Neutral Citation Number: [2024] EWHC 2408 (Admin)

Case No: AC-2024-CDF-000003

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 24 September 2024

Before:

HIS HONOUR JUDGE KEYSER KC
sitting as a Judge of the High Court

- -

Between:

THE KING on the application of ABDUL KHALISADAR	**Claimant**
- and -	
SECRETARY OF STATE FOR JUSTICE	**Defendant**

- -
- -

Carl Buckley (instructed by **Reece Thomas Watson**) for the **Claimant**
Anthony Lenanton (instructed by **Government Legal Department**) for the **Defendant**

Hearing date: 13 September 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 24 September 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE KEYSER KC

Judge Keyser KC :

Introduction

1. The claimant, Mr Abdul Khalisadar, who is now aged 43 years, is a prisoner at HMP Ashfield. On 4 January 2013, when he was 31 years old, he was sentenced to Imprisonment for Public Protection ("IPP") with a minimum tariff of 18 months[1] upon his plea of guilty to charges of engaging in sexual activity in the presence of a child under the age of 16 and of making indecent images of children. The tariff expired on 4 July 2014.

2. The Secretary of State referred the claimant's case to the Parole Board for determination under section 28 of the Crime (Sentences) Act 1997 whether he should be released on licence and, if he should not, for advice pursuant to section 239(2) of the Criminal Justice Act 2003 as to whether he should be transferred to open conditions. The Parole Board held an oral hearing on 29 June 2023 and issued its decision on 16 July 2023. It made no direction for the claimant's release. However, it recommended that he be transferred to open conditions.

3. By a decision dated 13 October 2023 ("the Decision") the Secretary of State for Justice rejected the Parole Board's recommendation.

4. With permission granted on 28 May 2024 by His Honour Judge Lambert, sitting as a Judge of the High Court, the claimant applies for review of the Decision and seeks an order that it be quashed and the matter be referred back for a fresh decision to be made.

5. I am grateful to Mr Buckley, counsel for the claimant, and Mr Lenanton, counsel for the Secretary of State, for their succinct and focused submissions.

The Legal Framework

6. Section 12(2) of the Prison Act 1952 provides:

> "(2) Prisoners shall be committed to such prisons as the Secretary of State may from time to time direct; and may by direction of the Secretary of State be removed during the term of their imprisonment from the prison in which they are confined to any other prison."

7. Section 47(1) of that Act empowers the Secretary of State to make rules for *inter alia* the classification, treatment, employment, discipline and control of prisoners. The Prison Rules 1999 were made in exercise of that power. Rule 7(1) provides:

> "(1) Prisoners shall be classified, in accordance with any directions of the Secretary of State, having regard to their age, temperament and record and with a view to maintaining good order and facilitating training and, in the case of convicted

[1] The papers are unclear on whether the tariff was 18 months or 2 years. The Parole Board's decision says 2 years, but the Secretary of State's decision says 18 months. The agreed end-of-tariff date is precisely 18 months after the date of sentence, which tends to support the shorter tariff.

> prisoners, of furthering the purpose of their training and treatment as provided by rule 3."

Rule 3 provides:

> "3. The purpose of the training and treatment of convicted prisoners shall be to encourage and assist them to lead a good and useful life."

8. Section 239(2) of the Criminal Justice Act 2003 provides:

> "(2) It is the duty of the [Parole] Board to advise the Secretary of State with respect to any matter referred to it by him which is to do with the early release or recall of prisoners."

9. As a transfer to open conditions is relevant to the early release of a prisoner, the Secretary of State has the power to ask the Parole Board for its advice on whether a prisoner is suitable for transfer to open conditions. However, the Secretary of State is not obliged to ask for such advice. The decision whether to transfer a prisoner to open conditions is that of the Secretary of State, not that of the Parole Board, and the Secretary of State is not bound to accept the Parole Board's recommendation.

10. The Secretary of State has a policy that applies to the decision whether to accept or reject a recommendation by the Parole Board to transfer a prisoner to open conditions: the Generic Parole Process Policy Framework ("the Policy Framework"). The Policy Framework has been through many versions—I was told, ten versions—but the provision that is relevant for present purposes (what is now paragraph 5.8.2) has been published in four iterations: January 2020; July 2022; July 2023; and August 2023. The Decision in the present case was made under the final, August 2023 version of paragraph 5.8.2, which alone is relevant. It is, perhaps, interesting to see the changing versions of the text.

11. The first (January 2020) version of the relevant text was as follows:

> "5.8.2 PPCS [the Public Protection Casework Section] may consider rejecting the Parole Board's recommendation if the following criteria are met:
>
> - The panel's recommendation goes against the clear recommendation of report writers without providing a sufficient explanation as to why; or
>
> - the panel's recommendation is based on inaccurate information.
>
> 5.8.3 The Secretary of State may also reject a Parole Board recommendation if it is considered that there is not a wholly persuasive case for transferring the prisoner to open conditions at this time."

12. The most important change to the Policy Framework, for present purposes, was introduced in the second (July 2022) version:

> "5.8.2 The Secretary of State (or an official with delegated responsibility) will accept a recommendation from the Parole Board (approve an ISP [Indeterminate Sentenced Prisoner] for open conditions) only where:
>
> - the prisoner is assessed as low risk of abscond; and
> - a period in open conditions is considered essential to inform future decisions about release and to prepare for possible release on licence into the community; and
> - a transfer to open conditions would not undermine public confidence in the Criminal Justice System."

The basic change from the first version (the Secretary of State will consider rejecting the recommendation if certain conditions are satisfied) to the second version (the Secretary of State will accept a recommendation only if certain conditions are satisfied) has been retained in subsequent versions.

13. The third (July 2023) version was in force at the date of the Panel's recommendation and provided:

> "5.8.2 The Secretary of State (or an official with delegated responsibility) will accept a recommendation from the Parole Board (approve an ISP for open conditions) only where the ISP has made sufficient progress during the sentence in addressing and reducing risk to a level consistent with protecting the public from harm, in circumstances where the ISP in open conditions may be in the community, unsupervised under licensed temporary release;
>
> And where the following criteria are met:
>
> - The prisoner is assessed as low risk of abscond; and
> - A period in open conditions is considered essential to inform future decisions about release and to prepare for possible release on licence into the community; and
> - A transfer to open conditions would not undermine public confidence in the Criminal Justice System."

14. At the date of the Decision, the fourth (August 2023) version applied. Paragraph 5.8.2 of the Policy Framework read:

> "5.8.2 The Secretary of State (or an official with delegated responsibility) will accept a recommendation from the Parole Board (approve an ISP for open conditions) only where:
>
> - the prisoner has made sufficient progress during the 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 low risk of abscond; and
>
> - there is a wholly persuasive case for transferring the ISP from closed to open conditions."

