

[2023] PBRA 102

Application for Reconsideration by Khan

Application

1. This is an application by Khan ('the Applicant') for reconsideration of a decision of a Parole Board panel ('the Panel') dated the 12 January 2023 not to direct his release.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the Parole Board Rules) provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) either on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair.
3. I have considered the application on the papers. These are the decision letter, the application for reconsideration, and the dossier.

Background

4. In 1996, the Applicant and another man (WA) took part in the murder of the proposed partner of WA's sister. The applicant and WA were not arrested for the offence until 2004 and were convicted of the offence in 2005. He was sentenced to life imprisonment with a minimum term to be served of 12 years, 6 months and 20 days. His 'tariff' expired in June 2018. A previous Parole Board panel, on 27 April 2021, following referral to the Board in early 2018 and many deferrals, declined to direct his release.
5. On 20 June 2022, the Secretary of State for Justice (the respondent), again referred the applicant's case to the Parole Board to consider whether it would be appropriate to direct release and if not to advise whether he should be transferred to open conditions. On 9 December 2022 a Parole Board member, having considered the papers which accompanied the request, decided that the case could fairly be considered on the papers without an oral hearing and in a Decision Letter (DL) declined to direct his release. Following the hearing the Applicant was informed of his right to ask for an oral hearing. No such request having been received within the 28 days allowed for such an application, the decision became final, subject only to the right, which he has now exercised, of applying for reconsideration of the decision. As to this matter it has now become apparent that the applicant was not in fact served with the DL until after the 28 day period had expired. I will revert to this matter later.



Request for Reconsideration

6. The application for reconsideration is dated 17 January 2023. The grounds are set out in a lengthy handwritten document submitted by the Applicant.
7. The grounds submitted are lengthy. I summarise them in order. Many of them relate to matters beyond the remit of this appeal process which may only focus on the rationality and lawfulness/procedural fairness of the decision. Others merely repeat, in slightly different language, grounds already on the form. The form on which the grounds are written contains 3 sections and printed headings. In summary:
8. Section/Page 1 - headed 'Your Reasons':
 - i) The Board failed to explain the risk factors which it considered in coming to its conclusion.
 - a-c. It reached its conclusion on the basis of proven lies and irrelevant or inaccurate data which the Board and Prison Service had refused to correct, and of *'the malicious allegation'* that since he had not engaged with those trying to write reports on him there was little prospect of his complying with licence conditions if released. An example of the above being the allegation that the Applicant's failure to take part in assessments, interventions or parole reviews was because he wanted to be released to travel to and settle in Pakistan, where it would be impossible for the conditions imposed by the Board to be implemented.
 - d. The decision relied in part on the Applicant's failure to attend previous oral hearings and a conclusion that to direct such a hearing would be a waste of time.
 - e. The Board – in the shape of staff members of the Board with whom the Applicant has corresponded and members of panels - have unfairly accused the Applicant of being a *"woman hater"*. At a previous hearing the female panel chair shouted at the applicant.
 - f. At a previous hearing the psychologist alleged untruthfully that the Applicant had confessed to the index offence of murder. There are references to pagination which must be those within the previous dossier.
 - g. There is no evidence within the papers or elsewhere of so-called *"narcissistic traits"*.
 - h. It had been falsely alleged in 2012 that the Applicant had feigned illness and mobility problems.
 - i. The Board did have relevant representations from the previous legal representatives in 2021, and there were other matters within the dossier for the 2021 hearing which it should have taken into account.

9. Section 2 – Incorrect process:

- (i) a-c. There was no (proper) review process. The Board was aware that the



Applicant had not received the dossier considered by the panel which made the decision. The Parole Board did not receive the Acknowledgement of Service which would have confirmed receipt.

d. The Board was aware that the Applicant was no longer legally represented, having been informed by the previous solicitors.

e. The Applicant had informed the Parole Board (in writing or verbally – it is not clear) that he had not received correspondence.

f. The Applicant had informed the Board that he had been unable to instruct new solicitors because of what he alleges amounted to theft of correspondence.

