

[2024] PBRA 220**Application for Reconsideration by Cooper****The Application**

1. This is an application by Mr Cooper ('the Applicant') for reconsideration of the decision of a panel of the Parole Board not to direct his release on licence. The decision was made by a panel of the Board ('the panel') who had conducted an oral hearing on 26 September 2024.
2. The Applicant is serving a sentence of imprisonment for public protection ('IPP') for a serious sexual offence of which the details will be summarised below. His sentence was imposed in April 2007. He was released on licence in June 2012 but has been recalled to prison on three occasions, most recently in June 2021.
3. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) provides that applications for reconsideration of panel decisions may be made, either by the prisoner or by the Secretary of State for Justice, in eligible cases. The Secretary of State is the Respondent to any reconsideration application made by a prisoner, and will be referred to as 'the Respondent' throughout this decision.
4. Rule 28(2) specifies the types of cases in which reconsideration applications may be made. They include cases, like the Applicant's, where the prisoner is serving an IPP sentence.
5. A reconsideration application may be made on the ground (a) that the panel's decision contains an error of law and/or (b) that it is irrational and/or (c) that it is procedurally unfair.
6. In this case an application for reconsideration has been made by the Applicant's solicitors on his behalf. The application has been made within the prescribed time limit. It is therefore an eligible case.
7. I am one of the members of the Board who are authorised to act as 'Reconsideration Panels' to make decisions on reconsideration applications, and this case has been allocated to me. I have not found it necessary to receive any oral evidence and I have considered the application on the papers.
8. The documents which have been provided to me and which I have considered for the purposes of this application are:



- (a) The dossier of papers provided by the Respondent in the Applicant's case (the dossier now runs to 766 numbered pages and includes the panel's decision);
- (b) The representations made by the Applicant's solicitors in support of the application for reconsideration; and
- (c) An e-mail from the Public Protection Casework Section of the Ministry of Justice ('PPCS') stating on behalf of the Respondent that she does not wish to submit any representations in response to this application.

Background and history of the case

9. The Applicant is now aged 58. He has a substantial criminal record (initially in the USA, from which he was eventually deported, and then in this country). He has serious mental health difficulties and has spent significant periods in prisons and in psychiatric hospitals.

10. The offence for which he is serving his current sentence (the 'index offence') occurred in June 2006 and was committed jointly by the Applicant and another man. It was summarised as follows in the panel's decision:

'In brief, [the Applicant] persuaded the victim, who had mental health vulnerabilities, to accompany him to the [other man's] house. There he made her smoke crack cocaine and perform oral sex on him. He then insisted that she should let his co-defendant "do as he wished". [The other man] then committed offences of anal and vaginal rape upon the victim.'

11. The Applicant was convicted after a contested trial. The minimum period which he was ordered to spend in prison before he could be released on licence (his 'tariff') was fixed at 4½ years less the time which he had spent in custody on remand.

12. The Applicant's behaviour in custody has been generally good, and in June 2012 he was released on licence to a psychiatric hospital.

13. In April 2014 he was recalled to prison because his behaviour had deteriorated.

14. He was re-released on licence in July 2017 to supported accommodation for offenders with mental health difficulties. In December 2018 he was once more recalled to prison, again because of a deterioration in his behaviour.

15. The circumstances of that recall were summarised by the panel as follows:

'One of [the Applicant's] conditions was to observe a curfew between 10 p.m. and 6 a.m. The Parole Board had highlighted in its [previous] decision the importance of structured liaison between Probation, ...mental health services and [the housing provider]. However, on the first day [the Applicant] was late for his probation appointment and arrived extremely late back at his accommodation. He was reminded about the importance of abiding by his curfew, but was even later the following night.'



'On 16 June 2021 he met professionals responsible for his case, who again emphasised the importance of adhering to his licence conditions. He claimed to have been visiting his aunt in Islington for a meal on the first night, but it later emerged that he was visiting a sex worker friend who had tried to persuade him to return for his curfew. The friend told Probation that [the Applicant] had been taken advantage of by other sex workers. His apparent preoccupation with sex mirrored the behaviour which led to his previous recall, and he showed resentment for rules and a belief that authorities were conspiring against him ...The result of him not returning to [the housing provider] until 4 a.m. was that he missed two doses of his prescribed medication...'

