

[2024] PBRA 166

## Application for Reconsideration by Garton

### The Application

1. This is an application by Garton ('the Applicant') for reconsideration of a decision of the Parole Board ('the Board') not to direct his release on licence. The decision was made by a 4-member panel of the Board on 8 July 2024 following an oral hearing on 25 June 2024. The Applicant is serving an extended determinate sentence for serious offences against his then wife, the details of which will be described below.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) provides that applications for reconsideration of panel decisions may be made, either by the prisoner or by the Secretary of State for Justice, in eligible cases. The Secretary of State is the Respondent to any reconsideration application made by a prisoner, and will be referred to as such in this decision.
3. Rule 28(2) specifies the types of case in which reconsideration applications may be made. They include cases, like the Applicant's, where the prisoner is serving an extended determinate sentence.
4. A reconsideration application may be made on the ground (a) that the panel's decision contains an error of law and/or (b) that it is irrational and/or (c) that it is procedurally unfair.
5. This is an eligible case, and an application for reconsideration has been made by the Applicant and his solicitors on the grounds of irrationality and procedural unfairness. The application was made within the prescribed time limit.
6. I am one of the members of the Board who are authorised to make decisions on reconsideration applications, and this case has been allocated to me. I have considered the application on the papers. There has been no reason for me to take any oral evidence.
7. The documents which have been provided to me and which I have considered for the purposes of this application are:
  - (a) The dossier of papers provided by the Respondent for the Applicant's hearing: the dossier now runs to 369 numbered pages and includes the Panel's decision;



- (b) The representations made by the Applicant and his solicitor in support of this application for reconsideration, and the documents supporting them (see paragraph 38 below); and
  - (c) An e-mail from the Public Protection Casework Section ('PPCS') of the Ministry of Justice stating on behalf of the Respondent that she does not wish to submit any representations in response to this application.
8. In addition to reading these documents I have listened to the parts of the audio recording of the hearing which appeared to be relevant to the representations made by the Applicant and his solicitor. Unfortunately the Panel Chair's microphone was evidently not switched on (or, if it was, it was not functioning properly) so nothing that she said could be heard on the recording. Everything I heard said by the other participants in the hearing could be heard clearly.

### Background and history of the case

9. The Applicant is aged 62. He was a well-regarded police officer for many years and had previously served in the Territorial Army. He had no convictions before those for which he is serving his present sentence.
10. He was married to his wife for more than 30 years. They have three children (two daughters and a son). His ex-wife (as she now is) suffers from multiple sclerosis. The marriage broke down due to the Applicant's infidelity and other faults. He eventually moved out of the family home in September 2016.
11. The offences of which he was convicted after a contested trial were, in chronological order:
- (a) stalking his wife over a period of about 3 years after the marriage had broken down;
  - (b) the rape of his wife in October 2016; and
  - (c) conduct intended to pervert the course of justice after the rape.
- He continues to deny that he was guilty of any of those offences.
12. His case has been considered on two occasions by the Criminal Cases Review Commission ('CCRC') which on both occasions decided not to carry out any further investigations into the case. The Applicant told the panel that his solicitors would be applying for a judicial review of the CCRC's latest decision on the ground that there are lines of enquiry which should be pursued. His solicitor has, however, now been told that the CCRC is going to reconsider the case (apparently in the light of serious public criticisms of the CCRC's handling of another case).
13. The Applicant is fully aware that, unless and until his case is referred by the CCRC to the Court of Appeal and his convictions are quashed by that Court, the Board is obliged by law to proceed on the basis that the jury's verdicts were correct: the Board itself has neither the authority nor the resources to re-investigate the case. Like the panel I must therefore approach this application on the basis that the Applicant was guilty of the 3 offences, of which the details were recorded in detail by the trial judge in her sentencing remarks.



