

[2022] PBRA 155

Application for Reconsideration by Northey

Application

1. This is an application by Northey (the Applicant) for the reconsideration of a decision of a panel of the Parole Board (the Panel) dated 30 August 2022. The Panel decided not to direct the Applicant's release or to recommend his transfer to open conditions.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the *Parole Board Rules*) provides that applications for reconsideration may be made in eligible cases (as set out in Rule 28(2)) either on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair. This is an eligible case.
3. A decision not to make a recommendation for progression to open conditions is not eligible for reconsideration under Rule 28 of the Parole Board Rules. This decision will therefore not consider the Panel's decision to refuse to make a recommendation for the Applicant's transfer to open conditions.
4. I have considered the application on the papers. These papers are:
 - a) a dossier of 339 numbered pages;
 - b) an application for reconsideration submitted by the Applicant's solicitors; and
 - c) an oral hearing decision dated 30 August 2022.

The reply on behalf of the Secretary of State

5. The Secretary of State did not offer any submissions.

Background

6. The Applicant is now 37 years old. On 7 January 2008, at the age of 22, the Applicant was given a sentence of imprisonment for public protection (IPP sentence) with a minimum term of four years, less time spent on remand. The minimum term expired on 19 November 2011. The Applicant was convicted of three robberies committed in July and September 2007. The Applicant, with others, had targeted late night businesses. The Applicant had been armed with a crowbar which he had brandished to intimidate and cause fear. The robberies were financially motivated. The Applicant had been released from prison in early July 2007 and was on licence at the time he committed the robberies although his recall to prison had already been initiated due to his failure to attend his appointments with the probation service.



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7. The Applicant's criminal record reveals a history of anti-social, non-compliant, acquisitive, aggressive, and violent behaviour. His convictions, the first was for causing criminal damage when the Applicant was 15 years old, reflect the Applicant's chaotic lifestyle, which lacked structure and purpose, and the impact of alcohol misuse. Notably, a conviction in 2006 for intimidating a witness was committed against a partner who had reported him for causing criminal damage, and his partner at the time of the index offences was convicted of assisting the Applicant to get away from the scene of one robbery and of driving dangerously in doing so.
8. The Applicant has been released and recalled four times during his IPP sentence. Aggression and violence have been features of three periods spent in the community, resulting in convictions for violent offences committed against intimate partners and others following his third and fourth releases. It is notable that the Applicant has had several intimate relationships during his time in the community, that his relationships have tended to become intense quite quickly, that he has repeatedly been unfaithful to his partners, and that at least two casual sexual relationships have resulted in pregnancies. The Applicant has also had a propensity to minimise his abusive behaviour towards partners. He has found it difficult to recognise the impact of his behaviour on his partners and to take full responsibility for his behaviour, blaming his partners for being controlling, putting pressure on him, or being volatile.
9. The Applicant was first released in April 2013. The Applicant had completed several accredited programmes and spent time on a Therapeutic Community as well as in open conditions before his first release. He was recalled a year later in April 2014 after being arrested for causing criminal damage. Although he was later charged, the Applicant was not convicted of any offences as no evidence was offered at court. It was reported that alcohol-related intimate partner violence (IPV) took place during this release and that his partner obtained a non-molestation order.
10. The Applicant was released a second time in September 2014, five months after being recalled. On this occasion, the Applicant's recall was extremely rapid and occurred within four days because he had relapsed into drinking alcohol and had breached his curfew at the approved premises (AP).
11. A third release took place in June 2015. This release was more successful, certainly initially. However, there was a marked deterioration in the Applicant's behaviour and compliance from the end of 2016. In December 2016, the Applicant was convicted of driving without due care and attention and failing to stop after an accident. In March 2017, he was arrested for assaulting a member of the bar staff in a pub but following an investigation, the police took no further action against him. In August 2017, the Applicant's DNA was found in a police car. The Applicant has admitted that he damaged the police car and grabbed a bag from inside the car. This led to a conviction of theft from a vehicle. In August 2017, police were called to an incident at his former partner's home and he was arrested for assault and criminal damage but eventually no further action was taken against him. On 6 October 2017, the Applicant assaulted his new partner by dragging her by the hair and collar and then damaged her car by jumping up and down on the car's bonnet and roof. After he was arrested, he assaulted four police officers when he



was in police custody. The Applicant was convicted of battery and criminal damage and of four offences of assaulting a constable. He was recalled the following day. Following his recall, concerns were raised about the high level of calls made by the Applicant to his partner which he described as his way of keeping the relationship on track.

