



Neutral Citation Number: [2025] EWHC 1507 (Admin)

Case No: AC-2024-LON-003935

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 June 2025

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

Between :

THE KING
on the application of
IVAN CATLEY

Claimant

- and -

SECRETARY OF STATE FOR JUSTICE

Defendant

- and -

THE PAROLE BOARD
OF ENGLAND AND WALES

Interested
Party

Stephen Tawiah (instructed by **Kesar & Co.**) for the **Claimant**
Richard Evans (instructed by the **Government Legal Department**) for the **Defendant**

Hearing date: 12 June 2025

Approved Judgment

This judgment was handed down remotely at 10.30 am on 18 June 2025
by circulation to the parties by email and by release to the National Archives.

THE HONOURABLE MR JUSTICE PEPPERALL:

1. Ivan Catley is a serving prisoner. By a decision made on 28 August 2024, the Secretary of State for Justice rejected the Parole Board’s recommendation that he should be transferred to an open prison. By this claim for judicial review, Mr Catley challenges such decision. He argues that the Secretary of State’s decision was inadequately reasoned. Further, he argues that the decision was irrational; specifically, he argues that it was irrational to reject the Parole Board’s recommendation on the basis of fresh information without giving the board the opportunity to consider and advise upon that material.

BACKGROUND

2. Mr Catley is a prolific robber. His eighth robbery conviction arose out of an incident on 6 July 2010 when he smashed a bottle which he then used to threaten to stab a couple in order to steal their mobile phones. Further, he repeatedly punched the female victim in the face. On 4 February 2011, in the Crown Court at Snaresbrook, Mr Catley was sentenced to imprisonment for public protection with a tariff of 3 years.
3. Mr Catley was released on licence on 1 November 2021. He was set up with employment at Timpson and with accommodation in approved premises. Unfortunately, things unravelled very quickly and Mr Catley was recalled to prison on 17 December 2021. During that short period in the community, Mr Catley was dismissed from his employment and banned from entering other Timpson stores. Further, he breached the curfew, failed an alcohol test and tested positive for cocaine.
4. The Parole Board convened an oral hearing on 7 May 2024 to conduct its second review of Mr Catley’s case since his recall. The board heard evidence from Mr Catley as well as from his Prison Offender Manager and his Community Offender Manager. By its written decision dated 10 May 2024, the board concluded that Mr Catley was not suitable for release. The board then considered whether it should recommend that Mr Catley be transferred from closed to open conditions. In addressing that issue, it considered the Generic Parole Process Policy Framework issued by the Secretary of State. Paragraph 5.8.2 of the framework document provides:

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

 - the prisoner has made sufficient progress during the sentence in addressing and reducing risk to a level consistent with protecting the public from harm (in circumstances where the prisoner in open conditions may be in the community, unsupervised under licensed temporary release); and
 - the prisoner is assessed as low risk of abscond; and
 - there is a wholly persuasive case for transferring the ISP from closed to open conditions.”

5. The Parole Board noted that there was an absence of recent violent conduct but that there was evidence that Mr Catley was prone to abusive and challenging behaviour. While recording that Mr Catley disputed the majority of the negative entries in his prison records, it added that his conduct towards his previous Prison Offender Manager led to her leaving that role. The board noted Mr Catley's tendency to become animated when aggrieved and to speak loudly and quickly. There was very little to suggest that he appreciated how he presented and the panel expressed its concern as to his own understanding of his risk and triggers, and as to how he might manage himself in the event of conflict. While noting some improvement since the last review, the panel had limited confidence that Mr Catley would adhere to licence conditions or be transparent with professionals managing his case. It added:

“Given the history of violent offending ... and the behaviour through his sentence, as evidenced by the number of adjudications and negative entries, the panel concluded that in his case there is a link between non-compliance and the risk of serious harm.”

6. In specifically addressing the first element of the test under paragraph 5.8.2 of the framework document, the board considered the breakdown of the relationship between Mr Catley and his previous Prison Offender Manager. It concluded that this did not contradict the evidence of his progress, adding:

“There was no indication that he was aggressive or threatening, that his behaviour amounted to a risk of serious harm, and rather that it was indicative of him needing to better understand and practice (sic) management of his interpersonal style. This is precisely what he would be able to do in open conditions.”

The panel therefore concluded that Mr Catley had made the necessary progress in addressing and reducing his risk.

7. As to the second requirement, the panel accepted the evidence of the professional witnesses that the risk of absconding from open conditions was low.

8. The Parole Board's recommendation was then considered by the Secretary of State's Parole-Eligible Casework team, which is part of the Public Protection Casework Section within His Majesty's Prison and Probation Service. The responsible team leader reviewed the Parole Board's decision. She noted from review of the prison case management system that there had been a number of negative entries in respect of Mr Catley's conduct since the Parole Board hearing. Specifically:

8.1 On 13 May 2024, Mr Catley reacted in a volatile manner to the Parole Board's decision. He made comments about his Prison Offender Manager which were described as “rude, abusive and extremely hateful”. Despite being challenged, he continued in the same vein.

