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	<i>Delivered:</i> 30/07/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION
(JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY THOMAS McWILLIAMS
FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF THE DEPARTMENT OF JUSTICE

Mr Ronan Lavery KC with Mr Mark Bassett (instructed by Brentnall Legal Ltd) for the
Applicant

Mr Tony McGleenan KC with Mr Philip McAteer (instructed by the Departmental
Solicitor's Office) for the Respondent

COLTON J

Introduction

[1] On 31 March 1995, the applicant, Thomas McWilliams, was convicted of the murder of Norman Truesdale on 10 March 1993. He was also convicted of hijacking, false imprisonment and belonging to a proscribed organisation, namely the provisional IRA. He received a sentence of life imprisonment.

[2] He was released on licence on 28 July 2000 pursuant to the Northern Ireland (Sentences) Act 1998 which was enacted as a consequence of the Belfast/Good Friday Agreement in 1998.

[3] On 18 July 2012, the applicant was remanded to custody on a charge of possession of a firearm in suspicious circumstances. His licence was suspended by the Secretary of State for Northern Ireland on 28 August 2013.

[4] On 25 March 2014, he was convicted of the offence of possession of a firearm with intent to endanger life or property. He received a determinate custodial sentence (DCS) of 12 years. This sentence consisted of six years' imprisonment and six years on licence.

[5] The applicant's release on life licence was formally revoked by the Sentence Review Commissioners on 10 February 2015.

[6] On 10 January 2018, the then Lord Chief Justice Sir Declan Morgan, recommended a minimum life tariff of 21 years pursuant to Article 11 of The Life Sentences (Northern Ireland) Order 2001 ("the 2001 Order") in respect of the 1995 convictions.

[7] The Northern Ireland Prison Service informed the applicant that his DCS release date was 23 January 2017 and that his life tariff expiry date was 11 March 2014.

[8] His case was referred to the Parole Commissioners under Article 43(3) of the 2001 Order, on 22 February 2017.

[9] Ultimately, his case was considered by a panel of Parole Commissioners on 11 October 2018. The panel directed the applicant's release on 17 October 2018.

[10] The panel determined that the applicant did present a risk of serious harm but one that could be managed on licence. Accordingly, the panel imposed licence conditions which included requirement that the applicant must report to a probation officer and remain under the supervision of a probation officer or any person nominated.

[11] After his release, the applicant did not have any contact with the Probation Service. The reason for this is well-known – see *Re Nash* [2014] NIQB 76. As explained in the affidavit of Mr Allison, on behalf of the Department of Justice, at para [6] of his first affidavit:

"6. In September 2017, however, a verified threat had been made by dissident republican groups against all staff working for PBNI and, as a result, PBNI Senior Management had made a decision to cease all direct supervision of individuals considered by PBNI to be terrorist offenders. This applied regardless of the perceived or known affiliations of individuals with proscribed organisations (either loyalist or dissident republicans). For a short period (September 2017 to February 2018) PBNI also ceased home visits by probation staff to any individual residing in perceived nationalist/republican areas to protect the safety and well-being of staff."

[12] On 18 September 2020, the applicant received the following correspondence from the Department of Justice:

“Dear Sir/Madam

Multi-Agency Review Arrangements (MARA)

The purpose of this letter is to advise you that Multi-Agency Review Arrangements (MARA) have been developed by the Department of Justice to support the management of Terrorist Related Offenders on licence.

Following assessment by MARA, it has been agreed you meet the definitional criteria to be classified as a Terrorist Related Offender. Accordingly, with effect from today’s date, your licence supervision will be managed through MARA. Your period on licence is an integral component of the sentence you received at court following conviction. The purpose of your licence is to protect the public, prevent re-offending and support rehabilitation.

As you are aware, as part of your licence conditions you **must** receive prior approval to:

- Travel within Northern Ireland (with overnight stays away from the approved address).
- Travel outside of Northern Ireland.
- Travel outside of the United Kingdom.
- Change of approved address.
- Permanently reside outside of Northern Ireland.

