

2022] PBRA 105

Application for Reconsideration by Ellis

Application

1. This is an application by Ellis ('the Applicant') for reconsideration of the decision of a panel of the Board ('the panel') which on 8 July 2022, after an oral hearing on 29 April 2022 and consideration on the papers of further evidence provided at its request, issued a decision not to direct his release on licence and not to recommend that he should be transferred to an open prison.

Background and history of the case

2. The Applicant is aged 40. He is serving a sentence of imprisonment for public protection ('IPP') imposed on 17 September 2007, when he was aged 26, for an offence of wounding with intent ('the index offence') which he committed jointly with another young man. He had previously accumulated a significant criminal record which included the following convictions for offences of violence:
 - Common assault at age 14
 - GBH (section 20) at age 15
 - ABH at age 18
 - ABH again at age 19
 - Common assault and assaulting a constable at age 22; and
 - Battery x 2 at age 23.
3. The index offence was described as follows in the decision of an earlier panel of the Board. CCTV evidence showed the victim moving to attack the Applicant, and then the co-defendant assaulting him in response. The Applicant reacted by punching the victim so that he fell down, and continued to punch and kick him whilst he was lying on the ground in what the judge described as a joint ferocious attack going far beyond any actions which could be described as self-defence. Having initially left the victim lying on the stairs at the railway station where the attack had occurred, the Applicant subsequently returned to assist him until professional help arrived. The injuries inflicted were serious and included a fractured cheekbone and damage to one eye.
4. The Applicant has been released on licence three times and recalled three times during his present sentence. The reasons for the recalls were as follows:
 - First recall (on 29 September 2013 after more than 7 months on licence):



the Applicant had begun drinking heavily and, whilst under the influence of alcohol, he tried to shoplift a bottle of cider and when challenged punched the shop manager.

- Second recall (on 8 January 2020 after more than 7 months on licence): the Applicant had lapsed back into substance misuse and had been evicted from his supported accommodation. He had also formed a relationship with a woman (Ms X) who was the secretary of the Fellowship group which he attended but who herself had ongoing substance misuse issues.

- Third recall (on 29 January 2021 after 6 months on licence): the Applicant had resumed contact with Ms X and they had met on a number of occasions but on the last occasion when they met, at his flat, there was an argument and he effectively threw her out of the flat. Part of the incident was seen or heard by neighbours. There is some dispute about what exactly happened but the Applicant agrees that he pushed, restrained and grabbed Ms X during the altercation. He has also admitted that he did not handle the situation well and that on reflection he could have behaved better. Both he and Ms X were under the influence of substances at the time of the incident. The Applicant was arrested and charged with ABH but the police decided (understandably in the light of the evidence) that no further action should be taken against him. He has remained in custody since his recall.



5. Reports of his progress in custody since his latest recall have been positive. In summary it was reported that:

'Since recall [the Applicant] has engaged well with prison rules and has completed further risk reduction work. He has completed work with [a specialist substance misuse worker] and also worked as a peer mentor on the Drug Recovery Unit at [the prison where he has been detained] co-facilitated Core Group sessions on the Hope Programme [an intensive substance misuse programme]. He has continued to engage with NA and AA meetings and also attended weekly Aftercare sessions to explore relapse prevention and to support others. More recently [the Applicant] has engaged with the Wellbeing Team at [the prison] and completed group sessions and one to one work with the In Reach Team addressing depression, anxiety, anger, and trauma. He has also completed bereavement sessions and in-cell work linked to poor coping and other mental health concerns.'

6. The panel recorded as follows the evidence given at the recent hearing by the official responsible for the Applicant's supervision in custody ('the POM'):

'[The POM] spoke positively about [the Applicant]. She confirmed that he is an enhanced prisoner on the IEP Scheme and there have been no significant negative entries of Security and Intelligence Reports recorded against him. [The POM] told the panel that since recall [the Applicant] has worked well with staff and completed further risk reduction work. He is now more insightful about the circumstances leading to his recall and hopes to prioritise his recovery, ahead of starting new relationships.'

7. Following the Applicant's recall the Secretary of State referred his case to the Parole Board to decide whether to direct his re-release on licence, and on 17 May 2021 an oral hearing was directed. The case was allocated to the panel, and a hearing was scheduled to take place on 4 October 2021. That hearing was adjourned, partly because of failures to provide documents which had been directed to be produced but also to enable a full psychological risk assessment to be carried out.