(ii) a-c. The Applicant never received the dossier used by the Board member who made the decision appealed against and was therefore unable to respond to matters within it. Such evidence as was available was hearsay and thus impossible to challenge.

d. The Applicant supplied many evidential documents to prison staff at 3 prisons either directly or by friends emailing them. Both the prisons and the Board have falsely denied receiving them. He also supplied the relevant Offender Management Units (OMU) with papers relevant to the question of parole. Both the OMU and the Board have falsely denied this.

e. OMUs and the Board have breached the GDPR and the Data Protection Act. The Applicant spoke to a particular member of staff at the Board about this in 2022.

f-g. Much 'historical' material dating back to 2004 had not been retrieved for the purposes of the hearing including unlisted security reports etc and many documents from 2004 to 2022. The previous hearing had a dossier of some 1200 pages - this failure to retrieve documents in spite of Judicial Review proceedings having been instituted against the Prison Service. (This point is repeated elsewhere in the grounds submitted.)

h. The prison obstructed the Applicant's efforts to attend Central London County Court in January 2023 to make an application to add the Board as a defendant to his claim.

iii) The Board's process was oppressive, arbitrary and objectionable.

a. It was necessary for the Board to have considered some 1500 pages of evidence instead of the 288 pages used for the recent hearing.

b. A paper review was inappropriate for a case of such complexity.

c. There were hundreds of pages of countervailing evidence available which the Board has denied receiving since 2017.

d. The Board has rejected "verbal" evidence and falsely denied that evidence existed or that previous complaints had been upheld.

- e. The failure to order an oral hearing represented a breach of the Applicant's rights under the Human Rights Act 2000.
- f. There was no reference to telephone conversations between the Applicant and named Parole Board employees in advance of the hearing which had taken place between 2017 and 2023.
- g. The dossier omitted the recordings of the hearings during the period 2017- 2020. These recordings were "*illicitly*" deleted by the chair of the previous hearing and the Parole Board Head of Legal.
- h. In general the Board did not fulfil its duty to "*ensure cases dealt with justly*".
- i. 375 points raised by the Applicant in respect of the 2021 Board decision were omitted from the current dossier.
- j. The current panel indicated that it was unable to '*understand or determine*' the Applicant's risk factors and blamed him for his failure to attend the 2021 hearing.
- k. The Board denied the Applicant the chance to have his interview with a psychologist recorded.
- l. The Board's decision expressed opinions on topics (medical/psychiatric) on which it was not qualified to comment.

10. Section 3 – Irrationality:

- i. The panel in that it lacked a judicial chair and contained neither a non-white nor a Muslim member was unable properly to assess the possible "*cultural factors*" which may have laid behind the commission of the index offence.
- ii. The Board dishonestly denied receipt of papers supplied by the Applicant from 2017-2020.
- iii. The Board irrationally '*overrode*' expert evidence. During telephone calls to the Parole Board in advance of this hearing or (more likely) the previous hearing in 2021 – relevant material concerning the Applicant's medical condition was withheld and his allegations of racial or religious discrimination were ignored.
- iv. There is clear evidence within the dossier – OASys reports – of the Applicant's faecal and urinary incontinence but the Board falsely alleged that the Applicant had failed to supply such evidence. The same applies to evidence from 2010 and 2012 concerning a back injury.
- v. The Board irrationally denied the Applicant the chance of an oral hearing on the basis of these and other matters, and in anticipation of the applicant's refusal to attend, or, if he did, to cooperate with, an oral hearing.
- vi. The disabilities referred to above have been confirmed by NHS England.