8.2 On 13 June 2024, Mr Catley was very rude, aggressive and disrespectful when asked his name. Later that afternoon, he was aggressively shouting in a member of staff's face. He would not calm down and called the member of staff racist. Following these incidents, a security alert noted that Mr Catley posed a risk to females.

8.3 On 20 June 2024, Mr Catley became aggressive to an officer. He said that he was going to smash some officers' ears and that he would “take” all four of them. He had to be restrained and said, “next time I see you ..., you wait” and “suck your mum”. This

conduct led to an adjudication. A charge of using threatening, abusive or insulting words or behaviour was recorded as proved.

- 8.4 On 21 June 2024, Mr Catley was verbally abusive and told an officer to “fuck” himself.
 - 8.5 On 15 July 2024, Mr Catley became angry in the library. His conduct was described as “shouty and demanding” for ten minutes. He seemed unable to calm himself down.
 - 8.6 On 17 July 2024, Mr Catley became irate when refused permission for a phone call. He threatened suicide. When officers entered his cell, he was abusive and threatening and picked up a water bottle in an aggressive manner. This conduct led to a further adjudication but it was marked as “returned” because of incorrect or insufficient information in the officer’s statement.
9. The team leader recommended to her manager that Mr Catley should not be transferred to open conditions. Since, however, there was fresh relevant evidence since the date of the hearing in May, she drew this material to the attention of Mr Catley’s solicitors and invited them to lodge any further representations in respect of the recommended transfer to open conditions before the Secretary of State’s decision was finalised. On 22 August 2024, the solicitors responded that this new material should not be conclusive in determining Mr Catley’s level of risk. They submitted that the new conduct did not evidence violent behaviour and that verbal outbursts are not uncommon in prisons. They urged the Secretary of State to view these incidents within the context of the challenging conditions faced by their client. Further, they relied on the efforts that Mr Catley had made towards his rehabilitation, his commitment to positive change and his reintegration into society, and his positive behaviour during his incarceration.
 10. The case was then reviewed by a manager within the Parole-Eligible Casework team. By a decision dated 28 August 2024, the Secretary of State formally rejected the Parole Board’s recommendation for transfer to open conditions. While agreeing with the Parole Board that there was a low risk of absconding, the Secretary of State concluded that:
 - 10.1 Mr Catley had not made sufficient progress in addressing and reducing risk to a level consistent with protecting the public from harm in circumstances where a prisoner in open conditions might be unsupervised in the community; and
 - 10.2 there was not a wholly persuasive case for transfer to open conditions.
 11. In reaching these conclusions, the Secretary of State cited the following matters:
 - 11.1 She referred to the progress made and the lack of any recent physical violence. Against that, she noted Mr Catley’s abusive and very aggressive conduct towards his previous Prison Offender Manager. She added that the previous manager’s concerns centred around how his interpersonal difficulties would be interpreted in the community as he had little awareness of his risk and triggers, and a tendency to blame others and to minimise his own conduct. The manager felt that Mr Catley needed to develop insight into his own personality and how he presents to others.
 - 11.2 She observed that, since the Parole Board’s decision, Mr Catley had received a proven adjudication for using threatening, abusive or insulting words or behaviour and that there had been a further adjudication albeit no action had been taken. She also noted the negative behaviour warnings since the oral hearing. She concluded:

“Given the volume of negative behaviour entries as well as the adjudication it is clear you have little awareness of your triggers, have poor compliance with the prison regime and poor problem solving skills and you need to develop an insight into your personality traits and how these present to others. In view of this it is not considered you have made sufficient progress during the sentence in addressing and reducing risk to a level consistent with protecting the public from harm, in circumstances where in open conditions you may be in the community, unsupervised, under licensed temporary release.”

- 11.3 She concluded that on all the evidence available, she could not be satisfied that there was a wholly persuasive case for transfer to open conditions. She explained:

“Whilst the Parole Board has concluded that you had completed all core risk reduction work, given the volume of negative behaviour entries since the Parole Board decision as well as the adjudication it is clear that you have little awareness of your triggers, poor compliance with the prison regime and poor problem-solving skills and need to develop an insight into your personality traits and how you present to others.

In view of this it is not evident that you have made sufficient progress during the sentence in addressing and reducing risk to a level consistent with protecting the public from harm, in circumstances where the ISP in open conditions may be in the community, unsupervised, under licensed temporary release.

Giving the serious details of your index offence and the recent behaviour linked to your risk factors, the Secretary of State is not satisfied that the risks you pose are manageable in less secure conditions.”

