Neutral Citation Number: [2022] EWHC 1692 (Admin)

Case No: CO/2502/2021

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

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 1 July 2022

Before:

MRS JUSTICE FOSTER DBE

- -

Between:

THE QUEEN
on the application of
EDMUND BRUTON

Claimant

- and -

PAROLE BOARD OF ENGLAND AND WALES

Defendant

- and -

SECRETARY OF STATE FOR JUSTICE

Interested Party

- -
- -

Stuart Withers (instructed by **Kesar and Co Solicitors**) for the **Claimant**
[The Defendant and Interested Party neither appeared nor were represented.]

Hearing date: 21 January 2022

- -

Approved Judgment

MRS JUSTICE FOSTER DBE:

INTRODUCTION

1. The Claimant, Edmund Bruton, is a Category C prisoner currently detained in HMP Dartmoor, and this is his challenge to a decision of the Parole Board communicated by letter dated 19 April 2021 in which the three-person Board decided he should not be released nor transferred to conditions of lesser security.

2. The Claimant, who was 51 at the time of the decision, is serving an indeterminate sentence for public protection (an "IPP sentence") under section 225 of the Criminal Justice Act 2003, with a minimum term of 7 years 6 months (less 277 days spent on remand) imposed on 25 October 2011 following conviction for intentionally damaging property with intention to endanger life. He also received a determinate sentence of 6 months in respect of dangerous driving and was disqualified for life, that latter element was subsequently varied by the CACD to 5 years but his appeals against conviction and sentence were otherwise dismissed. Mr Bruton's tariff accordingly expired in 2018; this was his second review.

3. On 9 March 2021 a three-member panel of the Parole Board convened to review Mr Bruton's detention. This hearing was adjourned due to a lack of time; the case was finally concluded on 9 April 2021. The issue before the Parole Board was whether it was satisfied that it was no longer necessary for the protection of the public that Mr Bruton was confined. If not so satisfied the Parole Board has no power to direct his release.

4. Permission was granted by Ms Margaret Obi sitting as a Deputy Judge of the High Court. As is usual, the Defendant, as a judicial body, remains neutral in these proceedings but in order to assist the Court has filed a set of reports from the Claimant's extensive dossier to add to those previously filed as necessary for determination of the claim. The Court has also received a transcript of the hearing before the Parole Board.

THE LEGAL FRAMEWORK

5. The sentence passed on the Claimant was one of Imprisonment for Public Protection created by s.225 of the Criminal Justice Act 2003 ("the 2003 Act") (in fact abolished by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 with prospective effect from December 2012). The effect of the sentence is that it is an indeterminate life sentence for the purposes of s.34(2)(d) of the 1997 Act. The Claimant has served his minimum term and his release on parole can be considered. The Claimant's release was governed by the provisions of s.82A of the Powers of Criminal Courts (Sentencing) Act 2000. Once the minimum term has expired, the early release provisions set out in s.28(5)-(8) of the 1997 Act apply and responsibility for considering release passes to the Parole Board.

6. The Parole Board is a statutory body constituted by s.239 of the 2003 Act. By s.28(6)(a) of the Crime (Sentences) Act 1997 ("the 1997 Act"), it is required to direct the release of a life sentence prisoner where, a case having been referred to it by the Secretary of State, it is "*satisfied that it is no longer necessary for the protection of the Public that the prisoner should be confined*".

7. In 2019 the Defendant introduced new Parole Board Rules which contained the Reconsideration Process.

8. Rule 28 of the Parole Board Rules sets out the process. Pursuant to rule 28(3) a party requesting the reconsideration must within 21 days of the written direction submit an application and serve it on the Board. That did not happen in time in this case – due to a mistake about the address which, unfortunately was not notified to the Claimant.

THE ISSUE

9. The Claimant puts his case on the basis that the decision was unfairly reached because of errors made by the Parole Board. Although expressed in somewhat different language the challenge essentially amounts to the following:

   a. failing to take into account evidence that supported the Claimant's case and demonstrated that he met the test for release
   b. failing properly to consider the Claimant's closing submissions
   c. making material mistakes of fact when summarising the witnesses' evidence.

10. The evidence for this is argued to be the inaccuracies and omissions in the decision letter of the Board. It is said that this has a resonance beyond merely saying the Board should have reached a different decision because this decision will form part of the Claimant's dossier and ought not to stand in its present form because it could prejudice future consideration of his case. It is said there is no fair or accurate summary of the evidence given at the hearing and accordingly, and in any event, the decision should go back for correction to the Parole Board. The arguments overlap, and I deal with the Claimant's case compendiously.

BACKGROUND

11. On 9 March 2021, the Claimant's case was heard by a three member panel of the Parole Board including a specialist psychologist member. The Panel had before it a number of reports from professionals and heard evidence from the following:
   (a) the Claimant,
   (b) Ms Kennedy, an independent psychologist instructed by him
   (c) Ms Jones, a prison psychologist
   (d) Ms Stockley, the Claimant's Prison Offender Manager at HMP Channings Wood
   (e) Father Anthony, Prison Chaplin
   (f) Ms Venter, the Claimant's Community Offender Manager

12. It is in respect of the recording and the consideration of the evidence of Ms Stockley and to an extent that of Ms Jones that issue is particularly taken.