16. This is the second review of the Applicant's case since his latest recall. The first review was concluded in July 2022. The then panel took evidence from (among others) a prison psychologist and an independent one instructed by the Applicant's solicitors.
17. The then panel was not satisfied that the Applicant met the test for re-release on licence or the test for a move to open conditions (see below for those tests). They were concerned about some issues which appeared to remain unexplored. They placed significant weight on [the prison psychologist's] very thorough report which emphasised that it would not be safe to release [the Applicant] before he had completed further risk-reduction work. The Applicant's problematic personality traits were identified and were of concern.
18. The then panel noted that there had been a consistent focus on the Applicant's mental health issues rather than the psychological aspects of risk, which meant that issues of his sexual behaviour and his apparent targeting of vulnerable women were not understood and had not been addressed. His mental health had been generally controlled and his medication had been increased relatively recently, but there were still reports from the workplace of him shouting about conspiracies (which suggested that paranoia remained a significant problem).
19. Since the 2022 review the Applicant's compliance with his medication for mood stabilisation has fluctuated. There have been periods when he has chosen not to take it and has had to be encouraged to resume it. He was offered 'depot medication' (long term injections) but declined to take it. There was one reported instance of paranoid behaviour in August 2024 when he rang his cell bell and asked the prison officers about the involvement of the Secret Service in his detention. He was not offered any form of risk-reduction work by the prison authorities.
20. The Respondent has again referred the Applicant's case to the Board to decide whether to direct his re-release on licence and, if not, to advise the Respondent about his suitability for a move to open conditions.
21. In December 2023 the case was reviewed by a MCA panel who directed that it should proceed to an oral hearing. A panel was then appointed to conduct the hearing. The panel comprised a Judicial Chair, a Psychiatrist Member and an Independent Member.



22.The hearing took place on 26 September 2024. It was conducted by video link. The Applicant was represented by his solicitor. The panel had read and considered the dossier which at that stage ran to page 738. Oral evidence was given by:

- the Prison Offender Manager ('POM')
- the Community Offender Manager ('COM')
- an independent psychologist (the same one as before) and
- the Applicant himself.

23.The professional witnesses all supported the Applicant's request for re-release on licence, but as noted above the panel decided not to direct release on licence and not to recommend a move to an open prison.

24.The Applicant's solicitors submitted this application for reconsideration of the panel's decision on 17 October 2024.

The Relevant Law

The test for re-release on licence

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

The rules relating to reconsideration of decisions

26.Under Rule 28(1) of the Parole Board Rules 2019 (as amended in 2022) a decision is eligible for reconsideration if (but only if) it is a decision that the prisoner is or is not suitable for release on licence. The grounds on which an application may be made are as set out above (error of law, irrationality or procedural unfairness). A decision not to recommend a move to an open prison is not eligible for reconsideration.

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

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

Error of law

28.Examples of administrative decisions made by a panel of the Board which may be ruled to be unlawful under the broad heading of illegality are where the panel:

- a) misinterprets a legal instrument relevant to the function being performed;
- b) has no legal authority to make the decision;
- c) fails to fulfil a legal duty;
- d) exercises discretionary power for an extraneous purpose;



- e) takes into account irrelevant considerations or fails to take account of relevant considerations; and/or
- f) improperly delegates decision-making power.

29. These are not the only possible reasons for a finding of error of law but they are the ones most commonly alleged. The task of the High Court or a Reconsideration Panel in evaluating whether a panel's decision is unlawful is essentially one of construing the content and scope of the instrument conferring the duty or power upon the panel. The instrument will normally be the Parole Board Rules, but it may also be an enunciated policy or some other common law principle.

Irrationality

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

31. In **R (DSD and others) -v- the Parole Board 2018 EWHC 694 (Admin)** ('the Worboys case') a Divisional Court applied this test to Parole Board decisions in these words: "*the issue is whether the release decision was so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.*" The same test of course applies to 'no release' decisions.

