Neutral Citation Number: [2025] EWHC 1328 (Admin)

Case No: AC-2024-LDS-000130

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

Royal Courts of Justice

Date: 04/06/2025

Before :

UPPER TRIBUNAL JUDGE WARD
(SITTING AS A JUDGE OF THE HIGH COURT)

- -

Between :

THE KING	**Claimant**
On the application of DEREK MURCOTT	
- and -	
THE SECRETARY OF STATE FOR JUSTICE	**Defendant**

- -
- -

Carl Buckley (instructed by **Bhatia Best**) for the Claimant
Robert Cohen (instructed by **Government Legal Department**) for the Defendant

Hearing dates: 5th March and 10th April 2025
Written post-hearing submissions received 17th April 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 4th June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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UPPER TRIBUNAL JUDGE WARD (SITTING AS A JUDGE OF THE HIGH COURT)

Upper Tribunal Judge Ward (sitting as a Judge of the High Court) :

1. The case was first listed for hearing on 5th March in Leeds, but had to be adjourned when counsel became unwell shortly beforehand. To accommodate the diaries of counsel and the judge, in order that the resumed hearing could take place soon, it was relisted for hearing in London on 10th April. It does, however, remain a Leeds case.

2. The Claimant challenges a decision by the Defendant, communicated to the Claimant on 23 April 2024, not to hold an oral hearing in connection with the review of the Claimant's status and not to downgrade him from Category A status to Category B. The Defendant acted by the Director of High Security ("the Director"), who considers categorisation with assistance from an advisory panel.

3. Permission to seek judicial review was given by DHCJ Ridge following an oral hearing, permission having been previously refused on the papers by HHJ Saffman.

4. As pleaded, the grounds of the application were: –

   a) the decision to refuse to downgrade the Claimant to Category B status is unreasonable and irrational, in that it is contrary to common law principles of procedural fairness; and/or in the alternative

   b) the decision to refuse an oral hearing in his case is unreasonable and irrational, in that it is contrary to common law principles of procedural fairness.

5. I noted that what was said to make the decision unreasonable and irrational (note the words "in that") is that it was said to be "contrary to common law principles of procedural fairness". As pleaded, it was not that the Defendant's decision was unreasonable and irrational on the evidence before it, though it appeared from the Claimant's skeleton argument (and Mr Buckley confirmed) that he sought to argue this and indeed had done so at the oral permission hearing. I suggested that he might need to apply to amend the grounds. Mr Cohen had no objection and accordingly the hearing proceeded on the basis that the grounds were:

   a) the decision to refuse to downgrade the Claimant to Category B status is unreasonable and irrational; and/or in the alternative

   b) the decision to refuse an oral hearing in his case is contrary to common law principles of procedural fairness.

6. The trial bundle included the decision on the annual review (dated 22.1.25) which followed the one at issue in these proceedings, together with the Category A dossier on which it was taken. Mr Buckley submitted that a similar approach should be adopted to that of Fordham J in *R (Wilson) v Secretary of State for Justice* [2022] EWHC 170 (Admin) (a case on which there had similarly been a subsequent review of the prisoner's Category A status) where at [12] he said:

   "I accept, for the purposes of the present case, that if this Court is satisfied that it was incorrect in November 2020 – in the circumstances as they then were – for the Director to deny the Claimant an oral hearing then the position would be this. The claim for judicial review, for which permission was granted, would in principle be

made out, and what should happen in this case is an oral hearing at which all relevant materials are considered, on an up to date basis."

The same would apply, in Mr Buckley's submission, if the decision were to be flawed for irrationality. Mr Cohen had no issue with this and accordingly there is no submission before me that any part of the present proceedings has become academic and I am content to apply the approach in *Wilson.*

7. The policy document setting out the Prison Service's approach to Category A prisoners is PSI 08/2013 ("the PSI"). There is no submission that the guidance in the PSI is unlawful and indeed *Hassett* established that a particular part of it (para 4.7(b) addressing "where there is a significant dispute on the expert materials") is lawful.