12. The Applicant's fourth release took place in August 2018, and he remained in the community until he was recalled in July 2019 for assaulting his former partner, the victim of the 2017 battery conviction. The Applicant's assault of his former partner included slapping her face and head, and bending the fingers of both her hands back. He also put his forearm against her throat and applied force, causing her to lose consciousness. The Applicant was convicted of two offences of battery and given a sentence of imprisonment of 18 weeks.
13. The Applicant's behaviour since his recall has been good although there have been two incidents of concern involving either violence or threats. In September 2019, the Applicant was adjudicated for punching another prisoner after a disagreement got out of hand. His prison offender manager (*POM*) reported that the Applicant had been remorseful for his actions and had proactively approached a prison officer to request a mediation between him and the other prisoner, which took place and appeared to resolve matters between them. On his arrival at Prison A in February 2020, the Applicant is reported to have made a veiled threat towards a cell mate in an attempt to secure a single cell.
14. When the Applicant's case was reviewed by the Parole Board in November 2019, the community offender manager (*COM*) recommended that he should complete Building Better Relationships (*BBR*) to reduce the risks he presented to intimate partners. The Applicant's Parole Board review was concluded on the papers at his request because he said that he recognised that he needed to engage in offending behaviour work to address his risk of violence. It was proposed that he should move to Prison B to undertake the Kaizen programme for intimate partner violence and general violence (*Kaizen*). In February 2020, the Applicant was transferred to Prison A which does not deliver Kaizen. Shortly afterwards, the Covid pandemic resulted in a 'lockdown'.
15. In October 2020, the Applicant's case was reviewed as part of the 'HMPPS GPP Psychology Pilot'. The review stated that despite treatment, the Applicant had continued to offend which suggested that there were outstanding areas of risk to be addressed. The review stated that "*a full psychological risk assessment would be helpful in this case to assist with understanding the key factors that are driving general violence and IPV*" and that a programme needs assessment (*PNA*) should also be considered.
16. On 28 January 2021, a prison psychologist (*2021 Psychologist*) completed a psychological risk assessment (*2021 PRA*) of the Applicant and a PNA. The 2021 Psychologist had concluded in the 2021 PRA that the Applicant presented a high risk of future violent reoffending. The PNA she had undertaken highlighted that the Applicant had treatment needs in three domains: managing life's problems, positive relationships, and healthy thinking. The 2021 Psychologist said that given the number of treatment needs that had been identified, a high intensity programme was essential and she recommended Kaizen. She concluded that the



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Applicant should remain in closed conditions and transfer to a prison which delivered Kaizen. The 2021 Psychologist also highlighted that the role of alcohol in the Applicant's offending and his emotional management skills should be addressed, and that the Applicant should be supported to develop a collaborative working relationship with the probation service. The 2021 Psychologist considered that the Applicant's release should not be considered until the recommended work had been completed.