With effect from 18 September 2020 all applications you wish to make in relation to travel, changes to your address, or resettlement outside of Northern Ireland, must be submitted to MARA@licencessupervision.org.uk. Please note the associated timeframes for the submission of applications, copies of the associated policies and guidance referred to within the guidance can be found at www.justice-ni.gov.uk. If you are seeking to travel within the next 10 working days, please provide full details to MARA at the above email address for consideration as soon as possible. ...

Yours faithfully
Chairperson, MARA”

[13] On 6 September 2021 the applicant received a notice of a variation from the Department of Justice pursuant to Article 8 of the 2001 Order.

[14] Under the variation notice the applicant must:

- “(a) Keep in touch with the supervising officer as instructed by the supervising officer.
- (b) Receive visits from the supervising officer as instructed by the supervising officer.
- (c) Reside permanently at an address approved by the supervising officer and obtain the prior permission of the supervising officer of any change of address.
- (d) Undertake such work, including voluntary work, as approved by the supervising officer, and obtain the prior permission of the supervising officer for any proposed change.”

[15] As will appear later in this judgment the supervising officer is a person appointed under what are known as the “Multi-Agency Review Arrangements (MARA).”

[16] The variation notice was accompanied by correspondence from the Department of Justice which included the following paragraphs:

“The purpose of this letter is to advise you that Multi-Agency Review Arrangements (MARA) have been deployed by the Department of Justice to support the management of individuals classified as Terrorist Risk Offenders.

Following assessment by the Multi-Agency Review Assessment Panel (MARAP) it has been agreed you meet the definitional criteria to be classified as a terrorist risk offender. Accordingly, with effect from today’s date, your licenced supervision will be managed through new arrangements.

Your period on licence is an integral component of the sentence you received at court following your conviction. Following a review, MARAP has agreed your revised licence conditions to support the purpose of a licence, namely to protect the public, prevent reoffending and

support rehabilitation. A copy of your revised licence, which comes into immediate effect, is attached.

For the remainder of the licence you will be under the supervision of an assigned officer.

An appointment has been made to meet (*name of supervising officer identified*).

Within supervision sessions your supervising officer will be asking you questions about many areas of your life – topics will be broad but may include your history of offending behaviour, your general life history, your experience of relationships, employment, education, alcohol use or drug use. Your supervising officer will also want to understand what support you have around you. You are encouraged to engage in these discussions with your supervising officer in line with the expectation of your licence.

The supervising officer will use this information, as well as a selection of background court paperwork or previous reports completed about you, to complete an assessment of the risk posed by you and the specific issues that are related to the likelihood of you committing further offences.

This assessment will be reviewed to assess any progress made on licence and will also inform aspects of decision making during your time on licence. You are entitled to see a copy of the assessment when completed and also to contribute your views.”

The applicant's challenge

[17] By these proceedings the applicant challenges the variation notice of 6 September 2021.

Grounds of challenge

[18] The grounds relied upon in the original Order 53 Statement can be summarised as follows.

“The decision is contrary to and, ultra vires, Article 8 of The Life Sentences (Northern Ireland) Order 2001 (“the 2001 Order”) in that:

- (i) The impugned amendment was not the result of an individual assessment of any current or future risk to public safety posed by the applicant.
- (ii) The impugned amendment was not the result of an individually reasoned recommendation by the Parole Commissioners specific to the applicant as required by Article 8(3) of the 2001 Order.
- (iii) Past convictions for politically motivated offences, including the index offence, do not represent valid criteria for the classification of Terrorist Risk Offenders in 2021. Supervision of the kind required by the amended licence is contrary to the scheme established by the Good Friday Agreement.
- (iv) The respondent has approached the power of post-release amendment of life licences under the 2001 Order as though it was the same as that under Article 24 of the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order").