14. The stalking was persistent and took place in various forms after the breakdown of the marriage. It included the monitoring of covert devices which the Applicant had placed in his wife's bedroom and in the living room of their house: he knew how to do that as he had had training in the use of surveillance equipment in his role as a police officer. He monitored the devices on many occasions by dialling in to them from wherever he was. The prosecution alleged, and the jury agreed, that he was making sure that his wife was on her own and not in a relationship with another man.
15. The rape occurred one day when the Applicant let himself into the house. There was an argument: the Applicant's wife wanted a divorce but he did not. He went upstairs and she followed him. He tried to have sex with her. She did not want it and struggled to avoid it but he overcame her and raped her.
16. The conduct intended to pervert the course of justice related to his behaviour after the rape. His wife rang the police to report the rape whilst he was still in the house. He put pressure on her to retract her allegation. He said that he would agree to a divorce if she retracted it. She did retract the allegation when spoken to by the police officers who initially attended in response to her call, but when different officers arrived she told the truth about what had happened.
17. At the Applicant's trial he denied stalking his wife. He admitted installing the covert devices but said that was because he was afraid that his wife would harm him in order to get her hands on his substantial police pension. As regards the rape he said that there was sexual intercourse between them but it was consensual. As regards attempting to pervert the course of justice he completely denied that that had happened.
18. The jury believed his wife on all the charges and did not believe the Applicant. He was sentenced on 26 June 2018 to an extended determinate sentence made up of 9 years for the rape (with an extended licence period of 3 years) and a consecutive sentence of 4 years for the stalking offence. There was no separate penalty for the conduct intended to pervert the course of justice as that was taken into account when fixing the sentence for rape. On appeal the sentence for the stalking offence was ordered to run concurrently with the sentence for the rape.
19. The Applicant's behaviour throughout his sentence has been impeccable.
20. The Applicant became eligible for early release on licence on 1 May 2024. If not released early by direction of the Board he will be automatically released on licence in May 2027. His sentence will not expire until May 2030.
21. In August 2023 the Respondent referred the Applicant's case to the Board to decide whether to direct his early release on licence. If not released early by the Board on this review, he will be entitled to annual reviews thereafter.
22. On 29 January 2024 the case was reviewed by a single member of the Board who directed that it should proceed to an oral hearing.
23. In due course a panel of the Board was appointed to conduct the oral hearing. The panel comprised four independent members of the Board.



24. As noted above the oral hearing took place on 25 June 2024. It was conducted remotely by video link. The Applicant was legally represented. The panel considered both written and oral evidence. The written evidence was contained in the dossier of papers provided by the Respondent. Oral evidence was given by the following witnesses:

- the Applicant's Prison Offender Manager ('POM');
- the Applicant himself;
- the Applicant's Community Offender Manager ('COM') who was standing in for the previous COM who was on long term sick leave;
- a Prison Psychologist; and
- an Independent Psychologist instructed by the Applicant's solicitors.

25. All the professional witnesses recommended the Applicant's early release on licence but the panel disagreed.

## The Relevant Law

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

26. The test for early 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*

27. 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. The grounds on which an application may be made are as set out above (error of law, irrationality or procedural unfairness).

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

- (i) A paper panel (Rule 19(1)(a) or (b)) or
- (ii) An oral hearing panel after an oral hearing, as in this case (Rule 25(1)) or
- (iii) An oral hearing panel which makes the decision on the papers (Rule 21(7)).

29. The decision of the panel in this case not to direct release on licence is thus eligible for reconsideration.

### *The test for irrationality*

30. The power of the courts to interfere with a decision of a competent public authority on the ground of irrationality was defined in **Associated Provincial Houses Ltd -v- Wednesbury Corporation 1948 1 KB 223** by Lord Greene as follows: "*if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere*". The Parole Board is a public authority for that purpose, and the Wednesbury test therefore applies to a reconsideration panel when determining an application for reconsideration on the ground of irrationality.



31. In **R (DSD and others) -v- the Parole Board 2018 EWHC 694 (Admin)** (‘the Worboys case’) a Divisional Court applied this test to parole board decisions in these words: *“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.”* The same test of course applies to ‘no release’ decisions.
32. In **R (on the application of Wells) -v- Parole Board 2019 EWHC 2710 (Admin)** Mr Justice Saini set out what he described as a more nuanced approach in modern public law. This approach is: *“to test the decision maker’s ultimate conclusion against the evidence before it and to ask whether the conclusion can (with due deference and with regard to the panel’s expertise) be safely justified on the basis of that evidence, particularly in a context where anxious scrutiny needs to be applied”*. This formulation of the test was adopted by a Divisional Court in the case of **R (on the application of the Secretary of State for Justice) -v- the Parole Board 2022 EWHC 1282 (Admin)**.
33. As was made clear by Mr Justice Saini, this is not a different test from the Wednesbury test. The interpretation of (and application of) the Wednesbury test in parole hearings (as explained in the Wednesbury and DSD cases) was of course binding on Mr Justice Saini. It is similarly binding on reconsideration panels.
34. It follows from these principles that in considering an application for reconsideration a reconsideration panel cannot substitute its own view of the evidence for that of the panel who heard the witnesses. It will only direct reconsideration on the ground of irrationality if the Wednesbury test is satisfied.
35. A further point to be noted is that, whilst the views of the professional witnesses must be properly considered by a panel deciding whether a prisoner should be released, the panel is not bound to accept their recommendations even if they are unanimous. If, however, the panel is going to reject the recommendations of the professionals, it must provide adequate reasons for doing so. If its reasons are inadequate or do not stand up to close examination, its decision may be regarded as irrational.

