

[2021] PBRA 7

Application for Reconsideration by Shahjahan

The Application

1. This is an application by Shahjahan (the Applicant) for reconsideration of a decision of an Oral Hearing Panel of the Parole Board (OHP) dated the 19 December 2020 not to direct his release. The OHP, which had convened via remote video link on 27 November 2020, had adjourned for a report to be disclosed and for written final submissions to be made by the parties.
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.
3. I have considered the application on the papers. These include the application for reconsideration itself, detailed written submissions from the parties, the Decision Letter and the dossier which ran to over 700 pages.

The Sentence

4. The Applicant is now 36 years of age. In February 2012, when he was aged 28, having entered pleas of guilty, he received an Indeterminate Sentence for Public Protection for offences contrary to the Prevention of Terrorism Act with a tariff of 8 years 10 months, less time spent in custody. That sentence was subsequently varied by the Court of Appeal to an Extended Sentence of 22 years 8 months, of which 17 years 8 months was the custodial term and the extended licence period was one of 5 years. The Applicant's sentence expiry date is recorded as being 25 August 2033.

The Background

5. To understand the background against which the OHP had to consider the Applicant's risk it is essential to go into greater detail than is usually the case in these decisions. The offences to which the Applicant pleaded guilty involved allegations of engaging in conduct in preparation for acts of terrorism. Following a major police investigation, the Applicant and eight other defendants were arrested in December 2010. The Judge in sentencing said that this case presented a novel factual matrix, namely the commission of terrorist offences by fundamentalist Islamists who turned to violent terrorism in direct response to material, both propagandist and instructive, issued on the internet by Al Qaeda in the Arabian Peninsula.



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6. Four of the nine defendants, including the Applicant, were based in the north of England. Two were from the south east and three were from Wales. They met in parks and elsewhere where plans to commit acts of violence were discussed. The group based in the north were engaged in activities to raise funds to establish a military training camp in South Asia. The OHP accepted that at the time of his arrest the Applicant had no intention to travel for terrorist training. In pleading guilty the Applicant accepted that he had travelled to and attended meetings of the groups, had engaged in fund raising for terrorist training and had assisted others. It was accepted on behalf of other defendants that they had planned for the preparation and detonation of an explosive device in London.
7. The Judge in passing sentence found that (i) the Applicant and others in his group took a longer term view than the others and in that sense were the more serious of the three groups and posed a greater long term risk, mainly due to their plans to train others (ii) that the Applicant was not only the leader of the group based in the north but also was recognised by his own and the other defendants as the leader of the larger group to whom others deferred (iii) that the Applicant operated (with the two other defendants in his own group) at a higher level of efficacy than the rest, that his group were more serious in their commitment to violent extremism than the others, were working toward a long term agenda and had the ability to act on a strategic level.
8. The OHP specifically noted that one of the Applicant's co-defendants in November 2019, one month after the Applicant's release into the community, had committed a grave terrorist offence in the course of which he was shot dead by police officers; that another of the Applicant's co-defendants had been recalled to prison for being in possession of prohibited items and a third (a member of the Applicant's own group) had received a life sentence for further terrorist offences. The OHP specifically accepted that it was in no position to make any finding regarding the Applicant's role in his own offending but did note that one of the professional witnesses had observed that the Applicant had in the past sought to minimize his offending.

The Recall

9. The Applicant was released at his automatic release date in October 2019 and recalled in April 2020. GPS tagging information revealed that he had visited a university campus (where a family member was a student) close to where he was living on at least 20 occasions over a period of some 5 months without informing the probation officer responsible for his supervision in the community. Further, it emerged that he had not completed a sufficient record of his movements as he was required to do when leaving his accommodation and some of the entries he had made were actively misleading. In addition, he had met his wife outside his accommodation in breach of COVID 19 rules.
10. In his own evidence to the OHP, the Applicant admitted meeting his wife in breach of the COVID rules and admitted with one exception that he had not reported his visits to the university. He gave as an explanation that he went to the university campus to spend time in private with his wife, making use of the family member's room. He accepted that once he realised he could visit the university without



challenge he had gone there with increasing frequency. He said that his wife had offered to meet with a member of the probation service to support his account but that request had been met with no response from the probation service.

