The King on the application of Thomas Williams v The Parole Board for England and Wales v The Secretary of State for Justice

No Substantial Judicial Treatment

Court
King's Bench Division (Administrative Court)

Judgment Date
4 December 2025

Case No: AC-2025-CDF-0000170

High Court of Justice King's Bench Division Administrative Court

[2025] EWHC 3183 (Admin), 2025 WL 03490789

Before: His Honour Judge Keyser KC Sitting as a Judge of the High Court

Date: 4 December 2025

Hearing date: 28 November 2025

Representation

Simon Ridding (instructed by Kesar and Co.) for the Claimant.
The Defendant and the Interested Party did not appear and were not represented.

Approved Judgment

Judge Keyser KC:

Introduction

1. The claimant, Mr Thomas Williams, is now 49 years of age. In 2008, at the Crown Court at Liverpool, he was convicted of an offence of wounding with intent to cause grievous bodily harm ("the index offence") and was sentenced to imprisonment for public protection ("IPP") with a minimum term of 3 years and 102 days. The tariff expired on 5 October 2011. The claimant remains in custody (though he has three times been released and recalled) and is accordingly post-tariff.

2. The claimant challenges the decision on 12 May 2025 of a panel ("the Panel") of the defendant, the Parole Board for England and Wales, to refuse to direct his release from custody ("the Decision").

3. There are four grounds of challenge:

1) The Decision rests on mistakes of fact.
2) The defendant took into account irrelevant matters and failed to take into account relevant matters.
3) The defendant failed to give sufficient reasons for the Decision.
4) The Decision was irrational.

4. Permission to pursue all four grounds was granted by Mr Justice Kerr on 6 October 2025. He observed that there was considerable overlap among the grounds and that it was not desirable to compartmentalise, segregate or reformulate them. The way the case was put was, in essence, that either the Decision rested on mistakes of fact or, if there was no mistake of fact, the Decision fails to explain how the defendant arrived at the apparently mistaken premises, despite the evidence it received; therefore, the Decision either is irrational or fails to provide sufficient reasons for its conclusions.

5. The defendant and the interested party, the Secretary of State for Justice, have taken a neutral stance to the challenge and have played no substantive part in the proceedings. At the hearing the claimant was represented by Mr **Simon Ridding** of counsel, for whose assistance I am grateful.

The Legal Framework

6. Sentences of IPP were introduced by the Criminal Justice Act 2003 . They have been abolished for offenders convicted after 2 December 2012, but the abolition was not retrospective and so does not apply to the claimant. A sentence of IPP consists of (i) a minimum tariff and (ii) a further indeterminate period of licence. The licence period is eligible to be terminated once 10 years have elapsed from the date of first release; in the claimant's case the 10-year period ended on 12 July 2023.

7. Section 28 of the Crime (Sentences) Act 1997 , as amended, ("the 1997 Act ") provides in relevant part:

> "(1A) This section applies to a life prisoner in respect of whom a minimum term order has been made; and any reference in this section to the relevant part of such a prisoner's sentence is a reference to—
>
> (a) the part of the sentence specified in the minimum term order …
>
> …
>
> (5) As soon as—
>
> (a) a life prisoner to whom this section applies has served the relevant part of his sentence; and
>
> (b) the Parole Board has directed his release under this section,
>
> it shall be the duty of the Secretary of State to release him on licence.
>
> (6) The Parole Board shall not give a direction under subsection (5) above with respect to a life prisoner to whom this section applies unless—
>
> (a) the Secretary of State has referred the prisoner's case to the Board; and
>
> (b) the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined."

8. Section 32 of the 1997 Act provides in relevant part:

> "(1) The Secretary of State may, in the case of any life prisoner who has been released on licence under this Chapter, revoke his licence and recall him to prison.
>
> …
>
> (4) The Secretary of State shall refer to the Parole Board the case of a life prisoner recalled under this section.
>
> (5) Where on a reference under subsection (4) above the Parole Board directs the release on licence under this section of the life prisoner, the Secretary of State shall give effect to the direction.
>
> (5A) The Board must not give a direction unless satisfied that it is no longer necessary for the protection of the public that the life prisoner should remain in prison."

9. With effect from 3 February 2025, a new section 28ZA of the 1997 Act has, so far as material to this case, provided as follows:

> "(1) This section applies for the purposes of any public protection decision made by a decision-maker about a life prisoner under a relevant provision of this Chapter.
>
> (2) A 'public protection decision', in relation to a prisoner, is a decision as to whether the decision-maker is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.
>
> (3) The decision-maker must not be so satisfied unless the decision-maker considers that there is no more than a minimal risk that, were the prisoner no longer confined, the prisoner would commit a further offence the commission of which would cause serious harm.
>
> (4) In making that assessment, the decision-maker must consider the risk that the prisoner would engage in conduct which would (or, if carried out in any particular part of the United Kingdom, would) constitute an offence specified in Schedule 18B to the Criminal Justice Act 2003 .
>
> (5) When making a public protection decision about a prisoner, the following matters must be taken into account by the decision-maker—
>
> (a) the nature and seriousness of the offence in respect of which the relevant sentence was imposed;
>
> (b) the nature and seriousness of any other offence for which the prisoner has at any time been convicted;
>
> (c) the conduct of the prisoner while serving the relevant sentence (whether in prison or on licence);
>
> (d) the risk that the prisoner would commit a further offence (whether or not specified in Schedule 18B to the Criminal Justice Act 2003) if no longer confined;

(e) the risk that, if released on licence, the prisoner would fail to comply with one or more licence conditions;

(f) any evidence of the effectiveness in reducing the risk the prisoner poses to the public of any treatment, education or training the prisoner has received or participated in while serving the relevant sentence;

(g) any submissions made by or on behalf of the prisoner or the Secretary of State (whether or not on a matter mentioned in paragraphs (a) to (f)).