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

36. 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.
37. An Applicant seeking to complain of procedural unfairness under rule 28 must normally satisfy the reconsideration panel that:
- (a) express procedures laid down by law were not followed in the making of the relevant decision; and/or
  - (b) they were not given a fair hearing; and/or
  - (c) they were not properly informed of the case against them; and/or
  - (d) they were prevented from putting their case properly; and/or



- (e) the panel did not properly record the reasons for any findings or conclusion; and/or
- (f) the panel was not impartial.

38. The overriding objective is to ensure that the Applicant's case was dealt with justly so it is possible that other grounds for a finding of procedural unfairness may be established.

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

39. The application form was completed and submitted by a legal representative on behalf of the Applicant on 29 July 2024. Attached to it were the following documents:

- representations submitted by the Applicant's solicitor;
- personal representations submitted by the Applicant;
- a letter from the COM; and
- a letter from a representative of a military charity.

### **The position of the Respondent**

40. As noted above, as a party to parole proceedings the Respondent is entitled to submit representations to the Board in response to an application by a prisoner for reconsideration of a panel's decision, but PPCS have indicated on behalf of the Respondent that she does not wish to submit any representations in this case.

### **Discussion**

41. There are a large number of matters which I need to discuss arising out of the panel's decision and the representations submitted by the Applicant and his solicitor. I will begin by discussing the matters arising out of the solicitor's representations.

### ***The solicitor's representations***

42. The solicitor begins by explaining that he has been acting for the Applicant since 2020, though he did not represent him at the oral hearing of this case. He did however act for him as a '*Mackenzie friend*' in the divorce proceedings between the Applicant and his ex-wife, which took place while the Applicant was in prison. Much of what he writes in his representations, whilst it may be relevant to the Applicant's application to the CCRC (or to the possible re-opening of the financial position in the divorce proceedings if his convictions are quashed), is not relevant to the decision which I have to make on this reconsideration application.

43. In the course of their representations relating to the CCRC application the Applicant and his solicitor both referred to the case of Sheila Bowler whose conviction for murder was referred to the Home Secretary, whose role was later taken over by the CCRC when it was created, and then referred to the Court of Appeal. Mrs Bowler's conviction was quashed by the Court of Appeal in 1997, there was a retrial and she was then acquitted by a jury.



44. I should mention that I represented Mrs Bowler in the Court of Appeal and on the retrial. I have considered whether in the light of that connection I should recuse myself from this case. I am satisfied that there is no reason why I should. The outcome of the Applicant's application to the CCRC and any subsequent proceedings in the Court of Appeal are not matters with which I am concerned or about which I am required to make any decision.
45. The solicitor expresses his opinion about one matter which the panel had to consider for the purpose of their decision. The solicitor says that he *"is fully satisfied that the Applicant will not seek any further contact with his ex-wife and can see the real danger of any inadvertent contact which could be turned against him."* I am afraid that little weight can be attached, on a reconsideration application, to opinion evidence of that kind on a matter on which the panel had the advantage of observing a prisoner's evidence and forming a view of his credibility.
46. The solicitor draws attention to one error which the panel made in their decision. They stated that the POM did not give a recommendation. That was not the case. The POM, like the COM and the two psychologists, made a clear recommendation that the Applicant should be released on licence. That was confirmed by the POM in the letter which she provided for the purpose of this application. Furthermore I listened to the recording of the POM's evidence, in which she made it clear that she was recommending the Applicant's release on licence, and why. Since the panel evidently overlooked the POM's recommendation they cannot have attached any weight to it. This was a significant failure, and its impact on the rationality of the panel's decision will need to be considered below.
47. The next matter which I need to discuss is the accusation made by the Applicant about the behaviour at the hearing of one of the panel members.

