

[2023] PBRA 174

the  
Parole  
Board

working with others  
to protect the public

## Application for Reconsideration by Kelly

### Application

1. This is an application by Kelly (the Applicant) for reconsideration of a decision of a panel (the panel) of the Parole Board dated 5 August 2023 (the panel decision) making no direction for the Applicant's release and no recommendation for 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 either on the basis (a) that the decision contains an error of law (b) that it is irrational and/or (c) that it is procedurally unfair.
3. I have considered the application on the papers. These are:
  - (a) The Secretary of State's reference of the Applicant's case to the Parole Board dated 20 May 2021 asking the Board to consider whether or not it would be appropriate to direct the Applicant's release and if the Board did not consider it appropriate to direct release, the Board was asked to consider the Applicant's continued suitability for open conditions;
  - (b) the panel decision;
  - (c) the Applicant's application for Reconsideration of the panel decision dated 15 August 2023;
  - (d) the email dated 24 August 2023 from the Public Protection Casework Section (PPCS) on behalf of the Secretary of State (the Respondent) setting out their representations in response to the Applicant's application for reconsideration;
  - (e) the closing submissions of the Applicant's Solicitors to the panel submitted in August 2023;
  - (f) the statements from the Applicant's Solicitors at the Parole Board hearing in which the Solicitor stated that she had represented the Applicant at the hearing and that in the light of the late service of the dossier "*I checked that [the Applicant] was content to proceed which he stated he was*" and she also stated that "*I also made no mention of the situation regarding the dossier in closing submissions as I had clarified with [the Applicant] during the pre-hearing conference that he was content with proceeding with the hearing which he agreed to*", and
  - (g) the Applicant's dossier containing 697 pages.
  - (h) I was also provided with a recording of the hearing before the panel on 1 August 2023.

## The hearing before the Panel

4. A three-member panel of the Board comprising of two independent members and a psychologist member convened for an oral hearing at the prison on 1 August 2023. The Applicant was legally represented but the Respondent was not legally represented.
5. The panel heard oral evidence from:
  - (a) The Applicant's Prison Offender Manager (POM);
  - (b) The Applicant's Community Offender Managers (COM);
  - (c) The Prison Appointed Psychologist (the Prison Psychologist); and
  - (d) The Applicant.
6. The grounds for seeking reconsideration are that in not concluding that the Applicant's risk could be managed in the community and that his release should have been ordered because:
  - (a) there was procedural unfairness and an error of law in that the Applicant was unable to give adequate instructions to his legal representative as the Applicant did not have sight of the dossier until 15 minutes before the hearing and at least 9 reports were relied on at the hearing which the Applicant had not seen before the hearing (Ground 1);
  - (b) the panel was "rude" as it cut off witnesses in mid-sentence and this was procedurally unfair (Ground 2);
  - (c) the decision of the panel was irrational as neither the Applicant nor the professionals were asking for it (Ground 3);
  - (d) the panel acted in other irrational ways or procedurally unfair ways in dealing with the evidence and in treating the Applicant (Ground 4).

## Background

7. On 26 January 1998, the Applicant was sentenced to life imprisonment for the offence of the murder with a tariff of 17 years and 96 days.
8. The index offences occurred after the Applicant attended a party at which the victim was also present and who is reported to have made comments about the Applicant's mental health and that she would "get his children taken off him". He subsequently followed his victim outside and attacked her. The Applicant then obtained a knife which he used to stab and slit his victim's throat before leaving the scene. He visited two locations before returning to find the victim still alive. The Applicant then went to a property where he kept a hunting knife before returning to the place where he had attacked the victim and fatally stabbed the victim.
9. The Applicant had previous convictions for offences of dishonesty, including burglary, as well as for possessing and supplying drugs, using threatening behavior and committing an assault causing actual bodily harm in which his victim was a child.
10. Misuse of alcohol and substances has been reportedly linked to the previous

offending of the Applicant, but these matters were not significant factors in relation to the index offence. There have been concerns that the Applicant has misused substances in custody. In addition, the Applicant has experienced difficulties in maintaining relationships with professionals and this has been frequently linked to mistrust or disagreement with their recommendations. He has made threats to a doctor and disengaged with a professional; if repeated, this conduct could have an adverse effect on future supervision of the Applicant.