11. In addition to these matters, following his recall to prison, a 2019 diary was found in the Applicant's room at his accommodation. It contained a list of about 30 names and/or addresses and some telephone numbers. Of these approximately one third were prisoners almost all of whom were located in high security establishments, and some of whom had been convicted of very serious terrorist offences.
12. A senior counter terrorist police officer gave evidence to the OHP based upon two detailed reports both of which were served on the parties and can be found in the dossier. At the hearing the OHP were told that the police were no longer investigating nor pursuing any criminal charge relating to the Applicant's visits to the university campus and further, that there was no evidence that the Applicant had made or had attempted to make any contact with any of the prisoners identified in his diary.
13. The Decision Letter records the OHP's view that the replies to questions on these matters given by the senior police officer were necessarily limited for what are described as "operational reasons". The OHP recorded that the officer's evidence was that the Applicant had provided an incomplete and selective account of his conduct leading to his recall and in the opinion of the officer appeared to have hidden his movements. As for the telephone numbers in the diary, the officer's evidence was that the police were very concerned about the Applicant's apparent intention to associate and/or remain in contact with the individuals concerned.
14. The OHP summarised its conclusions upon these matters as follows. As far as the repeated visits to the university campus were concerned it found that on the Applicant's part they demonstrated poor consequential thinking, boundary - pushing and a lack of transparency with those responsible for the Applicant's supervision. As for the names and details in the diary, the OHP expressed its concern that the Applicant should have chosen to keep the contact details of such persons which would inevitably raise concerns about the possibility of the Applicant engaging in further terrorist activity at some unspecified time in the future.

Risk Factors

15. In light of this background and the reasons for the Applicant's recall, it is in my judgment important to record the Applicant's relevant risk factors (matters that would make it more likely that he would re-offend) as found by the OHP. These can be summarised as follows:
 - (i) A propensity to act without thinking of the consequences
 - (ii) Suggestibility and susceptibility to outside influences
 - (iii) A willingness to break rules and act impulsively
 - (iv) A lack of transparency (as evidenced by his recall behaviour)
 - (v) Boundary pushing and a sense of entitlement
 - (vi) A lack of openness and honesty and poor compliance with supervision
 - (vii) Extremist influences and associates



16. The OHP accepted that the Applicant posed a high risk of serious harm to the public when in the community and that his current level of engagement with extremist causes was appropriately assessed as medium and not currently imminent.

The Request for Reconsideration

17. The challenge to the Decision is based upon four grounds (the order of which I have altered for convenience of presentation) which allege procedural unfairness and irrationality:

(i) The OHP failed to ensure that there were sufficiently fair procedural safeguards in place to protect the Applicant and as a result relied upon assertions made to it that were unsupported by the evidence.

(ii) The OHP relied upon information which had not been explored or examined in the course of the Parole Board's review or during the oral hearing.

(iii) A comment made by the OHP in its concluding remarks was procedurally unfair and irrational.

(iv) The OHP's findings did not accord with the evidence that was presented to it and in consequence mis-characterised evidence, inappropriately disregarded the recommendations of an expert and failed to adequately or sufficiently explain how it reached important conclusions.

The Relevant Law

Parole Board Rules 2019

18. Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is made by a paper panel (Rule 19(1)(a) or (b)) or by an oral hearing panel after an oral hearing (Rule 25(1)) or by an oral hearing panel which makes the decision on the papers (Rule 21(7)).

Irrationality

19. In **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)**, the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said at para. 116,

"the issue is whether the release decision was so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

20. This test was set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374**. The Divisional Court in **DSD** went on to indicate that in deciding whether a decision of the Parole Board was irrational, due deference had to be given



to the expertise of the Parole Board in making decisions relating to parole. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing 'irrationality'. The fact that Rule 28 contains the same adjective as is used in judicial review shows that the same test is to be applied.

21. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28. See for example, **Preston [2019] PBRA 1** and others.

Procedural unfairness

22. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result. These issues (which focus on how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.
23. In summary an applicant seeking to complain of procedural unfairness under Rule 28 must satisfy me that either:
- (a) express procedures laid down by law were not followed in the making of the relevant decision;
 - (b) they were not given a fair hearing;
 - (c) they were not properly informed of the case against them;
 - (d) they were prevented from putting their case properly; and/or
 - (e) the panel was not impartial.
24. The overriding objective is to ensure that the Applicant's case was dealt with justly.

The reply on behalf of the Secretary of State

25. It has been indicated on behalf of the Secretary of State that he does not wish to make any submissions regarding this application.