Prior to the hearing the applicant sought to add the following grounds under this heading:

- (v) The definitional criteria used by the respondent to identify Terrorist Risk Offenders under section 3.2 of its published guidance (Article 50 guidance) should not include the applicant. He was released under licence pursuant to the provisions of the Good Friday Agreement and the Northern Ireland (Sentences) Act 1998. Supervision of former prisoners convicted of politically motivated offences connected with the Troubles is recognised as being inappropriate. To include the applicant by virtue of licence amendment is *ultra vires*."

[19] The applicant further argues that the impugned decision constitutes a breach of his rights pursuant to article 8 of the European Convention on Human Rights ("ECHR") as given effect in the Human Rights Act 1998.

The applicant's case at hearing

[20] At the hearing the applicant made it clear that he was not making a challenge to amendments made to the standard conditions in the Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) Rules 2009 (“the 2009 Rules”) by the Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) (Amendment) Rules 2021 (“the 2021 Rules”).

[21] Further, while criticising the decision of the Commissioner dated 17 August 2021 which led to the variation of 6 September 2021, he did not seek any public law remedies in respect thereof.

[22] The challenge is confined to the notice of variation dated 6 September 2021.

[23] It was submitted that this variation is the result of a change in government policy rather than any individual assessment of the risk posed by the applicant. It was argued that it was contrary to the scheme of prisoner release on licence contained in the Good Friday Agreement.

[24] It was submitted that the conditions were imposed on a life licence contrary to:

- (i) Article 8 of the 2001 Order;
- (ii) Contrary to published policy of the respondent; and
- (iii) Contrary to the applicant’s rights contained in article 8 ECHR as given effect by the Human Rights Act 1998.

[25] The principal remedy sought was the quashing of the variation notice dated 6 September 2021 insofar as it requires MARA supervision. Various declaratory orders were also sought.

The MARA Scheme

[26] The background to the introduction of the MARA scheme is set out in an affidavit from Steven Allison on behalf of the Department of Justice.

[27] As referred to earlier in this judgment, issues had arisen in relation to the supervision by the Probation Board of Northern Ireland (“PBNI”) of terrorist offenders. Prior to September 2017, the PBNI was the lead agency with responsibility to monitor terrorist offenders’ adherence to licence conditions. True it is, as was acknowledged in *Re Nash* [2014] NIQB 76; [2015] NICA 18, that the Board’s ACE Risk Assessment tool was not designed for use to assess risk of terrorist offending, but PBNI did supervise all individuals on licence in the community, including those convicted of terrorist related offences.

[28] Matters became acute, however, in September 2017 when PBNI Senior Management decided to cease all direct supervision of individuals considered by PBNI to be terrorist offenders as a result of a verified threat.

[29] At this time, a Northern Ireland Executive was not in place and, accordingly, there was no Minister of Justice in office to address this issue.

[30] Following the recommencement of the Northern Ireland Assembly and Executive in January 2020, the Minister of Justice having been briefed on the public protection gaps arising from the PBNI's operational approach asked officials to develop an alternative delivery model not directly involving PBNI staff to assess and manage the risk of terrorist related offenders. The Minister accepted that this would require an amendment to subordinate legislation to provide the DoJ with discretion to assign licenced supervision to other staff not employed by PBNI.

[31] Pending the development of a longer-term solution underpinned by the relevant legislative amendment, interim multi-agency arrangements (known as MARA) were developed and commenced on 8 September 2020. At that time the Minister issued interim guidance under Article 50 of the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order") together with supporting policies.

[32] Mr Allison describes the interim arrangements in his affidavit in the following way:

"11. The key component within the interim arrangements was the establishment of a Multi-Agency Review Panel with responsibility for:

- (i) Deciding whether individuals should be classified as TROs having regard to criteria set out in the guidance issued by the Minister under Article 50 of the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order").
- (ii) Consider and agree a risk management plan, including additional licence conditions in relation to individual TROs;
- (iii) Consider and determine applications submitted by TROs on licence in the community to travel outside Northern Ireland, change address or permanently resettle outside the UK; and
- (iv) Where relevant, consider what steps were appropriate to address non-compliance with licence supervision/conditions by TROs, including by way

of issuing warnings, varying licence conditions and/or initiation of revocation proceedings.”

