

**[2021] PBRA 50****Application for Reconsideration by Jalil****The Application**

1. This is an application by Jalil (the Applicant) for reconsideration of a decision dated 15 March 2021 not to direct his release (the Decision) following a hearing held by an Oral Hearing Panel (OHP) on 2 March 2021.
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair. This is an eligible case.
3. I have considered the application on the papers. These include the application for reconsideration itself, detailed written submissions from the parties, the decision letter, the dossier which ran to just under 1000 pages and a number of other documents and emails.

**The Sentence**

4. On 15 June 2007 the Applicant, now 47 years old, was sentenced to an extended determinate sentence of 26 years' imprisonment and a licence period of 5 years. Alongside five other co-defendants, he had earlier pleaded guilty to conspiracy to cause explosions intending that such acts should be carried out and knowing, when giving help, support and assistance, that such explosions were likely to endanger life. He has been eligible for early release by direction of the Parole Board since August 2017. His automatic release date is in December 2021.

**Background and Context**

5. To understand the background to and the context in which the OHP had to consider the Applicant's risk it is essential to go into greater detail than is usually the case in these decisions.
6. Another, seventh defendant (AB) who led the conspiracy, was sentenced separately for conspiracy to murder. The judge found that AB had developed plans to attack targets in the USA; those plans were submitted to the Al – Qaeda leadership but were not activated because of the attack on "9/11" at the World Trade Centre in New York. AB then turned his attention to the planning of attacks in the UK and developed three possible projects. It was in relation to these that the Applicant provided assistance and support. The judge found that the Applicant became a trusted associate of AB and, of the other defendants, the most involved in the plans formulated by AB.

7. Importantly, the judge also found that the Applicant throughout his active participation in the conspiracy did not intend that the consequences of the plans should be death and stressed that he was sentenced on the basis that he was a party to a conspiracy to cause explosions that were likely to have endangered life. As well as providing practical assistance to AB, the Applicant carried out a considerable amount of online research into the materials required for the proposed attacks. He had shown a particular interest in military subjects with particular focus upon his family's homeland in Kashmir. It was said that while visiting Pakistan in the 1990's he sought to acquire some military training with both the army and with a terrorist group.
8. The Applicant met AB who had written a book about Kashmir, in the 1990's; the Applicant was later to describe him as an interesting and exciting character. In response to the allegation of involvement in the conspiracy to which the Applicant eventually pleaded guilty, he said that he believed that the research he was conducting was for a book. More recently he told an Imam that he accepted that some of the material he gathered was "*concerning*" and was for inclusion in a research dossier and told a psychologist that he knew the project was to be for a terrorist handbook realising that the contents of such a book could be misused for terrorist purposes. The OHP noted that the Applicant accepted that he never questioned the morality of his agreement to undertake the research without having regard to at least the possible consequences. In passing sentence, the judge found that he was satisfied that the Applicant was privy to the substance of what AB had hoped to achieve.
9. The Applicant has been in prison since his arrest in 2004. He was diagnosed for the first time with autism in 2016. That diagnosis was made by a consultant forensic psychologist working within the prison service. It appears to have been agreed that it was appropriate to treat the Applicant's disability as a primary context for his risk and its management.
10. The OHP rightly recognised that the Applicant's more recent custodial history was complicated. The manner in which the Applicant responded to uncertain and difficult circumstances over a period of some two years between 2018 and 2020 together with the implications of the diagnosis of autism were significant features of the application for release before the OHP and will require further consideration in the determination of this application.
11. It is important to set out at least in outline some of the relevant chronology that lead the Applicant through his solicitors to launch Judicial Review proceedings in the High Court. In February 2017, the Applicant was re-categorised to Category B and in November of that year was transferred to a category B prison. In March 2018 he was re-categorised to Category C and in May 2018 transferred to a Category C prison. In October 2018 he was re-categorised to Category D but it was not until January 2019 that he was moved to open conditions.
12. By April 2019 he was due to take his first release on temporary licence in the community. In March 2019 he was removed from open conditions to a Category C prison over a disputed allegation involving use of a mobile phone. The Applicant challenged that decision and was re-categorised back to Category D in early August 2019. In early November 2019 he was transferred back to open conditions.