Discussion

26. Before dealing with the Applicant's Grounds in detail it is appropriate to consider certain aspects of the parole and reconsideration process which are raised by this application.

Allegations

27. The first is the manner in which the Board is required to deal with conduct alleged to have occurred which has not been adjudicated upon either by a criminal or civil court or a prison adjudication. Allegations which are relevant to a panel of the Board are those which could affect the panel's risk analysis and may be relevant to the review process in one or more ways. They will include allegations of risky behaviour, in other words, allegations of behaviour associated with risk factors, for example mixing with negative peers whilst on licence or allegations relating to a prisoner's ability and /or willingness to comply with licence conditions.



28. Panels may need to make findings of fact regarding an allegation when it is relevant to the parole review by considering a reasonably sufficient body of evidence on which it can make a finding of fact. If a panel cannot make a finding of fact it is encouraged nevertheless to consider the "level of concern" raised by the allegation. To make an assessment of concern a panel would have to decide:

- (a) what, if any, relevance the allegation has to the parole review; and
- (b) the weight to be attached to the concerns arising from the allegation;

and then form a judgment as to what, if any, relevance and weight is to be fairly attached to these concerns and the impact this might have on the panel's overall judgment. A variety of factors can be considered by a panel when it is considering an allegation. These will include whether the source of the information can be tested and assessed; what material there is that supports the allegation; the nature of the allegation itself, the context in which it occurred, and of course the prisoner's own evidence in relation to it.

29. A relevant and significant allegation is likely to be a matter of concern to a panel and as a result impact on its judgement regarding parole. It is not the law that a panel of the Board can only proceed on an allegation where it has been proved in a criminal or civil court. It is not the law that a panel of the Board must put itself in a position where it was equipped and prepared to itself try an allegation. A panel of the Board is an expert body, with the responsibility to act fairly. It can be expected to and will reject allegations unsupported by any material or evidence and will consider matters in context and in light of facts established in the case (**see R v Morris [2020] EWHC 711**)

Recall

30. Secondly, a panel has a duty to consider whether a prisoner's recall was appropriate. This is done before a panel goes on to assess risk (see **R (Calder) v Secretary of State for Justice [2015] EWCA Civ 1050**). This is not an assessment of the lawfulness of a recall but only its appropriateness. The test for release is unaffected by the decision required by the case of **Calder** and so remains a separate issue. Regardless of how the panel decides the question of the appropriateness of the recall, it must go on to carry out a separate analysis of re-release in which the identification and management of risk remains the focal point for the panel's consideration. In circumstances where a panel finds that the recall was inappropriate and /or there was no breach of the prisoner's licence, it still needs to assess current risk taking into account the reasons for recall and all other risk factors.

31. In approaching the appropriateness or otherwise of a recall a panel will need to consider (taking into account information known at the time of recall and any other information subsequently obtained) a variety of factors including: whether there was an intentional breach of licence conditions; whether the breach was serious; the circumstances of the breach; relevance of the recall events to risk and other information that is available to the panel.

Non – Disclosure



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32. Thirdly, applications can be made by the Secretary of State for a direction from a panel of the Board that a particular piece of sensitive information to be considered by a panel should be withheld from the prisoner (and in exceptional cases from their representative). These applications are by no means unusual, particularly (but by no means exclusively) in cases which resulted in convictions and sentences under anti - terrorist legislation.
33. The general rule regarding disclosure of evidence in parole proceedings is that all material that a panel of the Board is to consider must be disclosed to the prisoner. This is because of the fundamental requirement that in order to have a fair and impartial hearing every prisoner has the right to know the material that is going to be considered by the panel. In some circumstances, which are regarded as exceptional, material which a panel will be invited to consider may be lawfully withheld from the prisoner. These circumstances and the Rules governing them are well known and set out in the Parole Board Rules.
34. For the non-disclosure of evidence to be lawful two requirements must be met in every case. Non-disclosure of material to a prisoner is only permissible where:
- (i) Disclosure of it would adversely affect national security, the prevention of disorder or crime, or the health and welfare of another person; and
 - (ii) Withholding information is a necessary and proportionate measure in the circumstances of the case.
35. Withholding information from a prisoner is only likely to be both necessary and proportionate if it does not prejudice the prisoner's right to a fair hearing.
36. The relevant Rules and published Guidance of the Parole Board which govern the process of non-disclosure applications set out in detail the steps that are required to be taken in every case at every stage as well as provisions for decisions to be appealed. Any decision made is subject to a right of appeal by the Secretary of State, an authorised third party or the prisoner's representative or the prisoner him/herself if unrepresented.
37. The Parole Board is well aware of and sensitive to the concern that non-disclosure applications can engender particularly in the minds of prisoners and their representatives. It is recognised that the power to withhold material from a person who is directly affected by the outcome of the proceedings is exceptional, hence the general rule that all material must be disclosed and when it is not there are clearly understood procedures in place to guarantee fairness and impartiality.

