



Neutral Citation Number: [2025] EWHC 2024 (Admin)

Case No: AC-2025-LON-000643

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 31 July 2025

**Before :**

**Vikram Sachdeva KC**

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**Between :**

**THE KING**  
**(THU VAN NGUYEN)**  
**- and -**  
**SECRETARY OF STATE FOR JUSTICE**

**Claimant**

**Defendant**

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**Jude Bunting KC** and **Stuart Withers** (instructed by **SL5 Legal**) for the Claimant  
**Peter Laverack** (instructed by the Government Legal Department) for the Defendant

Hearing date: 19 June 2025  
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**Approved Judgment**

This judgment was handed down remotely at 2pm on Thursday 31 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

**Vikram Sachdeva KC:**

Introduction

1. This is a challenge to the legality of the Defendant's decision dated 15 January 2025 to revoke the Claimant's licence and recall him to prison under *s32(1) Crime (Sentences) Act 1997*.
2. The Claimant is a 50 year old man who is serving a life sentence for murder committed on 23 December 2005. On 30 October 2006 he was sentenced to life imprisonment with a tariff of 14 years, less time on remand.
3. On 25 January 2020 the Claimant's tariff expired.
4. On 14 July 2022 the Parole Board held an oral hearing and on 18 July 2022 it made a direction for release. He was released on licence on 6 October 2022.
5. On 3 February 2023 the Defendant revoked the Claimant's licence and recalled him to prison.
6. On 15 March 2024, over a year later, the Parole Board held an oral hearing.
7. On 25 March 2024 the Parole Board directed the Claimant's release.
8. On 11 April 2024 the Claimant was released on licence.
9. On 15 January 2025 the Probation Service completed a Part A Recall Report alleging that the Claimant had breached the condition requiring abstinence from alcohol on three separate occasions (14/15 December; 17/18 December; and 23/24 December 2024). It was recorded that the Claimant categorically denied consuming any alcohol and asserted that the alcohol reading was false. Information had been obtained from

the alcohol tag company suggesting that the tag was likely to have been working properly.

10. The same day the Defendant revoked the Claimant's licence and recalled him to prison.
11. On 3 February 2025 the Parole Board directed the Claimant's case to an oral hearing, which is yet to be listed.
12. On 3 March 2025 this claim was issued, with an application for expedition.
13. On 7 March 2025 Johnson J refused the Claimant's application for expedition.
14. On 3 April 2025 permission was granted on the papers by Matthew Butt KC, sitting as a Deputy High Court Judge, with the following observations:

“[t]he claim is arguable given the findings of the parole board on 25 March 2024 following the previous recall”.

15. I acknowledge the hard work, care and skill which has been deployed by both parties' counsel over the course of the hearing and in written submissions in the preparation and presentation of their respective cases. I do not intend any disrespect to either of the parties if I do not address every single point which has been made to me, but I have taken them all into account and what follows is my assessment of the issues important to the disposal of this claim.

#### Circumstances of Index Offence

16. The index offence was described thus in Part A of the Recall Report, drafted by the Probation Service, and dated 15 January 2025:

“Mr Nguyen was sentenced at the Central Criminal Court on 30/10/2006 for the offence of Murder and received a Life sentence, with a tariff length of 14 years. **Mr Nguyen murdered Mr Billy Gregory, 23, of Charlton, South-East London, he died on Christmas Day 2005 after being glassed at a pub in Woolwich the night before.**

On Friday 23rd December the victim, Mr Billy Gregory, went out with friends for a Christmas drink. Whilst at The Earl of Chatham public house on Thomas Street, Woolwich, Mr Gregory and his friends went into the toilet, where one of the friends has seen Mr Nguyen holding a pint glass, he turned back around when he heard the sound of breaking glass. He saw Mr Gregory leaning on Mr Nguyen and stated there was a large amount of blood over the walls. They went outside at which point the door staff appeared and dealt with the situation, and carried Mr Gregory out to the front of the pub. Another witness saw the incident in the toilets and reported Mr Nguyen was using the urinal when Mr Gregory bumped into him, words were exchanged between them before Mr Nguyen struck Mr Gregory in the face with a glass.

Police and Ambulance Service were called, and Mr Gregory was taken to the Queen Elizabeth Hospital. Mr Nguyen, who had also sustained injuries was arrested at the scene and taken to Lewisham Hospital where he was treated for his injuries before being conveyed to Plumstead Police Station. The initial prognosis of Mr Gregory’s injuries were, that they were not life threatening, however, at 11.45am on 25/12/2005 Mr Gregory died from his injuries.

The previous OASys (2015) also notes the following details: The Court heard how Mr Gregory had been drinking with friends in the Earl of Chatham pub when he found himself at the bar next to Mr Nguyen. Simon Denison, prosecuting, told the Court: "Something happened which caused Billy to react." He said that **a short time later the two men came across each other in the men's toilets and again something "brief and trivial" happened. "Out of the blue, the defendant suddenly and deliberately thrust his glass into Billy's neck,"** Mr Denison said. Mr Gregory used his shirt to try to stem the flow of blood from a deep neck wound but he collapsed and later suffered a massive stroke.

Mr Nguyen's account of the incident is similar to that stated above however it did diverge slightly from the initial statements. Mr Nguyen stated that the initial altercation at the bar was as a result of him backing into Mr Gregory who had occupied a seat at the bar that Mr Nguyen had just vacated. He explained that the victim responded in an aggressive manner and words were exchanged. He explained that he offered Mr Gregory a drink to diffuse the situation, to which the victim Mr Gregory rudely declined by stating that he 'was not a tramp.' Mr Nguyen explained that he walked away from the situation and eventually proceeded to the men's bathroom with his pint glass in hand. He recounted placing the pint glass on the urinal, whilst he relieved himself.

**According to Mr Nguyen the victim entered the bathroom with two other individuals and proceeded to 'bang' into him, Mr Nguyen described feeling threatened and explained that he retaliated in self-defence by striking the victim with the pint glass,** he maintains that it was not his intention to cause the death of the victim.” (emphasis added)

17. The trigger for the crime was identified as follows:

“It appears that **the trigger behind the offence was in relation to being provoked or threatened**. At the time of the offence, Mr Nguyen explained feeling threatened by the victim and his friends who had entered the toilet together. Accounts of the incident suggest that My Nguyen was unable to manage his behaviour and reacted instinctively, which resulted in him attacking the victim. **Further identified triggers which contributed to his loss of temper, aggression and impulsive behaviour include alcohol misuse having admitted to having 5-6 pints of lager prior to the incident**.” (emphasis added)

#### First Parole Board decision

18. The Parole Board directed the Claimant’s release on 3 February 2022 on the basis that it was no longer necessary for the protection of the public that the Claimant should be confined. The oral hearing decision dated 18 July 2022 stated as follows:

##### “1. Analysis of Offending Behaviour (The Past)

1.1 The Index Offence took place on 24 December 2005. Mr Nguyen was in a pub and became involved in a confrontation when he bumped into the victim. Later, at around 12.30am, Mr Nguyen came across the victim in the toilet of the pub. He assaulted the victim with a pint glass to the side of his neck. The victim suffered immediate and heavy loss of blood and died on 25 December 2005 despite efforts at hospital to save his life.

1.2 Mr Nguyen told the panel that he had failed to think about the consequences when committing the Index Offence, had acted impulsively and, **if he had been sober, could have walked away from the situation. He said “It’s the drinking”. His [Community Offender Manager] told the panel that alcohol misuse was the “driving factor” in the commission of the Index Offence.**

1.3 The sentencing Judge said that Mr Nguyen was a man who was quick to take offence because of the way he wrongly perceived the actions and thoughts of others. At the time of the Index Offence, Mr Nguyen was drinking heavily and the Parole Board in 2021 noted that his life was out of control. **Mr Nguyen drank lager all day and spirits in the evening until he passed out, only recognising that he was an alcoholic when he came to prison.**” (emphasis added)

19. The licence conditions imposed on the Claimant included the following:

“6. **You are subject to alcohol monitoring.** Your alcohol intake will be electronically monitored for a period of 12 months from the date of your release, and **you may not consume units of alcohol**, unless otherwise permitted by your supervising officer.

...

8. Allow person(s) as designated by your supervising officer to install an electronic monitoring tag on your and access to install any associated equipment in your property, and for the purpose of ensuring that equipment is functioning properly. You must not damage or tamper with those devices and ensure that the tag is charged, and report to your supervising officer immediately if the tag or the associated equipment are not working correctly.”

#### First recall and second Parole Board decision

20. The Part A Recall Report dated 3 February 2023 by the Probation Service asserted breaches of the licence conditions relating to good behaviour and to be subject to alcohol monitoring and not to consume alcohol unless permitted by the supervising officer. The circumstances and behaviours leading to the recall were as follows:

- i) Two confirmed tamper/obstruction events on 28 January 2023. Two events were recorded as starting and ending at the same time (start time: 13.55 on 28 January 2023; end time 3.30am on 29 January) which appear to constitute one event rather than two. A further tamper alert took place on 30 January 2023. It is also noted under each such event that “Alcohol is present during this time period”, although the basis for this statement is unclear.
- ii) Numerous [this meant 3, according to oral evidence before the Parole Board] alerts received between 28 and 31 January 2023 indicating a direct breach of licence conditions which stipulate that Mr. Nguyen is to practice abstinence and refrain from alcohol consumption.