8. The assessment was carried out in January 2022 by a Registered Forensic Psychologist ('the psychologist'). For reasons set out in detail in his report of 28 January 2022 the psychologist recommended the Applicant's re-release on licence. He confirmed that recommendation in an addendum report on 22 April 2022.
9. A full hearing took place on 29 April 2022 at which the Applicant's legal representative applied on his behalf for a direction for re-release on licence, which was supported by all three professional witnesses: these were the POM, the psychologist and the official prospectively responsible for the Applicant's supervision in the community ('the COM').
10. The panel decided to adjourn the case for further information and further representations by the Applicant's legal representative to be provided.
11. On 8 July 2022, when they had been provided, the panel issued its decision not to direct the Applicant's re-release on licence and not to recommend a move to open conditions) 2022.
12. The application for reconsideration of the panel's decision was made on 19 July 2022 by the Applicant's legal representative on his behalf.
13. 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.

The Relevant Law

The test for release on licence

14. The test for release on licence is whether the Applicant's continued confinement in prison is necessary for the protection of the public. This test was, as one would expect, correctly set out by the panel at the start of its decision.

The rules relating to reconsideration of decisions



15. Under Rule 28(1) of the Parole Board Rules 2019 (as amended) a decision is eligible for reconsideration if (but only if)
- (1) it is a decision that the prisoner is or is not suitable for release on licence and
 - (2) one of more of the following three grounds is established:
 - it contains an error of law
 - it is irrational
 - it is procedurally unfair.
16. A decision that a prisoner is or is not suitable for release on licence is eligible for reconsideration whether it is made by
- a paper panel (Rule 19(1)(a) or (b)) or
 - an oral hearing panel after an oral hearing, as in this case, (Rule 25(1)) or
 - an oral hearing panel which makes the decision on the papers (Rule 21(7)).
17. The decision of the panel in this case not to direct release on licence is thus eligible for reconsideration. It is made on the grounds of irrationality and procedural unfairness. There is no suggestion of any error of law. The panel's decision not to recommend a move to an open prison is not eligible for reconsideration.

The test for irrationality

18. In **R (DSD and others) v the Parole Board** [2018] EWHC 694 (Admin) (the "Worboys case"), the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It stated at paragraph 116 of its decision:
- "The issue is whether the release decision was so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."*
19. This was the test which had been set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374** and applies to all applications for judicial review.



20. 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 Board in making decisions relating to parole.
21. The Parole Board, when deciding whether or not to direct a reconsideration, adopts the same high standard as the Divisional Court for establishing 'irrationality'. The fact that Rule 28 uses the same adjective as is used in judicial review cases in the courts shows that the same test is to be applied. The application of this test to reconsideration applications has been confirmed in previous decisions under Rule 28: see, for example, **Preston [2019] PBRA 1**.
22. It has been established that a decision may be regarded as irrational where the panel has failed to give sufficient reasons for its decision. The importance of giving reasons was reiterated in **R (on the application of Stokes) v Parole Board [2020] EWHC 1885 (Admin)**. In that case the court cited the following explanation given by Lord Carnwath in **Dover District Council v CPRE Kent [2017] UKSC 79** for the need to give reasons in public law decision-making.

'I think it important that there should be an effective means of detecting the kind of error which would entitle the court to intervene, and in practice I regard it as necessary for this purpose that the reasoning of the [decision maker] should be disclosed... It is to be noted that a principal justification for imposing the duty was seen as the need to reveal any such error as would entitle the court to intervene, and so to make effective the right to challenge the decision by judicial review.'

23. It follows that a panel of the Parole Board must provide sufficient reasons to explain its logic and how its conclusion follows from the evidence put before it. There should not be an "*unexplained evidential gap or leap*": see the decision of Mr Justice Saini in **R (on the application of Wells) v Parole Board [2019] EWHC 2710 (Admin)**.

The test for procedural unfairness



24. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed, and therefore producing a manifestly unfair, flawed or unjust result. These issues (which focus on how the decision was made) are entirely separate from the issue of irrationality which focusses on the actual decision.

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

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

26. The overriding objective is to ensure that the case was dealt with fairly.

The request for reconsideration in this case

27. The representations in support of this application for reconsideration begin by submitting that, whilst it was clearly open to the panel to come to a conclusion as to the Applicant's risk to the public, it could not have made an accurate risk assessment on suitability for release as it is clear that evidence given in the hearing was ignored and/or misinterpreted. Detailed reasons are then given in support of that submission. It will be convenient to consider those reasons below in the 'Discussion' section of this decision.