I shall refer to the condition in the first bullet-point as "the Sufficient Progress Criterion". The same criterion was contained in the July 2023 version of paragraph 5.8.2. It was also contained in the Secretary of State's Directions to the Parole Board 2022, to which the Panel in the present case expressly had regard (see paragraph 4.5 of the Parole Board's decision).

15. There are very many, very detailed decisions regarding the correct approach of the Secretary of State when considering whether to accept or reject the Parole Board's recommendation to transfer a prisoner to open conditions[2]. Here, I am content to adopt the summary statement of law given by Sir Ross Cranston in *R (Green) v Secretary of State for Justice (No. 2)* [2023] EWHC 1211 (Admin):

> "42. In drawing the threads together, it seems to me that the following applies if the Secretary of State is to disagree with the recommendations of the Parole Board for a prisoner's move to open conditions:
>
> i. the Secretary of State must accord weight to the Parole Board's recommendations, although the weight to be given depends on the matters in issue, the type of hearing before the panel, its findings and the nature of the assessment of risk it had to make;
>
> ii. on matters in respect of which the Parole Board enjoys a particular advantage over the Secretary of State (such as fact finding), he must give clear, cogent, and convincing reasons for departing from these;
>
> iii. with other matters such as the assessment of risk, where the Secretary of State is exercising an evaluative judgment, he must accord appropriate respect to the view of the Parole Board and he must still give reasons for departing from it, but he can only be challenged on conventional public law grounds such as irrationality, unfairness, failure to apply policy, and not taking material considerations into account."

[2] As illustrated by the list given by Fordham J in *R (Carrigan) v Secretary of State for Justice* [2024] EWHC 1940 (Admin), at [5]

Among other judgments, I mention in particular that of Chamberlain J in *R (Oakley) v Secretary of State for Justice* [2022] EWHC 2602 (Admin), especially at [46]-[51], the summary of principles given by Fordham J in *R (Sneddon) v Secretary of State for Justice* [2023] EWHC 3303 (Admin) at [28] (subject to doubt about his comments in the judgment on evaluation of risk), and the recent judgment of Eyre J in *R (Hahn) v Secretary of State for Justice* [2024] EWHC 1559 (Admin).

16. I shall not attempt to repeat the detailed statements of law in earlier cases, but I offer the following observations.

1) The decision on whether to transfer a prisoner to open conditions is that of the Secretary of State[3], not of the Parole Board. It is well-established that the question on a judicial review is whether the Secretary of State was entitled to reach that decision, not whether the Parole Board was entitled to make its recommendation: see, for example, *R (Overton) v Secretary of State for Justice* [2023] EWHC 3071 (Admin), *per* Eyre J at [28].

2) In making the decision whether to transfer a prisoner to open conditions, the Secretary of State must have regard to the Parole Board's recommendation, engage with the reasoning and conclusions of the Panel, and afford them appropriate respect. See, for example, *R (Hindawi) v Secretary of State for Justice* [2011] EWHC 830 (QB), at [52]. The Secretary of State is not bound to accept the recommendation, but she must give reasons if she decides not to do so.

3) In making the decision whether to transfer a prisoner to open conditions, the Secretary of State is required to follow the applicable policy (here, paragraph 5.8.2 of the Policy Framework) or show good reasons for departing from it. The different iterations of the Policy Framework affect the nature of the particular decision to be made by the Secretary of State but not the applicability of the fundamental principles of review to the decision in question. It is also to be noted that, although the Policy Framework has been through various iterations, the Parole Board will generally be framing its recommendation by reference to the criteria that guide the Secretary of State's decision.

4) The legal tests for review of a decision to reject a recommendation for transfer to open conditions are the conventional common law tests, in particular rationality. The test of rationality is the usual one, namely *Wednesbury* unreasonableness. The court is, however, concerned with the rationality of the reasons for the decision to reject the recommendation, not merely the question whether the outcome itself is clearly unreasonable. The court will not generally grant review on the basis that the Parole Board's recommendation could not rationally be rejected; rather it will determine whether the Secretary of State's reasons amount to a rationally sufficient justification for rejection. As a decision to reject a recommendation to transfer to open conditions engages a fundamental right, namely liberty, Article 5(4) of ECHR is engaged and the

[3] Some cases have referred (with a seeming note of disparagement) to the substitution of the views of "a civil servant" for those of the Parole Board. I respectfully think that doubtfully appropriate. One appreciates that the Secretary of State will not usually be the actual decision-maker. But the decision always bears the authority of the Secretary of State and ought to be taken to represent the product of the skill and expertise available to the Secretary of State. What matters is the cogency of the reasoning, not the identity of the particular decision-maker.

court must examine the rationality of the decision with "the most anxious scrutiny": *Browne v The Parole Board of England and Wales* [2018] EWCA Civ 2024, per Coulson LJ at [54].

5) The context in which the test of rationality is being applied includes (a) a recommendation by a specialist body established by statute and with expertise within the area of its remit, (b) the Secretary of State's acknowledged expertise in the assessment of risk and the management of risk in the context of the prison estate, and (c) the important fact that the decision for the Secretary of State properly relates to the concrete facts of the particular prisoner's case and the material factors concerning his case, not extraneous matters such as wider political considerations: see *R (Zenshen) v Secretary of State for Justice* [2023] EWHC 2279 (Admin), *per* Dexter Dias KC, sitting as a Deputy High Court Judge, at [83]; also *R (Hindawi) v Secretary of State for Justice,* at [50], where it was noted that the "assessment of risk, by the application of publicly promulgated criteria, is a task with no political content" and that the Parole Board is "immunised from external pressures".