21. The Part A Recall Report asserted two bases for finding that the Claimant was no longer manageable in the community:
- i) The index offence was a serious violent offence committed under the influence of alcohol, and the Claimant has a propensity to commit violent offences under the influence of alcohol.
  - ii) The alert notifications signal a breach of trust as there were attempt to tamper with the monitoring device.
22. A warning had been given on 30 December 2022 that on 25 December 2022 an alcohol violation alert was received and should a further notice be received he is at risk of getting a licence warning.
23. On 3 February 2023 the Secretary of State revoked the Claimant's licence and recalled him to prison. The reasons for recall were as follows::

**“You have been warned for a notice that you had an alcohol violation. Following this warning your alcohol monitoring device detected further alcohol use.**

**Given that alcohol is a direct link to potential for violent behaviour and serious offending your risk cannot be managed within the community at this time.**

As a result of this information, the Secretary of State is satisfied that you have breached the following conditions of your licence:

- 1 They shall be of good behaviour and not behave in a way which undermines the purpose of the licence period;**
- 11 They shall comply with any requirements specified by the supervising officer for the purpose of ensuring that they address their alcohol/drug/anger/offending behaviour problems;**
- 14 They are subject to alcohol monitoring. Their alcohol intake will be electronically monitored for a period of 12 months from the date of their release, and they may not consume units of alcohol, unless otherwise permitted by the supervising officer;**

In view of the offences for which you were originally sentenced, the risk suggested by your offending history and your behaviour as described in the recall

report completed by the Probation Service, and which is attached, the Secretary of State revokes your licence and recalls you to prison.” (emphasis original)

24. The Claimant’s solicitor made submissions seeking release but also sought to challenge the original recall, on the basis that the Claimant was adamant that he had not attempted to tamper with his tag or consumed alcohol, that no levels of alcohol intake had been provided, that readings could have been due to a faulty tag and/or the rice wine his mother sometimes used in food, and that a DVLA blood test indicated very low levels of alcohol consistent with abstinence. It was also implied that no further investigations into whether the tag was working were made by the Defendant, despite the Claimant having questioned whether it was functioning correctly.
25. The Parole Dossier contains a SCRAM Systems Non-Compliance Report from the Ministry of Justice dated 5 March 2024. There was a description of the mechanism for detecting alcohol and for tampering.
  - i) Alcohol was detected on 26 December 2022 (peak Transdermal Alcohol Concentration (TAC) 0.034%), with a note stating that routine diagnostics performed on the bracelet indicated that it was functioning properly at the time of the confirmed consumption event.
  - ii) A confirmed tamper alert was detected on 28 January 2023. It was asserted that Alcohol was detected, which appears on the graph to have been in the range 0.025% to 0.050%, although whether the six criteria for alcohol detection were met is unclear. There was a note stating that routine diagnostics performed on the bracelet indicated that it was functioning properly at the time of the confirmed tamper event.



- iii) A confirmed tamper alert was detected on 30/31 January 2023. It was asserted that Alcohol was detected, which appears on the graph to have been in the range 0.025% to 0.050%, although whether the six criteria for alcohol detection were met is unclear. There was a note stating that routine diagnostics performed on the bracelet indicated that it was functioning properly at the time of the confirmed tamper event.
26. The SCRAM Systems Non-Compliance Report concluded that there was one event that met SCRAM Systems criteria for alcohol consumption and two events that met SCRAM Systems criteria as a tamper event. It is unclear why the other two instances of alcohol detection were not formally classified as meeting the criteria for alcohol consumption.
27. The Parole Board hearing took place on 14 March 2024. The Claimant was represented at the hearing; the Defendant was not. The witnesses were Rebecca Feek, described as a “Stand in” Prison Offender Manager and Katie Lockyer, a Community Offender Manager. The Community Offender Manager’s evidence was as follows:
- i) The decision to recall the Claimant was solely as a result of breaches of his alcohol tag.
  - ii) Alternatives to recall “could have” been considered.
  - iii) An email warning had been given.
  - iv) The Claimant denied alcohol use and tampering.
  - v) She found his accounts of what may have caused the tag’s indications to be inconsistent.

- vi) Overall she considered that the Claimant did not take responsibility or accountability for his actions.
- vii) She considered that the circumstances of the recall were offence paralleling in the sense that alcohol was linked to violence. There was “no other evidence” of raised risk of serious harm.
- viii) She did not know how/if the readings on the tag corresponded to levels of alcohol consumption.
- ix) The Claimant was not, at the date of the hearing, ready to be released. His attitude and approach to his recall and his lack of responsibility taking meant that he needed to remain in custody for longer.

28. The Prisoner Offender Manager’s evidence was as follows:

- i) The Claimant could be managed in the community.
- ii) The Claimant’s non-admission of the events leading to the recall did not substantially contribute to his risk.
- iii) The previous risk management plan had worked, as he had been recalled to custody before any serious harm occurred.

29. The Parole Board decision was promulgated on 25 March 2024, and found release to be appropriate, on the basis that the recall did not satisfy either limb of the *Calder* test, and it therefore had been unlawful.

30. As to whether the Defendant could establish on reasonable grounds that the Claimant was in breach of his licence conditions (para 4.3):

“The panel finds that there were not reasonable grounds. **No evidence was presented which correlated the readings of the tag to a specific level of alcohol consumption. There is no evidence that [the Claimant’s] concerns about the tag were adequately explored with the service provider.** On that basis alone, the decision to recall him to custody was unlawful.” (emphasis added)

31. As to whether it was necessary to recall the Claimant (para 4.4):

“The panel finds that recall was not necessary, even if the alcohol readings had been sufficiently positive to indicate a breach. **[The Claimant] was told that future tag alerts may trigger a licence warning, yet he was recalled to custody immediately on further alerts without any evidence that alternatives to custody were considered thoroughly, if at all. There was no evidence of escalating risk. There was no evidence of further offending.**” (emphasis added)

32. The statutory test for continuing detention was therefore found not to be satisfied (para 4.6):

“**It is impossible for the panel to know whether or not Mr Nguyen did drink alcohol or tamper with his tag.** Even if he did, the risk management plan which was in place at the time was sufficient to protect the public since he was recalled to custody (albeit, in this case, unlawfully) before any serious harm resulted. **It is likely to do so again. Alcohol is the primary risk factor in Mr Nguyen’s case and a tag will provide insight into his compliance.** However, **an alert should not trigger an immediate recall without a thorough investigation of circumstances. A device reading is not a substitute for thorough decision making and risk assessment at the point that recall is being considered.**” (emphasis added)

#### Events preceding the recall decision under challenge

33. The licence dated 9 April 2024 included the following conditions, which were the same as those imposed on 18 July 2022:

- i) They shall be of good behaviour and not behave in a way which undermines the purpose of the licence period (Condition 1).

- ii) They shall be subject to alcohol monitoring. Their alcohol intake will be electronically monitored for a period of 12 months from the date of their release, and they may not consume units of alcohol, unless otherwise permitted by the supervising officer (Condition 13).
34. The alcohol tag raised an alert on 14/15, 17/18 and 23/24 December 2024, although they were not noticed by probation at that time.
35. Ms. Sarah Kintu, a Probation Officer and the Claimant's Community Offender Manager, was responsible for supervising the Claimant when he was not in custody, including initiating any recommendation for recall to prison. On 31 December 2024 Ms. Kintu became aware of the alert on 23/24 December 2024 and issued the Claimant with a letter warning of potential future recall:
- "I am writing to you because you have breached your licence conditions. Whilst recalling you to prison has not been considered necessary on this occasion it is important that you comply and engage with your licence to prevent future recall and help you to complete your licence period."** (emphasis added)
36. On 7 January 2025 the Claimant and Ms. Kintu met at a supervision appointment. The Claimant denied that he had consumed any alcohol and attended with his previous dossier in which he had highlighted test results that he considered to be false in stating that he had consumed alcohol. Ms. Kintu asked him whether he was on some form of medication or whether he could provide any other explanation for the positive result but the Claimant was adamant that he was unable to do so. The Claimant suggested that the equipment should be changed every 30 days and that perhaps low battery life may be causing problems or false results. Ms. Kintu stated that she would consider a referral to Pier Road, a community alcohol and drugs support unit, but that it was unclear what would be achieved given the Claimant's level of denial.

37. On 9 January 2025 Ms. Kintu, who was catching up on the holiday email backlog, became aware of the alerts of 14/15 and 17/18 December 2024 and emailed the private company which had supplied the alcohol tag as follows:

“Could you please provide clarifications regarding this reading [23/24 December]. I note from delius that **there were other violations in the days prior [to] this violation and so we are considering recall but need a better understanding of what the reading means in order to inform our decision. For example are they indicative of someone who has consumed significant levels of alcohol**, 2/3 times over the average limit etc.” (emphasis added)

38. The company emailed back on 13 January 2025 stating that it did not have access to the monitoring data, but that another company, SCRAM Systems, did have access. That day Ms. Kintu emailed SCRAM Systems seeking clarification of the readings, on the basis that they were considering recall and needed a better understanding of what the reading meant to inform their decision. David Buckley, Senior Data Analyst from SCRAM Systems, replied providing an explanation of the results, stating:

- i) The bracelet is not designed to be able to tell how many drinks or what kind of drinks a person has consumed, there being many variables that can affect the levels.
- ii) A table was enclosed to provided context for Transdermal Alcohol Concentration (TAC) and Blood Alcohol Concentration (BAC). The chart did not purport to be a direct correlation between TAC and BAC but was a guide to help better understand peak TAC values.
- iii) Results shown were typical for a healthy 180 pound male consuming individual alcohol units, 15 minutes apart, on an empty stomach.

Drinking Event Classification	Peak TAC of Event	Typical Peak BAC (mg alcohol per 100 mL of blood)	Typical Number of Alcohol Units Consumed
Low Level	0.020 – 0.049	20 – 49	1 – 4
Medium Level	0.050 – 0.079	50 – 79	5 – 7
High Level	0.080+	80+	8 or more

39. On 14 January 2025 the Claimant and Ms. Kintu met, and the Claimant again categorically denied alcohol consumption. The Claimant stated that he believed that there was a fault with the reading and would be challenging it. He said that he felt he was being stitched up, particularly as there had been alcohol monitoring failures that led to him being recalled in the past. Ms. Kintu advised the Claimant that she was awaiting feedback from the data analyst.