32. In **R (on the application of Wells) -v- Parole Board 2019 EWHC 2710 (Admin)** Mr Justice Saini set out what he described as a more nuanced approach in modern public law. This approach is: "*to test the decision maker's ultimate conclusion against the evidence before it and to ask whether the conclusion can (with due deference and with regard to the panel's expertise) be safely justified on the basis of that evidence, particularly in a context where anxious scrutiny needs to be applied*". This formulation of the test was adopted by a Divisional Court in the case of **R (on the application of the Secretary of State for Justice) -v- the Parole Board 2022 EWHC 1282(Admin)**.

33. As was made clear by Mr Justice Saini, this is not a different test from the Wednesbury test. The interpretation of (and application of) the Wednesbury test in parole hearings (as explained in the Wednesbury and DSD cases) was of course binding on Mr Justice Saini. It is similarly binding on Reconsideration Panels.

34. It follows from these principles that in considering an application for reconsideration a Reconsideration Panel cannot substitute its own view of the evidence for that of



the panel who heard the witnesses. It will only direct reconsideration on the ground of irrationality if the Wednesbury test is satisfied.

35. A panel is of course obliged to consider the recommendations of professional witnesses but it is not bound to follow them (even if they are unanimous). If, however, it decides not to follow them, it must give adequate reasons for deciding not to. If the panel do not give adequate reasons, or if their reasons do not stand up to close examination, their decision may be regarded as irrational.

Procedural unfairness

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

37. Examples of procedural unfairness which may be a ground for quashing a panel's decision on this ground are where :

- (a) express procedures laid down by law were not followed in the making of the relevant decision; or
- (b) the party was not given a fair hearing;
- (c) the party was not properly informed of the case against them;
- (d) the party was prevented from putting their case properly;
- (e) the panel did not properly record the reasons for any findings or conclusion; and/or
- (f) the panel was not impartial.

38. These are not the only possible grounds for a finding of procedural unfairness but they are the ones most commonly alleged. The overriding objective is to ensure that the Applicant's case was dealt with justly.

The request for reconsideration in this case

39. As noted above this application was submitted on 17 October 2024 by the Applicant's solicitors on his behalf. The grounds advanced by the solicitors will be discussed below.

The position of the Respondent

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

Discussion



41. It is convenient to start by considering the primary argument advanced by the Applicant's solicitors (that **there were inadequate grounds for the panel's rejection of the unanimous recommendations of the professional witnesses**). I need to examine the reasons given by the panel for that rejection.
42. The panel clearly considered very carefully the evidence given by the professionals. They noted the Applicant's criminal record (including offences against women) and the circumstances of the index offence. They also noted his well-established mental health difficulties.
43. As regards his offences against women, the panel noted that in 2011 a psychiatrist had expressed the view that the Applicant had a long-standing pattern of violence and hostility towards women. The panel agreed with that analysis, and the evidence appeared to justify it.
44. The panel questioned the Applicant about the index offence, and found that he accepted some responsibility for it but did not fully accept that his sexual activity with the vulnerable victim had been non-consensual. That was obviously a matter of serious concern for the future.
45. The Applicant's mental health difficulties are of two kinds, a mental illness and unhelpful personality traits. It is unnecessary to detail those difficulties, which are of course no fault of the Applicant, in this decision. They played a significant part in his offending. The mental illness was categorised as being severe and enduring, and the unhelpful personality traits are unlikely to change.
46. The panel further noted that the Applicant had been a persistent drug user. This in turn had brought him into the company of negative peers and motivated acquisitive offending. His sexual preoccupation had resulted in him spending large sums of money on sex workers, sometimes leaving insufficient money for food. Alcohol misuse had also been an issue.
47. Another matter which necessarily caused concern to the panel was that the Applicant's behaviour within relationships had often caused difficulties, especially when relationships were ending and he had managed his emotions inadequately. He was reported to have very limited understanding of what a healthy relationship involves.
48. The Applicant also has a history of breaching licence conditions. For example, he persistently breached curfews during his current sentence, and he had in the past been absent without leave from psychiatric establishments.
49. It was against that background that the panel had to assess the evidence of the professional witnesses.