13. The context in which the Parole Board were obliged to consider the risks of release of course included the details of the index offence.

14. No issue is taken with the Parole Board's description of the facts of the offending and I

take them directly from their Decision:

> "*3 Analysis of offending.*
> *"Now aged 51, you are serving a sentence having been convicted after trial of damaging property with intent to endanger life and dangerous driving. You were acquitted of attempted murder. You drove your vehicle at speed through the living room wall of your former girlfriend's house when she and her children were in the property. Prior to the offence you had consumed a supposedly lethal quantity of anti-freeze. You also sent text messages to your former partner, saying that she could have avoided you committing suicide if she had answered your messages. You said that you would be "waiting for her in hell". You were found in the car in the partly demolished property shortly after the collision. You had puncture wounds to either side of your neck, which you said you had caused by you placing a garden fork on the steering wheel so that it would injure you on impact. You said that you had pulled the fork out of your neck. However, the fork was not retrieved by the police. At the time of sentence, you said that you were so intent on killing yourself because of the pressures in your life, that you failed to consider the consequences of your behaviour on others. The sentencing judge commented that your behaviour was pre-meditated and that you not only planned your own death but also serious injury to your previous partner and her children. At the time of sentence, you said that you wanted your ex-partner to see you die as she was the only person in your life, and you had no life. Your application to appeal your conviction was refused in 2017.*
>
> "*You had been observed driving dangerously in the surrounding residential area. It is said that you reached speeds of 80mph, that a postman had to jump out of the way for his own safety, and that you placed other pedestrians at risk. Your previous partner, her three children, and one of their friends, were present in the home when you drove into it at speed. Your ex-partner and three children were in the living room at the time of the impact and two of the children suffered injuries as a result. One sustained a scar to the head and another required stitches to the shoulder. However, all involved were severely traumatised and the children displayed symptoms of Post-Traumatic Stress Disorder.*
>
> "*You met your ex-partner on an on-line dating site less than a year before your index offence. You had spent time at her home, and you had been introduced to her children.*
>
> "*She ended the relationship but maintained some contact with you because she was concerned about your emotional well-being. You failed to accept that the relationship was over or to accept that it was your behaviour that had contributed to the relationship ending.*
>
> "*Your index offence represented an extreme act of domestic violence. You have one previous conviction. According to the PNC record, in*

> *1986 at the age of 17, you were convicted of indecent assault on a female aged 16 or over, for which you received a probation order for three years. The pre-sentence report states that the girl was under 16 at the time of the offence and that you were babysitting for her and her sister at the request of their mother. Police were alerted when you were naked in front of a 7 year old child, and it later emerged that you had sexually touched the child/or her sister sometime previously. You told the Panel that you still intended to challenge this conviction and it has played on your mind. You said that you were advised to plead guilty.*
>
> "*You continue to say that your index offence was the result of your emotional crisis at that time due to your financial difficulties, the anniversary of your father's death, your mother's ill health and your mental breakdown. You deny any intention to hurt anybody.*"

THE EVIDENCE

Ms Stockley

15. Ms Stockley had known the Claimant for some years. She spoke about his time previously in prison, but had had less recent contact with him. She said:

> "*… in Channing's Wood, there was, he did say about perhaps there was some kind of, in my words, a vendetta against him, but he says that's not anything he can prove and I think he's kind of dropped that.*
>
> "*His time at HMP Dartmoor, he tells me, he clarifies he did not go onto hunger strike and he was not suicidal, but he admits that he did manipulate people so that he could get a better cell, which he believes he's entitled to for decency.*"

16. When asked what she made of his thoughts of vendetta she put it down to his personality difficulties.

17. When questioned further was it his intention that staff should believe he was on hunger strike, even if in fact he wasn't, she stated:

> "*R STOCKLEY: Yes. Yes, I think, I believe so.*
>
> "*E MCALLISTER: And equally with the threat to harm himself, did you get an impression from Mr Bruton as to whether that was a serious threat or whether it was intended to alarm staff?*
>
> "*R STOCKLEY: I think it was intended to alarm.*"

18. She also said:

> "*I think it's a bit concerning that he's turned to quite consciously manipulating, and there must be better ways. It does concern me that*

> *his repertoire of problem-solving skills didn't go beyond pure manipulation. It doesn't bode well for how he's going to conduct himself going forwards.*"

19. Other examples of manipulation at his earlier prison were discussed, and incidents where he was accused of harming other prisoners.

