Neutral Citation Number: [2025] EWHC 1471 (Admin)

Claim No: AC-2024-MAN-000406

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

SITTING IN MANCHESTER

Before His Honour Judge Pearce sitting as a Judge of the High Court on 13 June 12025

Manchester Civil Justice Centre,
1 Bridge Street West,
Manchester
M60 9DJ

BETWEEN:

REX

on the application of

MR BILLY JOE TOMPSON

Claimant

-and-

THE SECRETARY OF STATE FOR JUSTICE

Defendant

-and-

THE PAROLE BOARD OF ENGLAND AND WALES

Interested Party

- -

- -

Mr PHILIP RULE KC and **MR CARL BUCKLEY** instructed by **BHATIA BEST SOLICITORS** for the **Claimant**

MR MYLES GRANDISON instructed by the **GOVERNMENT LEGAL DEPARTMENT** for the **Defendant**

THE INTERESTED PARTY did not appear and was not represented

Hearing date: 8 May 2025

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JUDGMENT

This judgement was handed down at 11am on 13 June 2025 by email to the parties and by publication on the National Archive,

HIS HONOUR JUDGE PEARCE

INTRODUCTION

1. The Claimant, Mr Billy Joe Tompson, was sentenced to life imprisonment on 1 June 2012 for offences of wounding contrary to Section 18 of the Offences against the Person Act 1861, attempted rape and sexual assault by penetration in circumstances dealt with in greater detail below. The sentence was a discretionary life sentence and the minimum term of imprisonment was set at 5 years and 7 months. His tariff expired on 1 January 2018 and he is therefore a post-tariff prisoner eligible for release on licence, and who, for reasons considered below, is subject to judicial Parole Board reviews.

2. In 2023, the Claimant's case was reviewed by the Parole Board. On 6 March 2024, the Board, having heard evidence at an oral hearing on 28 February 2024, recommended the Claimant's transfer to open conditions. That recommendation was passed to the Defendant, but at the same time further material came to light relating to the Claimant's alleged conduct. Having considered both the Board's recommendation and the additional material, the Secretary of State for Justice, by letter of 12 August 2024, communicated her decision not to accept the recommendation made by the Parole Board ("the Decision"). As a result, the Claimant remains in closed conditions.

3. The Claimant argues that this decision was unlawful on four grounds:
   3.1. Procedural unfairness in that, having regard to the nature of the new information and the questions arising from it, there should have been a re-referral to the Parole Board to consider the new material;
   3.2. Alternatively, procedural unfairness in the Defendant herself not convening an oral hearing to address the new material;

3.3. Unwarranted departure from the Defendant's policy that requires a return to the Parole Board if its recommendation is made on an incorrect factual basis.

3.4. Irrationality, in failing to make reasonable and sufficient enquiry into the new material.

THE LEGISLATIVE AND POLICY FRAMEWORK

4. Section 12(2) of the Prison Act 1952 ("the 1952 Act") provides that the Defendant may lawfully confine a prisoner, and allocate him to a prison. Section 47 of the 1952 Act enables rules to be made for the classification of prisoners. Rule 7 of the Prison Rules 1999 ("the 1999 Rules") provides that prisoners shall be classified having regard to specified matters including "*in the case of convicted prisoners, of* (sic) *furthering the purpose of their training and treatment as provided by rule 3*." Rule 3 provides that the purpose of the treatment of convicted prisoners "*shall be to encourage and assist them to lead a good and useful life.*"

5. Categorisation of prisoners is by security consideration and by prison type. For adult male prisoners, there are four security categories, the first three of which permit detention only in closed prisons.:

- Category A - Prisoners whose escape would be highly dangerous to the public or the police or the security of the State and for whom the aim must be to make escape impossible.
- Category B - Prisoners for whom the very highest conditions of security are not necessary but for whom escape must be made very difficult.
- Category C - Prisoners who cannot be trusted in open conditions but who do not have the resources and will to make a determined escape attempt.
- Category D - Prisoners who present a low risk and who can reasonably be trusted in open conditions and for whom open conditions are appropriate.

6. In the case of a prisoner serving an indeterminate sentence, move to a category D open prison is an important step. It is frequently considered necessary before a release direction can be given. It is a necessary step before consideration of release on temporary licence to the community for resettlement purposes, the purpose of which is explained in the Release on Temporary Licence[1] Policy Framework (3 October 2022 reissue) in these terms :

> "*[1.1] Release on Temporary Licence (ROTL) facilitates the rehabilitation of offenders, by helping to prepare them for resettlement into the community once they are released. This includes, among other examples, finding work and rebuilding family ties. It is intended that this will lead to reduced reoffending in the long-term*.

[1] Commonly abbreviated to ROTL.

"*[1.2] There is no entitlement to ROTL but the expectation is that it will be widely used with suitable offenders in open prisons and women's prisons where the resourcing and infrastructure best enable ROTL to be undertaken…*"

7. The Parole Board is a judicial body tasked amongst other things with review of the risks posed by prisoners serving indeterminate sentences and the lawfulness of detaining them. It determines the statutory power of release. In addition, by section 239(2) of the Criminal Justice Act 2003 ("the 2003 Act"), the Board advises the Secretary of State in respect of matters relating to the early release or recall of prisoners. Since transfer to open conditions is a matter which has a direct relevance to the early release of a prisoner, section 239(2) of the 2003 Act provides the system whereby the Defendant may ask the Board for advice on whether a prisoner serving an indeterminate sentence is suitable for transfer to open conditions.

8. Paragraph 5.8.2 of the Generic Parole Process Policy Framework, published on 27 January 2020 and re-issued on 16 August 2023 sets out the circumstances in which the Secretary of State may reject the Parole Board's recommendation on the issue of transfer to open conditions:

"*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*."

9. Paragraph 5.8.3 of that Policy Framework provides:

"*Where the Parole Board recommendation was based on incorrect information, the Secretary of State (or an official with delegated responsibility) is unlikely to accept the recommendation. The case will normally be referred again to the Parole Board for a fresh consideration and new recommendation, with an explanation, rather than submitting it for formal rejection…*"

10. There is no obligation on the Defendant to seek the advice of the Parole Board (see *Gilbert v Secretary of State for Justice* [2015] EWCA Civ 802 at [70]). She has the benefit of the experience of her department (see *Sneddon v Secretary of State for Justice* [2024] EWCA Civ 1258 at [28]). If she does so, she is not obliged to follow its advice, so long as she acts

rationally (see *Sneddon* at [29]). She is not limited to rejecting a recommendation of the Board only where she is able to identify a deficiency in its reasoning (see *Sneddon* at [30]).

RELEVANT FACTUAL BACKGROUND

(A) THE CLAIMANT'S CONVICTIONS

11. Prior to the offences to which the Decision relates, the Claimant, when at the age of 13 in 2016, was convicted of and sentenced for offences of rape and sexual assault in which the victims were aged 5 and 7 at the time.

12. The offences for which the Claimant was sentenced on 1 June 2012 (by when he was 19 years old) were, as noted above, wounding, attempted rape and sexual assault by penetration. In sentencing comments, HHJ Ashurst said:

> "*"Exactly five months ago a young teacher in her mid twenties had been out with friends on New Years Eve. In the early hours of the morning you attacked this woman, a complete stranger, in the most appalling circumstances. Quite unusually this offence was caught on camera. The victim in this case has made it clear that she wished any sentencing court to see that footage. I have seen that footage and I am bound to say it is one of the most harrowing pieces of footage that I have ever witnessed. You dragged this woman from the streets, immediately used violence on her, knocking her to the ground, and you then carried out a perfectly brutal attack upon her. You struck her not once, but nearly 30 times, with very considerable violence. The camera reveals how her body moves against the pavement and the curb where you had unceremoniously dragged her between two parked cars, very close to where she lived. You then began to molest her, removing her clothing, fondling her breasts, fingering her vagina. She was completely motionless and unconscious. You then lowered your trousers. It is quite clear you were trying to penetrate her, but you could not achieve an erection and you were not able to do so, but the video which reveals a very sustained attack shows that that was not for want of trying…. I am satisfied in your case that there is a very high risk of sexual reoffending in the future, and the likelihood is that harm is likely to be extremely serious, if not fatal. You have accepted in you interview with Dr Agarwal and in the Probation Service that there are other disturbing incidents in your past. One involved your admission of seeking to poison the food or your former foster carer. You show, in my judgment, superficial remorse for this dreadful assault on the complainant in this particular case.*[2]"

[2] In this and other quotations from documents in this judgment, I have retained the original grammar, spelling and punctuation, save in one respect noted below.