Giving Reasons

38. Fourthly, the importance of giving adequate reasons in the decisions of the Parole Board has been made clear in the cases of **Wells v The Parole Board [2019] EWHC 2710 (Admin)** and **Stokes v The Parole Board and the Secretary of State [2020] EWHC 1885 (Admin)** which contain helpful guidance on the correct approach to deciding whether a decision made by a panel in the face of evidence from professional witnesses can be regarded as irrational.



39. It is suggested in **Wells** that rather than ask whether "*was the decision being considered irrational?*" the better approach is to test a panel's ultimate conclusions against the evidence placed before it, and ask whether the conclusions reached can be safely justified on the basis of that evidence, while giving due deference to the panel's experience and expertise.
40. Panels of the Board are independent and are not obliged to adopt the opinions and recommendations of professional witnesses. It is the responsibility of panels to make their own risk assessment and to evaluate the likely effectiveness of any proposed risk management plan. If a panel is going to depart from the recommendations of experienced professionals, it is required to explain its reasons for so doing and ensure as best it can that its stated reasons are sufficient to justify its conclusions.

Finally

41. The reconsideration mechanism is not a process where I am required to indicate whether or not I would have reached the same or a different conclusion from that reached by the OHP in this case.
42. What lies at the heart of my determination of this application is whether I am satisfied that the conclusions reached by the OHP are first justified by the evidence they considered and secondly are adequately explained.

The Applicant's Grounds

Ground 1

43. The submission that is made is that the OHP accepted without question or enquiry the evidence of a senior Counter Terrorism Police officer ('the officer') regarding both the Applicant's visits to the university campus and the concerns arising from the contents of the diary. It is suggested that no application was made under the Parole Board Rules for non-disclosure of information or reports and furthermore that no evidence at all was provided to substantiate what are described as highly damaging allegations which the OHP knew were disputed. It is submitted for all those reasons that the Applicant was deprived of basic the standards of procedural fairness.
44. The relevant matters (which I summarise) are as follows:
- (i) The hearing on 27 November 2020 was adjourned so that a relevant police report could be placed before the parties and the OHP. That report was the subject of comment in written submissions submitted on behalf of the Applicant following the adjournment at the conclusion of the oral hearing. A second report dated 20 November 2020 prepared by the officer himself was also added to the dossier. That statement set out the factual matters relied upon by the officer to reach the conclusions he drew regarding the Applicant's alleged conduct and risk. To that extent at least the Applicant had the opportunity to test the case against him subject to any limitations placed upon the witness regarding the evidence he was able to give - a factor that



the OHP were bound to have appreciated and taken into account in its analysis of the evidence and the competing arguments.

- ii) There was a non-disclosure application made in this case. The Chair of the OHP agreed to consider the application notwithstanding it was made outside the normal time frame set by the Parole Board Rules. The Chair granted the application for non-disclosure and a gist was prepared in the form of a Security Report dated 20 October 2020 which is to be found at page 527 of the dossier. The decision by the chair to direct non-disclosure was not the subject of an appeal.
- iii) The evidence given to the OHP by the officer is in part referred to in the Decision Letter. It is recognised by the OHP that some of the witness' answers were necessarily limited for operational reasons. As I understand it, no application was made on behalf of the Applicant for there to be consideration given to the taking of any other procedural steps that might have been available under the Parole Board rules and guidance relating to non-disclosure. For example, an application on behalf of the Applicant for there to be submissions made "in camera" or an application for there to be a "closed hearing".
- iv) As for the complaint that steps should have been taken for the OHP to hear evidence from family members of the Applicant. I accept that a prisoner cannot be expected to encourage an investigation of his own conduct. That said, I note it appears that no application was made on the Applicant's behalf to call any witnesses pursuant to the Parole Board Rules.
- v) Having considered the material that has been placed before me and from such enquiries I have been able to make, I am entirely satisfied that there was no procedural unfairness in this case. I do not find that the OHP was bound to seek carry out any further investigation before considering the Applicant's responses to the allegations made that formed the basis of his recall to prison. I reject Ground 1.