20. As to assessing risk, she was asked by the Parole Board about offending behaviour work to which she replied:

> "*My understanding is that there hasn't been any risk reduction work or other offender programmes undertaken by Mr Bruton since the last Parole review two years ago. Have I got that right?*
>
> "*R STOCKLEY: That's correct.*
>
> "*So, apart from the Covid interruption, is the fact that no risk reduction work's been undertaken down to Mr Bruton's choice?*
>
> "*R STOCKLEY: Yes.*
>
> "*E MCALLISTER: Do you have an impression of whether he will, in fact, engage with the, whatever program he's deemed suitable for, if the time comes that he's assessed and offered a place?*
>
> "*R STOCKLEY: I'm aware that he would prefer to do one-to-one work.*
>
> …
>
> "*I think he would struggle in a group situation. I think he struggles on a one-to-one, but in a group situation there'd be more eyes and ears on him, seeing his faults. So, I think there is a real, a genuine difficulty for him to be exposed and to acknowledge his faults and areas for further improvement…*"

21. The rest of her evidence included:

> "*He doesn't want to do group work, I think there is something to be said for him being released to do one-to-one work; have a, be on a robust licence. I feel that it's just not tested yet, his relationship with Ms Venter isn't tested. Ms Venter will have a better idea of that, of course, than me.*
>
> …
>
> "*I don't feel the risk is imminent. But I do feel that it's really important for him to face his difficulties, acknowledge his difficulties at least [in some way?] and I do think it's really important.*"

22. When asking herself rhetorically how much his thinking had changed since the index offence she said:

> "*I think his mood is different. I think he's much in a better place. I think he's got less difficulties now. But, for the future, it's like I've said - I don't think the imminency is there, but I think the risk is there if it's triggered by a crisis occurring like before.*"

23. Also when probed she said:

> "*…if he were to feel that his sister didn't come through to him when he expected her to.*
>
> "*R STOCKLEY: Yeah, yeah.*
>
> "*E MCALLISTER: And that scenario very much parallels the index offence, does it not?*
>
> "*R STOCKLEY: Yes, I totally agree, yeah.*"

24. It is said that the Parole Board wrongly assumed there was a diagnosis of Personality Disorder when there was not.

25. In my judgement it cannot be ignored that Ms Stockley answered regarding whether the Claimant sought to deflect from a close examination of his difficulties thus:

> "*R STOCKLEY: I think he just finds it really, really difficult to look at his narcissistic personality disorder. I don't think he wants to be that person.*
>
> "*E MCALLISTER: Right. And is it getting in the way of looking at the NPD?*
>
> "*R STOCKLEY: I think it has done, but I think it can be surpassed. I think supplying him with and going through some information about it; having that discussion with him; recognising the traits in him. I think that that could work, to a point.*"

26. Later it was said:

> "*E MCALLISTER: Sorry, it's not my last question. You said that you were, I suppose, a little bit torn or a little bit ambivalent about your recommendation and that you, and that possibly with a robust riskmanagement plan thathecould besafely managed in the community. Do you have any thought? Have you seen the risk management plan that is proposed in the event that he were released?*
>
> "*R STOCKLEY: I haven't seen it because I don't have access to OASys currently, so I've not seen an updated one. What I would say about it is I kind of pass this over to the community offender manager and*

see how they feel about how robust their plan is. Can they manage him safely? Can they engage him? I think, in principle, it's possible, yes."

27. This was the highest her evidence reached in the Claimant's favour in my judgement. In answer to questions about why she did not recommend release where the risks were low she said:

> "*It's the longer-term issue that I've been concerned about. But, as I have explained, yes, it would be possible, I think, with a robust licence to manage Mr Bruton safely in the community.*"

28. Asked for details of any possible plan, she said:

> "*A testing period in an AP with appropriate move-on plan, probably to his own home; or private rented accommodation; or with a relative, as deemed, assessed as suitable. But, initially, to an approved premises. I'd like him to report at least once a week for intervention with his community offender manager. I'd like him to engage fully with the OPD service. I don't know of the level of contact they offer, though; to report developing relationships as a licence condition; a licence condition to engage with interventions. Those are the primary ones, yeah. Those are the ones that I would absolutely expect to see there.*"

29. His own representative said she seemed to have the most comprehensive understanding of Mr Bruton from all the reports that there are. She agreed.

30. Turning to Ms Jones. She said the following to the Panel when asked about why he needed to remain in closed conditions to do core work:

> "*MS JONES: It's my preference that he does the core risk reduction working in closed. I consider his problematic personality traits to be functionally linked to his risk and, at this time, even when I did my assessment - and having listened to today's evidence as well - I still have some concern about his level of insight into his personality; how he's going to potentially manage that in the future. And I'm not entirely confident as to whether that work could be completed to the level it needs to be completed in the community, if we think about risk, need and responsivity. Again, I can understand where Ms Stockley was coming from – that there is a fine line, I think, between whether that work can be done in the community; or whether it warrants his continued detention in closed conditions, and it's a difficult balance.*
>
> …
>
> "*I think, given that those personality traits are continuing to persist to some extent, I think - and his ambivalence regarding engagement in treatment - I suppose I would have some concerns about whether he would engage in that treatment in the community. However, his motivation to complete the treatment in custody is problematic.*

