Neutral Citation Number: [2022] EWHC 2781 (Admin)

Case No: CO/162/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 November 2022

Before :

DEXTER DIAS KC
(sitting as a Deputy High Court Judge)

- -

Between :

THE KING (on the application of MEHMET BAYBASIN)	**Claimant**
- and -	
SECRETARY OF STATE FOR JUSTICE	**Defendant**

- -
- -

Matthew Stanbury of counsel for the **Claimant**
Robert Talalay of counsel for the **Defendant**

Hearing dates: Final hearing 11 October 2022

- -

JUDGMENT

Dexter Dias KC, sitting as a Deputy High Court Judge:

1. This is the judgment of the court.

2. The judgment follows a substantive hearing in a claim for judicial review heard on 11 October 2022. I deliver it in eight sections to assist parties follow the court's line of reasoning.

[In the following text, "B" preceding a number refers to the hearing bundle.]

§I. Introduction

3. The claimant is Mehmet Baybasin. He is a Category A prisoner at HMP Whitemoor, Cambridgeshire and serving a 30-year sentence of imprisonment for playing a leading role in an international conspiracy to import of cocaine from South America in vast quantities. The single issue in this claim is whether prison authorities should have convened an oral hearing when deciding whether to downgrade his security categorisation from Category A to B. The impugned decision is that of the Category A Team of the Long Term and High Security

Prisons Group ("CAT") taken on 8 December 2021, when his request for an oral hearing prior to the categorisation decision was refused.

4. In adjudicating upon this claim, the court applies the standard correctness test: "The court must determine for itself whether a fair procedure was followed…. Its function is not merely to review the reasonableness of the decision-maker's judgment of what fairness required": *R (Osborn) v Parole Board* [2014] AC 1115, per Lord Reed at [65]. Thus the question is not whether the decision is susceptible to challenge on irrationality or *Wednesbury* grounds ("beyond the range of responses open to a reasonable decision-maker" as expressed by Sir Thomas Bingham MR in *R v Ministry of Defence, ex p Smith* [1996] QB 517, 554). Instead, this court considers whether the impugned decision was objectively correct. Nothing more, nothing less.

5. The parties are as follows: the claimant Mehmet Baybasin was represented at the substantive hearing before me by Mr Stanbury of counsel. The defendant is the Secretary of State for Justice. He was represented by Mr Talalay of counsel. I am grateful to counsel for their focused and thoughtful oral and written submissions.

§II. Permission

6. Permission to review this decision was granted by Holman J on 4 April 2022. In doing so, the Judge stated:

> The approach of the CAT is relatively dismissive both of the experience/qualifications, and of the reasoning (described as "nebulous conjectures") of Dr Pratt, and it is arguable that fairness to the C (and,

> although less relevant, to Dr Pratt), required that he be given an opportunity to explain himself and for that to be tested by questioning.
>
> There cannot be repeat challenges to decisions of the CAT, but it is relevant that the C has now been in Cat. A custody for over 10 years and not yet had the opportunity of an oral hearing. Ten years is a long time, even if only 1/3rd of the sentence (see para. 36 of the SGD), and it is now over 2 years since permission was refused for the earlier [judicial review].

7. The consequence of this needs emphasising. The claimant does not have permission to challenge the substantive decision not to downgrade him from Category A to Category B. Therefore the exclusive focus is on procedural justice. That does not in any way diminish its importance either in public law or to the claimant. Procedural unfairness remains a vital ground of judicial review challenge and public safeguard. There are two advantages to fair procedure: first, it promotes accurate decision-making; second, it engenders public confidence in the decision-making process, especially on the part of the very people who are affected by public body decisions.

§III. Underlying offences

8. Mehmet Baybasin was born on 1 January 1963 and is now 59. His criminal case has been considered carefully by the Court of Appeal: *R v Baybasin* [2013] EWCA Crim 2357, per Lord Thomas CJ. The factual background can be reliably taken from the court's judgment. I spell it out in some detail as the facts remain relevant to key arguments advanced before me.