13. The Applicant's next parole hearing was due to take place in April 2020. It was important that he should be able to demonstrate the successful completion of periods of release on temporary licence. That had been the recommendation of the Parole Board at two previous hearings and also the recommendation of professional advisers to the Applicant. The importance of the move to open conditions for the Applicant was that without it, in the light of his autism, it was thought that he would be unlikely to be able to demonstrate to the Parole Board that the statutory test for release could be met. The Applicant's autism was highly relevant to risk and required him to be tested in open conditions in order that he be able to demonstrate risk reduction if he could.
14. Less than three weeks after his transfer to open prison on 29 November 2019, the tragic London Bridge terrorist attack took place in which two people were fatally stabbed and three more seriously injured. An urgent review was carried out of the licence conditions of those convicted of terrorist offences who had been or were about to be released into the community. Within days the Applicant was re-categorised to Category C. The OHP noted that this decision had apparently been made following discussions at a senior level in the Prison Service. In the decision, the OHP confirmed that an oral hearing for the parole review had been arranged but was adjourned at the Applicant's request due to the ongoing litigation regarding his re-categorisation. The OHP in agreeing to an adjournment, acknowledged the need for the Applicant to show progress in open conditions prior to any consideration for release.
15. The High Court proceedings taken on behalf of the Applicant were finally settled in August 2020. It was accepted in those proceedings that the re-categorisation and allocation decisions that were challenged by the Applicant were unlawful. A fresh independent re-categorisation took place in August 2020 which resulted in the Applicant moving to a Category D prison in September 2020. In total he spent approximately a total of 9 months in open conditions. Importantly, due to the COVID-19 pandemic he was unable to undertake any temporary releases.

### The Request for Reconsideration

16. The challenge to the decision not to release is based upon five grounds:
- a. Ground 1. The OHP departed from expert psychological evidence regarding the Applicant's diagnosed autism;
  - b. Ground 2. There was a failure to address manageability of risk;
  - c. Ground 3. There was a failure to consider key protective factors relied upon;
  - d. Ground 4. The OHP took a shortcut in its reasoning;
  - e. Ground 5. The OHP's reasoning fell below acceptable public law standards and in consequence rendered the Decision procedurally unfair.

### The Relevant Law

*Parole Board Rules 2019*

17. Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is made by a paper panel (Rule 19(1)(a) or (b)) or by an oral hearing panel after an oral hearing (Rule 25(1)) or by an oral hearing panel which makes the decision on the papers (Rule 21(7)).
18. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. This has been confirmed by the decision on the previous reconsideration application in, for example, the application in the case of **Barclay [2019] PBRA 6**.

### *Irrationality*

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

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

20. This test was set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374**. The Divisional Court in **DSD** went on to indicate that in deciding whether a decision of the Parole Board was irrational, due deference had to be given to the expertise of the Parole Board in making decisions relating to parole. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing 'irrationality'. The fact that Rule 28 contains the same adjective as is used in judicial review shows that the same test is to be applied.
21. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28 see for example: **Preston [2019] PBRA 1** and others.

### *Procedural unfairness*

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

24.The overriding objective is to ensure that the Applicant's case was dealt with justly.

### **The reply on behalf of the Secretary of State**

25.The Parole Board has been notified that the Secretary of State does not wish to make any representations in relation to this application.

### **Discussion**

26.I should begin a discussion of the merits of this application with the following observations.

#### *Giving Reasons*

27.The importance of giving adequate reasons in decisions of the Parole Board has been made clear in the cases of **Wells [2019] EWHC 2710 (Admin)** and **Stokes [2020] EWHC 1885 (Admin)** both of which contain helpful guidance which I am bound to follow on the correct approach to deciding whether a decision made by a panel in the face of evidence from professional and other expert witnesses can be regarded as irrational.

28.It is suggested in **Wells** that rather than ask "*was the decision being considered irrational?*" the better approach is to test the ultimate conclusions reached by a panel against all the evidence it has considered and ask whether the conclusions reached can be safely justified on the basis of that evidence, while giving due deference to the panel's experience and expertise.