8. The PSI defines a Category A prisoner as being 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".

9. It further provides that before a Category A prisoner will be downgraded there must be "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".

10. I note that what requires to be addressed is the risk of re-offending "if unlawfully at large". In such circumstances a person will not have access to the support that would be available to them either in prison or on parole. That is a key reason for distinguishing the authorities relating to parole decisions such as *R(Osborn) v Parole Board* [2013] UKSC 61 from those relating to Category A reviews: *Hassett* at [51] and [56].

11. The PSI also gives guidance as to when an oral hearing might be held. The process of deciding whether to hold one is not a mathematical one but the more of the factors listed in the PSI that are present in any case the more likely it is an oral hearing will be needed. The PSI makes three overarching points in this regard:

    a) that each case must be considered on its own particular facts;

    b) that the oral hearing decision is approached in a balanced and appropriate way which includes being 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, and the grant of an oral hearing should not be dependent on the prospects of success of a downgrading categorisation;

    c) the oral hearing decision is not necessarily an all or nothing decision.

12. Factors it identifies that would tend in favour of holding an oral hearing include:

    a) where important facts are in dispute;

    b) where there is a significant dispute on the expert materials (an example given by the PSI where this fact will be "squarely in play" is where the local advisory panel ("LAP"), in combination with an independent psychologist, takes the view that downgrade is justified);

c) where the length of time involved in the case is significant and/or the prisoner is post-tariff although it does not follow that because the 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;

d) where the prisoner has never had an oral hearing before or has not had one for a prolonged period.

13. I have noted the helpful summary of the legal position in *R(Steele) v Secretary of State for Justice* [2021] EWHC 1768 (Admin). It is not necessary to set all of it out here but I gratefully adopt the summary of authorities at [4] derived by Fordham J from *R(Mackay) v Secretary of State for Justice* [2011] EWCA Civ 5211, *R(Downs) v Secretary of State for Justice* [2011] EWCA Civ 1422 and *Hassett* (above).

"(1) The common law principles identified in the parole context in Osborn v Parole Board [2013] UKSC 61 do not apply with the same force to Category A review decisions (*Hassett* paragraphs 59 to 61). (2) The general guidance in the PSI is lawful and not apt to mislead a decision-maker as to the applicable legal standards, a point decided in the specific context of a challenge to factor (b) (*Hassett* paragraph 66). (3) A Category A review decision "has a direct impact on the liberty of the subject and calls for a high degree of procedural fairness" (*Mackay* paragraph 25). (4) It is "for the Court to decide what fairness requires, so that the issue on judicial review is whether the refusal of an oral hearing was wrong; not whether it was unreasonable or irrational" (Mackay paragraph 28). The CAT may need to "exercise a judgment on whether an oral hearing would assist in resolving … issues and assist in better decision making" and the question for the Court is whether the CAT "was wrong to decide against an oral hearing" (*Downs* paragraph 45). ...(6) Although it has been said that "oral hearings will be few and far between" (*Mackay* paragraph 28) and "comparatively rare" (*Hassett* paragraph 61), that is prediction rather than principle: there is "no requirement that exceptional circumstances should be demonstrated" (*Mackay* paragraph 28) ... ."

14. The claimant has a long history of convictions dating back to 1973, when he was aged 12. In 1982 he raped a woman at knifepoint and received an eight-year sentence. While serving that sentence he attempted to strangle to death a prisoner and was convicted of attempted murder. He was released in June 1993. Nine months later, in 1994 he raped a woman several times having subdued her with use of a knife and violent threats and tied her up, for which he was sentenced to life imprisonment for rape and buggery, with a 15 year tariff, reduced on appeal to 10 years. The day following the rape he threatened to kill and indecently assaulted a teenage girl. That and other offences were the subject of concurrent sentences. He had been a Category A prisoner following the attempted murder. He became Category A once again following his sentencing for the rape in 1994 and has retained that status ever since. More recently, in 2017 he was convicted of indecent exposure to a member of prison staff.

