and against those in authority in the community".*
c. The Applicant "*told the panel [his] violence in relationships was due to frustration and feeling backed into a corner. [He] said [he was] reckless and did not think of the consequences.*"
d. The panel noted that the Applicant had had "*three significant intimate relationships, the first two involved convictions of violence against your then partner...and the third relationship was problematic. In addition, [he] had assaulted [his] parents with whom his relationship had always been difficult.*"
e. "Significantly*, since recall, [the Applicant has] not completed any interventions in relation to healthy relationships or domestic abuse. [A training course addressing relationships and the handling of emotions] would be appropriate*"
f. "*although [the Applicant's] forensic history includes general violence, the panel identified [his] current risk was within relationships, particularly but not confined to intimate partners.*"
g. "*it concerned the panel that [the Applicant was unable to provide even a rudimentary definition on what [he] considered to be abusive in a relationship. [He] could not identify [his] problematic traits…. [He] currently has no tools to enable [him] to manage [his] emotions in a relationship at times of stress.*"
h. "*the panel did not agree that [he] had done enough to reduce [his] risk in relationships.*"
i. " *Apart from conditions [preventing the Applicant contacting his parents] the [proposed risk management plan for the Applicant] the [proposed risk management] plan is essentially the same as [the plan in place for the Applicant's last release] and, whilst it might have worked for some time, it did not prevent eventual violence*"
j. The panel considered as "*reasonable"* the Offender Assessment System risk assessment that he posed a high risk of causing serious harm to the public and this includes future partners and to known adults.
k. In consequence, notwithstanding the support for the Applicant's release from the three professional witnesses and his good conduct in custody "*the panel decided that [the Applicant's] risk within relationships made it necessary for [the Applicant] to remain confined for protection of the public from serious harm and so did not direct [his] release*".
l. The Panel considered that the benefits of the Applicant being in open conditions outweighed the risk to the public and recommended that he be transferred to open conditions.

The Relevant Law

36. The panel correctly sets out in its decision letter the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

Parole Board Rules 2019

37. 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

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 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.

40. 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

41. 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.

42. 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.

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

Other

44. The test to be applied when considering the question of transfer to open conditions is the subject of a well-established line of authorities going back to **R (Hill) v Parole Board [2011] EWHC 809 (Admin)** and including **R (Rowe) v Parole Board [2013] EWHC 3838 (Admin), R (Hutt) v Parole Board [2018] EWHC 1041 (Admin)**. The test for transfer to open conditions is different from the test for release on licence and the two decisions must be approached separately and the correct test applied in each case. The panel must identify the factors which have led it to make its decision. The four factors the panel must consider when applying the test are:
    (a) the progress of the prisoner in addressing and reducing their risk.
    (b) the likeliness of the prisoner to comply with conditions of temporary release
    (c) the likeliness of the prisoner absconding; and
    (d) the benefit the prisoner is likely to derive from open conditions.

45. 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.

46. 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 draftsman ship."

The reply on behalf of the Secretary of State

47. The Secretary of State stated that he did not intend to make any submissions in response to the Application for Reconsideration save that the FP "*confirmed that no consent was provided for the memo to be submitted in support of the [Applicant's] reconsideration application".* I will return to consider the effect of that statement on the validity of FP's memorandum when I deal with Ground 3.

Discussion

48. In dealing with the grounds for reconsideration, it is necessary to stress four matters of basic importance. First, the Reconsideration Mechanism is not a process by which the judgment of the panel can be *lightly* interfered with. Nor is it a mechanism in which the member carrying out the reconsideration was entitled to substitute his own views 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.

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

50. 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.

51. Fourth, in many cases, there can be more than one acceptable decision that a Panel can be entitled to arrive at depending on its view of the facts.

Ground 1

52. The Applicant states that he found the manner of questioning by the Panel as *"aggressive and interrogatory rather than probing and challenging"* and *"this effected [his] ability to process the questions aimed at him, consider and deliver an answer and present himself effectively*". It is also said that this "*heightened the anxiety that [the Applicant] experienced."*

53. I am unable to accept this serious criticism of the Panel's conduct for three separate reasons. First, the onus of proving this allegation is on the Applicant but neither he nor his legal representative have provided any specific details or specific examples of the Panel's *"aggressive and interrogatory"* questioning. So, it has not been shown that there was any unacceptable or unfair conduct by the Panel.

54. A second or alternative reason for rejecting this ground is that it is not contended, let alone proved, that any specific aspect of the Applicant's evidence would have been different if the Panel's questioning had been *"probing and challenging"* rather than *"aggressive and interrogatory".*

55. Another and perhaps less cogent reason why this ground fails is that there is no allegation that any complaint was made to the Panel about the questioning during the hearing. If the questioning by the Panel was unfair, it is reasonable to assume that complaints would have been made during the hearing about this by the Applicant's legal representative and that these complaints together with the Panel's response would have been relied on in the Grounds for Reconsideration

