

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/02/2014

Before:

THE HON. MR JUSTICE CRANSTON

Between:

R (on the application of C)	<u>Claimant</u>
- and -	
Secretary of State for Justice	<u>Defendant</u>

Roger Pezzani (instructed by **Guile Nicholas**) for the **Claimant**
Katherine Olley (instructed by **The Treasury Solicitor**) for the **Defendant**

Hearing dates: 24 January 2014

Judgment Approved

Mr Justice Cranston:

Introduction

1. The Secretary of State for Justice (“the Secretary of State”) has refused his consent under the Mental Health Act 1983 to the claimant having unescorted community leave. The basis is that the risk to the public would be significant. The claimant was convicted in 1998 of two murders and is now in a psychiatric hospital. The Secretary of State’s refusal is in the face of recommendations from professionals, and a decision by the First Tier Tribunal that he should be granted a conditional discharge from hospital. Is the refusal legally flawed?

Background

2. The claimant is in his mid-forties. He was convicted of a double murder in 1997. There was then a retrial following a successful appeal to the Court of Appeal, Criminal Division, in the light of fresh medical evidence. He was convicted at the second trial. Its outcome was also challenged on appeal. It was said that the judge had misdirected the jury in relation to two defences the claimant advanced, firstly, loss of control in provocation, and secondly, diminished responsibility and the relevant medical evidence. The Court of Appeal, Criminal Division rejected an appeal and the convictions stood.

3. It was common ground at his trials that, in the early hours of a day in mid-1996, the claimant unlawfully killed a woman and a man. At the time they were in a bungalow. Immediately prior to the killing, the claimant had smashed a window and front door panel, and dived through the window into the bungalow. The woman sustained over 50 knife wounds, some 20 stabs, several of which were to the heart. Her throat had been cut, with the left carotid artery severed. The man suffered nearly 40 wounds, some 20 stabs, several of which were to the heart. His throat too had been cut, with his left carotid artery and jugular vein being severed. The private parts of both the victims were mutilated. After the killings, the claimant drove a motorcar to the local hospital, where he handed the knife that he had used to hospital staff, and made admissions to them which led to the police being summoned.
4. As a child, the claimant had been rejected by his mother and as a young adult he had lived as a virtual recluse for almost 10 years. At the end of 1995 he was admitted to a psychiatric unit and it was there that he first met his female victim who was herself a patient. He became deeply emotionally involved with her and, from the beginning of 1996, they had a sexual relationship.
5. However, after several months she told him that she had started a sexual relationship with the claimant's male victim. The following day, the claimant was readmitted to hospital where he and his female victim discussed her relationship with the male victim. The claimant was able to see the bed at the bungalow where intercourse between them had taken place and where ultimately the killings occurred.
6. The prosecution case was that this killing was the consequence of planning and revenge. The defence case was that the claimant was guilty not of murder but of manslaughter, either because of provocation or because of diminished responsibility. The claimant gave evidence and maintained that it had been his intention to set fire to himself. He said that, at the bungalow, he had heard moans and groans and had flipped. He denied that this was a deliberate attack and he denied that the stabs were aimed at specific parts of the bodies.
7. After both trials the claimant was sentenced to two concurrent life sentences. It was necessary for a period ("the tariff") to be fixed before which the Parole Board could not consider his release on licence. In accordance with the system then in force, the trial judge after the 1997 trial recommended a tariff of 15 years. In light of comments by the trial judge, the Lord Chief Justice recommended a tariff of 10 to 11 years. The Secretary of State then fixed the tariff at 11 years. When at his retrial the claimant was again convicted, the trial judge recommended a tariff of 15 years and the Lord Chief Justice one of 14 to 15 years. The Secretary of State set the tariff at 15 years.
8. There was an unsuccessful judicial review of the 15 year tariff in 2003. Ultimately, as a result of changes in the law, a High Court Judge fixed the claimant's tariff. He decided on 11 years, the tariff fixed after the first trial, since the seriousness of the offence, and the culpability of the claimant, had not changed between the first and second trials. Notwithstanding the appalling nature of the double murder, he said, a significant reduction from a starting point of 14 years was demanded by the claimant's mental abnormality. Thus the claimant's tariff expired on 10 May 2007.
9. In August 2000, the claimant was transferred from prison to Broadmoor hospital pursuant to sections 47 and 49 of the Mental Health Act 1983. In August 2007, he

