



Neutral Citation Number: [2025] EWHC 2592 (Admin)

Case No: AC-2025-LON-001576

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Friday 10 October 2025

Before:

ELEANOR GREY KC
Sitting as a Deputy Judge of the High Court

Between:

**The King (on the application of MICHAEL
QUILLIGAN)**

Appellant

- and -

THE SECRETARY OF STATE FOR JUSTICE

Respondent

Mr P. Rule KC and Mr D. Henderson (instructed by Albin & Co) for the Appellant

Mr P. Laverack (instructed by the Government Legal Service) for the Respondent

Hearing date: 23.09.25

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Eleanor Grey KC:

Introduction

1. This is an application for judicial review of a decision by the Defendant, the Secretary of State for Justice, to revoke the Claimant's licence and to recall him to prison, and to later maintain that decision when requested to cancel it.
2. The Claimant is a determinate prisoner (i.e. a prisoner with a fixed-term sentence) who is presently serving his sentence in prison. He was due to be released from prison on licence on 15 September 2022, after the 'requisite custodial period' of his sentence had expired; whether as a matter of law that release took place is disputed. It is not disputed that on 14 September 2022, the Claimant was transferred to another prison on an extradition warrant and was then extradited to the Republic of Ireland on 28 September 2022. He was subsequently convicted of offences in the Republic and served time in prison there. After his release, he travelled again to the UK and came to the attention of the Defendant when charged with an offence of being drunk and disorderly on 8 January 2023, as described further below. As a result, on 24 March 2023, the Defendant revoked his licence and recalled him to prison; but by this time the Claimant had returned to Ireland. The Claimant was arrested in the UK almost a year later, on 6 March 2024, and was then returned to custody by the Defendant. In October 2024, the Parole Board considered his case, including the circumstances of his recall and criticised the recall decision. However, the Board also determined that the Claimant was unsafe for release and declined to order his release from detention. After receiving representations from the Claimant, on 17 February 2025 the Secretary of State declined to rescind the recall decision. By a Claim Form issued on 19 May 2025, the Claimant brought these proceedings, challenging the Defendant's decision to revoke his licence and seeking release from prison, as well as damages for unlawful imprisonment. The application is resisted by the Defendant, who says that the recall decision was a lawful one and, in any event, the subsequent decision of the Parole Board demonstrates that the proper and lawful place for the Claimant is in prison.
3. Permission to apply for judicial review was granted by Aiden Eardley KC, sitting as a Deputy Judge of the High Court, by Order of 14 July 2025. The judge also granted the necessary extension of time to challenge the recall decision of March 2023, given the delay in applying to review this. The case was expedited.
4. The challenge is brought on four grounds. In summary, and in the order in which they have been argued before me, they are:
 - a. Ground 4: That the decision to recall the Claimant in March 2023 was unlawful;
 - b. Grounds 1 and 2: That the refusal to rescind the recall decision, made after the Parole Board had considered the Claimant's case, was unlawful and irrational;

- c. Ground 3: That in any event, the reasons given by the Defendant for refusing to cancel the recall decision were inadequate.
5. In addition, the parties are not agreed on the relief that would flow from any finding of unlawfulness, with the Defendant arguing (broadly) that any relief should be limited to declarations, given the Parole Board's decision not to order release.
6. The Claimant relies on his own witness statement, supplemented by a bundle of documents. The Defendant has filed two witness statements from Ms Nina Shuttlewood of the Defendant's Public Protection Casework Section, together with exhibits. The first statement is dated 11 August 2025 and the second is dated 9 September 2025. The Claimant objects to the admission of the second statement given its date of service, but the parties have agreed that I may have regard to its contents 'de bene esse'. It seems to me that the evidence should be admitted; that it came after the deadline for the filing of the Defendant's evidence is excusable given that this case was expedited and there has been enough time to enable the Claimant to respond, if necessary. In the event, it is the primary documents exhibited by Ms Shuttlewood that I have derived the most assistance from.

The factual background.