### ***The behaviour of one of the panel members at the hearing***

48. The Applicant makes a number of serious complaints about the conduct of that panel member. He says that her questioning was aggressive, patronising, condescending and inappropriate to such an extent as to affect the fairness of the proceedings, and that her questions went far beyond what would be considered reasonable and appropriate. He adds that she sought to discredit the very real likelihood that he suffers from PTSD; that she used the expression 'in denial' to describe him; and that she inferred that he was only concerned about his reputation.
49. I have listened to the recording of the panel member's questioning and I am satisfied that there can be no valid criticism of it. Different panel members have different styles of questioning, some more robust than others. This panel member's questioning was certainly robust and challenging, but it did not go beyond the bounds of what is acceptable. The Applicant has never been diagnosed with PTSD; 'in denial' is an expression often used in cases of this kind; and the point about his concern for his reputation accorded with the view of the whole panel as it appears from their decision.



50. I listened with care to the Applicant's responses to the panel member's questions. Sometimes the effect of intimidating questioning can prevent a prisoner from '*giving best evidence*' or, as I prefer to put it, doing himself justice. That was certainly not the case here. The Applicant gave his answers in a calm and unruffled way and got across very clearly the points which he wished to make.
51. I cannot therefore find that the Applicant's complaints about the panel member's approach come anywhere near establishing irrationality or procedural unfairness.
52. I now need to examine the various points made by the panel in their decision in support of their decision to reject the recommendations of the professionals, along with the Applicant's criticisms of them and my own comments about them.

### ***The panel's approach to the professionals' assessments of the Applicant's risks***

53. In the section of their decision dealing with '*Analysis of Change*' the panel set out their views of those assessments.
54. They started by referring to the statistical assessments of risk used by probation. Those indicated low risks of general re-offending, violent reoffending, non-violent reoffending and serious recidivism. The panel concluded that that may be an underestimate because of the Applicant's age against the static factors and the fact he has only one conviction for three offences.
55. The panel next referred to the structured risk assessment system used by psychologists to assess the risk of spousal assault ('SARA'), which in this case indicated a high risk of such offending. The panel expressed their agreement with that assessment.
56. Finally the panel referred to the clinical assessments made by probation in their 'OASys' report to assess a prisoner's risks of serious harm, if he re-offends, to various categories of people in the community. In this case probation assessed the Applicant as posing a medium risk of serious harm to the public and a known adult (his ex-wife), and a low risk to children and staff. The panel expressed the view that his ex-wife is at highest risk but that future partners would also be at risk of the Applicant's sexual jealousy, controlling and coercive behaviour and potential sexual assault, particularly if any new relationship encountered problems or came to an end.
57. The Applicant makes a number of criticisms under the heading "*The whole assessment process is wrong*". He starts by criticising the panel for suggesting that the '*static scoring system*' (i.e. the statistical one) is wrong.
58. In fact the various risk assessment methods used by professionals all have their value. Sometimes, as in this case, the different methods produce markedly different results. A familiar problem with statistical assessments is that they are based on the number of a prisoner's convictions, and do not take into account their seriousness: thus they can (and do sometimes) underestimate the risks posed by a prisoner who has only one or a small number of convictions but they are for very serious offences. That is the case here, and there can be no criticism of the panel's suggestion that the results of





the statistical assessments were underestimates. In a case like this the most important and reliable assessment systems are SARA and probation's clinical assessments of the prisoner's risks of serious harm.

59. The Applicant then refers to various other aspects of the system which have created difficulties in this case. These are: (1) he was not eligible for accredited courses because his statistical risk scores were too low; (2) for the same reason he was not eligible for a place in a probation hostel ('Approved Premises'); (3) he could only be subject to a GPS tracker for 12 months; and (4) changes of COM.
60. All of these matters were unfortunate (see below) but the panel (and the Applicant) had to live with them and I do not think that any of them can amount to procedural unfairness or irrationality in the panel's decision for the purposes of a reconsideration application.
61. I turn now to specific matters covered by the panel in reaching their decision.

### ***The Applicant's attitude to his ex-wife***

62. The panel stated in their decision:

*'The panel considered [the Applicant's] active risks most likely to reassert themselves on release to be resentment towards his ex-wife. Despite asserting that he does not blame her for his conviction, or begrudge the financial settlement that has been made, [the Applicant] takes no responsibility for his offending. He has sought to blame others for his situation and has shown no insight.'*

*'[The Applicant] maintains that he has no intention of seeing his ex-wife, and he would be prevented from doing so by his licence conditions. However, through contact with his son, [the Applicant] has the opportunity to find out more about her activities, which could lead towards increased risk of stalking and controlling behaviour.'*

