

**R. (on the application of Anditon) v Parole Board for England and Wales**

No Substantial Judicial Treatment

**Court**  
King's Bench Division (Administrative Court)

**2025 WL 02633308**

Neutral Citation Number: [2025] EWHC 2099 (Admin)  
IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION ADMINISTRATIVE COURT  
Case No: AC-2025-CDF- 000035

Cardiff Civil and Family Justice Centre 2 Park Street, Cardiff, CF10 1ET

Date: 08/08/2025

**Before :**  
HIS HONOUR JUDGE JARMAN KC  
Sitting as a judge of the High Court

**Between :**

**R (COLIN ANDITON) Claimant**

**- and -**  
PAROLE BOARD FOR ENGLAND AND WALES

**-and-**  
SECRETARY OF STATE FOR JUSTICE

**Defendant**

**Interested**

**Party**

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**Mr Stuart Withers** (instructed by **Broudie Jackson Carter**) for the **claimant**

The other parties did not appear and were not represented

Hearing dates: 5 August 2025

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## Approved Judgment

This judgment was handed down remotely at 10.30am on 8 August 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE JARMAN KC

HHJ JARMAN KC:

### *Introduction*

1. The claimant is serving a term of imprisonment for murder and challenges by way of judicial review, with permission which I granted, the decision of the Parole Board dated 19 December 2024 refusing his request for an oral hearing in order to determine whether he should be granted parole. Mr Withers represents the claimant. The other parties have remained neutral and have taken no active part in the proceedings. I indicated at the end of the substantive hearing that I would uphold the claim and grant appropriate relief and give my reasons in due course. This judgment records my reasons.

### *The statutory scheme*

2. the [statutory scheme for the recall of prisoners on licence and the role of the board is dealt with by the Criminal Justice Act 2003](#). Under section 239(2) it is the duty of the board to advise the Secretary of State with respect to any matter referred to it which is to do with the early release or recall of prisoners. Section 256A provides that if a prisoner's case has been previously referred to the board and has not been released, the Secretary of State must refer the prisoner's case back to the board no later than the first anniversary of its most recent determination. Subsection (4) provides that the board must not give a direction for a person's release on a reference under that section unless the board is satisfied that it is not necessary for the protection of the public that the person should remain in prison. The board has no inherent jurisdiction and acts upon the statutory reference by the Secretary of State.

3. The Secretary of State has made rules under section 239(5) for proceedings before the board, namely the [Parole Board Rules 2019](#) (SI 2018/1038) which have subsequently been amended. Rule 6 provides that the panel chair or duty member may adjourn or defer the proceedings to obtain further information or for such other purposes as they consider appropriate. By rule 19 the board may direct an oral hearing. By rule 19(6) any decision made as to whether a prisoner is deemed unsuitable for release is provisional. Rule 20(1) provides that a prisoner may apply for an oral hearing if he has been deemed unsuitable for release under Rule 19.

4. In July 2020 the board produced guidance entitled "Adjournments and deferrals". The guidance at [4.6] provides that an adjournment would not normally be appropriate when the prisoner is subject to a police investigation/criminal proceedings and the outcome is still awaited and is unlikely to be resolved within four months. It is more appropriate to conclude the case on the papers to avoid lengthy delays to review, and there is the option to re-refer the case on the conclusion of outstanding charges.

5. In September 2023, the board produced further guidance "Guidance on Allegations" which at [8.3] provides that panels should exercise caution when allegations are subject to ongoing investigation or court proceedings, but panels can make findings of fact where appropriate.

### *The facts*

6. In 1993 the Claimant was convicted in California of murder. He was sentenced to 25 years to life, with no eligibility for parole for 15 years. In 2012 he was transferred to this jurisdiction pursuant to the [Repatriation of Prisoners Act 1984](#). In 2014 his minimum term was set at 17 years and 285 days. He was released on licence in August 2017 but recalled in February 2019 and convicted of several offences for which he received a determinate sentence. In July 2023 the board after an oral hearing

directed his release on life licence, noting a diagnosis of paranoid schizophrenia/schizoaffective disorder and a history of self-harm and suicidal ideation. That release took place in September 2023.