[33] The Multi-Agency Review Panel (“MARAP”) comprised of senior representatives from PSNI, NI Prison Service, PBNI and DoJ.

[34] While the interim arrangements were implemented, the DoJ developed a project to provide for permanent arrangements.

[35] In particular, this required engagement by the Minister with Executive colleagues to secure agreement to amend subordinate legislation to provide the Department with discretion to designate other staff (not PBNI) to fulfil the supervisory role set out in the standard licence conditions in the 2009 Rules.

[36] On 26 November 2020, the Executive noted the proposal to the legislative amendment and agreed that the legislative change process should be commenced.

[37] Under the proposal the previous description of “Terrorist Related Offender” was replaced with the descriptor “Terrorist Risk Offender” (“TRO”).

[38] The policy document set out the background to and rationale for the proposed amendment and indicated that it was required to ensure that TROs were subject to licence supervision to support the purpose of a licence, namely:

- (i) To protect the public.
- (ii) Reduce offending.
- (iii) Support the rehabilitation of the offender.

[39] The proposed amendment went through the appropriate legislative procedure involving scrutiny by the Justice Committee. It was finally progressed through the NI Assembly by the negative resolution procedure and came into effect on 6 September 2021.

[40] The amendment was entitled the Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) (Amendment) Rules 2021.

[41] The substance of the amendment was to amend the 2009 Rules to provide that:

“‘Supervising Officer’ means a probation officer or such other person or organisation for the time being responsible for supervising specific offenders on licence in accordance with the arrangements made by the Department of Justice.”

[42] In relation to standard conditions of licence under other conditions of licence, the amendment had the effect of substituting “supervisory officer” for “probation officer.”

[43] The Department also issued guidance under Article 50 of the 2008 Order in relation to the new arrangements.

[44] Importantly, this application considering the definitional criteria for what is meant by a TRO indicates that the criteria applied to:

“b. An individual on licence, with the exception of anyone released on licence under the terms of the Belfast Agreement 1998 (known as the Good Friday Agreement) who has not been convicted and currently serving a sentence (listed above) since their release under the Belfast Agreement.”

[45] In conjunction with the development of the new scheme, the Department commissioned a leading academic to develop a bespoke risk assessment tool for use with TROs. A new risk assessment tool known as Terrorist Risk Offender Dynamic Assessment (TRODA) was developed.

[46] In addition, the Minister and officials engaged with the UK government to secure agreement to recruit and deploy specialist staff within the Northern Ireland centric team to fulfil the supervisory role.

[47] Mr Allison avers that the staff were in place by the end of June 2021 with training commencing on 1 July 2021 in preparation for the commencement of the new delivery model on 6 September 2021.

[48] The court has already considered the new scheme in the case of *Mullan’s Application* [2023] NIKB 19. In that case the court was considering a challenge by the victim of a terrorist offender not being returned to prison but who was subject to licence conditions under the MARA scheme. Mr Justice Scofield also considered the proportionality of licence conditions imposed under MARA in relation to travel in the case of *Mackle’s Application* [2023] NIKB 13.

[49] The court makes it clear that there can be no basis for challenging the lawfulness of the new scheme. It is designed to fulfil the Department’s obligations to ensure assessment and management of risks posed by TROs through licence conditions.

[50] What is at issue in this case is the application of the scheme to the applicant.

The application of the interim arrangements to the applicant

[51] On 14 August 2020, PBNI submitted a referral to MARAP to consider the applicant against the interim criterion to be classified as a TRO. The relevant criteria under the definition was Criterion 3 which under the interim guidance provided:

“The individual has been convicted of and is serving a current sentence for offence(s) where MARA is satisfied offence(s) was committed in connection to terrorism or in connection to terrorist activity.”