9. On 8 July 2011 in the Crown Court at Liverpool, before Judge David Aubrey QC and a jury, Mehmet Baybasin, along with others, was convicted of

conspiracy to import cocaine. He was also convicted of concealing criminal property. On 19 October 2011, he was sentenced to concurrent terms of 30 years' and 4½ years' imprisonment respectively.

10. The prosecution alleged that between September 2008 and April 2009 there was a sophisticated and large-scale conspiracy to import cocaine from Central America to the United Kingdom. It was alleged that Mehmet Baybasin also had travelled extensively and had meetings with Ricardo Ocampo, a Colombian, and Javier Oponte, a Venezuelan. It was the prosecution's case that Mr Baybasin provided the link to Ocampo who was, in turn, the link to drugs supplies in Central America. There was a stockpile of 40 tonnes of cocaine available to be shipped from abroad. This was highly organised international drug trafficking on a vast scale. The Court of Appeal endorsed the trial judge's conclusion that Mehmet Baybasin was near the top of the supply chain and distribution organisation, and was not only controlling and directing operations in London but also had international connections.

§IV. History of assessment

11. These are the second proceedings brought by this claimant concerning his prison categorisation. In the first set of proceedings, David Elvin QC, sitting as a Deputy High Court Judge, refused permission on 17 January 2020. This followed the assessment of the defendant that the claimant had made no progress, and demonstrated no insight and change, to evidence a significant reduction in risk of reoffending [B57]. In the interim, the claimant underwent "bespoke intervention work" alongside his prison offender manager, specifically focused on five goals designed following the recommendations of

the CAT and his most recent psychological profile in 2018 [B57-58]. This was regularly reviewed from December 2020 to July 2021. For the purposes of determining whether to recategorise the claimant in 2021, the Claimant's risk was assessed by a number of people and compiled in a dossier prior to the defendant's decision [B54-68].

§V. Impugned decision

12. On 29 November 2021, the claimant's representatives wrote to the CAT, seeking an oral hearing [B44-51]. In its decision of 8 December 2021, the CAT affirmed that the test was a significant reduction in risk if at large (and not, for example, a person's manageability at lower levels of security). The CAT considered that nothing new had been identified and that there was no basis for an oral hearing [B52-53]:

> The Category A Team remains satisfied that the report's conclusion provides no coherent or relevant grounds to show Mr Baybasin has achieved a significant reduction in his risk justifying his downgrading. It is therefore satisfied this report provides no significant alternative view (or strongly-worded or positive view) on his risk levels warranting further consideration through an oral hearing. It does not see that it must revise its view or hold an oral hearing solely on the basis of the view of a private psychologist, when this recommendation is insufficiently explained and is not in accordance with the correct criteria. It considers there are no other grounds to hold an oral hearing for this review. In accordance with the criteria in PSI 08/2013, nor any issues relevant to the review that can be resolved only through an oral hearing.

§VI. Law and regulatory framework

13. The governing legal and regulatory framework has two elements (1) common law principles derived from decided authority; (2) the applicable Prison Service Instruction ("PSI") – here PSI 08/2013.

14. The law can be reduced to a number of settled and uncontroversial propositions. This forensic exercise has been undertaken by Fordham J: *R (Steele) v Secretary of State for Justice* [2021] EWHC 1768 (Admin) [1], [3]-[5]; *R (Wilson) v Secretary of State for Justic*e [2022] EWHC 170 (Admin) at [2]. I gratefully draw upon his legal scholarship. It is unimprovable.

    (1) The test for Downgrading is whether the Director has "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": see Prison Service Instruction 08/2013 at §4.2. This Downgrading test reflects that need for "cogent evidence in the diminution of risk" which has been endorsed by the Courts as "plainly a proper requirement": see *R (Hassett) v Secretary of State for Justice* [2017] EWCA Civ 331 [2017] 1 WLR 475 at §70.