7. In January 2024 he was arrested for supply of class A drugs and tested positive for drug use. The police took the view that he may be psychotic (he had a previous psychotic episode the previous November) and arranged for an assessment under the [Mental Health Act 1983](#). That indicated that he was floridly psychotic and he was detained under section 2 of the 1983 Act from January until his discharge on 6 February 2024. He received home treatment for his mental health between 3 and 8 May 2024. In that month he was arrested for further drug offences. The Secretary of State revoked his licence, and he was returned to custody.

8. On 31 May 2024 a Part B Post Recall Risk Management Report was completed by the claimant's community offender manager, which recommended that he remain in custody to stabilise his mental health. His probation officer assessed that it was likely that there had been a level of coercion in respect of the offences, as he claimed. He accepts that he was in possession of the drugs but denies intent to supply. The report included a risk management plan to manage the risk on licence. In June 2024 the Secretary of State referred his case to the board under s 32(1) of the Crime (Sentence) Act 1997 for consideration as to his release or transfer to open conditions.

9. In June 2024 his solicitors requested an oral hearing so that he could seek his release, emphasising that he had recently been sectioned, he had been under pressure to possess the drugs and had been exploited due to his vulnerability. It was indicated that he was receiving appropriate medication in the prison healthcare unit and that his condition was stable.

10. In July 2024 a panel member of the board issued an assessment that there was evidence lacking in respect of the recent investigation into drug offences and as to the claimant's mental health and that the case should be returned to a specialist psychiatrist member. Directions were given for the filing of (a) an up-to-date police report, (b) the claimant's discharge summary from the [Mental Health Act 1983](#), (c) a report from the mental health team in custody regarding his presentation since returning to custody, (d) an up- to-date report from the claimant.

11. The same month the police notified the board that the investigation into the drug offences was ongoing and would take 12 to 16 weeks from the end of May 2024. The following month they provided a report which included a letter from the claimant, an occurrence details log, and witness statements from eight police officers. In the claimant's letter he asked that 'bad people' who made him 'do it' were not informed as they would 'kill him', and went on to set out his vulnerabilities and difficulties with his mental health. The occurrence detail log indicated that he had not been interviewed on grounds of his mental health. The report acknowledged that the claimant may be getting used by people he considers friends in order to sell drugs.

12. On 6 October 2024 another panel member adjourned the review for eight weeks, to allow a further update from the police and further legal representations, and in doing so stated that the board cannot usurp the role of the criminal courts in making determinations of fact around the criminal matters, although the guidance was also noted. The following month the police indicated that a charging decision was likely within eight to ten weeks, and the claimant's solicitors asked the board for an adjournment for the charging decision to be made or to direct an oral hearing for the review.

13. On 4 December 2024 the same panel member issued a decision under rule 19 refusing to direct release or to direct an oral hearing, which included the following passage:

"The Panel has considered the case against the principles set out in the Supreme Court judgment relating to Osborn, Booth & Reilly [\[2013\] UKSC 61](#), and does not find that there are any reasons for an oral hearing. The Panel considered whether an oral hearing would assist in assessing the risk posed and concluded that in this case it would not. The Panel also considered Mr Anditon's legitimate interest in participating in the process and whether there were tenable grounds to suggest that an oral hearing was necessary to allow him to effectively put his case. The Panel concluded it was not. Therefore, the review will proceed based on the papers."

14. On 19 December 2024 the claimant's solicitors made an application under rule 20 for an oral hearing, which emphasised his vulnerabilities and his mental health issues. The application was refused on the same day, on this basis:

"An oral hearing is not required in all cases. In your case you remain under investigation for allegations of drug supply. It is not a matter for the Parole Board as to how long the Police may take to investigate. However, the outcome of the investigation

may be relevant to the risk assessment and therefore an oral hearing at this stage would be premature...The paper decision is therefore final, and your current review is now concluded in accordance with the Parole Board Rules – not applicable for reconsideration eligible cases.”