40. Ms. Kintu emailed SCRAM Systems that day as follows:

**“Thank you for the information. However I am seeking further clarity mainly because [the Claimant] was previously recalled for similar readings and the recall [was] considered to be unlawful. To avoid this happening again, I specifically need to know whether this would be considered to be a significant reading? Clarity on this would be very helpful.”** (emphasis added)

41. The same day Ms. Kintu then spoke to David Buckley from SCRAM Systems. Ms. Kintu’s note of the conversation states as follows:

**“This discussion was considered necessary given Mr Nguyen’s denial of any alcohol consumption. I was assured that the [sic] an alert will only be generated when alcohol has been detected in the electrochemical fuel cell, and that all alerts are fully analysed and interpreted by a team of trained data analysts and must meet strict guidelines. Therefore whilst Mr. Nguyen denies breach[ing] the tag, alcohol consumption can be confirmed.**

**We discussed the prior recall which was considered to be unlawful** and he is adamant that alcohol would have been detected at the time nonetheless and that

had someone attended the Oral Hearing to explain the hearing then the recall would have likely stood.” (emphasis added)

42. A document entitled “SCRAM Systems Non-Compliance Report” dated 14 January 2025 was prepared by the Ministry of Justice. It stated as follows:

- i) The tag detects the alcohol concentration in the vapour above the skin, via an electrochemical fuel cell, and calculates a Transdermal Alcohol Concentration (TAC).
- ii) If alcohol is detected by the SCRAM CAM Tag, an alert is generated. All TAC alerts are analysed, and data is interpreted by a team of SCRAM Systems trained data analysts. These alerts must meet a strict set of rules referred to as the 'confirmation criteria', and all TAC detections must meet all criteria to be confirmed as alcohol consumption. The criteria are as follows:
  - a) A baseline transdermal alcohol concentration (TAC) of zero must be established.\*
  - b) A peak transdermal alcohol concentration (TAC) must be established.
  - c) A zero transdermal alcohol concentration (TAC) baseline must be re-established.\*
  - d) The absorption rate must be less than .100 TAC per/hour.
  - e) The elimination rate must be less than or equal to .035 TAC per hour.
  - f) The event must pass the Environmental Contaminant Test.

\* Zero TAC baseline is defined as two consecutive readings at 0.000% TAC

- iii) If deviations in the IR voltage and temperature indicate obstruction or removal, a tamper alert is generated. Data is interpreted by a team of trained data analysts according to a strict set of rules referred to as ‘confirmation criteria’. All tamper alerts must meet all criteria in order to be confirmed as an obstruction or removal.
- iv) There was a generic paragraph which described Graph Interpretation as follows:

**“Graph Interpretation**

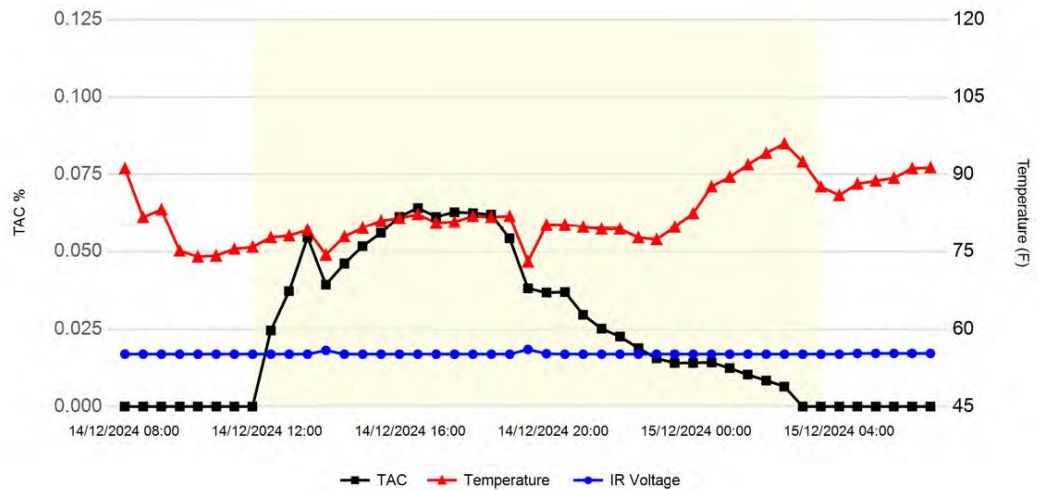
The graph displays the relationship between TAC, IR, and Temperature measurements in the CAM Tag. The Transdermal Alcohol Concentration (TAC) readings are the black line and are represented on the scale to the left of the graph. The Infrared (IR) readings are identified on the blue line, and the temperature readings are displayed on the red line and represented by the scale on the right of the graph. When a CAM Tag is placed on a client, baseline IR voltage readings are established indicating the CAM Tag is installed on the client.”

- v) The 14/15 December alert was described as follows:

**“Confirmed Alcohol Consumption**

The graph below displays the confirmed alcohol consumption event. **Routine diagnostics performed on the bracelet indicate that the bracelet was functioning properly at the time of the confirmed consumption event.**





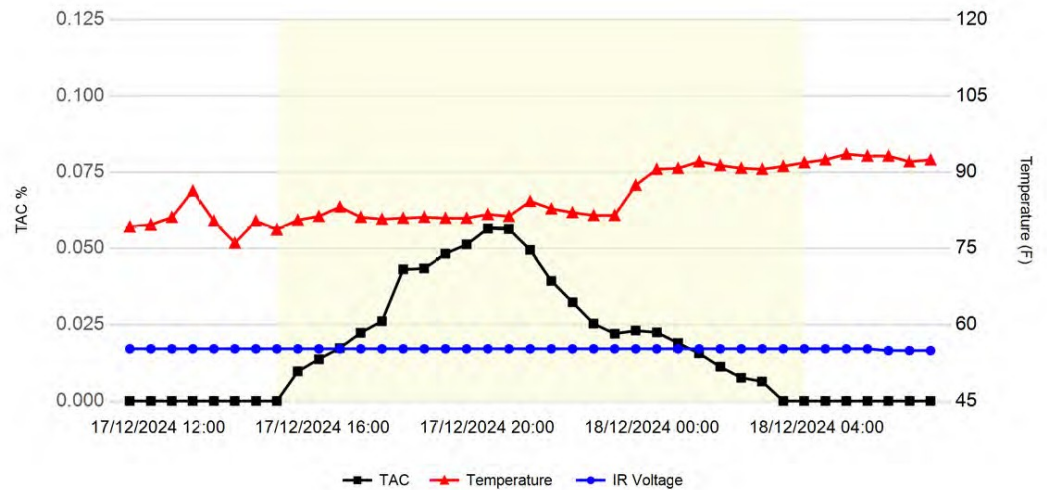
This detection met SCRAM Systems criteria to be confirmed as alcohol consumption:

1. A baseline TAC of zero was established on 14 December 2024 at 11:35.
2. A peak TAC of .064% was established on 14 December 2024 at 16:13.
3. Zero TAC was re-established on 15 December 2024 at 02:59.
4. The absorption rate was .014 TAC per hour.
5. The elimination rate was .006 TAC per hour.
6. The event passed the Environmental Contaminant Test.” (emphasis added)

vi) The 17/18 December 2024 alert was described as follows:

#### “Confirmed Alcohol Consumption

The graph below displays the confirmed alcohol consumption event. Routine diagnostics performed on the bracelet indicate that the bracelet was functioning properly at the time of the confirmed consumption event.



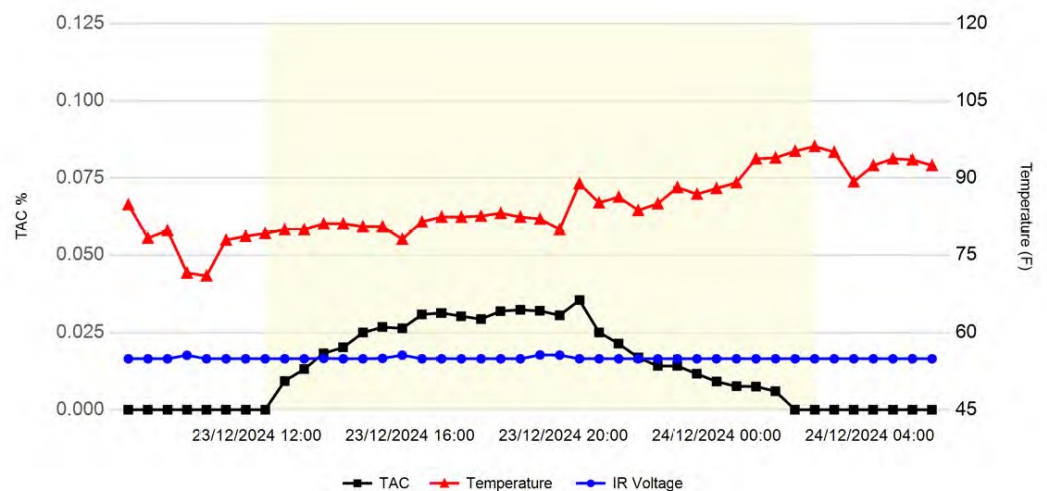
This detection met SCRAM Systems criteria to be confirmed as alcohol consumption:

1. A baseline TAC of zero was established on 17 December 2024 at 14:53.
2. A peak TAC of .057% was established on 17 December 2024 at 20:00.
3. Zero TAC was re-established on 18 December 2024 at 03:11.
4. The absorption rate was .011 TAC per hour.
5. The elimination rate was .008 TAC per hour.
6. The event passed the Environmental Contaminant Test.” (emphasis added)

vii) The 23/24 December 2024 alert was described as follows:

#### **“Confirmed Alcohol Consumption**

The graph below displays the confirmed alcohol consumption event. **Routine diagnostics performed on the bracelet indicate that the bracelet was functioning properly at the time of the confirmed consumption event.**



This detection met SCRAM Systems criteria to be confirmed as alcohol consumption:

1. A baseline TAC of zero was established on 23 December 2024 at 12:12.
2. A peak TAC of .036% was established on 23 December 2024 at 20:24.
3. Zero TAC was re-established on 24 December 2024 at 02:02.
4. The absorption rate was .004 TAC per hour.
5. The elimination rate was .006 TAC per hour.
6. The event passed the Environmental Contaminant Test.” (emphasis added)

43. The conclusion of the SCRAM Systems Non-Compliance Report was described thus:

“[The Claimant] had three (3) events that met SCRAM Systems criteria and were confirmed as alcohol consumption.”