15. The evidence before the Local Advisory Panel ("LAP") and subsequently before the Director included reports from officers in the residential wing, the workshop in which the Claimant was engaged and in the Security department. There was a report by Hayley Mitchinson, a Registered Forensic Psychologist in the prison's psychology department (accompanied by the Claimant's comments on her report, broadly accepting it). Ms Mitchinson indicated, in underlined text, that her report was to be read in

conjunction with the two previous reports she had made. Those reports are not in evidence before me. No point was taken in that regard at the hearing before me. In a report dated 31/10/2022 (dated in error in Ms Mitchinson's evidence as 31/10/2023), the Claimant had been "assessed as moderate risk of future sexual violence and downgrade was recommended." In the absence of that report, the basis on which Ms Mitchinson there recommended downgrade despite a moderate risk of "future sexual violence" is not apparent. Following the incident in which the Claimant was deselected from the PIPE, Ms Mitchinson had reviewed her report, concluding that the incident in the PIPE unit "did not impact upon his level of risk or progression pathway." ("PIPE stands for "Psychologically Informed Planned Environment" and offers in various formats psychologically informed services for high-risk offenders with personality disorders.)

16. In the period April to October 2023 which her latest report addressed, she noted that the Claimant had maintained "Enhanced" status on the Incentive and Earned Privileges (IEP) scheme and had not received any adjudications i.e. for alleged breach of Prison Rules. She referred to a number of instances of positive behaviour and also to a number of relatively low-level instances of negative behaviour. His "schemas" (core beliefs) included that the world is out to get him and he is instinctually mistrustful. It was unlikely that these views will ever go away. However, despite his now-decreased negative interactions with professionals, his being argumentative did not equate to the risk of violence, either sexual or physical. She considered his offending occurred after the suppression of emotions, rather than due to expressing them inappropriately, therefore the recent instances of negative conduct were in her view not "offence-paralleling" nor evidence of risk increasing. Ms Mitchinson maintained her position that the Claimant represented a moderate risk of future sexual violence and continued to recommend a downgrade to Category B status. Her reasons included that he had completed a substantial amount of treatment, had achieved risk reduction and there was no outstanding risk reduction work for him to complete and that he was "not considered high risk if unlawfully at large". There were no further opportunities for progression as a Category A prisoner. He had consolidated his learning and shown an improved ability to manage transitions. He was (at that time) almost 20 years over tariff. I return to Ms Mitchinson's report at [48] below.

17. There was a risk assessment from the Offender Management Unit which categorised the Claimant's risk in the community to children, the public, known adults and staff as "high" but that would be reduced to "low" or "medium" (according to the group concerned) if he were in custody. In a section of the lengthy and detailed report from the Claimant's Prison Offender Manager (POM) which appears to be a reiteration and updating of an earlier report (in that parts predate the incident on the PIPE Unit) the report notes that the Claimant "has engaged in some work exploring his schemas but has not yet addressed his sexual offending". Elsewhere in the report, however, there is a list of "treatment/therapies he has completed to address his offending behaviours and become aware of his risk factors which could lead to problematic behaviours". It further noted that when in the community, the Claimant had drunk up to 12 pints of lager three or four times a week to assist with managing his emotions, something which "will need to be closely monitored on release". The POM noted that during his time in custody and in hospital the Claimant had completed a significant amount of treatment resulting in a reduction in his risk and indicated that in her opinion the Claimant continued to demonstrate consolidation of skills and learning from past interventions in

more testing environments. She noted that "it is well documented that Mr Murcott can at times struggle with his emotional regulation and can be quick to react to certain situation[s], however I have always found that he is able to discuss these situations and reflect on why he has reacted in the way he has." The POM would "support a downgrade to category B status based on the substantial amount of treatment/interventions Mr Murcott has completed whilst in custody." The plan would be for him to progress to the Hull PIPE.

