the Parole Board

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[2021] PBRA 145

Application for Reconsideration by Silva

Application

1.This is an application by Silva (the Applicant) for reconsideration of a decision of the panel contained in a decision letter dated 8 September 2021 given after an oral hearing held on 7 September 2021 refusing to direct the release of the Applicant.

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

3.I have considered the application on the papers. These are the decision letter of 8 September 2021, the Application for Reconsideration received on 27 September 2021, an email dated 7 October 2021 from PPCS stating that the Secretary of State will not make any representations in reply to the Applicant's reconsideration application and the dossier comprising 691 pages.

Background

4.On 26 June 2018, the Applicant who was then 16 years old, received an extended determinate sentence for an offence of robbery comprising a four-year custodial sentence and an extended supervision period of one year. His conditional release date (CRD) is in May 2022.

Request for Reconsideration

5.The application for reconsideration is dated 27 September 2021.

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

(a) Irrationality

(i) that the decision is irrational as it is contrary to the recommendations provided by the professional witnesses (Ground 1);

(ii) that the panel gave insufficient weight to the Applicant's engagement with his appointment with professionals (Ground 2); and

(iii) that it was unfair for the panel to conclude that the Applicant may find it difficult to avoid former associates (Ground 3).

(b) Procedurally unfair as the panel should have given regard to the fact that the Applicant has difficulties recalling details of his offending behaviour work (Ground 4).

Current parole review

7.The Applicant's application was first listed for an oral hearing on 4 January 2021 but was adjourned to 19 April 2021 by the panel without any evidence being adduced as a result of an application for an adjournment made by the Applicant's legal representative on the grounds that the risk management plan (RMP) had not been developed.

8.The hearing on 19 April 2021 was further adjourned to 2 July 2021 because of uncertainties about the Applicant's immigration status. Further uncertainty concerning the Applicant's immigration status led to the panel further adjourning the hearing until 26 August 2021 when full evidence was adduced at a hearing conducted by a video link.

9.The panel, which comprised 3 independent members of the Parole Board, heard oral evidence from:

(a) The Prison Instructed Psychologist;

(b) The Applicant's Community Offender Manager (COM);

(c) The Applicant's stand-in Prison Offender Manager (POM);

(d) A Senior Probation Officer;

(e) Two Home Office officials; and from

(f) The Applicant.

10. The Applicant committed the index offence when he was 16 years old when he together with two accomplices robbed their two victims, who were a male and a female both aged 18, of their mobile phones.

11. When the Applicant was arrested at his home, a search of his bedroom revealed a significant amount of Class A drugs, some cannabis and other items which indicated drug dealing activity. He was subsequently charged with possession of Class A and Class B drugs with intent to supply. He contended that he was holding the drugs for others under duress.

12. Prior to committing the index offence, the Applicant had 16 convictions for 38 offences. His most serious convictions were for 5 counts of robbery in 2014 and for possession of a bladed article on 2 occasions in 2014.

13. The panel recorded that the Applicant moved between two Prison establishments in July 2019 where he has remained except for a short period when he was moved in order to attend court. His initial custodial conduct was poor, and he acquired 30 proven adjudications prior to 17 January 2020 which were all for violence or threatening, insulting or abusive words or behaviour. Many security intelligence entries indicated that the Applicant was involved in gang-related rivalries and drug culture. His POM reported that in custody there was no specific intelligence – other than 28 named non associates – to suggest he was in contact with a known gang.

14. In November 2019, the Applicant received an adjudication after an improvised weapon was found in his cell and he was also convicted in court after he had pleaded guilty to the offence of being in unauthorised possession of an offensive weapon. His evidence to the panel in relation to this improvised weapon is summarised in paragraph 28 below. In December 2020, he was the victim of an assault believed to be related to outside gang issues but to his credit he did not fight back. In February 2021, he indicated to staff that he was close to fighting with another prisoner *"due to outside issues".*

15. Latterly, and after Covid-19 restrictions have limited the regime in custody, the Applicant's behaviour has improved significantly, and the panel rightly noted that he deserved credit for this.