(6) When making a public protection decision about a prisoner, the decision-maker must in particular have regard to the protection of any victim of the prisoner.

(7) For the purposes of subsection (6), a 'victim' of a prisoner is a person who meets the definition of victim in section 1 of the Victims and Prisoners Act 2024 by reference to the conduct which constituted the offence for which the relevant sentence was imposed.

(8) In subsections (5) and (7), 'relevant sentence' means the sentence in respect of which the public protection decision is made.

(9) This section does not limit the matters which the decision-maker must or may take into account when making a public protection decision.

(10) The 'relevant provisions' of this Chapter under which a public protection decision may be made, and the purposes for which the decision is made, are—

(a) section 28(6)(b) , for the purposes of section 28(5) ;

(b) section 32(5A) , for the purposes of section 32(5) ;

…

(11) The 'decision-maker', in relation to a public protection decision made under a relevant provision of this Chapter, is—

(a) if the decision is made under section 28(6)(b) or 32(5A) , the Parole Board;

…

(12) Subsection (2) has effect in relation to a decision made by the Parole Board under section 32(5A) (recall of life prisoners while on licence) as if for the words 'be confined' there were substituted 'remain in prison'."

10. In *R (King) v The Parole Board [2016] EWCA Civ 51, [2016] 1 WLR 1947* , (a case concerning the lawfulness of guidance given by the Parole Board to its panels in respect of directing the release after recall of prisoners serving a determinate sentence of imprisonment), Lord Dyson MR said at [31]:

"[A]s a matter of ordinary language, the words 'necessary for the protection of the public' do not entail a balancing exercise in which the risk to the public is to be weighed against the benefits of release to the prisoner or the public. The concept of 'protecting the public' does not involve any

> kind of balancing exercise. It simply involves safeguarding the public from the danger posed by the prisoner. As Mr Grodzinski puts it, the goal to be achieved is clear, namely the protection of the public; and the means by which it is to be achieved, namely by continued confinement of the prisoner, is equally clear. If the Board concludes that confinement is necessary because there will be a (more than minimal) risk of harm if the prisoner is released, then confinement of the prisoner will be required to avoid that risk."

Summary of the Background Facts

11. The index offence occurred when the claimant, who anticipated his imminent arrest and imprisonment thereafter for another offence, attended at the home of his former partner, Miss C, in order to see their child before his detention. In the course of the meeting the claimant, who was under the influence of alcohol and cocaine, headbutted Miss C and then stabbed her. He subsequently went to a police station and handed himself in.

12. The claimant pleaded guilty at court. At the time of his sentence he had nine previous convictions for 17 offences dating back to 1994, including two convictions for affray in 2004. The pre-sentence report for the index offence assessed the claimant as "posing a High Risk of Harm to the public". It encouraged the claimant to address his substance and alcohol misuse by completing the Prison – Addressing Substance Related Offending (P-ASRO) programme, and to improve his consequential thinking skills by undertaking the Enhanced Thinking Skills programme. It said that he would benefit from undertaking relevant victim awareness programmes and engaging with employment training and education in order to assist with his eventual resettlement into the community. It also suggested that, while on licence, he attend the Community Domestic Violence Programme.

13. The claimant began his sentence at HMP Altcourse. In October 2008 he was transferred to HMP Garth. Upon the expiry of his tariff in October 2011, he applied for release. The panel (all references to a "panel" are to a panel of the defendant) noted that his behaviour had been "generally good" and that he was polite to prisoners and staff. It refused to direct his release but recommended that he be transferred to open conditions. Accordingly, in May 2012 the claimant was transferred to HMP Kirkham.

14. On 10 July 2013, after an oral hearing, a panel directed the claimant's release, subject to additional licence conditions that included a requirement that he notify the supervising officer of any developing intimate relationships with women.

15. On 2 January 2015 the claimant was recalled to prison after he had allegedly assaulted Miss C. (The claimant accepted that he had been drinking but denied any assault, and the police took no further action.) He was sent to HMP Liverpool.

16. On 28 April 2015, after a further oral hearing, a panel directed the claimant's release on licence. He was released on licence on 12 May 2015.

17. On 24 August 2017 the claimant was recalled for the second time, after he was alleged to have assaulted his new partner, Miss F. (Miss F made an initial allegation of assault, but later she retracted it, and at court the prosecution offered no evidence and a not guilty verdict was returned.) The claimant was again sent to HMP Liverpool.

18. On 29 September 2018, after another oral hearing, a panel directed the claimant's release on licence, with a condition that he reside at his mother's house. The panel recorded that it could not reach a firm conclusion as to whether the claimant had been violent towards Miss F, that it considered that the claimant had made progress in addressing the attitudes and behaviour that had led to his recall, and that in its view the risk to the public was at a level that no longer required his detention.