13. The seriousness of this offending history speaks for itself. It is self-evident that anyone considering conditions in which the Claimant might either be released or might be unlawfully at large was entitled if not required to consider the risk to members of the public to be significant.

(B) REFERRALS TO THE PAROLE BOARD

14. An oral hearing of the Parole Board took place on 2 March 2022, following which the panel recommended that the Claimant be held in open conditions. This recommendation was rejected by the Defendant in a letter dated 1 June 2022 on the basis that there was not a "wholly persuasive case" for open conditions. A review period of 12 months was set for the purpose of allowing the Claimant to:

> "*Undertake consolidation work related to the programmes you have previously completed; Demonstrate you are able to handle stressful and uncomfortable situations appropriately, such as seeking support and advice from professionals;*
>
> *Demonstrate continued improvement in your engagement with professionals, including your POM*[3]*.*"

15. The Claimant's continuing detention was reviewed by a member of the Parole Board on 12 February 2023, following which it was recommended that an oral hearing take place.

(C) THE PAROLE BOARD'S ASSESSMENT OF 6 MARCH 2024

16. The Claimant's case was considered by a panel of the Parole Board at an oral hearing on 20 February 2024, when evidence was given by:
    16.1. The Claimant himself;
    16.2. The Claimant's POM, Mr Stephen Gaughan.
    16.3. A prison psychologist, Ms Rachel Charnley;
    16.4. The Claimant's Community Offender Manager[4], Mr Mike Richmond.

17. In its assessment of 6 March 2024, the panel of the Parole Board noted the Claimant's offending history. It recorded concerning features of his character and thinking but also noted evidence of steps towards rehabilitation, including the completion of the Sex Offender Treatment Programme in 2015 and the Extended Sex Offender Treatment Programme in 2017. He had spent time in the Beacon Unit[5] at HMP Garth between April 2018 and February 2021, following which there was evidence of some understanding of his motivations and triggers for offending. However, as of a report of August 2020, there remained risk areas relating to his offending behaviour.

[3] POM stands for Prison Offender Manager.

[4] Abbreviated to "COM" in some of the documents referred to below.

[5] A unit for male offenders with a diagnosis of personality disorder.

18. The Panel noted in particular

18.1. Mr Gaughan's evidence that the Claimant "*had held enhanced status since 2019 with no significant concerns about his conduct. Mr Tompson is currently employed as a gym orderly which he described as a trusted position. He said that there had been no concerns about sexually inappropriate behaviour since 2013 (a sexual gesture towards a female officer) that Mr Tompson had held enhanced status since 2019 with no significant concerns about his conduct. Mr Tompson is currently employed as a gym orderly which he described as a trusted position."*

18.2. Ms Charnley's evidence that the Claimant "*continues to demonstrate an ability to manage his emotions, work with staff, improve relations with his POM, and reflect on his risk."*

18.3. Mr Richmond's evidence that, since the last Parole Board review, the Claimant had "*engaged positively with his COM and his POM, and he recognises the benefits of positive engagement and the support available*."

19. There was a difference between the three experts in that Ms Charnley considered the Claimant to be suitable for release on licence to Psychologically Informed Planned Environment Approved Premises[6], whereas Mr Gaughan and Mr Richmond favoured a move to open conditions (Mr Gaughan seemingly by a narrow margin over PIPE AP).

20. The Panel's conclusions were expressed thus:

"*4.1 The panel took account of the following matters of concern:*

• The extremely serious nature of the index offences with its likely enduring impact on the victim;

• Mr Tompson's offending history, involving the use of sexual violence against both children and an adult and its repetition despite intensive intervention after the first set of convictions;

• Risk assessments including those indicating a high risk of serious harm to the public, a known adult and children, and a very high risk of sexual contact reoffending;

• The assessments of the need for support on release in the context of a relatively short stay at PIPE AP and uncertain plans for move on/resettlement/support services.

Set against that the panel took account of the following positive factors:

• The assessments of all professionals that Mr Tompson has made progress since the last review in reducing his risk through consolidating and applying the skills learned;

• The assessment of all professionals that risk could be managed in the community;

• The lack of significant concerns about behaviour in custody for many years;

[6] Abbreviated to "PIPE AP" below,

• Mr Tompson's presentation to the panel in which he demonstrated some insight into his risk factors and strategies to manage them;

• The risk management plan with its elements of support and monitoring, including placement at a PIPE AP for an initial period.

4.2 The panel was extremely concerned by the offending history, the risk assessments, and the uncertainty of the support elements of the move on plan. It concluded that the professionals had placed too much emphasis on the support available at PIPE AP in view of the relatively short period for which this could be guaranteed (3 months) together with the uncertainty of support services on a transfer between areas, given the need to assess risk on an indefinite basis. It noted that although a number of referrals had been made/were proposed, such as to Evolve, support services in the Manchester area, OPD[7] pathway and MAPPA[8] these had not yet been fully followed through.

4.3 The panel gave Mr Tompson credit for his recent progress. However, it concluded that the risk of direct release without more certainty about long term support would risk destabilising Mr Tompson after so long in custody which could lead quickly to an escalation of his risk. Balancing the factors listed above the panel concluded that it remains necessary for the protection of the public that Mr Tompson remain confined and it does not direct his release.

4.4 The panel went on to consider Mr Tompson's suitability for open conditions:

4.4.1 The panel considered the current criteria set out below:

4.4.2 Whether risk has been reduced to a level compatible with public protection -the panel took account of the assessments of all professionals regarding reduction in risk. It concluded that risk had been reduced to a level compatible with public protection on periods of temporary release.

4.4.3 Risk of abscond - the panel noted the assessment of the professionals and the lack of any evidence of an abscond history. The panel assessed the risk of abscond to be low.

4.4.4 The panel therefore recommends to the Secretary of State that Mr Tompson be progressed to open conditions.

4.7 A future panel would be assisted by an updated report on custodial conduct, a report on any interventions undertaken, any ROTL[9]s completed, an updated risk assessment and risk management plan and consideration of a further psychological risk assessment."

[7] Offender Personality Disorder.

[8] Multi Agency Public Protection Arrangements.

[9] Release on Temporary Licence.

(D) DEVELOPMENTS AFTER THE PAROLE BOARD HEARING

21. In oral submissions, Mr Rule KC for the Claimant took me through the sequence of events after the Parole Board hearing in some detail. A close review of that material is valuable in giving context to the submissions that the parties make in particular on the need for a further oral hearing.

22. On 14 March 2024, Ms Hope, a "Parole Eligible Case Manager" within HM Prison and Probation Service, sent a pro forma document relating to the open recommendation. In the email she states, "*Please be advised that this is the first case I have completed whilst training with Chris. Any feedback will be much appreciated,"*

23. The Claimant's case was referred to Ms Emma Oakes, a Senior Policy Manager in the Public Protection group of the Ministry of Justice, working on parole reforms. In her statement she says, "*In 2024, I assisted the Parole Eligible Casework Team in responding to Parole Board open recommendations."* As the Claimant says, this suggests that, at least at that time, dealing with open recommendations from the Parole Board was not her main area of work.

24. On 18 April 2024, Mr Richmond emailed Mr Gaughan about a telephone call he had received from the Claimant in these terms:

> "*I took phone call from Billy-Joe Tompson from HMP Littlehey on 17/04/24 at 11am. Long call, Billy-Joe quite emotional at times and crying.*
>
> *Basically he has been told to move Wings this morning at 9am, and this is a "security move". Billy-Joe went on to tell me that he thinks this move is linked to his friendship with another prisoner called MGR[10] is a 33 year old male prisoner of YYY origin - MGR is also a sex offender and Billy-Joe told me that he believes MGR offence was one of grooming a child, telling the child that he was 21 years old. When Billy-Joe first met MGR told him he was 22 years old and Billy-Joe has since found out that MGR is actually 33 years old. Billy-Joe and MGR became friendly and got on very well- this all changed when Billy-Joe jokingly locked MGR into his cell and MGR could not get out; Billy-Joe told me there is a way of locking a cell but the prisoner inside can then get out by moving the lock mechanism somehow- Billy-Joe says MGR took this prank very badly and was never the same towards him since that day. This all happened before his Parole hearing and Billy-Joe says there was no reason, he believes, to tell me or his POM about this.*
>
> *Since then they became friends again until MGR has then told him to go away; this pattern has repeated several times, coming to a head a few weeks ago when they had a fight in*

[10] For the sake of consistency, this prisoner is identified with the cipher "MGR" in all of the documents cited below. (The cipher is chosen at random) This is the exception to the rule that I have maintained the original text of passages that are quoted.

