

Neutral Citation Number: [2025] EWHC 2560 (Admin)

Case Nos: AC-2024-LDS-000039
AC-2024-LDS-000089

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

Leeds Combined Court Centre

Date: 8 October 2025

Before :

MR C M G OCKELTON, SITTING AS A JUDGE OF THE HIGH COURT

Between :

The King on the application of **Claimant**
Charles Smith

- and -

The Secretary of State for Justice **Defendant**

and between :

The King on the application of **Claimant**
Charles Smith

- and -

The Secretary of State for Justice **Defendant**

Carl Buckley (instructed by **Bhatia Best Solicitors Ltd**) for the **Claimant**
Myles Grandison and Thomas Jones (instructed by **Government Legal Department**) for the
Defendant

Hearing date: 11 August 2025

C.M.G Ockelton:

Introduction

1. There are before me two applications for judicial review. Hill J gave permission and ordered that they be heard together.
2. The claimant is a serving prisoner. His most recent sentence, following a number of previous convictions, consists of nine concurrent life sentences for rape imposed, together with a concurrent sentence of four years for assault occasioning actual bodily harm, on 21 December 2005. The tariff was set at nine and a half years and expired on 21 October 2014. He has been a Category A prisoner throughout his sentence, and is currently at HMP Frankland. His annual reviews of categorisation have not, to date, included an oral hearing.
3. On 17 November 2023, the defendant decided that the claimant should not be transferred to open conditions. That decision is challenged in claim AC-2024-LDS-000039. On 26 January 2024 the defendant decided not to hold an oral hearing in order to determine the claimant's then current categorisation review. That decision is challenged in claim AC-2024-LDS-000089. As the claimant has remained in prison following these decisions, the annual review of his categorisation has taken place again since then. But it is agreed between the parties that these proceedings are not academic, and the defendant accepts that if the claimant succeeds in either of the current challenges, that would effectively invalidate the subsequent decision on his categorisation.

The Parole Board Decision

4. Both challenges are firmly and largely based on a decision by the Parole Board, dated 12 June 2023, following an oral hearing before the Board a week earlier. In that decision, the Board declined to direct the claimant's release, but did recommend that he be transferred to open conditions. That is also a recommendation of recategorisation into Category D, because open conditions are only available for prisoners in that category.
5. Because the claimant's case relies to a considerable extent on what the Board heard about progress to open conditions from the claimant and a number of doctors, and how it resolved the difference, I need to cite from the Board's decision at some length.

2.3. The author of the SARN report expressed the view it would be "beneficial" for Mr Smith to have the opportunity to consolidate his learning within a PIPE [Psychologically Informed Planned Environment] Unit, which could be either a Category A or Category B PIPE Unit, giving him the "chance to live in a community setting in which he will be able to develop new relationships with others and practice [sic] his learning from treatment". The SARN report recommended a progressive regime be considered if a PIPE Unit was not possible for any reason. It is clear from the SARN report that all core risk reduction work was considered to have been completed and that

a period of consolidation was recommended, which it might be beneficial to Mr Smith to complete within a PIPE Unit and has been accepted onto the waiting list. He told the panel that he remained of the view that he does not need to engage in a Category A PIPE Unit. He told the panel that he had previously been worried about progression to Open Conditions because he thought he would be left to fend for himself. He told the panel that he now feels ready for Open Conditions, having discussed with his Key-Worker what Open Conditions was really like and where and how he could access support in Open Conditions if needed.

2.4. Mr Smith initially agreed to engage with a PIPE. He told the 2020 Parole Board panel that he was not willing to engage with a Category A PIPE Unit, but was prepared to apply to the Category B PIPE Unit at HMP Hull. Mr Smith has told professionals that he is unwilling to engage with the PIPE Unit at HMP Frankland due to fears for his safety because it houses main population prisoners, whereas the PIPE Unit at HMP Hull is for vulnerable prisoners. Mr Smith remains a Category A prisoner, however, and is therefore not eligible for a Category B PIPE. Mr Smith has not participated in a PIPE Unit to date. Mr Smith recently engaged with an interview with the PIPE Unit at HMP Frankland

2.5. All the professional witnesses agreed that all core risk reduction work has been completed. The panel agreed.

2.12. Dr Bennett was concerned about the large transition from a Category A prison to Open Conditions. She felt that the refusal to reduce Mr Smith's categorisation had resulted in an impasse that was blocking his progress. She conceded, however, that if Mr Smith was progressed to Open Conditions it was not likely to put the public at risk of serious harm. She agreed that if Mr Smith's custodial behaviour did destabilise in Open Conditions it would not lead to an increase in risk of serious harm to the public. Ms Smyth also worried about the large transition to Open Conditions. She confirmed that work could be done to support Mr Smith with such a transition.