11. The Applicant has participated in offending behavior work and other work directed by psychology, but he has been unwilling to attend a Therapeutic Community to address his ongoing needs.
12. In 2021 after a decision of the Board, the Applicant was transferred to open conditions and he had 2 successful escorted day releases, but he expressed concerns about progressing to unaccompanied day releases as he perceived that there was a risk to his safety. This belief appears to have been attributed to paranoid thinking, but as the Applicant reported that he was not feeling safe, he was then returned to closed conditions.
13. In February 2023 while the subject of a psychological risk assessment by the psychologist, the Applicant spoke of hearing voices, and he also made comments interpreted as threats to anyone with whom he would be required to share a cell. It was pointed out by the psychologist that the Applicant *"requires some special management strategies and frequent monitoring"*.
14. The Applicant's POM told the panel that the Applicant had told her that during the index offence *"he felt a mixture of paranoia and real threat and he was using substances and alcohol"*. Her evidence was that *"it was possible paranoia was still present"* in the Applicant. She considered that the Applicant lacked insight into stressors in the community and was naïve about relationships.
15. The Applicant's POM did not identify any further core risk reduction work for the Applicant to complete. Her view was that a further period for the Applicant in open conditions would be beneficial as there was no risk of the Applicant absconding and there had been no evidence of violence in custody.
16. In his evidence, the Applicant explained that while in open conditions he heard voices which led him to believe that there was a risk to his safety. The Applicant spoke to his partner who contacted the prison who then moved him from open conditions.
17. The Applicant said it had been news to him that he had been assessed for cell sharing and that he objected to sharing a cell. He identified his risk factors to be the victim's family, but as he was not required to do further work in custody, there was no benefit in him being in prison.
18. The prison psychologist explained that *"her professional opinion remained that the Applicant should have a further period of testing in open conditions"*

to evidence he can manage particularly if he feels unsafe". She noted that he "lacked insight into intimate partner violence [and that] his risk of serious harm could become imminent if similar factors arose such as impacting his sense of self, such as unfaithfulness or mistrust".

19. She explained that because the Applicant "had not had a period of testing to demonstrate skills, she supported a period in open conditions".
20. The Applicant's COM recommended that the Applicant would find circumstances in the community to be different from what he was used to and she recommended that the applicant should be placed in open conditions "where circumstances in the community would be different and there were lots of barriers [for the Applicant] which could be tested via ROTLs".
21. The Applicant has been assessed within OASys, the probation service assessment report, as posing a high risk of serious harm to the public, a medium risk to known adults, children and staff. He has also been assessed as posing a medium risk of general reoffending and a low risk of violence. The Applicant's COM agreed with these assessments.
22. As explained in paragraph 3 above, the Respondent has referred the Applicant's case to the Parole Board and has asked the Board to consider whether or not it would be appropriate to direct the Applicant's release and if the Board did not consider it appropriate to direct release, the Board was asked to consider the Applicant's continued suitability for open conditions. The Applicant is seeking his release and if that is not ordered, he is not seeking his transfer to open conditions.