MGR cell- Billy-Joe says this was more slapping and pushing and shoving; no-one was injured and Billy-Joe did not think much of this particular incident.
On 16/04/23 Billy-Joe saw MGR go and speak to Officers in the Wing Office and then Billy-Joe was asked to be moved the following day; Billy-Joe now thinks that MGR has accused Billy-Joe of something, but does not know what that is, at this precise time.
Billy-Joe clearly now worried about how this may affect his Parole progress and his move to Cat D.

I am concerned as his COM about any close relationship with another prisoner who is an RSO - how does Billy-Joe know about MGR index offence? Surely MGR would not go and tell others about a sexual offence such as his?"

25. The email from Mr Richmond was forwarded to Ms Hope and Ms Oakes was informed of the development.

26. On 3 May 2024, Ms Oakes emailed Julia Whyte, Head of Parole Eligible Casework, about the report and noted, "*the security information we have got from the prison on this case doesn't really tell us much, so [Ms Hope] wanted to check whether we deem this incident an adverse development, and if she should still request reps from the prisoner*?"

27. Ms Whyte emailed in reply:

"*I agree it will be helpful to get an email update from report writers as to whether the limited info that is available, alters opinions, and their assessment on whether risk can be managed in open conditions. It doesn't appear like we will get much more info on this incident, but worth asking when we ask report writers for their updated views. Once we have these, we should pull into an email and send to the legal rep to ask for any reps (giving them seven days to do so*)."

28. Mr Gaughan emailed the prison governor on 7 May 2024, stating:

"*I have received an email for the PPCS who work on behalf of the sec state (see email below the below!). They are wanting information relating to Prisoner Billy Joe Tompson in relation to concerns re a relationship with another prisoner. The information is to be used to either support the Parole Boards recommendation to transfer to Cat D or challenge the recommendation based on new information. As part of this they have requested a copy of a complaint he has made.*
Business hub have advised it is confidential, however suggested I could contact yourself to see if this is something that could be shared with PPCS.
I have advised PPCS I will get back to them on Friday with any additional information.

At present they know Mr Tompson was moved cells due to 'protection of another person';. Ive also got an IR[11] linking Mr Tompson to sexually harassing the prisoner, and I forwarded some emails from the COM linked to Mr Tompson's conversation with the COM."

29. Mr Gaughan emailed Ms Hope on 10 May 2024, saying, "*I've put together what I can based on the information I have. I have had no luck getting any information from security, nor any information pertaining to the Complaint. See below."* Attached to this email is a lengthy document setting out the material that Mr Gaughan had obtained. In that document, he notes the lack of reliable information. He describes the allegations as being "*out of character*" but possibly "*suggestive of grooming behaviour.*" He concludes:

> "*given the risk posed by Mr Tompson is of a sexual nature, and in understanding he is alleged to have sexually harassed another individual, it is felt that he is not yet ready for a Cat D placement. This is based on the fact the concerns are very recent. Additionally a period in open estate will require greater self-management given controls in the prison are reduced. Given the prison have removed him from an open spur due to concerns (And added further controls), it cannot be justifiably argued that he is ready to be tested in more open conditions with less monitoring. Indeed his move of cell by its very nature has increased controls due to the alleged concerns. It is felt risk of harm concerns, albeit via an allegation, have increased due to the sexual nature of the prisoners complaint."*

30. In an email sent by Mr Gaughan to Ms Hope later on 10 May 2024, his position seems to have changed. The email refers to information received from the Head of Residence at HMP Wymott, in the following terms[12]:

> *"...I have completed a simple enquiry into Billy Joe, and the matter you have referred to. Please see copy of IR I have submitted following the enquiries made:*
>
> "*I received a complaint from BillyJo Tompson and conducted a few enquiries on the back of it, yesterday. It seems BillyJo was removed from B wing and relocated to H wing as another prisoner, had handed over approximately 25 letters allegedly from BillyJo, stating they were provocative. The prisoner had told staff he felt unsafe around BillyJo.*
>
> "*I understand Security had requested the move, as a short-term arrangement, pending an investigation in to the 'relationship' between BillyJo and GMR. No further investigation or mediation has taken place by the B wing CM, to determine who wrote the letters and why suddenly MGR feels unsafe around BillyJo.*

[11] Intelligence Report.

[12] This email is italicised for consistency within this judgment. In the original of the email, the parts of this email that are not underlined were not italicised, whereas those that are underlined were, suggesting that the italicised/underlined passage is a quotation from another source. The underlining maintains this distinction in the text.

"*BillyJo had sent me a 7-page lengthy complaint, asking for justice, as he believes MGR to be a manipulator. He also referred to losing his gym orderly job.*

"*On reading the letters that had been evidenced to Security, of all 25 letters, there is only one line within one letter, which I would deem as sexually explicit. The rest of the letters are basically a man who appears to be infatuated with another, begging for friendship, and telling him how much he loves spending time with him. They have obviously had a falling out and, again, pleads for them to be friends again.*

"*I did compare the handwriting on the complaint to the writing on the letters and whilst the handwriting does not seem to be the same, the signature of B or BillyJo is the same.*

I understand the issue with losing his gym orderly job was due to the alleged stealing of fabric conditioner; this is a separate matter to the one I have been dealing with and therefore will support any decision made by the PE Department.

"*In my opinion there is no reason for BillyJo Tompson to not be able to return to a community wing however, I would recommend this to be A wing rather than B wing. Can CM Littlefair or CM Tarbuck take this action, upon their return, to clarify there is nothing more to this situation.*"

In his email to Ms Hope enclosing this account, Mr Gaughan said,

"*I have received information re the complaint – which now, in my view, changes the view slightly. The letters indicate a level of infatuation (according the the GOV who has had access to them) and only one sexually explicit message. The question remains as to why the prisoner felt unsafe with Mr Tompson, and there still concerns as to the relationship however the letters don't, from what I am told, indicate anything of significant concern other than perhaps an unhealth infatuation. Indeed the Gov has suggested that Mr Tompson can return to the open wing / spur*."

31. On 23 May 2024, Mr Gaughan emailed Ms Hope with further information. It would seem that the POM for MGR had had obtained an account from him:

"*he told me the harassment had been going on for around 4 months with him making sexual references to him and writing him love letters. He said he didn't want to "grass" as he was worried what would happen to him, he thought if he ignored Billyjoe, it would go away, however when Billyjoe entered his cell and grabbed him, he knew he had to report it. MGR reports that Billyjoe grabbed him by the wrists and pushed him down on to his bed he said he put his forehead on top of "pinning me down, I couldn't get up so screamed for help, I thought he was going to rape me." I asked MGR if he wanted police involvement, he declined he said he feels much happier and safe now that Billyjoe has moved wings. He did*

mention that he had been told that Billyjoe had applied for a job in the laundry where MGR work, this did worry him, MGR reports being fearful of Billyjoe."

Of this account, Mr Gaughan said that he had "*come to the conclusion that there are too many concerning facets to the allegation that cannot be ignored. And as such take the view that the Parole Boards original recommendation be re-considered in light of the recent concerns shared*."

32. A security report was obtained from HMP Wymott[13]. This referred to various allegations against the Claimant including the matters referred to above. It grades all of the matters as "low" (including allegations that the Claimant had been involved in theft from the prison), apart from two incidents on 22 April 2024, both graded as "high":

"*A9088CJ Tompson has written numerous notes to MGR and may be attempting to groom and manipulate him as he has stated he is bi and has a massive crush on him and that he will do anything for him. Tompson has asked MGR to name his price and offered to give MGR a bag of protein, cash, and multiple video games despite MGR appearing to not want contact with Tomspon.*

"*Tompson admits that he broke boundaries with MGR and that he got close to him which is why he was very protective of him.*

"*MGR may have also accused Tompson of stalking as Tompson states that he didn't stalk him and that he only moved because MGR asked him to*."