16. Although the Applicant was referred to a training course addressing the tendency to use violence in September 2019, it was later decided that it would not be an appropriate intervention for him given his very high violence prediction score and because he had been screened into a programme which is a regime to help people recognise and deal with their problems.

17. A training course addressing the use of violence and sex offending was considered to be a more appropriate programme for the Applicant and he indicated that he was willing to take part in the programme, but this would have required him to move between two prison establishments. The Applicant did not want to move to one of the prisons whilst the other declined to accept him for the programme for a training course addressing the use of violence and sex offending because of concerns over his behavioural record in custody and because of *"potential problems with non-associates*". He also declined to go to that prison after he was accepted for its supportive programme of work because he was concerned that a move there would unsettle him and would lead to him becoming involved in fights in an attempt to establish his *"position" there*. Further attempts to persuade the Applicant to move there have been thwarted by the Covid-19 restrictions. He will now be unable to move there because there is not enough time left before his CRD.

18. The Applicant initially refused to complete an induction with the substance misuse team at the Prison, but he has since engaged and has received a positive report.

19. Indeed, to the Applicant's credit, his behaviour has improved since mid-2020. He has completed in-cell work and obtained enhanced status on the incentives and earned privileges scheme, while not receiving any adjudications or negative entries. Although the Applicant's regular POM was unable to attend the oral hearing, he gave a full briefing to his stand-in who told the panel of the Applicant's *"remarkable"* maintenance of motivation and good behaviour and that the Applicant's regular POM

supported the Applicant's release. This support for release was, according to the panel, based on the assumption that the Applicant would have full access to public funds which is a matter to which I will return.

20. The Applicant engaged with a forensic psychologist attached to the Wellbeing Team at the Prison, but their work together did not specifically address the Applicant's use of violence. In her psychological assessment of the Applicant, the prison-instructed psychologist concluded that the Applicant still needed to complete specific violence risk reduction work.

21. Very unfortunately, the Applicant has had six COMs in 2021, but the latest one told the panel that she had met with the Applicant on one occasion on 5 August 2021 with a second interview booked for the day before the hearing. The Applicant did not turn up for the second interview apparently being too tired to do so as he told the panel that he had been up late the previous night exercising in his cell. According to the panel, the *Applicant "had similarly refused to attend a meeting with his then COM*" in 2020.

22. The Applicant explained that he had not attended that meeting on the day before the hearing as he had not been given advance notice of it. His evidence was that "*if he'd known what the meeting was about he may have been in better position to make it".* He stated that even if he had known of the meeting, *"it was still possible he may not have gone anyway because it depended on his mental health at the time"*. His evidence to the panel was that "*sometimes he is so nervous that his legs don't move".*

23. In his evidence, the Applicant indicated that he found it difficult to recall details from his offending behaviour work as *"I don't even remember what I had for breakfast".* He told the panel that he had previously been immature and that he felt ashamed and embarrassed by his previous behaviour.

24. The Applicant explained in relation to the improvised weapon found in November 2019 and which is referred to in paragraph 18 above that he had picked it up after a friend had a fight with another prisoner and that he did this so as to ensure that his friend was not caught with it and he was going to return it to him. He did not think of passing it to the staff or disposing of it but he told the panel that he would not behave in the same way at the time of hearing.

25. The Applicant was keen to engage with the A regime to help people recognise and deal with their problems which is a form of Offender regime designed and supported by psychologist to help people recognise and deal with their problems. He is on their watch list and he will have a formal eligibility assessment until he has been released. The service is voluntary and cannot be directed.

26. The forensic psychologist attached to the Wellbeing Team at the prison produced a written report in which she recorded that the Applicant's engagement with her had been positive and that he had shown high motivation to access support. She proceeded to state that the Applicant's engagement could be inconsistent and that he missed some sessions due to *"not being in the right headspace"* and also because he found it difficult to wake in the morning. On other days, he missed sessions as

he preferred to take part in his football course. She recommended that he should continue his therapy in the community.