19. After his latest release on licence, the claimant generally did well in the community. Between September 2022 and July 2023 he attended regularly in one-to-one sessions with a forensic psychologist, Ms Jo Dodsworth, who in a letter in May 2024 expressed the view that the claimant had made considerable progress in managing his impulsivity and controlling his emotions without the use of alcohol. (See Decision, paragraphs 2.12 and 2.13, below, where the Panel express the view that Ms Dodsworth's views require re-examination in the light of the events that led to the claimant's latest recall.)

20. On 11 July 2023 the claimant was recalled to custody for the third time, after he had been arrested the previous day following an incident at a restaurant when he had been abusive to staff and had assaulted his latest partner, Miss Lewis. Upon his third recall, the claimant was sent to HMP Berwyn. Having considered the evidence in respect of the incident that led to the third recall, the Panel said in paragraph 2.27 of the Decision:

> "The panel has concluded that Mr Williams tends to minimise and that he had drunk rather more alcohol than he has admitted. The circumstances of this third recall mirror the circumstances of previous recalls and, to a lesser extent the index offence, and for the panel provide evidence of a continuing incapacity to control his emotions when under stress. This time a court has adjudicated and found that he did commit a physical assault on his partner and for the panel that is the crucial finding."

21. The claimant's eligibility for release was considered again by a panel at an oral hearing on 11 November 2024. Because of a change in the constitution of the panel, the oral hearing commenced *de novo* on 26 March 2025 before a new panel ("the Panel"). The claimant was represented by the solicitors who were then (but are not now) acting for him. The Panel received evidence from the following witnesses: Mr Gary Speers, the claimant's Prison Offender Manager ("POM"); Ms Fiona Wilyman, a forensic psychologist instructed on the direction of the defendant; Ms Sheena-Marie Williams, the claimant's Community Offender Manager ("COM"); and the claimant.

22. On 12 May 2025 the Panel decided not to direct the claimant's release. That is the Decision under challenge. The claimant says that he had intended to appeal the Decision via the reconsideration mechanism but that the solicitors who then acted for him missed the deadline; accordingly, he now seeks judicial review. (The Panel also declined to recommend the claimant's transfer to open conditions. No challenge is made to that decision, and I was not addressed on it.)

The Decision

23. Section 1 of the Decision contained an analysis of the claimant's previous offending. Section 2 set out the background since the claimant's sentence in some detail, with reference to the evidence given at the hearing. Section 3 was forward-looking, analysing the manageability of the risk presented by the claimant. Section 4 set out the Conclusion.

"4.1. At the heart of the RMP [Risk Management Plan] is the concept that contact between Mr Williams and Ms Lewis or any future partner can be restricted until he completes the essential psychological intervention (preferably from Ms Dodsworth but otherwise from any other Forensic Psychologist who can provide it). All professional witnesses have agreed the intervention is necessary to ensure that losses of emotional self-control, such as happened on 10 July 2023, can be prevented in future. It was accepted by Ms Williams and Ms Wilyman that this work could be described as core risk reduction work but they took the view it could be safely completed in the community.

4.2. They recognised that there would be a considerable delay before it could be completed. The issue is can Mr Williams be safely managed in the community in the meantime?

4.3. The panel has concluded that he cannot. The panel accepts that the risk will not be imminent on release but a loss of self-control could happen at any time. As Ms Williams accepted, there were no warning signs before the incident on 10 July 2023 and the panel has concluded Mr Williams still retains the belief that he can engage in what he describes as 'social drinking'. He disputes that drink played any part in the incident on 10 July 2023 but Ms Lewis told the police it was a factor and the panel thinks it was.

4.4. Mr Williams has not done any work since recall that gives the panel confidence that he can manage stressful situations in a relationship context without losing self-control and in the view of the panel that will remain the position until he completes some work on healthy relationships. Inevitably, if Mr Williams was released, there will be a period between release and completion of this work in the community and the panel sees no effective way of protecting the public during that time. It has reached the conclusion that for the protection of the public that work should be done in closed conditions.

4.5. The alternative proposed by the professional witnesses and advocated by Ms Doyle the legal [re]presentative is that Mr Williams be released and addresses his problems with relationships in the community by a combination of BC [Building Choices in the Community] and the bespoke work begun by Ms Dodsworth being continued. The panel does not accept that BC, about which, in any event, it has very little information, can bridge the gap in the interim and anyway it accepts the evidence of Ms Wilyman that BC is not likely to prove as effective as a psychological intervention. When the latter might begin in the community (cue [due?] to the rolling out period and consequent waiting lists) is only one of a number of imponderables inherent in this RMP and the panel does not accept that the public will be sufficiently protected by it.

4.6. The panel has to be satisfied that it is no longer necessary for the protection of the public for Mr Williams to be confined and that involves the panel finding that the risk is no more than minimal. Having considered all the evidence set out above the panel is unable to reach that conclusion and does not direct release.

4.7. That being so, the panel has gone on to consider whether, as an alternative, it should recommend a transfer to Open Conditions. For the same reasons as set out above, the panel does not think that Mr Williams has made sufficient progress during this sentence in addressing and reducing risk to a level consistent with protecting the public from harm (in circumstances where the prisoner in open conditions may be in the community, unsupervised under licensed temporary release). In the panel's view he still has important work to complete to make him safe on temporary releases on licence. Also the panel accepts that he does not need to transition into the community via Open Conditions. It would be of no benefit to him or to the public for him to do so. In those circumstances the panel does not recommend a transfer to Open Conditions.