And

"*Billy Joe Tompson A9088CJ seems to be panicking as MGR is claiming that Billy-Joe is gay or bisexual and that he was making sexual advances towards him. Billy stated that MGR is accusing him of stalking him and writing odd notes, which Billy states that he and MGR used to send notes as a way of communicating. Billy is worried that this matter will affect his Parole.*"

33. On 19 June 2024, the Claimant's solicitors made representations on behalf of the Claimant, complaining in particular about the lack of notice of the allegations being made and the failure on the part of the Defendant to ask for his representations. The letter sought disclosure of relevant material, raising questions as to the fairness of a procedure where the Defendant might reject the recommendation of the Parole Board panel.

34. On or about 23 July 2024, Mr Gaughan and Mr Richmond had a meeting with the Claimant. This was recorded in an email from Ms Hope to the Claimant's solicitors on 24 July 2024,

[13] The report is undated but the last entry relates to an incident on 31 May 2024 so it would seem that it must have been prepared after then.

seemingly based on a note prepared by Mr Gaughan. The note is long but important and is produced in full:

"*Here is information taken from Mr Tompson meeting, held yesterday, and attended by Mr Tompson, COM Michael Richmond and I.*

"*Mr Tompson wanted to use the opportunity to discuss his view on matters and share what he feels are discrepancies in information against him. He also used the opportunity to share what steps he has taken to try and clarify allegations made.*

"*I explained to Mr Tompson I would share the below points that he has made.*

He has displayed evidence sharing how the security team are no longer completing any further investigation. The outcome is that Mr Tompson and MGR will be kept separate. Mr Tompson has also been advised and provided evidence that security team did not sanction the cell move.

"*It appears that the first mention a 'security move was mentioned initially by Mr Tompson to his COM during a phone conversation, and later picked up by myself. Mr Tompson has received a letter from security that confirms this moves was not triggered by them. On considering NOMIS*[14] *notes the move was for 'someone's safety.' There is a possibility this was undertaken by a prison officer from the wing rather than by security.*

"*Mr Tompson has also advised that the security team are of the view that he can return to the 'spur' wings. This being a wing sharing the same similarities as that he was housed on when the allegations take place. Such wings provide greater freedoms and responsibility given men of up to 28 individuals are locked behind a 'spur' and are free to move around the spur after lock up. Mr Tompson makes the point that this would not be sanctioned should there be concerns stemming from the allegation. The Security team have confirmed, after investigation, that they hold no issue with Mr Tompson returning to the open spur. This suggests Mr Tompson has been deemed trustworthy to enjoy the increased freedoms of movement amongst prisoners after lock up. This is significant in considering recent events and in considering support for a Cat D move.*

"*Mr Tompson advised that he has not been allowed sight of the letters identified as being sent by him. He is not able to comment on the one letter which has been identified as sexually explicit. He also questions the number of letters identified (25 in total). He does not believe he is responsible for 25 letters having been sent and believes the suggestion that some of these are not in his hand writing (but suggested to have been signed by him) suggest other individuals may have been sending letters purporting to be him. He denies the letters were love letters and was unable to share why he was deemed infatuated with MGR. He describes a close bond and friendship which he was keen to maintain.*

[14] National Offender Management Information System.

"*Mr Tompson states that he feels the allegations made against him may be linked to MGR feeling rejected. He states MGR had made advances towards him, which he rejected. He believes this may have triggered allegations being made. He also states that he believes other individuals may have been influencing MGR to make allegations. Potentially to scupper his parole chances. Mr Tompson also takes the view MGR has history of making allegations against others, and states he has evidence of this relating to three other prisoners. In his words there is a pattern of behaviour relating to MGR and allegations. He points at the fact no such allegations have been made in his time in custody.*

"*Mr Tompson also advises that a third party is aware of MGR allegations, advising that the said third party was told by MGR that he would make an allegation against him. He has requested further investigation into this by the security team.*

"*Mr Tompson disputes the suggestion that he pinned MGR to the bed and placed his fore head on top of him. He states that he was in MGR room. However states he was "fighting for our friendship" after the two had been in conflict. Mr Tompson stated that he is ok with having been identified as wanting a friendship, but disputes any suggestion of sexual harassment. Letters viewed by security teams suggest infatuation and a man desperate for friendship. One is deemed sexually explicit. As above, Mr Tompson is unable to comment on the contents of this letter and believes, given the hand writing discrepancies, some letters may have been sent by others posing as him. As his POM I have not been permitted sight of these letters*

"*He states on reflection, when considering the altercation, he should have left the room, as this was requested of him. He states however that he wanted to mend the relationship and continued to request to talk to him. He states MGR looked to push him out of the room, resulting in him restraining him and telling him to calm down. He states it was not a fight as originally interpreted by his COM. Further as POM, I was aware that I mentioned that Mr Tompson did not mention a fight to me when discussing the incident. Mr Tompson states that this is because no fight occurred. Mr Tompson did however tell me MGR put his arm to is throat when being pushed from the room. This I did not share in my original information. Mr Tompson states this was the reason he restrained him by holding his arms, before telling him to calm down. He states he did not fight but pushed him away from him to the bed. He suggested MGR offered no physical threat to him and as such he did not engage in any form of fight*

"*Mr Tompson pointed to the suggestion made by MGR of being in fear of being raped was made months after this incident. Mr Tompson questioned why this was not reported immediately. He also questions the validity of the suggestion Mr screamed in fear, suggesting that in his view other prisoners would have heard this and looked to intervene.*

Certainly there are no IRS to suggest prisoners reported any concerns linked to this. Mr Tompson has also suggested that he questions whether MGR was in fear of him, sharing how the two attended an inter wing sports day. He states that he witnessed no concerns in MGR

"*Mr Tompson points at IRs being placed more frequently from March 24, taking the view that others may be conspiring against him. This again he feels could be attempts to scupper his Cat D progress. He points at the fact IRS*[15] *were minimal prior to this.*

"*Mr Tompson disputes all IRs relating to theft of items from the gym. He states he has never stolen anything nor been found with anything. He believes the IRS consider him guilty and are based on other prisoners making accusations (low level intelligence).*

"*There appears to be pertinent questions raised by Mr Tompson, particularly around the hand writing of notes, which can be evidenced. Further security teams describe, from having access to the notes, an infatuation and man desperate to be friends rather than anything suggesting sexual harassment has originally had been suggested. This correlates with Mr Tompson's expressed acknowledgement that he held the friendship dear. Further there has been no pattern of sexually harmful behaviour prior to this point, nor concerns raised previously.*

With security teams having investigated allegations and having had sight of evidence, and having reached the conclusion that Mr Tompson can be relocated back to an open spur (on the proviso the two can be kept separate), I believe the re-categorisation proposal by the Parole Board can be further considered by the PPCS[16]*.* "

35. The Claimant's solicitors made further representations on 28 July 2024, pointing out in particular that:

(i) None of the allegations against the Claimant had been substantiated;

(ii) The removal of the Claimant from his cell had not been a "security move" but was rather the decision of an individual prison officer;

(iii) The Claimant remained of Enhanced Status in trusted employment;

(iv) The Security Department, having investigated matters, had returned him to an open spur;

(v) The allegation of rape, which the Claimant denied, had not been reported to the police or investigated;

(vi) There was a clear suspicion that some of the letters were written by other inmates trying to give the impression that they were from the Claimant

[15] Intelligence Reports.

[16] Public Protection Casework Section of HM Prison and Probation Service,

(vii) The allegations were being made by an inmate who had a history of making false allegations and who had mental health issues.