44. That day Ms. Kintu completed a Part A Recall Report and recommended the revocation of the Claimant’s licence. The report was endorsed by Ms. Kintu’s manager (also a Community Offender Manager), Katie Lockyer, and by Eric Bedford, a senior manager.

45. On 15 January 2025 the Public Protection Casework Section considered the Part A Recall Report, together with an OASys risk assessment, a record of the Claimant’s previous convictions, and the Claimant’s licence.

46. On 15 January 2025 the Defendant revoked the Claimant’s licence.

#### Recall decision under challenge

47. The Defendant’s reasons for the revocation of the Claimant’s licence are as follows:

“You have displayed poor behaviour by **breaching your Alcohol Monitoring on Licence (AML) tag, violating this on three separate occasions**. Given that **you committed a serious violent offence whilst under the influence of alcohol resulting in loss of life**, it is a concern that you are not taking responsibility for any alcohol use. Your behaviour is in direct violation of your licence conditions,

and the monitoring tag imposed to encourage abstinence has not acted as a deterrent for your offence paralleling behaviour.” (emphasis added)

48. The Defendant found that the Claimant had breached both conditions 1 and 13 of his licence, and concluded as follows:

“In view of **the offences for which you were originally sentenced, the risk suggested by your offending history and your behaviour as described in the recall report** completed by the Probation Service... the Secretary of State revokes your licence and recalls you to prison.”

49. The circumstances and behaviours described in the Recall Report leading to the recall and assessment as to why the risk was no longer manageable in the community were as follows:

“**Mr Nguyen has breached his Alcohol Monitoring on Licence (AML) tag, violating this on three separate occasions**, between 14th-15th December 2024; 17th-18<sup>th</sup> December 2024; and 13-24th December 2024. It is indicated that he consumed between 5-7 units of alcohol on each occasion [sic].

The breaches have been discussed with Mr Nguyen and **he has categorically denied consuming any alcohol, referring to the alcohol reading as false** and that he seeks to challenge this. Subsequently, I have discussed his reading with a Senior Data Analyst of the tag company who was able to provide further information regarding the reading.

**I was assured that the [sic] an alert will only be generated when alcohol has been detected in the electrochemical fuel cell**, and that all alerts are fully analysed and interpreted by a team of trained data analysts and must meet strict guidelines. **Therefore whilst Mr Nguyen denies breached [sic] the tag, alcohol consumption can nonetheless be confirmed.**

**Given the circumstances surrounding the index offence, in that Mr Nguyen committed a serious violent offence whilst under the influence of alcohol resulting in loss of life**, it is a concern that he is not taking responsibility for any alcohol use. This would suggest that Mr Nguyen **either lacks awareness of the links alcohol has to his risks or that he is not fully motivated in addressing his offence related needs**. Therefore it is my assessment that **Mr Nguyen is no longer manageable in the community at this time** as his behaviour is in direct violation of his licence conditions, and the monitoring tag imposed to encourage abstinence has not acted as a deterrent for his offence paralleling behaviour.” (emphasis added)

50. The Claimant was recorded as being managed in MAPPA (“Multi-agency public protection arrangements”) Category 2, and at MAPPA Level 1. MAPPA has three categories of offender (see <https://www.gov.uk/government/publications/multi-agency-public-protection-arrangements-mappa--3/multi-agency-public-protection-arrangements-mappa-accessible-version> ).

51. The Current Risk of Serious Harm Assessment (evidenced by an OASys assessment dated 15 January 2025) was:

- i) Public: High (of serious physical harm/violence which could lead to death, in particular towards male peers). This is defined as meaning “there are identifiable indicators of risk of serious harm. The potential event could happen at any time and the impact would be serious”.
- ii) Known Adult: Low.
- iii) Children: Low.
- iv) Prisoners: Medium. This is defined as meaning “there are identifiable indicators of risk of serious harm. The offender has the potential to cause serious harm but is unlikely to do so unless there is a change in circumstances, for example... alcohol misuse.”
- v) Staff: Medium (risk of physical violence towards police officers).

52. As to how the Claimant had responded to supervision to date, the Part A Recall Report stated:

“Mr Nguyen has generally attended his appointment as directed, engaging positively with his Community Offender Manager during supervision sessions and has also completed work with Forward Trust regarding substance misuse.

Whilst his attendance has been good, Mr Nguyen has continued to protest against his prior recall, considering it to be unjust and maintaining that he does not consume any alcohol. However the recent alcohol violations would suggest that Mr Nguyen is not being open and honest regarding his use of alcohol and that he continues to make poor decisions without considering the consequences of his behaviour.”

53. As to the alternatives to recall taken to try to secure compliance and manage risk prior to requesting recall, it was recorded under the heading “Warnings” that a licence compliance letter had been issued to the Claimant on 31 December 2024 stating:

“I am writing to you because you have breached your licence conditions. Whilst recalling you to prison has not been considered necessary on this occasion it is important that you comply and engage with your licence to prevent future recall and help you to complete your licence period.”

54. No other actions had been taken, the possibilities including increased frequency of reporting, additional licence conditions, referral to multi-disciplinary teams (eg IOM, MAPPA Gangs Unit), referral to partnership agencies, referral to approved premises, and drug testing.
55. Reasons for recommending a standard recall (to the end of the sentence) rather than a fixed term recall were as follows:

“Given Mr Nguyen's level of denial, it is my view that **he is not being open and honest regarding [h]is alcohol consumption and lacks insight of the link this has to his risks**. Therefore it is my assessment that Mr Nguyen's risk is no longer manageable in the community at this time. The monitoring tag imposed to encourage abstinence has not acted as a deterrent for his offence paralleling behaviour. A standard recall would allow Mr Nguyen t[i]me to revisit intervention work around thinking, Behaviour and consequential thinking. Along with time to engage with alcohol services to work towards abstinanace [sic] from alcohol.” (emphasis added)

56. For indeterminate and extended sentence offenders there must be a “causal link” between the current behaviour and the behaviour that was exhibited at the time of the

index offence: *The Recall, Review and Re-Release of Recalled Prisoners Policy Framework* dated 1 April 2029 (“the Recall Framework”) at para 4.2.1. In the Claimant’s case similar behaviour to the circumstances surrounding the index offence was found, specifically consumption of alcohol.

57. The Part a Recall Report was endorsed by a line manager (of Senior Probation Officer status), who stated as follows:

“Mr Nguyen has breached his licence conditions **due to three noted periods of alcohol consumption whilst on an AAMR -alcohol monitoring tag**. The recent violations and continued denial around alcohol consumption would suggest that Mr Nguyen is not being open and honest regarding his use of alcohol and shows that he continues to make poor decisions without considering the consequences of his behaviour. **Alcohol consumption is linked to both his offending behaviour and his risk of serious harm to the public and I therefore, agree that his risk is currently unmanageable in the community** and a standard recall is therefore, endorsed in order to protect the public from potential harm.” (emphasis added)

58. A senior manager (of Assistant Chief Officer status) is asked to authorise and commend on the recall and the quality and content of the recall report. The question was asked whether the senior manager was satisfied that alternatives to recall had been considered in this case but that the risk posed by this offender has been assessed as no longer being manageable in the community. The box indicating assent has not been ticked, but the following comment was made:

“Mr Nguyen breached the condition of his licence as described. I agree that recall is necessary to reduce the risk of further re-offending and associated harm.”

59. An oral hearing of this case before the Parole Board has been directed between July 2025 and January 2026. It is currently unclear precisely when that hearing will take place.

### **Evidence filed by the parties**

60. The Claimant filed a statement dated 26 February 2025 stating that he categorically denied that he had imbibed any alcohol since being released from prison, and that he was absolutely committed to never drinking alcohol or taking drugs ever again. He was a barber by trade and had started working in a barber's shop from November 2024.
61. The Claimant filed a statement dated 1 April 2025 from the manager of the barber shop at which the Claimant had worked, Mr. Zueb Hasan, stating that the Claimant was never intoxicated at any time while he was working at the shop. He also stated that they constantly used numerous products which contain ethanol, methanol, or similar alcoholic chemicals, as did most barber shops.
62. The Defendant filed a statement dated 22 April 2025 from Ms. Sarah Kintu, the Claimant's Community Offender Manager, who had made the decision to recommend recall. She described the events surrounding that decision and appended relevant documents.
63. The Defendant has also filed a statement dated 23 April 2025 from Shaun Stewart, Senior Data Analyst and Judicial Services Lead at SCRAM Systems, who had submitted the "SCRAM Systems Non-Compliance Report" dated 14 January 2025. Insofar as it purports to be expert opinion evidence, no permission has been sought, nor granted, and I will not treat this statement as if it were expert evidence.
64. Mr. Stewart states that the SCRAM device is fitted to the wearer's ankle and takes readings from the wearer's insensible perspiration from the skin every 30 minutes, testing it for alcohol on the wearer's skin (as opposed to in their blood). It performs a



self-diagnostic test every 8 hours and if it fails any portion of this test it will flag itself for removal out of the field and SCRAM Systems will not confirm any alert generated after that flag is raised. The tag detects alcohol in the environment, such as in a barber shop, and a review of the tag data conducted by Mr. Stewart revealed that there had been 32 non-confirmed alcohol events (which failed criterion 6 – the Environmental Contaminant test) associated with the Claimant’s tag between 24 April 2024 and 2 January 2025. The SCRAM tag has been used in various courts including in the US and UK, and has been the subject of over 30 peer-reviewed studies since 2006, and 26 other independent evaluations. In 2013 SCRAM Systems conducted a statistical analysis and meta-analysis of the SCRAM data and found that the false positive rate was 0.14%.