7. Much of the factual background is not in dispute; I have highlighted any issues of controversy below.
8. The Claimant is an Irish national, currently detained by the Defendant at HMP Lowdham Grange.
9. On 4 May 2020, the Claimant, who was 32 at the time, was sentenced to 5 years and 4 months' imprisonment for robbery, with shorter concurrent sentences for other offences including further robberies and burglary. All the offences had been committed on 13 January 2020. This was his first experience of imprisonment within the UK prison system, or its system of release on licence; it has also been explained to the Court that there is no equivalent system of supervision following release in Ireland.
10. According to the copy of the draft or unsigned licence in the bundle, the Claimant's sentence was to have expired on 16 May 2025 (a date derived from his sentence length, less time already served on remand). The Claimant's period of custody was to end on 15 September 2022; this was his Conditional Release Date, being the half-way point of his determinate sentence.
11. Again according to the documentary evidence before the Court (and as explained in the witness statements of Ms Shuttlewood) shortly before that date, on 26 August 2022, a Prison Offender Manager, as well as the Claimant's Community Offender Manager from the Probation Service, spoke to the Claimant by 'phone. On the previous day (according to notes on the Defendant's case management system), the Claimant had been told that he was "*no longer being extradited*" and that a telephone conference call had been arranged with his Community Offender Manager "*regarding his release, sentence plan and any loose ends*". So the context of the telephone discussion was a plan to release the Claimant from custody in the UK.

12. The file note of the telephone conversation demonstrates that there was a general discussion of licence conditions (including conditions to be imposed to address drugs and alcohol use) with the Claimant. The officers attending *“Went through licence conditions and reporting instructions.”* On this topic, the Claimant’s witness evidence is that there *“... is said to be a note of a telephone conversation between myself and a Probation Officer called Yasmin King and a prison offender manager called Danny Worster. I cannot remember this event. I cannot recall any of the conversation recorded there.”* He did not think that any meetings with Probation Service officers took place, but notes that it was a very confusing time, with some incorrect information being given to him at the time (e.g. that he was not to be extradited to Ireland). When he was extradited, he thought that he would have no responsibilities or relationship with the English Probation Service, and he was never shown a licence. The Claimant’s lack of recollection of the conversation on 26 August 2022 is not, of course, a denial that it took place and I accept the accuracy of the file note.
13. On 14 September 2022, the Claimant was transferred to HMP Wandsworth under an extradition warrant issued by the Westminster Magistrates’ Court on 9 September 2022; he was wanted by the Irish authorities in connection with an allegation of violent disorder in Limerick in December 2019. He was therefore not automatically released from custody on his Conditional Release Date, as the Defendant’s witness statement notes.
14. It is the Defendant’s case that on 15 September 2022, the Claimant’s licence nevertheless came into effect and was effective until the point of extradition (28 September). There is a copy of the licence relied on by the Defendant in the Bundle. It has not been signed or dated by either the Defendant’s representatives or by the Claimant and there is no evidence that it was ever shown to the Claimant before his extradition to Ireland, or that any discussion of the licence system in the UK took place after the conversation on 26 August 2022. The licence contained standard conditions, including:
- 5(i): to *“Be of good behaviour and not behave in a way which undermines the purpose of the licence period”*,
 - 5(ii): *“Not to commit any offence”*;
 - 5(iii): to *“Keep in touch with the supervising officer in accordance with instructions given by the supervising officer”*, and
 - 5(vii) *“Not to travel outside the United Kingdom, the Channel Islands or the Isle of Man except with the prior permission of the supervising officer or for the purposes of immigration deportation or removal”*.
 - Condition 3 also required the Claimant upon release to *“report without delay”* to the Duty Officer at Enfield Probation Office.
15. On 28 September 2022, the Claimant was extradited to Ireland to face various charges which resulted in convictions for two counts of assault (for which he was sentenced to 1 year consecutive, and 18 months suspended and concurrent); and violent disorder (6 months concurrent) and no insurance (5 months imprisonment). The effect of s59(2) of the Extradition Act 2003 is that the time remaining on his UK sentence was ‘paused’ on extradition, thus extending the Sentence Expiry Date. Furthermore, under s59(6)(a), if a “person [is] released on licence at the time of extradition”, his licence is “suspended until the person’s return”. Whether or not the Claimant was “a person released on

licence” at the material time of extradition is disputed by the Claimant and I return to this issue below, but the Defendant says that this is what had occurred and took decisions on that basis.