was transferred from Broadmoor to a medium security psychiatric hospital. In March 2012, he was transferred to that hospital's low secure unit. Since 2008, the claimant has had regular unescorted leave in the unfenced hospital grounds there. Since 2009 he has also had much escorted leave in the community.

10. In late July 2012, Dr H, the claimant's responsible clinician, applied to the Secretary of State for consent so that the claimant could have unescorted community leave. The Secretary of State sought further information from the doctor. In response Dr H opined that, were he returned to prison, there would be a deterioration of his mental disorder and an increased risk both to himself and others. Dr H explained, inter alia, that the claimant declined to take leave if he were searched on return around his groin area. The hospital seemed to accept this. Dr H explained that if he were to be granted unescorted community leave he would maintain that stance, although he agreed to the use of a metal detector.
11. The Secretary of State refused his consent to unescorted community leave on 13 December 2012. He accepted that unescorted leave is an important part of testing and rehabilitation but was not satisfied that the claimant's risk had reduced to a level where such leave was appropriate. The Secretary of State noted that the claimant had a different view of his risks compared with his clinical team and that the claimant considered that he needed no further treatment. The Secretary of State said that the claimant's "...lack of meaningful engagement with treatment to address his risk of future harm is such that [the Secretary of State could not be] confident that he would behave appropriately, or be equipped to deal with challenging situations on unescorted community leave". The Secretary of State stated:

"While I note that [the claimant] does have periods of unescorted ground leave, this proposal for increasing access to the community will bring [the claimant] into contact with a far greater range of situations and people, with increased potential for risk. It would, for example, afford him the opportunity to form relationships or attachments (or what he perceived to be relationships or attachments). Without further work to address his index offence and risk, I do not consider that risk acceptable."

Before considering any further request for unescorted community leave the Secretary of State wanted to see the claimant "...complete further psychological work, focusing on his index offence, his attitude to relationships and the risk of future violence, including the potential risk in any future relationships or attachments".

12. The claimant made an application to the First Tier Tribunal (Health, Education and Social Care Chamber) in February 2013. The Tribunal considered the claimant's case on 22 April 2013. The claimant's solicitor had instructed Dr K, an NHS consultant forensic psychiatrist, to prepare a report for the hearing. Dr K attended the hearing to give evidence, as did Dr H and other professional witnesses. Dr K recommended the claimant's conditional discharge and stated that he could be safely managed in the community. He was not sure that much further treatment would help. By contrast Dr H did not support the claimant's discharge, although if it happened it was possible he could be monitored. His primary need was psychology work on a one to one basis. Dr H stated that his risks were currently low but were potentially high if he had a

relationship. It was extremely important that he obtained unescorted community leave, and if it were not obtained his possible return to prison as an alternative solution would need to be discussed. A social worker supported the approach of unescorted leave before conditional discharge was given. The claimant himself gave evidence and expressed great remorse.