29.Panels of the Board are wholly independent and are not obliged to adopt opinions and recommendations of professional and/or expert witnesses. It is the responsibility of a panel who will have acquired considerable experience in the assessment of risk to make their own risk assessment and to evaluate the likely effectiveness of any proposed risk management plan. That will require a panel to test and assess the evidence presented to it and to decide what evidence they are able to accept and what evidence they cannot accept.

30.Having reached conclusions upon the evidence it is clear that a panel is then required to explain its reasons, especially if they are going to depart from the recommendations made by experienced professionals and/or expert witnesses. A panel can rationally depart from expert evidence, but a rational explanation for doing so must be given and it must ensure as best it can that its stated reasons are sufficient to justify its conclusions.

31.It follows that I must decide whether on a reading of the Panel's decision, I am satisfied that the conclusions they reached are first justified by the evidence they considered and secondly whether I am satisfied that those conclusions are adequately and sufficiently explained or whether there are any unexplained evidential gaps or leaps in reasoning which fail to justify the conclusion that is reached.

#### *The Reconsideration mechanism*

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32. The reconsideration mechanism is a relatively new procedure which was introduced in July 2019. It allows both parties to a parole hearing, namely the prisoner and the Secretary of State for Justice, the opportunity to apply to the Parole Board for a decision to be reconsidered if they believe that it was not legally sound. As I have already indicated, applications for reconsideration must be on the basis that the panel's decision was either irrational and/or procedurally unfair and the test is similar to that required to launch a judicial review.
33. The reconsideration mechanism is not a process where I am required to indicate whether, or not, I might have reached the same or a different conclusion from that reached by the Panel.

### *The Panel's decision*

34. This was on any view a difficult and complicated application for release by a prisoner who had been in prison since 2004 in respect of very serious terrorist related offending; who had been diagnosed with autism for the first time in 2016; who had been eligible for release since August 2017 and whose more recent prison experience was described by Mr Justice Spencer during the protracted High Court proceedings as being "*a bad case of procedural default*" and on behalf of the Applicant as representing for him '*two turbulent years*'. Alongside these complicating factors was a considerable body of expert and other evidence for the OHP to consider. This was all in the context of a long sentence that is due to end on 3 December 2021 thereby leaving the OHP with a period of just over 9 months of further custody to consider.
35. The decision itself runs to 18 pages of which all but two provide a very detailed account of the evidence. What is described in the written submissions on behalf of the Applicant as the "*operative reasoning*" is set out over those two final pages under the heading "**Conclusion and decision of panel**" which I summarise.

### **The OHP:**

- i. Confirmed that they had considered all of the written and oral evidence as well as the closing submissions from the parties' representatives;
- ii. Made clear that its task was to focus upon the Applicant's risk factors should he be released prior to the release date, while accepting that some if not most of that period (of 9 months) could be spent in approved accommodation;
- iii. Accepted that the Applicant's involvement with AB may have been enabled by his autistic traits which had to be set against their conclusion that on balance he continued to minimise his role which may impact on his future understanding of his risks. It also noted that autism was a lifelong condition;
- iv. Noted the disruption to his path through his sentence bought about by events beyond his control which he had challenged via legitimate and successful means (the High Court litigation) and had dealt with well, while at the same time observing that he did so while in the ordered and structured environment of a prison;
- v. Considered that it had always been the case that all concerned with the Applicant regarded temporary release on licence (ROTLs) to be a critical part of the testing process;



- vi. Found that the diagnosis of autism and his history showed that he did not adapt to disruptive change quickly and that he needed time to adapt;
- vii. Disagreed with the views of an expert psychologist engaged to report by the Applicant's solicitors who had suggested that the difficulties he had encountered during the previous two years amounted to the equivalent of being tested in the community;
- viii. Found that the "*purpose and intent of Category D*" (open conditions) had "*not been realised and further that they represent a critical part of assessing his risk*";
- ix. Observed that "*one acknowledged aspect of autism is becoming overwhelmed by events that cause extreme anxiety leading to a possible loss of self-control.*";
- x. Found that he had not sufficiently demonstrated that he would have internal controls to deal with his vulnerabilities to situations or to cope with the changes and demands of being tested in the community; and
- xi. Finally, and in an earlier part of the decision, had set out the proposals in place to manage his risk in the community which included a confirmed place in suitable accommodation, a new Imam to assist him in the community, together with medical and mental health support and a large number of specific Licence Conditions. Further, details of conditions regarding the future use of technology were set out and other matters relevant to his management.

