Neutral Citation Number: (2024)EWHC 771 (Admin)

Case No: AC-2022-BHM-000136

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

Birmingham Civil Justice Centre
33 Bull Street
Birmingham B4 6DS

Date: 5 April 24

Before :

HIS HONOUR JUDGE SIMON
sitting as a Judge of the High Court

- -

Between :

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

- -

- -

MR M BIMMLER (instructed through **BHATIA BEST SOLICITORS**) for the **Claimant**
MR D MANKNELL KC (instructed by **GOVERNMENT LEGAL DEPARTMENT)** for the **Defendant**

Hearing date: 7 November 23

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JUDGMENT

His Honour Judge Simon:

Introduction

1. This Claim challenges the lawfulness of a decision by the Defendant, the Secretary of State for Justice, not to accept the recommendation of the Parole Board for England and Wales (the Parole Board) that the Claimant, Adam Swellings, should move to open conditions. The Defendant's decision was communicated to the Claimant in a letter dated 29 April 2022.

2. At the time of the decision the Claimant was a pre-tariff life prisoner. He was sentenced to detention for life on 11 February 2008 following his conviction for the murder. The Claimant was 18 years old at the date of the offence and 19 at the date of sentence. There were co-defendants with whom this court is not concerned. The sentencing judge set the tariff or minimum term as 17 years less time spent on remand. The tariff is due to expire on 16 August 2024. At the time of the trial, the case drew considerable media and public attention.

3. At the point at which the claim was issued, the Claimant remained a Category B prisoner. He was a Category B prisoner on 7 May 2021 when the Defendant referred the Claimant's case to the Parole Board for advice as to whether he should be transferred to open conditions in preparation for the upcoming

expiry of his tariff. The expiration of the tariff, of course, means no more than that the Claimant can be considered by the Parole Board for release.

4. The Parole Board considered the Claimant's case at an oral hearing on 28 March 2022, including consideration of the professional reports set out at paragraph 14 below. Those reports recommended a move to open to conditions. By way of oral hearing decision, dated 4 April 2022, the Parole Board recommended such a move. The reasoning of the Parole Board is set out in detail below.

5. The recommendation was sent to the Defendant for consideration. A file including the Parole Board's report was prepared by officials in the department of the Defendant and the file was then submitted to the decision- maker for consideration. The decision-maker, acting under delegated authority from the Defendant, determined that the Parole Board's recommendation should not be followed. The reasoning appears in the letter of 29 April 2022.

6. The Claimant sought judicial review of the decision on a number of grounds. HHJ Mithani KC refused permission on paper, but HHJ Rawlings granted permission on amended grounds 1, 3 and 4 following an oral renewal hearing. Permission was refused on ground 2, which asserted unlawfulness on the part of the Defendant in failing to consider the Secretary of State's directions.

7. The full hearing of the Claim took place before me with both counsel and myself appearing remotely. Thankfully no technical issues arose throughout the hearing.

8. At the conclusion of the hearing, I reserved judgment and this is what now follows below.

9. Following the hearing, but before this judgment was circulated, a further first instance decision was promulgated. I was in any event aware of this authority when it was published and I make reference to this in the case law section below.

The offence for which the sentence was imposed

10. On 11 February 2008, having been convicted with two others of murder after a trial, the Claimant, who was 19 years old at sentence, was made subject of an order of custody for life with a minimum tariff of 17 years less 179 days spent on remand.

11. The murder had taken place on the night of 10 August 2007. The victim, Mr GL, left his home to confront a group of youths who were causing criminal damage to vehicles in the street, including the car belonging to Mr GL's wife. Mr GL was outnumbered by a large group of youths. The Claimant exchanged words with Mr GL and then punched him to the ground. Others of the group then joined in by punching and kicking Mr GL a number of times. A fatal kick was delivered but it was not possible to be certain by whom it wasdelivered. The Claimant's assertion that he walked away from the attack, having started it, was rejected by the trial judge and, on appeal, the Court of Appeal identified the Claimant as the leader of the group.

12. The Claimant and the co-defendants were under the influence of alcohol and skunk cannabis at the time. The Claimant was also on bail at the time of the offence and his presence at the scene was in breach of a bail condition (an exclusion zone), having been released from custody the same day.

