Neutral Citation Number: [2021] EWHC 3257 (Admin)

Case No: CO/559/2021

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

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 2 December 2021

Before :

Mrs Justice Whipple

- -

Between :

The Queen

(on the application of Omar Stephens) **Cla**

- and -

Secretary of State for Justice **Defe**

- -

- -

Jack Jennett (instructed by **GT Stewart Solicitors**) for the **Claimant**

Myles Grandison (instructed by **Treasury Solicitors**) for the **Defendant**

Hearing date: 11 November 2021

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Approved Judgment

Mrs Justice Whipple :

Introduction

1.
This is a claim for judicial review brought by Omar Stephens, a serving prisoner, against the Secretary of State for Justice's decision dated 17 November 2020 (the "Decision") to refuse to accept the recommendation of the Parole Board dated 10 August 2020 that he should be moved to open conditions. Permission was granted on the papers by James Strachan QC sitting as a deputy judge of the High Court.

2.
The background to the claim is that on 13 February 2006 the Claimant was convicted of the murder of Daniel Lealy on 13 October 2004. He was sentenced to life imprisonment with a minimum term of 17 years for that offence. That minimum term, taking account of credit for time served on remand, is due to expire on 27 January 2022.

3.
The Claimant is a Jamaican national. He entered the UK in 2003 with leave to remain as a student. His leave expired on 30 April 2004 and he made no application to regularise his stay in the UK. He was convicted of possession of crack cocaine with intent to supply in June 2004 and was sentenced to 9 months imprisonment. He committed the murder while on licence for that offence. He was sentenced for that murder in 2006. He serves his sentence as a foreign national prisoner or “FNP”.

4.
The Home Office served a Liability to Deport notice on the Claimant on 17 September 2007. Due to the process having changed over the years, a revised Notice of Liability to Deportation was served on him on 19 May 2021. He is liable to deportation at the end of his tariff period. As an overstayer, he is separately liable to administrative removal and on 30 June 2015 was served with a RED.0001 (which notified him of his liability to administrative removal) but he was not removed at that time because he was also subject to deportation in light of the life sentence for murder.

Parole Board proceedings

5.
The Claimant applied to the Parole Board for transfer to open conditions as a non-expired tariff prisoner. The Parole Board initially refused to recommend transfer to open conditions, but following successful judicial review proceedings, the matter was referred back to the Parole Board. A fresh panel consisting of one judicial member and two independent members convened on 30 July 2020 for a further hearing. By letter dated 10 August 2020, the Parole Board recommended transfer to open conditions (the “Parole Board letter”).

6.
The Parole Board letter set out four tests for progression to open conditions, as follows:

“1. The extent to which you have made sufficient progress in addressing and reducing risk to a level consistent with protecting the public from harm;

2. the extent to which you are likely to comply with any form of temporary release;

3. the benefits of testing you in a more realistic environment;

4. and the risk of absconding.”

The evidence received by the Parole Board was noted, including a dossier of 356 pages prepared on behalf of the Claimant by his solicitors, and oral evidence from the Claimant, his offender supervisor and offender manager; it noted that he was represented at the hearing by his solicitor. The Parole Board letter noted that the Claimant continued to maintain his innocence of the crime, despite having his appeal dismissed and having asked the Criminal Cases Review Commission to consider his case on several occasions to no avail. His refusal to acknowledge his offending meant that he had been unable to complete any accredited offending behaviour programmes. He had attended a number of courses while in prison. He was reported to be a model prisoner with an exemplary record by his current

offender supervisor. While in prison he had little contact with his support network, which was his aunt who lived in the UK and a friend. The panel assessed the level of risk, noting that his offender manager considered him to have strong motivation to remain out of custody and to stay in the UK. The panel said it was aware that as a FNP he was liable to deportation and the opportunities for the Claimant in an open prison may be limited, but considered this to be a matter for the Home Office and HMPPS. It noted that none of the report writers considered that there was evidence to suggest that the Claimant presented a risk of absconding: he had nowhere to go if he absconded and he wanted to remain in the UK and he was unlikely to jeopardise his chances of appealing his deportation by absconding.