- vii. The Board failed to request and to obtain medical evidence concerning the above disabilities.
- viii. The Board, in spite of denials since 2017, has behaved in a discriminatory and hostile way.
- ix. During telephone calls with Parole Board staff from 2017-2021 they alleged that the index offence was an honour killing although that allegation has since been denied.
- x. The Board's decision to list the case under the TACT protocol is an indication of its racist attitude to the Applicant. (This must be a reference to the 2021 hearing since the solicitors then acting for the Applicant are mentioned in connexion with it.)
- xi. The Board falsely alleged that the Applicant posed a threat to civil servants, MPs, police and Prison Service staff.
- xii. The allegations made by the Applicant against probation staff resulted in their concocting false/malicious allegations against him.
- xiii. The attitude described in the previous ground generated a false accusation that the Applicant had a knife in his cell. The "knife" was in fact two pieces of plastic sellotaped together for use in cleaning the toilet.
- xiv. The Board's decision contained lies concerning what had or had not been found in the Applicant's garage at the time of the index offence.
- xv. The Board's decision repeats "*deceitful allegations*" when the trial judge stated that there was no history of violence and there is no record of violent behaviour by the Applicant while serving the sentence.
- xvi. It was irrational to deny the Applicant an oral hearing, which would have been the only way for the Applicant to correct the numerous errors of fact within the dossier.
- xvii. The Board "*lied*" when it claimed that the Applicant was held in a '*single cell*'.
- xviii. A large number of complaints made while the Applicant was at particular.
- xix. The Board wrongly suggested that there had been 36 adjudications against the Applicant when the true number was 5.
- xx. The decision wrongly relied on the suggestion that the Applicant had been "*on the run*" between the time of the murder in 1996 and his arrest.
- xxi. The Board should have sought evidence from a named psychologist and falsely claimed that she could not give evidence by video link.
- xxii. The prisons in respect of whom the Applicant has issued proceedings made many untrue allegations against the Applicant and had subjected him to racist, Islamophobic and other objectionable behaviour.
- xxiii. The Board's decision fails to explain why '*it's obstructing deportation to Pakistan*'.



- xxiv. The Board's attitude is comparable to that alleged against Yorkshire Cricket Club and others in current proceedings by one of its former players.
- xxv. The Board's decision ignored the fact that when serving a previous sentence the Applicant had been placed in open conditions and allowed to work outside the prison without problem.
- xxvi. Since 2005 the Prison Service and, more recently, the Board have ignored or obstructed assessments of the Applicant, and
- xxvii. In December 2022 the prison was informed that no new interventions were necessary for the Applicant. The Board's decision ignored or overlooked this fact.
- xxviii. The Board has over-relied on the circumstances of the index offence and ignored the fact that the Applicant has no conviction for violence in the 2 years leading up to that offence or since.
- xxix. The Board's decision not to hold an oral hearing in both 2021 and 2022 was based on the fear that its "*discrimination, harassment and victimisation, and its muting of the microphone during a hearing in 2020 would be revealed.*" This has led to the unfair decision now sought to be reconsidered.
- xxx. (Presumably at the previous hearing) the Board was misled by the Applicant's then solicitors.
- xxxi. The Board's decision has been wrongly influenced by fear of Judicial Review proceedings against it in respect to the 2021 decision.

Current parole review

11. The history of Parole Board hearings in the Applicant's case has been difficult. His case was first referred to the Board in October 2017. By the time a panel convened to hear the case three and a half years had elapsed during which hearings had been adjourned or deferred on many occasions. The Applicant did not attend the oral hearing which had been fixed for 27 April 2021 but his then legal representative asked for what would have been the sixth adjournment of the hearing. The application was refused and the Applicant's legal representative did not stay to listen to or take part in the hearing which then followed. The panel declined to order release or to recommend that the Applicant be transferred to open conditions.
12. The Applicant's case was again referred to the Parole Board by the Secretary of State for Justice (SoSJ) on 20 June 2022. On 9 December 2022, a Member Case Assessment (MCA) panel considered the referral and a dossier then containing 221 pages. The panel decided that in the circumstances the case could be dealt with on paper and issued the decision now sought to be reconsidered. The decision was conveyed to the Applicant. At its conclusion the Applicant was informed that if he wished to apply for his case to be considered at an oral hearing he must do so within 28 days. No such application was made. I have now been informed that owing to an administrative error the DL was not given to the Applicant in time for



him to make such an application.

The Relevant Law

13. The panel correctly sets out in its DL dated 9 December 2022 at paragraph 4, the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.
14. Under Rule 28(1) of the Parole Board Rules 2019 (as amended) the only types of decision which are eligible for reconsideration are those concerning whether the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is made by a paper panel (Rule 19(1)(a) or (b)) or by an oral hearing panel after an oral hearing (Rule 25(1)) or by an oral hearing panel which makes the decision on the papers (Rule 21(7)).