27. In his evidence, the Applicant told the panel he had previously been immature and that he did not understand the consequences of his actions. He also explained that he had no animosity to previous gang connections, but they may have problems with him as when he was assaulted in December 2020.

28. The Applicant explained that peer groups were a *"big thing"* that in the words of the panel's decision *"might cause him to be violent again".* He provided to the panel a long list of areas around London he should avoid. His COM had not been aware of some of them, and they would reduce the number of designated accommodation beds available for him.

29. In her evidence, the Applicant's COM explained that she could not provide a firm recommendation for release without some certainty that the Applicant would have recourse to public funds and how this would impact his RMP. Her opinion was that in the absence of the regime to help people recognise and deal with their problems' intervention, the Applicant could complete a training course addressing the tendency to use violence and a training course addressing decision making and better ways of thinking in the community. She appeared conscious of the Applicant's *"poor supervision record"* but despite this, she considered that his RMP was robust and that increases in the Applicant's risk factors would be "*noticeable*."

30. The prison psychologist had conducted a psychological risk assessment of the Applicant in November 2020 and she concluded that a training course addressing the tendency to use violence and a training course addressing decision making and better ways of thinking would not be sufficient to meet the Applicant's needs. She considered that his risk of causing serious harm could be managed with a strongly defined treatment pathway, including the regime to help people recognise and deal with their problems.

31. She considered that although the Applicant had made good progress in his attitudes towards physical violence, more work was required around aggression and intimidation. Her view was that he needed a wider range of alternative strategies to manage conflict and further work to develop his consequential thinking and perspective taking as well as to ensure a reinforcement of emotional management strategies. The prison psychologist considered that the Applicant would require "*robust case management and high levels of supervision"* if released. In her oral evidence, she concluded that the RMP would be sufficient to manage the Applicant's risk of causing serious harm.

32. The panel considered reasonable the assessment of the Applicant's probability of proven reoffending, both violently and non-violently as being high as was his risk of serious recidivism. Should the Applicant reoffend, the panel considered that his risk of causing serious harm to the public is considered to be high and medium to known adults which the panel considered included prior associates. The panel identified issues which may increase the Applicant's risk of violent reoffending.

33. The panel considered that the Applicant's risk of causing serious harm would not be imminent on release, but that *"a relatively small change in his circumstances such as encountering old associates could increase the imminence of his risk quite quickly".*

34. The Applicant's RMP has to be considered in the light of his immigration status as he is not a British national and as he has been refused EU settled status. The Home Office has made a decision to deport him and he has appealed that decision. The appeal is unlikely to be concluded before he reaches his CRD. He has sought judicial review in relation to his ongoing claim to have recourse to public funds. The panel believed that it was unlikely that he would receive public funds as he has never worked.

35. The panel explained that a consequence of this potential refusal of the Applicant's recourse to public funds is that part of RMP may need to be privately funded as the panel was told that each department dealing with the Applicant will have to make its own assessment of whether he is entitled to support and that all such decisions cannot be made until an application is made.

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36. The Applicant's COM was confident that the Applicant's sister would be prepared to pay £10 per week contribution towards his designated accommodation. After the hearing, the Applicant's solicitor submitted an email from the Applicant's sister which confirmed the type of assistance which the family could provide, and this included financial support. The Applicant told the panel that after his stay at the designated accommodation (which would last for 8 weeks) he would live with family members.

37. The professionals agreed that in the absence of an accredited risk reduction work and a regime to help people recognise and deal with their problems was essential to managing the Applicant's risk but the prospect of him completing that programme might be dependent on his recourse to public funds.

38. Having explained the test for ordering release, the panel explained that the Applicant's very good conduct in the preceding 12 to 15 months was extremely positive and that it did not underestimate the resilience the Applicant was required to show during lockdown to improve and maintain his good conduct. Under the RMP, the Applicant would be subject to standard licence conditions with some additional conditions but no exclusion area.