    (2) The PSI records (§2.1) that a Category A prisoner is "a prisoner whose escape would be highly dangerous for the public, or the police or the security of the State, and for whom the aim must be to make escape impossible". The focus (§2.2) is on "the prisoner's dangerousness if he

did escape, not how likely he is to escape". The PSI goes on to describe the review procedures applicable, inter alia, in the context of Category A review.

(3) Oral hearings are addressed in the PSI at §§4.6 and 4.7. The PSI has been revised and updated, including in the years subsequent to the October 2013 decision of the Supreme Court in *R (Osborn) v Parole Board* [2013] UKSC 61. At §4.6, the PSI discusses the extent to which there are parallels and differences between Category A review decisions and Parole Board decisions, as does *Hassett* at §51. At §4.6 the PSI says "this policy recognises that the *Osborn* principles are likely to be relevant in many cases in the [Category A review] context", referring to the PSI as "guidance [which] involves identifying factors of importance, and in particular factors that would tend towards deciding to have an oral hearing".

(4) At §4.6 the PSI identifies three "overarching points". (i) The first, in essence, is that each case must be considered on its own particular facts. (ii) The second, in essence, is that the decision as to whether to hold an oral hearing must be approached "in a balanced and appropriate way", which includes (quoting *Osborn*) the decision-makers being "alive to the potential, real advantage of a hearing both in aiding decision making and in recognition of the issues to the prisoner" and not making "the grant of an oral hearing dependent on the prospects of success of a downgrade in categorisation". (iii) The third, in

essence, is that there is scope for flexibility and tailoring: the decision is "not necessarily all or nothing". I set out §4.7 the PSI shortly.

(5) *Hassett* at §56 endorsed the guidance in *R (Mackay) v Secretary of State for Justice* [2011] EWCA Civ 522 and *R (Downs) v Secretary of State for Justice* [2011] EWCA Civ 1422. Within this line of authority are to be found the following points. (1) The common law principles identified in the parole context in *Osborn* do not apply with the same force to Category A review decisions (*Hassett* §§59-61). (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* §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* §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* §28). The decision-maker 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* §45). (5) Where a prisoner denies the offending of which they were convicted, which may in consequence mean ineligibility or unsuitability for participation in courses relevant to satisfy the decision-maker that the risk to the public has been significantly reduced, the decision-maker's "starting point can only be the correctness of the jury's verdict"

and the denial "may … in many cases severely limit … the practical opportunity of demonstrating that the risk has diminished" (*Mackay* §27). (6) Although it has been said that "oral hearings will be few and far between" (*Mackay* §28) and "comparatively rare" (*Hassett* §61), that is prediction rather than principle: there is "no requirement that exceptional circumstances should be demonstrated" (*Mackay* §28). (7) The fact that there is a "difference of professional opinion" between two experts (eg. two psychologists), the fact that the decision-maker has "two clear, opposed views to consider", and the fact that the decision-maker's "task was to decide which view it accepted" does not – in and of itself – make an oral hearing necessary (*Downs* §§44-45, 50; *Hassett* §69).

15. The PSI policy has previously been challenged and stands with full effect: *R (Hassett) v Secretary of State for the Home Department* [2017] EWCA Civ 331 at [66]. Moreover, while the PSI is directly relevant, it unnecessary to cite it in full. Para. 4.7, insofar as it is material, states:

> 4. 7 … the following are factors that would tend in favour of an oral hearing being appropriate:
>
> a. **Where important facts are in dispute.** Facts are likely to be important if they go directly to the issue of risk. Even if important, it will be necessary to consider whether the dispute would be more appropriately resolved at a hearing. For example, where a significant explanation or mitigation is advanced which depends upon the credibility of the prisoner, it may assist to have a hearing at which the prisoner (and/or others) can give his (or their) version of events.
>
> b. **Where there is a significant dispute on the expert materials.** These will need to be considered with care in order to ascertain whether there is a real and live dispute on particular points of real