The Secretary of State's position

28. By e-mail dated 29 July 2022 the Public Protection Casework Section ('PPCS') on behalf of the Secretary of State stated that he offers no representations in response to the application.

Documents considered

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

- The dossier provided by the Secretary of State for the Applicant's case, which now runs to page 500 and includes a copy of the panel's decision letter;
- The representations submitted by the Applicant's legal representative in support of this application; and
- The e-mail from PPCS stating that the Secretary of State offers no representations in response to this application.

Discussion

30. The key question for the panel to decide was whether, if the Applicant was rereleased on licence, his risk of serious harm to the public would be safely manageable in the community. If so, he would be entitled to be re-released on licence: if not, his continued confinement in prison would be necessary.

31. In order to decide that key question the panel needed to consider the whole of the evidence and to address the following questions in particular:



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(a) whether the Applicant needed to remain in prison to complete additional risk-reduction work which could not be completed in the community;
(b) whether the Applicant was likely to comply with the proposed risk management plan and (c) whether that plan was likely to be effective to manage his risk in the community.

32. It is convenient to deal with the panel's conclusions and the legal representative's submissions under those three headings.

Question 1: Does the Applicant need to remain in prison to complete additional risk-reduction work which cannot be completed in the community?

33. The factors which contributed to the Applicant's offending have been identified as:

- a willingness to use aggression and violence against others;
- use of drugs and misuse of alcohol;
- limited ability to manage emotions;
- poor decision making and problem solving;
- impulsivity;
- a chaotic lifestyle;

- difficulties in intimate relationships; and
- an attitude which minimises and justifies the use of violence in situations of conflict.

34. Most of those risk factors have been successfully addressed by offending behaviour work which the Applicant has undertaken over the course of his sentence. However, notwithstanding his consistently good behaviour in custody and his completion of that work, his failures on licence have demonstrated that substance misuse and problems in relationships have re-surfaced on each occasion after a period in the community, resulting in his three recalls. The psychologist has perceptively observed that problems in relationships are both the cause and the effect of substance misuse.

35. In addition to the risk factors identified by panels of the Board the psychologist has identified a clear link between the Applicant's behavioural problems and the traumatic experiences which he has experienced throughout his life and which do not appear to have been fully (if at all) addressed in the offending behaviour work which he has been offered by the authorities. The psychologist has explained this as follows:

'[The Applicant] witnessed the death of his sister when he was age six and she was age two. Not only did he observe this directly, but [the Applicant] has held a sense of responsibility for the incident and has felt that he was blamed for it by his parents. [The Applicant] has previously reported that as his family did not discuss the incident, he was unable to process and learn to cope with the distressing emotions that followed this event. This experience resulted in [the Applicant] developing core beliefs about himself, others and the world shaped by his significant sense of shame.

'Shame is a self-conscious emotional experience characterised by a negative evaluation of the self, associated with feelings of worthlessness, inferiority, powerlessness and being exposed. It is often experienced with an urge to hide or escape, or attack out at others in order to ensure that they do not witness the 'true self' of the individual. [The Applicant] has discussed a sense of believing that he is inadequate and undeserving compared to others and has believed others to be harsh, critical and rejecting

'[The Applicant's] trauma has been compounded by a substantial amount of further trauma and loss that he has experienced throughout his life, which I do not believe he has learned to cope with and fully process.'

36. In discussing the link between this trauma and the Applicant's offending (and how it can now be addressed) the psychologist has written:

'Substance misuse is a key risk factor for [the Applicant] ... [His] substance misuse is underpinned by emotional problems that are rooted in experiences of trauma and loss that have occurred throughout his life. Due to the impact that the death of his sister had on [the Applicant] and his family, he did not learn to process and make sense of this incident nor cope with the distress associated with it. [The Applicant] has held a sense of responsibility for this event and this experience has been compounded by many other traumatic



experiences and bereavements that have occurred since then.

'[The Applicant] has been unable to process these events and continues to report symptoms of trauma (e.g. re-experiencing and nightmares). Throughout his life, [the Applicant's] primary way of coping with these experiences and emotional difficulties has been through substance misuse. As such, it is my opinion that in order to reduce [his] reliance on substances and his risk of violence over the long term, it is imperative that he completes trauma work and receives support with his emotional wellbeing. It is my opinion that this work will need to be intensive and occur over the long-term. Previous intervention that [the Applicant] has received around these issues has been brief and appears to have had limited impact.