2.13. In contrast, Dr Mannix and Mr Black concluded that there has been a sufficient period of consolidation in the 5 years since Mr Smith completed HSP in 2018. They agreed that there is good evidence that he continues to refresh his learning and to apply his skills in his general life. They concluded that this was a sufficient period of consolidation of his skills without significant negative incident to be confident in Mr Smith's ability to manage his risk and to seek appropriate professional support if he was struggling emotionally. They concluded that there was evidence of good insight into his risk and risk factors. They agreed that there remained some areas of minimisation in relation to the

level of violence used, but they did not consider that this impacted their assessments of risk, Mr Smith's ability to manage his risk nor that it prevented professionals from having a good understanding of his index offences and risk factors. They agreed that, at the time of the index offences, Mr Smith had a significant amount of unprocessed trauma resulting in negative attitudes towards sex, feelings of rejection and isolation, poor emotional management and a failure to seek professional help leading to him using sexual violence against sexworkers to feel in control and to make himself feel better. They agreed that he has completed significant work to understand the impact of his childhood trauma on his adult functioning. They agreed that there is no evidence from his custodial behaviour that he continues to hold negative attitudes towards sexworkers or women in general. They agreed that there is no evidence of ongoing sexual preoccupation. They agreed that there is good evidence from his custodial behaviour of Mr Smith using his skills to cope with set-backs (such as the repeated negative recategorization decisions). They agreed that there is good evidence of Mr Smith engaging with professionals, seeking support when appropriate and putting plans in place to know where and how to seek relevant support.

2.14. Dr Mannix agreed broadly with Ms Fisher and Dr Bennett's risk assessments and formulations. She was less concerned, however, about his attitudes to women and violence. She noted that he presents with a good level of insight into his risk and that there is no custodial evidence of negative attitudes towards women and no use of violence. Dr Mannix concluded that all core risk reduction work has been completed. She does not consider that engagement with a PIPE Unit is necessary to consolidate his learning and will not have a significant impact on risk management. In her view, Mr Smith's anxiety about progressing directly to Open Conditions is borne out of his institutionalisation and anxiety about progressing, resulting in the use of avoidant coping skills. Dr Mannix did not recommend release at this time due to the need for a gradual transition to the community and time to develop his personal support networks, release plans and an understanding of the expectations of being managed on Life Licence. Dr Mannix considered, however, that Mr Smith's risk has reduced to a level that can safely be managed in Open Conditions. Dr Mannix recommended his progression to Open Conditions. In her view a period in Open Conditions is essential to test Mr Smith in conditions of lesser security, with gradual, steady and increasing access to the community and real-life situations and to enable him to develop his release plans with his COM so as to inform future decisions about release. She considered that Mr Smith presents a Low risk of abscond. She agreed that if Mr Smith felt overwhelmed or unsupported in Open Conditions he was more likely to ask to be returned to

Closed Conditions rather than abscond. She considered that sufficient support would be available in Open Conditions via OPD Pathway services, EBM, PERS as appropriate.

2.15. Mr Black agreed with Dr Mannix that Mr Smith has now reduced his risk to a level that could safely be managed in Open Conditions and recommended that he progress to Open Conditions. Mr Black's recommendation has fluctuated over the course of this review. He told the panel that this was a reflection of periods when Mr Smith had not felt ready himself to progress directly to Open Conditions from a Category A prison. Mr Black told the panel that he had been confident in Mr Smith's ability to manage his risk in Open Conditions since 2018, but that Mr Smith had been concerned about it being too big a jump and had initially wanted a more gradual progression via de-categorisation. Mr Black confirmed that as Mr Smith now felt ready to progress to Open Conditions, he supported that progression. Mr Black has known Mr Smith for over 18 years, since he was sentenced. He has found him open and honest and very motivated to engage with professionals and offending behaviour work. Mr Black felt confident that Mr Smith would seek professional support if he was struggling emotionally. Mr Black agreed with Dr Mannix that a period in Open Conditions was essential to test Mr Smith in conditions of lesser security with gradual, controlled and supported access to the community. He considered that a period in Open Conditions was essential to develop a robust risk management plan and for Mr Smith to build his community ties. He agreed that Mr Smith presents a Low risk of abscond.