THE DEFENDANT'S REASONING

36. The Defendant's decision not to follow the advice of the Parole Board is set out in her letter of 12 August 2024. Having summarised the Claimant's offending, risk profile, his prison history and progress towards rehabilitation considered by the Parole Board in its decision of 6 March 2024, the letter goes on to state that the test that "*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*" was not met:

"*…new information has come to light since the hearing which calls into question whether your risk has sufficiently reduced to support a progressive move.*

"*An email was received from your Prison Offender Manager (POM), Mr Gaughan, on 17 April, reflecting that you were made subject to a security move, due to concerns that you posed a risk to the safety of another prisoner. The email suggests that you had become friendly with another named prisoner, who had been convicted of child sexual offences. It transpired that you had locked this man in his cell, and the man was unable to get out, and that your relationship soured after this incident, which you described as a 'prank.' You became friendly again, though the other man told you to 'go away,' a pattern that repeated itself several times, before you had a physical fight in a cell. Neither of you were injured, and on 16 April, you saw the other man speak to officers, which preceded your security move. You suggested in a call to your COM that the other prisoner may have made an allegation against you. In the email correspondence, your COM raised that he held concerns about you forming a close relationship with another registered sex offender, given you were aware of the man's index offence.*

"*The Secretary of State notes the POM Report reflects that you had previously asked for a wing move in November 2023 as other prisoners had been discussing their index offences and displaying offence supportive attitudes, and that you had dealt with this appropriately and been able to process your emotions better on your new location (Pages 5-6, POM Report), with the psychologist not finding this incident to be indicative of 'intense grievance thinking' by you (Para 2.9, Page 8, Parole Board Decision Letter). However, the events with the other sex offender had taken place after the 2023 wing move, and you had not thought to inform your POM or COM about the incidents in the first instance. This could indicate you were not being open with the professionals supervising you, and in the follow-up email from Mr Gaughan, he sets out concerns that you being involved in a fight, knowing how to lock*

prisoners in a cell, and could be linked to thefts in the prison caused Mr Gaughan to hold concern over your risk of harm.

"*Further information has been received from the prison, which suggests that the other prisoner has alleged that you pinned him to his bed and held him down, fearing he was about to be raped. There had also been letters sent by you to this individual, which had only sexually suggestive line within, and appeared more to present you as an infatuated man, who was desperate to spend time with the other prisoner. While the other prisoner asked for a security move and to be kept apart from you, he declined to press charges. When questioned about the man's allegations, you were reported to have admitted having grabbed this individual by the wrists and pushed him onto the bed, stating this was for his safety, fearing he may be suffering with his mental health. This account differed from the version you had told your COM earlier, and from a version told by you in a July meeting with your POM and COM, whereby you and the man were 'fighting for their friendship'. While the minutes of this meeting reflect that you were considered safe by the Security Department to move onto an open spur, and little weight was attached to the letters, the Secretary of State still hold the view that it is concerning that your account of the incident has changed over time, and agree with one of the earlier assessments of your POM, dating to May 2024, that this could be indicative of impression management, and that pinning the other prisoner to the bed with force was offence paralleling in nature.*

"*Your conduct with the other sex offender was not known at the time of the hearing and has clear links to your risk of harm. It is of concern that you were involved in a physical fight in the run-up to your parole hearing and initially did not inform staff. This incident is suggestive of some of the 'warning signs' of increasing risk cited by the psychologist at the hearing, namely 'disengagement from staff' and 'involvement in conflict situations' (Para 3.5, Page 10, Parole Board Decision Letter). Not being open and honest could make your risk unmanageable in the Category D estate, and it remains a security concern that you are able to lock/unlock prison cells from within and hold other prisoners in them against their will. This suggests your risk is not manageable in the open estate and, therefore, this criteria is not met."*

37. The Defendant also found that the criterion that there be a wholly persuasive case for transferring the Claimant from closed to open conditions was not met.

THE APPLICATION FOR JUDICIAL REVIEW

38. The Claimant's Claim Form was issued on 11 November 2024. By it, the Claimant sought permission to bring judicial review on the following grounds:

38.1. Procedural unfairness in that, having regard to the nature of the new information and the questions arising from it, there should have been a re-referral to the Parole Board to consider the new material;

38.2. Alternatively, procedural unfairness in the Defendant herself not convening an oral hearing to address the new material;

38.3. Unwarranted departure from the Defendant's policy that requires a return to the Parole Board if its recommendation is made on an incorrect factual basis.

38.4. Irrationality, in failing to make reasonable and sufficient enquiry into the new material.

39. The Claimant seeks the following relief:

(i) An order quashing the decision of the Defendant;

(ii) An order that the matter be referred to an Oral Hearing to be convened before the Parole Board or, in the alternative, before the Secretary of State.

(iii) Declaratory relief

(iv) Costs.

40. By order dated 23 January 2025, HHJ Halliwell granted permission to bring judicial review proceedings on all grounds. The application proceeded to a substantive hearing before me on 8 May 2025.

GROUND 1 – PROCEDURAL UNFAIRNESS IN NOT REFERRING BACK TO THE PAROLE BOARD

The Claimant's Case

41. The Claimant's starting position is that the Defendant's determination of the significance of the new material that came to light after the Parole Board's involvement in the process had ceased was of questionable reliability. It is apparent from the Defendant's decision letter that this material was central to her decision not to accept the Parole Board's recommendation. The letter treats as true a number of matters which were clearly in fact open to question.

42. In such circumstances, the Claimant says that fairness demanded an oral hearing for several purposes

42.1. To assess the reliability or accuracy of any information;

42.2. To identify what is hearsay and multiple hearsay;

42.3. To identify the accuracy of what is recorded;

42.4. To evaluate the Claimant's own account of matters.

43. In *Osborn v Parole Board* [2014] AC 1115, Lord Reid, giving a judgment with which the rest of the Supreme Court agreed explained that what procedural fairness requires is a matter for the objective decision of the court. The court must determine for itself whether a fair procedure was followed, rather than simply reviewing the decision maker's determination of what is fair:

> "*The court must determine for itself whether a fair procedure was followed…. Its function is not merely to review the reasonableness of the decision-maker's judgment of what fairness required.*"

44. He further identified that following a fair process has several independent benefits:

44.1. "*[67] There is no doubt that one of the virtues of procedurally fair decision-making is that it is liable to result in better decisions, by ensuring that the decision-maker receives all relevant information and that it is properly tested…"*

44.2. It tends to avoid "*[68] …the sense of injustice which the person who is the subject of the decision will otherwise feel. I would prefer to consider first the reason for that sense of injustice, namely that justice is intuitively understood to require a procedure which pays due respect to persons whose rights are significantly affected by decisions taken in the exercise of administrative or judicial functions*."

44.3. It promotes the rule of law: "*[71] Procedural requirements that decision-makers should listen to persons who have something relevant to say promote congruence between the actions of decision-makers and the law which should govern their actions*."

45. Lord Reid summarised his conclusions as to when the Parole Board is required to hold an oral hearing in his judgment at [2].

> *"(i) In order to comply with common law standards of procedural fairness, the board should hold an oral hearing before determining an application for release, or for a transfer to open conditions, whenever fairness to the prisoner requires such a hearing in the light of the facts of the case and the importance of what is at stake. By doing so the board will also fulfil its duty under section 6(1) of the Human Rights Act 1998 to act compatibly with article 5.4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in circumstances where that article is engaged.*
>
> *(ii) It is impossible to define exhaustively the circumstances in which an oral hearing will be necessary, but such circumstances will often include the following.*
>
> *(a) Where facts which appear to the board to be important are in dispute, or where a significant explanation or mitigation is advanced which needs to be heard orally in order fairly to determine its credibility. The board should guard against any tendency*

to underestimate the importance of issues of fact which may be disputed or open to explanation or mitigation.

(b) Where the board cannot otherwise properly or fairly make an independent assessment of risk, or of the means by which it should be managed and addressed…

(c) Where it is maintained on tenable grounds that a face-to-face encounter with the board, or the questioning of those who have dealt with the prisoner, is necessary in order to enable him or his representatives to put their case effectively or to test the views of those who have dealt with him. (d) Where, in the light of the representations made by or on behalf of the prisoner, it would be unfair for a paper decision made by a single member panel of the board to become final without allowing an oral hearing …

(iii) In order to act fairly, the board should consider whether its independent assessment of risk, and of the means by which it should be managed and addressed, may benefit from the closer examination which an oral hearing can provide.

(iv) The board should also bear in mind that the purpose of holding an oral hearing is not only to assist it in its decision-making, but also to reflect the prisoner's legitimate interest in being able to participate in a decision with important implications for him, where he has something useful to contribute.

(v) The question whether fairness requires a prisoner to be given an oral hearing is different from the question whether he has a particular likelihood of being released or transferred to open conditions, and cannot be answered by assessing that likelihood.