'Based on my assessment of [the Applicant's] risks and needs, it is my opinion that the treatment that is required can take place in the community.'

37. The psychologist's assessment of the Applicant's current risk and its imminence is as follows:

'The current assessment of [the Applicant's] violence risk using [the conventional risk assessment tool] concludes that overall, he is at 'low' risk of future violence whilst he remains in custody ... Upon release to the community, it is likely that his risk of violence will remain 'low' initially, but without the appropriate treatment and support, this will likely escalate over time until his risk of violence becomes imminent, as has been the case during previous periods of release. This is why it is imperative that [the Applicant] receives the support and treatment that he needs as soon as possible, should the Parole Board decide to direct his release.

'[The Applicant] has not displayed any recent problems with violence whilst in prison Furthermore, his key risk indicators are currently absent and a large number of protective factors are present. If he were to receive a high level of therapeutic, relational support upon release to the community, it is likely that the imminence of his violence risk will remain low. Should he not receive such support, it is likely that the imminence of his violence risk in the community will increase over time.'

38. The psychologist went on to describe the services which he believes are likely to be available in the community to provide the necessary support (see below). The POM and the COM both supported the psychologist's view that the Applicant should be re-released into the community. They agreed with the psychologist that the Applicant's risk would not be imminent on his release but could increase materially if he disengaged from trauma therapy or disengaged from support services.

39. In its decision the panel explained its rejection of the professionals' views that the necessary trauma work could safely be completed in the community as follows:

'The panel noted that until [the Applicant] has completed extensive trauma therapy work in the community, the risk he poses of both IPV [interpersonal violence] and of general violence is likely to remain elevated in the community, presenting an unacceptable risk to the public, in the panel's assessment. Whilst report writers consider that this psychologically informed work can be safely completed in the community the panel did not agree. In the panel's assessment this work is core risk reduction work and should be completed in closed conditions before further testing and consolidation can take place. In coming to this conclusion the panel considered [the Applicant's] assessed risks and his previous poor compliance record.'

40. The legal representative submits that the panel failed to provide any real reasons for departing from the unanimous view of the professionals that the psychologically informed trauma work could be completed in the community. The panel offered no real explanation for why it should be regarded as 'core' risk reduction work which needed to be completed in prison; and the panel's statement that '*until the Applicant has completed extensive trauma therapy work his risk in the community is likely to remain elevated*' appears to run counter (without explanation) to the very clear view of the professionals that

risk would not become imminent unless and until the Applicant disengaged from trauma therapy or support services.

41. In these circumstances I believe that the reasonableness or otherwise of the panel's decision to reject the recommendations of the professionals must depend on the answers to the questions posed under the other two headings identified above: (a) is the Applicant likely to comply with the proposed risk management plan? and (b) is that plan likely to be effective to manage the Applicant's risk in the community? If both those questions are answered in the affirmative the panel's decision must be regarded as irrational: if either of them is answered in the negative the opposite conclusion must be drawn.
42. On each of the two questions the legal representative submits that the panel either misrepresented or failed to attach proper weight to the evidence.

Question 2: Is the Applicant likely to comply with the proposed risk management plan?