7.
In conclusion, the panel said it had carefully considered the four tests for progression to open conditions; the fourth related to risk and the conclusion was that the Claimant did not present "anything more than a minimal risk of absconding, based on your compliance in custody and motivation to lead a pro-social life". The panel concluded that the Claimant met the test for transfer to open conditions and recommended to the Secretary of State that he was granted a progressive move.

The Decision

8.
On 17 November 2020, HMPPS (by Dane Thomas, of the Public Protection Group, part of the public protection casework section of HM Prison and Probation Service, or HMPPS) wrote to the Claimant saying that the Secretary of State had considered the Parole Board's recommendation but was not prepared to agree to the Claimant's transfer to open conditions. The reasons given were as follows:

"PSI 37/2014 states that open conditions will only be appropriate where it is clear that the risk of abscond is assessed as very low. Taking into account the enhanced risk assessment provided by your offender supervisor, it is clear that you do not meet this criteria. For this reason, the Secretary of State does not consider there is a wholly persuasive case that you should be transferred to open conditions at this time.

The Secretary of State therefore rejects the parole board's recommendation that you transfer to open conditions, and your next review is scheduled to conclude at your tariff expiry on 27/01/2022."

The Claim

9.
The Claimant sought judicial review of the Decision by claim form dated 20 January 2021. He advanced three grounds of challenge, as follows:

i)
The Secretary of State erred by failing to take into account the Parole Board's recommendation and the fact that the Parole Board has particular expertise in assessing the risk posed by individual prisoners.

ii)
The Secretary of State erred in law by going behind a finding of fact made by the Parole Board, without having provided adequate reasons for doing so.

iii)
The Secretary of State's decision not to follow the Parole Board's recommendation is irrational.

10.
The Secretary of State failed to serve an Acknowledgement of Service (due to administrative oversight). On 6 July 2021, James Strachan QC sitting as a deputy High Court Judge granted permission for judicial review. After permission was granted, the Defendant first put its case before the Court in the form of its detailed grounds of defence and evidence.

Legal Framework

HMPPS approach to open conditions for FNPs liable to deportation

11.
Section 12(2) of the Prison Act 1952 provides that a prisoner may be lawfully confined in such prisons as the Secretary of State directs. Section 47 of that Act empowers the Secretary of State to make provision for the classification and treatment of prisoners. Category D is commonly referred to as "open" conditions.

12.
By standing instructions PSI 37/2014, issued on 14 August 2014 by the National Offender Management Service (the predecessor organisation to HMPPS), guidance is given to prison staff as to eligibility for open conditions and for ROTL (release on temporary leave) in relation to prisoners who are subject to deportation proceedings. It states on p. 1 by way of summary that:

"**Prisoners in closed conditions** who have a Deportation Order against them and who have either exhausted appeal rights in the UK or whose appeal rights must be exercised from abroad: must not be classified as suitable for open conditions; and, must not be granted temporary release (ROTL).

Prisoners in closed conditions who do not meet the criteria above but who are liable for deportation or removal proceedings, must be subject to a more rigorous risk assessment prior to consideration for open conditions or ROTL. Open conditions or ROTL will only be appropriate where it is clear that the risk is very low."

13.
The document goes on to say (part-italicised as in the original):

"1.3 **Prisoners in closed conditions** who do not meet the criteria above but who are liable for deportation (see definition below) or removal proceedings, must be subject to a more rigorous risk assessment prior to consideration for open conditions or ROTL. Risk assessments must be undertaken (taking into account the guidance at Annex E) on the assumption that deportation will take place. Each case must be individually considered on its merits but the need to protect the public and ensure the intention to deport is not frustrated is paramount. Open conditions or ROTL will only be appropriate where it is clear that the risk is very low.

1.4 The term "**liable for deportation**" applies to prisoners who:

•
are confirmed by the Home Office as meeting the initial criteria for deportation based on such factors as sentence length (whether the prisoner has been informed of this or not); or

•
have received a formal notice of liability for deportation; or

•

have received a deportation order with appeal rights in the UK remaining; or

•
fall below the threshold for deportation but are being considered for or made subject to removal from the UK”

14.
Annexe E of PSI 37/2014 is headed “assessing the risk presented by prisoners who are subject to immigration procedures”. It provides guidance in relation to the “strengthened” risk assessment required prior to making decisions on categorising to open conditions those prisoners who are facing deportation or removal procedures, as follows (part-italicised in the original):

“7. Before being categorised suitable for open conditions or granted ROTL, all prisoners (not just those facing deportation/removal procedures) must be assessed as low risk of abscond and low risk of harm to the public in the event of an abscond or failure to return. In the case of categorisation, consideration must also be given to any control issues which might impact on the security and good order of the prison and the safety of those within it.