2.23. ...there are 3 records of angry outbursts by Mr Smith in response to disagreements with staff in the period of this review (since October 2020). On 1/12/2021 Mr Smith is described as "argumentative and aggressive" during a cell search. On 17/10/2022 Mr Smith is described as having an "outburst" when challenged for being late to the servery. He is reported to have apologised to the member of staff involved the following day. On 23/02/2023 Mr Smith is reported to have "stormed off in an aggressive manner" "muttering profanities". As referred to above, Ms Smyth and Dr Bennett place considerable weight on these 3 incidents in concluding that further evidence is required of Mr Smith's ability to apply his skills. Dr Mannix and Mr Black did not place significant weight on these incidents, regarding them as minor, isolated incidents that were not relevant to risk. The panel explored the incidents with Mr Smith. The panel was satisfied that these were 3 isolated incidents that bear little, if any, relevance to risk. In particular, the panel noted that the "outbursts" were short-lived, verbal outbursts. They were not considered at the time as sufficiently serious to result in any sanction for Mr Smith. In particular, he did not receive an

Adjudication or IEP warning, he was not downgraded from Enhanced IEP status and he maintained his employment in a trusted role. On one occasion, Mr Smith was able to reflect on his behaviour and apologise to the member of staff involved. The incidents did not lead to any prolonged deterioration in his behaviour or emotional management. The incidents were not targeted at female staff and did not lead to any deterioration in Mr Smith's overall attitude towards staff or women.

2.29. To the extent that there were differences of opinion between Dr Bennett and Dr Mannix regarding progression to Open Conditions, for the reasons set out above [but not transcribed in this judgment] the panel preferred the evidence of Dr Mannix. Further, the panel noted that Dr Bennett had not had the opportunity to complete her own risk assessment and that her report was confined to commenting on the impact of any subsequent information on Ms Fisher's report. Dr Mannix's report is considerably more recent than Ms Fisher's report and reflects Mr Smith's increased confidence in the support that will be available to him in Open Conditions. Dr Bennett accepted that all core risk reduction work has been completed. She considered that further evidence of Mr Smith having consolidated his skills was required, but considered that if this was not completed on a PIPE Unit it could be achieved by "informal" discussions between Mr Smith, his Key-Worker, Wing Staff or his POM. This suggested to the panel that the nature of the work required is ongoing consolidation work that can safely be completed in conditions of lesser security.

4.5. Taking account of all the evidence, and for the reasons set out in detail above, the panel was satisfied that Mr Smith has made sufficient progress in addressing and reducing his risk to a level consistent with protecting the public from harm, including in circumstances where he might be unsupervised on ROTL in the community. In particular, the panel agreed that he has reduced his risk of future sexual offending from Very High to Medium in the community and from Very High to Moderately Low in Open Conditions. He has engaged with extensive amounts of offending behaviour work, has spent 5 years since completing HSP evidencing the consolidation and application of his skills, including by his thorough scenario planning, engagement with professionals and identification of individuals and groups who can support him as he progresses through his sentence. His risk is not considered to be imminent. Dr Bennett agreed that even if Mr Smith felt overwhelmed in Open Conditions and his behaviour destabilised, the public would not be put at risk of him committing a further sexually violent offence in Open Conditions and his risk of serious harm was unlikely to escalate.

4.6. Taking account of all the evidence, and for the reasons set out in detail above, the panel was satisfied that a period in Open Conditions is essential to inform future decisions about release and to prepare for a possible release on licence into the community. In particular, it is essential after 18 years in the high secure estate that Mr Smith's ability to apply his learning, manage his emotions and seek appropriate support is tested in conditions of lesser security with a gradual, supported and controlled experience of the community via ROTLs. Further, it is essential that Mr Smith spend time in Open Conditions for him to develop his risk management plan collaboratively with his COM, to build on his community links for resettlement purposes and to build his own confidence in his ability to manage life in the community.

4.7. Taking account of all the evidence, and for the reasons set out above, the panel was satisfied that Mr Smith presents a Low risk of abscond.

4.8. Taking account of all the evidence, and for the reasons set out in detail above, the panel was satisfied that Mr Smith meets all limbs of the test for progression to Open Conditions. Accordingly, the panel recommends that Mr Smith progresses to Open Conditions."

6. It would be hazardous to attempt any summary of this complex document, which runs to 17 pages in total, but in the context of the present claims I make the following observations. First, it is clear that the Board took into account a wealth of material and of expertise, and made a clear recommendation of transfer to open conditions. Secondly, there was a focus on whether the claimant needed to undertake a period within a PIPE unit before being suitable for open conditions.
7. Thirdly, the opinions of those with expertise did not all point in the same direction. I am content to adopt the summary provided by the defendant's counsel. Ms Fisher, Dr Bennett (Prison Psychologists) and Ms Smyth (Prison Offender Manager) recommended that the Claimant engage with the PIPE unit to consolidate and evidence the application of his skills. On the other hand, Dr Mannix (Psychologist instructed on behalf of the Claimant) and Mr Black (Community Offender Manager) did not feel that engagement with the PIPE unit was necessary in order to consolidate his learning. The Panel sought to resolve these differences of opinion at paragraph 2.29.
8. Fourthly, nobody seems to have suggested, and the conclusion does not say, that the risk to the public from further offences had gone. On the contrary, the risk of further sexual offending was assessed at medium in the community and moderately low in open conditions. Fifthly, there is discussion, and not entirely consistent opinion, on the extent to which the claimant would need, and would call on, support if while in open conditions he was in danger of recidivist thoughts or attitudes. It is perfectly clear that those whose opinions were

available to the Board regarded it as part of the context that support in some form would be available.