IS THE CLAIM ACADEMIC?

12. The Secretary of State takes the preliminary point that this claim is academic since the Parole Board is currently undertaking a fresh review of Mr Catley’s case. Richard Evans, who appears for the Secretary of State, argues that even if her decision were to be quashed, she would in any event have to reconsider the question of transfer in accordance with the latest evidence and advice from the Parole Board.
13. I acknowledge that there is a fresh review on foot. Indeed, there has been a recent police investigation into Mr Catley’s conduct although it appears that he is not to face any criminal charges. Further, I accept that regardless of whether the claim succeeds, the Secretary of State will reconsider transfer in view of the latest advice and her own reassessment of the case. It is, however, uncertain as to when the Parole Board will be able to hear this case and provide its updated decision on release and, if release directions are not to be given, when it will provide its updated advice on transfer to open conditions. In my judgment, the court should be slow to conclude that the claim is academic. Permission to apply for judicial review has been given. By the time that any challenge to the Secretary of State’s rejection of a transfer recommendation works its way through the system and is finally heard, it will perhaps be inevitable that the next parole review will either be on foot or imminent. If the court were too ready to refuse a claim on the grounds that the challenge had become academic, there is a risk that it becomes impossible to challenge transfer decisions.

THE LAW

14. The proper approach to a challenge to the Secretary of State's decision to reject a recommendation for transfer was settled by the Court of Appeal in R (Sneddon) v. Secretary of State for Justice [2024] EWCA Civ 1258, [2025] K.B. 245. There is accordingly no dispute as to the following principles:
 - 14.1 Section 12(2) of the Prison Act 1952 provides that prisoners are to be committed to such prisons as the Secretary of State directs. By s.239(2) of the Criminal Justice Act 2003, the Parole Board has a duty to advise the Secretary of State with respect to any matter that she refers to it to do with the early release of prisoners. Since transfer to open conditions is a matter relevant to early release, advice on transfer falls within s.239: Sneddon, at [8]; R (Gilbert) v. Secretary of State for Justice [2015] EWCA Civ 802, at [7] and [70].
 - 14.2 The Secretary of State is the sole decision maker: Sneddon, at [24].
 - 14.3 The Secretary of State is not obliged to seek advice. As the Lady Chief Justice put it in Sneddon, at [24], she has a two-tier discretion: a discretion as to whether to seek advice; and a discretion as to whether to accept any advice that she seeks.
 - 14.4 While the Parole Board has relevant expertise, the Secretary of State and her department and agencies also have expertise in the management of prisoners in the prison estate and the assessment of risk: Sneddon, at [27]-[28]; Gilbert, at [71].
 - 14.5 The Secretary of State is entitled to reject the board's advice if she reasonably concludes that the advice is not wholly persuasive. It is her view that matters and, in the words of the framework document, for her to be "wholly persuaded" or not. Thus, the Secretary of State can reject a reasonable recommendation on the basis of her own reasonable but different assessment: Sneddon, at [29].
 - 14.6 The issue is not the rationality of the board's recommendation but of the Secretary of State's decision: Sneddon, at [29]. Accordingly, the Secretary of State does not need to identify a deficiency in the board's reasoning in order lawfully to reject its recommendation: Sneddon, at [30].
 - 14.7 The issue is therefore whether the Secretary of State's decision was outside the range of reasonable decisions open to her, and whether there is a demonstrable flaw in the reasoning which led to her decision: Sneddon, at [34].
 - 14.8 While eschewing any bright-line rule, the Lady Chief Justice nevertheless observed that disagreement with the board's evaluative assessment of risk associated with a transfer to open conditions may readily fall within the range of reasonable decisions open to the Secretary of State: Sneddon, at [36].

GROUND 1: LACK OF REASONS

15. In my judgment, this ground is hopeless. The Secretary of State clearly concluded that Mr Catley had not made sufficient progress in addressing and reducing risk to a level consistent with protecting the public from harm to direct his transfer to open conditions. In doing so, she expressly balanced his progress in custody and the lack of recent physical violence against Mr Catley's very aggressive conduct towards his former Prison Offender Manager and her evidence to the Parole Board. She explained that she took into account Mr Catley's very recent conduct issues including the proven adjudication for the use of threatening, abusive or insulting words or behaviour. Further, she concluded that it was clear from the volume of his negative behaviour entries and the proven adjudication that he had little awareness of

his triggers and exhibited poor compliance with the prison regime and had poor problem-solving skills. She concluded that he needed to develop his insight into his personality traits and how he presents to others. There is, accordingly, no proper basis for arguing that she failed to give adequate reasons for her decision.