> importance to the decision. If so, a hearing might well be of assistance to deal with them. Examples of situations in which this factor will be squarely in play are where the LAP [Local Area Panel], in combination with an independent psychologist, takes the view that downgrade is justified; or where a psychological assessment produced by the Ministry of Justice is disputed on tenable grounds. More broadly, where the Parole Board, particularly following an oral hearing of its own, has expressed strongly-worded and positive views about a prisoner's risk levels, it may be appropriate to explore at a hearing what impact that should or might have on categorisation.
>
> It is emphasised again that oral hearings are not all or nothing – it may be appropriate to have a short hearing targeted at the really significant points in issue.
>
> c. **Where the lengths of time involved in a case are significant** and/or the prisoner is post-tariff. It does not follow that just because a prisoner has been Category A for a significant time or is post tariff that an oral hearing would be appropriate. However, the longer the period as Category A, the more carefully the case will need to be looked at to see if the categorisation continues to remain justified. It may also be that much more difficult to make a judgement about the extent to which they have developed over the period since their conviction based on an examination of the papers alone.
>
> Where there is an impasse which has existed for some time, for whatever reason, it may be helpful to have a hearing in order to explore the case and seek to understand the reasons for, and the potential solutions to, the impasse.
>
> d. **Where the prisoner has never had an oral hearing before**; or has not had one for a prolonged period.
>
> [emphasis provided]

§VII. Discussion

16. I consider the PSI para. 4.7 factors in turn. For organisational clarity, I subdivide para. C into "C1" and "C2" (my numeration) separating length of time in custody from impasse. Further, I will deal with impasse along with para. B as it is touches on an area of expert dispute.

Factor (a): Important facts in dispute

17. There are none. Or at least none capable of resolution at an oral hearing. The most glaring factual dispute remains, as it did throughout the criminal proceedings and then throughout the claimant's imprisonment to this point, whether he was guilty of these offences. He remains steadfast in his denial of culpability. That is his right. But it has significant consequences for those who subsequently must assess the risk he poses to the public. Critically, for the purposes of this judicial review claim, it is impossible to litigate this matter at an oral hearing. The court cannot go behind the jury's verdict; that would be wrong in principle. The claimant's appeals against both conviction and sentence were rejected by the Court of Appeal. On close analysis, there are no disputed background facts that materially affect the question of risk. I deal with the question of the claimant's attitude/insight shortly.

Factor (b): Significant dispute on the expert materials

18. The preponderance of Mr Stanbury's careful submissions was directed at this factor. He submitted that there was a sharp and significant dispute on the expert materials and it was not feasible to expect the CAT to resolve it reliably without an oral hearing. In fact, it would be unfair to the claimant.

19. Strictly applying the PSI, in my judgment two discrete issues arise: first, whether the expert dispute is "tenable", to adopt the terminology of the PSI; second, even if tenable, whether an oral hearing is subsequently necessitated to resolve the dispute.

20. ***Tenability***. The defendant's resistance to the claimant's case on this point was grounded in very significant criticism of Dr Pratt's report. Understandably, Mr Stanbury launched a vigorous defence of Dr Pratt and extolled the virtues of the report. My starting-point in evaluating the intrinsic worth of Dr Pratt's contribution is that I accept he is independent and has acted with professional integrity. Further, I find little merit in the CAT criticism that "in recent years it has received a number of reports by the same author" that "were not closely following the correct … [downgrading] criteria [B53]. I have not seen those reports. I do not know the circumstances. My focus, I emphasise, is strictly on the inherent coherence and value of the report before me – nothing else. That said, I reject the claimant's submission that a "disquieting impression" is left that the CAT would have rejected Dr Pratt's report "no matter what he said". Indeed, the decision letter makes plain that the CAT acknowledged explicitly Dr Pratt's "right to have and express his views" [ibid.]. The decision-makers clearly considered his report carefully ("it took into account the private psychological report submitted as part of your representations" [B52]). What then happened was that they did not accept Dr Pratt's conclusions. They were entitled on the evidence to reject them.