17. Despite his frustration at not being able to access Kaizen earlier, the Applicant was reported to be motivated to complete a further intervention. Unfortunately, it proved challenging to arrange for the Applicant's transfer to a prison which delivered Kaizen or BBR. When the Applicant was eventually offered an opportunity to transfer to Prison B to be assessed for Kaizen in January 2022, he declined to move on the basis that he had been told that he might not be guaranteed a place on Kaizen and that his Parole Board review was due to take place and he did not want to postpone it.
18. For the reasons explained below, a fresh PRA dated 16 May 2022 (*2022 PRA*) was completed by another prison psychologist (*2022 Psychologist*). The 2022 Psychologist assessed the Applicant as presenting a low risk of general violence and a moderate risk of IPV. The 2022 Psychologist considered that the Applicant's risk of violence increased when he was experiencing relationship breakdown, overwhelming stress, mental health and employment difficulties, and using substances to cope. She concluded that there was limited evidence to suggest that the Applicant would engage in IPV in every relationship without other risk enhancing factors being present. She agreed with the 2021 Psychologist that the Applicant needed to address his risk of IPV and that this was core risk reduction work. Based on her assessment that the risk of future IPV was moderate, the 2022 Psychologist considered that the Applicant would be suitable for BBR rather than Kaizen.
19. At the date of the hearing, the Applicant had not completed any accredited interventions to address his risk of general violence or IPV. However, he had completed in-cell work on 'managing my emotions', alcohol dependency, and healthy relationships, which it was reported had been done to a high standard.

Request for Reconsideration

20. The application for reconsideration is dated 15 September 2022.
21. The grounds for seeking a reconsideration are set out in the application for reconsideration as follows:
 - "1. *Procedurally unfair - live evidence was not heard from the psychologist whose evidence the panel 'preferred' in making their decision;*
 - it is therefore submitted that*
 2. *the decision is irrational.*"

22. Based on the arguments advanced in the body of the application, I shall consider the following grounds:

Ground 1: the proceedings were procedurally unfair because the panel “*attached immense weight*” to the 2021 PRA completed by the 2021 Psychologist who was not available to attend the hearing to give evidence and therefore, unlike the 2022 Psychologist, could not be questioned by the panel or cross-examined by the Applicant’s legal representative.

Ground 2: the Panel’s decision was irrational because it preferred the written evidence in 2021 PRA to the oral evidence given by the 2022 Psychologist at the hearing.

Ground 3: the Panel’s decision was irrational because it disregarded the evidence provided on the imminence of the Applicant’s risk and concluded that the Applicant should undertake work in custody on a risk which was not currently active and for which the Applicant had not been fully assessed.

Current parole review

23. The Secretary of State referred the Applicant’s case to the Parole Board in October 2020 to consider whether or not it would be appropriate to direct his release. If the Parole Board did not consider it appropriate to direct release, it was invited to advise whether the Applicant should be transferred to open conditions.
24. The Panel convened on 13 January 2022 to review the Applicant’s case but the 2021 Psychologist did not attend the hearing. Instead another forensic psychologist, attended the hearing. The Panel spent time exploring her knowledge of the Applicant and concluded that she had had little direct contact with him and therefore would be “*less able to comment specifically on his learning and development on this recall ...*”. The hearing was adjourned to obtain a fresh PRA. Neither the adjournment decision nor the Panel’s decision explains why the 2021 Psychologist did not attend the hearing and why she could not be directed to attend a future hearing.
25. A fresh PRA, the 2022 PRA, was completed in May 2022 by the 2022 Psychologist. The hearing was adjourned for the second time on 16 June 2022 “*to secure the attendance*” of the 2022 Psychologist. The Panel’s decision does not provide any further information about why the 2022 Psychologist was not available on 16 June 2022.
26. The hearing resumed on 1 August 2022 and was conducted remotely. The Panel comprised two independent members and a psychologist member. The Panel had considered a dossier of 339 numbered pages which included the 2021 PRA, the 2022 PRA, a PAROM 1 addendum dated 27 May 2022 from the Applicant’s COM, and a report dated 24 May 2022 from the Applicant’s POM. Oral evidence was taken from the POM, the Applicant, the COM, and the 2022 Psychologist.
27. The POM expressed the view that the Applicant could be managed in the community because he was not in a relationship at present and he had a place on BBR in the community. The POM considered that the Applicant had greater insight



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into his behaviour, and if he did enter into an intimate relationship, he would disclose it, so that his risk could be managed. The POM said that her view that the Applicant could use internal risk management controls was based solely on his positive behaviour in custody.