Procedural unfairness

15. 'Procedural unfairness' means a procedural impropriety or unfairness which resulted in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result.
16. 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; and/or
 - (b) The applicant was not given a fair hearing; and/or
 - (c) The applicant was not properly informed of the case against him/her; and/ or
 - (d) The applicant was prevented from putting his/her case properly; and/or
 - (e) the panel was not impartial.
17. The overriding objective is to ensure that the Applicant's case was dealt with justly.

Irrationality

18. 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."

19. 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 into 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.

20. It is unnecessary for the panel to include every detail in their decision letter. 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 draftsmanship."*

The reply on behalf of the Secretary of State (the Respondent)

21. No reply has been received from the Respondent.

Discussion

22. My job, as the reconsideration assessment panel, is to review the decision made by the panel to see whether any mistake of law or irrationality as it is defined in judicial review has been identified. It is not for me to decide the issue of whether the Respondent should have been released nor to have any regard to any public, press or political reaction to the decision. If I decide that there has been an error of law in reaching the decision or that the decision is irrational I will direct that the matter be re-considered. If not then the decision will stand.
23. The reconsideration process is solely concerned with the procedural propriety and rationality of the decision sought to be reconsidered. The reconsideration process may not be used to appeal against the fact that an oral hearing was not directed or to appeal against the findings of a previous parole panel.

My conclusions:

24. As to the grounds summarised at paragraph 8 above –
25. Ground 1:
- a) The DL set out the risk factors clearly at paragraphs 1.10-11 of the DL. All were clearly derived from the circumstances of the Applicant's previous criminal record, the index offence and his behaviour in prison since serving his sentence.
26. Ground 2:
- (a) Sub-paragraphs iii-vi are based on events or allegations outside the remit of the reconsideration process.
 - (b) Sub-paras i and ii which alleges lies and deceitful conduct generally against the Board without particulars, rather than referring to the content of the DL, are of no relevance to the application. (Research into the names of Parole Board staff referred to in the grounds clearly refer back to the previous decision of the Board in 2021. As such they are irrelevant to consideration of the rationality or procedural fairness of the decision I have to consider.)



- (c) Sub-para vii. There is no reference to '*narcissistic traits*' in the DL, or in the dossier supplied for the consideration of the Duty Member.
- (d) Sub-para viii. The previous representations had no relevance to the decision which had to be made more than a year after the earlier one.
27. As to the grounds summarised at paragraph 9 above under the heading of '*incorrect process/procedurally unfair*':
- (a) Sub-paragraph i is too general an allegation to amount to a ground of appeal.
- (b) Sub-paragraphs ii, iii and vii allege that the Applicant had not had notice that his case had been referred to the Board and that the receipt of DL was the first he knew of the referral.
28. I was concerned to discover whether the Applicant had had notice of the fact that his case had been referred to the Parole Board – or whether, as he alleges, the decision now under consideration represented the first intimation to him that the Parole Board was due to consider his case. Accordingly, I asked for evidence one way or the other on that topic. After a long delay I was provided with two emails dated 28 June 2022. The first was from solicitors then acting for the Applicant asking that he be supplied with a copy of the dossier. The second was a reply from an unnamed person stating that he had been supplied with the dossier "*last week*". It is clear that at some time between that exchange in June 2022 the Applicant ceased to be represented since he has not submitted in his extensive grounds that that he is now represented or that he was at the time his case was considered and the DL was issued.
29. Rule 16 of the Parole Board Rules is set out below:
- Referral and service of reports***
30. *A case is deemed to be referred to the Board on the date that the Board receives the referral letter and the information and reports required under paragraph (3) from the Secretary of State.*
31. *The Secretary of State must serve the information and reports required under paragraph (3) on the prisoner (and the prisoner's representative if they are represented) at the same time as service on the Board.*
32. *Subject to rule 17, the Secretary of State must serve on the Board and the prisoner (and the prisoner's representative if they are represented)—*
- (a) the information specified in the Schedule;*
- (b) any further information which the Secretary of State considers relevant to the case, and*
- (c) where a case relates to a request for advice, any information which the Secretary of State considers relevant to the case.*
33. Sub-paragraph iv and vi – the submission that the Board knew that the Applicant was unrepresented has no relevance to an application for reconsideration. It is a matter for offenders to decide whether they wish to be



represented. The Board has to deal with offenders' cases whether they are or are not legally represented.