Ground 2

- 45. It is submitted that the OHP relied upon matters which had not been explored at any stage of the review of the Applicant's case including the oral hearing. Specifically, objection is taken to references to certain relatively recent events involving three of the Applicant's co-defendants and it is submitted that none of these matters set out on page 2 of the Decision Letter were referred to in the dossier.
- 46. In fact, there was a reference to the most notable and grave of these events in the dossier. It appears in the expert psychologist's report at paragraph 5.2.13 at page 475 of the dossier. The OHP explained clearly why it regarded the information as relevant.
- 47. The background to and the circumstances of the Applicant's offending have been summarised in paragraphs 5 to 8 above. The Applicant was found by the Judge who passed sentence to have been a leading figure in the events. The nine defendants worked in teams and met as a group more than once. The purpose of referring to



post offending events involving three members of the group were explained by the OHP as being relevant to future risk. The Applicant and his representative were on notice that, as I have mentioned, the reporting psychologist had referred in terms to the most notorious of the recent incidents concerning a former co-defendant. There was in addition the evidence before the OHP that the Applicant had in his possession a diary which contained the contact details of offenders convicted of very serious crime including terrorist offences. In my judgment, given the background, the Applicant's conduct that led to recall and his identified risk factors it is entirely understandable that the OHP regarded these matters as relevant.

48. In my judgment the OHP were fully justified in referring to these events for the reason given, and in these circumstances, Ground 2 must fail.

Ground 3

49. It is submitted in this ground that a comment by the OHP made at the end of the Decision Letter is both procedurally unfair and irrational as it represents a "fundamental misunderstanding" of the review processes of the Parole Board with regard to extended sentence prisoners.

50. The offending comment is to be found at the very end of the Decision Letter, it appears immediately after the OHP has announced to the prisoner its decision on his application. It is, in effect, by way of a postscript to the decision. The relevant paragraph heading reads;

"9. Indication of possible next steps to assist future panels."

It is, as I understand it, intended to do precisely what it says. Namely to give, in effect, an indication to a future panel of potential avenues for progress in a prisoner's sentence. No more and no less.

51. It is noteworthy that in the pro-forma used by Prison Offender Managers for the purpose of providing the Parole Board with their reports, paragraph 14 is headed "**Not Supporting Release**". Paragraph **14E** reads in part as follows:

"It is the community offender manager's responsibility to consider and assess all recalled prisoners on an ongoing basis.....Please confirm when you will (my underlining) review this case"

52. The form provides two boxes marked "**3-6 months**" and "**6-9 months**". The report writer is expected to mark one or the other. This has been done in this case. The writer (that is the Community Offender Manager) has indicated a preference for the "3-6 month" period and has explained why.

53. The OHP has in the opening line of paragraph 9 of the Decision Letter indicated in terms that "*it sees merit in the suggestion that the case should be reviewed again in 3-6 months*"

54. In my judgment this has been mis-understood as amounting to a direction for the next review. It has led to a submission that if that was the intention then the OHP



should not have concluded the review with a final decision adverse to the Applicant, but rather deferred it to reconvene at the end of that period.

55. In my judgment this does not amount to procedural unfairness nor irrationality on the part of the OHP. This is no more than the recording (with approval) of a professional opinion by a professional witness relating to the future possible progression of a prisoner.

56. I find that this ground is misconceived and must fail.

Ground 4

57. The first challenge in this ground rests upon the proposition that the OHP misrepresented and/or mis-characterised important elements of the evidence, disregarded recommendations made by the expert psychologist and failed to adequately or sufficiently explain its conclusions in relation to the proposed risk management plan.

58. I have carefully considered the matters set out on the Applicant's behalf in paragraphs 52 to 56 (inclusive) of the submissions.

59. The OHP accepted that the Applicant clearly derived a good deal of support from close family. Taking other evidence into account it reached the conclusion that it was not possible for the panel to determine the extent to which the family were protective factors and balancing the evidence as best they could found that it should proceed on the basis that it may not be. I find no substance in the complaint that is made.

60. The evidence of the professional witness responsible for the Applicant's management in the community was summarised in order to explain why she had not recommended release. It is submitted that, in effect, the OHP should have preferred the way the point was expressed in an earlier written report. I do not agree. This was entirely a matter for the OHP to decide and I find this ground too must fail.