56. For each of these reasons, I reject this ground.

Ground 2

57. It is contended that the Panel misinterpreted the evidence given which led to an irrational decision not to direct release and the errors are said to include:
    a. When referring to an assault by the Applicant on AW in 2015, the Decision Letter states that AW sustained a cut to her lip, but the Applicant contends that the injury sustained was a scratch. It is also said by the Applicant that the incident was not "*aggressively charged*" and that the threat he made to strike AW was in a bid to stop the children eating a bad diet was made in a jovial manner rather than in an aggressive manner. The Panel was entitled to reach the conclusions it did having heard the evidence and the details of the criminal case which led to the Applicant's conviction.
    b. Disputes about the extent of violence used by him in the incident leading to his recall but the recall was clearly justified as he was convicted of assault.
    c. An error about the circumstances in which he ended his relationship with A and whether he restrained AW or she restrained him. The Panel was entitled to reach its own conclusions on the accuracy and reliability of the Applicant's evidence. It was not bound to accept the Applicant's evidence.
    d. That the Panel was wrong in saying that the Applicant had no positive relationships as he contends that he has positive relationships with his sister, his ex-partner's mother, his employer and his friends in the community. It is not contended in the Grounds for Reconsideration that such evidence of these other friendships was adduced at the hearing or that on the evidence adduced, the

Panel was not entitled to conclude that the Applicant had no positive relationships.

e. Too little weight has been attached to the core risk reduction work he has undertaken since the last review. The Panel, as the designated fact finders, who questioned the Applicant were entitled to conclude that "*it concerned the panel that the Applicant (a) "was unable to provide even a rudimentary definition on what [he] considered to be abusive in a relationship; (b) could not identify [his] problematic traits…. And (c) currently has no tools to enable [him] to manage [his] emotions in a relationship at times of stress.*"

f. The period covered by the statement of the Applicant that he used violence when he felt frustrated and backed into a corner. The Applicant contends that this remark related to his earlier offending and not his use of violence in relationships. The Panel was entitled to regard this comment as relating to his use of violence in relationships at the time of its deliberations and the Decision Letter.

58. As I have explained in paragraph 45 above, these alleged errors and the others relied on in the Grounds for Reconsideration will only lead to reconsideration if first they are *"uncontentious and objectively verifiable"* and second that the errors "*must have played a material (though not necessarily decisive) part in the tribunal's reasoning".*

59. I am not satisfied that alleged errors are "*uncontentious and objectively verifiable*", but in any event they certainly have not played a material or any significant part in the panel's reasoning. That reasoning is set out in paragraph 35 above and the complaints of the Applicant fail to undermine that reasoning especially as much of it has not been challenged in the Grounds.

60. It must not be forgotten that the Panel, unlike me, had seen and heard the Applicant give evidence and be questioned. In addition, due deference must be given to the *expertise* of panels of the Board in making decisions relating to parole. These are further reasons for rejecting this head of challenge.

Ground 3

61. This ground for Reconsideration is based on a memo written by the FP dated 10 January 2022 and sent to the Board with the Grounds for Reconsideration. As I have explained, the PPCS Reconsideration Team have written to Parole Board's Reconsideration Team in a communication dated 8 February 2022 explaining that PPCS "*have contacted the [FP] who has confirmed that no consent was provided for the memo to be submitted in support of [the Applicant's] reconsideration application".*

62. In my view, this means that I should ignore the FP's Memorandum. But without prejudice to that conclusion, I will also comment on its contents. I will explain why

even if the allegations in that Memorandum are correct, then whether considered individually or cumulatively, they do not undermine the conclusions in the Decision Letter.

63. FP and through her the Applicant contends in that Memorandum that
    a. The decision letter was inaccurate when it stated that FP explained that the rationale for the non-completion of the assessment of the risks of further offending within relationships was that "she *thought that [another diagnostic assessment] (which she did undertake) would cover partner abuse".* FP says that the reason why [an assessment of the risks of further offending within relationships] was not completed was because the Applicant "*did not demonstrate views in interview or through the collateral information that were supportive of Inter Partner Violence and his violence against partners appeared to be more in the context of general violence rather than confined to a relationship setting*". FP explained that she "*did not agree that completion of an* [assessment of the risks of further offending within relationships] *would add any further information than that contained within the [diagnostic assessment], particularly as the Applicant [was] not currently in a relationship. Intimate relationships were therefore discussed in the [diagnostic assessment]*".
    b. Although the decision letter refers to FP being concerned as to "*whether the Applicant would be able to undertake consolidation work in the community*", FP does not recall raising this concern and noted that there was evidence from the COM that the Applicant could undertake consolidation work in the community around relationships.
    c. She explained during the hearing that the Applicant "*was clearly nervous, which I believed was impacting on his testimony…this was due to him presenting in a more open and insightful manner in the interviews for the risk assessment*".

64. As has been explained in paragraph 45 above, an error in a Decision Letter can only lead to ordering reconsideration of a decision if *the true position has 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".*

65. The matters set out in paragraph 63 (a) and (b) have not been shown to be wrongly stated in the Decision Letter and perhaps more importantly, they have not played a material part in the Board's crucial reasoning which is set out in paragraph 35 above. In those circumstances, they cannot justify whether considered individually or cumulatively an order for reconsideration. I do not understand how the fact that the Applicant was nervous as set out in paragraph 65 (c) can be relevant to a claim for reconsideration especially as all panel members are always conscious that prisoners at Parole Board hearings are almost invariably and understandably nervous at hearings.

66. Further or alternative reasons why this ground must fail are that:

a. Due deference must be given to the *expertise* of panels of the Board in making decisions relating to parole and more particularly on the risk posed by the Applicant in the community as set out in its conclusions in paragraph 35 for concluding that he could not be safely released.
b. In any event, I do not have the advantage that the panel had of hearing and seeing the Applicant and the professional witnesses giving evidence and the panel is entitled to further deference for its decision.
c. In any event, 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. There are no such compelling or indeed other reasons in this case for interfering with the decisions of the panel relating to the issue of whether the Applicant could be safely released.

Decision

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

Sir Stephen Silber
18 February 2022