16. Prior to or during early January 2023, the Claimant was released from prison in the Republic of Ireland. In early January 2023, unknown to the Defendant at the time, the Claimant re-entered the UK. The Defendant’s case is that he automatically became subject to his licence conditions on his entry to the UK.
17. On 8 January 2023, the Claimant was arrested for being drunk and disorderly. According to his evidence, he was released without charge and returned to Ireland the next day. However, charges were brought, since by 23 February 2023 the Claimant was due to attend the Manchester City Magistrates’ Court to answer allegations of being drunk and disorderly in a public place. The offence is non-imprisonable but may be punishable by a fine. He did not attend, but the offence was withdrawn. It is now apparent that the reason it was withdrawn was because the Court considered that “*the Defendant has been extradited.*” This appears from a document from the Manchester City Magistrates’ Court which was supplied to the Defendant on 6 August 2025, in the course of gathering and clarifying the evidence in this application for judicial review (see the second statement of Ms Shuttlewood, which exhibits it; the same information was, however, provided in a report from the Greater Manchester Police to the Parole Board in 2024).
18. On 9 June 2023, the Claimant pleaded guilty in the Limerick Circuit Court to an offence of violent disorder committed on 8 February 2023, and was sentenced to six months’ imprisonment (effective from 7 March 2023). On 27 July 2023, he pleaded guilty to a further offence of violent disorder. The following day, a sentence of two years and six months’ imprisonment was imposed, with the final 18 months to be suspended. He was however released from prison in Ireland by early 2024, on temporary release conditions.
19. Returning to events in February 2023 in the UK, on 14 February 2023 and then again on 23 February, the Probation Service was notified that the Claimant was due to appear in the Manchester City Magistrates’ Court. This led to consideration of whether the licence should be revoked. Key internal emails from the Probation Service include:

On 23 March 2023:

“I have requested the information regarding his extradition. However, it appears that he is clearly back in the UK. Extradition is not deportation so we do not terminate the case in these instances. He needs to be managed /the event stay live until LED [Licence Expiry Date]. If you have no means to contact him / re-engage him then you would be looking at recall. I’ll get back to you when I get confirmation of what he was extradited for. It would seem though that either he served the sentence in Ireland or was found not guilty ...”

20. I pause to say that the reference to extradition and deportation reflects the fact that, prior to receiving notice of the Claimant’s return to the UK, there had been some confusion about the terms of his removal from the UK in 2022, with a belief that he had been deported (which would mean that the licence should be terminated). At the email above shows, this misunderstanding was corrected on 23 March 2023.

21. Emails on 23 March continued:

"I presume I will need to recall this man....

Information for Shirley [Head of Service, Enfield & Haringey Probation]

Extradited from prison on day of release to Ireland.

No communication since then regarding a return to the UK.

I was contacted by a court in Manchester on 23/3 when he was appearing for a drunk and disorderly charge - they thought he was on [Post-Sentence Supervision] and the charges were not proceeded with, he should have been recalled at that point.

I followed up to ascertain if he was in the country / confirmed extradition and it has taken until the [email set out above] to understand how to manage the case.

Recall based on risk being unmanageable / no contact with probation."

22. On that day, a request to authorise recall was made to the Head of Service, Enfield and Haringey, and immediately approved.
23. The following day, the Probation Service submitted a recall request to the Defendant's Public Protection Casework Section ("PPCS"). Ms Shuttlewood explains in her first statement, para 10, that *"Once the Probation Service has initiated the process by making a recommendation for recall in a Part A report, PPCS, on behalf of the Defendant, reviews the information in the Part A report and decides whether there are sufficient grounds to recall the offender to custody and the type of recall appropriate."* On 24 March 2023, the Part A was received by PPCS and reviewed by a Case Manager. The same day, PPCS took the decision, on behalf of the Defendant, to revoke the Claimant's licence, meaning that he again became liable to be detained in prison to continue serving his determinate sentence. This is the first decision under challenge.
24. The 'Secretary of State's Reasons for Licence Revocation' states:

"You have been recalled to prison because the Secretary of State is satisfied you have breached the following condition of your licence:

5. i. be of good behaviour and not behave in a way which undermines the purpose of the licence period;

5.iii. keep in touch with the supervising officer in accordance with instructions given 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."

25. The Part A Recall Report had referred to breaches of conditions 5(i), 5(ii) and (iii), an inability to contact the Claimant and his being unmanageable in the community (Boxes 17(a) and 19). As for the Claimant's offending history, at the time he had 25 convictions for 92 offences in the UK and the Republic of Ireland spanning from 2005 to 2022.