18. When the matter was considered by the LAP, it had the benefit of representations on the Claimant's behalf, drafted by solicitors. It noted that Ms Mitchinson thought the Claimant had made significant progress at the PIPE unit and that she did not link his verbal outbursts to the level of risk and that his being argumentative did not indicate a risk of physical harm. They noted the support of the POM who considered there was no outstanding risk reduction work with him to complete and that he had maintained IEP enhanced status, through periods of transition, over a lengthy period. In the LAP's view, the next stage was for the Claimant to be downgraded to category B to further manage his transition.

19. The decision under challenge noted the offences summarised above and the circumstances of them. It noted the Claimant's deselection from the PIPE unit and his warning in August 2023 but that his behaviour since the incident in the PIPE had been mostly acceptable. It noted the psychology evidence and that the POM likewise recommended a move to a Category B PIPE unit. It noted the recommendation of the LAP.

20. The Director considered a longer period of sustained good behaviour and application of skills was needed to show convincingly that significant risk reduction had been achieved. He took into account the Claimant's long and varied offending, including serious offending shortly after release from custody and, more recently, further sexual offending in custody. In his view, the claimant's offending showed he would pose a high level of risk if unlawfully at large and that before his downgrading could be justified there needed to be convincing evidence of a significant reduction in risk. Against the positive assessment and recommendations, the Director noted that the Claimant had had to be removed from a series of environments as result of his poor responses or behaviour, most recently from the PIPE unit in 2023. Although since then he had achieved a period of stability and improved self-management the Director's conclusion was that a longer period of sustained good behaviour and application of skills was needed convincingly to show he had achieved significant risk reduction if at large.

21. The Director's reasons for not holding an oral hearing were that there were no significant facts in dispute. The available information and reasoning for downgrading were readily understandable. Disagreeing with the downgrading recommendations did not in itself represent a significant dispute justifying an oral hearing. Although the Claimant had been in prison many years and has never had an oral hearing, in the Director's view those facts alone could not justify an oral hearing, absent other supporting grounds. The Claimant remained free to engage further to enable closer assessment of significant progress and was therefore not in an impasse.

22. Mr Buckley submits that the Director's decision was indeed irrational. The LAP will have known about the test for whether a prisoner can be downgraded and Ms

Mitchinson's evidence had expressly addressed it. Her evidence had dealt with treatment the Claimant had received, had explained why his deselection from the PIPE unit had no adverse implications for his downgrading, why in her view there was no increase in risk and he would not be high risk if unlawfully at large and had given her conclusion in favour of downgrading. While Mr Buckley accepts that the Director is the primary decision-maker and the LAP's role is an advisory one, if he is to reach a different conclusion, he needs to state why. Here there was a substantial commonality of view between the professionals, yet no explanation was offered for the different position taken by the Director. He had, in Mr Buckley's submission, reached his own conclusion "with limited engagement".

23. In Mr Buckley's submission, the Defendant had been "confronted with convincing evidence that the Claimant's risk of re-offending if unlawfully at large had significantly reduced from multiple experts who had direct experience of working with the Claimant." It was said that "This evidence *specifically* demonstrated positive developments in his attitude towards his offending and the development of skills to help prevent similar offending." (Mr Buckley's emphasis). He clarified that this was intended to refer to parts of Ms Mitchinson's evidence which set out work the Claimant had completed, his progression through his sentence and that he had sought to do what had been asked of him. She had recorded greater insight into his personality and what triggers his offending. She had also addressed the incident of indecent exposure in 2017.

24. Mr Buckley was asked about passages in Ms Mitchinson's evidence which appeared to suggest that risk would be increased and/or that factors leading to a decrease in risk would be unavailable in the circumstances which the test requires to be addressed, namely if the Claimant were to be unlawfully at large. He relied on Ms Mitchinson's conclusion that the Claimant "was not considered high risk if unlawfully at large" and on the Claimant's demonstrated ability to manage transitions within Category A environments.