28. The Applicant was asked why he struggled in intimate relationships. He said that he was "*emotionally immature*" due to the time he had spent in prison and that when he felt frustrated as a result of things going wrong, he did not know what to do and his lack of skills in dealing with conflict resulted in him being violent. The Applicant said that "*he realised that he had to stop burying his head in the sand and expecting others to do things for him*". He said that he "*recognised that he needed to be open about any relationship problems at an early stage, to be self aware, and not to ignore problems*". He said that he "*had used violence to make himself feel better but thought he would not have done so had he been in control of himself or more mature*". He identified future risks as alcohol, relationships, not being occupied, his mental health, and his belief that things would go his way.
29. In its decision, the Panel set out in detail the assessments, findings, and recommendations of the 2021 Psychologist. The 2021 Psychologist had concluded in the 2021 PRA that the Applicant presented a high risk of future violent reoffending. Based on the PNA she had undertaken, she considered that the Applicant should remain in closed conditions and transfer to a prison which delivered Kaizen. The 2021 Psychologist's view was that the Applicant's release should not be considered until the recommended work had been completed.
30. In contrast, in the 2022 PRA, the 2022 Psychologist assessed the Applicant as presenting a low risk of general violence and a moderate risk of IPV. She agreed with the 2021 Psychologist that the Applicant needed to address his risk of IPV and that this was core risk reduction work. Based on her assessment that the risk of future IPV was moderate, the 2022 Psychologist considered that the Applicant would be suitable for BBR rather than Kaizen.
31. At the hearing, the 2022 Psychologist recommended the Applicant's release to complete BBR in the community because she considered that his risk of future violent offending was not imminent, he had sufficient protective factors, and he would ask for help. In discussing the imminence of risk, the 2022 Psychologist said that the Applicant's current abstinence, ability to obtain employment, not being in a relationship, and the risk management plan (*RMP*) amounted to significant mitigating factors that would reduce the imminence of risk.
32. The COM supported the Applicant's release. Although she had not worked with him in the community previously, she described a "*good enough*" working relationship which allowed her to push and challenge him. She thought he had started to understand the need for him to change. The COM believed that his risk in the community was manageable with the proposed RMP as long as he was not in a relationship or not having relationship problems. The COM felt that the RMP was strengthened by GPS tagging and an alcohol monitoring tag, and that there would be warning signs of risk increasing if the Applicant was open and honest with her.


The Relevant Law

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33. The Panel's decision dated 30 August 2022 correctly sets out the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions. These are automatically set out in the Parole Board's template for oral hearing decisions.

Parole Board Rules 2019 (as amended)

34. Under Rule 28(1) of the Parole Board Rules the only types of decisions which are eligible for reconsideration are those concerning whether 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)). Decisions concerning the termination, amendment, or dismissal of an IPP licence are also eligible for reconsideration (Rule 31(6) or Rule 31(6A)).
35. Rule 28(2) of the Parole Board Rules provides the sentence types which are eligible for reconsideration. These are indeterminate sentences (Rule 28(2)(a)), extended sentences (Rule 28(2)(b)), certain types of determinate sentence subject to initial release by the Parole Board (Rule 28(2)(c)) and serious terrorism sentences (Rule 28(2)(d)).
36. 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 **Barclay [2019] PBRA 6**.

Irrationality

37. 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 paragraph 116:

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

38. 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.
39. The application of this test has been confirmed in previous decisions on applications for reconsideration under Rule 28: **Preston [2019] PBRA 1** and others.

Procedural unfairness

40. 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.
41. 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) he was not given a fair hearing;
 - (c) he was not properly informed of the case against him;
 - (d) he was prevented from putting his case properly; and/or
 - (e) the panel was not impartial.
42. The overriding objective is to ensure that the Applicant's case was dealt with justly.

