

[2023] PBRA 36

## Application for Reconsideration by Morris

### Application

1. This is an application by Morris ('the Applicant') for reconsideration of the decision of a panel of the Parole Board ('the panel') which on 24 December 2022, after an oral hearing on 14 December 2022, issued a decision not to direct his release on licence.
2. I am one of the members of the Parole Board ('the Board') who are authorised to make decisions on reconsideration applications, and this case has been allocated to me.

### Background and history of the case

3. The Applicant is aged 51. At the age of 20 he was diagnosed as suffering from a serious mental illness. Since then, he has spent substantial periods in psychiatric hospitals. He has a history of acts and threats of violence, some of which have resulted in criminal convictions while others have not. His mental illness appears to have played a part in most of his offences.
4. In February 2001, at the age of 29, following a conviction for burglary, the Applicant was made the subject of an order for his indefinite detention in a psychiatric hospital. That order remains in force though on two occasions he has been conditionally discharged from hospital: that meant that he was released into the community subject to a number of conditions, and he could be recalled to hospital if he broke any of them.
5. On 31 December 2006, at the age of 36, during one of his periods living in the community he and another man committed offences of attempted robbery and wounding with intent to cause serious harm robbery (the 'index offences'). He pleaded guilty to those offences, for which on 26 November 2007 he received an indefinite sentence of imprisonment for public protection ('IPP'). His minimum term under that sentence (his 'tariff') was set at 4 years less the time which he had served in custody on remand. His tariff expired on 31 January 2011.
6. The circumstances of the index offences were summarised by the panel, on the basis of the judge's sentencing remarks which in turn must have been based on the evidence presented by the prosecution, as follows:

*"Late on New Year's Eve 2006, the victim had fallen asleep on a bench at [a railway] station. When most other people had gone, he was attacked jointly by [the Applicant] and his co-defendant. Without provocation, [the co-defendant] repeatedly stabbed the victim 8 times, mainly to his face and head, with one knife wound penetrating his mouth and another narrowly missing his eye. [The*



3rd Floor, 10 South Colonnade, London E14 4PU



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)



[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)



@Parole\_Board



0203 880 0885



INVESTORS  
IN PEOPLE | Bronze

*Applicant] meanwhile was restraining the victim and trying to steal the man's mobile phone. The trial Judge remarked that it was 'a truly horrifying experience for him and it was very fortunate that his injuries were not far worse...' After the serious injuries were inflicted, [the Applicant] lingered, to see if there was anything worth stealing from the victim. The Judge remarked that [the Applicant and the co-defendant] were acting together in this disgraceful unprovoked knife attack upon an innocent man."*

7. It is of some significance that at the time of the index offences the Applicant was receiving regular 'depot' injections of medication designed to treat his mental illness, and that he had received one of those injections not long before he was involved in these very serious offences. There must therefore have been other factors, in addition to his mental illness, which contributed to those offences.
8. Since his conviction and sentence for the index offences the Applicant has been in the unusual position of being subject both to an indefinite hospital order and to an indefinite sentence of imprisonment. When released into the community he was therefore liable to be recalled either to hospital (if he breached any of the conditions of his conditional discharge from hospital) or to prison (if he breached any of the conditions of a release on licence from prison).
9. After his IPP sentence was imposed in November 2007 he remained in prison for six years before being released on licence by direction of the Board in December 2013. During that period in prison he completed an accredited programme designed to reduce a prisoner's risk of further violent offending.
10. In March 2016 he committed a serious assault on a neighbour who he believed, quite wrongly, to have poisoned him. He took a pair of bolt croppers from his flat and went across the road and used them to assault the victim. He then handed himself (and the bolt croppers) into the police. No charges were brought because of his mental condition but he was recalled to a psychiatric hospital for breaching the terms of his conditional discharge.
11. He remained in the hospital until 9 May 2017 when he was conditionally discharged to supported accommodation. During that period in hospital he is reported to have been disruptive and to have made threats to kill and stab other people. He also kicked a doctor while an injection was being administered, and at one point he took a doctor hostage.
12. He only lasted a week in the supported accommodation. He is reported to have attempted to attack his social worker and threatened to kill his probation officer, with whom he was angry. The residential staff had to intervene, but then had to lock themselves in a room for their own safety. The police had to be called, and he was recalled to prison for breach of his licence conditions.
13. In March 2019 the Applicant's case was considered by a panel of the Board ('the 2019 panel') which had to decide whether to direct his re-release on licence. The professional witnesses responsible for supervising him in prison and prospectively in the community recommended release to a probation hostel. A psychologist who had assessed the Applicant's risk was of the view that that



risk could be managed while he was living at the probation hostel but had concerns about the manageability of the risk when he moved on to other accommodation.