39. The panel, having considered all the evidence, including the recommendations of the professionals, concluded that the RMP even if fully functional would not provide the reassurance required so that the panel could be satisfied that it was no longer necessary for the protection of the public that the Applicant should remain confined. The panel therefore did not direct the Applicant's release for the reasons which I will consider when analysing the grounds for seeking reconsideration.

The Relevant Law

40. The panel correctly sets out in its decision letter dated 8 September 2021 the test for release.

Parole Board Rules 2019

Irrationality

41. In **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)**, the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said at para. 116,

"the issue is whether the release decision was so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

42. This test was set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374**. The Divisional Court in **DSD** went on to indicate that in deciding whether a decision of the Parole Board was irrational, due deference had to be given to the expertise of the Parole Board in making decisions relating to parole. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing 'irrationality'. The fact that Rule 28 contains the same adjective as is used in judicial review shows that the same test is to be applied. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

Procedural unfairness

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

44. In summary an Applicant seeking to complain of procedural unfairness under Rule 28 must satisfy me that either:

(a) express procedures laid down by law were not followed in the making of the relevant decision;
(b) they were not given a fair hearing;

(c) they were not properly informed of the case against them;

(d) they were prevented from putting their case properly; and/or

(e) the panel was not impartial.

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

Other

47. 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.

48.In **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said: "*It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of craftsmanship.*"

The reply on behalf of the Secretary of State

49.PPCS have indicated in an email dated 7 October 2021 that the Secretary of State will not make any representations in response to the Applicant's reconsideration application.

Discussion

50.In dealing with the grounds for reconsideration, it is necessary to stress five matters of basic importance. The first is that the Reconsideration Mechanism is not a process by which the judgment of the Panel when assessing risk can be lightly interfered with. Nor is it a mechanism in which the member carrying out the reconsideration was entitled to substitute his view of the facts in place of those found by the panel, unless, of course, it is manifestly obvious that there was an error of fact of an egregious nature which can be shown to have directly contributed to the conclusion arrived at by the panel.

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

52.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.

53.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. 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.

Ground 1

54.It is contended that the decision of the panel not to release the Applicant is irrational as it is contrary to the recommendations provided by the professional witnesses who maintained their recommendations for the Applicant after having heard all the evidence. Nevertheless, the task on this application is to see whether the panel put forward adequate reasons for taking a contrary view to the view of the professional witnesses after taking into consideration all the evidence, including the factors in favour of releasing the Applicant, such as the efficacy of the RMP, the views of the professionals in recommending release and the Applicant's good conduct in custody.

55.There has been no challenge to the conclusion of the panel that the Applicant's probability of proven reoffending, both violently and non-violently were assessed as high as was his risk of serious recidivism and that if he reoffended, his risk of causing serious harm to the public was high and medium to prior associates, which excluded the victims of the index offence. No cogent reasons have been put forward for challenging the further conclusion of the panel that although *"[the Applicant's] risk of causing serious harm would not be imminent on release but that a relatively small change in his circumstances – such as encountering old associates- could increase the imminence of his risk quickly."*

56.The panel proceeded to find that it was not clear how future contact and problems with former associates and those with whom he had difficulties in the past could be avoided. Importantly, the panel "*did not share [the Applicant's] confidence that walking away to avoid confrontation would be fully effective*" especially when it is clear that *"[the Applicant] still has some difficulties with previous gang associates in custody".* The panel noted that *"while non-contact conditions could work for named individuals this is unlikely to be completely effective"*. No cogent submission has been put forward to undermine this conclusion especially in the light of the deference owed to the panel in making decisions in relation to parole.