#### *The Grounds for Reconsideration in more detail*

36. In three detailed sets of written submissions the Applicant's case was set out in detail. The first is dated 1 March 2021 and was sent to the Parole Board the day before the oral hearing. The second is dated 12 March 2021 and was submitted pursuant to a direction of the OHP at the conclusion of the oral hearing. The third is dated 29 March 2021 and represent the Applicant's representations in support of this application.

37. In paragraph 16 above I set out in headline form the five grounds upon which the Applicant seeks a reconsideration of the no release decision, which I now summarise in more detail as follows:

38. It is submitted that the OHP:

- (i) Departed from what is submitted was unanimous psychological evidence regarding the Applicant's autistic traits without identifying a rational basis for so doing (**Ground 1**);
- (ii) Failed to have regard to the nature of the Applicant's risk and whether it could be safely managed in the community until December 2021 given all the proposed monitoring and control proposals set out in the risk management plan (**Ground 2**);
- (iii) Failed to have regard, or did not give enough weight to, the protective factors present in the Applicant's diagnosis (**Ground 3**);
- (iv) Took a shortcut in its reasoning by assuming that there was a professional consensus that the Applicant required testing in open conditions coupled with periods of Release on Temporary Licence, when on all the evidence there was no such consensus (**Ground 4**);

- (v) Provided reasons for its decision which were inadequate as they do not enable the Applicant nor any other reviewing body to understand why the ultimate decision was to refuse release (**Ground 5**).

39. In setting out the Applicant's grounds in this way demonstrates that certainly in relation to Grounds 1, 4 and 5 the challenge amounts to a reasons challenge whereas in Grounds 2 and 3 the challenge is an irrationality challenge.

40. I will deal with each ground in turn.

#### Ground 1

41. Significant reliance is placed by the Applicant upon both the detail and the implications of the diagnosis of autism made in 2016 by a forensic psychologist. It is submitted that specific aspects of the psychologist's assessments were drawn to the attention of the OHP. That much is abundantly clear from a careful consideration of the first two sets of written submissions on behalf of the Applicant.

42. The psychologist was not called to give evidence to the OHP. Her findings and conclusions are referred to in some detail in the Decision and are set out fully in her original report which stood as her evidence. It is submitted that the OHP have rejected the psychologist's evidence but have provided no or no sufficient reasons for so doing; that the OHP's operative reasoning is contrary to what is said to be the unanimous psychological evidence drawn to the Panel's attention and further that the conclusion reached is not informed nor supported by any explanation.

43. That the OHP must have rejected important aspects of the evidence of the psychologist (and in one important respect other evidence given by another psychologist) is clear; that they were entitled to do so is equally clear. The Panel comprised of a psychologist member, a psychiatric member, a specialist independent member and was chaired by a judicial member. It is they who are to be regarded as the experts in risk assessment. That said, the approach I am required to adopt is to test the OHP's conclusion against the evidence they received and ask whether (with due deference and with particular regard to their expertise) their conclusion can be safely justified on the basis of that evidence, particularly in a context where anxious scrutiny needs to be applied.

44. I find that there is force in the Applicant's submission that there is an unexplained gap or leap in reasoning on the part of the OHP and that their conclusion is not adequately or sufficiently explained. I accept the Applicant's submission that the OHP's reasoning appears to rely upon what it describes as "*one acknowledged aspect of autism [which] is becoming overwhelmed by events that cause extreme anxiety leading to a possible loss of self control*". I accept that on the face of it that appears to be directly contrary to the psychologist's view in circumstances where her evidence was not the subject of any questioning at the hearing. I hasten to say that why that was the position is unknown but the fact is that was the position. Further and importantly, I also accept that what was required but is regrettably absent is an explanation by the OHP as to the basis upon which they reached that very important conclusion on what was accepted to be a critical aspect of the assessment of the Applicant's risk.