13. The First Tier Tribunal decided that if the claimant had been subject to a restriction order under section 41 of the Mental Health 1893 Act, he would have been entitled to be discharged from being detained in hospital, subject to a range of conditions which it set out. It accepted the “enormity” of the risks involved and that a suitable hostel would need to be available. Following the statutory language, the Tribunal found that it was not satisfied that the claimant was suffering from mental disorder, or from mental disorder of a nature or degree which made it appropriate for him to be liable to be detained in a hospital for medical treatment. Nor was it necessary for the health and safety of the claimant, or for the protection of other persons, that he should continue to receive such treatment. (The Tribunal expressly preferred Dr K’s view over that of Dr H). The Tribunal’s conditions included provisions for further treatment. The Tribunal recommended that if the claimant was not discharged, he should remain in hospital rather than be returned to prison.
14. The Secretary of State had a right to appeal the Tribunal’s decision, which was not exercised. However, when informed of the decision, the Secretary of State explained that his policy was that those sentenced to life imprisonment should have their release determined by the Parole Board and that he would refer the case there. That was done and a Parole Board hearing is imminent.
15. In the light of the Tribunal’s decision, Dr H applied again to the Secretary of State for unescorted leave. In making the application Dr H accepted that there had been no significant change in the claimant’s position since the previous application. In the application dated 27 June 2013, Dr H explained that the claimant had been made aware that, in order to progress, it was important that he undertake further psychology therapy; that his relationships in hospital and the community had to be monitored; and that there had to be plans in place for the conduct of any unescorted leave. Dr H wrote:

“[A Tribunal] granted a “conditional discharge” from his sections 47/49 against the recommendation of his Responsible Clinician [i.e. Dr H], who remained concerned about his need for further treatment in a secure hospital and the serious unpredictable risk he posed to others ... In the light of his change of status and his tribunal granting a “conditional discharge” his current Responsible Clinician has agreed to apply for unescorted leave.”
16. In relation to the claimant’s mental condition Dr H stated that the claimant had presented as stable, believed that he should be discharged but was aware of the team’s view that he needed to be further tested out and complete psychotherapy regarding interpersonal violence, relationships and the index offence. Regarding compliance, Dr H recorded that the claimant had agreed that he needed to address the index offence but believed that he had completed this work at Broadmoor and would not benefit from further therapy. Dr H set out the risks to others as follows:

“Future risk may be in the context of a relationship which is intimate or which he perceives to be intimate. If this relationship changes or is not what he perceives it to be then he may act on this.

Other risks may include risk to past victims’ families as he had previously reported feeling persecuted by them ... risk to women vulnerable or not most possibly within a relationship. This risk is not exclusively directed to women but may include men he perceives are rivals either in a sexual relationship or other perceived competitive/paranoid situations. The risk is enhanced if he experiences a relapse of his mental disorder, is non compliant with treatment, in a stressful situation or life event. He may pose a risk to random members of public if involved in confrontation or if he has become so distressed that he runs amock.”

17. The Secretary of State refused the request for unescorted leave on 11 July 2013. He noted Dr H’s view as the responsible clinician that there had been no significant change since the previous application, and further noted that there was no evidence that the work identified in his letter of 13 December 2012 had been completed:

“[T]he Secretary of State is necessarily concerned with the protection of the public and the patient and needs to be satisfied that the patient will not present a risk in the community. Unfortunately the evidence is such that whilst [the claimant] has not shown signs of deterioration, neither has he shown the level of progress expected.

[The 13 December] letter also highlights the potential vulnerability of [the claimant] as a result of wider exposure within the community from hostility and media interest as a result of poor or absent coping mechanisms. This presents another area in which the Secretary of State would require a degree of assurance.

In reaching this conclusion I have considered fully the most current information in the latest application, [the claimant’s] history and progress and your comments. For a future request to be successful there would need to be clear evidence that the highlighted concerns had been addressed and that unescorted leave would not present an unacceptable level of risk.”

18. The claimant’s offender manager, from the Probation Service, prepared a parole assessment report in anticipation of the hearing before the Parole Board. In it he wrote:

“...I would not, at present, be supporting [the claimant’s] release. It is only relatively recently that [the claimant] has been subject to a low secure regime at [the hospital], and he has not, as yet, had unescorted leave in the community, which

would allow agencies the opportunity to monitor any risks posed, to allow him to engage in and reflect on situations which may arise in the community, including the development of relationships in a less structured environment, and also allow him to engage in a greater range of interests and activities which may be developed on his release. In these circumstances, it is my view that [the claimant's] release at this time would represent an unacceptably high level of risk to the public.”