The POM's evidence



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50. The POM explained that, although the 2022 panel and the independent psychologist had been of the view that the Applicant needed to complete further risk reduction work before being re-released on licence, the prison service had not managed to arrange any suitable work for him to undertake. It was apparently recognised that any work had to be tailored to the Applicant's cognitive limitations. A programme had been identified as suitable for him but formal referrals did not seem to have been carried out and the programme was not available in the prison where the Applicant was detained.
51. The POM told the panel that [the Applicant] was currently compliant with his medication, he had a good relationship with staff in prison, and he appeared to have positive views about how he would manage in the community. There was no recent evidence of substance misuse. The POM therefore felt that the Applicant could safely be re-released on licence and any intervention work could be completed in the community.

The psychiatrist's evidence

52. The psychiatrist's overall concern about the Applicant's risk was impulsivity when coupled with the Applicant's difficulties with functioning in the 'non-structured environment' of the community. The psychiatrist had previously seen the Applicant in elated states (a feature of his mental health difficulties), and noted that he did well in circumstances where there were high levels of support in a structured environment. He therefore managed well in prison. If the level of support available in prison could be replicated in the community, the psychiatrist believed that it would be safe to release the Applicant on licence.
53. It was felt by the psychiatrist that the Applicant certainly needed to live in 24-hour supported accommodation, but that he also needed very intense one-to-one support within the accommodation amounting to visits on a regular basis (at least every other day). He suggested that the sort of regime which would support the Applicant would be a morning and evening check-in with a support worker or mental health worker who would have sufficient time to help the Applicant to plan each of his days, to ensure that medication was being taken and to oversee his general demeanour and wellbeing. The psychiatrist acknowledged that this would be a substantial and complex package. However, he said that others in the community (usually on leaving hospital rather than prison) had such packages. He suggested that it would be a less expensive package than incarceration in custody. His general view was that with support the Applicant could manage in the community, but that the support must be highly intensive.

The COM's evidence

54. The COM had taken over the Applicant's case in April 2024. She had had one conference with him. She had a positive view of his presentation. Her general impression was that his risk could be managed in the community, and was not imminent. She suggested that his risk would rise over a gradual period of time and interventions could take place as and when needed. She agreed that impulsivity was a concern but she felt that there could be a suitable package managing the Applicant in the community.



55. She confirmed that her risk management plan included a period of residence in AP followed by accommodation in supported accommodation (as before). She felt that there should be additional support with a weekly check-in from the Offender Personality Disorder service and also a weekly check-in from the Well-being service.
56. The Applicant had expressed his willingness to the COM to abide by his licence conditions. He would also be referred to drug services and would hopefully be supported by the community mental health forensic team. There was no detail as to what exactly the format of supported accommodation would be: however in general terms the COM felt that there was enough in her package to ensure the public were protected. She also mentioned a sex offender programme (delivered weekly) which could offer support and learning to the Applicant.

The Applicant's own evidence

57. The Applicant gave evidence himself. He said that since the index offence, he sees the world in a different way and his aggressive approach to life has changed dramatically. He appeared to be telling the panel that his view now was that he would stay away from sex workers, except on 'a social basis'. He hoped in time to have a relationship with a more pro-social person. He said that, in the future, his plan was that his relationship with sex workers would be more friendship than sexually motivated.
58. He was asked about the three recalls and why they had occurred. His account was somewhat confused. He said that he felt that the behaviour of the people working and living in the accommodation which he had been allocated was questionable and they were not sufficiently supportive. He also noted that there had been very few clocks available in the accommodation and this appeared to impact upon his understanding of curfew times.
59. He accepted however that on his last brief period on licence he had left the accommodation and breached his curfew.
60. He said that he had to do this because he had to buy food and clothes. He accepted that the breach was within days of him being released on the third occasion. He emphasised to the panel his view that it was important for him to have food for the week.
61. The panel noted that the Applicant's approach to breaching curfews was to justify and explain the need for breaches to meet his current requirements for shopping etc. He demonstrated little insight into the need for compliance or an understanding of the concerns around non-compliant behaviour. He said, however, that in the future he would not put himself in that sort of situation.
62. He felt he was a changed person. He also acknowledged that he needed a lot of support and help and felt that he did not have enough support in the past. He now acknowledged that he must abide by conditions such as curfews. He realised that



he would have to stick to his conditions. He said that in the future he would comply with licence conditions.