8. Those facing deportation/removal must not only meet these criteria, in order to be assessed suitable for categorisation to open conditions or ROTL, they must additionally be assessed against the risk factors set out in this instruction which are intended to take account of any additional risks associated with their deportation status. Some prisoners liable for deportation will have an increased incentive to abscond/fail to return (over and above any general abscond risks) as a means of evading the removal process.

9. There is a presumption that prisoners who are being considered by the Home Office for deportation (or for removal), will be categorised suitable for ROTL and for transferring or remaining in open conditions only where there is a very low risk of their seeking to frustrate the intention to deport/ remove by absconding. In assessing these prisoners there must be an assumption that the deportation/removal will take place.

10. There are additional factors to consider with prisoners facing removal or deportation including:

•
The risk that they will use the low security of the open estate or temporary release to evade not only custody but also possible removal/deportation action.

•
This risk may be heightened in circumstances where it is known the prisoner is unwilling to be removed/deported from the UK and has previously sought to frustrate or evade the immigration process, for example- through their previous failure to comply with immigration restrictions, immigration bail or via the terms of leave in the UK, or because they have previously absconded from an IRC.

•
Previous failures within prison also need to be considered, not only in terms of failures to return from previous ROTL but also late returns and other failures to comply with prison rules and regulations that may indicate an inclination to abuse the privilege afforded by open conditions or ROTL and abscond or fail to return when considered in conjunction with their deportation status.

•

Any previous failure of this nature in prison or immigration custody should normally be seen as proof of not falling within the “very low risk” of abscond category.

•
Risk may be lessened where the prisoner is known to be cooperative and is seeking to return to his or her home country.

•
Other factors indicating lower risk may include strong family ties in this country or other factor that might indicate that the prisoner would not wish to jeopardise his chances of successfully appealing and remaining in this country.”

Parole Board’s powers to recommend open conditions for FNPs liable to deportation

15.
The Parole Board’s functions are conferred upon it by section 239 of the Criminal Justice Act 2003. By section 239(6), the Secretary of State may give the Board directions as to the matters to be taken into account by it in discharging its functions, and

“… and in giving any such directions the Secretary of State must have regard to—

(a) the need to protect the public from serious harm from offenders, and

(b) the desirability of preventing the commission by them of further offences and of securing their rehabilitation.”

16.
Pursuant to section 239(6), the Secretary of State has issued directions to the Parole Board, headed “Transfer of indeterminate sentence prisoners to open conditions” dated April 2015 (the “Directions”). Paragraph 8 of the Directions provides:

“8. Pursuant to Prison Rules, an ISP [indeterminate sentence prisoner] who has been served with a deportation order and who has exhausted all their in country appeal rights is ineligible to be considered for open conditions. An ISP who is liable for deportation, but does not meet the criteria set out above can still be considered for transfer to open conditions. However, before recommending that such an ISP be transferred to open conditions, the Parole Board must be satisfied that the ISP presents as a very low risk of abscond. In considering whether the ISP is a very low risk of abscond, it must take into account the following:

a) The risk that the ISP will use the low security of the open estate or temporary release to evade not only custody but also possible removal/deportation action. This risk may be heightened in circumstances where it is known the ISP is unwilling to be removed/deported from the UK and has previously sought to frustrate or evade the immigration process, for example - through their previous failure to comply with immigration restrictions, immigration bail or via the terms of leave in the UK, or because they have previously absconded from an IRC.

b) Previous failures by the ISP within prison, not only in terms of failures to return from previous ROTL but also late returns and other failures to comply with prison rules and regulations that may indicate an inclination to abuse the privilege afforded by open conditions or ROTL and abscond or fail to return when considered in conjunction with their deportation status. Any failure of this nature in prison or immigration custody should normally be seen as proof of not falling within the “very low risk” of abscond category.