4.8. In the panel's opinion what Mr Williams needs to do is to complete a further intervention addressing the outstanding areas of risk in managing his emotions particularly in the context of

> conflicts arising during relationships. The panel expresses the hope that this work can be completed as soon as possible in closed conditions, if not at HMP Berwyn then elsewhere."

The Grounds of Challenge

24. The principal way in which the challenge is put is that the Decision rested on material mistakes of fact by the Panel. The points relied on can, I think, equally well be categorised as an irrationality challenge.

Mistake of Fact

25. In *E v Secretary of State for the Home Department [2004] QB 1044, [2004] EWCA Civ 49* , the Court of Appeal said at [66]:

> "In our view, the time has now come to accept that a mistake of fact giving rise to unfairness is a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties share an interest in co-operating to achieve the correct result. Asylum law is undoubtedly such an area. Without seeking to lay down a precise code, the ordinary requirements for a finding of unfairness are apparent from the above analysis of *R v Criminal Injuries Compensation Board, ex parte A [1999] 2 AC 330* . First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been 'established', in the sense that it was uncontentious and objectively verifiable. Thirdly, the appellant (or his advisers) must not have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the Tribunal's reasoning."

26. On behalf of the claimant, Mr Ridding submitted that the Panel made several mistakes of fact and that these mistakes played a material part in the Panel's reasoning.

1) The Panel wrongly said that all the professional witnesses recommended "intervention", by which it can be inferred the Panel meant work undertaken in custody to reduce the risk upon release. (Skeleton argument, paragraph 47)
2) The Panel mistakenly treated the work undertaken with Ms Dodsworth as core risk reduction work, whereas in fact it was work voluntarily undertaken by the claimant in the community and could be continued in the community.
3) Similarly, the Panel placed weight on its statement that the professional witnesses gave evidence that the claimant needed to undertake "core risk reduction work" to reduce his risk to a level sufficient for release, and it then disagreed with the opinion of those professional witnesses that the work could be done in the community. This characterisation of the recommended work as core risk reduction work was incoherent and wrong, because core risk reduction work is by definition work that must be done prior to release (and usually in closed, not open, conditions).
4) The Panel proceeded on the basis that risk of violence would be imminent upon release, whereas that was not an opinion expressed by any of the professional witnesses.
5) The Panel also proceeded on the mistaken basis that there would be a "considerable delay" before necessary work could start (Decision, paragraph 4.2).

27. In my judgment, the matters relied on do not come remotely close to showing either that the Panel proceeded on the basis of a mistake of fact, within the scope of *E v Secretary of State for the Home Department,* or that the Decision was irrational.

28. In the first place, the Panel obviously (a) did not use "intervention" to mean work that was necessarily to be completed in custody and (b) did not mistakenly think that the professional witnesses considered further work in custody to be necessary before release. Paragraph 4.1 of the Decision makes clear that all the professional witnesses considered that further intervention was necessary but that Ms Williams and Ms Wilyman thought that this intervention could take place in the community.

29. Second, there is no basis for inferring that the Panel mistakenly believed that the work that Ms Dodsworth had already undertaken with the claimant was core risk reduction work in the sense that it had been mandated and/or been carried out in custody. (Indeed, paragraph 53 of the Statement of Facts and Grounds states in terms that "the Panel understood that the work with Ms Dodsworth was at the Claimant's own behest.") The Decision does not say any such thing, and paragraphs 2.12 to 2.14 in particular show that the Panel had engaged closely with the written material as to the work undertaken by and with Ms Dodsworth and had a clear understanding of that work.

> "2.12. Between September 2022 and July 2023, apart from January and February when he was unwell, he had participated in weekly 1:1 sessions with Ms Dodsworth. She took the view that Mr Williams had made considerable progress since the index offence 'in terms of managing … impulsivity … emotions … and … tendency to use aggression' and he was '… no longer using alcohol to cope with … emotions … had not used any violence for a number of years' (see her letter to Mr Williams dated 17 May 2024 at p. 586 of the dossier).
>
> 2.13. While the panel accepts that progress had been made it is of the view that Ms Dodsworth's statements about alcohol and violence need to be re-examined in the light of the events leading to recall. Also, as pointed out by Ms Fiona Wilyman, the Forensic Psychologist instructed by Forensic Psychological Services Wales on the direction of the PB, who completed a Psychological Risk Assessment (PRA), much of the work done by Ms Dodsworth was constructing a formulation and, had the work not been interrupted by recall, therapy would have continued 'with a focus on altering feelings linked to …previous experiences' which 'would help to change your patterns of thoughts, feelings and behaviour' (see p. 598).
>
> 2.14. In short, there was important work yet to be done and Ms Dodsworth encouraged Mr Williams to continue with it and was willing to accept a re-referral if he wished to do so. Mr Williams told the panel that he was keen to resume this therapy."