14. The 2019 panel decided that the Applicant did not meet the test for re-release on licence. It concluded that he had limited insight into his mental illness and offending behaviour. It was not satisfied that he possessed the ability to recognise the importance of complying with medication and the implications of not doing so, or that he had the necessary strategies or coping skills to manage his emotions or to manage a deterioration in his mental health or a lapse into the use of illegal drugs. In the 2019 panel's opinion those were all key areas of risk which remained active.
15. The 2019 panel pointed out in its decision that the Applicant had not completed any offence-focussed work in respect of managing his emotions, aggression or the use of violence with weapons. It also had grave concerns about the proposed risk management plan and was not confident that it was capable of managing the Applicant's risk of serious reoffending and risk of causing serious harm.
16. In June 2019 the Applicant committed a serious assault on a prison officer with whom he normally got on well, fracturing his jaw. That offence, again, did not result in any criminal charge.
17. In September 2019 the Applicant's mental illness was considered to be of sufficient severity to require his transfer from prison to a psychiatric hospital, where he has remained since then. On arrival at the hospital, he was observed to be '*obviously psychotic*'. For his first few months there his behaviour was unsettled; there was then a period when he was occasionally irritable; but by April 2020 his behaviour had improved to the point where he was moved to a less secure ward and in September 2020, he was moved again to his present rehabilitation ward.
18. By March 2021 the Applicant's mental state had been stabilised to the extent that he was granted unescorted leaves from the hospital into the local community. There have been no concerns about the Applicant's behaviour on these leaves, and no indications of illicit drug use or alcohol consumption. He uses his leaves constructively, much of his time being spent at a local arts centre. He is a talented artist and has won many prizes.
19. During his leaves the Applicant has regularly visited Ms F at her office. In contrast to previous problems with his relationships with probation officers, he and Ms F seem to have established a good working relationship (though of course it remains to be seen whether difficulties may arise when Ms F is supervising him in the community).
20. In April 2021, the Applicant's Responsible Clinician (Dr A, an experienced Consultant Psychiatrist) agreed to a request by the Applicant to replace his depot medication with oral medication, as the depot had some unpleasant side-effects. He has been fully compliant with the oral medication.



21. As noted above, one of the reasons why the 2019 panel had not directed the Applicant's release on licence was that he had not completed any offence-focused work in respect of managing his emotions, aggression or the use of violence with weapons. It was hoped that he would undertake such work in the form of 1:1 psychology session with an experienced Clinical Psychologist (Dr B).
22. In April 2022 the Applicant attended a two and a half hour session with Dr B which seems to have been quite successful. However, he declined to attend any further sessions, though he did have a further meeting with Dr B in September 2022. Dr B described that meeting as being *'to think about discharge into the community, to reflect on his journey during hospital and what he had learnt, and to think about what challenges may come up for him in the community and how to navigate them'*.
23. Although not attending any more psychology sessions specifically designed to fill the gap which the 2019 panel had identified, the Applicant attended fifteen 1:1 art therapy sessions.
24. On 20 January 2022 a Mental Health Tribunal decided that if the Applicant had not been subject to the indefinite hospital order and the IPP sentence he would have been suitable for a conditional discharge into the community once suitable accommodation was available. The Tribunal decision triggered a referral of the Applicant's case to the Secretary of State, who on 2 February 2022 referred the case to the Board to decide whether the Applicant should be released on licence.
25. In due course suitable accommodation was found for the Applicant at a small residential unit with 24-hour support from professional staff. By the time of the hearing the panel had had 11 overnight leaves at that unit, which had clearly gone very well.
26. A detailed risk management plan was formulated to cater for the Applicant's needs if he was to be released into the community. His mental health would be managed by the local Community Mental Health Team ('CMHT'). Staff at the residential unit work closely with the CMHT and probation. Residents' medication is kept securely and taken under supervision by staff. Any behavioural concerns would be communicated promptly to probation and the CMHT. The Applicant would be expected to stay at the unit for at least 6 months and preferably 12 months before moving on to semi-supported accommodation and in due course to independent accommodation. This was clearly the best plan that could be devised and implemented.

### **The hearing, the panel's decision and the application for reconsideration**

27. The hearing took place on 14 December 2022 and was conducted by video link. The Applicant was at the hospital and his solicitor was present there with him.