### **The Applicant's Claim for Release**

23. The Applicant's Solicitor contended in her closing submissions that:
  - (a) Evidence at the hearing depicted the Applicant as a model prisoner "who demonstrates compliance with the regime and full engagement with both services and professionals";
  - (b) The Applicant has worked hard to achieve an in-depth understanding of his risk which shows a high level of awareness around his triggers and red flags and in consequence he has developed his skills and insights into his risk which he has never had previously and which will result in a successful release at the present time and ensuring that he is not reliant on external mechanisms to act as protective factors;
  - (c) For a significant period, the Applicant has not used violence or substances and so he has demonstrated that he does not pose a risk of imminent or future harm in open or closed conditions;
  - (d) There should not be a requirement that the Applicant spends a further period in open conditions especially as he would comply with the release plan and would engage with professionals;
  - (e) A period on testing can be safely and successfully achieved through the Applicant being released to PIPE (Psychologically Informed Planned Environment) Approved Premises under the supervision of the release plan;

- (f) The Risk Management Plan (RMP) provides a high level of monitoring over the Applicant's risk areas and would allow community professionals to identify warning signs and address them prior to the risk of harm becoming imminent;
- (g) The Applicant had identified to the panel the key aspects of his support network;
- (h) A release decision would provide the Applicant with the opportunity to demonstrate self-management and to ensure that he is able to apply his learning and skills within a real-life environment under the high level of tailored supervision and monitoring of community professionals; and
- (i) All professionals were at this stage supportive of progression for the Applicant and were of the opinion that the external controls of the closed estate were no longer required. They all recommended that he should be transferred to open conditions but there was no guarantee that such a recommendation would be accepted or that if accepted, the Applicant would be able to access periods of temporary release and the testing the professionals were seeking.

24. Hereinafter, these will be collectively referred to as "*the Applicant's points*".

### The Panel's Reasoning

25. The panel took into account the Applicant's points. Indeed, it was well aware of the views of the professionals and the excellent recent behavior of the Applicant. The panel concluded that it remained necessary for the protection of the public that the Applicant should be confined because of the following factors:

- (a) The Applicant had been convicted of the very serious index offence of the unprovoked murder of an unarmed female, as explained in paragraph 8 above.
- (b) The Applicant had a large number of previous convictions for acquisitive offences, drug related offences and one assault. He has also used "*violence towards other males*" and had been abusive in an intimate relationship.
- (c) The Applicant had completed some risk related work and had spent a period in a secure unit where he engaged in substantial therapy, but "*had been discharged with outstanding work on his scheme which was felt to underpin his risk [and] he had been unwilling to complete this but has maintained positive prison behavior*". There has been an absence of violence on the Applicant's part and his prison behavior had been "*largely positive*".
- (d) The Applicant progressed to open conditions but he "*had not completed any unaccompanied or overnight ROTLs [release on temporary licence] by the time he was removed.*"
- (e) On the issue of the Applicant having to share his cell, "*the panel were satisfied [the Applicant's] words implied a threat to the decision maker and anyone he was required to share a cell with [and the Applicant's] response to questioning did not mitigate concerns he would be a risk of serious concern to another prisoner if required to share*".

- (f) The panel had *“further concerns about [the Applicant’s] motivation and willingness to engage with all interventions and accept support from all services which may assist and manage his resettlement”*.
- (g) *“His dismissal of the value of further testing and opportunities for resettlement indicate limited insight into his needs and risks.”*
- (h) *“While the [RMP] provides controls and support, the panel were not satisfied he would fully engage.”*
- (i) *“Additional protection, such as from IIRMS, [intensive intervention and risk management services]; had been dismissed by [the Applicant]”*.
- (j) *“The panel assess [the Applicant] to be a high risk of serious harm to the public and known adults”*.
- (k) *“The panel concluded that it remains necessary for the protection of the public that [the Applicant] is confined and did not direct [his] release”*.
- (l) Having noted the recommendations from the professionals that the Applicant should return to open conditions, the panel concluded that it could not accept that recommendation as the Applicant had not made sufficient progress during his sentence in addressing and reducing risks to a level consistent with protecting the public from serious harm as:
  - i. *“The paralleling nature of the concerns that led to [the Applicant’s] return to the closed estate with the index offence would indicate that there are still live risk factors that remain unaddressed”*; and
  - ii. *“[the Applicant] would appear to be vulnerable when placed in a less structured setting and remains concerned about ongoing risk to himself [which] in turn can trigger his risk factors”*.