*'The panel did not accept [the Applicant's] assertions that he did not blame his ex-wife for his conviction, nor that he did not begrudge her financial settlement. The panel concludes it is more probable than not that he continues to be preoccupied with her and the injustices he perceives he has suffered. His oral evidence consistently put the responsibility on others for any failings and he did not accept much as his own failing.'*

[In reaching this finding the panel correctly applied the civil standard of proof, which is applicable in parole proceedings, as opposed to the criminal standard. The panel continued:]

*'Whilst it is fair to note that [the Applicant] and his victim are now divorced, the panel considers him to continue to be preoccupied with her and the injustices he perceives he has experienced. The panel cannot discount the possibility that he might harbour a grievance that he might seek to act on. When he went to her home on the day of the index offence he was feeling preoccupied and aggrieved.'*



*There are, therefore, parallels and the panel considers that to be significant in terms of current and future risk if those feelings are not addressed or otherwise ameliorate.'*

63. The Applicant disagrees with this and maintains that he does not present any risk to his ex-wife. However, I am satisfied that the panel were fully justified (by the evidence in the dossier and their own observation of the Applicant's evidence) in making these findings of fact.
64. The Applicant complains that the panel introduced the divorce settlement '*to provide evidence of my offending behaviour and sanction*'. That was not the case at all. What the panel stated in their decision was: '*Although [the Applicant] explicitly said that he did not blame his ex-wife he also told the panel that his ex-wife had given him reason for his behaviour due to her MS, her lack of understanding, her perceived intention to gain financially by harming him and her actual financial settlement. Whilst he said he did not begrudge his ex-wife the money he also itemised the settlement and told the panel that if he had representation he might have received a fairer settlement. That persuades the panel that [the Applicant] was not entirely sincere in his statements that he does not blame or resent his victim.*' This was a fair account of the Applicant's evidence and the finding which the panel made about it.

### **The Applicant's attitude to his offending**

65. The panel state in their decision:

*'[The Applicant] has not accepted responsibility for his offending and blames others for his situation, whether that be at work, in his marriage, his illicit relationships, his finances or his own behaviour. He showed no insight as to his risks.*

*'Although [the Applicant] has engaged in a wide range of general courses, he has not addressed his sexual offending. His index offending included sexual violence, sexual jealousy, stalking and controlling behaviour. The panel recognises that the psychologists consider risk to be highly situation specific in this case. The panel does not agree that this is a situation that could not arise again, however.*

*'[The Applicant] is entitled to appeal his conviction and the panel placed no weight on him doing so. There is no evidence that [the Applicant] has changed his attitude and he continues to accept only his version of events about anything that could otherwise reflect negatively on him. He only accepts what he cannot deny in the face of very clear evidence such as the surveillance equipment. The panel considered that there was an over reliance [by the professional witnesses] on external controls to manage his risks and that [the Applicant] needs to develop his internal controls.'*

66. The Applicant is naturally unhappy about this. It is of course correct that denial is not in itself a risk factor. Quite often a '*denier*' is able to show that he does not now pose a significant risk of further offending: indeed, in some cases denial can be a protective factor. That is not always the case, however. It all depends on all the circumstances of



the case, including the nature of the offender's crime(s) and his current attitudes to them.

67. The circumstances of this case are set out very fully in the panel's decision, and I am satisfied that the panel were entitled (having considered the details of the Applicant's crimes and having seen and heard him give evidence) to conclude that he has not reduced his risk of serious harm to a level which would be safely manageable on licence in the community.

### **Employment, financial problems etc**

68. The panel wrote in their decision:

*'When [the Applicant] returns to the community he will have lost his job, his house and his reputation, all things that have been important to him. He will also have debt from before his conviction plus his legal costs for his appeals.'*

*'Struggling to get employment and not having purposeful activity is likely to impact negatively on [the Applicant's] mental health and that could raise his risk. Increased interest in his ex-wife's activity would also be a concern, such as asking their son about her or having increased feelings of grievance against her because of his losses in employment, finances, accommodation and liberty.'*

69. The Applicant is confident that he will be able to obtain employment of some kind, even if it is only stacking shelves in a supermarket. He has received support in custody from an ex-servicemen's organisation, and the letter from a representative of that organisation explains that on his release the Applicant will be fully supported by a NHS service which is delivered in the community by the Forces Employment Charity.
70. The panel acknowledged that the Applicant's strong work ethic is a protective factor and that he has been consistently employed in custody, including in positions of trust. They went on to say that he is motivated to work in the community and has engaged with armed forces charities in seeking support to do this. They added, however, that while these represent positive aspects of the Applicant's character the panel notes that his employment as a police officer did not prove protective, so the extent of how well any future employment proves to be protective would need careful monitoring. A further point is that the Applicant is accustomed to being in a position of authority and he may find it difficult to find satisfying employment in the community.