> "*T TOSTEVIN: So, is it a stalemate?*
>
> "*MS JONES: Yes.*
>
> "*T TOSTEVIN: Okay.*
>
> "*MS JONES: And I think this is the problem. I think this is where the difficulty comes in terms of moving forward.*
>
> …
>
> "*I suppose, as long as he can engage in some personality work in the community and he has that involvement with the OPD pathway, I suppose that could be a potential option.*
>
> "*I just have some reservations about whether his personality traits are going to be impacting upon his ability to engage openly and honestly with professionals involved in his management, and I think my concern is that there is an element of grandiosity at times with Mr Bruton, which can act as quite treatment-interfering or interfering in terms of managing him.*
>
> …
>
> "*Q: It sounds to me like what you're saying is that actually maybe the risk isn't manageable if he's not going to be open, and that's the worry.*
>
> "*MS JONES: Yes.*"

31. Mr Kider in cross-examination asked a question and the Claimant relies on the answer:

> "*Q: ... can I just be clear, from your evidence today, your preference is from Mr Bruton to stay in custody to undertake work on his personality traits; then to undertake core offender behaviour work in the community. However, you are of the opinion, based on what you said, that Mr Bruton's risk could be managed in the community by Probation with the support of OPD pathway and with Mr Bruton being open; and with the added condition that Mr Bruton had to engage with the OPD pathway? I apologise, that was a very long question there, summarising what was said over some time.*
>
> "*MS JONES: Yes, that's what I said, yeah.*"

Other Witnesses

32. Other evidence that the Parole Board would have been bound to take into account included that from Dr Jennifer Bamford, a forensic psychologist who had been instructed by the Claimant in 2017.

33. Her report recorded that the relationship in respect of which the crime took place had ended in February 2011. He was sentenced on 25 October 2018. The report notes he self-harmed in 2013. She gave a psychological assessment of the Claimant which noted the following:

> "*He was "vulnerable to impression management", "faking good" – page 296 and self-deception, complacency with narcissistic personality traits and fragile sense of self. This included a tendency to minimisation.*"

34. The MCMI IV test was employed by her which she emphasised was not a diagnostic tool but described levels of pathology. It was in terms of (1) not elevated, or (2) elevated to either (a) "style" or (b) "type" or (c) "disorder". These were three scales of increasing severity. The use of the word disorder did not imply a diagnosis. She explained that there were three levels of involvement where evidence was found in the Claimant's case. She saw narcissistic personality to disorder level (i.e. the highest level), compulsive personality to style level, and turbulent personality to style level. She noted "*habitual maladaptive methods of relating, behaving, thinking and feeling*" – this is what she was looking to determine.

35. She said the Claimant bottles things up and has an invincibility approach to life with unrealistic goals and difficulty in accepting failure.

36. He had self-reported that he took only 1% responsibility for the current circumstances (4.10.3.4). He was quick to depreciate those who did not accept his superior self-image. She said the tests were accurate, indeed the results might be under reporting. She noted how the Claimant would behave in future linked to his personality style and she identified areas that may become problematic if he lacked insight – e.g. where there was a highly stressful situation or suffering mental health problems. He may be defensive and may employ charismatic skills (see page 108). She said personality disorder was not present to a troubling degree; there were aspects of emotionally unstable personality disorder – he could be cognitively rigid with little room to be persuaded and there was a clear lack of insight. She said that not accepting or managing his mental illness would increase the risk to himself and others.

37. She did accept he could be managed in the community but he struggled, and had difficulty in hypothetical thinking. He did not respond to social cues. The primary risk factor was the deteriorating mental health. A relapse into depression would be a very serious risk factor. Although in 2019 he had felt low it was noted, in the evidence to the tribunal, that his mental health was now stable.

38. However, amongst the other evidence heard before the Parole Board Ms Venter, his Community Offender Manager, gave difficult evidence for the Claimant. It was her view that he played professionals off one against another. The Parole Board recognised that the Claimant's relationship if he were directly released, with her, was key.

39. The evidence of Ms Kennedy included that the Claimant had difficulty in acknowledging his difficulties and the issue was whether that would shift over time. Ms Kennedy referred to things that the Claimant might find shameful or embarrassing and his own

evidence highlighted that there were ongoing traits – persistent traits. He was at an "impasse therapeutically" and that the problematic traits of his personality were functionally linked to his risk and had not yet been tested. He was a medium risk in the community said Ms Kennedy.

40. There was no doubt that Ms Venter's evidence was less positive. She had written three reports, two in 2020, one in March 2021 and she had not had a lot of contact with him since the Claimant had not done offence related work. She accepted their relationship was not good and said she felt that he felt she was against him. Her risk assessment was of serious harm to members of the public at a high level (see page 209), that she did not recommend open conditions because they did not provide any offender behaviour programmes in open conditions.

41. Ms Venter was of the view that the Claimant still took very limited responsibility for his crime, there was a very limited recognition of responsibility, but progress was acknowledged; controlling behaviour played a large role in the offence and it was still an issue. She said the Claimant did not understand the role of professionals around the control issue. Although there was improvement in managing moods noted she was unconvinced by his newly expressed wish to comply with work , she said in times before he had "found every avenue not to engage" , and there were risk factors in his relationships – particularly intimate relationships. His personality traits were very important - there was a lot of intellectualisation and grandiosity that would get in the way. His personality, she said, interfered with his ability to engage.