[52] The proforma document for the TRO classification referred to the applicant’s conviction on 31 March 1995 for the offence of murder, to his release in 2000, to the subsequent revocation of his licence and to the conviction of 25 March 2014 for possession of firearm and ammunition with intent to endanger life or property.

[53] The panel sought further information from the PSNI in respect of Criterion 3. On the basis of the information provided the panel determined on 4 September 2020, that the applicant met the criteria for classification as a TRO. The court has not seen the additional information, but as will become apparent from the discussion in relation to the decision under challenge, it is likely that the further information sought related to the 2014 conviction.

[54] At its meeting on 4 September, the panel unanimously agreed that the applicant’s licence should be amended in line with the interim MARA guidance.

[55] Accordingly, the DOJ referred the applicant’s case to the Parole Commissioners for Northern Ireland on 4 September 2020, confirming that the applicant had been assessed as a TRO with proposed additional licence conditions to those imposed on the applicant’s life licence on 19 October 2018.

[56] In a written decision on 11 September 2020, the Parole Commissioner recommended that the conditions be varied in accordance with the request pursuant to Article 8(3) of The Life Sentences (Northern Ireland) Order 2001.

[57] In short, the effect of the variation was to require applications for change of address or leaving Northern Ireland should be submitted to MARA.

[58] The applicant’s licence was varied accordingly on 16 September 2020 and the applicant was advised of the updated position by correspondence on the same date.

[59] On 25 September 2020, in accordance with his revised licence conditions, the applicant applied for approval to travel to Portugal from 6-15 October 2020, which application was approved by MARA.

[60] This interim decision is not the subject matter of challenge but is nonetheless set out by way of background.

Application of the new scheme to the applicant – leading to the impugned decision

[61] On 2 July 2021, PBNI submitted a referral form requesting MARAP to determine if the applicant met the criteria to be classified as a terrorist risk offender.

[62] The referral form referred to the index offence as being “possession of firearm and ammunition with intent.”

[63] The eligibility criteria relied upon was Criterion 3, namely:

“The individual has been convicted of and is serving a current sentence for offence(s) where MARA partners are satisfied offence(s) was committed in connection to terrorism, or in connection to terrorist activity.”

[64] In the narrative of the referral report the PBNI refer to the conviction on 31 March 1995 and the imposition of a life sentence with release in 2000 and subsequent revocation of the licence. The narrative also then refers to the Crown Court conviction on 25 March 2014.

[65] The panel initially concluded that the PBNI had provided insufficient information. Having considered additional information provided by PSNI dated 14 July 2021, the panel agreed that the applicant met Criterion 3 to be classified as a Terrorist Risk Offender.

[66] The additional information provided by PSNI related to the conviction on the 25 March 2014. The information provided was as follows:

“An attempt was made to murder a police officer during which time a firearm was discharged at police. This occurred during a public order situation which had developed at a Belfast interface following the Twelfth of July parades. Mr McWilliams was convicted of attempting to dispose of or conceal this firearm.”

[67] At the commencement of the MARA panel meetings on 19 July 2021, the panel agreed protocols to conduct the classification meetings.

[68] On 4 August 2021, the panel met to consider whether the applicant’s licence should be amended to support his supervision on licence. The panel unanimously agreed the licence should be amended in line with the guidance underpinning the new delivery model. The panel agreed the applicant should be assigned a supervising officer. The licence should be amended to reflect the role this officer had in considering such things as applications to travel and/or change of address.

[69] On 13 August 2021, the DoJ Licensing Unit wrote to the Parole Commissioners of Northern Ireland to consider the proposed amendments to the applicant's life licence.