9. The Board's parameters for considering and making a recommendation for transfer to open conditions are of significance. The Board has power to direct a prisoner's release, in which case the Secretary of State must act on the direction. Where it does not direct release, it may consider whether to recommend transfer to open conditions. Paragraph 2 of the Secretary of State's Directions to the Parole Board dated 2 June 2022 was in effect at the relevant time. It read as follows:

“2. Before recommending the transfer of an ISP [= Indeterminate Sentenced Prisoner] to open conditions, the Parole Board must consider:-

- (i) all information before it, including any written or oral evidence obtained by the Board;
- (ii) the extent to which the ISP has made sufficient progress during the sentence in addressing and reducing risk to a level consistent with protecting the public from harm, in circumstances where the ISP in open conditions may be in the community, unsupervised, under licensed temporary release;
- (iii) whether the following criteria are met:
 - the prisoner is assessed as low risk of abscond; and
 - a period in open conditions is considered essential to inform future decisions about release and to prepare for possible release on licence into the community.”

10. It is to be noted that there has to be an assessment of whether the prisoner's progress is such that the risk level is 'consistent with protecting the public from harm'. Further, the only justification for a recommendation is that a period in open conditions is seen as 'essential' in the process of decision-making about eventual release. Although any prisoner is likely to welcome a move to open conditions and will have to work to meet the preconditions, open conditions are a decision-making tool, not a reward for progress or good conduct.

The Secretary of State's Decision on Open Conditions

11. The defendant's decision following the Parole Board's recommendation was not to accept it but to retain closed conditions for the claimant. Again, I need to cite the decision, but not at such length. The decision begins by referring to and setting out the Parole Board recommendation, but stating that the decision-maker is not going to follow that recommendation. It sets out the law, and lists the materials that have been taken into account in making the decision. It continues, referring to the progress the claimant has made but explaining why one crucial criterion is not met, as follows:

The Secretary of State notes you have demonstrated the following positive progress: You have maintained your Enhanced IEP status, and your custodial behaviour has remained good. You have reportedly coped well with repeated negative categorisation decisions, and have not received any

adjudications over the period of the review. You received one proven adjudication in 2009, which is the only adjudication received during your entire sentence. You completed both SARN and Healthy Sex Programme (HSP) in 2018 and have engaged very well with employment, progressing to working as a mentor in the Upholstery workshop which is a trusted role. You have reportedly engaged well with education as well as with prisoners and staff.

The following evidence is considered to support the conclusion that the criteria in the Open Conditions Test is not met: 'There is a wholly persuasive case for transferring the ISP from closed to open conditions'.

The categorisation review noted in August 2022 that there was convincing evidence that your risk of similar reoffending if unlawfully at large had not significantly reduced. It is considered necessary that you remain in the high security facility until your risk had reduced. It is therefore paramount that the appropriate risk related offender behaviour work is completed prior to the Secretary of State's accepting a Parole Board recommendation for move to Open conditions.

It has been noted that the POM, COM and Psychologist have identified how you can progress through your sentence, namely the PIPE Unit at HMP Frankland. The PIPE Unit at HMP Hull was explored but you were unsuitable due to your Category A status. You have a clear route to progress in your sentence which could in turn lower your categorisation. However, you are choosing not to engage. The Secretary of State therefore confirms that it is necessary for you to remain in a closed prison environment and continue to work towards evidencing a reduction in your risk in preparation for your next parole review.

12. The decision letter concludes with advice about PIPE.
13. Again also, I need to consider the parameters within which the decision is made. The relevant document is the General Parole Process Policy Framework, in the version issued on 16 August 2023, after the Parole Board had made its recommendation in the present case. It imposes a clear restriction on accepting a recommendation for transfer to open conditions, in paragraph 5.8.2:

The Secretary of State (or an official with delegated responsibility) will accept a recommendation from the Parole Board (approve an ISP for open conditions) only where:

- the prisoner has made sufficient progress during the sentence in addressing and reducing risk to a level consistent with protecting the public from harm (in circumstances where the prisoner in open conditions may be in the community, unsupervised under licensed temporary release); and

- the prisoner is assessed as low risk of abscond; and
 - there is a wholly persuasive case for transferring the ISP from closed to open conditions.
14. The final requirement, which is new in this version of the Framework, is a different consideration from that in the Directions to the Parole Board.