6) I respectfully doubt the usefulness of a legal distinction between matters on which the Secretary of State must give "very good reasons" for differing from the Parole Board and matters where some lesser justification will suffice. This distinction, the point of which is obvious enough, is said to rest on the difference between matters on which the Parole Board has a significant advantage over the Secretary of State and cases where it does not have such an advantage. However, as it is not helpful to identify significant advantage by reference to a classification of propositions or conclusions as "questions of fact" or "questions of assessment of risk" (see *R (Oakley) v Secretary of State for Justice* [2022] EWHC Admin 2602 (Admin), at [51]), so advantages may be greater or less, and reasons may be more or less compelling, with a spectrum in either case. What matters is the sufficiency of the reasons to establish the rationality of the particular decision. Some things are just harder to justify than other things. (The admittedly imperfect analogy of the civil standard of proof may not be entirely inapt. It used to be said that the standard of proof was higher, for example, for fraud than for negligence. Now it is recognised that the standard of proof is the same, although it is generally harder to prove fraud to the requisite standard than negligence.) As a matter of law, what should be relevant is not the difference between a "very good" and "good" or merely adequate reason, but the requirement to provide sufficient justification to establish the rationality of the disagreement on the point in issue. In *R (Zenshen) v Secretary of State for Justice* [2023] EWHC 2279 (Admin), Dexter Dias KC said at [83]: "What [the Secretary of State] must demonstrate is a genuine engagement with the material factors that arise in the case of the individual prisoner serving an indeterminate sentence. He can reach a different decision to the Panel. But his basis for departure must be rational and properly justified. If not, it is susceptible to public law challenge." That was said in the context of a case where the Panel had enjoyed a "significant advantage" over the Secretary of State, but I should have thought that the words quoted were applicable to every case, albeit that in some cases disagreement will be easier to justify.

7) It may perhaps be, in a given case, that the point of disagreement between the Secretary of State and the Parole Board is one on which rejection of the latter's view will only be reasonable if the Parole Board's view can be shown to rest on an error or misapprehension. However, whether that is so in any given case is (in my view) a contingent matter, not a matter of a substantive legal requirement (see point (1) above). If and insofar as dicta in *R (Kumar) v Secretary of State for Justice* [2019] EWHC 444 (Admin), [2019] 4 WLR 47, at [53] and *R (Oakley) v Secretary of State for Justice* [2022] EWHC 2602 (Admin) at [48] are interpreted to mean that there are certain matters of disagreement in respect of which the Secretary of State can *as a matter of law* depart from the Parole Board's view only if the Parole Board has made something akin to a public law error, I respectfully disagree. Thus if, on an issue on which reasonable experts might differ, the Secretary of State takes a different view from that of the Parole Board, I cannot for my part see why the Secretary of State should as a matter of law be required to demonstrate an error on the part of the Parole Board. Of course, it might, in a particular case, be difficult to justify the rejection of the Parole Board's view on the issue. But, if the Secretary of State considers all the evidence available to the Panel, it ought to be open to the Secretary of State to prefer a different view on a matter on which reasonable disagreement is possible. The Secretary of State is making her own decision, not reviewing somebody else's.

8) When it comes to findings of primary fact made by the Parole Board after receiving relevant oral evidence, it is likely to be harder to justify rejection of the Parole Board's findings, at least if questions of credibility arise. In this regard, see in particular *R (Hindawi) v Secretary of State for Justice*, at [58]-[64]. I respectfully think, however, that the point can be overstated. Nowadays, judges are forever being told, and telling themselves, that demeanour and impression are unreliable bases for assessing credibility, and less weight is generally accorded to the "sometimes broad and sometime subtle" advantages of seeing a witness than to less subjective (or imaginary) criteria. Although the reluctance of appellate courts to interfere with findings of fact is commonly explained on the basis of a relevant advantage possessed by the court of first instance, the more persuasive reason may be that findings of fact are allocated to the court of first instance (which, unlike the Parole Board when it makes a recommendation, is actually a decision-maker) and that to permit re-hearings on fact as well as law would be impractical; thus the appellate court will not usually interfere with a finding of fact that was rationally open to the court of first instance, even if the appellate court would have reached a different decision. (This is a point made extra-judicially by Lord Bingham of Cornhill in chapter 1 of *On Judging*.) However, any rational justification for rejecting the Parole Board's view as to the credibility of a witness from whom it had received oral evidence is likely to require detailed consideration of the oral evidence given to the Parole Board; this might well require a transcript of the evidence in question.

The Parole Board's Recommendation

17. At the hearing before the Panel of the Parole Board, the claimant was represented by a solicitor. The Secretary of State was not represented. The Panel received evidence

from several witnesses: Mr Andrew Seddon, the Prison Offender Manager ("POM"); Mr Bodrul Allum, the Community Offender Manager ("COM"); Dr Jenny Pryboda, the Prison Psychologist; and Dr Karyn Mannx, an independent Psychologist. The Panel also had a dossier of 551 pages.

18. I mention what seem to me to be the most important parts of the Panel's decision. Section 1 dealt at length with the claimant's past offending. It recorded that the claimant had first been arrested in 2006 in the course of an investigation into the downloading of images of children that were of a violent and sexual nature. Charges for that matter were left to lie on the file, but the investigation produced evidence that led to the claimant's conviction for rape and conspiracy to pervert the course of justice (by the provision of a false alibi), for which he was sentenced to 10 years' imprisonment. The claimant was released from that sentence on licence in 2011, but in April 2012 police found more than 100 indecent images of children on an encrypted laptop, as well as evidence that since his release on licence the claimant had been in contact with a 12-year-old girl in the USA, which involved the exchange of indecent images and explicit conversations concerning violent sex. These matters were the subject of the claimant's guilty plea and his current sentence. The Panel recorded that a previous panel in April 2017 had found "an entrenched pattern of sexual offending committed over an extended period" and that a long period of imprisonment appeared to have had minimal deterrent effect, as the claimant had re-offended almost as soon as he left Approved Premises three months after his release on licence.

19. The claimant gave evidence to the Panel in 2023 regarding his previous offending. Regarding the rape, he maintained his earlier account that he recalled nothing of it and that it had resulted from fasting during Ramadan and ingesting a drug. Regarding the false alibi, he said that he and the several people who had supported it (and who were consequently convicted, with him, of conspiracy to pervert the course of justice) had made a genuine mistake about the date; thus he denied culpability. The Panel regarded that account as incredible. Regarding the index offences committed while on licence, the claimant said that he had by then done no offence-focused work and so had wrongly thought that these were victimless offences. Later in the Panel's decision it is recorded that the claimant gave evidence that he had not thought that his viewing of pornography was in breach of any of his licence conditions, and he said that he would like to think that, if he had had the benefit of offence-focused work, he would not have engaged in the activities in question.

20. The Panel said this about the claimant's current risk factors:

> "1.5. Historic risk factors: these include childhood abuse, having attitudes that support or condone sexual violence, minimisation, problems with self-awareness and insight, problems with coping, sexual deviance and preoccupation with sex. Also relevant are problems with both intimate and non-intimate relationships.
>
> 1.6. The recent psychological reports provided for the panel today suggest that in the more dynamic or changing risk factors Mr Khalisadar no longer minimises his actions, and manages to cope with stress. However Dr Pryboda does still consider that he continues to have some problems with attitudes that condone sexual violence; self-awareness and continued issues with his

past. It is more difficult in a custodial environment to assess changes in sexual deviant attitudes or preoccupation with sex, but it would be fair to say this has not been currently in evidence.