26. These factors will hereinafter be collectively referred to as the “the panel’s crucial factors”.

## The Relevant Law

### *Irrationality*

27. 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 explained at para. 116 that:

*“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.”*

28. This test was set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374**. The Divisional Court in **DSD** went on to indicate that in deciding whether a decision of the Parole Board was irrational, due deference had to be given to the expertise of the Parole Board in making decisions relating to parole. The Board, when considering whether to direct a reconsideration, will adopt the same high standard for establishing



'irrationality.' The fact that Rule 28 contains the same adjective as is used in judicial review shows that the same test is to be applied. The application of this test has been confirmed in previous decisions on applications for reconsideration under Rule 28: **Preston [2019] PBRA 1 and others**.

29. 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.
30. 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.*"

### The Reply on behalf of the Secretary of State (the Respondent)

31. PPCS, on behalf of the Respondent, confirmed in an email dated 24 August 2023 that the Applicant was first issued with his parole dossier on 16 September 2021. PPCS have liaised with the Applicant's current POM, who was able to confirm that she did provide an updated dossier fifteen minutes before the oral hearing on 07 August 2023. PPCS notes that the Applicant was offered time to review the dossier by the Panel and declined the opportunity to do so. PPCS stated in that email that it makes no further representations in response to the Applicant's reconsideration application.

### Discussion

32. In dealing with the grounds for reconsideration, it is necessary to stress six 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.

33. The second matter of material importance is that when deciding whether a decision of the panel was irrational, due deference has to be given to the expertise of the panel in making decisions relating to parole.
34. 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.
35. Fourth, when considering whether to order reconsideration, appropriate weight must be given to the views of the professional witnesses, but reconsideration cannot be ordered if the panel has put forward adequate reasons for not following the views of the professional witnesses.
36. Fifth, in many cases, there can be more than one decision that a panel can be entitled to arrive at depending on its view of the facts.
37. Sixth, a decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28 of the Parole Board Rules 2019 (as amended) (see **Barclay [2019] PBRA 6**).

## The Grounds for Seeking Reconsideration

### Ground 1- Procedural Unfairness/Error of Law

38. It is contended that there was procedural unfairness and/or an error of law in that the Applicant was unable to give adequate instructions to his legal representative as the Applicant did not have sight of the dossier until 15 minutes before the hearing and at least 9 reports were relied on at the hearing which the Applicant had not seen before the hearing. Even if the dossier had to be supplied 8 weeks prior to the hearing, his ground fails for each of the following reasons.
  39. First, the Applicant's solicitor has explained that in the light of the late service of the dossier before the hearing started "*I checked that [the Applicant] was content to proceed ... he stated he was.*"
  40. Second, the recording of the hearing shows that the Applicant's solicitor told the panel at the start of the proceedings in the presence of the Applicant about the late service of the material and significantly she explained in the presence of the Applicant that he was content to proceed and that he could read documents in breaks. The Applicant did not dissent or object.
  41. Third, if the Applicant had had any problems during the hearing as a result of the late service of documents, those problems would surely have been referred to either at the time when they arose during the hearing or at the latest in the closing submissions of the Applicant's legal representative. There was no complaint during the hearing by the Applicant that he was



prejudiced by the late service of any documents. Furthermore, no complaint was made by the Applicant's legal representative in her detailed closing submissions that the Applicant had been prejudiced by the late service of the material. No acceptable explanation has been given for this very significant omission.

42. Fourth, the Applicant has failed to show what relevant evidence could and would have been adduced by him if he had received the material which he received late at the proper time and/or crucially how such relevant evidence could or would have undermined the panel's crucial factors and the decisions arrived at by the panel to refuse to order the release of the Applicant.