25. Responding to the comment that it might not be sufficient to secure downgrading that a prisoner had done all that was expected of him, Mr Buckley accepted that it does not necessarily follow that because a course has been completed, there has been a decrease in risk; but here, the view of the professionals was that there had been such a decrease.

26. In relation to whether an oral hearing should have been held, Mr Buckley relies on the passages in *Steele* referred to above and on the criteria set out in PSI 08/2013, each of which he submits is adequately satisfied.

27. He accepts there is no dispute between experts here, but it is a case where the Director takes a different view from the experts. He relies on *R(Smith) v Secretary of State for Justice* [2020] EWHC 2712 (Admin) where at [34] Calver J suggested that in the case before him "since all three psychologists agree on downgrading, the claim to an oral hearing is obviously stronger than it would be in a case where there is a significant dispute on the expert materials" and cited a decision to similar effect: *R(Seton) v Secretary of State for Justice* [2020] EWHC 1161 (Admin). *Smith* continued to offer an illustration of an applicable principle, despite the note of caution in relying on first instance decisions in the light of the Court of Appeal's decision in *R (Clarke) v Secretary of State for Justice* [2024] EWCA Civ 861.

28. The PSI highlights as a relevant factor where the prisoner is post-tariff. The Claimant has served 20 years post-tariff.

29. It is difficult for the Claimant to know what else he has to do to demonstrate a reduction in risk and to that extent there is an impasse, which holding an oral hearing might assist in resolving. He does not accept that the position adopted by the Director – that the Claimant needs to demonstrate a reduction of risk by serving more time trouble-free- means that there is not an impasse.

30. The other two factors- where a prisoner has served many years and whether he has had an oral hearing previously – are also present.

31. Mr Buckley submits that oral hearings may have benefits such as in enabling an impasse to be resolved, in allowing an assessment or other disputed evidence to be challenged and generally would make for a better decision.

32. Accordingly, it is submitted that the present case is one of the comparatively rare ones when an oral hearing should have been granted.

33. Mr Cohen confirmed that the Director was advised by a senior psychologist, a police adviser and a member of CART. The Director and member of CART did not have a particular professional expertise, but have long experience in the assessment of risk.

34. Responding to a question originally put to Mr Buckley, he confirmed that there are 25 Category A prisoners who are more than 20 years post-tariff (out of a total of slightly more than 1,000 Category A prisoners).

35. Mr Cohen referred back to the test in PSI 8/2013 (see [9]) emphasising that by requiring "convincing evidence" and that risk be "significantly" reduced, the threshold is a high one. Further, it is one to be assessed in the circumstances of a prisoner having escaped, when control mechanisms, structure and assistance will all be lacking. The test is, therefore, not about whether a prisoner has done well in complying with what has been asked of him, whether there has been an improvement, or whether Category B would be better for him.

36. He noted the gravity of the Claimant's offending (see [13]). There are obvious concerns relating to the index offence and as to the Claimant's past conduct.

37. Nor can it be said that the Claimant has been compliant throughout his time in prison.

38. He noted that the reports before the Director did not paint an unalloyed picture. As noted above, the Claimant was considered to pose "a moderate risk of future sexual violence" and to pose a "high" risk in the community.

39. He accepted that the Director was not entitled to ignore the reports before the LAP or its recommendations, but he did not do so. In his decision he set out the facts of the Claimant's offending, looked at the history and the Claimant's present circumstances, and recorded the LAP recommendation. He noted that the Claimant had been in custody for many years, had engaged with intervention and that recent behaviour had been positive. Against that, he had noted the moves between institutions in 2017 and two deselections from particular units. Consequently, while there had been an improvement, he had concluded that a longer period was needed.