*Ground 2*

45. It is submitted on the Applicant's behalf that any consideration of the statutory test for release requires a panel to consider the nature of the relevant risk(s) and whether it or they can be safely managed in the community.
46. It is further submitted that the expert psychological evidence agreed that the Applicant's risk was not imminent and that the relevant risk scenario involved the Applicant being subjected to the negative influence of others who might seek to exploit him. It is submitted that the Decision did not reject the apparent consensus of the experts' opinions and if the OHP thought that it did, then it should have made that clear.
47. The further submission made in support of this ground relates to the proposed risk management plan for the Applicant in the event of his release into the community. The application for release relied significantly on the manageability of the Applicant in the community and the controls that were in place to monitor him. Apart from describing the plan in detail the complaint made is that the OHP did not go on to evaluate it.
48. I agree that it would have been preferable for the decision to have indicated agreement or disagreement with the suggestion that there was a consensus of opinion between the psychologists. The fact it did not, does not, in my judgment meet the test to justify a finding of irrationality as that description is now understood in accordance with the guidance I have referred to earlier. These were matters of evidence for them as the experts to consider and assess and to reach a conclusion upon if they could.
49. However, I take a different view with regard to the absence of any evaluation regarding the proposed risk management plan and the absence of any explanation of the relationship between the nature of the Applicant's risk in light of his autism. At the point at which the hearing took place the Applicant had just 9 months left to serve on the custodial element of his long sentence. The OHP appeared to acknowledge that if released he would spend the majority if not the totality of the time resident in specific authorised premises. In the part of the decision headed "**Evaluation of effectiveness of plans to manage risk**" the plans themselves were set out in detail and reveal no less than thirty different arrangements, referrals, licence conditions, matters touching on the future use of technology, face to face future probation management and the like. Regrettably, there is no evaluation of those proposals nor crucially any explanation nor justification in the decision as to why these arrangements would not in their opinion have been either adequate or sufficient enough to manage the Applicant's identified risks in the community.

*Ground 3*

50. The submission here is that if the OHP had decided not to accept the psychological evidence regarding the protective factors (matters which make further offending less likely) arising from the Applicant's autism, which it is submitted supported the manageability of the Applicant's risk, then an explanation was required but has not been provided.



51. Detailed submissions in this regard had been made on the Applicant's behalf in their written submissions on 1 March (paragraphs 6 -18) and 12 March (paragraphs 25-31).
52. The Applicant submits that protective factors arising from his autism that are relevant to this issue include:
- i. the traits that make him liable to be unguarded and honest in his dealings with probation;
  - ii. his traits that make him inherently averse to new environments and groups that were risky; and
  - iii. the evidence that he had developed insight into his traits, which may offer a protective factor.
53. It is suggested that the OHP ignored factors which it thought gave rise to risk and ignored or gave no weight to protective factors.
54. I do not agree. The material before the OHP included the matters relied on here by the Applicant. On my close analysis of the decision as a whole there are references to his autistic traits noting for example that it had been felt in assessments that due to these traits he would be unlikely to develop anti-social thinking and further gave him credit for having a strong tendency to avoid certain situations. Clearly the OHP had considered these matters with care.
55. Again, while I accept that it might well have been preferable to develop and explain the positive aspects of the Applicant's autism as a demonstrable part of the conduct of a balancing exercise, for example when dealing with the Applicant's own evidence on his autism to a previous panel, I am unable to find that this ground is made out.

#### Ground 4

56. It is submitted that a central part of the OHP's reasoning was that it had always been understood and agreed that temporary release on licence (ROTL) would be a critical part of the testing process for the Applicant to be provided with a measured transition back into the community is flawed.
57. Further attention is drawn in this Ground to two specific findings made by the OHP, namely:
- i. That the purpose and intent of his time in a Category D prison had not been realised in the Applicant's case; and,
  - ii. That the manner in which the Applicant coped with the turbulent events between 2018 and 2020 (his repeated and unlawful transfers between categories and prisons) was not, as one psychologist described it, "*equivalent to testing him in the community*".
58. The submission made is not entirely straightforward but if I have understood it correctly it is as follows. The OHP has taken a shortcut in its reasoning by asking whether an assumed expectation of professional witnesses that the Applicant required time in open conditions and ROTLs as a pre-requisite for release into the



community had in fact been the case and whether in consequence the Applicant's time in open prison had served its "*purpose and intent*", or whether he had undergone equivalent testing by other means (for example, handling well the so-called "*turbulent 2 years*").