The Parole Board's decision

13. On 28 March 2022, the Parole Board considered the Claimant's case at an oral hearing. This was the first review pre-tariff, the Claimant being then 33 years of age. The tariff is due to expire on 16 August 2024 and the review therefore took place just under two-and-a-half years away from the completion of the minimum term imposed by the sentencing judge.

14. The Parole Board heard a Victim Personal Statement from the widow of Mr GL and then heard from the Claimant's Prison Offender Manager (POM), Community Offender Manager (COM) and from a Prison Psychologist in Training.

15. The Parole Board's report addressed its analysis of past offending behaviour, its analysis of current evidence of change and its analysis of manageability of future risk.

16. The Claimant had relevant previous convictions and had been made subject to a Restraining Order, which he breached on a few occasions. The beneficiary of this order had been referred to as Miss HC, but the Claimant maintained that it was actually her boyfriend. This point was unresolved by the Parole Board as part of its considerations, as a copy of the order could not be sourced. However, the POM reported that at a recent MAPPA meeting, the police had confirmed that Miss HC was the beneficiary of the Restraining Order but that it related to anti-social behaviour rather than domestic abuse or violence.

17. The Parole Board considered the Claimant's upbringing, abuse of alcohol and drugs, previous convictions and his pro-criminal peer group, albeit of those slightly younger for the most part. The risk factors were described at paragraph 1.8:

> *"1.8. Risk factors live at the time of the index offence included alcohol and drug abuse; low self-esteem; antisocial attitudes; the need for status, image and reputation amongst his pro-criminal peers; pro-violent attitudes; and a perception that violent behaviour earned respect and acceptance. He was a very aggressive and angry young man."*

18. In analysing evidence of change, the Parole Board recounted the risk reduction work completed by the Claimant between 2009 and 2012, noting that the witnesses agreed "there is no outstanding core risk reduction work". His progress through his sentence almost without incident (the exception being an adjudication for smoking in 2021) was acknowledged as well as his enhanced prisoner status. There was reference to a pro-social identity having become "embedded slowly over the years", but there had been concern that he remained friendly and in contact with the brother and mother of one of his co- defendants. He was said to have accepted his POM's advice to cease contact

some six months prior to the Parole Board's hearing, as it was inappropriate (there must be a typographical error in the relevant passage).

19. The Parole Board reported previous disparaging remarks made by the Claimant about the victim's wife, though the POM had not detected any"recent evidence of that attitude".

20. The Claimant told the Parole Board that "bravado" had been a large factor in his life then. He acknowledged that he instigated the violence against the victim, repeating that he punched Mr GL once to the head "and then walked away". He said he saw the fatal kick as he left the scene.

21. The psychologist indicated that the results of assessments administered suggested that the current risk of violence could be managed in open conditions and a period of testing was required in a less secure environment.

22. The COM recommended open conditions as this would provide an opportunity for the Claimant to "continue to demonstrate progress". OASys assessment predicted a medium probability of future reoffending, non-violent offending and violent reoffending. In the event of reoffending, risk of serious harm was assessed as high to the public, medium to a known adult (the victim's wife) and medium to staff, though there had been no issues with prison staff.

23. The Parole Board identified factors likely to increase the risk of reoffending, protective factors which should reduce the risk and warning signs of which to be aware.

24. Analysis of the manageability of risk if transferred to open conditions was limited to reference to a risk assessment to be conducted before approval for any limited release and licence conditions.

25. The Parole Board recorded that the POM, COM and psychologist recommended transfer to open conditions and were confident that the Claimant could cope with a long period in that regime. The Claimant'sconsistent assertion that he walked away after he sparked the attack which had been rejected by the trial judge and the Court of Appeal was referred to, the

Parole Board stating that it "detected a degree of minimisation of the extent of his involvement, but this is unlikely to change".

26. The Parole Board considered that the Claimant's conduct in closed conditions was a positive indicator, though not necessarily conclusive, of likely behaviour in the community. His working during his sentence and consistent family support were acknowledged. The Parole Board observed that the Claimant's answers during the oral hearing frequently lacked detail, but considered that allowance should be made for it being a first parole hearing and in circumstances where the panel and others were appearing by video.