c) Risk may be lessened where the ISP is known to be cooperative and is seeking to return to his or her home country, as will other factors such as strong family ties in this country or that the ISP does not wish to jeopardise his chances of successfully appealing and remaining in this country." (emphasis added)

HMPPS response to a recommendation by the Parole Board

17.
The Generic Parole Process Policy Framework ("GPPPF") implemented on 27 January 2020 aims to streamline the interaction between the Parole Board and HMPPS, amongst other agencies. Paragraph 3.3 notes that all indeterminate sentenced foreign national prisoners must be considered for removal from custody for the purpose of deportation at their tariff expiry (this is known as the Tariff Expiry Removal Scheme, or TERS). Paragraph 3.4 addressed reviews for indeterminate sentences prisoners (ISPs). Paragraph 5.3.1 states that all IFNPs (indeterminate foreign national prisoners) that are liable for deportation will be considered for eligibility for TERS, and will be presumed suitable for removal unless they meet the criteria for refusal.

18.
Part 2 of the GPPPF starts at Paragraph 5.4 and deals with Parole Board reviews for certain categories of prisoners, including pre-tariff ISPs seeking to transfer to open conditions. The PPCS (public protection casework section, charged with administering this policy and making determinations on behalf of the Secretary of State in relation so ISPs) is not obligated to accept the Parole Board's recommendation on transfer to open conditions:

"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."

19.
If the Parole Board recommends a move to open conditions for an IFNP, the GPPPF requires as follows:

"5.8.9 … Where an IFNP has been recommended a transfer to open condition by the Parole Board, an enhanced risk assessment will be conducted by the POM [prisoner offender manager] at the request of PPCS using Annex E of PSI 372014 – Eligibility for Open Conditions and for ROTL of Prisoners Subject to Deportation Proceeding."

Case Law

20.
The Court has examined the circumstances in which the Secretary of State may reject a recommendation by the Parole Board that an ISP should be transferred to open conditions. In R (Banfield) v Secretary of State for Justice [2007] EWHC 2605 (Admin), Jackson J derived five principles from the authorities. Of those, the first and the fifth are most relevant to this case:

“(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.

…

(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.”

21.
He emphasised at [29] and [41] that decisions on categorisation are for the Secretary of State, and the Secretary of State is not bound by the Parole Board’s recommendations.

22.
The Secretary of State’s role as primary decision maker was confirmed by the Divisional Court in R (Hindawi) v Secretary of State for Justice [2011] EWHC 830 (QB) at [63].

23.
The circumstances in which the Secretary of State could depart from a recommendation of the Parole Board were examined in R (Kumar) v Secretary of State for Justice [2019] EWHC 444 (Admin). In relation to what is now paragraph 5.8.3 of the GPPPF, Andrews J said at [53]:

“The current Policy has added a third ground, namely, that the Secretary of State does not consider that there is a wholly persuasive case for transferring the prisoner to open conditions at the relevant time. The was the target for much of Mr Rule’s criticism. Bearing in mind that this follows an express acknowledgment of the “very limited parameters” for departure from the recommendation of the Board, it is clear that the purpose of that ground is not to widen those parameters, but to preserve the ability of the Secretary of State (or the person to whom he has delegated the power to make the decision on his behalf) to exercise his discretion to reject a recommendation which does not strictly fall within either of the preceding grounds, but which appears to him (for good reason) to be unjustified or inadequately reasoned.”

24.
In that case, she decided that the Secretary of State was entitled to reject the recommendation of the Parole Board, the good reason being that it ran counter to the majority view of professionals with direct experience of and contact with the prisoner.

25.
In R (Noye) v Secretary of State for Justice [2017] EWHC 267 (Admin), Lavender J drew on Hindawi to emphasise the “clear distinction” between findings of fact made by the Parole Board panel and the assessment of risk, noting that the Secretary of State could only depart from findings of fact made by the Parole Board “for good reason” ([24]). In that case, Lavender J concluded that a finding that a risk of absconding was “highly unlikely” was not a finding of fact but an assessment of the extent of future risk [41], although he also found that the Parole Board’s conclusion that the Claimant had made significant progress in changing his attitudes and tackling his behaviour problems was indeed a finding of fact from which the Secretary of State could not depart without good reason [46].

Evidence about the Decision

26.