40. The Defendant had reached his own view, applying the correct legal test. His decision demonstrated the reasons for his view. He was aware that some of the professional opinion was supportive of the Claimant but reached a different view as to its effect on the question he had to decide. More than this would be needed to demonstrate that the decision was irrational.

41. As to whether an oral hearing is required, Mr Cohen submits that the approach in *Clarke* should be adopted. The case, which postdates *Smith*, moves away from a formalistic analysis in favour of examining the fairness of the procedure as a whole.

42. In Mr Cohen's submission an oral hearing would have achieved nothing. There was no dispute of fact here. The professionals had set out their position clearly and the Director had reached a decision taking it into account and explaining his reasoning. In relation to what were described by William Davis J (as he then was) in *R (Morgan) v Secretary of State for Justice* [2016] EWHC (Admin) 106 as "the more nebulous potential justifications for an oral hearing i.e. the length of time the prisoner had been in prison and whether there had ever been an oral hearing previously", there was no reason why an oral hearing was needed for either of those reasons when there was no other reason to hold one. The reasons why the Claimant had been post-tariff for a long time were set out in the decision. The Claimant had submitted representations by solicitors and had had the chance to state his case.

43. Consequently, in Mr Cohen's submission a fair procedure was followed overall and no oral hearing was required.

44. On ground (a) as it stands, I can state my conclusions simply. I accept Mr Cohen's analysis of the Director's decision, which addressed the correct test, took into account points on both sides of the equation, reached a conclusion which was entirely rational given all the matters that were taken into account and showed that it had done so.

45. The primary emphasis of Mr Buckley's submissions, though, was on ground (b). As stated by the Court of Appeal in *Clarke* at [111]:

> "the authorities show that whether the CART has acted unfairly in not holding an oral hearing depends on the evaluative assessments by the court about whether relevant factors are present in a particular case, and, if so, about the weight which the court should give to the factor or factors which is or are present. It is clear that no one factor must be given decisive weight."

46. What is inappropriate, according to *Clarke* at [115], is to dwell on other first-instance decisions:

> "The Judge's decision and those in *Zaman* and *Seton*… were made on different facts. They are all first instance decisions. The legal issues in all the cases were similar. So the decision of each judge involved the assessment, and weighting, of the various factors which happened to be relevant in each case. No point of any legal significance can be deduced from the fact that two other judges have reached different decisions from the Judge. Each case was different. A submission to the contrary is close to a submission that every judge in such a case must decide, as a matter of law, that an oral hearing is required. Any such contention is wrong."

47. In the present case, there was no dispute of fact about the Claimant's offending, the various interventions he had experienced, his disciplinary record in prison nor, so far as I am aware, any other potentially relevant primary fact. The professionals whose evidence had gone to the LAP, and then to the Director, had set out their position with care.

48. When preparing this judgment, conscious that a high standard of procedural fairness is required, given the subject-matter of the case (see e.g. *Mackay*) I decided to invite post-hearing submissions in relation to the possible impact of Ms Mitchinson's report having stated that it was to be read together with her two previous reports, particularly given her recommendation for downgrading to Category B despite her view that the Claimant posed a moderate risk of future sexual violence. What was referred to in the agreed bundle before me as the "Category A dossier" did not contain the two earlier reports and the reference to earlier reports had not featured in oral argument.

49. In responding, Mr Cohen indicated that the Defendant's officials had confirmed that past reports had been received for previous reviews and that the accumulated information relating to past reports and review decisions was before the decision-maker at the time of the review under challenge and so that "in that sense" the context for Ms Mitchinson's opinion and recommendation was before the decision maker.

50. Mr Buckley submitted that to enable a full and accurate picture of the risk assessment, and the reasoning provided by Ms Mitchinson, it was incumbent upon the Defendant to take those previous two reports into account, the Defendant having been expressly directed to those reports and further, why those reports were relevant. He therefore submitted it was arguable that the Defendant did not pay enough attention to the detail of that report, or in the alternative determined (without reason) that there was no need to consider the same. In any event, there was seemingly relevant information that the Defendant was aware of, was directed to, but failed to consider.