27. The benefits of the Claimant being in open conditions were articulated by the Parole Board, which expressed the view that they "substantially outweighed the current level of risk to the public of serious harm".

The Defendant's decision

28. The Defendant's decision letter, following various introductory paragraphs to set the context of the decision in line with the Generic Parole Process Policy Framework, explained that there was not a wholly persuasive case for the Claimant's transfer to open conditions at the time the Parole Board's recommendation was considered.

29. The decision letter then detailed the "very positive progress" that the Claimant had made during his sentence, specifically his behaviour during his sentence; his completion of offending behaviour work; a level of maturation and his appearing to have addressed key risk factors (making mention of a specific incident in the prison kitchen when the Claimant was punched but did not retaliate); the risk of absconding being considered to be low; and some progress in demonstrating victim empathy.

30. The Defendant then considered further points from the Parole Board's report, namely that the Claimant was still assessed as posing a high risk of serious harm (though the likelihood of reoffending might not be high, the level ofharm would be a high level of physical or psychological harm if he didcommit violence); concerns about the levels of dishonesty and minimisation

(relating to the context of the Restraining Order and the Claimant's version of the breaches of the order); minimisation of the gravity of his actions in the index offence, despite the conclusions of the trial judge and the Court of Appeal; and past disparaging comments about the victim's wife, which, though not repeated recently, had continued for a long period of time.

31. The Defendant acknowledged the Claimant's progress and the recommendations of professionals, but in explaining the decision overall not to accept the recommended transfer, said this:

"... the Secretary of State does not consider that at this juncture there is a wholly persuasive case for transferring you to open conditions. The Secretary of State concludes that given you remain two years from being eligible for release on licence, the pressures and temptations which would inevitably arise in open conditions, relevant to your risk factors require further monitoring and testing in a lower category closed establishment. You are currently a Category B prisoner and the Secretary of State has assessed that an alternative and more appropriate progression route should be taken by you gaining Category C status first. This would permit you additional time to suitably plan and prepare for a potential transfer to open conditions, preparing for the significant change that an open prison presents, including ensuring that the skills you have learned can be appropriately transferred intothe open estate."

The Grounds advanced

32. The grounds advanced before me were:

[1] The Defendant's decision-making approach was unlawful and contrary to the guidance in *R (Kumar) v Secretary of State for Justice* [2019] 4 WLR 47;

[2] (originally ground 3) The Defendant's decision was inadequately reasoned;

[3] (originally ground 4) The Defendant failed to consider relevant considerations/came to an irrational conclusion on the evidence in coming to his decision.

Relevant legislation and guidance

33. The advisory role of the Parole Board is provided for in s239(2) Criminal Justice Act 2003:

"239 The Parole Board

...

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

34. In exercising this function, the Parole Board cannot direct transfer of a prisoner to open conditions, only provide advice and a recommendation to the Defendant. The corollary is that the Defendant is not bound to accept the advice of the Parole Board, though he must take it into consideration and give due weight to it.

35. The Defendant has developed a policy in respect of his approach to the review of Parole Board recommendations. That policy is contained in the Generic Parole Process Policy Framework (the GPPPF). At the time of the decision in the present case [*it has since been revised*] the GPPPF stated, in particular, that:

"5.8.2 PPCS may consider rejecting the Parole Board's recommendation if the following criteria are met:

• The panel's recommendation goes against the clear recommendation of report writers without providing a sufficient explanation as to why;

• Or, the panel's recommendation is based on inaccurate information

5.8.3 The Secretary of State may also reject a Parole Board

recommendation if it is considered that there is not a wholly persuasive case for transferring the prisoner to open conditions at this time."

The case law

36. The applicable law to challenges by way of judicial review of the Defendant's rejection of the Parole Board's recommendation, in circumstances such as arise in this claim, is a well-trodden path. There have been a number of reported cases over recent years addressing and refining the correct approachto consideration of grounds of illegality or irrationality against decisions of theDefendant. Both counsel made submissions, drawing on the same body of case law and tracing its development. Almost without exception the decisions are at first instance, but there is little divergence as to the central principles. The applicable principles are very helpfully and concisely laid out in the relatively recent judgment of Sir Ross Cranston in ***R (Green) v Secretary of State for Justice (No 2)*** [2023] EWHC 1211 (Admin):