1.7. The panel agrees with the assessment of dynamic risk factors to some extent however it considers that there is very little evidence of continued attitudes condoning sexual violence. The panel also considers that Mr Khalisadar continues to minimise his offending. The minimising in itself is not necessarily risk related and could be as a result of shame and cultural pressures, however it may lead to some issues relating to risk management and should continue to be explored and challenged.

1.8. There was discussion at the hearing about personality style. There is no current assessment of personality. In the past, Mr Khalisadar has been said to evidence traits of narcissistic personality, evidenced by deceptive, manipulative behaviour and impression management. Also suggested are traits of anti-social personality disorder, difficulties in problem solving, lack of emotional regulation and problems with secure attachments. The dossier includes continued concerns of impression management. The panel accepts that Mr Khalisadar has had a difficult upbringing that has influenced his personality style, however it does not consider there is evidence that he currently displays narcissistic or anti-social behaviours. The issue relating to secure attachments will need to be tested and monitored in the future. The panel also did not see signs of inappropriate impression management during the hearing. It is accepted that a prisoner will wish to present as best as possible during a hearing, and to that extent Mr Khalisadar was more reluctant to discuss some of the more sensitive aspects of his sexual offending, however he was in the panel's opinion much more open than the dossier led them to believe.

…

1.10. In relation to sexual interest and deviance, Mr Khalisadar's offending past does indicate a sexual interest in children as well as interest or curiosity with BDSM sex. His conversations with the 12 year-old victim as well as some of the downloaded images included images of BDSM type language and equipment (handcuffs and whips for example). Mr Khalisadar explained this to the panel as being curious rather than particularly focused on sex with violence, and said that although the dossier and prosecution case for the index offence focused on him behaving in a dominant manner, there had been times during his 'conversations' with the minor in the USA when he played the submissive role, but that this was not relevant to the case and therefore had not been highlighted.

> 1.11. Although Mr Khaliisadar has undertaken appropriate work on his sexual offending, the panel considers that until he is tested in the community he will need to be monitored for and engage in ongoing work to ensure that the work that he has undertaken is refreshed and consolidated."

The Panel identified a number of protective factors, including a good level of insight into risk factors, a good (theoretical) understanding of healthy intimate relationships, positive engagement with professionals, good compliance with rules, support from his family, and his religious faith. The Panel said that the RM2000 static risk-assessment tool indicated that the claimant's risk of reconviction for a sexual crime was high. However, using the RSVPv2 risk assessment tool Dr Pryboda had assessed the claimant's risk of sexual recidivism as moderate in the community and low to moderate in open conditions. Dr Mannix was in substantial agreement with that conclusion and considered risks to be manageable in open conditions. The Panel said:

> "1.15. The COM assessed that Mr Khalisadar's risk of serious harm to the public and to children is high, and the panel accepts this is accurate. The usual OGRS and other scores for assessing re-offending in OASys risk assessment used by the probation services are not useful for cases where sexual offences are the main or only convictions. The more relevant assessments of Indecent Image Reoffending Risk (OSP/I) and the Contact Sexual Reoffending Risk (OSP/C) indicate that Mr Khalisadar offers a medium risk of OSP/I and high risk of OSP/C. In the panel's opinion given both offences and the large numbers of images left to lie on file, the actuarial risk assessment of indecent image based offending (OSP/I) may be understated. The panel accepts that the actuarial risk assessment of contact sexual offending (OVP/S) is likely to be high."

21. Section 2 of the Panel's decision analysed the evidence of change. It recorded that the claimant had engaged well and meaningfully in a substantial amount of offence-focused work, including Kaizen (a programme for adult males who have been convicted of violent or sexual offences and are assessed as high or very high risk). However, since completing Kaizen he had been reluctant to engage with further risk-reduction work, which had been recommended by a Parole Board panel in 2020, because he had previously been led to believe that he had completed all necessary work; though he had engaged in structured consolidation work with his former POM. He did not engage with a recommendation that he undertake the Healthy Sex Programme ("HSP").

22. The Panel's discussion of the evidence regarding any requirement for further work is important and I set it out at some length.

> "2.3. Both the psychologists today however told the panel that they did not consider that he needed to undertake HSP. Dr Pryboda was of the opinion he needed to undertake further work to manage his personality traits and indicated that this needed to be done prior to release or open conditions. Dr Mannix however indicated that while this work would be of benefit to him it was not core work and that he did not need to undertake any further

work in closed conditions, and open conditions such as those in HMP Standford Hill and HMP Leyhill offered work that supported personality issues such as the 'PERS' scheme that would offer support and monitor any issues that needed to be addressed.

2.4. The panel took some time to explore with Dr Pryboda the kind of work that she assessed that Mr Khalisadar should undertake prior to progression. She had stated that she did not consider sexual offending as a primary need, however the underlying personality traits needed further work. Dr Pryboda considered this to amount to core risk reduction work. There is no current evidence of personality disorder. These traits would include ability to form meaningful working relationships with professionals that involved in managing risk, more insight into his personality presentation and to develop strategies to manage unhelpful traits. She further suggested transfer to a unit such as LPU at HMP Brixton or the Acorn Service at HMP Whatton to 'develop his understanding of his personality'.

2.5. Dr Pryboda was asked for evidence of difficulties that Mr Khalisadar had with these traits that needed work in closed conditions. There was a plethora [of] evidence contradicting her concerns, indicating that Mr Khalisadar is able to engage and well with professionals managing risk, as evidenced by full accounts given in both current and former risk assessments and to the panel. It is the case that anyone will need to challenge inconsistencies or hesitation to answer, but these issues were not in any way serious enough in the panel's opinion to warrant continued detention in closed conditions. He has positive reports about engagement with all other professionals such as wing officers, chaplaincy and prisoners. Dr Pryboda, in the panel's opinion, was unable to provide evidence for her reasoning that there were sufficient concerns about Mr Khalisadar's personality traits and presentation that amounted to requiring work in closed conditions.

2.6. Dr Pryboda also told the panel that she was concerned that Mr Khalisadar had only recently (with her and the panel) given an account of a lifestyle prior to the index and rape offences of taking drugs. She relied on this as evidence of Mr Khalisadar's occasional lack of openness. When challenged by Mr Kingham however, she indicated that she could not be sure of her assumptions. In fact the panel has seen that Mr Khalisadar has mentioned having issues with taking drugs prior to speaking to either of the two current psychologists (during Kaizen and at various points in the OASYS document).