34. Sub-paragraph v – there is no record at the Parole Board of any such conversation. In any event the consideration of cases by the single member is based.
35. Sub-paragraph viii. No particulars are supplied of the papers allegedly supplied to the Board or of how they may be relevant to the decision sought to be reconsidered. It would appear from the Applicant's submissions that these papers probably relate to the previous hearing by the Board in 2021.
36. Sub-paragraph ix. The Applicant – as set out in the DL – is a convicted murderer with a previous record of relevant offending who has consistently declined to engage or cooperate with those who have tried to assist his rehabilitation and reduce the risk he poses to the public. That attitude has persisted – see e.g. the reports of his current Prison Offender Manager (POM) and Community Offender Manager (COM) within the dossier submitted for the instant hearing.
37. Sub-paragraphs x, xiv and xvi. These relate to matters concerning the previous hearing in 2021 and have no relevance to the decision sought to be reconsidered.
38. Sub-paragraph xi. This case is not a complex one. It concerns an offender convicted of murder who has consistently resisted any attempts designed to enable/help him to demonstrate that he can safely be released.
39. Sub-paragraph xii. The paper hearing procedure has been the subject of litigation before the Courts of England and Wales. While its use has been circumscribed no court, whether applying UK law or the European Convention on Human Rights has proscribed the use of paper hearings in appropriate cases. A case such as this, in which, the risk posed by the offender to the public is clearly no less, and arguably greater, than it was at the time of a previous hearing was clearly suitable for such a hearing.
40. Sub-paragraph xiii. No relevant particulars are given of any such telephone communication between the date of the most recent referral in June 2022 and the DL of December 2022. I have asked for records of communications between the applicant and the Board since the referral and have found none. Any such communications prior to the date of and made for the purposes of the previous hearing in 2021 are irrelevant to consideration of this decision.
41. Sub-paragraph xv. I have considered the dossier and the DL which followed it. I see no force in the general contention that the Board dealt with this case unjustly.
42. Sub-paragraph xvii. The DL makes it clear in Chapter 3 of the DL what conclusion it reached on the risk currently presented by the Applicant and the inability of licence conditions to manage it.
43. Sub-paragraph xviii. The Board has no power to direct the manner in which



meetings between a prisoner and a psychologist are conducted.

44. Sub-paragraph xix. There was no up to date psychological assessment of the Applicant available since he had refused to take part in such an assessment.
45. As to the grounds set out at paragraph 10 above on the ground of irrationality.
46. As to subparagraph i the Parole Board Rules permit the making of parole decision by a single member on the papers. Such decisions may be revisited and if appropriate changed and an oral hearing ordered if notice of an intention to ask for an oral hearing is made within 28 days of the decision. No such application was received within the period whereupon the decision became final and subject only to the reconsideration process. (See Rules 19 and 20 of the Parole Board Rules 2019). I have since been made aware that through an error the decision was not communicated to the Applicant in time for him to make such an application. This a second procedural failure in the case to add to that set out in paragraph 24 above concerning the applicant's grounds at ii, iii, and vii.
47. As to subparagraphs ii-vii, these make the same allegations in general terms as those at subparagraphs ii-iv of paragraph 9. I reject them for the reasons given above. The decision was clearly based on the fact that nothing had changed significantly for the better in the Applicant's general attitude and his risk to the public since the previous hearing and that there would be nothing to be gained from directing an oral hearing.
48. As to sub-paragraph viii, this is a general and unparticularised allegation which has no direct bearing on the decision now sought to be reconsidered.
49. As to sub-paragraphs ix and x these refer back to the previous Parole Board decision of 2021 and have no relevance to this application.
50. As to sub-paragraph xi I have seen no evidence that the "*Board alleged that the Applicant posed a threat to civil servants, MPs, or police*". As to prison staff the dossier contained material which dealt with possible violence or threats of violence against prison staff. The panel was entitled to consider these in coming to its conclusion.
51. As to sub-paragraph xii, this is a general and unparticularised allegation and as such cannot justify an order for reconsideration.
52. As to sub-paragraph xiii, this was properly dealt with at paragraph 2.3 of the DL. The Board was entitled to act on the information which had led to an adjudication against him for possession of the "*improvised weapon*".
53. As to sub-paragraph xiv there is no reference in the DL now sought to be reconsidered of what was or was not found in the Applicant's garage at the time of the murder.
54. As to sub-paragraph xv the Applicant has previous convictions for actual or potential violence: assault on a police officer, possession of an offensive weapon and robbery. There is nothing in this ground.