63. The panel accepted that the Applicant expressed a positive attitude towards compliance in the future and had no doubt that his expressions of positive behaviour were genuinely felt. However, they noted that the evidence within the dossier appeared to indicate that such commitments had been expressed before earlier recalls.
64. The panel stated that on the basis of the Applicant's repeated failures to comply in the past, they were bound to conclude that he would struggle to maintain this expressed commitment when faced with the unstructured environment of the community.
65. The panel then went on to set out, in the section of their decision headed 'Analysis of the Manageability of risk', the following very detailed analysis of the proposed plans for the future:

'The panel noted that a care programme approach (CPA) meeting had taken place in August 2024. A number of key professionals attended the meeting, as did [the Applicant] himself. The meeting was held to reflect upon the fact that [the Applicant] suffers from a mental disorder and therefore requires the support of mental health services in the community.'

'The meeting minutes indicate that professionals were able to consider the potential problems of managing [the Applicant's] difficulties in the community. However, two matters emerge from the minutes; firstly that no concrete plan (beyond generic generalisations) was being suggested tailored to meet [the Applicant's] specific risks and needs, in particular the need for intense and constant oversight. Secondly the general view (of those attending) was that there were difficulties in predicting [the Applicant's] compliance in terms of future behaviour.'

'Of great importance, so far as the panel were concerned, was the fact that the CPA minutes provided little or no concrete indication of how [the Applicant's] mental health and risk factors would be managed in the community. The minutes indicated no clear view as to the regularity of any input from forensic mental health services, or details about the availability of suitable accommodation, or the method by which medication compliance and general compliance with licence conditions, in terms of risk, would be monitored.'

'The panel considered [the Applicant's] potential for using his own internal controls to manage risk. The panel accept that [the Applicant] himself, at the hearing and in earlier hearings, has expressed a commitment to living a pro-social life and complying with licence conditions in the community. Despite these positive expressions, the panel took the view that the historical evidence indicates that [the Applicant], when in the unstructured environment of the community, has very limited ability to manage compliance and adhere to licence conditions. The panel were not persuaded that behaviour in the highly structured environment of



a prison is a helpful measure of [the Applicant's] ability to harness internal controls in the community.

'For that reason the panel, whilst respecting [the POM's view] that [the Applicant] was well thought of in the prison by staff, reject the basis of her recommendation. [The POM's] confidence about [the Applicant's] ability to manage his risks in the community took little account of evidence of how [he] in fact has managed outside prison in the past.

'Similarly, the panel had difficulty in supporting the confidence of [the COM] about [the Applicant's] ability to manage internal controls in the community. The panel accept that [the COM] referred to a number of generic support agencies and her own supervision as assisting [the Applicant] to manage himself in the community: however, the intensity and frequency of those controls was unclear and in most cases relatively infrequent.

'In the current climate, the panel accept that in reality the Probation Service can offer relatively limited day-to-day support of those for whom they hold responsibility. Reliance inevitably has to be placed upon [the Applicant] himself, using his own internal controls. As indicated, the evidence clearly supports the view that [the Applicant] has a low likelihood of compliance. He tends to have a poor relationship with professionals and prioritises his own immediate concerns, whether sexual or otherwise, over any requirement to adhere to licence conditions and prosocial behaviour.

'The panel accept that this is clearly a function of [the Applicant's] mental health and personality issues, however they are concerns which can only be addressed by intensive, regular and frequent oversight. So far as external controls are concerned, the panel took note in particular of the views of [the psychiatrist] who has known [the Applicant] for some time. [The psychiatrist] favours [the Applicant] being directed for release into the community and takes the view that [the Applicant's] risks could be managed. However, of crucial importance is that [the psychiatrist] takes the view that those risks can only be managed if he is subject to highly intensive oversight.

'[The psychiatrist], in addition to supported accommodation and the other listed support agencies within the risk management plan, suggested morning and evening check-ins, and daily plans agreed and delivered by a key worker.

'The panel analysed the risk management plan. Although there are references to a number of agencies and references to collaborative work with agencies, the reality is that very few of those agencies would be proactive in overseeing [the Applicant] in the community. Many would rely upon [the Applicant] himself attending for support and supervision. The CPA meeting gave no detailed indication of the proactive support that forensic mental health services would provide.