16. Stephen Tawiah, who appears for Mr Catley, argues that the Secretary of State then essentially repeated the same reasons for her second finding that she was not satisfied that there was a wholly persuasive case for transfer to open conditions. Such criticism is misplaced since in any case where the Secretary of State concludes that a prisoner has not made sufficient progress in addressing and reducing risk to a level consistent with protecting the public from harm, it would be astonishing if the same reasons did not also fail to satisfy her that there was a wholly persuasive case for transfer. Here, the Secretary of State relied on the same matters but also upon her ultimate conclusion that, given the seriousness of the original offence and Mr Catley's recent behaviour linked to his risk factors, she was not satisfied that the risks that he posed were manageable in less secure conditions. Again, there is no merit in the argument that she failed to give adequate reasons for her decision that there was not a wholly persuasive case for transfer.

GROUND 2: IRRATIONALITY

17. In the course of his submissions, Mr Tawiah rightly accepted that the Secretary of State was entitled to take into account events after the Parole Board hearing. Indeed, given that the Secretary of State's decision about transfer is primarily an assessment of the risk of harm to the public it would be extraordinary if she were not entitled to take into account all relevant evidence as to that risk.
18. Mr Tawiah accepts that the Secretary of State is not bound to seek advice from the Parole Board before making a transfer decision. That much is clear from the legislation and the clear guidance given by the Court of Appeal in Gilbert and Sneddon. Nevertheless, he argues that once the Secretary of State embarks on the process of seeking advice, it is irrational to fail to seek updated advice on fresh evidence which might undermine the Parole Board's conclusions. He concedes, however, that there is no authority for that proposition in either the legislation or the caselaw.
19. I have no hesitation in rejecting the submission that the Secretary of State was bound to seek further advice. Such submission seeks to fetter the discretion of the Secretary of State as to when she should seek advice. Faced with fresh evidence, the proper position is that the Secretary of State again has the two-tier discretion identified in Sneddon: first, a discretion as to whether she should seek further advice; and, secondly, a discretion as to whether she should accept any advice that she takes. It is simply not arguable that it was irrational for the Secretary of State to decide that she did not need to seek further advice on the recent conduct issues. Having so decided, the Secretary of State properly drew the fresh material to the attention of Mr Catley's lawyers and invited their representations before deciding his case.
20. Mr Tawiah argues that the Secretary of State accepted the board's advice but for the new material. He argues that the fresh evidence was simply no more than further instances of the negative conduct that the Parole Board had already noted and taken into account. Further,

he submits that verbal abuse is not unusual in the prison environment and cautions against taking too censorious an approach.

21. In his crisp submissions, Mr Evans argues that the Secretary of State plainly took an holistic view of the case and that it was open to her, as the sole decision maker, to find that the criteria for transfer were not met.
22. As already explained, the sole decision maker was the Secretary of State. There is no reason to assume in the absence of an express statement that she made some interim finding that she would have accepted the Parole Board's advice but for the new material. I accept Mr Evans' submissions that she took an holistic view of the case. She considered all of the material before the Parole Board but also the new material and reached her decision on the whole of that evidence.
23. As to whether the new material was, as Mr Tawiah argues, simply "more of the same", I make the following observations:
 - 23.1 First, it was again for the Secretary of State to consider all of the evidence, including the evidence as to Mr Catley's recent conduct in prison, rather than for her to justify taking a different view of his conduct from the Parole Board.
 - 23.2 Secondly, most of the conduct entries before the hearing related to rudeness and verbal abuse but not threatening behaviour. While some of the post-hearing conduct could be said to be more of the same, the proven incident of 20 June was more serious and involved a threat of violence to prison officers. While not the result of a proven adjudication, the Secretary of State was also entitled in assessing risk to take account of the 17 July incident which again appeared to involve the threat of violence.
 - 23.3 Thirdly, although in its reasoning the Parole Board focused on abusive behaviour, there was in fact evidence before it of recent threats of violence:
 - a) It recorded at paragraph 2.10 of its report that Mr Catley had threatened his current Prison Offender Manager and another officer in March 2024, and that he had threatened to "bang out" an officer unless he was moved from his unit.
 - b) There was an adjudication finding that Mr Catley had used threatening, abusive or insulting words or behaviour on 10 April 2024.
24. Standing back, the Secretary of State was plainly entitled to take the view that (a) Mr Catley had not made sufficient progress in addressing and reducing risk, and (b) there was not a wholly persuasive case for transfer to open conditions, given Mr Catley's persistent abusive and threatening conduct when he does not get his own way, his limited insight into his own personality, his apparent inability to de-escalate situations of conflict, and his inability to sustain enhanced prisoner status. Accordingly, there is no basis for finding that the Secretary of State's decision, against the advice of the Parole Board, to direct Mr Catley's transfer to open conditions was irrational.

OUTCOME

25. For these reasons, I dismiss this claim.