65. Mr. Stewart also stated that the SCRAM tag worn by the Claimant passed all its self-diagnostic tests and was functioning as designed during the confirmed consumption events.
66. The Defendant also seeks to rely on the statement dated 24 April 2025 of Nina Shuttlewood, Head of Post-Release and National Security Casework within the Public Protection Casework Section (“PPCS”), part of His Majesty’s Prison and Probation Service (“HMPPS”). HMPPS is an executive agency of the Ministry of Justice. Ms. Shuttlewood explains that the Probation Service (another part of HMPPS) initiates the process for recall by making a recommendation, and it is then for PPCS to take the recall decision on behalf of the Defendant.
67. The Defendant also relies on the statement dated 25 April 2025 of Stephen O’Connor, Deputy Director of Probation Policy, who sets out the history of Alcohol Monitoring

on Licence (“AML”), following the Defendant’s decision to utilise AML nationally in June 2022.

### Legal Framework

68. Section 28 of the *Crime (Sentences) Act 1997* states as follows:

**“28.— Duty to release certain life prisoners.**

(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,

(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...**” (emphasis added)

69. The Defendant’s power to revoke a life prisoner’s licence is contained in s32 *Crime (Sentences) Act 1997* which states as follows:

**“32.— Recall of life prisoners while on licence.**

(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...**

(3) A life prisoner recalled to prison under this section —

(a) may make representations in writing with respect to his recall; and

(b) on his return to prison, shall be informed of the reasons for his recall and of his right to make representations.

(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...**

(6) On the revocation of the licence of any life prisoner under this section, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.” (emphasis added)

70. The purpose of recall is to protect the public against risk. It is not a punishment: *R (Gulliver) v Parole Board* [2007] EWCA Civ 1386 [2008] 1 WLR 1116 at [19].

71. The legislation does not set out the test to be applied for recall. However the test is the same as for initial release on licence: *R v Parole Board, ex parte Watson* [1996] 1 WLR 906.

72. Prisoners on licence can lawfully be recalled for breach of a licence condition only if two criteria are met (*R (Calder) v Secretary of State for Justice* [2015] EWCA Civ 1050 at [21] and [27] – [28], approving *R (Jorgensen) v Secretary of State for Justice* [2011] EWHC 977 at [16] and [25]):

- i) There were reasonable grounds for concluding that there was a breach of his licence conditions, and
- ii) In all the circumstances, the recall was necessary for the protection of the public, because of the dangers posed by the prisoner when out on licence. This question requires consideration of two sub-issues:
  - a) Whether the offender had acted intentionally in breach of his licence conditions, and

- b) Whether the safety of the public would be at risk if the offender remained out on licence.

73. Where a statute conferring discretionary power provides no lexicon of the matters to be treated as relevant by the decision-maker, then it is for the decision-maker and not the court to conclude what is relevant subject only to *Wednesbury* review: *R (Khatun) v Newham London Borough Council* [2004] EWCA Civ 55 [2005] QB 37 at [35].
74. In considering whether to recall a prisoner on licence, the common law imposes an obligation on the Secretary of State to act reasonably and fairly. It must be a material consideration to see whether there is any fault on the part of the prisoner. The Secretary of State must investigate any explanation that has been put forward in order to satisfy himself that recall is justified: *R (Benson) v Secretary of State for Justice* [2007] EWHC 2055 (Admin) [2008] ACD 15.
75. The Secretary of State is not required, prior to the exercise of the power to recall a prisoner, to satisfy himself that the information that he has been provided with by the Probation Service is correct: *R (Bildave Hare) v Secretary of State for the Home Department* [2003] EWHC 3336 (Admin) at [7].
76. In *R (Wilson) v Secretary of State for Justice* [2022] EWHC 1789 (Admin) [2022] ACD 100 one of the licence conditions was to notify the supervising officer of any developing intimate relationship with women, due to previous allegations (rather than convictions) for domestic violence. The Claimant's former partner informed the Claimant's probation officer and alleged that the Claimant had been seeing a woman. When confronted with this allegation, the Claimant denied that he had entered into a new relationship, but the probation officer completed a Part A recall report which recorded the allegation of the new relationship but failed to state that the Claimant

denied it. The Claimant was recalled, and the decision to recall was successfully challenged.

77. The court said this:

“41. The authorities cited by both parties support the proposition that **the court should be cautious as to interfering in decision-making in this sphere**. This is understandable. Both the Probation Service and the Secretary of State are concerned in the recall process within which the issue of risk to the public is a central consideration. **They are far better placed than the court is to assess such risk and correspondingly the court must exercise restraint in interfering with the decision-making process**. Moreover, **it would be undesirable and contrary to the principles set out in the authorities to impose a heavy duty of investigation and/or consultation before the power of recall is exercised**. A Probation Officer preparing a report in this context is required to have regard to a range of material but to reach a decision that may have important implications for public safety.

42. That said, **the undoubted requirement for there to be reasonable grounds to justify the decision to recall, coupled with the importance of operating a procedurally fair process of decision-making, means that the decision-maker and those providing information to the decision-maker must at the very least ensure that the material that is provided for the decision is reasonably accurate**. In this case, that was not so. The Secretary of State was not told that the Claimant denied that he was in a developing relationship of a kind that might put him in breach of his licence condition. This rendered the Recall Report misleading.” (emphasis added)

78. In *R (Nodwell) v Parole Board* [2022] EWHC 3173 (Admin), a challenge to the Secretary of State’s decision to recall the prisoner, the Claimant argued that there was a duty on the Secretary of State to investigate the date of certain text messages which appeared to threaten the victim of the index offence before making a decision to recall him. The messages had in fact been sent prior to his imprisonment. The court held:

“39. When the assessment of what procedural fairness required in the instant case is set in its proper context, and even absent the additional reasons provided for recalling the Claimant i.e. the fact that steroids were found in the Claimant’s room and that his AP bedspace had been withdrawn, in my conclusion **there was no requirement or duty on the AP staff, the COM or the PPCS to undertake any further enquiry as to the date of the text messages prior to the recall decision being made, however necessarily brief that enquiry might have**

**been.** This is not a decision born out of a principle that there is never an obligation to undertake investigations or seek an explanation from an offender before recall, but it is a conclusion drawn from the context and specific facts of this case.” (emphasis added)

79. Whether a fair procedure has been followed by a decision maker is a question for the court; it is not a matter of judgment for the decision maker reviewable by the court only on *Wednesbury* grounds: *R (Osborn) v Parole Board* [2013] UKSC 61 [2014] AC 1115 at [65].
80. The role of the Parole Board is to have regard to all the circumstances of the case, including the circumstances of the recall, but in the end to decide whether to recommend the release of the prisoner having made an assessment of risk to the public, on the basis of all the material available to it when it makes its decision: *R (Gulliver) v Parole Board* [2007] EWCA Civ 1386 [2008] 1 WLR 1116 at [35].
81. The powers and duties of the Parole Board extends to reviewing the original recall decision of the Secretary of State by virtue of the statutory provisions rather than due to the Secretary of State’s directions: (*R (Calder) v Secretary of State for Justice (supra)* at [42] and [45].
82. The Parole Board is an expert body entrusted by Parliament with the function of undertaking the relevant evaluative assessment whether to direct the release of those sentenced to indeterminate and certain determinate terms of imprisonment if it is satisfied that it is no longer necessary for the protection of the public that they be detained: *R (D) v Parole Board* [2018] EWHC 694 (Admin) [2019] QB 285 at [2].
83. A modern approach to the *Wednesbury* test is not to simply ask the question: was the decision irrational, but involves testing 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 decision-maker's expertise) be safely justified on the basis of the evidence, particularly in a context where anxious scrutiny needs to be applied. The question becomes: does the conclusion follow from the evidence or is there an unexplained evidential gap or leap in reasoning which fails to justify the conclusion: *R (Wells) v Parole Board* [2019] EWHC 2710 (Admin) [2019] ACD 146 at per Saini J at [31] – [33].

84. In a challenge to a decision of the Parole Board not to direct a prisoner's release Saini J accepted that under the modern context-specific approach to rationality and reasons challenges, the area with which he was concerned (detention and liberty) required him to adopt an anxious scrutiny of the decision: *Wells (supra)* at [35].
85. The reasons for decisions “must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal important and controversial issues”: *South Bucks DC v Porter (No. 2)* [2004] 1 WLR 1953 at [36].
86. Where there is no statutory duty to give reasons, the court will be cautious about accepting late reasons. The degree of scrutiny applied to subsequent reasons depends on the subject matter. Where important human rights are concerned (as in asylum cases), anxious scrutiny is required. Where the subject matter is less important, the court may be readier to accept subsequent reasons. The qualifications and experience of the decision-makers is relevant, the same comprehensiveness and clarity required of lawyers not being required from occasional non-lawyer tribunal chairs and members. Any supplementary reasons must elucidate or explain and not contradict the written reasons: *Hereford Waste Watchers Ltd v Herefordshire Council* [2005] EWHC 191 (Admin) [2005] Env LR 29 at [45] – [46].