51. As regards whether the reference to the two previous reports affected whether there should have been an oral hearing, Mr Buckley accepted that this point had not been a pleaded distinct ground and indicated that the Claimant seek to make any application to amend the grounds further. He submitted that it is an issue that is categorised as an aspect of procedural fairness, noting Hickinbottom LJ in *R (ASK) v SSHD* [2019] EWCA Civ 1239 at [63-64]:

> "The Common Law Duty of Fairness
>
> 63. In addition, where a power is delegated to a public body, there is a presumption that Parliament intended it to be exercised fairly. The scope of that duty is context specific. In these appeals, two strands are particularly relevant.
>
> 64. First, a public body has a common law duty to take reasonable steps to acquaint itself with material relevant to any decision it makes – and then properly to consider that information, with the other relevant information available to it – to enable it to make a properly informed decision. The sufficiency of the inquiry is essentially a matter for the decision-maker; but the context may require particular steps to be taken."

52. He referred also to the *Tameside* duty of enquiry and submitted that the matter I had raised provided additional support for the case that had been pleaded and argued before me that the process had not been procedurally fair in the circumstances.

53. I was not offered any evidence concerning Ms Mitchinson's two earlier reports, but Mr Cohen's submission was made on instruction from the Defendant's officials and I am prepared to assume in the absence of any reason to consider otherwise that they will have been aware of, and complied with, their duty of candour in responding to the request for a written submission. Odd though it might be thought to be that the earlier reports do not figure in the "Category A dossier", I do therefore accept that they were before the Director.

54. What the Director made of them, we are not told specifically, but it is not a reasons challenge that I am considering.

55. As to the weight to be given to the reference to the two earlier reports in assessing whether fairness meant that an oral hearing needed to be held, there are a number of factors I bear in mind. The matter had not been relied upon specifically as a pleaded ground in these proceedings, nor had it been raised in the submissions to the LAP dated 22 January 2024 by the Claimant's solicitors, who it is clear had the Category A dossier before them. (That in neither case is intended to suggest criticism, but does provide me with an indication that the reference to the earlier reports was considered not to be a matter requiring exploring further.) Nor has any suggestion been made as to what in the two earlier reports might have affected the outcome, including (without limitation) as to any further explanation to be derived from them as to Ms Mitchinson's view why, despite the Claimant's medium risk of sexual offending, he should be downgraded to Category B. Further, from what she wrote in her updating report, Ms Mitchison's earlier reports reflected the same position and will have been considered at an earlier Category A review: that does not mean they were necessarily irrelevant this time round, but their weight as an indicator of the necessity for an oral hearing will have tended to reduce as a result. I have therefore concluded for the various reasons in this paragraph that the existence of the two earlier reports, specifically referred to in Ms Mitchinson's updating report, does not materially add to the case for an oral hearing.

56. While the Director might not have followed the professionals' reports in relation to the decision he alone was tasked with undertaking, there is no indication that the impact of the reports, whether in the light of the previous paragraph Ms Mitchinson's, or anyone else's, was susceptible of acquiring materially added weight as the result of an oral hearing. I agree with Mr Cohen that a requirement to demonstrate a longer period of good behaviour does not mean that a person is at an impasse: the very existence of the requirement demonstrates how an impasse can be avoided. Importantly, the Claimant had had input into the process – not only through the submissions made by his solicitors but by the opportunity to see and comment on Ms Mitchinson's report. If there was not otherwise a need for a hearing, then to hold one simply because the Claimant has been in custody for a long time, or is many years post-tariff, would serve no purpose of substance, which limits the weight to be given to those factors. Assessing all the factors in the round, therefore, I do not consider that the failure to hold an oral hearing meant that the procedure failed to meet the common law requirements of a fair procedure.

Consequently, the application for judicial review fails on both grounds.