43. The panel stated that it did not share the confidence of report writers about the ability of the Applicant to work openly and honestly with professionals in the community. In support of its view the panel referred to the fact that the Applicant had in the past consistently breached licence conditions and failed to disclose relapses into substance misuse to the Probation Service. It observed that previous recalls have not had a deterrent impact upon him, and stated that although he says he is better motivated to comply as directed now, he has struggled to work openly and honestly with professionals in the past. The panel also stated that there were no warning signs prior to his last recall.
44. The legal representative makes a number of submissions about the panel's approach to this question.
45. Although the Applicant has previously breached licence conditions, the legal representative draws attention to a significant change since his last recall which makes it less likely that he will breach future licence conditions. It has now been identified that what the Applicant needs is appropriate trauma therapy and support (including psychological support) in the community, neither of which has previously been available to him when on licence, and he is highly motivated to engage positively in them. He has been working well whilst in custody with an integrated NHS-funded support service and, even before the psychologist's report, trauma therapy had been identified as something from which he would benefit and which he was keen to undertake.
46. As regards the breaches of licence conditions, the legal representative submits that a passage in the panel's decision which refers to the Applicant's latest period on licence does not present a fair or accurate picture. The passage states that the panel noted that there was no evidence that the Applicant ever disclosed the resumption of his relationship with Ms X to probation nor did he disclose his relapse into substance misuse to his then COM.
47. As regards the resumed relationship, it appears that the Applicant and Ms X had resumed contact with each other for a relatively short time before the incident which led to his recall. According to the Applicant they had had sex on only one occasion. The legal representative's notes refer to a discussion at the hearing about whether he should have disclosed a single 'one night stand' to his then COM in accordance with the licence condition requiring him to disclose any developing relationship.
48. According to the legal representative's notes a member of the panel told the Applicant that a 'one night stand' came under that condition, and the Applicant said that that had not been explained to him by his then COM. The present COM had not been the COM at the relevant time but she was able to refer to probation records and said that there appeared to have been some discrepancy about what had or had not been explained to the Applicant. This discussion is not referred to in the panel's decision but was referred to in an addendum report written by the psychologist at the panel's request after the hearing.
49. As regards the substance misuse, the legal representative states that the Applicant gave detailed evidence about his relapse and the steps he took to



address it. According to the legal representative's notes (a) the Applicant said he had told everyone including his GP about the struggles he was having with his anxiety and self-medication (b) he said that he was open and honest about it throughout (c) when a member of the panel asked the COM whether she was able to say whether the Applicant had disclosed relapse she said (again by referring to probation records) that she could see reference to a discussion around it ('what had happened around it and why') but it was 'not a very detailed note' and (d) the COM added that the probation records did confirm that the Applicant engaged well with substance groups, AA and sustained probation engagement in the community.

50. I have considered whether to obtain a recording or transcript of the parts of the evidence referred to in the last few paragraphs but I do not believe that is necessary: there is no reason to suppose that the legal representative's notes are anything other than substantially accurate.
51. Even if the Applicant had believed that as a general rule a 'one night stand' did not have to be disclosed, I think he might reasonably have been expected to realise that the resumption of a problematic relationship with a substance user was something of which probation should have been made aware. To that extent the panel's criticism of his failure to disclose was therefore justified.
52. However, if, as I must accept for the purposes of this decision, the Applicant's then COM was aware that he had been struggling with substance abuse, that means that the panel was mistaken in stating that there had been no warning signs.
53. Another matter, perhaps of less significance in the scheme of things, is the panel's statement in its decision that on one occasion the Applicant failed to maintain the battery level of the tracking device with which he had been fitted.
54. The legal representative submits that the suggestion that the Applicant breached the relevant licence condition was inaccurate and unfair. According to the legal representative (and I have seen no evidence to contradict this):

'[The Applicant] gave very clear evidence on this confirming that [the device] was faulty, and he rang 101 in the end to tell them and to let them know that he was at home when he should be. The company did come out and change it and after that there were no problems. It was nothing to do with [the Applicant] not maintaining the battery level of the tag as is suggested in the decision, which the way it is written suggests he has failed to comply when this is not the case. [The Applicant] gave evidence confirming this and confirming the steps he took to ensure everyone knew there was a problem with the tag, and it was not down to him being wilfully non-compliant as it is now being suggested.'

55. The legal representative submits that the Applicant's evidence at the hearing was open and honest throughout. The panel in its decision suggested otherwise. It pointed out that the Applicant's account of the recall incident was inconsistent with the police documentation in the dossier, and it stated that there was clear evidence of minimisation and victim blaming in his

evidence.

56. The difficulty with this is that the panel gave no examples to substantiate its views about the Applicant's evidence. The fact that a prisoner's evidence differs the truth or that he is minimising his actions. Nor does the fact that he says things unfavourable to a victim mean that those things are not true. I would feel happier about the panel's general assertions about the Applicant's evidence if it had been able to give any real explanation for its views (see paragraphs 22-3 above).
57. **Conclusion on Question 2.** I have given very careful consideration to the evidence on this question. I am afraid that I cannot see that the panel's rejection of the professionals' recommendations can be justified on the basis that that the Applicant is unlikely to comply with the risk management plan. With respect to the panel I think it attached too much weight to the Applicant's previous breaches and insufficient weight to the evidence of the current position. There is also force in the legal representative's other points.

Question 3: Is the proposed risk management plan likely to be effective to manage the Applicant's risk in the community?