(vi) When dealing with cases concerning recalled prisoners, the board should bear in mind that the prisoner has been deprived of his freedom, albeit conditional. When dealing with cases concerning post-tariff indeterminate sentence prisoners, it should scrutinise ever more anxiously whether the level of risk is unacceptable, the longer the time the prisoner has spent in prison following the expiry of his tariff.

(vii) The board must be, and appear to be, independent and impartial. It should not be predisposed to favour the official account of events, or official assessments of risk, over the case advanced by the prisoner.

(viii) The board should guard against any temptation to refuse oral hearings as a means of saving time, trouble and expense.

(ix) The board's decision, for the purposes of this guidance, is not confined to its determination of whether or not to recommend the prisoner's release or transfer to open conditions, but includes any other aspects of its decision (such as comments or advice in relation to the prisoner's treatment needs or the offending behaviour work which is required)

which will in practice have a significant impact on his management in prison or on future reviews.

…

(xi) In applying this guidance, it will be prudent for the board to allow an oral hearing if it is in doubt whether to do so or not."

46. The importance of the involvement of the Parole Board in matters relating to the release of prisoners pursuant to section 239(2) of the 2003 Act has been noted above. In *Howard League v Lord Chancellor* [2017] EWCA Civ 244, the Court of Appeal held that procedural fairness required a system of legal aid provision to fund reviews before the Parole Board where the possibility of recommending open conditions arose, reflecting the fact that "*although these reviews do not involve a decision to release itself, most prisoners require a period in open conditions before the Parole Board can be satisfied that they are safe to release. There is in consequence, a great deal at stake for prisoners at these reviews*" (per Beatson LJ at [65] giving the judgment of the court).

47. Furthermore, the Claimant places emphasis on the fact that, when advising the Secretary of State on the issue of transfer to open conditions, the Board is fulfilling a judicial function : see the unanimous decision of the Supreme Court in *Pearce v Parole Board* [2023] UKSC 13 at [6] and the judgment of the Court of Appeal in *Gourlay v Parole Board* [2017] EWCA Civ 1003, where at 65(v), Hickinbottom LJ, giving a judgment with which Richards LJ and Gloster LJ agreed, said that the Parole Board "*has to obtain relevant material from NOMS and the offender himself, and evaluate that material in making an assessment of the risk posed by the offender; and whether that risk is at an appropriate level for him to progress by way of transfer to a category D prison or release on licence, as the case may be. In respect of release, it has to reach its own objective judicial decision, to comply with the requirements of article 5.4* (sc. of the Human Rights Convention). *In respect of transfer, it reaches its decision in the same way, and to the same procedural standards. It has to use the same procedures for practical reasons: it is often the case that a panel is considering both transfer and release, at the same time. However, it is also required to adopt the same procedural standards, not as a result of article 5.4, but by the common law. Thus, in Osborn v Parole Board [2014] AC 1115 which concerned the requirement for oral hearings before a panel of the Board, in respect of both release and transfer decisions without taking any fine points between the two, Lord Reed JSC, giving the only substantive judgment, held that domestic, common law procedural fairness required an oral hearing in respect of both. Therefore, in considering transfer decisions, the Board both in practice acts, and in principle is required to act, as if it were a court or tribunal, even if article 5.4 does not require it to do so.*"

48. The Claimant concedes that the Defendant was under no automatic obligation to refer the question of transfer to open conditions to the Parole Board (see *Sneddon* at [24]). However, having determined to do so in the Claimant's case, it was necessary for procedural fairness to apply throughout the process. That included in the Parole Board's investigation and provision of advice to the Secretary of State (as to which no criticism is made) but also in dealing with subsequent issues which potentially undermined the validity or weight of the Parole Board's assessment.

49. Having convened an oral hearing, the Parole Board was better placed than the Defendant to assess the material before it. The Board had considered a substantial quantity of information. It heard evidence from three professionals and from the Claimant himself. In the particular circumstances of this case it ought to have been asked to review the further material that came to the attention of the defendant. As it was put in *Sneddon* at [36].

> *"In general, the weight that the SoS ought reasonably to give to the findings or assessments of the Board is likely to vary according to whether or not the finding or assessment was one in respect of which the Board held a particular advantage over the SoS. Thus, disagreement by the SoS with a finding of credibility made by the Board after a hearing involving oral evidence may be difficult to defend as reasonable… Put very simply, the greater the advantage enjoyed by the Board over the SoS on any particular issue, the less likely a decision of the SoS to depart from that finding or assessment will be rational."*

50. The Claimant contends that the failure to refer matters back to the Parole Board was "*plainly unfair"* since it did not pay adequate regard to these features of the allegations in light of the Board's recommendation:

    50.1. The allegations were denied;

    50.2. MGR was suggested to have previously made false allegations against other inmates;

    50.3. The Claimant asserted that his account of the incident had been misinterpreted.

    50.4. Issues of credibility were raised concerning the authorship of certain of the 'letters' said to have been written by the Claimant, it being suggested that they were in fact from other prisoners in different handwriting;

    50.5. The assertion that the Claimant had been subject to a 'security move' is an erroneous description, and led to unfair inference initially (which the Defendant has failed to recognise);

    50.6. The description of the Claimant's behaviour as "*offence paralleling*" was an inaccurate but highly damaging description of the allegations against the Claimant;

50.7. The Claimant had not been made the subject of any Adjudication, did not receive any IEP[17] warning, remained of Enhanced Status, and had regained his employment in a 'trusted' position.

51. Since the allegations were disputed, had they been referred to the Parole Board they would have been dealt with in accordance with the document 'Parole Board Guidance on Allegations' document (September 2023, v. 2.0) which reflects guidance from the Supreme Court, particularly in *Pearce.* It provides:

"2.2 Panels must make objective decisions that are based on:

- *All of the information provided to them;*
- *Information obtained as a result of the panel's inquiries (recognising that panels have a responsibility to make reasonable inquiries);*
- *Such facts that are undisputed by the parties*
- *Relevant allegations which are disputed but, in respect of which, the panel has made a finding of fact (see section 6); and*
- *Relevant allegations where the panel has not been able to make a finding of fact, but consider that there is a serious possibility that the allegation may be true and, as such, decide to give it enough weight as they think is appropriate (see section 7)".*

52. The Claimant noted in oral submissions that there is nothing within the decision letter to suggest that the Defendant even considered convening an oral hearing to examine the new material. Yet the examination of that material was fundamental to the decision of the Defendant. A fair process, had the material been before the Parole Board, would have required the Board to hold an oral hearing; and a fair process by the Defendant should have involved referral back to the Board for such a hearing. The Claimant further contends that a fair process might require the Claimant the opportunity to cross examine witnesses who can give evidence relevant to the issue before the Board on such a hearing. However, he does not go as far as to assert that I should give mandatory relief requiring this.

53. The Claimant accepts that he did not specifically request an oral hearing but contends that this is no bar to relief, in particular where the determination of what is fair is an objective process in respect of which the Defendant owes a duty regardless of what is requested by the prisoner - the Claimant draws attention to the similar principle identified in *Yusuf v Parole Board* [2010] EWHC 1483 (Admin).

[17] Incentives and Earned Privileges Scheme.

The Defendant's Case

54. The Defendant accepts that she is under a duty to act fairly when considering material relevant to the exercise of her power to transfer a prisoner to open conditions. However, she counsels caution in applying to the Secretary of State the same criteria of fairness as apply to the Parole Board. When the latter is exercising a judicial function, high standards of fairness are required. However, the former is undertaking management functions, "… *which mean that in striking a fair balance between the public interest and the individual interests of prisoners it is reasonable to limit to some degree how elaborate the procedures need to be as a matter of fairness for their decision-making*" (per Sales LJ in *Hassett v Secretary of State for Justice* [2017] EWCA Civ 331 at [51(1)]).

55. The procedure adopted by the Secretary of State, having received the advice of the Parole Board but then the further information that came to light, was both to investigate the further information and to give the Claimant the opportunity to comment on it. This was a fair procedure.

56. Further, the Defendant argues that the Claimant has mischaracterised the reliance placed by the Defendant upon the new allegations. It is denied that she made findings of facts. Rather what she did was to identify discrepancies and inconsistencies in the Claimant's account, the impact of his not being open and honest with his POM and COM and his accepted conduct grabbing a prisoner by the wrists and locking him in a cell. None of these matters involved contested factual issues, but rather an assessment of the risk in the light of the Claimant's own version of events. The conduct could properly be described as "*offence paralleling,*" because even that which the Claimant admitted had similarities to the index offences for which he is serving the indeterminate sentence. Accordingly, the Defendant was entitled to rely on these factors to reach the conclusion that she did without the need for an oral hearing.