55. As to sub-paragraph xvi the time for requesting an oral hearing passed without such an application being made. The reconsideration process cannot be used to make such an application 'out of time'.
56. As to sub-paragraph xvii it is hard to see the relevance of the single cell referred to in the POM report at p117 of the dossier and in paragraph 2.4 of the DL to the decision now sought to be reconsidered. There is nothing in this ground.
57. As to sub-paragraph xviii the existence of complaints against governors at two of the prisons at which the Applicant has been serving his sentence have no relevance to the decision sought to be reconsidered.
58. As to sub-paragraph xix although the DL refers to '*adjudications*' there is no reference to the number. There are references to a number (37 in total dating back to the beginning of the sentence) in the previous decision at page 46 of the dossier. It is clear that the decision now sought to be reconsidered focused on recent behaviour.
59. As to sub-paragraph xx it is clear from the decision of the previous Parole Board panel that soon after the index offence the Applicant had indeed been "on the run" until his arrest and conviction for the index offence in 2005. There is nothing in this ground.
60. As to sub-paragraph xxi. It is hard to see the logic of this ground. The Applicant had refused to cooperate with the psychologist who was ready to interview him and produce a report based in part on such an interview.
61. As to sub-paragraph xxii. This general allegation has nothing to do with the rationality or procedural fairness of the decision sought to be reconsidered.
62. As to sub-paragraphs xxiii-xxiv. The DL cannot be said to "*display an attitude*". At paragraphs 4.6-4.10 it analyses the situation as at the time of the referral and decision and comes to a clear conclusion that the risk posed by the Applicant to the public cannot safely be managed either if he were to be released or if he were to be transferred to open conditions.
63. As to sub-paragraph xxv while it is the case that the DL makes no reference to the fact that the Applicant had done well in open conditions during a previous sentence nearly 30 years ago, that period had been before he committed the index offence and behaved in the ways described in the dossier during the subsequent sentence until now.
64. As to sub-paragraph xxvi this is a general and unparticularised allegation and cannot justify an order for reconsideration. Most recently the Applicant has effectively prevented any meaningful contact with professionals.
65. As to sub-paragraph xxvii. I have not found any reference to this suggestion in the dossier. On the contrary previous reports specifically refer to the Applicant's refusal to comply with interventions – p67, 69, 87, 128, 130,143, etc.



66. As to subparagraph xxviii the Panel was entitled to "*rely*" on the index offence and the previous record of offending, together with the lack of progress since in coming to its decision.
67. As to sub-paragraph xxix. It is clear that the decision not to hold an oral hearing was based on the apparent absence of any progress made by the Applicant towards the reduction of his risk to the public if released. There is no merit in this ground.
68. As to sub-paragraph xxx. The Applicant is currently unrepresented. This ground has no relevance to the correctness of the instant decision.
69. As to sub-paragraph xxxi. This is not so much a ground as an allegation. There is nothing in the DL to indicate that its terms have been influenced in the way suggested.
70. I asked for evidence which might throw light on whether the Applicant had been served with notice of the referral by the Respondent. After a considerable delay I received none save a copy email which suggested in May 2022 that someone within the prison had done so "*last week*". Although it is clear that at some time he has received a copy of the most recent dossier since he refers to pagination within it in his grounds, I consider the absence of any firm evidence that the Applicant was aware that his case had been referred to the Board by the Respondent in itself amounts to a serious procedural irregularity. The failure to serve the DL upon him in time for him to make representations for an oral hearing amounts to a second procedural failing. While the latter might be cured by an extension of time for him to make submissions concerning the holding of an oral hearing I find that the earlier failure is sufficient to justify the order sought.
71. For the sake of completeness, I should state, as I have made clear in the preceding paragraphs that I would have rejected the other grounds submitted by the Applicant.

Decision

72. For the reasons I have given I allow this application.

Sir David Calvert-Smith
29 June 2023