3rd Floor, 10 South Colonnade, London E14 4PU



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)



[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)



@Parole\_Board



0203 880 0885

It is frequently the case that a hearing for a prisoner with mental health difficulties would best be conducted face to face with all participants present at the same location, but that is not an inflexible rule and in this case the Applicant and his solicitor had made a considered decision not to seek a direction to that effect.

28. At the hearing oral evidence was given by the following witnesses:

- (a) Dr A (the Responsible Clinician);
- (b) Dr B (the Ward Psychologist);
- (c) The Applicant;
- (d) Ms C, the manager at the proposed supported accommodation;
- (e) Mr D, the mental health social worker who would be working with the Applicant in the community
- (f) Ms E, the community psychiatric nurse who would be co-ordinating the Applicant's care in the community;
- (g) Ms F, the probation officer who would be supervising the Applicant in the community.

29. The Applicant was seeking a direction for his release on licence to the supported accommodation. Dr A and Dr B supported such a direction. Ms F, as a result of a recent direction by the Secretary of State, was prohibited from making any recommendation. The other witnesses provided helpful information about the proposed risk management plan.

30. As indicated above the panel decided not to direct the Applicant's release on licence. The Applicant's solicitor now applies for reconsideration of that decision.

## **The Relevant Law**

### ***The test for release on licence***

31. The test for release on licence is whether the Applicant's continued confinement in prison is necessary for the protection of the public.

### ***The rules relating to reconsideration of decisions***

32. Under Rule 28(1) of the Parole Board Rules 2019 (as amended in 2022) a decision is eligible for reconsideration if (but only if) it is a decision that the prisoner is or is not suitable for release on licence.

33. Reconsideration will only be directed if one of more of the following three grounds is established:

- (a) It contains an error of law or
- (b) It is irrational or
- (c) It is procedurally unfair.

34. A decision that a prisoner is or is not suitable for release on licence is eligible for reconsideration whether it is made by:

- (a) A paper panel (Rule 19(1)(a) or (b)) or



3rd Floor, 10 South Colonnade, London E14 4PU



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)

 [info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)



@Parole\_Board

 0203 880 0885

- (b) An oral hearing panel after an oral hearing, as in this case, (Rule 25(1)) or
- (c) An oral hearing panel which makes the decision on the papers (Rule 21(7)).

35. The panel's decision in this case not to direct release on licence is thus eligible for reconsideration.

### ***The test for irrationality***

36. In **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)** (the "**Worboys case**"), the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It stated at paragraph 116 of its decision:

*"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."*

37. This was the test which had been set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374** and applies to all applications for judicial review.

38. The Administrative 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 Board in making decisions relating to parole.

39. The Parole Board, when deciding whether or not to direct a reconsideration, adopts the same high standard as the Divisional Court for establishing 'irrationality'. The fact that Rule 28 uses the same adjective as is used in judicial review cases in the courts shows that the same test is to be applied. The application of this test to reconsideration applications has been confirmed in previous decisions under Rule 28: see, for example, **Preston [2019] PBRA 1**.

### ***The test for procedural unfairness***

40. 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 from the issue of irrationality which focuses on the actual decision.

41. The kind of things which might amount to procedural unfairness include:

- (a) A failure to follow established procedures;
- (b) A failure to conduct the hearing fairly;
- (c) A failure to allow one party to put its case properly;
- (d) A failure properly to inform the prisoner of the case against him or her; and/or
- (e) Lack of impartiality.

42. The overriding objective in any consideration of a prisoner's case is to ensure that the case is dealt with fairly.

### **The request for reconsideration in this case**



3rd Floor, 10 South Colonnade, London E14 4PU



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)



[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)



@Parole\_Board



0203 880 0885



INVESTORS  
IN PEOPLE | Bronze

43. The solicitor submits that the panel's decision was irrational and/or procedurally unfair. She advances four grounds in support of that submission. Her first three grounds are confined to the suggestion of irrationality. Her fourth ground includes a suggestion that the hearing was conducted in a manner which was procedurally unfair.

44. Her four grounds are as follows:

(1) The panel failed to take into account relevant information or comply with the "duty of inquiry" in respect of the ability for the Applicant to be placed on a depot at the point of moving on from his supported accommodation and was therefore based on a mistake of fact.

(2) The finding that the Applicant's lack of understanding of contributory factors in his violence (and him accepting very little responsibility for it) failed to take into account relevant information or give sufficient weight to relevant evidence.

(3) Insufficient reasons were given for departing from the views of all witnesses that he could be safely managed in the community at this time as required in public law.