26. As set out above, the Claimant had by July 2023 been convicted of further offences in Ireland and was serving a sentence of imprisonment there. On 8 February 2024, the Claimant was approved for temporary release by the authorities in the Republic of Ireland, on conditions which (according to the information before the Parole Board in October 2024) were subsequently breached, meaning that he was regarded as being unlawfully at large.
27. The Claimant returned to the UK on 6 March 2024. He was arrested on that date by the police, and returned to prison pursuant to the Defendant's decision to recall him.
28. At this stage, the Claimant did not make representations to the Defendant about the circumstances of his recall. Instead, his case was automatically referred to the Parole Board by the Defendant. The Parole Board considered the circumstances of his recall and continuing detention in a hearing held on 31 October 2024. By a decision issued on 9 December 2024, it declined to order the Claimant's release from detention. It did, however, consider the circumstances of the Claimant's recall to prison at length, to decide whether that decision had been "appropriate" (it was not charged with assessing whether or not it had been lawful, which is a matter for this Court). On the basis of the evidence heard and put before it, the Board accepted that the Claimant had never been informed that he was on supervision, or what being on licence meant, before being extradited from the UK in September 2022. *"It is of great concern that probation records have no contact with or regarding Mr Quilligan prior to or after his extradition to ROI"*. It heard from the Claimant on the circumstances of his arrest in January 2023 and concluded that the case must have been *"evidentially weak"* as it was not proceeded with and there was nothing to contradict the *"exculpatory"* account of events which the Claimant gave. The Board found that he was not in breach of any licence conditions, when the decision to recall was made by the Defendant. Nor could it have been reasonably concluded that there was a breach, or that recall was necessary. As a result, the decision to recall was not appropriate. However, having regard to the risk posed by the Claimant (specifically, after his Sentence Expiry Date in April 2026, when he would no longer be subject to conditions and supervision on licence) his risk of harm would not be manageable in the community, and the Board did not direct his release from prison.
29. In a letter dated 16 January 2025, the Claimant's legal representatives asked the Defendant to rescind the recall and to release the Claimant, given the Parole Board's findings on the decision to recall. In a short email by way of response sent on 17 February 2025, the stance that the *"recall is appropriate"* was maintained and the Defendant declined to rescind the decision. This is the second decision under challenge.
30. Thereafter, this application for judicial review was brought.
31. According to the second statement from Ms Shuttlewood, the Claimant's Sentence and Licence Expiry Date is now calculated to be 31 July 2026. (It was said to be 28 April 2026 in the Parole Board papers but the difference is not material in these proceedings).

Legal Background – Statutory Provisions

32. The power to recall an offender who has been released on licence is provided by section 254 of the Criminal Justice Act 2003 ("the Act"). The Claimant, as a person serving a sentence of imprisonment for a determinate term, is a fixed-term prisoner within the meaning of section 237(1). Under section 244(1), upon the claimant having served the

requisite custodial period, *"It is the duty of the Secretary of State to release him on licence under this section."* Section 249(1) provides that upon release on licence: *"the licence shall, subject to any revocation under section 254 or 255, remain in force for the remainder of his sentence."*

33. Section 250 deals with licence conditions, providing for a number of standard terms which must be included, and enabling the Secretary of State to add further ones, if so advised. Standard conditions of licence are set out in Article 3 of the Criminal Justice (Sentencing) (Licence Conditions) Order 2015, which reads in part:

"(1) The conditions in paragraph (2) are the standard conditions that must be included in an offender's licence in accordance with section 250(4)(a) of the Act, whether or not any standard conditions in articles 4 to 6 are also included.

(2) An offender must—

- (a) be of good behaviour and not behave in a way which undermines the purpose of the licence period;*
- (b) not commit any offence;*
- (c) keep in touch with the supervising officer in accordance with instructions given by the supervising officer."*

34. The power to recall a prisoner on licence is dealt with in section 254, "Recall of prisoners while on licence", which provides:

"(1) The Secretary of State may, in the case of any prisoner who has been released on licence under this Chapter, revoke his licence and recall him to prison.

(2) A person recalled to prison under subsection (1)—

- (a) may make representations in writing with respect to his recall, and*
- (b) on his return to prison, must be informed of the reasons for his recall and of his right to make representations.*

(2A) The Secretary of State, after considering any representations under subsection (2)(a) or any other matters, may cancel a revocation under this section.

(2B) The Secretary of State may cancel a revocation under subsection (2A) only if satisfied that the person recalled has complied with all the conditions specified in the licence.

(2C) Where the revocation of a person's licence is cancelled under subsection (2A), the person is to be treated as if the recall under subsection (1) had not happened.

(3)

(4)

(5)

(6) On the revocation of the licence of any person under this section, he shall be liable to be detained in pursuance of his sentence and, if at large, is to be treated as being unlawfully at large."

35. Thus this section establishes not only the power of recall, but provides for a right to reasons and to make representations, and gives the Secretary of State a discretion to cancel a revocation after considering representations, subject to the conditions in s254(2B).