Duty to give reasons

43. There are classes of cases in which there is a duty on decision makers to give reasons for their decisions. One such category of cases is where the subject matter is one that engages personal liberty, such as applications considered by the Parole Board.
44. The importance of giving adequate reasons in decisions of the Parole Board has been made clear in cases such as **Wells v The Parole Board [2019] EWHC 2710 (Admin)** and **Stokes v The Parole Board [2020] EWHC 1885 (Admin)**.
45. It is suggested that a panel's conclusions are best tested by asking whether the conclusions reached can be justified on the basis of the evidence placed before it, while giving due deference to the panel's experience and expertise.
46. Panels of the Parole Board are independent and are not obliged to adopt the opinions and recommendations of professional witnesses. If a panel is going to depart from the recommendations of experienced professionals, it is required to explain its reasons for doing so and ensure as best it can that its stated reasons are sufficient to justify its conclusions.
47. The giving of reasons by a decision maker is "*one of the fundamentals of good administration*" see **Breen v Amalgamated Engineering Union [1971] 2 QB 175**. When reasons are provided they may indicate that a decision maker has made an error or failed to take a relevant factor sufficiently into account, hence their importance. An absence of reasons does not give rise to an inference that the decision maker has no good reason for a decision. Neither can it be necessary for every factor to be dealt with explicitly for the reasoning to be legally adequate in public law.
48. If a panel is intending to reject the evidence of a witness then detailed reasons will be required. This is implicitly recognised in the case of **Wells** at paragraph 40:

"The duty to give reasons is heightened when the decision maker is faced with expert evidence which the Panel appears, implicitly at least, to be rejecting."

Discussion

49. In dealing with the grounds for reconsideration, it is necessary to highlight five matters of importance. The first is that the reconsideration mechanism is not a process by which the judgment of the Panel when assessing risk can be interfered with lightly. Nor is it a means by which the member carrying out the reconsideration is entitled to substitute his or her view of the facts for the view of the Panel, unless, of course, it is manifestly obvious that there was an error of fact of an egregious nature which can be shown to have directly contributed to the conclusion arrived at by the Panel.
50. The second matter of importance is that when deciding whether the Panel's decision was irrational, due deference has to be given to the expertise of the Panel in making decisions relating to parole. The third matter is that where the Panel arrives at a conclusion, exercising its judgment based on the evidence before it and having regard to the fact that it saw and heard the witnesses, it would be inappropriate to direct that the decision be reconsidered unless it is manifestly obvious that there are compelling reasons for interfering with the decision of the Panel.
51. The fourth matter is that when considering whether to order reconsideration, appropriate weight must be given to the views of the professional witnesses, but reconsideration cannot be ordered if the Panel has put forward adequate reasons for not following the views of the professional witnesses. The fifth matter is that, in many cases, there can be more than one decision that the Panel can be entitled to arrive at depending on its view of the facts.
52. I will deal with each of the grounds outlined in the application separately.

Ground 1 – procedural unfairness

53. The application submits that it was procedurally unfair for the Panel to give "immense weight" to findings and recommendations in a written report that the Applicant's legal representative had not had an opportunity to challenge during the hearing.
54. Setting aside the question of whether or not the 2021 Psychologist was available to be questioned, not being able to question the 2021 Psychologist does not automatically amount to procedural unfairness. Panels of the Parole Board consider all the written evidence and oral evidence before them when making a decision. It is not unusual for a dossier to contain several PRAs as well as psychiatric and other expert reports. It is not necessary, nor would it be practical for a panel to call the author of every report it might rely on. Written reports are often comprehensive and authors unambiguous in their reasoning and findings. It is a matter for each panel to determine what weight it gives to the written evidence before it and several factors will be relevant including for example the age of the report, the degree of direct interaction between the author of the report and the person being



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assessed, what has happened since the report was written and the implications for the author's findings. Moreover, it is only after the hearing has ended and a panel has heard all the evidence that it can consider what weight to give the evidence before it, whether that evidence is written or oral.