(4) The decision gave too much weight to the Applicant's evidence despite acknowledging in the decision the obvious difficulties he was having during the hearing (I think this means that the panel should not have attached as much weight as it did to those parts of the Applicant's evidence which were unhelpful to his case.) One suggestion which the solicitor makes is that the panel should have adjourned the hearing to be resumed face to face.

45. It will be convenient, in the 'Discussion' section below, to discuss first the reasons given by the panel for its decision not to direct release on licence and then the solicitor's grounds for submitting that those reasons were flawed or insufficient to justify departing from the recommendations of Dr A and Dr B.

### **The Secretary of State's position**

46. By e-mail dated 17 February 2023 the Public Protection Casework Section ('PPCS') on behalf of the Secretary of State stated that he offers no representations in response to the application.

### **Documents considered**

47. I have considered the following documents for the purpose of this application:

- (i) The dossier provided by the Secretary of State for the Applicant's case, which now runs to page 379 and includes a copy of the panel's decision letter;
- (ii) The representations submitted by the Applicant's solicitor in support of this application for reconsideration;
- (iii) Two e-mails sent to the solicitor by Dr A and Dr B which were attached to the solicitor's representations; and



- (iv) The e-mail from PPCS stating that the Secretary of State offers no representations in response to the application.

## The recording of the hearing

48. In the light of the solicitor's representations I decided that it was necessary to listen to parts at least of the audio recording of the hearing. The whole hearing lasted for 5 hours and 22 minutes. I decided that it was necessary to listen only to the first 4 hours 4 minutes, which included the oral evidence of Dr A, Dr B and the Applicant: the evidence of Dr A and Dr B was relied upon by the solicitor in her representations, and it was clearly necessary to form my own view of the Applicant's presentation and evidence in order to reach a decision on ground 4. In addition to those parts of the oral evidence, I listened to the solicitor's closing submissions.

## Discussion

### *The panel's reasons for its decision*

49. The starting point in the panel's reasons was its consideration of the Applicant's evidence about the index offences. The panel stated in its decision:

*'At the recent hearing [the Applicant] expressed what the panel considered to be genuine remorse for the harm caused to the victim by the attempted robbery and wounding. However, he significantly minimised the seriousness of the offences and his responsibility for them, and placed almost entire blame for their commission on the influence of a third person 'who dragged us into it', alcohol and some other substance, and 'being in the wrong place at the wrong time'. [the Applicant] told the panel that he and his co-defendant had been out drinking and came across an old friend, who he believes 'spiked' his drink. He repeatedly referred to this man influencing them, and encouraging him and [the co-defendant] to commit a robbery, as it was 'easy takings'.*

*'In stark contrast to the Judge's description of the injuries caused to the victim, the Applicant referred to them as being 'superficial'. His evidence caused the panel to have serious concerns about his level of insight into contributory factors in his violence that night and other violence by him, his lack of responsibility, and how he will manage potential triggers for violence in the future.'*

50. Having listened to the recording of the Applicant's evidence I am able to say that these concerns were entirely justified. The dossier contains a copy of the Judge's sentencing remarks. The Judge did not describe the victim's injuries as superficial. He described them as follows:

*'The attack led to as many as 8 stab wounds, one to the scalp, 5 to the face (including one extremely close to his left eye that could have led to a penetrating eye injury) and apparently one to his cheek actually penetrated into his mouth. There was also one to his left calf. It is extremely fortunate that he has made a full recovery, apart from scars. It must have been a truly horrifying experience for him and it is very fortunate that his injuries were not far worse*

...

51. The Applicant's apparent belief that the injuries could be described as 'superficial' was indicative of a significant lack of insight into the seriousness of his offences.

52. In a later passage in its decision the panel referred, as follows, to the Applicant's lack of insight into many of his risk factors. It stated:

*'In his evidence to the recent panel, [the Applicant] appropriately identified risk factors for violence as: not taking his medication; consuming alcohol or taking illegal drugs thus reducing the efficacy of his medication and disinhibiting him; not coping with stress well, associating with others involved in anti-social behaviour; and not seeking support from professionals involved with him.*

*However, analysis of his violence and the fact that [the Applicant] committed his index offences when mentally well, indicates the presence of other risk factors underpinning his violence. The panel could not find evidence that these factors have been adequately explored and addressed during his sentence.*

*From the evidence in the dossier and witnesses, other risk factors for violence include: attitudes that support the use of violence to settle grievances, gain financially or achieve a particular aim; becoming psychotic; feeling frustrated or paranoid; delusional beliefs about others; disagreeing about treatment for his mental illness; being willing to use a weapon; not managing his emotions well; not having a good relationship with those supervising and supporting him; poor problem solving; and not thinking through the consequences of his actions for himself and others.'*

53. It is not possible to fault this analysis of the position. There has been some improvement in his relationship with probation but it remains to be seen whether that improvement will be maintained when he is in the community.