19. There was also an OASys report prepared by the offender manager dated 24 July 2013. It recorded that while the claimant admitted the killings, his level of acceptance of responsibility was limited. He did not seem to have changed his views that his actions were the result of extreme provocation and diminished responsibility. He acknowledged that relationships in the future were likely to be viewed as a risk factor for him. There were issues of emotional wellbeing linked to a risk of serious harm. There was no evidence of aggression or violent behaviour since the murders although there were records of destructive and aggressive behaviour towards his parents when he was a child. Stating that he believed he was provoked, and that his responsibility was diminished by his mental state, may be a way of diminishing his own responsibility for his offences. Ongoing psychological treatment might reduce or contain the level of risk. The report assessed the claimant as being of a low risk in the community to the general public but of a high risk in the community to known adults. The claimant needed ongoing psychological and offence-focused work, improving his ability to identify potential risk factors and to develop strategies to address them. The claimant was motivated and had the capacity to change.
20. The claimant's offender manager inquired of the [the hostel] Trust, which provides accommodation for those with multiple, including mental health, needs. It offered accommodation for the claimant, although in its lengthy assessment noted that although he was now ready to leave hospital, many of his anxieties and personality difficulties remained and he would need monitoring and work. I note in passing the comment that the [the hostel] Trust thought it unusual that the Tribunal had suggested the claimant have conditional discharge without having already had unescorted community leave.
21. The claimant's letter before action was sent on 7 October 2013. It enclosed Dr K's report of 2 October 2013 where he reiterated his earlier analysis and conclusions. Dr K referred to the Ministry of Justice policy on section 17 of the Mental Health Act 1983, that leave has an important role in rehabilitation. In a section “opinion and recommendations”, Dr K critiqued the Secretary of State's decision in relation to unescorted community leave and stated that “[a]ny other patient would by now have been granted unescorted community leave”. He expressed the view that the claimant had in effect already had unescorted community leave since 2007 in the grounds. “[T]here are no significant risks to the public associated with granting [the claimant] unescorted community leave”. Dr K doubted that the Secretary of State had enough experience of this type of case.
22. The Secretary of State agreed to retake the decision. On 18 October 2013 he concluded that unescorted leave was not appropriate due to the potential risk posed to others. In the course of the letter the Secretary of State stated that while he took the Tribunal's decision into account he is obliged to reach his own conclusion on the

matter. The Secretary of State also noted that it is for the independent Parole Board to form its own view of the evidence and decide whether to direct release. It had not yet had the opportunity to do so. With the exception of the Tribunal's decision, the evidence before him when he considered the request for community leave in July 2013 was the same as that before him when he considered the earlier request in August 2012.

23. Following the issue of these proceedings the Secretary of State reviewed the decision. In a letter of 6 December 2013 he said that he understood that unescorted leave is an important part of testing and rehabilitation. However, his role is to ensure that restricted patients do not take any community leave which may put the public at risk. It is not the role of the Secretary of State to analyse the decision of the Tribunal, which addresses the separate question of discharge. The unescorted ground leave which the claimant had taken, which did not, in law, require the consent of the Secretary of State, is of a different nature to leave in the wider community. Leave within the hospital grounds is by definition amenable to greater control by hospital staff, and would not expose the claimant to the range of people or potentially stressful situations that would be encountered in the wider community. The claimant did not accept that he would be vulnerable. Given the high levels of previous media interest and victim issues in the case, unescorted leave would bring with it an increased risk of media intrusion, and potential hostility from members of the public. While those risks may be greatest in the area in which the index offence took place, the claimant had been subject to national media interest. That in itself would not be a reason to refuse permission for escorted leave. However, it was far from clear whether the claimant has the coping mechanisms in place to deal with this possibility without putting himself or others at risk. Overall, the weight of evidence is that he continued to present a risk of violence to others. This was the view of the current responsible clinician, who was best acquainted with the case, as well as previous responsible clinicians. The Secretary of State would not give permission for unescorted community leave in these circumstances.