The Secretary of State relies on evidence submitted for this judicial review from Gordon Davidson, deputy director of HMPPS and head of the public protection group. He produced two witness statements, dated 31 August 2021 and 12 October 2021, respectively. He set out the Claimant's immigration history, summarised above. He stated that once the Parole Board's letter was received, the Claimant's Offender Manager Lina Howard completed an enhanced risk assessment in the form at Annex E of PSI 37/2014 as required by paragraph 5.8.9 of the GPPPF (see paragraph 19 above). This was the "more rigorous" risk assessment required by paragraph 1.3 of PSI 37/2014.

27.
That assessment was completed on 1 October 2020. Ms Howard considered each of the factors listed in PSI 37/2014 and concluded that:

"despite Mr Stephens very good custodial behaviour and risk level, I do not feel I am able to make an assessment of 'very low risk', due to Mr Stephens attitude expressed regarding deportation/his FN status and how I assess this impacted his engagement in interviews with me and willingness to be forthcoming to questions in interview."

That assessment was reviewed, along with all the other material in the case including the Parole Board letter by a Team Leader, who agreed that the Claimant was not very low risk when it came to the risk of absconding.

28.
The matter was escalated to Mr Davidson for review. As part of his review, he noted that the Parole Board had not addressed the factors in PSI 37/2014 (as they are, in fact, summarised in the Secretary of State's Directions at paragraph 8, see paragraph 16 above). He concluded:

"Consequently, I formed the opinion that the Parole Board had not made a wholly persuasive case for transferring the Claimant to open conditions at that time, as the decision letter did not suggest that this mandatory additional part of the risk assessment process that applies to FNOs had been given due consideration"

Submissions

29.
Mr Jennett accepts that the Parole Board ought to have considered, and on the face of the Parole Board letter failed to consider, the various factors set out at paragraph 8 of the Secretary of State's guidance. However, he submits that even if the Parole Board had applied that guidance, it would still have recommended that the Claimant should move to open conditions, because the Claimant is at very low risk of absconding for all the reasons set out in the Parole Board's letter. In addition, he has strong links in the UK because of his aunt living here, she is his primary support network. Although he was an overstayer at the time of his conviction, he was young at that time. He wishes to appeal his deportation and would not jeopardise that appeal by absconding. Further and in any event, the Parole Board found that the Claimant was at very low risk of absconding, which is a finding of fact with which the Secretary of State should not interfere (and which he should respect). These failings make the Secretary of State's decision to reject the Parole Board's recommendation irrational. He notes that the advanced risk assessment was not before the Parole Board at any time and anyway that assessment is flawed because in this case, the fact that the Claimant is a foreign national does not serve to increase his risk of absconding.

30.

Mr Grandison submits that the Parole Board's letter was flawed because of its failure to take account of specific factors applicable to an IFNP who is liable to deportation in determining the level of risk of absconding. In any event, the Secretary of State is not bound by the Parole Board's recommendation. Further, there is no irrationality in the Secretary of State concluding that the Claimant cannot be categorised as very low risk; this does not involve going behind any facts found by the Parole Board, because the assessment of risk is an exercise of judgment, not a finding of fact.

Discussion

31.
The Parole Board concluded that the level of risk presented by the Claimant was minimal (its phrase was, to be precise, that he did not present 'anything more than a minimal risk' of absconding). This view was based on his compliance in custody and his motivation to lead a pro-social life.

32.
By the time the Parole Board was considering the Claimant's case for transfer to open conditions, he had been served with notice of deportation (dating back to 17 September 2007); he was then and remains now liable to deportation. The Parole Board was aware that he was liable to deportation as a FNP. That meant that other factors, not referred to by the Parole Board, needed to be considered, pursuant to the Direction. The true question for the Parole Board in assessing his case was whether he presented a "very low risk of abscond" – this is the test imposed by paragraph 8 of the Direction. That test had to be applied taking into account a number of factors, including the risk that the Claimant would use the low security of the open estate to evade not only custody but also removal or deportation; that that risk may be heightened because the Claimant was unwilling to be removed or deported from the UK, and that regard was to be had to the fact that the Claimant had previously sought to evade or frustrate the immigration process (all these factors appearing in paragraph 8(a) of the Direction).