### **Future relationships**

71. The panel wrote:

*'Future partners remain at risk of [the Applicant's] controlling behaviour, sense of entitlement and sexual jealousy. The ending of an intimate relationship would be a heightened risk, as would other stressors such as conflict in relationships, stress at work and financial pressure.'*



72. The panel was fully entitled to take the Applicant's offending behaviour into account in making this assessment. The Applicant is of an age when he may well enter into a new intimate relationship.

### ***The psychologists' evidence***

73. The Applicant makes trenchant criticisms of the panel's rejection of the recommendations of the psychologists. He states that:

- *'The findings and conclusions of two independent psychologists about my mindset and behaviour at the time and now after 6 hours of assessment, were totally dismissed, as was their recommendation that my risk could be managed in the community ...'*
- *'Why ask for a Forensic Psychologist's opinion (2 in my case) if the Parole Board are going to completely discount them?'*
- *'...the expert evidence of both Forensic Psychologists was heard together, which distracted from their findings, value and impact'*
- *'... the prisoner commissioned Forensic Psychologist was totally marginalised and not heard in the assessment ...'*
- *'...the Parole Board decided to form their own opinion ... in barely 30 minutes of questioning...'*
- *'The conclusion of the Parole Board that I had lied to them, or was disingenuous, totally undermined the assessments and opinions of 2 certified and qualified forensic psychological experts.'*

74. I am afraid I cannot agree with any of these criticisms. The panel members are all qualified in risk assessment. It was their responsibility to form their own opinions, not just on the basis of 30 minutes of questioning at the hearing but also on careful reading of the psychologists' reports. They gave cogent reasons, as set out in their decision, for their own assessment of the Applicant's risks and their manageability in the community. It is not uncommon for panels to disagree with professional witnesses.

75. The practice of taking the psychologists' evidence together is a well-established one. It saves time and helps to identify the points which are agreed and those which are not. The prisoner-commissioned psychologist was certainly not marginalised: she had every opportunity to express any disagreements with the prison psychologist.

76. It was an essential part of the panel's task to assess the Applicant's truthfulness and reliability. They took a different view from that of the professionals about parts of the Applicant's evidence. They were fully entitled to do so, and they gave adequate reasons (which stood up to close examination) for their view. Psychologists are often reluctant to question the truthfulness of prisoners, but panels are obliged to do so if the evidence requires it. The fact that in this case the panel were unable to accept the Applicant's evidence on some important points does of course, undermine the psychologists' recommendations to a significant extent.

### ***The evidence of the probation witnesses***



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



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77. The panel wrote, as regards the COM:

*'The COM recommended release. She was not the author of the COM report or addendum, and was standing in for a colleague who was allocated to [the Applicant] last year but is currently away from work. She had had a one hour meeting with [the Applicant] the previous day. She supported the views of COM report authors. The panel noted however that, although the COM author of the [original COM report] had supported release, she had also noted [the Applicant's] failure to recognise the impact of his actions, his resentment towards the victim and the possibility of him indirectly contacting the victim via his son. She considered it imperative that his licence conditions are reinforced regularly.'*

78. Later in their decision the panel wrote: *'Through no fault of his own, [the Applicant's] relationship with his COM is not established, as there had been various people in the role since 2023. The [Risk Management Plan] and both forensic psychologists emphasised the importance of the COM relationship in ensuring effective monitoring and control.'*

79. The Applicant says that the absence of his COM on sick leave was beyond his control (as of course it was) but then said that it was *'a major part of the Parole Board decision to deny [him] parole'*. I do not think it was a major part but it was a matter which the panel were bound to take into account. The panel cannot be criticised for doing that. In order to be able to conclude that it was safe to release the Applicant into the community the panel needed to have confidence that the COM would be able to understand and manage his risks.

80. As with the psychologists, the panel's justified finding that they could not accept important parts of the Applicant's evidence inevitably undermined the recommendations of the COM and her predecessor.

81. As noted above the panel mistakenly stated that the POM made no recommendation, which means that they cannot have attached any weight to the recommendation which she undoubtedly did make. I have carefully considered whether the panel's decision might have been different if they had recognised and accepted the COM's recommendation. If that was the case I would be bound to allow this reconsideration on the grounds of irrationality and/or procedural unfairness.