2.7. In relation to insight and developing strategies to manage unhelpful traits, the panel noted that Mr Khalisadar had kept down trusted jobs, was well thought of by staff and prisoners,

> had a good work ethic and assisted people in his Chaplaincy Orderly job. He had been enhanced almost throughout his sentence. There are numerous positive notes about his attitude and behaviour, and almost no negative comments and no adjudications. More recently he has engaged well with New Connections, a service that is assisting Mr Khalisadar to prepare for change and eventual release. He expresses anxiety and frustration about his progression, however as Mr Kingham pointed out, and the panel agrees, there is research evidence that an IPP sentence where prisoners are considerably over tariff does in itself lead to behavioural issues and anxiety. The POM also stated that any personality traits did not manifest themselves unless there were discussions relating to further work, and even then, Mr Khalisadar remained polite and engaged."

The Panel considered that, while the claimant's understanding of healthy relationships and intimacy was not a key risk factor for him, it was an area that he needed to work on as he progressed; however, this could be when he is in the community. After recording evidence given by the claimant on matters concerning risk, the decision continued:

> "2.20. Dr Mannix reiterated her assessment that Mr Khalisadar was ready for a transfer to open conditions. In relation to the personality traits that might pose challenges for risk management, these might include the need to present as positive (impression management) and under control; a still fragile self-esteem; and while there were no examples of non-compliance or problems with interpersonal relationships, these aspects of his personality would have to be monitored. She acknowledged that there was no evidence of these issues and she was speculating from the information in the dossier and his evidence. His fragile self-esteem may be linked to his IPP sentence and concerns about never getting out of prison for example.
>
> 2.21. These concerns were why he was not ready for release, however the work that he needed to undertake was not core work. Open conditions would provide sufficient support to help him think about how he presented and also help him with transitions which she suspected might be difficult for him. She also felt that although sad, the death of his father had somehow released a pressure on him and freed him up, she got the sense when speaking to him about his childhood that his father had been 'emasculating'."

23. The COM, Mr Allum, had only recently taken over the claimant's case; for that and other reasons, his evidence to the Panel was of limited importance. The most significant passage in the decision dealing with his evidence was this:

> "2.29. Mr Allum expressed that it was difficult to assess risk of sexual offending such as the rape when the perpetrator indicates that he cannot remember the event itself, and the panel agrees that this is the case. However the panel also accepts the two

> psychologists' assessment that sexual offending in itself, following the work undertaken by Mr Khalisadar, is not a current or unmanageable risk. Mr Allum told the panel that in talking to Mr Khalisadar about consent in sexual exchanges and the understanding of the impact that such offences have on the victim, Mr Khalisadar showed a 'deep insight'. However he remained concerned about guarded responses, inconsistencies in some narratives as well as this lack of memory. Mr Allum indicated that Mr Khalisadar was clearly intelligent, and this might give him the ability to be manipulative and steer the direction of conversations in directions he wishes to go. While the panel accept that this may be a tendency, when re-focused back on the subject the questioner wanted, they witnessed that Mr Khalisadar did not attempt to obfuscate but answered.
>
> 2.30. Mr Allum's recommendation followed that of Dr Pryboda, which was that Mr Khalisadar should stay in closed conditions and engage in further work. Both the panel and Mr Kingham pressed him on his reasons, and it is apparent that he had relied on Dr Pryboda's assessment and recommendation, which is understandable given that he had not long taken over the case. There were aspects of the case he was less familiar with, such as the more recent work Mr Khalisadar had been engaged with in New Connections. There was not a clear reason why he did not accept Dr Mannix's recommendation that Mr Khalisadar met the test for open conditions, other than that he had shown the OPD psychologist attached to his office Dr Pryboda's report and this professional had indicated the work should be done in closed conditions. Mr Allum indicated, as all other professional witnesses had, that Mr Khalisadar's risk of abscond was low."

24. The Panel did not consider the claimant's immediate release viable, having regard to concerns raised about possible impression-management and manipulation and his swift failure after release from his previous sentence. It was particularly concerned that he needed to establish a working relationship with his COM and establish a strong and secure personal and professional support structure before re-entering the community at large. It should be noted that the claimant was not actually seeking release and did not consider that he was ready for release.

25. The Panel's recommendation for a transfer to open conditions was made with regard to the Sufficient Progress Criterion, as set out in the Secretary of State's Directions to the Parole Board 2022 (see paragraph 13 above). The following paragraphs are relevant.

> "4.7. Both psychologists assess that Mr Khalisadar has engaged in appropriate work to address concerns relating to sexual offending. No further accredited work is suggested. The concerns expressed by Dr Pryboda and reflected in the POM and COM's recommendations, related to the suggestion that Mr Khalisadar needs to work on personality aspects that might hinder his progress. The panel tried hard during the hearing to assess what evidence there was that these personality issues were

so severe as to require some further work in closed conditions, albeit not accredited work. It was simply unable to find this evidence.

4.8. There is evidence that some professionals find Mr Khalisadar 'guarded' and are concerned that his intelligence will allow him to manipulate discussions with them. It seems somewhat harsh to use Mr Khalisadar's intelligence in a negative manner without much clearer evidence. He was reluctant to engage with further sexual or relationship focused work following Kaizen, because HSP was brought up as another treatment he might engage in despite being told he had completed all necessary work. He therefore asked the professionals for reasons, and this was put down as being reluctant. He told the professionals that he felt that he had enough insight into his behaviour, learned on his earlier courses. This was used as an example of his being manipulative and/or reluctant to engage with sentence planning. But in fact, he was right in that once assessed, both Dr Pryboda and Dr Mannix do not consider he needs to undertake HSP or further accredited work. He may come across as guarded, and needs to be reminded that he must be open and honest at all times. This does not equate to a need for treatment such that he needs to remain in closed conditions.

4.9. It is accepted by the panel that there are some accounts of his offending that are less credible than others, as explored already under section 2. The panel does not see how these interfere sufficiently with his insight or his ability to manage his behaviour going forward, and the panel is well aware that accounts do change over time. In general there are many consistencies rather than inconsistencies in Mr Khalisadar's accounts. Passage of time and repeated need to provide accounts as well as undertaking work on risk factors is also well known to have the effect of 'tainting' accounts.

4.10. Having assessed his risk of harm and his current or presenting risk factors against the evidence of consistent and compliant behaviour from Mr Khalisadar and his obvious motivation to progress, the panel considers that there is abundant evidence that Mr Khalisadar's risk can be managed in open conditions. His behaviour will no doubt need to be monitored given what happened in the AP at his last release, and this can be done with licence conditions for temporary release and an appropriately briefed community team. Risk of harm will be in particular to female strangers in the early hours of the morning (this can be managed with curfews) and misuse of the internet by viewing indecent images. This can be managed with monitoring access to electronic equipment such as mobile phones and computers."