54. The panel went on to identify the Applicant's protective factors (the things that make it less likely that he will re-offend) and stated:

*'However, the panel was not convinced that these protective factors sufficiently reduce [the Applicant's] risks to levels that are safely manageable in the community. This is a particular concern when he moves from 24-hour supported accommodation to semi-supported or independent accommodation, given that some of his risk factors above appear not to have been addressed in any depth during his sentence.'*

*'The panel was also concerned about [the Applicant's] limited insight into his mental disorder and had doubts as to whether he will comply, long-term, with [his medication]. He told [Dr B] that he 'does not believe he has a mental illness, nor does he believe he poses a risk of violence or thinks he needs hospital or a forensic structure. [The Applicant] does not consider himself to have a need for treatment. Since then, [the Applicant] has shifted his stance, saying that he does have a mental illness but does not recognise it as [the illness diagnosed by psychiatrists].'*

55. In the concluding section of its decision the panel recognised the progress which the Applicant has made in the last two years but concluded that does not at this stage meet the test for release on licence. It explained that conclusion as follows:

*'It is evident that [the Applicant] has made much progress ... He has been mentally stable for more than 2 years, helped by him being fully compliant with oral [medication]. He has also been compliant with unescorted leaves for some 20 months and with recent overnight leaves to supported accommodation ... There have been no indications of [the Applicant] consuming alcohol or using drugs on any of his leaves. There has been no violence or aggression by him since March 2020. He has been using his leaves constructively, much of it at an arts centre, but also by visiting his Probation Officer [Ms F] most weeks and forming a good working relationship with her. In his evidence, [the Applicant] stated that he will co-operate fully with all the professionals who will be working with him and continue taking his medication. He recognises the importance of avoiding alcohol and drugs. The risk management plan proposed, involving 24-hour staffed supported accommodation, is an appropriate one.'*

*'Notwithstanding the above positives, the panel also had significant concerns. [The Applicant] has a serious and enduring mental illness which, when not controlled by medication, has led to serious acts of violence, use of a weapon and threats to harm others with a knife ... [The Applicant] has very limited insight into his mental illness and, in April 2022, denied its existence. Although, with close supervision, he is likely to take his medication, him having doubts as to the presence of a mental illness runs a significant risk of him not taking that medication when he moves on to independent accommodation. He has previously stopped taking ... medication, leading to a relapse of his illness ...and serious violence.*

*'The panel also notes that [the Applicant] has declined to engage in a recommended assessment of his cognitive functioning and this suggests that his willingness to work collaboratively with professionals remains limited. Any memory difficulties will impact on the likelihood of him complying with medication once he moves to less supported accommodation.*

*'The panel's other significant concern is [the Applicant's] lack of understanding of contributory factors in his violence, committed in a range of situations, and him accepting very little responsibility for it. [His] index offences of attempted robbery and wounding with intent were committed when he was mentally well. He continues to blame external factors for those offences, accepting minimal responsibility. He also displays little insight into what led to, and his responsibility for, his other violence. He minimises the seriousness of all of his violence.*

*'Concerningly, the only structured work [the Applicant] has undertaken on violence was [the programme he undertook] in 2010, with some progress, but he subsequently went on to commit further serious acts of violence. On his last discharge from a secure hospital in 2017 it was less than a week before [he] committed a further act of serious aggression, an incident he minimises.'*

56. At this point the panel referred to and quoted from the 2019 panel's decision, to which I have referred above. It went on to state:



3rd Floor, 10 South Colonnade, London E14 4PU



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)



[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)



@Parole\_Board



0203 880 0885

*'Subsequent to that decision letter, [the Applicant] committed another serious assault (fracturing the jaw of a prison officer) and still has not completed the work on violence recommended by the Parole Board in 2019. [He] recently declined further sessions with a hospital psychologist that could have started to explore what has underpinned his violence. In the panel's view, work with [the Applicant] on increasing his understanding of his violence and management of his risk factors, and him gaining more insight into his mental illness and its links with violence, is core risk-reduction work. To protect the public, this work needs to be completed prior to [the Applicant's] release on IPP licence.*

*'In summary, the panel concluded that there is insufficient evidence that [the Applicant's] risks have reduced to a level that can be safely managed in the community. He needs to remain confined for public protection.'*

### **The grounds advanced by the solicitor in support of the application for reconsideration**

**GROUND 1: The panel failed to take into account relevant information or comply with the "duty of inquiry" in respect of the ability for the Applicant to be placed on a depot at the point of moving on from his supported accommodation and was therefore based on a mistake of fact.**

57. This criticism is aimed at the panel's view that, whilst with close supervision the Applicant is likely to take his medication at the supported accommodation, there is a significant risk that he may not take it when he moves on to independent accommodation.