61. It is submitted that the OHP drew an inference that the Applicant was able to "disguise" his compliance with licence conditions when in the community. As I read it, the OHP simply recorded the fact that a witness had accepted that it might be a possibility and nothing more. I find against the Applicant on this ground.

62. The challenges set out in paragraphs 56 and 57 of the Applicant's submissions are potentially of greater substance. It is submitted that the OHP failed to adequately or sufficiently to explain why the OHP differed from the recommendation of the expert psychologist and why it concluded that the proposed risk management plan was not sufficiently robust.

63. I begin by reminding myself of the duty placed upon a panel which intends to depart from the recommendations of experienced professionals. It is required to explain its reasons for so doing and at the same time ensure that its stated reasons are sufficient to justify its conclusions. To examine this submission further it is necessary to summarise the OHP's relevant observations on the evidence given by



the psychologist whose recommendation for release they did not follow and the proposed risk management plan that they found not to be sufficiently robust.

The Psychologist's Recommendation

64. The psychological assessment carried out on the Applicant drew attention to behaviours indicative of pushing boundaries. The OHP found that pushing boundaries and a sense of entitlement were important risk factors as were a lack of openness and honesty and poor compliance with supervision, together with extremist influences and associates.
65. The psychologist accepted that some aspects of the Applicant's risk were not yet fully known or explored.
66. While she did not believe the Applicant required further formal offending behaviour work, her evidence was that the priority was for the Applicant to show that he could put into practice the skills he had learnt.
67. Based upon her assessment of the Applicant's level of engagement with extremist causes as being medium it was her opinion that he met the test for release.
68. While being in favour of testing the Applicant in the community, the psychologist accepted that testing would involve risk and that stringent licence conditions would be required.
69. Having already demonstrated an ability to do well in closed conditions, the psychologist's opinion, on balance, was that testing of the Applicant would be more meaningful in the community with strict licencing conditions. For those reasons her opinion was that the Applicant met the test for release.
70. In reaching its conclusion not to follow the recommendation made by the psychologist, the OHP found that the Applicant's explanation for his visits to the university were unconvincing; that there was in his conduct on licence clear evidence of rule breaking, boundary-pushing, a lack of openness with those supervising him and, overall, a lack of compliance. Further the panel pointed to the Applicant's offending background and described these risks as extremely serious. For all those reasons it found that the risk he currently presented was too great to be managed safely in the community.

The risk management plan.

71. The OHP was reminded in submissions on behalf of the Secretary of State that the previous risk management plan, put in place when the Applicant was released in October 2019, placed considerable emphasis on strict monitoring and control. Further, it was submitted that the panel would need to be persuaded that the Applicant's account was sufficiently thorough and reliable to be satisfied that it was no longer necessary for the protection of the public that he should remain in prison. It is clear that the OHP certainly did not find the Applicant's account to them to be sufficiently thorough and reliable. Indeed, in effect they found it to be quite the opposite. I repeat for emphasis that the OHP found that the Applicant's explanation for his visits to the university campus were unconvincing and did not represent the



whole truth and that there was in his conduct that led to recall clear evidence of rule breaking, boundary–pushing, a lack of openness with those supervising him and, overall, a lack of compliance. The OHP’s conclusion, following its examination of the proposed risk management plan itself, was that it depended ultimately on the Applicant’s compliance (which they had clearly found to be significantly wanting) and was not in any event in their judgment sufficiently robust to manage the Applicant’s risk in the community.

72. On the Applicant’s behalf it is submitted that what is absent from the OHP’s reasoning is an adequate and sufficient explanation for why it did not follow the recommendation of the psychologist and why it did not accept that the risk management plan was sufficient. I do not agree. Following a careful reading of the Decision Letter as a whole I find that the OHP have identified how it reached the conclusions that it did and further that they have adequately explained why they were not able to follow the recommendations of the psychologist. As for their rejection of the proposed risk management plan, it is clear that in their view its effectiveness was largely dependent upon the Applicant’s compliance, about which, having considered all of the evidence, they had very serious doubts and concerns.

73. I am satisfied that the Decision Letter provides an adequate explanation for the OHP’s reasons and I am also satisfied that those reasons were sufficient to justify the conclusions that were reached.

Decision

74. For all the reasons set out above I am not persuaded that the decision in this case was procedurally unfair and/or irrational and accordingly the application for reconsideration is refused.

Michael Topolski QC
05 February 2021