CONSIDERATION of the CLAIMANT'S CASE :

Effect of the evidence and mistakes

42. As regards the evidence of Ms Stockley, the Parole Board recorded that:

> "*Ms Stockley did not recommend your release. She considered that offence focused work is still necessary.*"

They also recorded:

> "*Ms Stockley said that it was possible that you could be released if you were to engage with personality disorder services and complete individual work to address relationships. However, she had not seen the proposed risk management plan. She thought that you could present an abscond risk if you were in a crisis, but she thought that there would be warning signs*."

43. The Claimant says this was not a fair reflection of what she said – she did not say further offence focussed work was necessary, and her evidence had been more nuanced – saying he accepted, both that he could, and that he could not be released, but her view changed in the hearing and the effect of her evidence was positively in his favour – which was not recorded or taken into account by the Parole Board.

44. Regarding Ms Jones, the Claimant says that the decision ought to have stated that she

had said the risk could be managed in the community. He relies on an exchange between the Claimant's solicitor and the witness as follows:

> "*S KIDER: From your evidence today, your preference is from Mr Bruton to stay in custody to undertake work on his personality traits; then to undertake core offender behaviour work in the community. However, you are of the opinion, based on what you said, that Mr Bruton's risk could be managed in the community by Probation with the support of OPD pathway and with Mr Bruton being open; and with the added condition that Mr Bruton had to engage with the OPD pathway?*
>
> "*S JONES: Yes, that's what I said, yeah.*"

45. He complains that the decision recorded that he had made complaints in prison but failed also to record the fact that he had been successful in the outcome of those complaints. Ms Stockley's written report of August 2020 had however recorded this fact.

46. The Claimant accepts that neither recommended his release on licence, but he says that the proper interpretation of their opinions was that with a robust risk management plan his risk could be adequately managed in the community and the Parole Board ought if properly directing themselves to have accepted that opinion. However, the negative decision on release did not reflect this. Further, at section 4 the Board said "*All professionals agree that you have a personality disorder and that it is functionally linked to the risks that you pose*" whereas in truth, the Claimant submits:

    a. Ms Stockley stated the Claimant had "*personality difficulties*" (bundle reference TB/24) (although there is a reference by her that the Claimant had difficulties looking into his "*narcissistic personality disorder*" (TB/26) and see above).
    b. Ms Jones' evidence was that he had "*problematic personality traits*" (TB/156).
    c. Ms Venter also gave evidence in relation to the Claimant's "*personality traits*" (TB/255).
    d. The Claimant himself said that he had personality traits not a personality disorder (TB/56).

47. The Claimant points to two passages as evidencing material mistakes of fact in the Parole Board's conclusion as follows:

> "*A. All professionals agree that you have a personality disorder and it is functionally linked to the risks that you pose;*
>
> "*B. Ms Stockley did not recommend your release she considered the offence focussed work is still necessary.*"

48. Mr Withers for the Claimant submitted that these were mistakes of fact that vitiated the rationality of the decision. It was also evidence, he said, that the Parole Board had failed to take into account that true evidence, and the decision therefore could not stand. He argued that the phrase "*all professionals agree that you have a personality disorder*" meant that there was a diagnosis of personality disorder whereas this was not the case.

49. Further, Ms Stockley did not refer to offence focussed work. He submitted that Ms Stockley's evidence gave strong support to the proposition that the Claimant could be released. The fact that accurate and helpful evidence was omitted showed that the Parole Board had not directed their minds to the Claimant's case, vitiating the conclusions reached.

50. The Claimant's representative before the Board, his experienced solicitor, Mr Kider, in full, cogent and well-argued written submissions argued for release on the basis:

> "*... that Mr Bruton's risk can be managed safely in the community and that his detention is no longer necessary for the protection of the public.*
>
> "*With the support structure in place through the proposed licence conditions (with the offer of OPD work in the community, residence at approved premises or at his family home on GPS tag, one to one work with OM and Offender Behaviour work), ... the Claimant's risk could be managed in the community without exposing the general public to an unmanageable risk of harm. That he would thrive in these conditions and with the support available to him in the community.*"

51. In the decision it is stated that:

> "*Ms Stockley did not recommend your release. She considered that offence focused work is still necessary, she was concerned that you do not have a positive working relationship with your community Offender Manager, and you also discussed your intention of leaving the country. She considers that you need to further develop your abilities to manage your personality difficulties, your emotions and your decision-making skills. She said that you were more focused on developing your plans to leave the country, although your licence will not permit it.*"

52. The Claimant submitted that this was not an accurate reflection of the evidence given by Ms Stockley at the hearing. He said that in her evidence she repeatedly asserted that offence focused work was beneficial to the Claimant not "*necessary*". She stated that she would <u>like</u> the Claimant to have a programmes needs assessment – not that it was <u>necessary</u>. When asked if in her opinion the Claimant's risk could be managed in the community, Ms Stockley replied that it <u>could</u>.