Having confirmed that the claimant was considered to present a low risk of absconding, the Panel turned to the requirement (in the July 2023 version of the Policy Framework) that "a period in open conditions is considered essential to inform future decisions about release and to prepare for possible release on licence into the community":

> "4.12. Mr Khalisadar has been on a difficult journey on this sentence, where he has had to understand his offending, the triggers for it and the impact on victims. There is no doubt that his offending is serious. Mr Khalisadar, throughout the reports, is shown as expressing shame and remorse for the rape. He has had to learn that what he was doing viewing the type of pornography he was viewing was not a victimless crime. He has had to learn about the consequences of his online communications with a child. While he does not need to engage with any further offence focused work in the community, consolidation of his learning in open conditions where he will face some different challenges are [sic] essential. Furthermore, while there is no evidence of current drug abuse, evidence that he can continue to abstain from drugs in the different circumstances of open conditions will be important prior to future release.
>
> 4.13. Preparing for release is now important for Mr Khalisadar, and a staged process is required. Mr Allum indicated, and the panel agrees, that he will find it very difficult to engage with elements of his community given this crime, which might make him isolated, leading to problems with stress and loneliness. He has spent a considerable time in custody for someone of his age, this will have impacted on his maturation. Time in open conditions will enable him to build or re-build his family support structures. It will allow him to explore what he might be able to do once released in relation to work, faith, and use of his leisure time. Importantly, it will be a period of testing his relationship with [his partner] which has largely if not entirely been conducted within a closed custodial setting, and it will also allow for any risk to her to be monitored. He needs to build his relationship with his COM, this will be of utmost importance when released. He has evidenced a good work ethic, but may find it difficult to find work in the community given his offences as well as licence restrictions, and a period of time in open will give him the opportunity to fully explore what might be available for him, whether paid or voluntary.
>
> 4.14. Most importantly, it will give Mr Khalisadar the opportunity to prove to professionals that the concerns they have about his guardedness, his possible manipulative behaviour or any lack of openness have been dealt with by him, so that further down the line they may be confident that his risk will be manageable in the community.

> 4.15. For all these reasons, including the clear evidence that Mr Khalisadar is motivated and keen to progress and to prove himself, the panel is satisfied that that Mr Khalisadar wholly meets accepts that he entirely meets [sic] the test for recommendation to open conditions.
>
> 4.16. Having considered the considerable evidence in this case therefore the panel recommend that Mr Khalisadar be moved to open conditions. A future panel will be assisted with evidence that Mr Khalisadar is able to gain the trust of professionals involved in assessing and managing his risk; that he has realistic plans; that there have been no concerns of offence paralleling behaviour; that he has been able to spend time trouble free in the community and that he has developed a personal and professional support network."

The Secretary of State's Decision

26. The Secretary of State's Decision was set out in a letter dated 13 October 2023. The letter stated that the decision-maker had considered the information in the claimant's dossier, the Parole Board's recommendation and "the views of Report Writers". (This is a standard form of wording.) The letter summarised the background facts, quoted paragraphs 4.5 to 4.16 in the conclusion of the Panel's decision, and stated the applicable test for transfer to open conditions. It noted the positive matters recorded in the Panel's decision. However, it stated that the Panel's recommendation was rejected because the Secretary of State found that the Sufficient Progress Criterion was not met. I set out at length the stated reasons for this conclusion; for ease of reference I add some paragraph numbers:

> "[1] Both the HMPPS and external psychologist stated that you have evidenced considerable insight into the triggers for your offending and the external psychologist, Dr Mannix, assessed that you were ready for open conditions. However, the Secretary of State notes that the Community Offender Manager (COM) and HMPPS psychologist, Dr Pryboda, expressed some ongoing concerns regarding your risk factors. They both assessed that there was further work to be completed to address these factors and opined that this work should be completed within the closed estate. Dr Pryboda considered that you 'continue to have some problems with attitudes that condone sexual violence; self-awareness and continued issues with [your] past'. These concerns are evidently risk relevant, and in the knowledge of the access to the public, which would soon become available to you in an Open prison, this particular element of the evidence is concerning from a public protection perspective.
>
> [2] Dr Pryboda assessed that further work was required to address your personality traits and that this work needed to be completed prior to release or a move to open conditions. 'Dr Pryboda considered this to amount to core risk reduction work. There is no current evidence of personality disorder, however

these traits would include ability to form meaningful working relationships with professionals that involved managing risk, more insight into your personality presentation and to develop strategies to manage unhelpful traits. She further suggested transfer to a unit such as the LPU at HMP Brixton or the Acorn Service at HMP Whatton to "develop his understanding of [your] personality"'.

[3] Although Dr Mannix assessed that issues linked to personality traits could be addressed further in Open Conditions she still acknowledged that the following may pose challenges for risk management, '…the need to present as positive (impression management) and under control; a still fragile self-esteem; and while there were no examples of non-compliance or problems with interpersonal relationships, these aspects of [your] personality would have to be monitored.' The Secretary of State considered this in the knowledge of the open estate, and the access to the community and the public you will have in an open prison though acknowledges Dr Mannix is not concerned risk is imminent if you were to be managed in the open estate.

[4] Notably, your COM, 'remained concerned about guarded responses, inconsistencies in some narratives as well as [your] lack of memory. Mr Allum indicated that you were clearly intelligent, and this might give you the ability to be manipulative and steer the direction of conversations in directions you wish to go.' Whilst your intelligence is certainly not a criticism, the evidence to suggest manipulation and steering conversations to suit your own agenda, may have implications for risk management. Further, it is confirmed that your COM had discussed Dr Pryboda's report with the OPD professional based within his office and confirmed that this professional concurred with the recommendations within the report, agreeing that the further work should be completed [in] closed conditions.

[5] Taking all these views into account the Secretary of State in his conclusion, has departed from the Panel's view on this occasion, in the interests of public safety. It is of note, that the panel accepted that, 'in the past, [you] have been said to evidence traits of narcissistic personality, evidenced by deceptive, manipulative behaviour and impression management. Also suggested are traits of anti-social personality disorder, difficulties in problem solving, lack of emotional regulation and problems with secure attachments'. The Secretary of State concurs completely with the Panel in that you have a history of deception, minimising or denying your behaviour and failing to be open and honest with those responsible for supporting you to reduce your risk and/or manage your risk and this is supported by the following:

- There is evidence that you continue to claim that you cannot remember your actions in the first offence of rape. In addition to the previous conviction for rape, you were convicted along with 8 others who provided a false alibis [sic] for you, for perverting the course of justice. 'The panel did not find [your] account of why the alibi had been given as credible and an example of minimising [your] role in the conspiracy. The COM, giving evidence later, also agreed that this account was not credible". The Secretary of State would concur with all, this explanation lacks credibility calling into question both your honesty and openness but also your insight into the harm you will have undoubtedly caused to your victim.