The questioning of Ms Wilyman by the psychologist member of the Panel, Dr Georgina Rowse, shows that it was well understood that the claimant had participated in the work voluntarily. (Relevant passages of this and other parts of the evidence are set out in an Appendix to this judgment.) If what is meant is that the Panel was wrong to consider that *further* psychological intervention was required as core risk reduction work, this has nothing to do with any mistake of fact: it is a criticism of the Panel's conclusion that such work ought to be completed in custody in order to reduce the claimant's level of risk to a level that made him suitable for release.

30. Third, accordingly, the submission that the Panel made a mistake of fact, or that its reasoning was incoherent, regarding "core risk reduction work" has no merit. As is clear both from the Decision and from the transcript of the hearing, the Panel was at all times clearly focused on the statutory test for release. The Panel was concerned to know what if any work was required before the claimant could be safely released into the community. Its exploration of "core risk reduction work" with Ms Wilyman and Ms Williams shows this plainly. If and to the extent that any confusion existed regarding the designation of work *in the community* as core risk reduction work, that was found in the answers of the witnesses, not in some misapprehension of fact as to the witnesses' evidence on the part of the Panel. The simple position (to put the point shortly) is that the witnesses

agreed that further work was required in order to reduce risk but thought that it could be done in the community, but that the Panel thought that the claimant's level of risk required that the work be done *before* further release into the community.

31. Fourth, the Panel did not make any material mistake of fact, for the purposes of the test in *E v Secretary of State for the Home Department,* regarding imminence of risk on release or the timeframe within which necessary work would be commenced and completed.

32. So far as immediacy of risk is concerned, the Statement of Facts and Grounds does not come close to identifying a material mistake of fact. Paragraphs 56, 57 and 58 cite passages in the Decision that record the evidence of Mr Speers, Ms Williams and Ms Wilyman to the effect that the claimant could be safely managed in the community while doing further risk-reduction work and even in the interim period before such work commenced. The Statement of Facts and Grounds continues:

> "58. … [This evidence] undermines the Panel's conclusion as to the level of risk posed and the immediacy of the same.
>
> 59. It is submitted that the immediacy of risk and the requirement to complete CRRW [core risk reduction work] go hand in hand. In considering that the claimant was required to undertake CRRW the Panel, by inference, decided that the immediacy of the risk was at such a level that release was not possible. The mistake of fact clearly infected the Panel's decision."

But this does not identify, let alone establish, any "mistake of fact" at all. It just means that the Panel disagreed with the opinion of the witnesses that it was safe to release the claimant into the community before he had undertaken the necessary work. To disagree with the opinion of witnesses is not the same as making a mistake of fact. In paragraph 47(iii) of his skeleton argument and in oral submissions, Mr Ridding submitted that the Panel's conclusion that, in the period between his release and the completion of work, the claimant would pose an unacceptable level of risk to the public was a mistake of fact because it was contrary to the evidence of the witnesses. With respect, I think that this is to misunderstand the role that "mistake of fact" plays as a ground of review. (Whether the Panel's Decision was one that it could reasonably have made is a distinct question, to which I turn below.)

33. In her oral evidence, Ms Wilyman said that she did not consider that the risk posed by the claimant on release would be "imminent". In paragraph 4.3 of the Decision the Panel accepted that evidence; however, it concluded that "a loss of self-control could happen at any time." This does not evidence any mistake of fact, and certainly not one satisfying the requirements of *E v Secretary of State for the Home Department.*

34. Mr Ridding also relied on what were said to be mistakes of fact regarding the speed with which necessary work could commence after release and the time it would take to complete the work. Paragraphs 64 and 65 of the Statement of Facts and Grounds stated:

> "64. In addition to the aforementioned mistake of fact, the Panel also mistook the length of time it would take for the Claimant to complete the work with Ms Dodsworth. At paragraph 3.7 it is stated, 'the work would not start immediately' whilst at paragraph 4.2 the assessment of this fact was that there would be 'considerable delay' before the work could start. It is submitted that there is a clear distinction between something not starting immediately and there being a considerable delay.

> 65. Fundamental weight was given to the time it would take to complete the work, which was based upon a mistake of fact and the Impugned Decision should be quashed for this reason alone in accordance with *Kitto* [1] and *H* [2] ."

However, it is these paragraphs of the Statement of Facts and Grounds that contain the mistake of fact: paragraph 4.2 of the Decision said that there would be a considerable delay before the work could be *completed,* not before it could be started. There is no basis for asserting that the Panel made a material mistake of fact as to the time it would take either to commence or to complete the work: see, for example, paragraphs 4.2, 4.4 and 4.5 of the Decision.

35. Accordingly, I reject the challenge based on supposed mistakes of fact.

Irrelevant Considerations

36. Mr Ridding made clear in oral submissions that this ground was an alternative formulation of the previous ground: the Panel took into account irrelevant matters (mistaken facts) and failed to take into account relevant matters (true facts). This ground accordingly fails.

Rationality/Reasons

37. In the present case, it is convenient to deal with the third ground (lack of sufficient reasons) and the fourth ground (irrationality) together, as the claimant's case is that the reasons given by the Panel do not provide proper justification for the Decision in the light of the evidence that was before it.