"*42. In drawing the threads together, it seems to me that the following applies if the Secretary of State is to disagree with the recommendations of the Parole Board for a prisoner's move to open conditions:*

i. the Secretary of State must accord weight to the Parole Board's recommendations, although the weight to be given depends on the matters in issue, the type of hearing before the panel, its findings and the nature of the assessment of risk it had to make;

ii. on matters in respect of which the Parole Board enjoys a particular advantage over the Secretary of State (such as fact finding), he must give clear, cogent, and convincing reasons for departing from these;

iii. with other matters such as the assessment of risk, where the Secretary of State is exercising an evaluative judgment, he must accord appropriate respect to the view of the Parole Board and he must still give reasons for departing from it, but he can only be challenged on conventional public law grounds such as irrationality, unfairness, failure to apply policy, and not taking material considerations into account."

37. I gratefully adopt this summary of the approach to apply to this claim.

38. Following the hearing, a further first-instance judgment that had been reported in late December 2023 was brought to my attention, namely ***R (ota Sneddon) v The Secretary of State for Justice*** [2023] EWHC 3303 (Admin) per Fordham J. As requested by Mr Bimmler, I have considered the judgment, with the caveat expressed by Mr Manknell that it will be subject to appeal as wrongly decided in the opinion of the Defendant. The analysis undertaken by Fordham J does not cause me to alter what had already been my preliminary conclusions on the grounds in the instant case.

Ground 1: The Defendant's decision-making approach was unlawful and contrary to the guidance in R (Kumar) v Secretary of State for Justice [2019] 4 WLR 47 (Kumar)

39. In broad terms, Mr Bimmler submitted that the Defendant had not approached the exercise of considering the recommendation in accordance with the existing case law. He argued that instead of examining the Parole Board's decision for cogency and appropriate analysis, the Defendant has simply retaken the decision based on the written evidence. The 'not wholly persuasive' finding should only follow if the Parole Board's decision is unjustified or inadequately reasoned. *Kumar* permits exploration by the Defendant of whether the Parole Board has properly evaluated the evidence, adequately reasoned its conclusion or complied with applicable directions.The Defendant made no finding of a lack of cogency nor explained why he rejected the opinions of the professionals, but reviewed the evidence without reference to the Parole Board's reasoning. The Claimant also relied on a *Zenshen* argument [***R (Zenshen) v Secretary State for Justice*** [2023] EWHC 2279 (Admin)] in respect of the speed of the decision-making, noting that the instant case involved a decision reached even more quickly than in that case.

40. In response, Mr Manknell acknowledged that the Parole Board is better placed for fact-finding and matters akin to this and that due deference is due to it in that regard. However, the weighing of risk remains a matter for the Defendant, the s239 power having been enacted so that advice and a

recommendation could be sought. Ultimate responsibility for the results of any decision at the pre-tariff stage lies with the Defendant, who may adopt the Parole Board's reasoning and recommendation, but does not have to. The Defendant is entitled to assess the risks and reach a different view about the weight to be attached to them. In the instant case, the decision-maker had regard to the evidence considered by the Parole Board, such as the Claimant being in a Category B prison and how long he would spend in open conditions. Mr Manknell took issue with the way the Claimant suggested the case law circumscribed the Defendant's ability to reach a different conclusion from the Parole Board, requiring good reason to do so. He submitted that there was a very clear line of authority that, without more, the Defendant is entitled to take a different view on matters of risk and this was not affected by any subsequent case law. The Defendant's continuing, direct responsibility for pre-tariff prisoners and his expertise allow him to attach weight to the various risk factors as he sees fit, also balancing the private and public interests engaged. As to the *Zenshen* point, the time referred to by the Claimant was the time in which the ultimate decision-maker was engaged withthe file which had been carefully prepared by the specialist team within the Defendant's department.

Ground 1 - Analysis

41. With one point of only part exception to which I will return, I reject the Claimant's criticism of the Defendant's approach to consideration of the Parole Board's recommendation.

42. The Defendant has, in my judgment, approached the task by way of assessment of risk, based on the findings of the Parole Board. That is, on the authorities, a legitimate approach in the absence of binding authority to the contrary. The decision pays due deference to the opinions of the professionalswho reported to the Parole Board and it does not demonstrate a trespass into an area in which the Parole Board has sole specialist expertise. The decision letter read as a whole supports this conclusion.