58. The proposed risk management plan is based around an initial period of residence at a probation hostel, then a move to a specialist housing provider in the same area, supervision by the new COM, psychological support from the Offender Personality Disorder Pathway ('OPD') and a set of strict licence conditions.
59. A referral has been made to the probation hostel, and the Applicant has been accepted. A bed space is unlikely to be available until September 2022. At the hostel the Applicant will have a key worker and will be subject to close monitoring and supervision.
60. The Applicant has been interviewed by the specialist housing provider and it is recorded that they were impressed by him. They agreed to add him to their housing list and have said that they will be able to place him within 12 weeks of his release to the probation hostel. The housing provider is an organisation providing safe homes for vulnerable adults with support needs including clients experiencing homelessness, those with complex needs, learning difficulties and life-long disabilities. They have confirmed that they support individuals with

issues related to substance misuse, alcohol dependency and, frequently, multiple support needs which make them vulnerable. They aim to offer such persons a safe place to live, together with support, and they offer the opportunity for people to move their lives forward towards living independently.

61. The housing provider operates a two-stage process. In Stage 1 the individual is placed in one of five properties where he will be assessed to determine which services are appropriate to his case and he will be supported in his engagement with those services. The focus is on determining the type of intervention required and the level of housing support which may be needed. The Applicant will be issued with a key worker who will assist him in keeping appointments and in engagement with a GP, mental health services and drug and alcohol services. In stage 2, once his needs have been assessed, he will be moved on to whatever form of accommodation is considered to be appropriate to meet those needs and provide the necessary support.
62. It is proposed that at least 3 weeks before release the COM will refer the Applicant to the OPD pathway and push for practitioners within that service to formulate and put in place an appropriate plan for psychological support.
63. The proposed licence conditions are stringent and include (a) a requirement not to contact Ms X or another drug user with whom he had an intimate relationship early on in his last period on licence (b) a requirement to attend any appointments with psychologists (c) alcohol monitoring and (d) electronic tagging to monitor the Applicant's movements.
64. The professionals were all confident that this plan would be effective to manage the Applicant's risks in the community. The psychologist added that he believed it would be helpful for the licence conditions to be made clear to the Applicant to remove any degree of uncertainty, particularly in relation to what is meant by an 'intimate relationship' as to which there had previously been some confusion (see paragraphs 46-7 above). This is by no means the only case where there has been a lack of clarity about the meaning of the 'developing intimate relationships' condition.

65. The panel did not share the professionals' views about the likely effectiveness of the proposed risk management plan. It stated in its decision:

'The panel noted that the RMP provided was more robust than when [the Applicant] was previously released and that many restrictions linked to COVID have not been removed, however, the panel was concerned that it lacked certainty. It was unclear what level of support [the Applicant] would receive in the community via [the specialist housing provider] or how frequently he would be able to access support from the OPD Pathway (and what that work would look like). The panel was also concerned that this work is entirely voluntary and as such [the Applicant] could disengage at any time.'

66. The legal representative submits that the risk management plan was as clear as it could realistically be and was likely to be effective.

67. There is a good deal of force in the legal representative's submission. It is entirely reasonable that the precise nature of the support to be provided by the specialist housing provider and the psychological work to be provided by psychological services through the OPD pathway should be assessed and determined once the Applicant has been released into the community. That is how these things work. It is reasonable to suppose that the assessment processes will result in the provision of services appropriate to the Applicant's needs. Whilst of course it is true that the Applicant could withdraw from support at any stage, I believe that to be unlikely and if it were to happen the COM would no doubt take appropriate action.

68. **Conclusion on Question 3:** I have given very careful consideration to the evidence on this question. I am afraid that I cannot see that the panel's rejection of the professionals' recommendations can be justified on the basis of its concerns about the effectiveness of the risk management plan. I am not persuaded that the panel provided adequate or convincing reasons for its rejection of the views of the professionals on that issue.

Decision

69. I have not found this an easy case. I have some sympathy with the panel's cautious approach to this case. However, at the end of the day I cannot avoid the conclusion that the panel failed to provide sufficient reasons for rejecting the cogent reasoning and recommendations of the professionals. I must therefore decide that this case should be reconsidered on the ground of irrationality.

70. It is unnecessary, in these circumstances, to say anything about the alternative ground of procedural unfairness save that I think it would have been very difficult for the legal representative to substantiate that ground.

Jeremy Roberts
3 August 2022