38. In *R (Wells) v The Parole Board [2019] EWHC 2710 (Admin)* , Mr Justice Saini said:

> "30. As is obvious, a rationality challenge in public law is always a substantial challenge for a Claimant; and particularly so, when dealing with a specialist quasi-judicial body which will have developed experience in assessments of risk in an area where caution is required.
>
> 31. A modern approach to the *Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 K.B. 223 (CA)* test is not to simply ask the crude and unhelpful question: was the decision irrational?
>
> 32. A more nuanced approach in modern public law 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.
>
> 33. I emphasise that this approach is simply another way of applying Lord Greene MR's famous dictum in *Wednesbury* (at 230: 'no reasonable body could have come to [the decision]') but it is preferable in my view to approach the test in more practical and structured terms on the following lines: does the conclusion follow from the evidence or is there an unexplained evidential gap or leap in reasoning which fails to justify the conclusion?

> 34. This may in certain respects also be seen as an aspect of the duty to give reasons which engage with the evidence before the decision-maker. An unreasonable decision is also often a decision which fails to provide reasons justifying the conclusion.
>
> 35. I should also emphasise that under the modern context-specific approach to rationality and reasons challenges, the area with which I am concerned (detention and liberty) requires me to adopt an anxious scrutiny of the Decision: see *Judicial Review* (Sixth Edition), Supperstone, Goudie and Walker at para.8.12."

I find that passage helpful. The slight gloss I would, respectfully, place on it is that the example question in [33] – "does the conclusion follow from the evidence …?" – would be a little strong, if it were thought to imply a requirement of entailment. The issue is whether the conclusion was reasonably available to the decision-maker in the light of the evidence.

39. In the present case, section 4 of the Decision set out the Panel's reasoning quite clearly. As I have explained, that reasoning did not rest on the supposed mistakes of fact that constituted the primary ground of the claimant's claim. The Panel directed itself in accordance with the correct legal test; the contrary has not been alleged.

40. Accordingly, the challenge to the Decision comes down to this: In the light of the evidence from the witnesses that the claimant's risk could safely be managed in the community, was it reasonably open to the Panel to conclude that it could not and that it was necessary for the protection of the public that the claimant remain in custody? (With more fact-specific precision, this is essentially the question posed in paragraph 4.2 of the Decision.)

41. In my judgment, the answer to that question is affirmative: the Panel was reasonably entitled to reach the Decision. Before directing release, the Panel had to be satisfied that the risk of further offending that caused serious harm was no more than minimal. The opinions of the professional witnesses were entitled to respect, and it was incumbent on the Panel to have cogent reasons if it were to reject them. However, the defendant is itself a specialist body with expertise in the assessment of risk. (That expertise is evident, incidentally, from the transcript of questioning of the witnesses.) Further, it is a mistake to focus solely on the opinions of the witnesses. The Panel also received detailed documentary and narrative evidence of events, including the events that led to the claimant's latest recall, which occurred *after* Ms Dodsworth's involvement and despite her optimism as to the progress he had made. The Panel was entitled to use its own expertise to assess the risk posed by the claimant were he to be released, on the basis of all the available evidence. It was accepted by all witnesses that further work was required. The work done previously with Ms Dodsworth had not prevented the claimant from behaving in the manner that led to his third recall. There was evidence that there were no warning signs before that behaviour. The Panel concluded that alcohol played a part in that behaviour, that the claimant still believed that he could engage in "social drinking", that the circumstances of the third recall evidenced a continuing incapacity on the claimant's part to control his emotions when under stress, and that "a loss of self-control could happen at any time." (See, in particular, paragraphs 2.27 and 4.3 of the Decision.) There are no challenges to those findings of fact. In those circumstances, the conclusions and reasoning in paragraphs 4.4 to 4.6 of the Decision were clearly rational and justified.

Conclusion

42. For the reasons set out above, the claim is dismissed.

Annex – Extracts from the oral evidence

Evidence of Ms Wilyman (extracts)

"F WILYMAN: … I've sort of adopted my understanding of risk as probably being quite a sort of general risk of violence that could manifest within different contexts. And the sort of similar factors being relational issues being that sort of really strong trauma and threat response, as being relevant to both emotional dysregulation and being relevant to both. So … that's perhaps why I've seen both there being, still being that relevant risk of both general and IPV [intimate partner violence] violence.

DR ROWSE: Thank you, and in terms of imminence then and context in which Mr Williams might find himself in. He is in a relationship, we've talked about, but we don't quite know the fallout of this recent interaction. What's your assessment of imminence across both of those different types of violence, please?

F WILYMAN: So, I think in my report, I've talked about the fight and the risk not being imminent at the point of release. I am, I am a little concerned about what the potential sort of consequences I should say, could be of Mr Williams sort of coming decision around sort of temporarily ceasing contact with Rachel. And just sort of whether or not that's now going to be a conflict that they'll have to work through. You know, however, I don't think that any conflict will automatically lead to a heightened risk of IPV. You know, I think, I think there is probably a greater probability of IPV than general violence, because of the very fact that Mr Williams is in an intimate relationship. And I think that is why in my report, I have proposed a number of conditions that would be to try to place restrictions on the kind of the contact they can have. But I think the level of private contact that they might be able to have as well.

…

DR ROWSE: Okay, thank you very much, all right, and so you've mentioned today, and you've mentioned in your report about this outstanding need for him to do some work on relational dynamics. And you've highlighted in your report, the crux of the matter is whether this needs to be done before re-release or not.

F WILYMAN: Yes.

DR ROWSE: We now have three recalls, the recent of which is a conviction, and no additional work has been done. In your report and I don't know if that's the same today so, I'd like to ask you to confirm: You're stating that you believe that his risk management in the community in the interim before he does this work, is this a position that you adopt?