### Ground 2-Procedural Unfairness

43. It is contended that the panel was "rude" as it cut off witnesses in mid-sentence and this was procedurally unfair. This ground also fails because:

- (a) No details are given of when this occurred and whether the Applicant's legal representative asked the panel to allow the witness to continue and if not, why not; and/or
- (b) The Applicant has failed to state in respect of each witness what evidence that witness was prevented from adducing and how such relevant evidence could or would have undermined the panel's crucial factors and/or its decision to refuse to order the release of the Applicant.

### Ground 3-Irrationality

44. The contention of the Applicant is that the decision of the panel to refuse to release him was irrational as neither the Applicant nor any of the professionals were asking for it.

45. The Respondent's reference of the Applicant's case to the Parole Board dated 20 May 2021 asked the Board to consider whether or not it would be appropriate to direct the Applicant's release and if the Board did not consider it appropriate to direct release, the Board was then asked to consider the Applicant's continued suitability for open conditions. To comply with this reference, the panel considered first whether to release the Applicant and if not then it had to proceed to consider the Applicant's continued suitability for open conditions.

46. The challenge to the panel's decision to refuse to release the Applicant fails because:

- (a) It has been explained in the panel's crucial factors why it was entitled and/or obliged to refuse to release him;
- (b) None of the professionals supported the Applicant's release as they favored moving him to open conditions;
- (c) The Applicant has failed to show that 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 not to release the Applicant; and/or
- (d) In any event, due deference has to be given to the expertise of the

panel in making decisions relating to the Applicant's parole and that is a further or an alternative reason why the irrationality challenge fails.

47. The challenge to the panel's decision that the Applicant was unsuitable for open conditions has to be refused because a decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28 and this has been confirmed by the decision in **Barclay [2019] PBRA 6**.

#### **Ground 4-Irrationality and Procedural Unfairness and Error of Law**

48. This ground is that the panel acted in other irrational ways or in procedurally unfair ways in dealing with the evidence and in treating the Applicant.

49. The Applicant has supplied a detailed handwritten note setting out his complaints about the way in which the panel conducted the proceedings and considered the evidence in it, he sets out reasons why the Panel erred in law, followed an incorrect process and reached a decision which was irrational.

50. As for the contention that the panel erred in law;

- (a) In relation to the late supply of documents, it has been explained in paragraphs 38 to 42 above, that there is no merit in this complaint as:

- i. the Applicant stated before the hearing started that he was content to proceed notwithstanding the late supply of documents;
- ii. no complaint was made during the hearing that the Applicant could not follow because of the late supply of documents;
- iii. no such complaint about the prejudice suffered by the Applicant by the late supply of documents was made in the closing submissions of the Applicant's legal representative;
- iv. the Applicant has failed to show what relevant evidence could and would have been adduced by him if he had received the material at the proper time and/or crucially how such relevant evidence could or would have undermined the panel's crucial factors and the decisions arrived at by the panel to refuse to order the release of the Applicant. For each of these reasons, the complaint about the late supply of documents must be rejected.

- (b) In relation to the contention that "*I was forced to speak second meaning I could not challenge after this time*", there is no merit in this complaint for among other reasons;

- i. no complaint was made in relation to this during the hearing or in the closing submissions of the Applicant's legal representative;
- ii. the Applicant has failed to show what relevant evidence could and would have been adduced by him if he had been able to challenge this material and/or
- iii. crucially how such relevant evidence could or would have undermined the panel's crucial factors and the decisions arrived

at by the panel to refuse to order the release of the Applicant.