Statutory framework

24. Under section 47 of the Mental Health Act 1983 the Secretary of State may transfer a person serving a sentence of imprisonment to a hospital. The transfer direction has the same effect as a hospital order made in that person's case would have: section 47(3). By section 49 of the Act, where a direction has been made, the Secretary of State may direct that the person shall be subject to the special restrictions set out in section 41. The direction has the same effect as a restriction order made under section 41 and is known as a restriction direction. In its relevant parts, section 41 provides as follows:

“41.— Power of higher courts to restrict discharge from hospital.

(1) Where a hospital order is made in respect of an offender by the Crown Court, and it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public from serious harm so to do, the court may, subject to the provisions of this section,

further order that the offender shall be subject to the special restrictions set out in this section; and an order under this section shall be known as “a restriction order”.

...

(3) The special restrictions applicable to a patient in respect of whom a restriction order is in force are as follows—

...

(c) the following powers shall be exercisable only with the consent of the Secretary of State, namely—

(i) power to grant leave of absence to the patient under section 17 ...

This power in section 17 to grant leave to be absent from the hospital is subject to such conditions as a person’s responsible clinician considers necessary in the interests of the patient or for the protection of other persons: s. 17(1).”

25. Part V of the Act provides for the powers of the tribunal. Under section 74 of the Act, if a person subject to a restriction direction applies to the tribunal, it must notify the Secretary of State whether, in its opinion, the patient would, if subject to a restriction order, be entitled to be absolutely or conditionally discharged under section 73 (which contains the power to discharge). Effectively, the Tribunal must consider what it would have done under section 73 if the patient were detained under sections 37 and 41 of the 1983 Act. Thus the tribunal must consider whether it is appropriate for the person to be detained for treatment for the protection of others: section 72(b)(ii). If the tribunal notifies the Secretary of State that the patient would be entitled to be conditionally discharged, it may recommend that in the event of his not being discharged he should continue to be detained in hospital: section 74 (1)(b). Where the tribunal has made a recommendation under section 74 (1)(b) in the case of a patient who is subject to a restriction direction, the fact that the restriction direction remains in force does not prevent the making of any application or reference to the Parole Board, or the exercise by him of any power to require the Secretary of State to refer his case to the Board: section 74 (5A).

Was the Secretary of State’s refusal of consent flawed?

26. For the claimant, Mr Pezzani challenged the refusal by the Secretary of State for Justice to consent to unescorted community leave from hospital under section 41(3)(c)(i) of the Mental Health Act 1983. Mr Pezzani’s expertise in the area of mental health law was obvious in his measured and attractively put submissions. He contended that the refusal was flawed both for traditional public law reasons but also because of breaches of Articles 5(1) and 5(4) of the European Convention on Human Rights (“ECHR” or “the Convention”). The claimant fell under both Article 5(1)(a) and (e): X v United Kingdom (1981) 4 EHRR 188 [38]-[39]. Citing, inter alia, James v United Kingdom [2013] 56 EHRR12, [195], Mr Pezzani submitted that the refusal had to meet not only the public law test of rationality, but also had to be

proportionate. In other words the Secretary of State had to impose the minimum restrictions on the claimant's liberty necessary for the protection of the public. Ms Olley was content to accept proportionality as the standard for the purposes of the challenge since, in her submission, the Secretary of State's refusal was without doubt both rational and proportionate. The Secretary of State had clearly complied with his public law duties and those imposed on him by Article 5 of the Convention.