- It is of note that a prison sentence has not previously served to deter you from further offending and/or poor compliance in the past. You have evidenced a clear propensity to breach conditions and deceive supervising officers.

- The Secretary of State notes that professionals continue to be concerned with regards to your potential to perform impression management and provide guarded responses (see 7.4 of Dr Mannix, May 2023 report). This has implications in open conditions, where he [sic] will gain access to the public in an unsupervised manner though it is noted that this did not prevent Dr Mannix confirming you are, in her view, manageable in the open estate.

[6] In contrast to the Parole Board, it is the Secretary of State's view that given the links between these concerns and your repeated and serious sexual offending, your risk is yet to reduce to a level consistent with protecting the public from harm, in circumstances where the ISP in open conditions may be in the community, unsupervised, under licensed temporary release. The Secretary of State concurs with the HMPPS Psychologist and COM in that further work to address these areas is necessary and that, with public protection in mind, this should be completed with the closed estate. Therefore, this criteria [sic] is not met and it follows that, at this juncture, there is not a wholly persuasive case to transfer you to Open Conditions."

The Ground of Challenge

27. The claimant advances a single ground of challenge: that the Decision was irrational, in that it constituted an unreasonable departure from the findings and recommendation of the Parole Board.

28. In brief summary, Mr Buckley advanced the ground in the following way. The Secretary of State, though noting the expert opinion of Dr Mannix, relied heavily on the opinions expressed by Dr Pryboda and by Mr Allum, the COM, that further work was required to address the claimant's risk factors and that this work ought to be completed prior to any move to open conditions. In relying on that evidence the Secretary of State has implicitly rejected the contrary evidence of Dr Mannix, which was accepted by the Panel. The decision-maker has failed to give any cogent reasons—indeed, any reasons—for doing so, or for preferring Dr Pryboda's evidence, and has simply "cherry-picked" adverse pieces of information that support the conclusion in the Decision without explaining why they outweigh contrary evidence and information. The Secretary of State also failed to address the point that Mr Allum's evidence relied heavily on Dr Pryboda's opinion and so, to a large extent, stands or falls with that opinion. Additionally, the decision-maker noted that Mr Allum had discussed Dr Pryboda's report with the Offender Personality Disorder ("OPD") professional in his office, who had agreed that the further work should be carried out in closed conditions. However, this apparent reliance on the claimant's supposed personality traits is undermined, first, by the dependence of the OPD professional's dependence on Dr Pryboda's report and, second, by the absence of a current personality assessment, as noted by the Panel at paragraph 1.8 of its decision.

29. For the Secretary of State, Mr Lenanton (and Mr Irwin, who wrote the skeleton argument but did not appear before me) put the case to the following effect. Under the recent iterations of the Policy Framework, the question for the court is whether it was rational for the Secretary of State to conclude that the conditions for accepting the Parole Board's recommendation were not satisfied: see *R (Hahn) v Secretary of State for Justice,* at [30]. The Secretary of State, having considered the evidence, took a different view from the Parole Board in that the decision-maker was not satisfied that the evidence showed that the claimant had made sufficient progress in addressing and reducing risk to a level consistent with protecting the public from harm, having regard in particular to (a) Dr Pryboda's concerns that the claimant continues to have problems with attitudes that condone sexual violence, with self-awareness, and in relation to his past, (b) the opinion of two experts—the COM and Dr Pryboda—that there was further core risk reduction work to be completed to address the risk factors and the claimant's personality traits and that this work should be completed in the closed estate, and (c) the fact that a prisoner in open conditions may be unsupervised in the community under licensed temporary release. This was an evaluative assessment that was open to the defendant. Further, the COM remained concerned about the claimant's guarded responses, as well as his claimed lack of memory of the rape, his continued use of inconsistent and incredible narratives, and evidence that he had the ability to be manipulative. Additionally, the OPD professional agreed that further work should be carried out in closed conditions. The decision-maker has relied on the Secretary of State's knowledge of risk management and the nature of the prison estate and has had regard not only to the expert evidence but to the objective history and was entitled to differ from the Parole Board's assessment of the manageability of risk in open conditions. Finally, the "Wholly Persuasive Criterion" in paragraph 5.8.2 was a matter solely for the Secretary of State, not for the Parole Board.

Discussion

30. The Decision is to be read fairly, as a whole and in its wider context. Its reasoning, which concerns the liberty of the subject, is however to be scrutinised with care. In my judgment, the defendant has not provided a rational justification for the decision to reject the Parole Board's recommendations. This is not to say that it would necessarily be impossible to provide such a justification; but the Decision does not show a reasonable basis for rejecting the recommendation. In agreement with Mr Buckley's overarching submission, I consider that the Decision fails to engage with the assessment of risk in any meaningful way: it merely cherry-picks any adverse points, isolates them from the wider context, sidesteps actual consideration of the findings, reasoning and conclusions of the Parole Board, and asserts an opinion.

31. The Decision was based on the stated opinion that the claimant's risk had not reduced sufficiently to protect the public from harm if he were to be transferred to open conditions, and that therefore there was not a wholly persuasive case for his transfer: see paragraph [6] of the Decision (paragraph 26 above). Although it is correct to say, as did Mr Lenanton, that the "wholly persuasive case" criterion was a matter solely for the Secretary of State to consider, the reasoning in the Decision shows that the rationale for finding that criterion not to have been satisfied was the Secretary of State's conclusion that the Sufficient Progress Criterion had not been satisfied.

32. In that regard, it is of note that the Decision nowhere addresses the facts, recorded in the Panel's decision, that since his release from his previous term of custody the claimant had completed all necessary offence-related work and that both psychologists agreed that sexual offending in itself was not a current or unmanageable risk: see paragraph 2.29. Instead, the Decision is focused on issues concerning the claimant's personality traits that are said to have adverse implications for his risk-management.