58. In support of this criticism the solicitor relies on various pieces of information which were before the panel or, if they were not, the solicitor submits could and should have been obtained by the panel in pursuance of its 'duty of enquiry'. In that connection the solicitor has quoted the following passage from a previous decision (as it happens, a decision of mine) in another case **[2021] PBRA 100**.

*'One situation which may give rise to a finding of irrationality or procedural unfairness is where a panel has made a decision in the absence of an important piece of evidence which might have made a difference to the decision and which the panel might reasonably have been expected to obtain (adjourning the hearing, if necessary, for that purpose).'*

59. The pieces of information which the solicitor submits were before the panel or should have been obtained by it were as follows:

- (1) any deterioration in the Applicant's mental state would take place over a period of weeks or months;
- (2) it would be observable by members of the CMHT who would be responsible for supervising and managing the Applicant's mental health in the community;
- (3) a switch from oral medication to depot medication could be made at any time if considered necessary; and

(4) there would be powers in place (including recall to hospital) to manage any deterioration.

60. The solicitor has obtained written confirmation from Dr A that these were all mentioned by him at the hearing, and the recording to which I have listened confirmed that to be the case. None of the points were specifically referred to in the panel's decision.

61. As these pieces of information were all in evidence at the hearing, the 'duty of enquiry' does not really arise. What does arise is the question whether the panel overlooked or failed to attach appropriate weight to Dr A's evidence on these points and, if so, whether its decision not to direct the Applicant's release on licence might have been different if it had not done so. It will be most convenient to discuss that question after discussing the solicitor's other grounds.

***GROUND 2: The finding that the Applicant's lack of understanding of contributory factors in his violence (and him accepting very little responsibility for it) failed to take into account relevant information or give sufficient weight to relevant evidence.***

62. It is clear that there was a significant difference of opinion on this point between Dr A and Dr B on the one hand and the panel on the other.

63. The panel summarised Dr B's evidence as follows:

*"In her evidence at the recent hearing, [Dr B] told the panel that, had [the Applicant] taken up the offer of additional sessions, she would have explored with him, in depth, his violence. However, in their two sessions, she considered that he demonstrated a good understanding of his risk factors for violence, and how his thinking and illness as he perceives it contributed. She did not consider he had any unmet psychological needs. [Dr B] referred to other patients who have had much more psychological intervention progressing less than [the Applicant] did in his two meetings with her. He had dealt with challenging situations and frustrations on the ward and on leaves without concerns.*

*'[Dr B] stated that, although [the Applicant] had undertaken 'no formal piece of work on his violence, he has done the thinking across a number of settings' and he prefers more informal sessions. [Dr B] referred to [the Applicant] as having significant protective factors against violence.'*

64. Having listened to the recording, I am happy that this was a fair summary of Dr B's evidence.

65. In her e-mail to the solicitor Dr B stated:

*'I was disappointed in the conclusion of the parole board not to release [the Applicant]. I think it is important to be realistic about how much change can be expected [in the Applicant] through violence reduction orientated psychology sessions (and I do not feel hopeful of further change beyond where [he] is*



currently– partly because he has quite a good insight already, and partly because I think a number of factors will make it a challenge for him to progress in the sessions, even if he does attend each week).

*'I would say with the limited capacity I would envisage the Applicant to have to benefit from structured psychological work, the more external management factors (like structured meaningful activity and good working relationships with professionals) become much more important. I think they are likely to make a much bigger difference to [the Applicant] not committing any further violence than any psychological work [he] and I could do together. I put a lot of weight on the fact [the Applicant] has not committed any violence or shown any indication whatsoever of violent ideation in more than 2 years–across both the very challenging environments on the ward, and also a lot of unsupervised time in the community, akin to the situations he would be in if granted release, when using his large amounts of unescorted leave.'*

66. Dr A in his e-mail to the solicitor made similar points about the benefit (or lack of it) which he believed the Applicant would gain from further structured psychological work designed to reduce his risk of serious harm to the public.

67. The central issue on this ground is whether the panel was entitled on the evidence to prefer its view of the Applicant's insight into his offending and his risk factors (and his ability to apply his learning so as to avoid re-offending) to that of Dr A and Dr B. My conclusion is that it was.