21. The defendant proceeds to argue that due to its inherent defects and its "outlier" status, as Mr Talalay put it, there is in fact no "tenable" dispute for the purposes of the PSI. For arrayed against Dr Pratt's conclusion, are three mutually consistent conclusions from the prison psychologist, the offender manager and the LAP. The CAT clearly took into account, as it was entitled to do, the LAP decision (it "remains satisfied of its own decision and that of the LAP" B53]). This point has some relevance with respect to tenability. What each of the

contrary assessments makes clear is that there is a defined pathway to risk reduction for the claimant. Further, it is not long since the claimant's previous, rejected, challenge.

22. Dr Pratt's conclusion relies in significant measure on whether there is "offence paralleling behaviour". Mr Stanbury energetically submits that if the decision-makers do not believe that the claimant has "changed", all they need to do is "get him in a room and ask him the difficult questions", that they should "hear from him at an oral hearing and then decide". The difficulty with such an approach is that it could apply to almost every case where the prisoner seeking downgrading maintains that he has changed and no longer poses a risk to the public. Such evidence, while sometimes of value, will often be self-serving. It will commonly be difficult for the decision-makers to make such an assessment in the confines of an oral hearing. Of course, the whole purpose of structured psychological assessments is to provide rigour and verified methodology to such evaluations rather than looking at demeanour and surface impressions on the day – the difference between substance and surface. The further point on the facts of this case is that the claim that Mr Baybasin does show "insight into his past behaviours and lifestyle" and this should "be ventilated at an oral hearing" runs into the buffers of his continuing denial of guilt. It is difficult to conceive the value of hearing from him on the question of his attitude when he stubbornly refuses to accept his guilt. There is no indication that position would alter at an oral hearing. It is, on the authorities, not determinative. But as Mr Stanbury realistically conceded, a significant factor.

23. As to gravity, I accept Mr Stanbury's submission that Dr Pratt in fact did consider the seriousness of the offences. Indeed, he took that gravity as a starting-point [B75]. However, where Mr Talalay is more persuasive is in respect of the nature of the offence. Dr Pratt relies upon the lack of repeat or "paralleling" conduct since the claimant has been in custody. Mr Stanbury makes the point that there is no dispute but that the claimant gets on with people and has in various ways made himself useful, helps other prisoners out [B56], including helping with translation. This evidences, Mr Stanbury submits, a "volte face". However, one must return to the nature of the crimes proved against the claimant. This was a conspiracy to import vast amounts of dangerous drugs. The claimant's role was to act as a liaison between the London and Liverpool ends of the criminal operation and indeed between this country and South America and the drug cartel there. He had to cooperate closely with a variety of people from different backgrounds. Clearly, Dr Pratt has not appreciated or appreciated sufficiently the significance of this course of conduct and how his behaviour in prison does not suggest that it could not be repeated, which could potentially put the public at risk. This is puzzling since Dr Pratt refers in terms to "the context [in] which he offended", yet fails to draw out the obvious implications of it.

24. Mr Stanbury also invites the court to consider the question of the claimant's lack of contact with his brother. The claimant has claimed to Dr Pratt that this was the "gateway" into his offending. I am satisfied that for all practical purposes it would be impossible for decision-makers to reliably assess whether this were true during an oral hearing. An identical point must be made about another of the claimant's claimed "protective factors": the support of his family

("I am reasonably sure that his wife and adult children will act as a protective factor against any willingness to return to organised crime" [B73]. Presumably, that was present when he engaged in this very serious international cocaine conspiracy. Equally, Dr Pratt found no signs of "latent pro-criminal attitudes" (Dr Pratt §3; [B78]). He assumed that the claimant's offending was not a lifetime "endeavour". However, it is validly arguable that the Doctor failed to give sufficient weight to the nature and seriousness of the claimant's offending. All these matters materially reduce the tenability of the expert dispute.

25. Dr Pratt is criticised for making "nebulous conjectures" [B79]. However, he in part relied on research by Harking and others. This research is publicly available and readily identifiable should the CAT have wished to consider it. That said, its value is distinctly limited since it concerned recidivism in a cohort of sexual offenders. That is very different from the criminality of the claimant. It is difficult to conceive how an oral hearing would bolster this point.