82. I am afraid I cannot see that there is any real possibility that the panel's decision might have been any different if they had taken account of the POM's recommendation. The reasons given by the POM in her evidence were broadly similar to those of the COM and the psychologist, which the panel were unable to accept. As with the other professional witnesses, the POM's recommendation is inevitably undermined by the panel's findings about the Applicant's credibility and reliability.

### **Risk reduction courses**

83. When a serious offence or offences have been committed by an offender, it is normally expected that to demonstrate a reduction in his risk the offender will need to complete



an appropriate risk reduction programme. These programmes are devised by psychologists after considerable research. The panel accurately described the position in this case concerning risk reduction programmes as follows:

*'[The Applicant] has engaged in many courses whilst in custody but has been unable to complete any accredited offender behaviour programmes due to his low static risk scores [i.e. the statistical risk scores]. He therefore has unaddressed treatment needs. A clinical override for [a specific programme which does not require the offender to admit guilt] had not been explored. [A programme designed to improve relationship skills] is now the recommended programme. This is available in custody (although not currently at [the prison where the Applicant is detained]) and in the community. There is greater availability in the community as more groups are running.'*

84. A clinical override is a decision by psychologists that an offender should be permitted to attend a programme for which his low statistical risk score would otherwise disqualify him. I have already drawn attention to the fact that statistical risk scores sometimes present an inaccurate assessment of a prisoner's risks.
85. The Applicant states that it is highly unlikely that he will be able to engage in the recommended risk reduction programme in prison, but there is a good chance of him being able to engage in it whilst on licence in the community.
86. This is a point on which I have some sympathy with the Applicant. It is extremely unfortunate that he has not thus far been able to undertake the recommended risk reduction programme in prison. It is possible that in the light of the panel's decision (and this one) the Respondent may take steps to enable the Applicant to undertake the recommended programme in prison after all: that is a matter for the Respondent and not one on which I am in a position to make any recommendation.
87. If the result of the system is that an offender remains unsuitable for release on licence because his risk has not been sufficiently reduced to justify it, the panel must recognise that fact and not depart from the statutory test for release from licence.

### **Approved premises and the risk management plan**

88. The panel accurately summarised the position in this case as follows:

*"The risk management plan (RMP) had proposed release to approved premises (AP). However, the COM advised that due to a chronic shortage of AP places, only tier A applications were being prioritised. [The Applicant] is tier B2. This was out of the control of the COM. She proposed CAS3 accommodation instead, for up to 84 nights. Move on accommodation would be with family or friends. As there would be no-sign [sic] in or other monitoring at CAS3 accommodation, a GPS tag was proposed. There would be a no contact restriction for the victim and their two daughters and exclusion zones to protect them. [The Applicant] would be required to notify relationships, including their ending, and not to have more than one mobile phone."*



89. The Applicant complained that *"the panel adopted the same stance...refusing to accept my static scoring and risk was too low to be accommodated in an AP. That fact is totally out of my control, but again was used as a negative against me."*
90. This is another point about which I have some sympathy with the Applicant, but his criticism of the panel is unjustified. As I have explained, statistical scores can be inaccurate and provide a misleading picture of a prisoner's risks. It was certainly not the Applicant's fault that the system prevented him from being accommodated in an AP. However, the panel was obliged to decide whether he could be safely released into the community, and the fact that he could not be placed in accommodation which provides a greater degree of control and supervision was a matter which they were bound to take into account.

### **Licence conditions**

91. The panel wrote:

*'[The Applicant] confirmed he understood the licence conditions and would abide by them. The panel noted that [the Applicant] had made repeated assertions about perceived failings in the criminal justice system and the lack of trust he had in it. Compliance on licence will rely on him trusting the system and the panel has doubts about the extent to which he would trust the supervision system enough to be fully open and honest. Any lack of openness on his part would significantly undermine risk management.'*

92. Some of the Applicant's criticisms of the system do have some force, but this observation by the panel cannot be faulted. The Applicant has very strong and inflexible views (about his conviction, his situation and the system as a whole) and if he feels he is being treated unfairly there is clearly a risk that he will react in the way suggested by the panel.
93. Another point on which I have some sympathy with the Applicant is the fact that the licence condition requiring him to wear a GPS tag is limited to 12 months, whereas the panel was required to consider his risk to the public for a much longer period. Again, this is a matter which the panel was bound to take into account when assessing his risks and their manageability in the community.