[70] In his written decision dated 17 August 2021, the Commissioner considered the proposed amendments and recommended the applicant's life licence be varied. In his recommendation he concluded that "in order to protect the public from serious harm and to manage Mr McWilliam's risk safely in the community it is appropriate that Mr McWilliam's licence is amended to incorporate these new arrangements."

[71] The amendments recommended were as follows:

- All references to 'probation officer' to be replaced with 'supervising officer.'
- The removal of the requirement to seek approval from MARA for a change of address. This is covered by the 'standard' condition (see – "Permanently reside at an address approved by the supervising officer and obtain the prior permission of the supervising officer of any change of address.")
- Revision of the wording and consolidation of licence conditions (i) and (k) relating to terrorism to read:

"You must not engage in any terrorist activities nor participate in any organisation that supports, directs, authorises, facilitates or controls such activities. You shall not engage in any conduct in support of terrorism including making public statements to that effect or raising funds for any such activity."

This condition will be monitored by the PSNI."

[72] Correspondence was issued to the applicant to confirm he had been classified as a TRO, confirming details of his supervisory officer and the date, time and venue of a supervision session. The correspondence also set out the purpose of supervision and risk assessment process. The applicant was encouraged to provide his views to inform the risk assessment/licence supervision process.

The applicant's challenge

The ultra vires argument

[73] The respondent has varied the applicant's licence conditions in respect of his life licence which was imposed pursuant to the 2001 Order.

[74] Pursuant to Article 8 of the 2001 Order under the heading "Duration and conditions of licences" sub-para (3) provides:

"The [Department of Justice] shall not include on release, or subsequently insert, a condition in the licence of a life prisoner, or vary or cancel any such condition, except in accordance with recommendations of the Commissioners.

[75] Mr Lavery contrasts this provision with the way in which such conditions can be varied under Article 24 of the 2008 Order. Under this provision the power of the Department to insert, vary or cancel a condition can only be made "after a consultation with the Parole Commissioners."

[76] This contrast demonstrates the legislative intent to introduce greater restrictions on executive interference with individual rights in the case of life prisoners than that which occurs with licences based on the 2008 Order. The Parole Commissioners are an important safeguard of the statutory scheme.

[77] Mr Lavery submits that in the circumstances of this case, the Parole Commissioners have not exercised a critical, independent and objective judgment in relation to the proposed variation.

[78] Mr Lavery points out that the guidance published under Article 50 of the 2008 Order mis-states the statutory test applicable to prisoners released on life licence. Thus, the guidance says:

"4.4 Licence Conditions

Licence conditions (and any subsequent variation of conditions) will be agreed and confirmed by MARAP. In the case of Extended Custodial Sentence, Intermediate Custodial Sentence, or life sentence prisoners, MARAP will consult with PCNI regarding appropriate licence conditions. (*my underlining*)

There is no change to the current licensing setting process. Individuals classified as TROs will ordinarily be subject to the following licence conditions on release from custody:

- (a) The standard licence conditions set out in Article 2 of the Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) Rules 2009; and

- (b) A condition requiring the individual “must not engage in terrorist-related activities nor participate in any organisation that supports, directs, authorises or controls such activities.”

[79] It is argued that this guidance has infected MARAP’s approach to the variation of the applicant’s life sentence conditions.

[80] Mr Lavery then turns to the Parole Commissioners’ decision of 17 August 2021 upon which the subsequent variation by the DOJ was based. He says that this is not a valid recommendation under the 2001 Order. At best the Parole Commissioner has been “consulted.” It, he argues, has all the hallmarks of a rubber-stamping exercise. As a consequence, he says that the purported licence variation of 6 September 2021 is deprived of legal effect.

[81] What he says has happened in this case is that the Parole Commissioner has simply endorsed a policy change of the Department.

[82] On this issue the first obvious point to make is that there has been no challenge to the Parole Commissioner’s recommendation of 17 August 2021.

[83] It is correct that neither the Article 50 guidance or the amendment to the 2009 Rules in 2021 have the automatic or inevitable effect of varying the applicant’s life licence conditions. In Mr McGleenan’s words they do not expand the footprint of the 2008 Order.