43. The one point of part exception might be said to be in relation to the Claimant's previous conviction and associated restraining order. The Parole Board considered this area of factual background and concluded that it could not resolve the position accurately. This was, however, specifically because a copy of the order could not be sourced. Nevertheless, the Parole Board's report contains a specific reference to recent confirmation from the police, shared at a MAPPA formal meeting, as to the person in whose favour the order was made and the Claimant's behaviour that gave rise to its being made. In those specific circumstances, the Defendant is entitled to rely on the information from the police when assessing risk. It is not in my judgment an example of the Defendant differing from a factual finding that the Parole Board was in a better position to make. Arguably, the Parole Board's inabilityto resolve the point does not amount to a factual finding, but is rather a non- finding. Even if I am wrong about this, I am satisfied that, when judging the Defendant's approach as a whole, the decision would have been the same, even if this point had not been factored into it.

44. In respect of the submission made about the time taken by the decision-maker acting on the Defendant's behalf to process and determine the Parole Board's report and file, I am not persuaded that it undermines the outcome by any public law measure. I do not know more than the judgment reveals about the evidence available to the Court in *Zenshen* for the judge to reach his conclusion on the point, but there is a danger of mischaracterising the process that is actually involved in two ways, which are relevant to the instant claim. First, the decision-maker was not simply provided with all material from the Parole Board's hearing to assimilate afresh without assistance. A dossier was prepared by staff in the relevant department to assist the decision-maker to focus on the key issues. Secondly, even if only through knowledge andexperience gained in post, a decision-maker will have achieved the status of professional, if not expert, assessor when it comes to risk management for those subject to life sentences. This combination of factors, in my judgment, puts the decision-maker in a very good position to understand the issues raisedin the Parole Board's report on an individual case, to assess the risks involved and to reach a conclusion with supported reasoning in a prompt manner.

45. Comparison with other cases in seeking to establish some temporal benchmark below which the Defendant's decision is automatically indefensible, is unhelpful and fails to recognise the Defendant's internal departmental processes that exist to streamline and support the decision-maker in their role. Of course, cases may arise where it is demonstrable that the decision-maker can only have given superficial or inadequate attention to assessing the Parole Board's recommendation, but this is not such a case.

46. My conclusion is that Ground 1 is not made out.

Ground 2 – Inadequate reasoning

47. Mr Bimmler's submission, in short, following on from his argument on ground 1, was that if the Defendant was required to explain why he had departed from the Parole Board's recommendation then the reasoning provided was inadequate. Even if that submission was wrong, Mr Bimmler said, whatever the standard of reasoning necessary, the Defendant's reasoning was inadequate. The Parole Board had reached detailed conclusions having considered the evidence in depth. The Defendant's decision did not engage with the Parole Board's reasoning and it was not possible with precision to identify with what in the Parole Board's decision the Defendant takes issue. The absence of any reasons for disagreeing with the Parole Board and departing from the views of the professionals demonstrated a lack of respect accorded to the Parole Board's expert status, having heard oral evidence.

48. In response, Mr Manknell emphasised that the case law requires good reason only when the Defendant is departing from findings of fact made by the Parole Board, which is not the case here. He said that the reasons given by the Defendant were intelligible, addressed the main issues and did not give rise to substantial doubt as to the reasoning such as to support a finding of having erred in law. The factors that troubled the Defendant were minimisation of the Claimant's responsibility, disparaging remarks about the deceased's family, the length of time that the Claimant would spend in open conditions if transferred on the Parole Board's recommendation and the pressures and

temptations that would present themselves. These had not been tested within a Category C setting.

Ground 2 - Analysis

49. In a general sense, a reasons challenge engages a high bar. If I had found that the Defendant had engaged in determining alternative findings of fact from those set out by the Parole Board, then plainly the reasons would have had to justify such departure from any matters over which the Parole Board has particular advantage. With the single acknowledged part exception, I have not been persuaded that the Defendant did anything other than reach a different assessment of risk based on the findings of fact in the Parole Board's decision.