Factor (c2): impasse

26. As mentioned, I deal with impasse here. It is a species of dispute between the experts. The claimant's argument runs that there is an impasse since Dr Pratt concludes that the relapse prevention work the claimant has been recommended is not so obviously risk-related that it will not "herald" a downgrade. However, Ms Sparkes has set out clearly the core work that the claimant will need to undertake to reduce risk:

> It has previously been recommended that Mr Baybasin should develop relapse prevention plans with his POM (Psychological Risk Assessment, August 2018). To date, there is no evidence that Mr Baybasin has

> completed this work. Mr Baybasin is therefore encouraged to create robust relapse prevention plans with view to developing pro-social strategies for managing trigger situations that he may encounter whilst in custody and in the community, in the future. Completing this work will potentially provide Mr Baybasin with further insight into how he emotionally and behaviourally responds to trigger situations. Additionally, relapse prevention work will also potentially enable him to develop a more in-depth understanding concerning the pathways to his previous offending, should he accept responsibility for his involvement with the index offence.

27. She concludes:

> 6.6 Recommendations for progression
>
> Mr Baybasin has made good progress so far with working towards his recommendations but at this time the work is incomplete, further work is needed to evidence insight and change in order to evidence a reduction in risk. I therefore cannot recommend Mr Baybasin for downgrade at this time.

28. I find the criticism that Dr Pratt has not engaged or not engaged adequately with this plan of reparative work to be well made. It is true that Dr Pratt accepted that Ms Sparkes' report was "comprehensive". Further he stated that managing stress was not relevant to the claimant's offending. That aside, he did not meaningfully engage with the substance of Ms Sparkes' careful report and in particular about risk reduction. This further erodes the tenability of the challenge to the defendant's expert evidence about risk/relapse prevention work.

29. An additional criticism of Dr Pratt is that he has not appreciated sufficiently the consequences to risk assessment of the claimant's continuing denial of guilt. I accept the submission of Mr Stanbury that persistent denial is not, as Lord Bingham held in *R* (*Oyston) v Parole Board* [2000] at [43], dispositive of

questions of risk reduction or future harm. Nevertheless, it remains an important matter in the overall risk assessment and it was not fully taken into account by Dr Pratt. This further adversely impacts the question of tenability.

30. I am not persuaded that the dispute about impasse can be better "fully and fairly ventilated" at an oral hearing, as the claimant submits. Once more, the dispute is unmistakably evident on the papers. Ultimately, the claimant has not sufficiently separated out the conceptual difference between impasse – that is a blockage in the way forward – and an evaluative disagreement about the efficacy of risk reduction steps. An oral hearing would add nothing of value to resolve that dispute.

31. ***Conclusion on tenability***. I find that there is not a tenable dispute about expert assessment. That is because I judge that Dr Pratt's report, well-meaning and from an independent professional, does suffer from several significant defects that render its core argument that the claimant has already achieved the requisite risk reduction profile simply not tenable.

32. ***Necessity***. In any event, even if there was a tenable dispute (there is not), I find no valid reason to believe that such a dispute would be better resolved at an oral hearing. The decision-makers have the rival assessments. They can adequately judge them on the papers. I fail to see how an oral hearing would, as Mr Stanbury put it, allow "a fair exploration of differences of opinion" between the expert assessors. Those differences are absolutely plain on the detailed and comprehensive documentation. Convening an oral hearing would not help them resolve the dispute. I have no doubt that Dr Pratt would repeat and adhere to his analysis and conclusions. They are clear in written form. The question is

whether they have sufficient merit to be accepted. An oral hearing adds nothing of value to the making of that decision in the very particular circumstances of this case. The CAT was entitled to conclude that there was no necessity for an oral hearing to be held "solely on the basis of the view of a private psychologist, when this recommendation is insufficiently explained and is not in accordance with the correct criteria" [B52].