[84] Ultimately, this issue depends on the court’s analysis of the Commissioner’s recommendation (even though as pointed out, it has not been the subject matter of a judicial review challenge).

[85] In the court’s view, the applicant’s case on this issue is unsustainable.

[86] Firstly, it should be remembered that the Parole Commissioners’ recommendation of 17 August 2021 does not exist in a vacuum. Licence conditions were already put in place (without objection) by the Parole Commissioners’ decision on 17 October 2018 which imposed licence conditions requiring the applicant to comply with supervision by PBNI. Indeed, it is noted that at his Parole Commissioners’ hearing the applicant confirmed that he would comply with supervision requirements of the PBNI.

[87] These licence conditions were varied (again without objection) on 16 September 2020 which introduced MARA into the equation for the first time. It will be noted that variation was made subsequent to a recommendation of Parole Commissioner Jackson.

[88] The Parole Commission recommendation of 17 August 2021 must be seen in this context and against this background.

[89] Turning to the recommendation itself, it is clear that the Commissioner understood his statutory role.

[90] The decision is expressly referred to as a “recommendation.”

[91] The Commissioner correctly identifies that the case has been referred to him under Article 8(3) of the 2001 Order, which as the decision records “requires them to make recommendations on the insertion, variation or cancellation of conditions of a life sentence prisoner when asked to do so by the Department of Justice.”

[92] In the decision he refers to the referral letter which identifies the new arrangements to assess and manage risks posed by individuals classified as terrorist Risk Offenders. He correctly sets out the review carried out by MARAP in the forthcoming revised management arrangements envisaged for TROs to replace the interim arrangements which had been necessitated by the inability of PBNI to perform their supervisory functions in relation to such offenders.

[93] He sets out the amendments which have been requested which, in effect, simply replace references to “probation officer” to “supervising officer.”

[94] The recommendation concludes:

“Recommendations

8. As a result of changes in legislation relating to the management of Terrorist Related Offenders, revised management structures will be introduced with the new legislation. Mr McWilliams has been designated as a Terrorist Related Offender. In order to protect the public from serious harm and to manage Mr McWilliams’ risk safely in the community, it is appropriate that Mr McWilliams’ licence is amended to incorporate these new arrangements.
9. I recommend that Mr McWilliams’ licence is amended as proposed in the section ‘Licence Amendments Request’ to commence with the start of the new legislation (6 September 2021).
10. The text for this recommendation should be disclosed to Mr McWilliams.”

[95] In my view, it is clear that the Commissioner fully understood his obligations under Article 8(3) and has given specific consideration to the applicant's case.

[96] The recommendation is clearly and properly recorded. Its terms are plain and such a recommendation is *intra vires* Article 8 of the 2001 Order.

[97] In the court's view, the recommendation is a valid one. The subsequent amendments made to the licence remain in accordance with the recommendation of the Commissioners as required by the legislation.

[98] Whilst this conclusion remains valid in any event, it is noted that Mr Allison avers in his affidavit that in one case, the Parole Commissioners did not agree the conditions of a life licence classified as a TRO should be amended to include direct face to face supervision.

The Belfast/Good Friday Agreement

[99] This case is complicated by the fact that the applicant had at one stage been released as a qualifying prisoner under the Northern Ireland (Sentences) Act 1998 ("the 1998 Act").

[100] This Act was enacted to give effect to the commitments under the Belfast/Good Friday Agreement to permit the accelerated release of prisoners who had been involved in offences arising from the Troubles and who met various eligibility requirements.

[101] Although controversial, this legislation was deemed appropriate as part of bringing an end to the Troubles and creating new political arrangements which would ensure that Northern Ireland would not return to the violence of the past.

[102] The respondent was clearly alive to the situation regarding those released under the 1998 Act which was part of the outworking of the Belfast/Good Friday Agreement.