27. In advancing his submissions, Mr Pezzani highlighted the finding of the First Tier Tribunal, that the claimant does not need to be deprived of his liberty in hospital at all, and that he could be released subject to conditions. The Tribunal's decision included a finding that it was not satisfied that it is necessary for the health or safety of the claimant or for the protection of the public that he should be detained for treatment in hospital. Less restrictive measures could be taken to achieve these aims and to manage potential risks. Certainly, Mr Pezzani accepted, conditions would need to be put in place. But the logic of the Tribunal's decision was that there could be no objection to the claimant having unescorted leave.
28. As well as the Tribunal's findings, Mr Pezzani underlined the opinion of Dr K, that unescorted community leave is important, and would not involve undue risk. As well Dr H, as the responsible clinician, had given evidence to the Tribunal that it is extremely important for the claimant to have unescorted community leave. Since in Mr Pezzani's submission unescorted leave was medical treatment under section 145 of the Mental Health Act 1983, considerable weight had to be given to the opinion of these two doctors. Further, the claimant's offender manager from the Probation Service said that the claimant's lack of unescorted community leave is a reason for not releasing him from detention. Mr Pezzani submitted that an important part of the claimant's case for liberty depended on his having an opportunity to demonstrate to the Parole Board that his level of dangerousness is not such that continued detention is justified. Coupled with that was the Tribunal's conclusion that there is little if anything further that can be achieved in hospital, and Dr H's view that the claimant should not be returned to prison. The most important next step was thus unescorted community leave.
29. By reference to the totality of the evidence available, Mr Pezzani therefore submitted that the Secretary of State's decision on consent under section 41(3)(c) was not a lawful, rational or proportionate response to the objective of the protection of the claimant and the public from harm. The Secretary of State had said that his role was different from that of the Tribunal. The reality, submitted Mr Pezzani, is that both he and the Tribunal are required to consider the risks posed to the claimant and the public by his being at liberty. As a matter of law the Tribunal is explicitly required by statute to determine this issue under section 72(1)(b)(ii) of the Mental Health Act 1983 and did so. The Secretary of State cannot escape from the fact that the considerations which are relevant to the exercise of his discretion in section 41(3)(c) are consonant with the considerations which are relevant to the Tribunal's exercise of its duty in section 72(1)(b)(ii) (and hence also in sections 73 and 74).
30. As to rationality, Mr Pezzani contended that the Secretary of State had not recognised the importance and relevance of the Tribunal's decision. He simply failed to mention Dr K's second report, a very relevant consideration. Something approaching determinative weight was by contrast placed on Dr H's opinion as the responsible

clinician, yet Dr H told the Tribunal that unescorted leave was very important for the claimant and had twice applied to the Secretary of State's consent for it to be granted.