Discussion

57. The fairness of the procedure adopted by the Defendant can be tested by looking at the material upon which she based her decision that the risk presented by the Claimant was not manageable in the open estate. The decision letter shows that she placed reliance on the following:

    57.1. The decision was based on "new information" which had come to light since the hearing before the Board;

    57.2. The new material "*calls in question whether* (the Claimant's) *risk has sufficiently reduced to support a progressive move."*

    57.3. The Claimant had "*locked a man in his cell"* in an incident that he had described as a "*prank"*:

57.4. The Claimant and MGR had *"had a physical fight in cell*."

57.5. The Claimant's COM had raised concerns about the Claimant "*forming a close relationship with another registered sex offender.*"

57.6. The Claimant had not told his POM or COM about the events, suggesting he was " *not being open with the professionals supervising*" him.

57.7. MGR had alleged that the Claimant had "*pinned him to his bed and held him down, fearing he was about to be raped*," behaviour that was described as "*offence parallelling in nature."*

57.8. *"When questioned about the man's allegations,* (the Claimant was) *reported to have admitted having grabbed this individual by the wrists and pushed him onto the bed, stating this was for his safety, fearing he may be suffering with his mental health."*

57.9. The Claimant's account of matters had changed.

58. If this conduct were in large part accepted, the Claimant could have had no complaint that the Defendant had reached her decision without an oral hearing. It is arguable that some of this material could be said to speak for itself and not to require an oral hearing. In particular the allegation that the Claimant had locked MGR in a cell, regardless of whether intended as a prank or not, was conduct that was not disputed by the Claimant and that was at least capable of forming part of the conclusion that the Defendant reached. But other parts of the material referred to by the Defendant in her decision letter were contentious and were not accepted by the Claimant, in particular the nature of his relationship with MGR, the allegation of having pinned MGR down (at least in so far as it went any further than acting in self defence), the allegation of having been involved in a fight (which it will be noted was stated by the Claimant in his written submissions to be a misunderstanding of what he had said) and the allegation that he had changed his account. On his account, this conduct could not seriously be described as "offence parallelling." At worst he engaged in an ill-judged prank. Otherwise (if his account is accepted), he was the victim of false allegations and possibly the forgery of material in his name to implicate him in improper behaviour.

59. Moreover, his assertions in this respect could not fairly be dismissed out of hand. The material referred to at [30] – [32] and [34] above, namely the emails from Mr Gaughan, the security report from HMP Wymott and the discussion with the Claimant on 23 July 2024, give at least some support for what the Claimant was saying.

60. In these circumstances, it was incumbent upon the Defendant in fairness to the Claimant to convene some form of oral hearing to allow the Claimant to answer the allegations and to permit their closer examination. Without this, the Defendant was left judging allegations that were factually disputed and the implications of which were far too ambiguous to allow safe

conclusions to be drawn. I do not accept that the Defendant simply drew inferences from material that was not in dispute, as was argued in submissions on her behalf; rather the decision letter reads as though conclusions were drawn on several factual issues such as the Claimant's alleged infatuation with MGR, the allegation of a fight and a decision of "offence parallelling nature", and that these conclusions informed the Secretary of State's ultimate decision.

61. I emphasise that this conclusion turns very much on the facts of this case. In most cases where new information comes to light, after a Parole Board hearing, the Defendant, with the expertise of her department, is likely to be able to address its significance in asking the question as to how it bears on the risk posed by the prisoner if he moves to the open estate. But where, as here, there are not only disputed factual issues in respect of new material that has come to light since the Parole Board hearing but where there is credible material that may support the prisoner's account, I conclude that the test of fairness is not met without that material being examined in an oral hearing.

62. I am not dissuaded from this conclusion by the failure of the Claimant through his representative to request an oral hearing. In some cases one might draw the inference from the failure of a prisoner's lawyer to raise a point such as this that there is no arguable unfairness in the procedure adopted. But in my judgment there is unfairness here and that cannot be negated by the failure of the Claimant or his representatives to take this point earlier.

63. Having concluded that a fair process for dealing with the new information required an oral hearing to assess the new material, I turn to consider whether the Defendant herself should have convened an oral hearing and thereafter consider what relief ought to be granted.

GROUND 2 – PROCEDURAL UNFAIRNESS IN THE DEFENDANT NOT HERSELF CONVENING AN ORAL HEARING

The Claimant's Case

64. In the event that I found the Defendant not to have acted unlawfully in failing to refer the Claimant's case back to the Parole Board for an oral hearing, the Claimant contends that her actions were unlawful in not herself convening such a hearing. The duties of the Secretary of State in considering issues relevant to the transfer to open conditions of a prisoner serving a life sentence were considered in *Banfield v Secretary of State of Justice* [2007] EWHC 2605 (Admin). Jackson J reviewed the authorities and derived five principles at [28]:

> *"(1) The decision of the Secretary of State is not lawful if he fails to take into account the recommendation of the Parole Board and the fact that the Parole Board has particular expertise in assessing the risk posed by individual prisoners. Nevertheless, it is a matter for the Secretary of State what weight he assigns to those factors in any given case.*

(2) The decision of the Secretary of State is not lawful if it was reached by an unfair procedure. It is for the court to determine in any given case whether the procedure was unfair.
(3) If the Secretary of State places reliance upon significant material that was not before the Parole Board, then fairness may require that the prisoner be given an opportunity to comment upon it.
(4) The mere fact that the Secretary of State takes a different view from the Parole Board of material that was before the Parole Board is not normally a matter which merits a reference back to the prisoner for his further comments.

(5) Even if the procedure adopted by the Secretary of State is fair, if his final decision is irrational it may still be quashed on traditional Wednesbury grounds."

65. In an appropriate case, fairness might require the Secretary of State to convene an oral hearing whether because she is minded to reach a different decision than the Parole Board or on other grounds: see *Williams v Secretary of State for the Home Department* [2002] 1 WLR 2264; *Hopkins v Secretary of State for Justice* [2019] EWHC 2151 (Admin); *Aston v Secretary of State for Justice* [2020] EWHC 1161; *Zaman v Secretary of State for Justice* [2022] EWHC 188 (Admin); *Murcott v Secretary of State for Justice* [2025] EWHC 706 (Admin). Each decision is fact specific but the authorities demonstrate the need for the Secretary of State to consider the potential need for an oral hearing with care, especially if her provisional conclusion differs from that of others with relevant expertise.

66. If it was not incumbent on the Secretary of State to refer the Claimant's case back to the Parole Board here, the same material on which he relies for arguing for the existence of such an obligation should lead the court to conclude that the Defendant herself was obliged to convene such a hearing.

The Defendant's Case

67. The Defendant repeats the submissions made in respect of Ground 1 above. The very reasons that mean that it was not incumbent on the Secretary of State to refer the new material back to the Parole Board mean equally that it was not necessary herself to conduct an oral hearing in order to achieve the requisite standard of fairness.

Discussion

68. As I have identified above, the failure to refer the consideration of the new material for an oral hearing amounted to procedural unfairness on the facts of this case. That might have been conducted by the Parole Board but equally might have been achieved by the Defendant herself convening such a hearing. The question that arises is whether the court can and should mandate what would have been a procedurally fair route. Whilst it would appear that re-referral to the

Parole Board would be the most obvious means to achieve this, since that body has already reviewed considerable material addressed some of the relevant issues and in any event is well experienced in conducting oral hearings, I am not persuaded that the court should dictate to the Defendant the appropriate route. On the face of it, an oral hearing convened by the Secretary of State outside of the ambit of the Parole Board would appear a perfectly reasonable manner to achieve what fairness demands.

69. In these circumstances, it is not necessary for me separately to rule on Ground 2. I consider that it is sufficient to quash the decision of the Secretary of State and remit the matter for consideration at an oral hearing in accordance with her directions. If further submissions are considered necessary on this issue, in particular as to whether I should order the Interested Party to conduct an oral hearing, this can be considered on or after handing down judgment. For the avoidance of doubt however, it is central to my decision that an oral hearing should have been conducted, whether by the Defendant or by the Parole Board on re-referral of the Claimant's case by the Defendant to it.