Judicial Review of Decisions under Paragraph 5.8.2 of the Framework

15. Although the defendant’s decision has been categorised by the claimant as ‘rejecting the Parole Board recommendation’, and, following him, the defendant’s written skeleton sets out what it calls ‘the circumstances in which the Secretary of State may reject the Parole Board’s recommendation’, I do not think that is an accurate way of looking at it. The wording of the Framework does not suggest that acceptance of a recommendation is to be regarded as routine, and unless the requirements set out in the Framework are met, the Secretary of State clearly must (not may) refuse to accept the recommendation. These points are merely aspects of the principle that the Board’s recommendation is merely advice: it is one of the things that the Secretary of State is to take into account.
16. For, as has been recently and authoritatively stated by the Court of Appeal (Lady Carr CJ, Dame Victoria Sharpe P and William Davis LJ) in Secretary of State for Justice v Sneddon [2024] EWCA Civ 1258, the Secretary of State is the sole decision-maker, by virtue of s 12(2) of the Prison Act 1952. The Board is not in this context a decision-maker.
17. The Secretary of State ‘must consider the advice of the Board with care and accord it such weight as is appropriate, given the nature, extent and context of the Board’s findings and recommendations’ (at [66]). But the Secretary of State and the Department and its agencies have additional expertise in managing prisoners and assessing prisoner risk (paras [28], [29], [36], [66]), and those factors too will be taken into account when the Secretary of State makes the relevant decision. Examples are given 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. By contrast, disagreement with the Board’s assessment of risk associated with a transfer to open conditions may readily fall within the range of reasonable decisions open to the SoS. 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. But what is and is not reasonable will turn on the facts of each case”

18. The Court is therefore not concerned with whether the Secretary of State has relied on or identified a viable reason for departing from a Parole Board recommendation. The question is simply whether the Secretary of State's decision, as a whole, is rational, in the sense set out by the Lady Chief Justice at [34]-[35]:

34. 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 [2018] EWHC 2094 (Admin); [2019] 1 WLR 1649 at [98]).

35. The reasonableness of the SoS's decision must be assessed in context, for rationality is not determined in the abstract. The central context is the legislative scheme identified above. The assessment of reasonableness will of course involve scrutiny of the SoS's approach to the Board's advice, and whether that advice was given due consideration and weight. But it is important not to be prescriptive as to the precise approach that will be reasonable in every case.

19. Particularly in view of what the Court said about first instance decisions at paras [2] and [23], (while affirming the previous decision of the Court of Appeal in R (Gilbert) v Secretary of State for Justice [2015] EWCA Civ 802), there is in my judgment no need or excuse to go beyond what Sneddon says. The principles set out there need to be applied in this case as in any other.

The Process of Category Review Decisions

20. Category A prisoners have their categorisation reviewed annually, first by the local advisory panel (LAP) within the establishment in question, which submits a recommendation to the Category A Review Team (CART). Most decisions to continue in Category A (ie not to recategorize) can be taken without specific reference to the Deputy Director of Custody (DDC) (High Security), but the latter is ultimately responsible for the Reviews, though risk assessment may be delegated to a senior civil servant. For the purposes of this claim, the relevant guidance and instructions for the review are in the document called PSI 08/2013. (Although on the face of the copy provided in the bundle that Instruction expired on 26 March 2017, it is common ground that it now has effect until replaced.) In this document, as stated in the opening introduction, mandatory instructions, which 'must be strictly adhered to' are printed in italics. The parts not in italics are accordingly of a lesser status and are to be regarded as guidance (see R. (Clarke) v Secretary of State for Justice [2024] EWCA Civ 861 at [108]-109)).
21. A Category A prisoner is defined at paragraph 2.1 as 'a prisoner 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'. The definition

is concerned with the danger the prisoner would pose if he escaped, and not with the likelihood of his escaping (para 2.2). Recategorisation to a lower security level is governed by paragraph 4.2, which is a mandatory instruction in italics:

“Before approving a confirmed Category A ... prisoner’s downgrading the DDC High Security (or delegated authority) must have convincing evidence that the prisoner’s risk of re-offending if unlawfully at large has significantly reduced, such as evidence that shows the prisoner has significantly changed their attitudes towards their offending or has developed skills to help prevent similar offending.”