33.
The Parole Board did not refer to the paragraph 8 test of "very low risk" at all.

34.
The Parole Board did not address any of the factors at paragraph 8(a). If it had addressed these factors, it would and should have noted that they went against the Claimant: there was a risk that the Claimant would use open conditions to evade removal or deportation, he was a person who had expressed a desire to remain in the UK, and he did have a history of evading or frustrating the immigration process because he was an overstayer who had not sought to regularise his immigration status after his student visa expired.

35.
The Parole Board would doubtless have also taken into account the evidence of the Claimant's good record of compliance with prison rules (see paragraph 8(b)), and the evidence going to the factors listed in paragraph 8(c), namely that the Claimant was cooperative, had some family ties in the UK (albeit the Parole Board should have assessed whether these counted as "strong" family ties) and that he would not wish to jeopardise his chances of successfully appealing against his deportation order. Broadly, these were factors which are reflected in the Parole Board's letter and which were relied on in arriving at the recommendation.

36.

How these factors balanced out should have been assessed by reference to the “very low risk” test applied by paragraph 8. That was not done.

37.
Mr Grandison argues that it is inconceivable that the Parole Board would have made its recommendation for transfer to open conditions if it had properly understood the test and applied the paragraph 8(a) factors. Mr Jennett accepts that the Parole Board went wrong but says that it still would have reached the same conclusion even if it had the right test and the relevant factors in sight. It is not necessary for me to decide that point. It is sufficient to note that the Parole Board went wrong in ways that were highly material; the Parole Board should have followed the Direction, and its failure to do that significantly undermined its conclusions.

38.
The issue for the Court is whether the Secretary of State, by the Public Protection Group (and more specifically, by Mr Davison) erred in law in declining to follow the recommendation of the Parole Board. The Decision stated that there was not a “wholly persuasive case” made out for transfer. That was to use the language of paragraph 5.8.3 of the GPPPF. That paragraph permits the Secretary of State to depart from a recommendation of the Parole Board in circumstances where, for good reason, the Secretary of State considers the recommendation to be unjustified or inadequately reasoned (see Kumar at [53], and paragraph 23 above).

39.
In this case, there was a good reason for the Secretary of State to conclude that the Parole Board’s recommendation was unjustified and inadequately reasoned. That was because the Parole Board had failed to follow the Direction, and had in consequence not applied the correct test, and had not addressed certain criteria specified in the context of a FNP liable to deportation. It had reached a conclusion which could properly and reasonably be said to be unjustified and/or inadequately reasoned.

40.
Ground 1 falls by the wayside once the error of approach by the Parole Board is identified. This was a case where the focus should have been on a higher test of risk, assessed by reference to specific criteria connected with the Claimant’s liability to deportation. The failure to apply the Direction undermines the confidence the Secretary of State could have in the experience and expertise of the Parole Board. The panel was simply not focussing on the correct target.

41.
Ground 2 fails because the Board’s assessment of risk was just that, an assessment of risk (flawed, in the event, by reason of the failures identified). It was not a finding of fact. The distinction made by Lavender J in Noye, drawing on Hindawi, applies. The Secretary of State did not go behind any finding of fact by the Parole Board. Rather, it rejected the judgment or assessment made by the Board, in circumstances where the Board had made serious errors of approach.

42.
Ground 3 fails. The Decision was not irrational. The Parole Board had approached the assessment of risk incorrectly, and the Secretary of State was entitled to accord little weight to that assessment (even to disregard it entirely). The Claimant’s offender manager, who had taken account of relevant matters including the Claimant’s attitude to deportation, did not assess him as “very low risk”. The Secretary of State was entitled to accord her assessment, based on the correct considerations, a great deal of weight. In consequence, it was rational to conclude that the Claimant did not fall within the

very limited category of IFNPs who might be considered suitable for transfer to open conditions based on the fact that they presented a very low risk of absconding.

Conclusion

43.
This claim for judicial review fails. The Parole Board's errors of approach are fatal to the Claimant's claim. I accept that the Claimant has made significant progress during the 16 years (so far) that he has been detained on tariff, and for that he is to be commended. But it was open to the Secretary of State to assess him as still presenting something more than a very low risk of absconding and to refuse a transfer to open conditions.

44.
I thank Counsel and those instructing them for clear and focussed arguments, both in writing and at the hearing.