68. Dr B accepts that, if the Applicant had agreed to participate in further psychological sessions with her, she would have *'explored in depth his violence'*. This is what the 2019 panel believed was necessary if his risk of serious harm to the public was to be reduced. *'Exploring in depth his violence'* would have involved a detailed exploration of all the factors which underlay that violence. It would also have involved endeavouring to give the Applicant an understanding of those factors and to provide him with strategies to address them and prevent them from leading him into further offending.

69. Dr A and Dr B are both of the opinion that the Applicant already has a sufficient understanding of his risk factors. However, the evidence (including the Applicant's own evidence to the panel) indicates that that is far from being the case and that he has little insight into his offending (hence his minimisation of that offending).

70. Dr A and Dr B place considerable reliance on the fact that the Applicant has not committed an act of violence or shown any violent ideation in the last two years in challenging environments in hospital or during his unsupervised leaves. Dr B suggests that those situations are akin to the situations he will meet in the community. I am afraid that the challenging situations which he will meet in the community will include ones which are significantly more testing than those he has encountered on his leaves, and the panel is fully entitled to its concern that he is not yet equipped with the necessary skills to navigate them.

71. I am afraid, therefore, that I cannot accept this ground.



3rd Floor, 10 South Colonnade, London E14 4PU



[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)



[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)



@Parole\_Board



0203 880 0885

**GROUND 3: Insufficient reasons were given from departing from the views of all witnesses that he could be safely managed in the community at this time as required in public law.**

72. The solicitor submits, and I agree, that:

- a) it is well established that a panel of the Board is not obliged to follow the recommendations of professional witnesses (the panel's responsibility being is to make its own independent assessment of the prisoner's risk) but
- b) it is also well established that, if the panel is rejecting the unanimous recommendations of all the professional witnesses, it must provide adequate reasons for doing so (if it fails to do so, or if its reasons can be shown to be flawed, its decision may be regarded as irrational).

73. The solicitor accepts that in this case the panel clearly set out its reasons for rejecting release. She goes on to submit that it failed to explain adequately why it rejected the recommendations of professionals. I am afraid that I cannot accept that argument. By setting out (as it did) a summary of the evidence of the professionals and then giving its own reasons for reaching a different conclusion from theirs the panel was explaining why it rejected their recommendations. I need say no more about this ground.

**GROUND 4: The decision gave too much weight to the Applicant's evidence despite acknowledging in the decision the obvious difficulties he was having during the hearing.**

74. It is at this point that I need to consider the applicant's presentation and evidence at the hearing.

75. The solicitor puts her submissions on this ground as follows:

*'The decision states: "As to declining further psychology sessions with [Dr B], [the Applicant] explained that he 'has to be ready for it' and that the [hospital where he is detained] is 'not the place to do psychology work'. He added that he had 'done a lot of psychology with myself'. Confusingly, when asked by the panel why he had been violent, he struggled, stating that 'if someone is making your angry, you've got to be aware of their star signs'. He seemed tired at that point in the questioning, but his response may have been the emergence of thought disorder when fatigued and under stress, and indicate that his recovery remains fragile.'*

*'However, it fails to record that [Dr B] was asked to then comment on the extent to which his evidence accurately reflected how he generally presents. As set out in her email, she explained how the circumstances might [have] affected his responses: [the Applicant's] clarity when speaking can vary widely depending on factors like his mood, how clearly someone engaging him in dialogue is able to ask questions and engage him, and fatigue in his concentration if the dialogue goes on for a while (particularly relevant in the parole board evidence). It was very clear that when asked open questions such as "what is*



*your attitude to violence,” [the Applicant] struggled with providing a coherent response which should be compared to his responses to his representative when asked direct questions such as whether he thinks violence is okay, when he answered very clearly it was not.*

*'It is unclear how the Panel came to conclude that some of [the Applicant's] answers were indicative of an emergence of thought disorder as opposed to the result of being in a very unusual and pressured environment. The decision acknowledges he seemed tired at this point but does not note that later in proceedings he actually repeatedly fell asleep as he was so exhausted.*

*'While [the Applicant's] solicitor was by his side to support him, it emerged that this did not assist in his evidence to the Panel's questions. Given the difficulties [the Applicant] faces and the extraordinarily difficult environment of a remote hearing, the Panel should not have accorded such weight to his answers to them and if they did want to, ought to have recognised the difficulties for the remote format and adjourned for an in person hearing.*