Factor C1: length of time in custody

33. The CAT went on to consider whether there were "other grounds to hold an oral hearing" in accordance with the PSI [B53]. It is now over 11 years since the claimant's sentencing date. I accept Mr Stanbury's broad point that with the prolonged passing of time comes an enhanced need to scrutinise the decision carefully. Quite properly, he draws the court's attention to PSI 08/2013. There it is recognised that where a prisoner has been Category A for a long period it may be "that much more difficult" to make a risk evaluation without an oral hearing.

34. While the PSI recognises an increasing difficulty in accurate assessment of risk as time passes without an oral hearing, it does not suggest it is impossible. Here the claimant has served just over one third of the determinate sentence imposed with 19 years before sentence "expiry", as Dr Pratt terms it. The CAT was not prevented from assessing risk accurately because of the passage of 11 years given the nature of the specific offending in this case. I find no merit in this as an argument for an oral hearing.

Factor (d): no previous oral hearing

35. The claimant has not previously had an oral hearing. While it is the case that generally a previous lack of oral hearing increases the likelihood of the need to convene one, the court must interrogate the very particular facts of this case (PSI §4.6). Once done, I fail to see how there remains any credible argument that the lack of an oral hearing makes it harder to reach a clear and correct decision on risk in this case. That is for all the reasons previously provided around the claimant's offending, attitude, and the inadequacy of his supporting expert evidence. Thus I find no substance in this point. The lack of previous oral hearing raises the issue of the right to be heard and the sense of injustice an affected person may feel. However, I am completely satisfied that the claimant's right to be heard – an elemental part of procedural fairness - has been met by the opportunity to make representations before the decision: see, for example, *R (Talpada) v SSHD* [2018] EWCA Civ 841 at [57].

§VIII. Overall conclusion and disposal

36. It is undoubtedly true that oral hearings will be "rare" or "few and far between": *R (Steele) v Secretary of State for Justice* [2021] EWHC 1768 (Admin) per Fordham J at [4]. However, I must simply and clearly assess whether an oral hearing was demanded by the facts of this case, without reference to the generality, about which there is no evidence before the court in any event. I am not prepared to speculate about other cases.

37. Instead, I step back and carefully review the points advanced under the above PSI factor headings both individually and cumulatively (*R (Nduka) v Secretary of State for Justice* CO/617/2019 (25 October 2019) at §34), echoing PSI

[4.7] ("the more of such factors that are present in any case, the more likely it is that an oral hearing will be needed").

38. Looked at globally and holistically, I do not find that there is any viable or credible basis to conclude that there should have been an oral hearing here. Or put another way: that the CAT decision to refuse an oral hearing was wrong. It was plainly and demonstrably correct. After what was plainly careful consideration of the psychological report, the CAT rejected Dr Pratt's prime conclusions. It found that his report "provides no coherent or relevant grounds to show Mr Baybasin has achieved a significant reduction in his risk justifying downgrading" [B53]. It was unnecessary to have an oral hearing to hear from Dr Pratt about this. The dispute was clear on the face of the papers. It could be adequately and fairly assessed on the papers. The further procedural step of convening an oral hearing was unnecessary and disproportionate. There were no important factual disputes that could have been resolved or better decided or decided differently at an oral hearing. There was not a tenable dispute of expert materials/evidence. Dr Pratt's report was defective in significant respects. There was not an impasse, but rather a identified and structured path for progression in risk reduction for the claimant articulated with commendable clarity by Ms Sparkes. In any event, an oral hearing would not have clarified any alleged impasse. The facts that it was 11 years since sentencing and there had never had an oral hearing were here outweighed by the claimant being under halfway through his determinate sentence and remaining implacably in denial of guilt.

39. Put shortly, on the very specific, granular facts of this case, I judge that an oral hearing would have made absolutely no difference to the objective correctness of the downgrading decision. Further, given the written representations submitted on behalf of the claimant to the CAT, there was no viable or compelling perception of justice point. Thus neither the necessity of accurate decision-making nor the dictates of fairness demanded an oral hearing.

40. This claim for judicial review is dismissed. Costs follow the event (CPR Part 44; Judicial Review Guide 2022 at 25.1.2.). The claimant to pay the defendant's costs, subject to detailed assessment if not agreed.

41. That is my judgment.