'The panel's role is not to draft risk management plans; the panel suggest that there may be a package of support which would enable [the Applicant] to live safely in the community. However, that package of support would amount to 24-



hour oversight and supervision. It will be essential to ensure that medication is being taken regularly. It would also involve a regular relationship with key workers and others who were able to plan a timetable for [the Applicant's] daily living plans, and in particular would ensure that skilled staff would be able to quickly identify the elevation of risk and intervene.

'The panel took account of the fact that [the COM] indicated that she felt that risk was not imminent and that a deterioration in behaviour and an elevation in risk would be able to be identified and intervention could take place. The panel disagreed with this view. [The Applicant's] historical behaviour indicates that he acts on impulse, he prioritises his own needs over the need for compliance and managing risky behaviour. The panel therefore took the view that the risk of serious harm was imminent, in the case of [the Applicant], unless he had a highly intensive and 24-hour oversight in the community.

'The panel therefore reflected upon the risk management plan and licence conditions suggested. Despite the plan containing a number of positive potential interventions and support agencies, the plan in its present form would, in the panel's determination, be incapable of managing [the Applicant's] potential risk of serious harm.

'In the light of the fact that the panel also determine that [the Applicant] has extremely limited internal control mechanisms, any decision to direct release would be virtually fully dependent upon the strength of external control mechanisms, which as indicated, the panel do not find reflected in the present plan.'

66. Finally the panel expressed, in the 'Conclusion' section of their decision, their overall conclusions.

'[The Applicant's] index offence was extremely serious. The panel accept that it was committed some time in the past: however, the facts of the offence involved abusive behaviour towards a vulnerable adult in circumstances where neither [the Applicant] nor his co-accused showed empathy or understanding of the obvious psychological and physical damage being caused to the victim. Although [the Applicant] accepts, in general terms, the outcome of the index offence, he maintains a residual position that the behaviour was, to an extent, consensual. [The Applicant] appears to have little insight into the overall concerns relating to the index offence and to his approach to meeting his sexual needs generally.

'Although [the Applicant] has spent substantial amounts of time in prisons and hospitals, there remains a concern that core risk reduction work remains outstanding. In June 2023, a psychologist at [the prison where he is detained] provided an advice note. The psychologist reported as follows: "It has been identified that [the Applicant] does have outstanding needs/targets related to the completion of core risk reduction work, though the exact nature of this work is currently unknown as the assessment outlined above have yet to be completed..... It is recommended that the following take place prior to any further psychological assessment: "[The Applicant] engages in the responsivity assessment



recommended ... when available, and following this engages in any core risk reduction work identified for him."

'The need for further core risk reduction work is not universally accepted in relation to [the Applicant]. As indicated above, his current COM takes the view that some work might be undertaken in the community. The prisoner instructed psychologist suggests that [the Applicant's] should be managed by highly intensive oversight in the community, as set out above. [The psychiatrist] also takes the view that the combination of regular intervention and attendance by forensic mental health services (as set out above) and intensive oversight by Probation in the community together with regular attendance on sex offender risk offending groups could allow [the Applicant] to be safely managed in the community.

'The panel's determination is that there is limited evidence that [the Applicant] has addressed the risk of harm in terms of sexual offending. As noted, there has been greater emphasis on [his] mental health, and less emphasis on investigating an understanding the function of his potential for sexual offending. The panel takes the view that core risk reduction work remains outstanding. The panel fully understands the difficulties of accessing any such offence related work, in light of [the Applicant's] mental health and learning challenges. However, the panel are bound to prioritise the risk to the public.

'Also of note is the fact that the risk management plan relies upon the presence of generic services rather than a specific plan focused upon the individual risks and needs of [the Applicant] (and the requirements of public protection). Again, the panel acknowledge that the suggested package of support ... would require a substantial amount of resources and input from Probation, mental health and other services. These are not matters, however, over which the panel itself has any control.

'The Panel therefore take the view that, at the date of the oral hearing, it remains necessary in order to protect the public that 'the Applicant] remain detained.

67. I have set out the panel's analysis of the Applicant's risk and its management in detail so that it can be seen how fully and carefully they considered the recommendations of the professional witnesses, and what were their reasons for disagreeing with those recommendations. I can find no fault in any of the panel's reasons.