55. In this case, there were significant differences of opinion between the 2021 Psychologist and the 2022 Psychologist on key issues including the level of risk of future violent reoffending presented by the Applicant, the imminence of the Applicant's risk, and whether the Applicant should address his outstanding risks (which it was agreed by both psychologists were core risks) in closed conditions or could do so in the community at an unknown date in the future. The Panel sought to explore these differences by questioning the 2022 Psychologist. The Panel could not question the 2021 Psychologist as she did not attend the hearing. Given that the findings and recommendations of the 2022 Psychologist were more favourable to the Applicant, the Applicant's legal representative, would have been fully aware of the importance of questioning the 2022 Psychologist about the reasons for the areas of difference between her and the 2021 Psychologist. It was also open to the Applicant's legal representative to present detailed closing submissions persuading the Panel that the 2022 Psychologist's findings and recommendations should be given more weight than those of the 2021 Psychologist.
56. In conclusion, I am satisfied that not being able to question or cross-examine the 2021 Psychologist did not create a procedural unfairness which resulted in the proceedings being fundamentally flawed.

Ground 2 – irrationality

57. The application submits that the Panel's decision was irrational because it preferred the written evidence in the 2021 PRA to the oral evidence given in person by the 2022 Psychologist.
58. When the Panel adjourned the hearing on 13 January 2022, it was on the ground that it would have been procedurally unfair to proceed when it could not question the 2021 Psychologist on the contents of the 2021 PRA. It is unfortunate that the reason why the 2021 Psychologist was unable to attend the hearing on 13 January 2021, and seemingly any future hearing, was not explained either in the adjournment decision dated 27 January 2022 or in the Panel's decision. The application does not address the matter either. Another psychologist, attended the hearing on 13 January 2022 instead. The Panel spent time exploring her knowledge of the Applicant and concluded that she had had little direct contact with him and therefore would be "*less able to comment specifically on his learning and development on this recall ...*". On that basis, the Panel decided to adjourn the hearing for a fresh PRA. The Panel stated, "*It was acknowledged that this would be frustrating for the Applicant, but it was the best way to ensure that the panel's decision would be based on a full and up to date risk assessment and ensure a fair hearing.*"
59. The 2021 Psychologist and the 2022 Psychologist reached significantly different conclusions in important areas of assessment and in their recommendations. It was incumbent on the Panel to use its expertise and experience to explore the reasons for those contradictory positions and determine what weight to give to



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each. The Panel questioned the 2022 Psychologist about her assessment of the Applicant's risk of violence, the imminence of his risk, and her recommendations about his treatment and his suitability for release.

60. The Panel explored in some detail whether the Applicant's risk of committing further violence against an intimate partner was imminent. The 2021 Psychologist had stated in the 2021 PRA that if the Applicant entered into an intimate relationship, it would elevate his risk given the nature of his past offences. However, she did not consider that his risk would necessarily immediately become imminent on entering a relationship because past violence had occurred in the context of relationship breakdown and after an accumulation of stress, frustration, and anger. The 2021 Psychologist said that since the Applicant had not undertaken any intervention specifically focused on his risk in relationships, his ability to manage relationship difficulties effectively and without resorting to avoidant coping strategies and violence was in question. In the 2022 PRA, the 2022 Psychologist's view was that there was limited evidence to suggest that the Applicant would engage in IPV in every relationship without other risk-enhancing factors being present, such as overwhelming stress, mental health difficulties, employment difficulties, or a relationship breakdown. She did not think that the risk of IPV was imminent given that the Applicant was not in a relationship and the other factors perpetuating IPV were not present.
61. In its conclusion, the Panel decided that it favoured the assessments and recommendations of the 2021 Psychologist on the basis that she *"had spent longer in interview with the Applicant and had presented her findings in terms of both a PRA and a PNA in a form that the panel could assess independently."* The 2021 Psychologist had spent approximately six hours over three appointments interviewing and assessing the Applicant.
62. The Panel went on to state that it, *"did not have the same level of confidence in prison psychologist assessment, which, although more recent, relied in part on a conversation with the programme manager at Prison B, of which the panel had no knowledge save that which prison psychologist shared at the hearing. It was difficult therefore to attach weight to the opinion formed in part on the basis of this private conversation."*
63. There are several reasons why it is contended that the Panel's approach fails to comply with its public law duties when it decided to favour the assessments and recommendations of the 2021 Psychologist, even after taking account of the deference due to it. The Panel did not explain why it no longer attached importance to being able to question the 2021 Psychologist despite having determined that it should adjourn the hearing on 13 January 2022 and direct a fresh PRA for this very reason. The Panel did not address the fact that the 2021 PRA had been completed 18 months before the hearing and did not consider to what extent the 2021 Psychologist's assessments and recommendations were still valid particularly in the light of (i) in-cell work completed by the Applicant on 'managing my emotions', alcohol dependency, and healthy relationships, which had reportedly been done to a high standard; and (ii) evidence that the Applicant's insight into his behaviour and risks had improved, and that he had started to develop self-management strategies.