GROUND 3 – DEPARTURE FROM POLICY

The Claimant's Case

70. The Claimant contends that there is a well-established public law duty upon a public authority to act in accordance with its applicable policy, absent good reasons to depart from that policy. As Lord Dyson put it in *Lumba v Secretary of State for the Home Department* [2011] UKSC 12, at [35], "*The individual has a basic public law right to have his or her case considered under whatever policy the executive sees fit to adopt provided that the adopted policy is a lawful exercise of the discretion conferred by the statute*."

71. The relevant policy is identified at [9] above, namely [5.8.3] of the Generic Parole Process Policy Framework, namely that, "*Where the Parole Board recommendation was based on incorrect information, … (t)he case will normally be referred again to the Parole Board for a fresh consideration and new recommendation, with an explanation, rather than submitting it for formal rejection*…"

72. The Claimant contends that, where the Parole Board had held a hearing and made recommendations but did not include within its consideration material that later comes before the Secretary of State in considering the Parole Board's recommendation, the recommendation was "*based on incorrect information*" within the meaning of the policy and that there is a duty to re-refer the matter to the Parole Board under [5.8.3].

The Defendant's Case

73. The Defendant contends that the Claimant's case is an incorrect reading of the policy. The policy refers to the position where, at the time of the Parole Board making its recommendation, it was working on the basis of incorrect information. Once the Parole Board has made its recommendation, it is in an analogous position to a public body which is *functus officio*. However, in the narrow circumstances identified in this policy, the recommendation can nevertheless be referred back to the Parole Board for reconsideration.

74. However the policy has no application where, as here, new information comes to light after the Parole Board has dealt with the case. In those circumstances, there is nothing to prevent the Secretary of State simply proceeding to determine the issue before her in the light of the new material.

Discussion

75. The purpose of the policy in [5.8.3] can be clearly seen from the wording of the second sentence. It addresses the position where a recommendation would be liable to be rejected because it was based on incorrect information. The Parole Board's recommendation would therefore need to be reconsidered in the light of the correct information.

76. The position here is somewhat different. The Secretary of State has received new material that is potentially relevant to her decision. She might very well have determined that the new information made no difference to the situation, for example on the ground that the new material was inherently unreliable (the very point being made by the Claimant here). If she reached such a conclusion, she would not be expected to refer matters back to the Parole Board pursuant to this policy. That however would reflect her judgment of the new information (and its interplay with the material already considered by the Parole Board).

77. However, if the policy in [5.8.3] applied to the situation of new information, the policy would appear to indicate that the Secretary of State would either (normally) refer the matter back to the Parole Board or (exceptionally) either accept the recommendation in any event or submit the case for formal rejection without such a review. That policy framework is ill-suited to the situation of new information (as opposed to the situation where it becomes apparent that the Parole Board has based a recommendation on material that, at the time it was considered, was in fact incorrect). There is infinite variety of situations that might arise where new information comes to light. It is far from clear why, in such circumstances, anything other than referral back to the Parole Board should be considered the exceptional course of action.

78. I have already indicated what I consider fairness to require in this case. This does not necessarily negate the argument that as well as following an unfair procedure, the Defendant

has failed to follow her own policy. However, it is unnecessary in light of my finding on Grounds 1 and 2 to try to fit the circumstances of the case into a policy framework which is ill-suited for the particular purpose. I am therefore not persuaded that I should quash this decision on ground 3.

GROUND 4 - IRRATIONALITY

The Claimant's Case

79. It is accepted that the Defendant's decision in this case is open to challenge on the grounds of irrationality (see *Sneddon* at [33]). The point was put thus by Lady Carr LCJ in *Sneddon* at [25]:

> *"The test of rationality or, as it is more accurately described, unreasonableness, is whether or not the SoS has acted in a way which was not reasonably open to him. Reasonableness in this context has two aspects: (i) whether the decision was outside the range of reasonable decisions open to the decision-maker; and (ii) whether there is a demonstrable flaw in the reasoning which led to the decision (see the helpful analysis in R (Law Society) v Lord Chancellor [2019]* 1 WLR 1649 at para 98)."

80. To make a rational decision, the decision maker must first make due and sufficient inquiry into the matter relevant to reach a reasonable and properly informed decision (see *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014). That duty was considered in the judgment of the Divisional Court in *Plantagenet Alliance v secretary of State for Justice* [2014] EWHC 1662:

> "*[100]] The following principles can be gleaned from the authorities:*
>
> *1. The obligation upon the decision-maker is only to take such steps to inform himself as are reasonable.*
>
> *2. Subject to a Wednesbury challenge, it is for the public body, and not the court to decide upon the manner and intensity of inquiry to be undertaken (R(Khatun) v Newham LBC [2005] QB 37 at paragraph [35], per Laws*
>
> *3. The court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision (per Neill LJ in R (Bayani) v Kensington and Chelsea Royal LBC (1990) 22 HLR 406).*
>
> *4. The court should establish what material was before the authority and should only strike down a decision by the authority not to make further inquiries if no reasonable council*

possessed of that material could suppose that the inquiries they had made were sufficient (per Schiemann J in R (Costello) v Nottingham City Council (1989) 21 HLR 301; cited with approval by Laws LJ in (R(Khatun) v Newham LBC (supra) at paragraph [35]).

5. The principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant, but from the Secretary of State's duty so to inform himself as to arrive at a rational conclusion (per Laws LJ in (R (London Borough of Southwark) v Secretary of State for Education (supra) at page 323D).

6. The wider the discretion conferred on the Secretary of State, the more important it must be that he has all relevant material to enable him properly to exercise it (R (Venables) v Secretary of State for the Home Department [1998] AC 407 at 466G)."

81. In this case the duty of rationality required the Defendant to evaluate the credibility and significance of the allegations against the Claimant, having considered and explored all of the new material as well as the Claimant's response to it. In order to assess this material, the Defendant was obliged to equip herself with the necessary information and this could only be achieved by considering the information in an oral hearing and a decision that failed to adopt this process was not only unfair but also led to an irrational decision.

The Defendant's Case

82. The Defendant contends that the Claimant misunderstands and overstates the *Tameside* duty. The obligation on a decision maker in the position of the Defendant is not obliged to identify all possible sources of relevant material. As Underhill LJ put it in *Balajigari v Secretary of State of the Home Department* [2019] EWCA Civ 673:

"*[70] the obligation on the decision maker is only to take such steps to inform himself as are reasonable… the court should not intervene merely because it considers that further enquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the enquiries made that it possessed the information necessary for its decision.*"

83. The Defendant draws attention to the high threshold for a rationality challenge. She contends that this threshold is not met here.

Discussion

84. I am concerned with the rationality argument only to the extent that it goes further than the fairness argument which I have accepted above. It is one thing to say that it was unfair not to

hold a further hearing to investigate the new material; another to say that the failure to do so led to the decision being irrational. If (as I have held to be the case) a fair procedure required an oral hearing to take place, then it would or at least may have produced material that the Defendant would have been obliged to consider rationally.

85. I am not persuaded that I can go further and conclude that the decision of the Secretary of State was irrational because this step was not taken. Further investigations might not have produced material that aided the decision making process. Applying the test referred to by Underhill LJ in *Balajigari*, the decision was flawed not because it was irrational to reach it without investigating matters further but because it was unfair to do so.

86. For these reasons I reject the fourth ground of challenge.

CONCLUSION

87. It follows from my judgment that the Claimant succeeds in impugning the decision of the Secretary of State on grounds that she did not, either by referral to the Parole Board or by herself convening an oral hearing, avail herself of the further information that might have been forthcoming at a further oral hearing of the issue as to whether to transfer the Claimant to open conditions in the light of the new material that come to light since the Parole Board had made its recommendation. For reasons set out above, I consider that either an oral hearing by the Parole Board or one convened by the Defendant herself would be a sufficient discharge of the duty to act fairly.

88. I therefore quash the decision that is impugned and will remit it for re-determination following an appropriate oral hearing. For reasons set out above, I consider it to be a matter for the Secretary of State to determine whether that hearing should arise from a referral back to the Parole Board or by herself convening such a hearing.

89. I do not separately accede to the other grounds of challenge to the decision, either in terms of a failure to follow policy or on an irrationality basis.