87. The Defendant's policy on recall is contained in *The Recall, Review and Re-Release of Recalled Prisoners Policy Framework* dated 1 April 2019 ("the Recall Framework"), which states as follows:

“4.2 Recalling an Indeterminate Sentenced Individual and Extended Sentenced Individuals

**Consideration of Recall for Indeterminate Sentenced and Extended Sentenced Individuals**

4.2.1 When assessing whether to request the recall of an indeterminate sentenced/extended determinate sentenced individual, community offender managers (COMs)/ Probation Practitioners **must demonstrate a “causal link” in the current behaviour that was exhibited at the time of the index offence.** One of the following criteria must be met when assessing whether to request the recall of an indeterminate sentenced individual:

- i. **Exhibits behaviour similar to behaviour surrounding the circumstances of the index offence...**

COMs/ Probation Practitioners must ensure that there is evidence of increased risk of harm to the public and at least one of the criteria set out above is met...

4.2.4 Prior to initiating recall, the COM/Probation Practitioner will liaise with the Senior Probation Officer (SPO) and discuss whether the recall threshold has been met. **The decision to request recall must be based on an individual's behaviour, or change of circumstances, whilst on licence.** This will not necessarily be directly linked to a breach of a specific licence condition. **The decision on whether to initiate recall must be made swiftly, to ensure the protection of the public.**

4.2.9 Where the current behaviour exhibited is concerning but, the judgement of the COM/Probation Practitioner is that it does not meet the threshold to recall, they should consider what additional licence conditions or alternative enforcement action can be introduced to manage the individual's risk in the community.” (emphasis added)

88. HMPPS' *AML* [Alcohol Monitoring on Licence] *Probation Guidance v2.0* states as follows:

**“4.3 The breach process**



Where there is a confirmed non-compliance event, the community-based Probation Practitioner makes a decision on the appropriate enforcement action based on the individual circumstances, risks linked to alcohol misuse and their professional judgement on a case by case basis.

**The response should be swift and certain and contact with the Offender should be made without delay.**

...

The community-based Probation Practitioner will review the alert information, contact the Offender to discuss the event and review the evidence to determine the best course of action based on their professional judgement. **A breach of licence conditions does not automatically result in the instigation of recall.**

If it is felt that the requirement for recall is not met, but there are issues of concern, Probation will issue a 'Licence compliance letter' to the Person on Probation, outlining the expectations required, noting further failure to comply could result in recall.

If the requirements for recall have been reached as risk is felt to have increased, and there is a decision not to recall as it is felt that there are safe alternatives to recall, this must be accompanied by a 'Decision not to recall letter' which is sent to the Person on Probation. The issuing of these letters can be accompanied by amended licence conditions. These may include increased levels of contact; cooperating with activities; or additional restrictions in relation to residence or curfew, to enable the risk to be managed and thus making the Licence more onerous. Further, this should also note that any further failures could result in recall.

The options are:

- Compliance letter
- Decision not to recall letter
- Licence Variation
- Licence revocation

**It is a matter of professional judgment for the community-based Probation Practitioner in discussion with senior colleagues to decide what action to take in the event of an alcohol-related non-compliance and this needs to be clearly recorded. To make a defensible decision, the Probation Practitioner would need to assess the individual's behaviour and circumstances, coupled with their alcohol misuse as detailed in the report.**" (emphasis added)

## **Grounds of Review**

89. The Claimant has two grounds of review. A third ground based on Article 5 of the European Convention on Human Rights was adjourned by consent, for the parties agreed that the potential success of that ground, as a necessary but not sufficient ground, required success on one of grounds one or two.

90. The Claimant's submissions were as follows.

91. First, procedural unfairness. The Claimant concedes that the discretion to recall under s32 is broad, but requires (a) reasonable grounds for concluding that there was a breach of his licence conditions and (b) in all the circumstances his recall was necessary for the protection of the public, because of the dangers posed by the prisoner when on licence. There is a duty to ensure that the decision maker is presented with the full information relevant to a decision and that a misleading or inaccurate position is not presented. The Defendant breached this duty by first:

- i) Not mentioning, summarising, or annexing the Parole Board's decision on the first recall. The recall was found to be unlawful. There were three alleged raised readings on the Claimant's tag, and he had alleged that the tag was faulty, but the Probation Service had not investigated these faults. There was a failure to consider alternatives to recall and no evidence of a raised risk to the public, even if the three raised readings were accurate.
- ii) These were material considerations, even if the Parole Board's finding of unlawfulness was not binding. The Defendant was being invited to recall in materially identical circumstances, which is why the decision of a court empowered by Parliament to assess the validity of a recall was relevant.
- iii) Had the decision been available the Defendant would have been aware that a thorough investigation of the circumstances was necessary, as was an adequate exploration of the Claimant's concerns with the service provider, and evidence of either escalating risk of further offending, and a need for thorough decision making and risk assessment at the time that recall was being considered.

92. Secondly:

- i) The Defendant did not have the information necessary for a properly informed assessment of the Claimant's allegation that he had not drunk any alcohol and the tag was faulty.
- ii) It was inaccurate for the Part A report to assert that the Claimant had consumed between 5 – 7 units of alcohol on each occasion, for the tag did not purport to measure actual alcohol intake but was generic. The Defendant was unaware of the multiple raised readings linked to environmental factors so it could not decide whether the three readings relied upon were similar or different.
- iii) The Part A report and OASys report wrongly criticised the Claimant's continued protests against his previous recall, implying that such concerns were unjustified, when they had been upheld by the Parole Board decision.

93. The second ground of review was irrationality.

94. First, the Defendant failed to obtain all relevant information and failed to have regard to all material considerations.

95. Secondly, there were no reasonable grounds for the Defendant to conclude that the Claimant had breached any of his licence conditions.

- i) The Part A recall report did not contain any detailed readings as to the alleged breaches.
- ii) There was an error of fact in the report as regards one of the readings.

iii) None of the issues set out by the Parole Board were considered.

96. Thirdly, there were unexplained evidential gaps in the Defendant's reasoning:

- i) There was no thorough or adequate explanation of the alternatives to recall or explanation why they were not sufficient to manage the purported risk.
- ii) It was irrational to consider that the Claimant's recall was necessary for the protection of the public, given that there was no evidence of the Claimant's risk escalating or of any further offending linked to the alcohol readings.
- iii) The Claimant's alleged alcohol use between 23/24 December 2024 was not thought by the Defendant to justify recall at the time, as evidenced by the compliance letter dated 31 December 2024, and to recall him based on allegations which pre-dated that letter was irrational. There was no evidence of an increased risk that post-dated the compliance letter.
- iv) It was irrational to base the necessity for recall on the Claimant's previous recall or the purported "trust issues" which it was said to suggest, given that the recall was unlawful.

#### Defendant's Stance

97. The Defendant submits that:

- i) There were reasonable grounds for concluding that there was a breach of licence conditions.
- ii) It was necessary to recall the Claimant.

98. Whether the test is met is adjudged on *Wednesbury* grounds: whether no reasonable Secretary of State could have reached the decisions on breach and necessity.
99. As to the first limb of *Calder*:
- i) The question is whether, on the evidence available to her, the Defendant was reasonably entitled to conclude that the recalled prisoner was in breach of the condition.
  - ii) The threshold is a modest one.
  - iii) There is no heavy duty of investigation and/or consultation before the power of recall is exercised.
  - iv) The decision-maker and those providing information to the decision-maker must at the very least ensure that the material that is provided for the decision is “reasonably accurate”.
100. As to the second limb of *Calder*:
- i) There are two sub-issues: whether the offender had acted intentionally in breach of his licence conditions, and whether the safety of the public would be at risk if the offender remained out on licence.
  - ii) There must be a causal link between the behaviour for which the person is recalled and the behaviour that was exhibited at the time of the index offence.
  - iii) The courts should be cautious as to interfering in decision-making in this sphere.

- iv) The Secretary of State is not obliged to consider alternatives provided that she focuses on the central issue and concludes that the safety of the public makes it necessary to order the recall of the prisoner who has been released on licence because the risk to the public cannot be contained in any other way which restricts the freedom of the claimant less.
- v) The fact that the word “necessary” is not used in the recall documentation does not matter, bearing in mind that the court should not approach decisions and reasons given by committees of laymen expecting the same accuracy in the use of language which a lawyer might be expected to adopt.

101. The Parole Board decision of 25 March 2024 was not a mandatory relevant factor.

102. There is no breach of procedural fairness:

- i) What procedural fairness requires is context-specific.
- ii) When considering procedural fairness in the prison recall sphere, there are existing safeguards in the form of disclosure of the recall dossier and the right to submit written representations.
- iii) Procedural fairness does not require detailed investigations or to test the prisoner’s denial for the decision to be procedurally fair, given the summary nature of the recall process and the existing procedural safeguards after recall, eg *Nodwell* (no duty to establish date the text messages were sent), cf. *Wilson* (failure to pass on known information concerning the denial of the developing relationship), *Jorgenson* (no requirement for a warning before recall).

103. As to procedural fairness on the facts:

- i) The first recall was for both alcohol consumption and tampering with the AML tag (although the alerts did not indicate any actual consumption of alcohol).
- ii) The first recall was irrelevant to whether the Claimant consumed alcohol on 14/15, 17/18 and/or 23/24 December 2024. The alerts on those days indicated consumption of alcohol, unlike for the first recall.
- iii) Ms. Kintu investigated the three tag alerts before deciding to recommend recall.