F WILYMAN: It is, I think as I've hopefully conveyed in my report, that is – it wasn't a particularly easy decision to reach and there is certainly, a level of caution within that, which I have tried to couch within sort of recommendations about licence conditions. And that sort of low-level tolerance for any you know, any sort of indications of non-compliance. And I think in many ways for me, it does reflect what I think is going to, you know, which treatment option, intervention option is likely to have the most beneficial or the strongest outcome.

DR ROWSE: Ms Wilyman, I don't mean to interrupt you, but in terms of the test –

F WILYMAN: I know, and I do understand that, yes, I do understand that as well.

DR ROWSE: So, the actual test, not what is going to be the most effective.

F WILYMAN: Yes.

DR ROWSE: Bearing in mind as well that he could move establishments and still get trauma-informed work in a closed setting. But the test is whether his risk can be managed for the protection of the public now currently, in the community. And so, do you feel that he meets the test?

F WILYMAN: I do; I do continue to cautiously feel that he meets the test. I am concerned about where the current position in terms of a pause in contact with Rachel may lead and the management of that. I suppose I'm concerned about why Mr Williams felt that was so important to do. And if he is now about to be released, the fact that he's potentially going to be released without that issue having been fully resolved is a concern for me. And I suppose I haven't had the benefit of discussing that with Mr Williams or hearing what Ms Williams, her view on that is as well. But I think broadly, I do feel that risk can be managed in the interim. I think we have seen Mr Williams comply for long periods of time in the community. I think we have seen him engage appropriately with the risk-management plans. But I am mindful that those risks of a further IPV have to be managed and have to be contained.

…

DR ROWSE: I guess I'm interested in how you think they're going to additionally manage the risk. The latest conviction was in a public place - in a restaurant. Prior allegations have been when he's popped back to the house because he's forgotten something, gone to visit people. There's still going to be a lot of private time spent together behind closed doors. What gives you the confidence that the risk-management plan is sufficient enough to manage those risks?

F WILYMAN: I think – I'm certainly not presenting those additional conditions as a means of wholly containing risk. It's about trying to restrict those prolonged periods of contact to overnighting. I think it's also for me, about demonstrating to Mr Williams and to his partner the seriousness of the risk-management process, the seriousness of the risk in this case. And demonstrating that there is a low level of tolerance amongst professionals. And I think it also provides an opportunity I guess, for observing their capacity as a couple to adhere to that level of, almost sort of intrusive restrictions within their relationship. …

…

DR ROWSE: Okay, thank you and so in terms of a future treatment pathway, we read in your evidence in your report, that there's a two-year wait for IRMS. … We're yet to hear from Ms Williams about the pathway for Building Choices in the Community and the contact from Ms Dodsworth is not going to be immediate. Do you have a timeframe for how long that might be?

F WILYMAN: No, I mean when I spoke with Ms Dodsworth, there's certainly, you know, she led me to believe there's capacity and it's just going to be a case of how quickly the different stages of that referral process can occur. …

DR ROWSE: And did she estimate how many sessions and how long a duration the piece of work would be? They've obviously spent a large number of sessions working together already … but that's been formulatory not intervention. … So, what's the length of time please?

F WILYMAN: So, my understanding was there's no sort of particular fixed length of time, which I think was also Mr Williams' understanding as well. They would sort of pick up to a certain extent, from where they were. They would obviously, they'd be revisiting aspects of the formulation to take into account more recent events. But it wouldn't be starting from scratch again. … So, there was no fixed duration, you know. … My understanding was it was about; their premise is about managing risk of harm. So, whilst they felt that that was still needing to be worked on they would continue to work with Mr Williams.

DR ROWSE: And obviously the most recent conviction occurred whilst he was engaging in that therapy, so it's not going to be immediately protective. You've discussed today that obviously, they will be spending a lot of time together, him and Ms Lewis. And there is this recent conflict, which is parallel to the situation in the restaurant. … So can I just double check with you, that you feel, until that work's completed, his risk can be managed, and there isn't more of an argument for him to do some intervention in custody prior to release?

F WILYMAN: There is that argument, and I can see that argument, and I, I did, sort of, talk through it, or, certainly, explored what the options could be for that trauma informed approach within custody, and there is some scope for doing that. I think, I feel, my opinion is that the risk can be contained upon release with appropriate licence conditions. Because, I think, there is such a high level of understanding from Mr Williams, as to what the consequences for him would be if there were further problems, if there were further difficulties. …

DR ROWSE: … If the panel were not to direct release, do you assess that he meets the criteria for open conditions, and his risk has been sufficiently reduced to be managed in the community, for example, on release on temporary licence?

F WILYMAN: Yes, I don't think there would be a high risk of abscond on temporary licence. I think all the indicators are that Mr Williams would comply with the open conditions regime.

DR ROWSE: And do you feel that risk has been sufficiently reduced?

F WILYMAN: I do.

DR ROWSE: What's reduced that risk since his recall?

F WILYMAN: I suppose I don't, necessarily, sort of, think of it in the, sort of, context of reduction, as such, it's more, sort of, do I feel that the risk can be managed within that-

DR ROWSE: Yes, sorry- sorry, Ms Wilyman, the test for open conditions is whether you feel the risk has been sufficiently reduced in order for it to be managed in the community on periods of temporary licence.