31. Finally, Mr Pezzani submitted that there is extensive, recent and high-quality evidence that unescorted community leave is the proportionate and necessary next step for the claimant to take with a view to his regaining his liberty. Article 5(4) was relevant because the main reason the claimant's offender manager gave for recommending against release on licence was that he had not been tested with unescorted leave in the community. By refusing his consent to this, the Secretary of State was effectively denying the claimant essential material he could place before the Parole Board justifying a decision to release: Benjamin and Wilson v United Kingdom [2003] 36 EHRR1, [8], [12]. If the Parole Board could not practically order the claimant's release as a result of the Secretary of State's refusal the claimant's Article 5(4) right of access to it was illusory rather than practical and effective.
32. This is not an easy case but in my view the Secretary of State's refusal of consent to the claimant having unescorted community leave in the letters of 11 July, 18 October and 6 December 2013 was lawful, rational in public law terms and proportionate. Ms Olley submitted that, as a matter of principle, a decision of the Tribunal under sections 73 and 74 of the Mental Health Act 1983 cannot dictate a subsequent decision of the Secretary of State in relation to the separate matter of an application made directly to him by Dr H for consent under section 41(3)(c)(i). That is perhaps an overstatement of how the case was put but in my view there was no error of law in respect of the Secretary of State stating that his role was different from that of the Tribunal. As a matter of law it certainly was. So long as the Secretary of State took the Tribunal's decision into account – which he did, in part by referring the case to the Parole Board – it was up to him to place such weight on it as he determined. The Secretary of State was entitled to take into account that Dr H, for one, did not accept the Tribunal's conclusion on conditional discharge.
33. Moreover, the Tribunal's conclusions did not stand in isolation. One important factor was that Dr H and the hospital team were of the view that, in order to progress, the claimant needed further psychotherapy work on interpersonal violence, relationships and the index offence. As early as his December 2012 letter, the Secretary of State accepted that unescorted leave was an important part of rehabilitation, but noted that the claimant's lack of meaningful engagement with treatment to address his risk of future harm was such that he could not be confident that the claimant would behave appropriately, or be equipped to deal with challenging situations on unescorted community leave. Before considering any further request for unescorted community leave the Secretary of State wanted to see the claimant complete further work. The situation in this regard had not changed at the date of the second application and the Secretary of State's refusal.
34. Certainly, Dr K took a different view on the need for future treatment, and the Tribunal adopted it, but there was nothing wrong in law in the Secretary of State preferring the view of Dr H, who was the claimant's responsible clinician. I note that in the OASys report the claimant was still maintaining that provocation and diminished responsibility played a part in the murders – matters rejected at trial by the jury. Dr H certainly supported unescorted leave but that was only part of her approach to the claimant's care and treatment.

35. Another factor was the closely related one of risk. The Tribunal had acknowledged its enormity but concluded that it could be managed. Dr H's view was that the claimant posed a serious, unpredictable risk. The assessment of the claimant's offender manager was that to release the claimant at the present time would represent an unacceptably high level of risk to the public. That conclusion was based not only on the fact that the claimant had not had unescorted leave in the community but also because it was only relatively recently that he had been on a low secure regime. That puts paid to the claimant's contention of a breach of Article 5(4) of the Convention because, by refusing consent, the Secretary of State was closing the door to the claimant being able to demonstrate to the Parole Board that his risk was reduced. As I read the offender manager's report the absence of unescorted leave was only one aspect of his reasoning that the offender could not be recommended at this point for release on licence.
36. Nor do I accept the complaint that Dr K's second report was a relevant consideration which the Secretary of State ignored, one aspect being Dr K's opinion that the claimant posed no significant risks. In essence Dr K's second report tracked his first report, albeit that it contained additional discussion of the Tribunal's decision and, it has to be said, some unfortunate overstatement and intemperate comment about the Secretary of State. There was nothing directed to any further assessment he had made of the claimant or any change of the claimant's circumstances. That the Secretary of State did not bring it into account did not result in a flawed decision.

Conclusion

37. In my view the Secretary of State committed no error of law in refusing his consent to the claimant's application for unescorted leave. His decision took into account all relevant considerations. It cannot be said that no reasonable Secretary of State would refuse consent or take the view he did of the risks the claimant posed. Nor was it irrational for the Secretary of State to consider that the claimant had to complete further work before an application for consent would be looked on in a more favourable light. The claimant had improved over the years and, as his offender manager puts it, is capable of further change. I very much hope that occurs.
38. There is an issue about publication of this judgment. Those considering his case at an earlier stage ordered anonymity. As I pointed out at the hearing previous proceedings involving this claimant are publicly available and I cannot see the justification for anonymity: the public have a right to know what I have decided about his claim for judicial review: R (on the application of M) v Parole Board [2013] EWHC 1360 (Admin); [2013] EMLR 23, [47]-[49]. However, Dr H has written requesting that the hospital's identity and that of the staff be concealed, to protect both the claimant and other patients from potential intrusion. That is a reasonable request and there be an order of anonymity to that extent.