104. Nor was the decision irrational:

- i) There was sufficient evidence to find that the Claimant had consumed alcohol on each of 14/15, 17/18 and 23/23 December 2024.
- ii) The information before the Secretary of State was “reasonably accurate”:
  - a) AML tagging was a licence condition to enable monitoring of the consumption alcohol.
  - b) Ms. Kintu checked the meaning of each alert with SCRAM Systems and received verbal and written assurance that on each occasion alcohol consumption was confirmed.
  - c) AML tagging had been approved by the Ministry of Justice.
  - d) The type of AML tag used had a false positive rate of 0.14%.

105. Although there was an error of fact in portraying the 23/24 December breach as indicating 5 – 7 units, that was immaterial because the decision to recall did not

depend on the quantity of alcohol ingested on each occasion.

106. As to necessity, it was rational to consider that his risk had increased if he had started to drink, such that it was no longer manageable in the community:

- i) The Part A Recall Report recorded the conclusion that the safety of the public would be at risk if the offender remained out on licence, which was endorsed by two senior Probation Officers.
- ii) There is a causal link between the behaviour for which the Claimant was recalled (consuming alcohol) and the behaviour exhibited at the time of the index offence (murdering someone while drunk).
- iii) The risk to the public was only acceptably low if he did not consume alcohol.
- iv) It was wrong to construe the Defendant's policy so as to require warnings of recall except in narrow defined circumstances. If that was true it would mean that, irrespective of the risk posed to the public by an offender on licence if he has a positive drugs test, he cannot be recalled to prison, which would undermine the entire purpose of the recall procedure.
- v) Increased risk does not require further offending linked to alcohol consumption. It is enough that there is an increased risk of loss of temper, aggression and impulsive behaviour including violence.

107. There is no evidence that the decision maker was influenced by a perception that the Claimant had in fact committed the breaches at issue in the first recall.

### Analysis



108. Given the context of detention and liberty, under the modern context-specific approach to rationality and reasons challenges, I accept that the proper approach is to adopt anxious scrutiny of the decision to recall the Claimant.
109. The fundamental questions which must be proved for the lawful exercise of the s32 discretion are twofold:
- i) Were there were reasonable grounds for concluding that there was a breach of licence conditions?
  - ii) Was it necessary to recall the Claimant?
110. It is a material consideration to see if there is any fault on the part of the prisoner; the Secretary of State must examine any explanation put forward to satisfy himself that recall is justified (*Benson (supra)*).
111. The information before the decision maker does not have to be absolutely correct (*Hare (supra)*; *Nodwell (supra)*) but it must be “reasonably accurate” (*Wilson (supra)*).
112. It is necessary to examine the evidence before the Defendant at the time the decision was made in order to determine whether these requirements are met.

Were there reasonable grounds for concluding that there was a breach of licence conditions?

113. This question raises the issues whether the information before the Defendant was “reasonably accurate” and whether adequate investigation had been performed by the Defendant before deciding to recall the Claimant.
114. The evidence before the Defendant included the following:

- i) The licence itself.
- ii) A record of the Claimant's convictions.
- iii) Part A Recall Report dated 15 January 2025 from Probation.
- iv) Claimant's OASys report dated 15 January 2025.
- v) Verbal and written enquiries from SCRAM Systems.

115. The evidence relied upon by the Defendant in support of a finding that there was a breach of licence conditions includes the following:

- i) The licence conditions included complete abstinence from alcohol.
- ii) There were three alcohol alerts indicating ingestion of alcohol in a short period of time, on 14/15, 17/18 and 23/24 December 2024.
- iii) The Claimant disputed that he had drunk any alcohol at all, and questioned the accuracy of the tag, asserting that the equipment needed to be changed every 30 days and that perhaps low battery life may have caused false results. He did not proffer the results of any tests which supported his claim of having not drunk any alcohol during the relevant period.
- iv) On 13 January 2025 Ms. Kintu emailed SCRAM systems to say that they were considering recall and needed a better understanding of what the reading meant to inform their decision, and whether they were indicative of the consumption of significant levels of alcohol. David Buckley, Senior Data Analyst at SCRAM Systems, responded by email the same day explaining that the bracelet could not tell how many drinks or what drinks a person has

consumed, but that the peak TAC values corresponded to the alcohol intake of a healthy 180 pound male consuming individual alcohol units 15 minutes apart on an empty stomach. A table was enclosed to interpret the peak TAC readings.

- v) The Claimant continued to deny alcohol consumption and reiterated his belief that there was a fault with the reading.
- vi) Ms. Kintu then spoke to Dave Buckley on 14 January 2025 who assured her that an alert would only be generated when alcohol has been detected, and that all alerts are fully analysed and interpreted by a team of trained data analysts and must meet strict guidelines. Ms. Kintu understood from that description that, whilst the Claimant denied it, alcohol consumption could be confirmed.
- vii) The same day Ms. Kintu received a report entitled “SCRAM Systems Non-Compliance Report” containing detailed readings of peak TAC levels corresponding to two episodes indicating 5 – 7 units (14/15 and 17/18 December 2024) and one episode of 1 – 4 units (23/24 December 2024). That report also asserted, in respect of each of the three sets of readings, the following:

“Routine diagnostics performed on the bracelet indicate that the bracelet was functioning properly at the time of the confirmed consumption event.”

- viii) The SCRAMS Systems Non-Compliance Report concluded as follows:

“[The Claimant] had three (3) events that met SCRAM Systems criteria and were confirmed as alcohol consumption.”

116. I find that there were reasonable grounds for concluding that there was a breach of licence conditions. The tag readings correspond with three episodes of alcohol consumption within a short period of time in circumstances in which the Claimant was required to maintain complete abstinence from alcohol. The Defendant, being aware that the reliability of the tag was being questioned, asked SCRAM Systems to confirm the significance of the alerts, and was informed that it indicated three episodes of alcohol consumption, and according to “routine diagnostics” performed by SCRAM Systems the bracelet was functioning properly at the time.
117. Although it is not clear precisely what “routine diagnostics” were performed, the Claimant has not requested details of the tests performed, and the Defendant has not inquired either. I have no reason to question that tests have been performed on the bracelet, and that showed that it was working properly at the relevant time.
118. The point was made subsequently that the Claimant worked among products containing alcohol which may have contaminated the results. It emerges from evidence filed subsequent to the decision that the tag was able to detect environmental exposure to alcohol and indeed it did so. However since the point had not been made before the recall decision, the Defendant cannot be criticised for failing to deal with the possibility of environmental contamination in the decision itself.
119. Given the need for a summary process, on the facts of this case it would be going too far, on the question whether there were reasonable grounds for concluding that there was a breach of licence conditions, to require the Defendant to send away the tag for physical testing, given that it was merely an assertion that the Claimant had not consumed alcohol without other evidence in support such as a test which showed that the Claimant had not ingested any alcohol during the relevant period. The Defendant

has no absolute duty to ensure that the information relied upon is correct – the duty is to perform such investigation as it reasonable in the circumstances.

120. It is also reasonable for the Defendant to be able to rely on indicative consumption levels of alcohol for an average 180 pound man, rather than requiring an accurate estimate of how much alcohol a particular prisoner has consumed, when the licence condition is to abstain from alcohol completely, rather than to keep consumption below certain levels.

Was it necessary to recall the Claimant?

121. In my view there is sufficient evidence that the Claimant had acted intentionally in breach of his licence conditions. The tag readings coupled with the explanation from SCRAM Systems as to their significance and accuracy provide a proper basis for finding that the Claimant deliberately consumed alcohol on three occasions, despite his denial.
122. The Defendant was also entitled to find that the safety of the public would be at risk if the Claimant remained on licence. This Claimant has always been subject to alcohol monitoring whilst being released on licence. There is good reason for that requirement. Alcohol was described as an identified trigger which contributed to his loss of temper, aggression and impulsive behaviour which led to the index offence of murder, substantially contributing to it by his alcohol misuse. The Part A Recall Report recorded the index offence of murder, noted the OASys conclusion that the current risk of serious harm assessment was High to the public, and stated that the Claimant was no longer manageable in the community.

123. Whilst the Claimant categorically denied consumption of alcohol, upon investigation alcohol consumption could nonetheless be confirmed. On that basis it was found that the Claimant was not taking responsibility for any alcohol use, so he either lacked awareness of the links alcohol had to his risks, or he is not fully motivated in addressing his offence-related needs.

124. The combination of the breach of the alcohol monitoring tag on three occasions, his history of committing a serious violent offence whilst under the influence of alcohol, the risk to the public being assessed as high, and the judgment that he was not now taking responsibility for alcohol use, the Defendant was entitled to find that the safety of the public would be at risk if the Claimant remained on licence.

125. It is asserted by the Claimant that there was an inadequate inquiry into alternatives to recall. The Part A Recall Report records the only alternatives to recall taken as the licence compliance letter sent on 31 December 2024, which implied that further breaches of licence could result in his recall to prison, but there is no express reasoning as to why sanctions short of custody would be inadequate to manage the risk.

126. However the Part A Recall Report does state:

“[t]herefore it is my assessment that [the Claimant] is no longer manageable in the community at this time as his behaviour is in direct violation of his licence conditions and the monitoring tag imposed to encourage abstinence has not acted as a deterrent for his offence paralleling behaviour”.

If a risk is not manageable in the community, it implies that no alternatives to custody are appropriate.

127. In *Jorgensen* (supra) the court said this:

“The Secretary of State is not obliged to consider alternatives provided that he or she focuses on the central issue and concludes that the safety of the public makes it *necessary* to order the recall of the prisoner who has been released on licence because the risk to the public cannot be contained in any other way, which restricts the freedom of the claimant less.”