50. With that in mind, I am not persuaded that the reasons given for the Defendant's reaching a different conclusion are inadequate. The decision letter dated 29 April 2022 is intelligible, engages sufficiently with the factual findings described in the Parole Board's report, demonstrates due deference to the Parole Board's considerations and recommendation, including by acknowledging the positives in the Claimant's case and explains in sufficient detail the basis for reaching a different conclusion on risk.

51. Ground 2 is therefore also not made out.

Ground 3 – Irrationality through failing to take account of relevant considerations

52. Under this ground, Mr Bimmler pointed to a number of aspects of the Defendant's decision that were objectionable. The decision referred to "additional time to suitably plan and prepare for potential transfer", but there was no evidence to support a need for such an approach, particularly as the core risk reduction work had been completed and the psychological evidence on this point was agreed by others working with the Claimant. There was no evidence of a need for the Claimant to spend time in Category C, it was not suggested by anyone and therefore was not rationally open to the Defendant on the evidence. Secondly, the Defendant had taken the point about a high risk of harm, but this could not be downgraded until assessed and tested in the community. Thirdly, the Defendant had relied on the Claimant's dishonesty

and minimisation. The Parole Board had investigated the alleged dishonesty and had been unable to resolve the issue and therefore did not make a finding of dishonesty. For the Defendant to do so, he would have required very good reason, given this was an area in which the Parole Board enjoys a particular advantage over the desk-based review. The Defendant's approach in this regard was irrational. Fourthly, the Parole Board had determined that the Claimant's minimisation of the index offence was unlikely to change and therewas no link between this and a greater risk of harm. Finally, the Defendant relied on the pressures and temptations that required further monitoring and testing in a lower category establishment, but there was no evidential basis for this.

53. Mr Manknell reminded the Court of the high bar for an irrationality challenge. The Defendant's decision was a pure assessment of risk and did not contradict any factual finding of the Parole Board. What was relevant was the assessment of a continued high risk of harm and that would be addressed by a move in this case from Category B to Category C, achieved in a planned and prepared way. The Defendant was entitled to be concerned about a static factor, when it was not the sole factor, and this applied to the Claimant's minimisation. The point of open conditions is that prisoners are much less controlled and there will inevitably be temptations. The Defendant's official is well-placed to make that assessment and to be concerned about the length oftime the Claimant might spend in open conditions, balancing the public interest with those of the Claimant. None of these assessments is irrational, due regard having been paid to the Parole Board's recommendation.

Ground 3 - Analysis

54. Under this ground, Mr Bimmler broke his submission down into a number of constituent parts. However, when analysed properly, the essence of the Claimant's submissions in respect of this ground is that the Defendant's assessment of risk is irrational because it differs from that of the Parole Board. As Mr Manknell reminded the Court, there is a high bar for demonstrating such irrationality.

55. None of the professionals at the Parole Board recommended that the Claimant spend time in Category C, but this is not surprising as this was not the focus of their or its consideration. There is therefore no specific assessment of the advantages and disadvantages of a staged move, but rather a weighing of the advantages of a move to open conditions against the risks inherent in it.

56. None of this prevents the Defendant from forming the independent assessment that a two-stage move is a necessary or better way of managing and testing the risks assessed to be presented by the Claimant. The Defendant is also entitled to draw on the expertise within his department applied to the particular permutation of risk factors either reported by the Parole Board and/or reasonably deduced from the evidence given at the oral hearing. The Defendant was also entitled to consider that, even if core risk reduction work had been completed, this was many years ago and refresher risk reductionwork remained a relevant issue, not least because of the minimisation concern.It is an assessment of risk by the Parole Board to conclude that this was unlikely to change, not a finding of fact, as it looks to the future, although it draws on past reports and evidence at the hearing. The Defendant was entitledto remain concerned about this key presentation and to apply more weight to itthan the Parole Board had done, when assessing balance of risk. In addition, the outcome of updated risk assessments were highly pertinent to the Defendant's consideration of the Parole Board's recommendation, when judged in the context of all of the other elements of the Claimant's presentation and risk.

57. Additionally, I repeat the points I made under the analysis of ground 1 above in coming to the conclusion that ground 3 is also not made out.

Conclusion

58. For the reasons set out above, I reject the Claimant's grounds of challenge to the Defendant's decision in response to the recommendation of the Parole Board.