57.The panel was entitled to reach that conclusion especially as has been pointed out in paragraph 32 above the Applicant had himself explained that peer groups were a "big thing" that *"might cause him to be violent again".* Indeed, the panel, who heard the Applicant give evidence, was entitled to note that "*it is clear that [the Applicant] still has some difficulties with previous gang associates in custody"*. For example, the Applicant indicated to staff in February 2021 that he was close to fighting with another prisoner *"due to outstanding issues".*

58.In reaching that conclusion, I had taken note of all the submissions by the Applicant's legal representatives including that the finding of the panel was "*unfair*" in not being convinced that the Applicant would walk away from encounters with former associates. The panel, as the designated fact finders who had heard all the evidence, was entitled to disagree and to reach its finding especially in the light of the matters set out in the preceding two paragraphs as well as the Applicant's *"extensive offending history often for acquisitive purposed"* which has been set out above. Indeed, as has been pointed out, due deference has to be given to the expertise of the panel especially as it has not been contended, let alone shown, that it made an error of fact of an egregious nature in reaching these conclusions.

59.As has been explained, in addition, the Applicant would only be entitled to an order for reconsideration if its case reached the high threshold of showing irrationality. That threshold means showing that the decision to refuse to release the Applicant "*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.*" This is a very high threshold and the Applicant's case does not reach it even after taking into consideration the fact that the decision of the panel is contrary to the recommendations of the professional witnesses and the other matters relied upon by the Applicant's legal representatives. So the application for reconsideration must be refused.

60.There are two further or alternative grounds which individually or cumulatively show why it is necessary to refuse the application for reconsideration. First, one of the reasons why the Applicant's RMP would not provide the assurance required that his risk of causing serious harm to the public could be managed and that is because of the Applicant's *"erratic engagement with those supporting him both in his therapeutic and supervisory relationships".* The Applicant's legal representatives consider the use of the word *"erratic"* to describe his engagement to be *"unfair and overstated".*

61.The forensic psychologist attached to the Wellbeing team at the Prison explained in a written report that the Applicant's engagement with her could be "*inconsistent and that he missed some sessions due to 'not being in the right headspace' and also that he struggled to wake in the morning to attend sessions".* She also reported that he sometimes missed sessions because he preferred to take part in the football course. This is also erratic and disturbing engagement.

62.The Applicant also failed to attend a meeting with his COM on the day before the hearing because he contended that he had not been given advance notice, but crucially. he added that if he had been given advanced notice, "*it was still possible that he may not have gone anyway because it depended on his mental health at the time*" and that *"sometimes he is so nervous that his legs don't move".* This also shows erratic engagement and it certainly is not the requisite consistent engagement required of a prisoner released into the community. I am fortified in coming to that conclusion by the Applicant's numerous convictions while subject to supervision orders, conditional discharge orders and bail conditions.

63.I have concluded that the panel was entitled to conclude that the Applicant's engagement with those supporting him had been *"erratic"* and also that he *"presents as someone who does not prioritise effectively and who picks and chooses how and when to engage".* This is a disturbing situation because the RMP required the Applicant's compliance with his supervising officer on numerous matters such as "*to comply with any requirements specified by [his] supervising officer for the purpose of ensuring that [he] address[es] [his] violent offending behaviour problems*". If the Applicant fails to engage with any of such basic obligations or engages *"erratically"*, he totally undermines the RMP and it ceases to ensure that he can or will be released safely.

64.A second and alternative reason why the Applicant could not be safely released into the community relates to the position after he leaves the designed accommodation where he would be well supervised during his initial period in the community, but that this would be limited to 8 weeks when his risk would be safely managed. His risk has,

however, to be considered until his CRD which includes a period of about 5 months after he leaves the accommodation. As the panel explained in respect of the later period, "*move on plans to his sister's address were tentative as she was in the process of moving and there were no alternatives if [her address] became unavailable".* In addition, the Applicant had not lived with his family since he was 16 and "*there had been difficulties in family relationships before that and contact over the last four years has been limited."*

65.Those factors indicate that the Applicant might have no accommodation available to him when he leaves the designated accommodation, or it might be in one of the areas in the long list of areas around London which the Applicant said he should avoid as explained in paragraph 32 above. This is a source of concern especially as there is a substantial risk that he will not receive public funds. The panel noted that he is unlikely to receive them as he has never worked. In any event, as the panel were told, each department dealing with the Applicant would have to make its own assessment of whether he is entitled to support and that this cannot occur until an application is made. At best the Applicant is likely to go through a period of anxiety about his future accommodation when his time at the designated accommodation is coming to an end.