*The case law*

15. Mr Withers’ helpful skeleton argument includes the case law which has grappled with the issue of fairness in deciding whether or not to hold an oral hearing in this context. In what he calls the key authority, the Supreme Court in *Osborn, Booth & Reilly* [2013] UKSC 61, referred to by the panel member, set out a helpful summary of the applicable principles as to whether fairness requires an oral hearing by the board. Lord Reed, with whom the other justices agreed, said this at [2].

“2. It may be helpful to summarise at the outset the conclusions which I have reached.

i) In order to comply with common law standards of procedural fairness, the board should hold an oral hearing before determining an application for release, or for a transfer to open conditions, whenever fairness to the prisoner requires such a hearing in the light of the facts of the case and the importance of what is at stake. By doing so the board will also fulfil its duty under [section 6\(1\) of the Human Rights Act 1998](#) to act compatibly with article 5(4) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in circumstances where that article is engaged.

ii) It is impossible to define exhaustively the circumstances in which an oral hearing will be necessary, but such circumstances will often include the following:

a) Where facts which appear to the board to be important are in dispute, or where a significant explanation or mitigation is advanced which needs to be heard orally in order fairly to determine its credibility. The board should guard against any tendency to underestimate the importance of issues of fact which may be disputed or open to explanation or mitigation.

b) Where the board cannot otherwise properly or fairly make an independent assessment of risk, or of the means by which it should be managed and addressed. That is likely to be the position in cases where such an assessment may depend upon the view formed by the board (including its members with expertise in psychology or psychiatry) of characteristics of the prisoner which can best be judged by seeing or questioning him in person, or where a psychological assessment produced by the Ministry of Justice is disputed on tenable grounds, or where the board may be materially assisted by hearing evidence, for example from a psychologist or psychiatrist. Cases concerning prisoners who have spent many years in custody are likely to fall into the first of these categories.

c) Where it is maintained on tenable grounds that a face to face encounter with the board, or the questioning of those who have dealt with the prisoner, is necessary in order to enable him or his representatives to put their case effectively or to test the views of those who have dealt with him.

d) Where, in the light of the representations made by or on behalf of the prisoner, it would be unfair for a “paper” decision made by a single member panel of the board to become final without allowing an oral hearing: for example, if the representations raise issues which place in serious question anything in the paper decision which may in practice have a significant impact on the prisoner's future management in prison or on future reviews.

iii) In order to act fairly, the board should consider whether its independent assessment of risk, and of the means by which it should be managed and addressed, may benefit from the closer examination which an oral hearing can provide.

iv) The board should also bear in mind that the purpose of holding an oral hearing is not only to assist it in its decision-making, but also to reflect the prisoner's legitimate interest in being able to participate in a decision with important implications for him, where he has something useful to contribute.

v) The question whether fairness requires a prisoner to be given an oral hearing is different from the question whether he has a particular likelihood of being released or transferred to open conditions, and cannot be answered by assessing that likelihood.

vi) When dealing with cases concerning recalled prisoners, the board should bear in mind that the prisoner has been deprived of his freedom, albeit conditional. When dealing with cases concerning post-tariff indeterminate sentence prisoners, it should scrutinise ever more anxiously whether the level of risk is unacceptable, the longer the time the prisoner has spent in prison following the expiry of his tariff.

vii) The board must be, and appear to be, independent and impartial. It should not be predisposed to favour the official account of events, or official assessments of risk, over the case advanced by the prisoner.

viii) The board should guard against any temptation to refuse oral hearings as a means of saving time, trouble and expense.

ix) The board's decision, for the purposes of this guidance, is not confined to its determination of whether or not to recommend the prisoner's release or transfer to open conditions, but includes any other aspects of its decision (such as comments or advice in relation to the prisoner's treatment needs or the offending behaviour work which is required) which will in practice have a significant impact on his management in prison or on future reviews.

x) "Paper" decisions made by single member panels of the board are provisional. The right of the prisoner to request an oral hearing is not correctly characterised as a right of appeal. In order to justify the holding of an oral hearing, the prisoner does not have to demonstrate that the paper decision was wrong, or even that it may have been wrong: what he has to persuade the board is that an oral hearing is appropriate.

xi) In applying this guidance, it will be prudent for the board to allow an oral hearing if it is in doubt whether to do so or not.

xii) The common law duty to act fairly, as it applies in this context, is influenced by the requirements of article 5(4) as interpreted by the European Court of Human Rights. Compliance with the common law duty should result in compliance also with the requirements of article 5(4) in relation to procedural fairness.

xiii) A breach of the requirements of procedural fairness under article 5(4) will not normally result in an award of damages under section 8 of the Human Rights Act unless the prisoner has suffered a consequent deprivation of liberty.