53. He submitted that this was indeed different from her position in her reports, however this was her final recommendation, given at the hearing. He also said the Panel in their decision appear to portray Ms Stockley's recommendation as a solid stance but submitted the effect of evidence was that her stance was in the middle. He urged that Ms Stockley had highlighted the Claimant's tendencies for depression, but she thought he was quite stable at the moment, and re-emphasised positive parts of her evidence particularly that she believed that with a robust, and positive relationship he could be released with work with the OPD. Also, with a robust risk management plan the Claimant could be managed safely in the community. At the time of her report she had not seen a risk management plan. Whilst this was true at the time Ms Stockley did her report, it was not the case by the time of the hearing where she gave her opinion on management of risk. The Panel's summary that Ms Stockley did not support the Claimant's release and he needed to

undertake offender behaviour programmes is a material mistake of fact.

54. Issue was also taken with the treatment of evidence of Ms Jones in that it too had evolved in the course of the hearing and it was submitted: "*At the hearing Ms Jones did initially assert that offender behaviour work was necessary before risk could be managed in the community. However, as she was questioned her position shifted to a position that the Applicant's risk can be managed in the community.*"

55. Further it was submitted that the Panel concluded that the Claimant was diagnosed with personality disorder. There has never been a formal diagnosis of this condition. It is accepted that the evidence of the experts points to the Claimant having traits of personality disorder, but this is not personality disorder. This is a "*very important piece of evidence that the Panel has again got wrong*" said Mr Withers.

56. The essential submission of the Claimant is that the decision should go back to the Parole Board for them to amend the findings properly to reflect the evidence as it was at the hearing.

LEGAL PRINCIPLES RELIED UPON by the CLAIMANT

57. The Claimant reminds the Court that the Parole Board was established under section 59 of the Criminal Justice Act 1967 and although a body corporate (see section 239(1) CJA 2003), it is recognised as a court when it decides issues concerning the liberty of a prisoner and whether to direct that prisoner's release. The Parole Board has no power to direct that release unless, pursuant to Section 28(6)(b) of the Crime (Sentences) Act 1997 it is satisfied "that it is no longer necessary for the protection of the public that the prisoner should be confined".

58. It is trite, (see *R (Sturnham) v The Parole Board and Another* 2 2013 2 AC 254) that the detention depends upon presenting "a continuing risk to life and limb" and whether the prisoner poses a risk of committing serious offences that may occasion serious harm.

59. The Parole Board guidance ("Parole Board Oral Hearings Guidance 2018") indicates that in assessing risk presented by the prisoner in the community the Parole Board must be satisfied that an acceptable supervision plan is in place.

    Again, it is well settled in the case law (the Claimant referred the Court particularly to *R (DSD) v Parole Board and the Secretary of State for Justice* [2019] QB 285) that a risk assessment is a matter of judgment for the Parole Board, and their experience commands respect. Nonetheless given the issues of personal liberty at stake a review of the Parole Board decision commands anxious scrutiny (*R(Brown) v Parole Board* [2018] EWCA Civ 2024).

60. Added to these fundamental principles the Claimant took the Court to a number of authorities where the Parole Board's handling of evidence, recording of argument and expert opinion had been questioned. The Claimant relied on a series of cases in which complaint had been made about the accuracy and/or sufficiency of Parole Board decisions and where, it was argued, a careful level of scrutiny was applied by the Court.

61. The Claimant argues that as a matter of substantive law, the evidence, properly understood, shows that the conclusion reached by the Parole Board was not open to them.

62. For these purposes the Claimant accepts that the test is in *R (DSD and others) v The Parole Board* (*supra*). Here the Divisional Court set out the well-established test for irrationality to be applied in judicial reviews of Parole Board decisions. It said at paragraph 116:

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

63. He also argues a procedural unfairness in the form of mistakes of fact that meant the hearing was unfair in not properly recording the evidence that was favourable to the Claimant or reflecting it in the decision letter refusing release or a move to less restricted conditions.

64. The submission is that the decision was irrational because it made "*numerous errors of material fact which led to a flawed assessment of risk*" which was the foundation for the unfavourable decision. At the centre of that is the submission that the Parole Board made a flawed assessment of "*whether the Claimant's risk of harm could be managed in the community.*"

65. It is suggested that the Panel by the decision date, a month and a half later, had forgotten the evidence that had been given at the first hearing and had poor notes of the evidence given during examination and cross examination of the witnesses. As the Claimant acknowledges, for a mistake of fact to vitiate the fairness of a decision the test in the case of *E v Secretary of State for the Home Department* [2004] QB 1044 must be met, namely that:

> " *… there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter; the fact or evidence must have been "established", in the sense that it was uncontentious and objectively verifiable; the Applicant (or his advisors) must not have been responsible for the mistake; and the mistake must have played a material (though not necessarily decisive) part in the tribunal's reasoning.*"

66. The approach of the Court to decisions by the Parole Board assessing risk were set out by the Divisional Court in *R (D) v Parole Board* thus per:

> "*117 The evaluation of risk, central to the Parole Board's judicial function, is in part inquisitorial. It is fully entitled, indeed obliged, to undertake a proactive role in examining all the available evidence and the submissions advanced, and it is not bound to accept the Secretary of State' s approach. The individual members of a panel, through their training and experience, possess or have acquired particular skills and expertise in the complex realm of risk assessment.*

> "*118 The courts have emphasised on numerous occasions the importance and complexity of this role, and how slow they should be to interfere with the exercise judgment in this specialist domain. In R (Alvey) v Parole Board [2008] EWHC 311 (Admin) at [26] Stanley Burnton J neatly encapsulated the position:*
>
> > "*The law relating to judicial review of this kind may be shortly stated. It is not for this court to substitute its own decision, however, strong its view, for that of the Parole Board. It is for the Parole Board, not for the court, to weigh the various considerations it must take into account in deciding whether or not early release is appropriate. The weight it gives to relevant considerations is a matter for the Board, as is, in particular, its assessment of risk, that is to say the risk of re-offending and the risk of harm to the public if an offender is released early, and the extent to which that risk outweighs benefits which otherwise may result from early release, such as a long period of support in the community, and in some cases damage and pressures caused by a custodial environment.*
>
> "*119 Further, as Lord Phillips of Worth Matravers CJ observed in R (Brooke) v Parole Board [2008] 1WLR 1950, para 53:*
>
> > "*Judging whether it is necessary for the protection of the public that a prisoner be confined is often no easy matter. The test is not black and white. It does not require that a prisoner be detained until the board is satisfied that there is no risk that he will re-offend. What is necessary for the protection of the public is that the risk of re-offending is at a level that does not outweigh the hardship of keeping a prisoner detained after he has served the term commensurate with his fault. Deciding whether this is the case is the board's judicial function.*"

67. In my judgement the transcript of evidence (to some of which my attention was drawn) makes clear that the notions of personality disorder, elements of other disorder, and personality traits were current in all of the psychological discussions about what risks the Claimant might pose upon release. Nowhere in the bundle was there a psychiatric report purporting to diagnose personality disorder yet the witnesses each recognised the Claimant's disordered personality was central to an assessment of risk. Indeed, as the Claimant's representative acknowledged, Ms Stockley herself used the phrase "personality disorder" in her evidence and much of the discussion concerned engagement with the personality disorder services. It is not in any event conceivable that the decision would have been any different had the Parole Board spoken of "traits" rather than disorder. The central concerns here were risk and the absence of work to date to demonstrate that the Claimant was in a position to mitigate the obvious concerns flowing from the index offence and the personality issues discerned to exist.

68. I have carefully considered the evidence given but find it impossible to say that the Parole Board made material errors of fact.

69. It is the case that Ms Stockley did not recommend release. The position was that no professional recommended release. Several of the witnesses accepted release was a possibility and they indicated the elements that required to be in place for that to be a possibility. Reference was made to offence focussed work – in fact as I read the transcript, this was in the evidence of Ms Venter. Ms Stockley did believe that work was still required but she said the following when questioned by the Panel:

> "*Q: My understanding is that there hasn't been any risk reduction work or other offender programmes undertaken by Mr Bruton since the last parole review two years ago, have I got that right?*
>
> "*A: That's correct.*
>
> "*Q: So apart from the Covid interruption is the fact that no risk reduction work been undertaken down to Mr Bruton's choice?*
>
> "*A: (Ms Stockley) Yes.*"

70. The context for this is that there was evidence that Ms Venter did believe offence focussed work was required, Ms Stockley did believe slightly different work was required, and neither of them recommended his release. In these circumstances it is in my judgement no material mistake of fact that serves to vitiate the conclusions of the Board nor otherwise presents an unfairness of process.

71. In these circumstances it is in my judgement impossible to conclude:

    a. That the tenor of Ms Stockley's evidence was robustly positive as was effectively argued by the Claimant, it was not.
    b. That Ms Stockley's evidence and that of Ms Jones was not in truth cautious and concerned, as portrayed by the Parole Board.
    c. That there was a material error of fact in taking account of a view that all believed he had personality disorder – that was not the thrust of the Board's decision, and indeed the central issue was the effect upon risk of the traits of his disordered personality, for which they was copious evidence, aside from diagnosis.
    d. That there were any other material mistakes of fact or misunderstandings by the Board of the tenor of the experts' views.

72. In my judgement the Board were carrying out the very function described by the Divisional Court in *R(D)* (above). They were conducting the difficult exercise of determining risk. How they evaluated those risks and the weight they put on various pieces of evidence were, it is accepted, matters for them, subject to errors of approach and rationality. In my judgement there was no error in their approach nor, on the evidence, can the conclusions be characterised as not open to them.

73. It was also suggested by Mr Withers that the importance of the Parole Board decision as a record within the Claimant's dossier meant the Court must look very closely indeed at any slip or error. I cannot accept that there would be any prejudice to the Claimant were somebody at some stage wrongly to suggest that this Parole Board accepted that the Claimant had been diagnosed with a personality disorder. Not only does the phrase

complained of not suggest that, in my judgement, but it is easy to show from the dossier that is not the case. It is, clear from a thorough review of the papers that the very issues that were central to the Claimant's case involved a consideration of personality problems of varying degrees and intensities. These personality traits were agreed by all the professionals to be central to any risk, it's management, and it's manifestation that the Claimant might present in future. For that reason, the phrase "*personality disorder*" appears in the evidence and in the dossier on many occasions. It does not connote a psychiatric diagnosis, nor would the informed reader take it to be such.