- (c) In relation to the contention that *"the Chair was preoccupied by a sentence quoted from a Comp2 –confidential access he read this out 5 times during [the] first 2 hours...and showed he was not paying attention to more important matters"*, there is no merit in this complaint for among other reasons, first, it is not stated what *"more important matters the Chair was not paying attention to"*; second, it is not explained how this failure to pay attention to these important matters has led to errors in the decision letter and third, it is not explained why no complaint was made in relation to this during the hearing or in the closing submissions of the Applicant's legal representative.
- (d) In relation to the contention that the Board *"was using information about the offence [of murder] as factual but was in fact wrong, the circumstances of offence leading up to the violence did not happen in the way it was documented"*, there is no merit in this complaint because on any view the index offence was an unprovoked attack on an unarmed female by the Applicant as explained in paragraph 8 above.
51. As for the contention that the incorrect process was adopted and the parole process was procedurally unfair:
- (a) Insofar as it is contended that the Board were *"rude and inappropriate especially when positive information about [the Applicant] was referred to even cutting off witnesses mid-sentence"* and cutting off the Applicant *"from answering the Board"*, there is no merit in this allegation as;
- i. No details are given of when this occurred and whether the Applicant's legal representative asked the panel to allow the witness or the Applicant to continue and if not, why not;
  - ii. no details are given of precisely what evidence each witness or the Applicant was prevented from adducing; and
  - iii. how such evidence could or would have undermined the Panel's crucial factors and/or its decision to refuse to order the release of the Applicant.
- (b) Insofar as it is contended that the incorrect process was adopted and the Board *"went against everyone ...and kept [the Applicant] in closed"*, this complaint must be rejected as:
- i. It has been explained in the Panel's crucial factors why it was entitled and/or obliged to refuse to release him and so could not accept the views of the professionals or the Applicant who did not consider that the Applicant should not be released;
  - ii. the Applicant has failed to show that it is manifestly obvious that there was an error of fact of an egregious nature in those crucial factors which can be shown to have directly contributed to the conclusion arrived at by the panel; and/or
  - iii. in any event, due deference has to be given to the expertise of the panel in making decisions relating to the Applicant's parole and that is a further or an alternative reason why this challenge fails.
- (c) Insofar as it is contended that the Applicant could not speak when the panel kept referring to matters which occurred more than 3 years

previously, there is no merit in this complaint for among other reasons, no complaint was made in relation to this in the closing submissions of the Applicant's legal representative and the Applicant has failed to show what relevant evidence could and would have been adduced by him if he had been able to challenge material and/or crucially how such relevant evidence could or would have undermined the panel's crucial factors and the decisions arrived at by the panel to refuse to order the release of the Applicant.

(d) Insofar as the Applicant complains about receiving the dossier 15 minutes before the hearing, there is no merit in this complaint for the reasons set out in paragraph 50(a) above.

52. As for the contention that the decision not to release the Applicant was irrational, these submissions cannot be accepted as:

- (a) The panel had been able to see and hear the Applicant give evidence and the members of the panel were well aware of his custodial history which had been explained by the Applicant's legal representative. In reaching its conclusion on these matters and deference is owed to the panel in its decision making so that the decision to refuse to release him was not irrational in the light of the panel's crucial factors;
- (b) Because even if the Applicant's complaints are correct, the panel's crucial factors cannot be impugned and the decision not to release the Applicant cannot be considered to be irrational because many of the panel's crucial factors still remain valid and would continue to constitute cogent factors for not releasing the Applicant. These factors would include:
  - i. The seriousness of the index offence;
  - ii. the Applicant's previous use of "*violence towards other males*";
  - iii. the Applicant's intense hostility to any prisoner sharing his cell and the risk of serious harm to such a prisoner;
  - iv. the Applicant's unwillingness to complete outstanding work which would underpin his risk;
  - v. the fact that the panel were not satisfied the Applicant would fully engage with the RMP;
  - vi. the fact that the Applicant had not completed any unaccompanied or overnight ROTLs by the time he was removed;
  - vii. the circumstances in which the Applicant was returned to closed conditions;
  - viii. the panel's assessment that the Applicant posed a high risk of serious harm to the public and known adults in the community; and/or
  - ix. even if the Applicant's complaints are correct, the decision under challenge not to release him fails to reach the high threshold for being irrational, namely that the decision was in the words of the Divisional Court in **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin) [116]** "*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*"

## Conclusion

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

**Sir Stephen Silber**  
**9 October 2023**