16. The Supreme Court, in dealing with the case of Mr Booth, who was serving a life sentence for attempted murder and had a history of psychiatric illness, and who was post tariff, said this at [99]:

“The points put forward in support of his so-called “appeal” raised significant issues on which the input of his psychiatrist might have been helpful and which merited the depth of consideration which only an oral hearing could provide. In that regard, it is relevant that the appellant had spent so long in custody post-tariff and that the board had been asked to advise on continuing areas of risk that needed to be addressed.”

17. There have been several cases in which the court, applying *Osborn*, has quashed as unfair a refusal by the board to hold an oral hearing, where mental health issues of the prisoner were relevant, including *R(Bennett) v Parole Board [2019] EWHC 2746 (Admin)* and *R (Lawrence) v Parole Board [2020] EWHC 3774 (Admin)*. In the latter case, Stacey J at [24] said:

“Where, as here, there may be issues of mental health problems fairness usually requires the grant of an oral hearing (see for example *Hussain v UK [1996] 22 EHRR 1* ). The extent to which the presentation of mental health issues on 16 January 2020 was down to drug abuse is best explored at an oral hearing and are important issues and facts that require clarification. Mr Lawrence's account of what happened that day has not yet been sought.”

18. In *R (Somers) v Parole Board [2023] EWHC 1160 (Admin)*, Forster J said at [55]:

“Put otherwise, a good reason for not holding a hearing should be present when a refusal is made in the case of a post tariff lifer, for whom the issues of insight behaviour and risk (at least) are central to progress, and are almost certainly best examined and understood in the open forum of an oral hearing.”

#### *Discussion and conclusion*

19. In my judgment, as Mr Withers submits, in the present case there are several factors which strongly point to the need for an oral hearing in order to ensure fairness. These include:

i) On his arrest in January 2024 the claimant was assessed as floridly psychotic and sectioned. The police did not interview him because of his mental health issues.

ii) Before his arrest in May 2024 he was receiving home treatment for mental health issues.

iii) The risk management report in May 2024 included a reference by the probation officer that there was likely to have been a level of coercion in relation the drug offences. He does not deny possession, but the issue is intent to supply, which is likely to be informed by his mental health issues and level of coercion.

iv) In July 2024 the panel member indicated that evidence was lacking in respect of the investigation into the drug offences and the claimant's mental health. Referral to a specialist psychiatrist member was directed. It does not appear that this was done, for reasons which remain unclear.

v) As at the date of the refusal, in December 2024, a charging decision had yet to be made, although his first arrest had taken place some 11 months earlier.

vi) The issue of intent, and/or of level of coercion, in relation to the drug offences, may well be informed by psychiatric evidence and/or expertise of the board.

vii) As a post tariff prisoner, the claimant's case was, at the least, deserving of

anxious scrutiny.

20. The claimant's mental health issues do not appear to figure largely in the decision that an oral hearing was unnecessary. There was a brief reference to the fact of his being sectioned, but the focus was very much upon the outstanding investigations. In my judgment, therefore the decision to refuse an oral hearing should be quashed and a declaration granted that that decision was unfair. The board should be directed to hold an oral hearing. The claimant's annual review commenced in June 2025 but it may take some weeks for a decision to be made on that review as to whether to hold an oral hearing. The claimant's trial in relation to the drug offences is now listed in November 2025. His case has recently been referred to the National Crime Agency to ascertain whether he is a victim of modern slavery. That could take months to decide and may jeopardise the trial date.

21. Mr Withers helpfully indicated that he would submit a draft order, which he has now done, and I am content to approve the order.

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