74. For these reasons the first of the facts does not have the effect argued by Claimant. Similarly, the second does not present the risks or unfairness argued by the Claimant. I was urged by Mr Withers to look at each of these facts and indeed other points he made about the Parole Board's decision cumulatively. His submission was that, taken in the round, they amounted to sufficient error and/or unfairness as to vitiate the substantive decision of the Parole Board.

75. A further ground under his heading 'Irrationality' was a submission that the Parole Board failed to take into account relevant evidence that demonstrated the Claimant's risk could be managed on licence in the community. He points to the acceptance by Ms Jones and Ms Stockley that it was possible his risk could be managed in the community. He says the Parole Board failed to acknowledge that the Claimant's numerous complaints and applications whilst in prison had had some positive outcomes.

76. It is in my judgement impossible to hold there was omission of relevant materials in the reasoning of the Parole Board. The transcript of the relevant evidence which I have read with care, including the other context to this decision (the report of Ms Kennedy) makes this clear. There were clearly behavioural concerns and, with respect to the submissions made, it is hard to see how, given the evidence before them, the Parole Board could have concluded differently.

77. The claim must be refused.

78. I add the following as there was at one time an issue as to what had happened with respect to pursuing an alternative remedy.

THE RECONSIDERATION COMPLAINT

79. The Parole Board is this case refused to reconsider their decision which would have been the proper recourse for a complaint about reconsideration, and is the remedy which generally requires to be exhausted before recourse to this Court.

80. The Claimant asserted that his representations were made to the correct address and appropriately sent to the Panel (and produced an email sent on his behalf to the Parole Board Case Manager on 10 May (within time for the 21 day time limit above dating from notification of the written decision on at about 5.30 pm 20 April 2021). Contact was made chasing up the request for reconsideration – which would have required a transcript to be obtained – on 17 June and on 23 June 2021 the Claimant was told by the case manager that the Parole Board had not received the request.

81. The Claimant pointed out that he had served "*on the Parole Board*" as required by the Rules. He asked in the alternative, through his representative that:

> "*In the alternative, we kindly ask that the Parole Board use their powers under Rule 6 to manage this case and make directions that these representations be re-submitted, to use Rule 9 to extend the time limit of service of the reconsideration application in the interests of justice as this matter effectively impacts on the Applicant's right to a fair hearing and his liberty under Article 5 and 1 of the Human Rights Convention.*"

82. He received the following reply telling him he had used the wrong email address. He had regrettably not been tipped off about the mistaken email address by the case manager whom he had copied in to the email:

> "*Thank you for your emails (dated 24.6.21 & 25.6.21 including an SHRF).*
>
> "*I have again reviewed the information you have provided in relation to the reconsideration application you submitted on behalf of Mr Bruton on 10 May 2021, and confirm that the email addresses to which you sent the application are not Parole Board reconsideration inboxes/email addresses.*
>
> "*Methods of service on the Parole Board is governed by rule 11(1) of the Parole Board Rules 20195, which reads: "11.-(1) Where a party or other person is required to serve documents on the Board or parties under these Rules, the documents must be served by being – (a)* ***sent to a secure electronic address where one has been provided by the Board*** *and/or a party.'*
>
> "*We have provided our email address reconsideration paroleboard.gov.uk as the correct secure electronic address for service of reconsideration applications.*
>
> "*Guidance is set out on our website in relation to how an application can be made and clearly states:*
>
> "*Please note that only applications which are sent to the correct postal or email address will be accepted. If you send it to a different address, or forward it to another person at the Parole Board, they* ***will not be able to accept it.****'*
>
> "*Therefore in view of this, the reconsideration application on behalf of Mr Bruton has been deemed ineligible as it is was initially incorrectly served and is now out of time. We are unable to progress this any further.*"

83. The Parole Board thus stated that they did not accept applications passed on from Parole Board Case Managers – it had to be directly emailed.

84. If the Defendant did not accept service in the manner submitted on 10 May 2021, in my judgement it should, as a matter of practice, given the context and the issues at stake, have brought this to the attention of the Claimant's legal representatives so they could re-serve in the Parole Board's designated manner. The Claimant had over 48 hours to re-serve this application had it been brought to his attention.

85. In the event, a complaint about these events was not fully pursued before me, perhaps understandably as it is not arguable as a reviewable error of law, and permission had been granted in any event. Nonetheless, it has meant that the Claimant invoked this Court's jurisdiction without having successfully sought a review of the decision as contemplated by the rules.

86. Whilst in my judgement that might ordinarily have been a sufficient reason to decline to consider the substance of the complaint, the Claimant was granted permission and I have considered the substantive complaints made and rejected the claim on its merits.