128. I interpret the Part A Recall Report as expressing the view that it is necessary to order the Claimant’s recall because the risk to the public cannot be contained in any other way. There is evidence of escalating risk as a result of the breaches, which assessment was accepted by the Secretary of State.
129. Although there is reference in the Part A Recall Report to the Claimant’s continued protests against his prior recall and his considering it to be unjust as an implicit criticism of the Claimant’s attitude, without making it clear that the Parole Board had agreed with the Claimant and declared the recall to be unlawful, that information is recorded under the section containing details of how the offender has responded to supervision to date, rather than going to one of the requirements for recall. Further, there is no reference at all to this point in the Defendant’s recall decision itself. I therefore find that this entry had no material effect on the decision to recall the Claimant.

#### The Parole Board decision dated 25 March 2024

130. The Claimant argues that, in accordance with the Parole Board decision dated 25 March 2024, absent (1) evidence which correlated the readings of the alcohol tag to a specific level of alcohol consumption, and (2) adequate exploration of the Claimant’s concerns that the tag was faulty, there were no reasonable grounds to conclude that the Claimant had breached his licence conditions.

131. The Stand-in Prisoner Offender Manager told the Parole Board that “[s]he acknowledged that she did not know how/if the readings on the tag corresponded to levels of alcohol consumption” (para 2.19). The Parole Board asserted that “[n]o evidence was presented which correlated the readings of the tag to a specific level of alcohol consumption” (para 4.3), that being one of the two reasons relied on to justify the finding that there were not reasonable grounds to find the Claimant was in breach of his licence conditions.
132. There was no evidence before the Parole Board which explained the significance of the peak TAC readings. The email sent by SCRAM Systems to Sarah Kintu on 13 January 2025 explained that the readings could be correlated to the likely alcohol consumption of a healthy 180 pound male consuming individual alcohol units 15 minutes apart on an empty stomach. That constitutes evidence which correlated the readings of the tag to a specific level of alcohol consumption. However that evidence was not before the Parole Board.
133. There is no suggestion that the Parole Board required that the alcohol consumption had to be that of the individual whose recall was being considered, as opposed to a typical prisoner of a certain weight.
134. As to exploration of the reliability of the tag, the Parole Board did have evidence concerning whether the tag had been functioning at the relevant time. The SCRAM Systems Report dated 5 March 2024 stated that:
- “Routine diagnostics performed on the bracelet indicate that the bracelet was functioning properly at the time of the confirmed consumption event.”
135. However this evidence does not appear to have been brought to the attention of the Parole Board, for there is no reference to it in their decision.



136. The evidence before the Parole Board from the Prisoner Offender Manager was that the Claimant would be managed in the community and the Claimant's non-admission of the events leading up to recall did not substantially contribute to his risk (contrary to the view of the Community Offender Manager, who criticised the Claimant's attitude and approach to his recall and his lack of responsibility-taking). For reasons which it did not explain the Parole Board merely concluded that "[t]here was no evidence of escalating risk", failing to deal with why it preferred the evidence of the Prisoner Offender Manager to that of the Community Offender Manager.
137. The Parole Board also found that "[the Claimant] was told that future tag alerts may trigger a licence warning, yet he was recalled to custody immediately on further alerts without any evidence that alternatives to recall were considered thoroughly, if at all."
138. It is correct that the previous warning given to the Claimant (on 30 December 2023) merely warned that he may receive a licence warning in the event of a further alcohol violation. However it is not a necessary prerequisite to lawful recall that a warning of recall to custody to be given. If the risk is sufficiently high and the other criteria are met, a warning may not be necessary.
139. The Community Offender Manager had told the Parole Board that "alternatives to recall could have been considered" – implying that they had not been. In fact the Part A Recall Report stated that the Claimant was no longer manageable in the community, which implied that no alternative to recall would have been appropriate (see paragraphs 126 – 8 above).

#### Failure to consider previous Parole Board decision

140. It might be thought surprising that no mention was made of the Parole Board decision of 25 March 2024 in the Part A Recall Report, if only to deal with the problems encountered during that recall, and to allow the decision maker to consider whether there were any similar difficulties which needed to be grappled with in the instant recall decision. No explanation has been proffered by the Defendant for this approach.
141. In law, the Claimant submits that the Parole Board decision was a mandatory relevant factor and/or it was irrational not to take account of that decision when considering whether to recall the Claimant on 15 January 2025 based on an assertion that it is the decision of an independent court in materially identical circumstances.
142. It is conceded by the Claimant that this court is not bound by Parole Board decisions.
143. I do not find that the said Parole Board decision was a mandatory relevant factor in the exercise of the discretion to recall under s32. It is not an express factor within the statute. Nor is implicitly a mandatory relevant factor, and it is not irrational not to take the Parole Board decision into account, for the following reasons.
144. First, the duty on the Secretary of State under s32 is to consider the circumstances at the time recall is contemplated, rather than to the state of affairs some time earlier, and apply the statutory test.
145. Secondly, even if the previous decision was the High Court's decision on a judicial review of the previous recall decision, which would be legally persuasive on this court, if the statutory test for recall were satisfied on the evidence, the recall would be lawful, as long as the general law was followed. What matters is whether the recall decision is lawful having regard to the terms of s32 and the relevant case law.

146. Thirdly, although the circumstances of the 2024 Parole Board decision have some similarities with circumstances on 15 January 2025, there are also some significant differences:

- i) The alerts in 2023 were 2 tamper alerts, one formal alcohol alert and two less formal alcohol alerts, each potentially indicating a putative alcohol intake of 1-4 units.
- ii) The Parole Board found, rejecting the evidence of the Community Offender Manager (but giving no reasons for doing so), that there was no evidence of escalating risk. This is in contrast to the Probation Officers' assessments on 15 January 2025 to the effect there was escalating risk.

147. Fourthly, the Parole Board's decision contains some questionable conclusions, in particular the decision that there had been inadequate investigation into whether the tag was working when SCRAM Systems had tested it and found it to have been working. Further, the oral evidence before the Parole Board was that alternatives to custody had not been considered, yet the conflict with the assessment in the Part A Recall Report that the Claimant was not manageable in the community was not resolved.

### Irrationality

148. The next question is whether the recall decision was irrational. Does the conclusion follow from the evidence, or is there an unexplained evidential gap or leap in reasoning which fails to explain the conclusion, per Saini J in *Wells* (supra)?

149. Many of the points sought to be made under this head repeat the points made under the first ground of review.

150. The allegation that the Defendant failed to obtain all relevant information and failed to have regard to all relevant considerations is addressed above.

151. It is further alleged that there were no reasonable grounds for the Defendant to conclude that the Claimant had breached any of his licence conditions. I have dealt with this argument above. Further points made under this ground is that:

- i) The Part A Recall Report did not contain any detailed readings as to the alleged breaches. This is factually incorrect, for the report states “It is indicated that he consumed between 5 – 7 units of alcohol on each occasion [sic]”.
- ii) There was an error of fact in the report as regards one of the readings. The reading for 23 /24 December 2024 was in fact consistent with 1 – 4 units rather than 5 – 7 units. In a witness statement dated 22 April 2025 Ms. Kintu concedes that it was incorrect to state that each alert would indicate between 5 – 7 units of alcohol consumption in a healthy 180 pound male, but that one of the three alerts showed consumption of 1 – 4 units. She comments that that error would not have been material to her recommendation to revoke the Claimant’s licence. I find that that evidence post-dates the issue of proceedings, and I do not place any significant weight on it. However, reading the Recall Report as a whole, it is the fact of alcohol consumption on three occasions which is the rationale for recall, rather than the putative level of alcohol consumption. That rationale was adopted by the Defendant in the recall decision, which makes reference to breaching the Alcohol Monitoring on Licence Tag three times, but making no mention of the equivalent consumption levels on each occasion. I therefore find that this admitted error

of fact was not a material error. Section 31(2A) of the Senior Courts Act 1981 provides that a court must refuse to grant a remedy on a claim for judicial review if it appears to the court that (1) it is highly likely (2) that the outcome for the claimant would not be substantially different (3) if the conduct complained of had not occurred. Further or alternatively, for similar reasons, I find that it is highly likely that the outcome for the claimant would not be substantially different if the conduct complained of had not occurred (and the correct reading of 1 – 4 units had been recorded for 23/24 December 2024), pursuant to *s31(2A) Senior Courts Act 1981*, and the recent guidance in *R (Greenfields (IOW) Limited) v Isle of Wight Council* [2025] EWCA Civ 488 and *Bradbury v Brecon Beacons National Park Authority* [2025] EWCA Civ 489. I must therefore refuse the Claimant relief arising out of that error.

- iii) None of the issues set out by the Parole Board were considered. I have dealt with these issues above.

152. It is submitted that there are unexplained evidential gaps in the Defendant's reasoning:

- i) There was no evidence that alternatives to recall were considered.
- ii) There was no evidence of the Claimant's risk escalating.
- iii) Insofar as the decision-maker concluded that recall was necessary because of the Claimant's previous recall or the purported "trust issues" which were said to exist, this was irrational given that the previous recall was unlawful.

153. I have already dealt with these issues above.

154. It is also asserted that the 23/24 December 2024 alert was not thought by the Defendant to justify recall, and to rely on alerts pre-dating that date was irrational. I do not agree. Ms. Kintu had not been aware of the earlier alerts when noting the 23/24 December 2024 alert, and the discovery that there had in fact been three violations of the alcohol monitoring regime rather than one did justify a different view being taken of the necessity for recall. There was no need for the two additional alerts to post-date the 23/24 December 2024 alert.

### Conclusion

155. For the reasons stated above, this claim is dismissed.