59. The submission made on the Applicant's behalf is that the OHP has misunderstood the evidence they received to the extent that there was never a consensus amongst professional witnesses that time in open conditions plus ROTL's were essential. In support of that proposition the Applicant relies upon (i) the original recommendation of, amongst others, the psychologist that the Applicant should be held in lower conditions of security, preferably an open prison, without any further stipulation being advanced that time in open prison and ROTLs were essential and (ii) the fact that before another Parole Board Panel in January 2018 there was strong professional support for the Applicant to be released to a family member's address. While accepting that this earlier application was refused it is submitted that it was noteworthy that the previous panel urged that the Applicant instead be transferred "*swiftly*" to open prison.

60. The Applicant further submits that it is not clear from where in the evidence the OHP have derived its assertion that all concerned had in fact always considered that ROTLs would be a critical part of the testing process.

61. The next submission is that one of the psychologist's evidence "*was not as the panel thought, that testing, directly equivalent to release in the community was required*". It was this same witness it is submitted who expressed the opinion that the Applicant had demonstrated his resilience in managing the difficulties and frustrations of the previous two years without disclosing any offence paralleling behaviour. It was this witness' evidence that was in this respect specifically rejected by the OHP.

62. I am entirely reliant upon the material disclosed in the dossier, submissions that I have received about the evidence and what is said by the OHP in its Decision. An assertion, on behalf of the Applicant, even one emphatically and confidently expressed, does not necessarily make it so. As I have already said it is open to a panel to accept or reject evidence and reach its own conclusions in good faith. The conclusion the OHP reached was one that was open to them.

63. I find myself unable to find that the OHP took an impermissible shortcut in its reasoning.

#### Ground 5

64. In light of the conclusions, I have reached in respect of Grounds 1 and 2, it is not necessary for me to consider this final Ground in any detail. In effect, it represents as it were, rolled up submissions in support of the Applicant's reason challenges that have been discussed when considering other Grounds 1 and 2.

65. For the avoidance of any doubt I make it clear that I would have found in favour of the Applicant in respect of this Ground as well.

#### Overall Conclusions

66. The approach I have taken in following the guidance I have referred to earlier is to consider whether some of the conclusions reached by the OHP in a decision that should be commended for its formidable industry were justified by the evidence and in particular whether any of those conclusions on matters of importance were adequately and/or sufficiently explained. The duty on a decision maker in the context of hearings before the Parole Board is to enable the prisoner applicant and the public to understand why a particular decision has been reached. The duty to give reasons is critically important because an unreasonable decision is also often a decision which fails to provide sufficient or adequate reasons justifying the conclusions reached.

67. I have, as I am required, given detailed and anxious scrutiny to the decision and applying the above approach I have concluded that the reasons challenge succeed in this case;

- (i) In respect of **Ground 1** I find the decision failed to sufficiently explain the basis upon which the OHP departed from certain expert evidence regarding the Applicant's autistic traits.
- (ii) In respect of **Ground 2** I find that the decision failed, given the nature of the Applicant's risk, to sufficiently explain why the proposed detailed Risk Management Plan would not in all the circumstances be sufficient to protect the public.
- (iii) In respect of **Ground 5** I find in respect of those matters that I have identified the Decision has failed to ensure that its stated reasons are sufficient to justify its conclusions.

68. In respect of **Grounds 3 and 4**, I am not satisfied that the Applicant has demonstrated that the OHP erred in its analysis of the particular aspects of the evidence referred to therein.

## Decision

69. For all the reasons set out above I find in respect of Grounds 1, 2 and 5 that this application must be granted.

70. The application in respect of Grounds 3 and 4 is refused.

**HH Michael Topolski QC**  
**23 April 2021**