[103] Thus, the Article 50 guidance expressly provides that those released on licence under the terms of the Agreement, be exempt from the definition of TROs. Thus, the scope (as set out above) excepts from the criteria "anyone released on licence under the terms of the Belfast Agreement 1998 (known as the Good Friday Agreement) who has not been convicted and currently serving a sentence (listed above) since their release under the Belfast Agreement."

[104] The difficulty for the applicant is that his licence when released under the 1998 Act has been revoked. Whilst on licence he has been convicted of another offence. He has been serving a sentence for that offence which expired on 18 July 2024. He is also serving his life sentence for the murder in 1993. It is this licence which has been varied. He is not subject to the licence arrangements under the 1998 Act. This is the

fundamental difficulty he faces in relation to his arguments about the Belfast/Good Friday Agreement. He has not made a further application for a declaration of eligibility for release under the 1998 Act. Therefore, his status is someone who is serving a life sentence for the murder committed in 1993, who is not on release as a result of the 1998 Act. As such, he clearly comes within the definition of a TRO and within the scope of the MARA scheme.

[105] It is clear from the history of this case that the application has been triggered by the suggestion in correspondence that as part of his supervision the applicant may be asked about his offending in 1993. In the court's view this has wrongly been characterised as some form of "interrogation." It is clear from the correspondence that he "may" be asked about his offending in 1993. He is not obliged to answer any questions about that offending. The purpose of the supervision by the supervising officer is to assess risk. Whether that requires a detailed analysis of the applicant's offending in 1993 is a moot point. The applicant in his affidavit evidence and in the submissions on his behalf to the Parole Commissioners has freely and openly dealt with his previous offending.

[106] It seems to the court that whatever be the doctrinal opposition to the ability of a supervising officer to ask these questions on no account could it be said to be unlawful.

[107] The outworkings of the Belfast/Good Friday Agreement through the legislative vehicle of the 1998 Act are fully respected under the current scheme by the exclusion from scope of those prisoners who are released under the 1998 Act, but not someone who is serving a current sentence for offences which have been committed in connection to terrorism, or in connection to terrorist activity, something which applies to the applicant in respect of both his convictions.

[108] A further complication that arose in this matter relates to the fact that MARAP sought clarification of the second conviction when considering whether the applicant met the definitional criteria of a TRO. The panel took the view that the second offence did meet the criteria. Nonetheless, it was also clear from their decision that they were fully alive to the 1995 conviction which was plainly a terrorist offence. Furthermore, the application to vary related to the dominant sentence which involved the applicant's life sentence licence conditions. It was those conditions which they sought to vary. In light of the analysis above, that variation has been made lawfully.

[109] The court, therefore, refuses the application for judicial review based on illegality and ultra vires.

Article 8 ECHR

[110] Whilst it is debatable for the purposes of this judgment, the court is prepared to accept that the obligation of the applicant to engage with the supervising officer

constitutes a prima facie interference with his article 8 rights. It seems to the court that the extent of any such interference is limited.

[111] In any event, any prima facie interference is justified as being in accordance with law in light of the analysis which has been set out above. The variation is in pursuit of a legitimate aim (which is accepted by the applicant) and proportionate, having regard to the analysis which has been set out in this judgment.

[112] The effect of the variation is to substitute a “supervising officer” for a “probation officer” in his original licence conditions imposed in October 2018. These are standard licence conditions required by the Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) Rules 2009.

[113] The court bears in mind that the purpose of a licence is for the protection of the public, to reduce offending and to assist in the rehabilitation of an individual offender. It could not be considered disproportionate to impose a requirement on such an offender to work with supervision officers to co-operate with risk assessment procedures.

[114] The objection, as has been indicated, is founded on the basis that such a supervising officer may question an offender about his previous offending. This objection is simply unsustainable.

[115] The court concludes that there has been no breach of the applicant’s article 8 rights and judicial review on this ground is refused.