### **Warning signs**

94. The professional witnesses all expressed the view that, if there was any increase in the Applicant's risk whilst he is in the community, it would be picked up by those managing him. However, the panel wrote:

*'[The Applicant] has in the past skilfully concealed the truth from his then wife and his employers, as well as from those investigating his offending. The panel considered that the warning signs may not be immediately obvious because [the Applicant] could continue to engage with supervision on a superficial level whilst*



*not being open and honest. The concerns the panel has over that are compounded by its finding that he has not been open and honest with the panel, or professionals, about his feelings regarding his victim and current situation.'*

95. This is another observation by the panel which cannot be faulted. It of course undermines the evidence of all the professional witnesses on this point.

## **References**

96. The Applicant states: *'I provided 3 references but I suspect only 1 made its way into the dossier for the hearing ...'*

97. In fact three references were included in the dossier and were obviously considered by the panel. The two references attached to the Applicant's representations are the statement by the POM and the letter from the representative of the military charity. The POM's letter was written after the hearing (and I have taken it into account in reaching my decision), and the panel were well aware of the information about the military charity.

98. In any event references are of very limited value in a case of this kind. There are no doubt many people who would speak highly of the Applicant but they are not aware of the full facts as set out in the panel's decision (and in this decision).

## **Multiple sclerosis**

99. It is of course agreed that the Applicant's ex-wife has suffered for many years from multiple sclerosis. The Applicant suggested at his trial (as part of his defence) that her disease might have contributed to her poor behaviour (as he alleged it to have been). That suggestion was not supported by professionals and does not seem to have been accepted by the jury. Indeed, as the panel recorded in their decision:

*'[The Applicant] tried to convince the victim and others that she was mentally unwell as a consequence of her MS. He hid things, accusing her of carelessness, to then 'find' them himself to make her feel insecure and lose confidence. He would turn up unexpectedly where the victim was, making her unable to relax. He tried to track her mobile phone. The Judge found that [the Applicant] had "manipulated [his wife] over a number of years, undermined her confidence, and persuaded others to believe that she is mentally impaired ..." '*

100. The panel also stated in their decision:

*'[The Applicant] denied wanting to see his ex-wife but told the panel he had been reading up on MS whilst in prison. When probed why he was doing this he said it was important to know, to understand what happens and what he can do better. The panel found this to be contrary reasoning as he would have no need to have a better understanding of the disease, unless he was hoping to attempt to resume a relationship with his ex-wife and or a new partner with the disease. Given his assertions that he had no desire to rekindle a relationship with his victim the panel cannot rule out that he might be reading up on MS because he feels it might be*





*useful to him in terms of discrediting her during his appeals process. At the very least his interest in the disease is evidence that he remains preoccupied with his ex-wife and her health.'*

101. The Applicant states in his representations:

*'The research 4 years ago was not only for trying to understand the illness but also because it was a genuine legal appeal point (R v Sheila Bowler), and that the defence had failed to disclose all medical records that her illness was chronic.'*

102. I am not quite sure whether this was a typing mistake (should 'defence' be 'prosecution'?) or whether he is criticising his own legal team. Whichever was the case, there was no dispute that his wife's illness was chronic. Whilst his case at the trial was (and evidently still is in his submissions to the CCRC) that the illness might have affected her mental state (and consequently her behaviour) as well as her mobility, that was not accepted at the trial and it will be a matter for the CCRC (and the Court of Appeal if the case is referred to them) to consider.

103. I cannot see any fault in the panel's tentative view of the matter. Indeed the Applicant's representations confirm their view about why he was so interested in MS and was reading up about it.

## Decision

104. In the above discussion I have attempted to cover the main points in the Applicant's representations. He makes a number of other points (for example stating that "the Parole Board seemed to take no account that my sentence had been deemed manifestly excessive and reduced in the Court of Appeal by 4 years") which I have not needed to consider as they are irrelevant to my decision.

105. It will, I think, be apparent from the above discussion that I cannot find any valid ground for directing reconsideration of the panel's decision in this case. None of the grounds advanced by the Applicant to support his allegations of irrationality and procedural unfairness stand up to close examination. On the contrary the panel analysed the evidence with great care and its decision cannot be faulted. Its findings of fact were fully justified, and its reasons for rejecting the recommendations of the professional witnesses were detailed and cogent.

106. In the circumstances my decision must be to dismiss this application for reconsideration. The panel's decision must stand.

**Jeremy Roberts**  
**27 August 2024**