F WILYMAN: Well, I mean, I suppose, given that I'm saying that the risk can be safely managed in the community, then, yes, I feel that the risk can be safely managed on temporary licence when in the community.

DR ROWSE: Yeah, okay, thank you, and I don't mean to press you, but I'm going to-

F WILYMAN: You're asking me why-?

DR ROWSE: -how do you think it's been reduced, yeah.

F WILYMAN: I suppose I would just echo what I've, sort of, said before, that I don't see that risk as being imminent. So in, I don't feel that there is that imminent risk that, when Mr Williams is on a ROTL, that he would be at an increased risk, at that point in time, of committing a further IPV incident."

Evidence of Ms Williams (extracts)

"S WILLIAMS: …Overall, his insight has greatly improved.

J MITCHELL: Where's the evidence for that?

S WILLIAMS: It's been through one-to-one work with myself.

J MITCHELL: Okay, can you expand on that, and show the panel where that insight is that you've seen? What are your examples?

S WILLIAMS: There's a toolkit that we will complete with clients who have been convicted of domestic abuse offences, and the Skills for Relationship toolkit. So we are looking at completing that. …

J MITCHELL: So, sorry, have you completed the work with him in terms of the toolkit?

S WILLIAMS: It's not completed, no, it's ongoing.

J MITCHELL: Okay. Why hasn't that been completed?

S WILLIAMS: Because he's in custody.

J MITCHELL: Right, okay. From the perspective of core risk reduction work, is there anything that's outstanding?

S WILLIAMS: He would certainly benefit from further work, as mentioned, the toolkit. There will be referrals to community wellbeing services, and the Building Choices Programme, which he's been approved for already with assessment within custody. Whether that's completed in custody or the community, either would be positive.

J MITCHELL: Okay. But is it core risk reduction work, in your view?

S WILLIAMS: I don't believe so, I think Mr Williams has already completed a lot of work to date.

J MITCHELL: And I'm not disputing that he's completed a lot of work, but why are we still seeing intimate partner violence?

S WILLIAMS: I'm not clear on that myself.

J MITCHELL: Okay. Does that not suggest then that there's core risk reduction work if there's still offending, which is, it seems to be a pattern, it's very similar to the index offence.

S WILLIAMS: It does, but I don't believe any of the other programmes can address the risks that Mr Williams poses.

J MITCHELL: So is that not then an argument for one-to-one work to be completed within a custodial setting before release is considered?

S WILLIAMS: Mr Williams has been recommended to complete the Building Choices programme and, if he was released to the community, that would also be offered alongside enhanced one-to-one work with the Community Offender Manager.

J MITCHELL: Okay. I'm sorry, I'm not clear as to why Building Better Choices is not core risk reduction work, bearing in mind the conviction in the community. Can you help me with that?

S WILLIAMS: I don't have the full details of the Building Choices programme, but from comments from colleagues that programme isn't as thorough as what the previous Building Better Relationships programme was, which is why I've commented and believe that the completion of the Healthy Relationships toolkit, amongst others, is more suitable.

J MITCHELL: Okay, but then, I suppose, if the work could be done on a one-to-one basis, and it would cover what you think it should cover, why is that not core risk reduction work in custody?

S WILLIAMS: As commented, it could be completed in custody as well.

J MITCHELL: Ms Williams, I'm going to keep bringing you back to the question, because you're not answering it. Is it core risk reduction work or isn't it, and why should it not be completed in custody if it's core risk reduction work?

S WILLIAMS: It is, but I also believe it could be completed in the community … as the risk that Mr Williams poses is manageable in the community.

J MITCHELL: Okay, so if it's core risk reduction work then, Ms Williams, by definition, should that not be completed in custody because it's core?

S WILLIAMS: Yes, it could be.

J MITCHELL: That's not the question I'm asking. Should it be?

S WILLIAMS: I believe his risk is manageable in the community, and he could complete the core risk reduction work in the community as well.

J MITCHELL: Okay, but, Ms Williams, how do you protect the intimate partner in a scenario where he could be waiting some time to start the work, or even finalise that work in the community, assuming release is directed?

S WILLIAMS: Yes, I have asked for a date to commence this programme. The next intake is commencing in April, April the 11th, and the next one, following that, is in May 2025.

J MITCHELL: Okay. And how long would the work be for?

S WILLIAMS: It is 36 weeks, or, if it's two days per week, it would be 13 weeks. But that would coincide with, if in the community, that would coincide with one-to-one work with an offender manager on a weekly basis.

J MITCHELL: Okay. So assuming it's once a week, that's up to nine months to complete that course … then that's the question, how would you think that the risk to the intimate partner could be protected within that period, when they work hasn't yet been completed?

S WILLIAMS: Through licence conditions and limitation of contact with his partner.

J MITCHELL: Which specific licence conditions do you think would protect partner?

S WILLIAMS: To reside as directed and, although residing overnight with his partner in his home address isn't a suggested licence condition, it would be encouraged. Mr Williams would be encouraged not to reside overnight with his partner until that programme is completed."

Footnotes

1 *R (Kitto) v The Parole Board [2003] EWHC 2774 (Admin)*
2 R (H) v The Parole Board *[2011] EWHC 2018 (Admin)*