33. Paragraphs [1] and [2] in the Decision refer to Dr Pryboda's assessment that further core risk reduction work needed to be completed before a transfer to open conditions. But the Decision does not engage at all with the fact that the Panel had scrutinised Dr Pryboda's evidence with some care in the course of the hearing and had concluded that Dr Pryboda was unable to substantiate her concerns: see, in particular, paragraphs 2.4, 2.5 and 2.6 of the Panel's decision. There is, in my view, no reason of principle why the Secretary of State should not be entitled to disagree with the Panel on this point, even if the Panel's view was one that could reasonably be held. Rational disagreement would, however, require proper engagement with the Panel's examination of Dr Pryboda's evidence. The Panel "took some time to explore" the issues with Dr Pryboda (paragraph 2.4) and, having "tried hard during the hearing to assess what evidence there was that [the claimant's] personality issues were so severe as to require some further work in closed conditions", was unable to find such evidence (paragraph 4.7). By contrast, the Secretary of State was not represented at the hearing and, as Mr Lenanton confirmed to me on instructions, did not obtain a transcript of the evidence given orally to the Panel. In those circumstances, it is hard to see how the decision-maker could gainsay the Panel's views on these matters and impossible to see why he should apparently ignore them. (For the avoidance of doubt, I do not accept Mr Buckley's submission that the Decision's treatment of the psychologists' evidence raised issues concerning the Panel's findings on "credibility". Acceptance or rejection of expert opinions rarely has anything to do with credibility in any relevant sense, and it did not do so in this case.)

34. Paragraphs [1] and [4] of the Decision noted that the COM shared Dr Pryboda's opinion and that the OPD professional agreed with her recommendation that the further work should be completed in closed conditions. However, the Decision does not engage with the facts that the Panel was generally unimpressed by the COM's ability to provide useful input and that the COM's opinion relied on Dr Pryboda's opinion: see, in particular, paragraph 2.30 of the Panel's decision. As for the remarks about the OPD psychologist in paragraph [4] of the Decision, the evidence recorded by the Panel was merely that the COM had shown Dr Pryboda's report to the OPD psychologist, "who had indicated that the work should be done in closed conditions." This, again, indicates that the opinion of that professional was based on Dr Pryboda's assessment of the claimant, which the Panel explored and rejected.

35. Paragraph [3] of the Decision ends by acknowledging that Dr Mannix was not concerned about imminent risk in the open estate. However, the use to which it puts Dr Mannix's evidence is to quote aspects of the claimant's personality that might pose challenges for risk management and would have to be monitored. The conclusion is then produced that the challenges are not manageable in the open estate. The fact that the Secretary of State is acknowledged to have generic expertise about risk-management in the open estate does not make his or her pronouncements about the manageability of the risk of particular prisoners sacrosanct. The Decision does not manifest any reasoning about why Dr Pryboda's opinions should be preferred to those of Dr Mannix. Nor does it engage with the fact that the Panel was unequivocally of the view that the factors in question—which, on the evidence, appeared to be potential rather than actual and, frankly, largely nebulous, and were limited to "possible impression management and manipulation"—were manifestly capable of being addressed in open conditions, though they were a reason why the Panel did not think the claimant ready for release until he had been tested in open conditions (see, in particular, paragraph 4.1 of its decision).

36. Paragraph [5] of the Decision deals with the claimant's history. First, it quotes, as being "of note", what the panel recorded about what had been said to be evidenced in the past. In that regard, however, there was no current assessment of the claimant's personality. Further, the Decision neither notes nor addresses the fact that the Panel found no evidence of current narcissistic or anti-social behaviours, saw no signs of inappropriate impression management and found the claimant to be much more open than the paperwork might have suggested: see paragraph 1.8 of its decision. Paragraph [5] proceeds to state that the claimant has "a history of deception, minimising or denying [his] behaviour and failing to be open and honest with those responsible for supporting [him]" in risk management. Pausing there, one observes that a prisoner serving a sentence of IPP will necessarily have an adverse history; the relevant question concerns progress and current risk. The Decision identifies three pieces of evidence showing the history in question.

    - The first is the claimant's continuation with a false claim that he cannot remember the rape and an incredible explanation for his false alibi, which is said to call into question the claimant's honesty and openness and his insight into the harm he caused his victim. The point is made, however, without any close engagement with the Panel's consideration of these matters. The Panel considered that the claimant continued to "minimise his offending"; however, it observed that, although this was relevant to risk management, it was not

necessarily risk-related, as it could be the result of shame and cultural pressures. No reasoning is given in the Decision to explain why any question regarding honesty and openness about past offending should not be capable, once identified, of being addressed in open conditions as the Panel thought it abundantly clear it was (see paragraph 4.10). Further, the Panel's remarks, just mentioned, link with the fact, not adverted to in the Decision, that the minimising of one's offending in the sense of giving exculpatory reasons for it (the rape was due to automatism; the false alibi was due to a mistake as to dates) is not the same as minimising the impact of offending, particularly sexual offending. The Panel noted that the current psychological reports suggested that "in the more dynamic or changing risk factors [the claimant] no longer minimise[d] his actions"; as mentioned, it said that since his last offending the claimant had completed all required sexual-offence-related work; and it recorded: the claimant's evidence that as a result he now understood, as he had not done previously, that the index offences were not victimless crimes; the facts that "[the claimant], throughout the reports, [was] shown as expressing shame and remorse for the rape" and had had to learn the impact and consequences of his other offending (paragraph 4.12); and the COM's evidence that the claimant showed "deep insight" concerning the impact that sexual offences have on the victim. It is to be noted that the Decision does not contradict the Panel's view that there was no further sexual-offence-related work for the claimant to undertake and identifies no specific work that should be undertaken. (It does include a couple of stock paragraphs, routinely included in such decisions, containing mention of the possibility of a Progression Regime; though, on my reading of the applicable policy, the claimant would be ineligible for such a regime.)

- The second piece of evidence is reoffending "and/or poor compliance" after the earlier prison sentence. That, however, is why the claimant was sentenced to IPP and as such would be a reason for never releasing him. It does not address the question of the claimant's progress during his current sentence or the evidence that he has now undergone offence-related work that he had not undergone prior to his earlier release.

- The third piece of evidence is professional concern with regard to the claimant's "potential to perform impression management and provide guarded responses". This, however, brings one back to points already mentioned. The Panel explored these issues both with Dr Pryboda and with Dr Mannix and, while it accepted the possibility of such behaviour, did not find actual and current evidence of it and considered that there was "abundant evidence that Mr Khalisadar's risk [could] be managed in open conditions." The Decision simply rejects the reasoning and conclusions of the Panel, especially in paragraph 4.10 of its decision, without engaging with it.

37. In conclusion, if one asks whether the Secretary of State's Decision manifested "a genuine engagement with the material factors that arise in the [claimant's] case", such as to evidence a "rational and properly justified" basis for departure from the Parole Board's recommendation, the answer must in my view be in the negative. Accordingly, I shall quash the Decision and remit the matter to the Secretary of State for a new decision, which (in accordance with her own policy) is to be made within 28 days.