*'It is noted that at a case conference in October 2022, it was made clear that if the case had to be in person, there would be further delays. [The Applicant] had already experienced a delay of a year despite being on the streamlining pilot and at that stage it was not clear that an in person hearing would be necessary. Therefore, one was not sought.*

*'However, it became clear in the hearing that he struggled with the format and was not able to achieve his best evidence. As such, the weight accorded to his answers ought to have been adjusted to take account of the situation. In the absence of such an adjustment and in fact a heavy reliance on his evidence, the hearing was procedurally unfair.'*

76. I listened very carefully to the whole of the Applicant's evidence as recorded at the hearing. There was an obvious disparity between, on the one hand, the answers which he gave to questions about topics such as his progress at the hospital, his unescorted leaves and his overnight leaves to the supported accommodation and, on the other hand, his answers to questions about his offending and his understanding of his risk factors, his strategies to avoid reoffending and his mental illness. Of course, giving evidence at a parole hearing must be a difficult and stressful experience, but it was clear to me that the answers which he gave to questions of the latter kind were not due to the nature of the proceedings but to his lack of any real understanding of the matters about which he was being asked.

77. It was noticeable that each of the panel members put their questions in a courteous and sympathetic manner, not in any way putting him under any real pressure. At his request his evidence was taken after that of Dr A and Dr B. A break was offered and accepted in the course of his evidence. Many of the answers which were unhelpful to his case occurred at an early stage in his evidence, before he became tired.

78. No request was made at the hearing that it should be adjourned to be resumed face to face, and the solicitor's closing submissions did not suggest that the Applicant had been disadvantaged by the procedure adopted.



79. As regards the solicitor's answer to the panel's question about the extent to which the Applicant's evidence accurately reflected how he generally presented, that answer will not have come as a surprise to the panel who no doubt appreciated that his presentation might vary according to the circumstances.
80. I of course accept the solicitor's statement that during the later stages of the hearing the Applicant repeatedly fell asleep. However, I do not believe that if he had remained awake throughout, he would have been able to contribute anything further to the proceedings or the panel's decision would have been any different.
81. In the circumstances I am afraid I am not persuaded that the Applicant's presentation and evidence at the hearing would have been significantly different if the hearing had been conducted face to face, or that there was any procedural unfairness in the way in which the hearing was conducted.

## Decision

82. I have explained above the reasons why I cannot accept the second, third and fourth grounds advanced by the solicitor in support of this application for reconsideration. I do not need to repeat those reasons at this point. I do however need to consider the first ground now that I have reached conclusions on the others.
83. I accept the solicitor's submission that the four matters on which Dr A placed reliance in his evidence but to which the panel made no reference in its decision can all be regarded as limiting the risk that the Applicant may stop taking his medication when he moves on from the supported accommodation. There must of course be some risk but the fact that the panel did not mention any of the four matters may suggest that it did not attach any (or any sufficient) weight to them and may therefore have regarded that particular risk as being higher than it actually is.
84. The panel might, if it had considered the matter, have disagreed with Dr A's view that any deterioration in the Applicant's mental state would take place over a period of weeks or months: it might have concluded that a trigger could result in a sudden deterioration. However, the panel did not express any disagreement with Dr A's view which must therefore be regarded as unchallenged. The other three points are beyond challenge.
85. It is next necessary to consider whether the panel's decision not to direct the Applicant's release on licence might have been different if it had acknowledged the limitations to the risk of his not taking his medication.
86. It is, I think, clear that the risk of the Applicant not taking his medication only played a relatively small part in the panel's decision. There were other factors (to which I have referred above) which, even if the panel had attached no weight at all to the risk of the Applicant not taking his medication, would on the panel's findings have led to the inevitable conclusion that the test for release on licence was not met.



87. Furthermore, as the index offence demonstrated, even if the Appellant faithfully took his medication, the other factors might result in serious violence. The panel cannot be faulted in its view that further work needs to be done to improve the Applicant's understanding of his mental illness and the factors underlying his offending, and to equip him with the skills necessary to avoid further offending.

88. I have a good deal of sympathy with the Applicant's position but in the result my final conclusion must be that, even if the panel over-estimated the risk of the Applicant failing to take his medication, its decision not to direct his release on licence cannot be said to be irrational, nor was there any procedural irregularity.

89. I do not believe I would be doing the Applicant any favour if I were to direct reconsideration of the panel's decision: it is unlikely that a fresh panel would come to any different decision. It is to be hoped that the Applicant will be encouraged by those advising him to undertake the necessary work so that he will be in a better position to persuade the next panel that he is ready for release on licence.

**Jeremy Roberts**  
**7 March 2023**