68. The Applicant's solicitors state: **'We refer the Panel to *R(Fuller) v Parole Board [2020] EWHC 62 (Admin)* which held that the decision was irrational – failure to consider key evidence of a witness which supported release, in [the Applicant's] case, the panel has failed to fully consider the evidence of the three professional witnesses.** It will be apparent from the above passages in the panel's decision that they could hardly have considered the evidence of the professionals more fully and persuasively. **That being so I must reject this ground for reconsideration of the panel's decision.** I can now turn to other points raised by the Applicant's solicitors.



69. The solicitors submit: **'The Panel erroneously concluded that [the Applicant] needs to undertake more risk reduction work. He has previously been released by the Parole Board having concluded that he has completed all risk reduction work.'**
70. I cannot accept this submission. Since the Board directed the Applicant's release on licence in 2012 (on the basis of the evidence before it at that time) a lot of water has gone under the bridge. When on licence the Applicant has been guilty on three occasions of risky behaviour, and in 2022 a psychiatrist and another panel of the Board concluded that it would not be safe to release the Applicant again unless and until he completed further risk reduction work. The 2024 panel reached the same conclusion for all the reasons which I have set out above.
71. It is of course regrettable that, despite the recommendation of a prison psychologist in June 2023 that the Applicant should engage in a recommended responsivity assessment and then in any core risk reduction work identified for him, that recommendation does not seem to have been followed up. However, the panel were correct in their approach to that situation. They were obliged to consider the protection of the public, and if they concluded (as they did) that the Applicant poses a more than minimal risk to the public they were obliged to decide that he should remain in prison.
72. The solicitors then submit: **'He has been recalled for breaching licence conditions, and the reasons were not linked to the index offence and he has not been charged with further offences. In addition to the above, as per the decision of *Sturnham* as a post-tariff prisoner, the [Applicant's] detention depended on whether he posed a risk of committing offences of serious violence similar to his index offence. There is no evidence within the [Applicant's] dossier or at the hearing that [his] risk is imminent and that he is likely to commit similar offences as the index offence.'**
73. Again, I cannot accept this submission. The panel were fully entitled, on the evidence and for the reasons which they explained as above, to conclude that the Applicant presented an imminent risk of further offending against women which might cause serious harm to any victim.
74. The solicitors submit that: **'The allusion of further offences being committed prior to the index, without any substantial proof or evidence is incredibly harmful to the Applicant and is ultra vires.'**
75. The dossier contained evidence that the Applicant had been convicted of two serious offences against women before the index offence. In 1990 he had been convicted in the USA of raping a former partner, and in 1996 he had been convicted in the UK of another offence against a former partner which was described as follows in the dossier:



'He was first convicted in the UK in 1996, for another offence of violence, involving using violence to enter premises of an ex-partner, possessing a bladed article and using threatening behaviour. In [a psychiatrist's] report for a Mental Health Review Tribunal dated 01/01/2011, he noted that [the Applicant] "went to the house of a girlfriend, smashed the window and forcefully opened the door of the property. During the process he pushed the woman's six year old child and expressed the belief that the woman was a witch" '.

76. Probation clearly and reasonably regarded the combination of these two offences and the index offence as constituting a pattern of serious offending against women, and the panel were entitled to agree with that view.
77. The solicitors place some reliance on the independent psychologist's opinion that **'by [the Applicant] doing more courses he could become more impulsive in the future, and that by keeping him in prison would only increase the risk and set him up to fail.'**
78. This is a debatable opinion and the panel were fully entitled to prefer the opinion of the prison psychologist that the Applicant had outstanding treatment needs (see paragraph 66 above).
79. Finally the solicitors submit that in finding that the risk management plan was not sufficient the panel **'failed to consider the responsibility for the care package, what he is entitled to under section 117 aftercare'**.
80. It is certainly the case that the Applicant is entitled to section 117 aftercare, but that does not alter the fact that the proposed risk management plan did not meet the very strict requirements which the independent psychologist believed were necessary if the Applicant was to be safely re-released into the community.

Conclusion

81. I have a great deal of sympathy with the Applicant but for the reasons which I have set out above I cannot find any basis for directing reconsideration of the panel's admirably clear and detailed decision. There was no error of law, no irrationality in the panel's decision and no procedural unfairness.
82. **My decision must therefore be to refuse this application.**

Jeremy Roberts
13 November 2024