66.This could well increase his risk of violent offending bearing in mind that the panel recorded that the undisputed factors which might increase this risk included '*financial need including unrealistic perceptions of entitlement and poor consequential thinking skills"*. In addition, it was noted that the Applicant is *"most likely to reoffend if he…is unable to achieve his goals in relation to employment and finances[and] a breakdown in his support network".* In addition, as has been explained, a relatively small change in the Applicant's circumstances *"could increase the imminence of his risk quickly".* No cogent reason has been put forward as to why this reasoning is defective. This would be an additional reason why the panel was entitled to reject this ground.

67.In consequence, there is a real risk that the Applicant could not be satisfactorily accommodated or supervised after his first 8 weeks spent in the community in designated accommodation. In addition, it appears unlikely that he will be entitled to contributions from public funds as he has never worked and in any event, this will depend on each department's decision. For all those reasons, I conclude that the decision of the panel to refuse to release the Applicant was not irrational as the Applicant's case falls well short of the high threshold for finding irrationality that the decision under challenge "*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."*

Ground 2

68.It is contended that the panel gave insufficient weight to the Applicant's engagement with his appointment with professionals and that this was irrational. As has been explained, the panel concluded that the Applicant's engagement with those supporting him both in therapeutic and supervisory relationships was erratic.

69.The panel members as the designated fact finders were entitled to reach that conclusion for the reasons set out in paragraphs 64 to 66 above and which show that the Applicant's engagement with the forensic psychologist attached to the Wellbeing team at his prison was inconsistent and that his mental health might have prevented him from attending meetings with his COM.

70.Even if correct, this complaint fails to reach the threshold for a finding of irrationality as it does not play a material part in the panel's decision-making. Further or alternatively, there were many other findings in the panel's reasoning which are not challenged, and which justify the panel's decision. Therefore, this ground must be rejected.

Ground 3

71.It is contended that it was irrational for the panel to conclude that the Applicant may find it difficult to avoid former associates bearing in mind that he had named all the areas across London that he should avoid. The panel were still able to envisage that there were other areas perhaps outside London where he might meet former associates. Deference is due to the panel for this conclusion and after all, they heard the evidence as the designated fact finders, they were entitled to reach this conclusion and it is not contended that they were not entitled to reach that conclusion.

72.There is no merit in this ground because even if correct, this complaint fails to reach the high threshold for a finding of irrationality.

73.In addition, the matters complained on in this ground do not play a crucial or material part in the panel's decision-making and so the decision of the panel should not be ordered to be reconsidered as there were many findings which are not challenged, and which justify the panel's decision as explained in the response to Ground 1 set out above.

Ground 4

74.It is contended that the proceedings were procedurally unfair as the panel should have given regard to the fact that the Applicant has difficulties recalling details of his offending behaviour work.

75.As has been explained in paragraphs 48 and 49 above, an Applicant seeking to complain of procedural unfairness under Rule 28 must satisfy the Court that either:

(a) express procedures laid down by law were not followed in the making of the relevant decision;

(b) they were not given a fair hearing;

(c) they were not properly informed of the case against them;

(d) they were prevented from putting their case properly; and/or

(e) the panel was not impartial.

76.The complaint in Ground 4 does not fall into any of these categories and so Ground 4 must be rejected

77. A further or alternative reason why it should be rejected is that it is not explained why the panel should have had regard to this fact and what difference it would have made to the outcome of the hearing.

Decision

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

Sir Stephen Silber
11 October 2021