22. It is to be noted that the assessment of dangerousness is in the context of an escape, when the prisoner would be unlawfully at large. The review is therefore concerned with that assessment. One procedural question is whether the review should incorporate an oral hearing. There are instructions and guidance on this in PSI 08/2013, paragraphs 4.6-4.7 (italicisation as in the original):

4.6 ... [T]his policy is intended to give guidance to those who have to take oral hearing decisions in the CART context. Inevitably, the guidance involves identifying factors of importance, and in particular factors that would tend towards deciding to have an oral hearing. The process is of course not a mathematical one; but the more of such factors that are present in any case, the more likely it is that an oral hearing will be needed. Three overarching points are to be made at the outset:

- *First, each case must be considered on its own particular facts – all of which should be weighed in making the oral hearing decision.*

- *Secondly, it is important that the oral hearing decision is approached in a balanced and appropriate way. The Supreme Court emphasised in Osborn that decision makers must approach, and be seen to approach, the decision with an open mind; must be alive to the potential, real advantage of a hearing both in aiding decision making and in recognition of the importance of the issues to the prisoner; should be aware that costs are not a conclusive argument against the holding of oral hearings; and should not make the grant of an oral hearing dependent on the prospects of success of a downgrade in categorisation.*

- *Thirdly, the oral hearing decision is not necessarily an all or nothing decision. In particular, there is scope for a flexible approach as to the issues on which an oral hearing might be appropriate.*

4.7 With those three introductory points, the following are factors that would tend in favour of an oral hearing being appropriate.

a. Where important facts are in dispute. Facts are likely to be important if they go directly to the issue of risk. Even if important, it will be necessary to consider whether the dispute would be more appropriately resolved at a hearing. For example, where a significant explanation or mitigation is advanced which depends upon the credibility of the prisoner, it may assist to have a hearing at which the prisoner (and/or others) can give his (or their) version of events.

b. Where there is a significant dispute on the expert materials. These will need to be considered with care in order to ascertain whether there is a real and live dispute on particular points of real importance to the decision. If so, a hearing might well be of assistance to deal with them. Examples of situations in which this factor will be squarely in play are where the LAP, in combination with an independent psychologist, takes the view that downgrade is justified; or where a psychological assessment produced by the Ministry of Justice is disputed on tenable grounds. More broadly, where the Parole Board, particularly following an oral hearing of its own, has expressed strongly-worded and positive views about a prisoner's risk levels, it may be appropriate to explore at a hearing what impact that should or might have on categorisation.

It is emphasised again that oral hearings are not all or nothing – it may be appropriate to have a short hearing targeted at the really significant points in issue.

c. Where the lengths of time involved in a case are significant and/or the prisoner is post- tariff. It does not follow that just because a prisoner has been Category A for a significant time or is post tariff that an oral hearing would be appropriate. However, the longer the period as Category A, the more carefully the case will need to be looked at to see if the categorisation continues to remain justified. It may also be that much more difficult to make a judgement about the extent to which they have developed over the period since their conviction based on an examination of the papers alone.

The same applies where the prisoner is post-tariff, with the result that continued detention is justified on grounds of risk; and all the more so if he has spent a long time in prison post-tariff. There may be real advantage in such cases in seeing the prisoner face-to-face.

Where there is an impasse which has existed for some time, for whatever reason, it may be helpful to have a hearing in order to explore the case and seek to understand the reasons for, and the potential solutions to, the impasse.

d. Where the prisoner has never had an oral hearing before; or has not had one for a prolonged period.”

Judicial Review of the CART Process

23. The decision whether to hold a hearing is for the DDC (High Security) or his delegate, exercising a public law function. On judicial review, the question is whether a decision not to hold an oral hearing was fair, not whether it was reasonable or rational: Mackay v The Secretary of State for Justice [2011] EWCA Civ 522, at [28]. What that means was examined in R (Hassett and Price) v Secretary of State for Justice [2017] EWCA Civ 331, where Sales LJ (as he then was) gave the leading judgment.
24. The Court first considered what fairness requires in the context of the Review process. It noted that the CART and the DDC (High Security) are not a body with independent judicial functions like the Parole Board, and that the stringent requirements set out by the Supreme Court in R (Osborn) v The Parole Board [2013] UKSC 61 cannot be read across to this process. The requirements here are less stringent. In expressing his conclusions on this point, Sales LJ said this at [61]:

“Some of the factors highlighted by Lord Reed will have some application in the context of decision-making by the CART/Director, but will usually have considerably less force in that context. However, it deserves emphasis that fairness will sometimes require an oral hearing by the CART/Director, if only in comparatively rare cases. In particular, if in asking the question whether upon escape the prisoner would represent a risk to the public the CART/Director, having read all the reports, were left in significant doubt on a matter on which the prisoner’s own attitude might make a critical difference, the impact upon him of a decision to maintain him in Category A would be so marked that fairness would be likely to require an oral hearing.”
25. The Court went on to consider whether, as argued by the claimants in that case, paragraph 4.7b was unlawful because the general formulation with which it begins seems to play down the impact of the examples given later. The Court rejected that argument. The guidance was lawful. In particular, ‘It is only where there is “a real and live dispute on particular points of real importance to the decision” that it is likely to be a requirement of fairness that an oral hearing be held’ (at [63]).
26. Hassett did not purport to examine the whole of the relevant section of PSI 8/2013 in the same way. Its conclusion makes clear, however, that although the Court’s function is to determine whether the refusal of an oral hearing was fair, it will properly do so by reference to the guidance there. In a number of subsequent decisions it has been decided or agreed that the relevant paragraphs can as a whole be treated as embodying the requisite principles of fairness (see, for example, R (Harrison) v Secretary of State for Justice [2019] EWHC 3214 (Admin) at [31(ii)] (common ground) R (Steele) v Secretary of State for Justice [2021] EWHC 1768 (Admin) at [4(2)] (headline summary by Fordham J). If

the guidance has been properly applied in an individual case, the decision is very likely to have been a fair one.

Submissions

27. In relation to the decision refusing to transfer the claimant to open conditions, the claimant makes the only submission realistically available to him, which is that the 'refusal to follow the Parole Board's recommendation' was irrational in the sense identified in Sneddon. In doing so on his behalf, however, Mr Buckley unfortunately adheres to the language of that misapprehension of the defendant's function. To pick up what Mr Buckley wrote in his skeleton argument, it is simply not correct, in my judgment, to say that the defendant 'does have the right to depart from the recommendation of the Parole Board, but it cannot simply substitute its position for that of the Board'. There is no 'position of the Board' to be 'substituted'. There is, importantly, no presumption that a recommendation will simply pass into being the Secretary of State's decision. The defendant has a duty to make his decision in accordance with the relevant parts of the Framework. He makes the decision, which is permitted to be in line with the Board's recommendation only if the requirements of the framework are met. Any recommendation of the Board will form part of the matters to be taken into account in making the decision. It has a value because of its source, but in the last resort it is merely advice, not a provisional decision.
28. In detail, Mr Buckley submits that the Secretary of State failed to recognise and apply a principle which he derives from Sneddon that the Secretary of State must give a good reason for a decision that differs from the recommendation of the Board in circumstances where the Board has applied its expertise in hearing evidence and reaching a view of what evidence was to be preferred. In the present case he identifies the assessment of risk by the Board, after hearing the different views of the experts before it, as such circumstances. He argues that the very points on which the defendant seems to have differed from the Board are matters falling within the Board's particular expertise, or points which it resolved after hearing oral evidence, specifically the need for the claimant to undergo further training to consolidate his ability to cope with life in the community. He submits that the defendant was therefore required specifically to indicate why he preferred the view not adopted by the Board, and on what basis he assessed the evidence that was before the Board. Mr Buckley also argues also that, the Board having concluded that the claimant had 'completed all core offending behaviour work' and had (in the Board's view) made 'sufficient progress in reducing risk', the defendant was obliged to mention those matters in his decision.
29. Further, Mr Buckley submits that the defendant mischaracterised the material relating to the possibility of PIPE training. Simply saying that the claimant 'refused to engage' with PIPE undervalued the material considered by the Board and its evaluation of it.
30. The defendant opposes those arguments. The crucial point, in Mr Grandison's submission was simply that the Secretary of State decided that there was not a 'a wholly persuasive case' for transfer to open conditions. That was something that (because of the timing of the change in requirements) the Board had not

even considered. The Secretary of State was entitled so to decide, and it was clearly a rational decision in circumstances where although the Board had reached a view, there was some dissent amongst the experts. It was not the case that the Board had a particular advantage in assessing risk through the evidence of experts who disagreed, and no questions of the credibility of oral witnesses arose. The defendant was not required to set out differences from the Board's advice and reasons for them, provided that the advice was properly taken into account. Matters of weight were for the decision-maker. The characterisation of the claimant's attitude to PIPE was accurate, and did not show that the defendant had not understood or properly considered the Board's advice.