64. All the professionals, save for the 2021 Psychologist who had not assessed the Applicant since January 2021, considered that the Applicant had gained insight into his risk of IPV and general violence. The POM and the COM gave evidence of more mature and reflective thinking by the Applicant and both believed he would be more open with the probation service. The Panel did not comment on the Applicant's insight, whether it considered that it had improved, and what impact that had on the imminence of his risk and his manageability in the community, and crucially how that might have impacted on the 2021 Psychologist's assessments and what weight should be given to them.
65. The Panel did not explain why it concluded that the Applicant's risk of future violence remained high rather than moderate (IPV) or low (general violence), as assessed by the 2022 Psychologist. The Panel did not provide its own assessment of the imminence of risk or set out its findings on factors which might have an impact on imminence to explain why it did not agree with the COM and the 2022 Psychologist. There was no discussion by the Panel of relevant issues such as: whether it considered that the Applicant was likely to enter into a new relationship quickly, the likelihood of him rekindling a relationship with a former partner, whether it considered that the Applicant would disclose an intimate relationship and be open with the COM about any deterioration or relationship breakdown, whether the Applicant had acquired any skills to cope with stress more effectively, whether the Applicant was more able to manage his mental health, whether the Applicant would be prepared to engage with the mental health programme at Withington Road Approved Premises, when he could access the mental health programme, and what consultations the COM had with the Offender Personality Disorder Pathway team about establishing a collaborative relationship with the Applicant given his previous trust issues.
66. For the reasons outlined above, I find the Panel's reasons for favouring the assessments, findings, and recommendations of the 2021 Psychologist irrational.
67. A further or alternative reason why the Panel's decision to make no direction for the Applicant's release is irrational is that it failed to comply with its duty to give detailed reasons for rejecting the evidence and the recommendations of the 2022 Psychologist. The Panel stated that it, "*did not have the same level of confidence*" in the 2022 Psychologist's assessment because "*it relied in part on a conversation with the programme manager at Prison B, of which the panel had no knowledge save that which Prison Psychologist shared at the hearing. It was difficult therefore to attach weight to the opinion formed in part on the basis of this private conversation.*" This criticism fails to take account of the fact that the 2022 Psychologist sets out a summary of her conversation with the treatment manager at Prison B at paragraph 6.5 of the 2022 PRA. If the Panel judged her summary to be inadequate, given that the 2022 Psychologist was a witness at the hearing, the Panel had every opportunity to question her about that conversation until it was satisfied that it understood what had been discussed and how it affected the 2022 Psychologist's recommendations. In any event, the 2022 Psychologist had made it clear that her assessment of the Applicant's risk of future IPV was moderate and for that reason it should be addressed by BBR, a moderate intensity intervention, rather than Kaizen.

68. The Panel is independent and is not obliged to adopt the opinions and recommendations of professional witnesses. However, if the Panel is going to depart from the recommendations of experienced professionals, it is required to explain its reasons for doing so and ensure as best it can that its stated reasons are sufficient to justify its conclusions. In this case, for the reasons I have outlined, the Panel has failed to do so since its reasons for preferring the 2021 Psychologist's assessments to the 2022 Psychologist's assessments are irrational.

Ground 3 – irrationality

69. In light of my conclusions on Grounds 1 and 2, it is not necessary for me to consider Ground 3.

Decision

70. Accordingly, I find the Panel's decision dated 30 August 2022 to be irrational for the reasons set out above. The application for reconsideration is therefore granted.

Hedd Emrys
31 October 2022