31. In relation to the decision not to hold an oral hearing for the Categorisation Review, Mr Buckley submitted that this was clearly a case where, in the words of PSI 08/2013, 'important facts are in dispute' and where the dispute would be 'more appropriately resolved at a hearing', but, in addition, that the other three pointers identified in paragraph 4.7 also figure here. There is a dispute on the question of risk and whether the claimant has done sufficient work to reduce the risk he poses. There is a difference on the expert evidence, essentially amounting to an impasse on PIPE. An oral hearing, even limited to one or both of these issues (as is suggested by the PSI might be appropriate) would give an opportunity to explore them further. Besides, the claimant is well over tariff, and has never had an oral CART consideration.
32. Mr Grandison again opposed all the claimant's arguments. The defendant had considered and applied paragraphs 4.6 and 4.7 of the PSI. The Parole Board's recommendation was considered, but the Board was assessing risk in a different context. There was no relevant dispute on the facts: the Board had assessed the claimant as continuing to pose a high risk of serious harm to the public and to children. At the date of the CART decision the claimant was on a waiting list for the PIPE at HMP Frankland. The defendant had been entitled to determine the review without a hearing and doing so was neither wrong nor unfair. The points about being over tariff and not having had a review added nothing material and could not themselves make the process unfair in this case.

Decision

33. In making his submissions on the decision not to transfer the claimant to open conditions, Mr Buckley sought to draw a considerable amount of learning from the mass of first-instance decisions preceding Sneddon. In the light of what the Lady Chief Justice said about those decisions in Sneddon itself, noted at [19] above, I find very little help in them. Sneddon sought to ensure that the task of judicial examination of a decision of this sort was straightforward, and did so.
34. Further, as I have also indicated above, the claimant's starting-point in relation to this decision was, in my judgment, wrong. I am not concerned with examining whether there were good reasons, or expressed reasons, for not following the Parole Board's recommendation (with the implication that the recommendation had to take effect in the absence of such reasons). I am simply considering whether the Secretary of State, applying the Framework, and taking into account all the material before him, was entitled to come to the decision

that is challenged or whether (on the contrary) that decision is shown to be irrational.

35. I do not accept that the decision-maker's characterisation of the claimant's attitude to the PIPE was inaccurate or insufficiently detailed. At the time of the Parole Board decision the position was that the claimant had made it clear that he would engage with the PIPE only on the terms he had set, which made the PIPE impossible for him because of his security classification. The decision-maker was entitled to note the differences between the experts on whether the PIPE or some similar course or some more informal substitute was necessary to enable the claimant to reduce the risk he still posed to the public if in open conditions. It almost goes without saying that if there is a difference in view between authoritative expert evaluations on a matter like that, there is unlikely to be a 'wholly persuasive' case. In any event, the Secretary of State was in my judgment amply entitled to decide that it was not. That is, essentially, the end of the matter. Nothing in the claimant's arguments shows that the decision was irrational in the sense identified in Sneddon.
36. Turning now to the challenge to the process of making the categorisation review decision, it is important to bear in mind the difference between the Parole Board's task and that of CART. That difference is set out above and was restated by Sales LJ in Hassett at [4] by reference to Williams v Secretary of State for the Home Department [2002] EWCA Civ 498. The Board was assessing what the situation would be if the claimant were in open conditions, accompanied by the regime and the supervision attached to such conditions. Nobody thought that there was no risk if he were at large in the community. Even the claimant seems to have thought that he would not be suitable for progression to open conditions without access to support and management. CART, in contrast, was concerned with the risk to the public if the claimant were unlawfully at large. The materials available, including the Parole Board report, raise no division or uncertainty on that point. The claimant still posed a risk as assessed by the Board. The Board's assessment was that the risk could be managed in open conditions. That management would not be available if the claimant was unlawfully at large.
37. In my judgment Mr Buckley's submissions did demonstrate that on the issues he identified there was scope for the sort of disagreement that might have been explored and possibly resolved at an oral hearing. That would not have made a hearing obligatory, provided that the decision-maker worked through the considerations in paragraphs 4.6 and 4.7 of the PSI.
38. The fatal difficulty with the claimant's case on whether there should have been an oral hearing in relation to his categorisation review, however, is that the potential disputes of fact or differences of opinion emerging from the Parole Board's recommendation were immaterial to the question being considered by CART. The issues identified were not 'important' because they did not go 'directly to the issue of risk' if the claimant were unlawfully at large, and they were not 'significant' in giving rise to 'a real and live dispute on particular points of real importance to the decision'. The potential disputes of fact or differences of opinion emerging from the Parole Board's recommendation were

material only to a proposal that the claimant be lawfully in the community under open conditions of detention.

39. The claimant therefore does not point to any matters that genuinely come within paragraphs 4.7a or 4.7b. I agree that the matters mentioned in paragraphs 4.7c and 4.7d would not make the claimant's case by themselves, and it is fair to say that Mr Buckley did not argue that they would. The decision to determine the review without an oral hearing is accordingly not shown to have been unfair.
40. For the foregoing reasons I dismiss both the applications for judicial review.