36. Section 255C(4) establishes a duty on the Secretary of State to refer the case of a recalled prisoner to the Parole Board for review by the Board.
37. Under s.59 of the Extradition Act 2003, the extradition of a prisoner has the effect of pausing the time remaining on his sentence until he returns to the UK:

“59 Return of person to serve remainder of sentence

(6) In a case where the person is entitled to be released from detention on licence pursuant to the sentence—

(a) if the person was released on licence at the time of extradition, the licence is suspended until the person's return;”

Legal Background – Caselaw

38. 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].
39. Prisoners on licence can lawfully be recalled for breach of a licence condition only if two criteria are met: see *R(Calder) v SSJ* [2015] EWCA Civ 1050 at [23], approving *R (Jorgensen) v Secretary of State for Justice* [2011] EWHC 977 at [14]). The two-stage test was summarised by Dinah Rose QC, sitting as a Deputy Judge of the High Court, at [30] of *R (Goldsworthy) v SSJ* [2017] EWHC 2822 (Admin):

“The Claimant could lawfully be recalled only if (1) there were reasonable grounds for concluding that there was a breach of his licence conditions, and, (2) in all the circumstances, his recall was necessary for the protection of the public, because of the dangers posed by the prisoner when out on licence.”

40. In *R (Jorgensen) v Secretary of State for Justice* [2011] EWHC 977, Mr Justice Silber summarised the position thus:

“[25] So I consider that the legal position is that when faced with a challenge to a decision to recall a prisoner because of the risk to the public for breach of a condition of his or her licence, the court should consider:-

i) Whether there is *“evidence upon which he could reasonably conclude that there had been a breach”*: **R (Gulliver) v Parole Board** [2007] EWCA 431 Civ 1386, [5] (Sir Anthony Clarke MR). Put slightly differently, the question *“is whether the Secretary of State could reasonably have believed on the material available to him that the claimant had not conducted himself by reference to “the standard of good behaviour”*: **R (McDonagh) v Secretary of State for Justice** [2010] EWHC 369 (Admin), [28] (Judge Pelling QC). If the Secretary of State cannot satisfy that test, the recall is unlawful but if he or she can, it is necessary to progress to the next questions;

ii) Whether there is the absence of any fault on the part of the prisoner so as not to justify recall (**R (Benson) v Secretary of State for Justice**

(supra)) because if there is not any fault, this will probably be a crucial or at least a very material consideration militating against justifying recall;

iii) Whether the decision to recall the prisoner can be justified on the basis that it is necessary in order to protect the public because of the dangers posed by the prisoner while out on licence (**R (West) v Parole Board** (supra) and **de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing** (supra));

iv) Whether adequate reasons have been set out to justify that decision so that the prisoner is, in Lord Brown's words in the **South Bucks** case (supra), able "*to understand why the matter was decided as it was and what conclusions were reached on the principal important and controversial issues*", which in this case means able to understand why his recall is justified ..."

41. Mr Rule submits that the first-stage question whether "*the Secretary of State could reasonably have believed on the material available to him that the claimant had [breached a licence condition]*" is not determined merely by a *Wednesbury* test but requires an underlying objective basis in fact. He draws attention to *R(Simpson) v Justice Secretary* [2023] 1 WLR 1505 at [71] where Mrs Justice Heather Williams considered the test under s244ZB(2) of the Criminal Justice Act 2003, which requires that "*the Secretary of State believes on reasonable grounds that the prisoner would, if released, pose a significant risk to members of the public [of specified offences]*..." This is a provision enabling the Secretary of State to refer high-risk offenders to the Parole Board in place of automatic release, so not directly applicable to this case. But the judge considered a submission concerning the language of 'belief on reasonable grounds':

"Counsel did not agree about what this requires. Ms Ailes submits that these words underscore the degree of deference to be accorded to the decision-maker; the Secretary of State does not have to be satisfied of the criteria on a balance of probabilities and in some situations more than one reasonably held view would be possible. Whilst she is correct that the Secretary of State does not have to be satisfied to a civil standard of proof, I do not accept that the "on reasonable grounds" wording does no more than Ms Ailes suggests. The wording is clearly there to add something to the rationality limitation that would apply in any event. This is not surprising given the context; whereby the Secretary of State is making a decision that will alter the basis upon which the prisoner in question is serving their sentence of imprisonment. **In my judgment this phrase introduces an objective requirement for there to be an identifiable supporting basis for each of the requisite elements of the Secretary of State's belief.**" (bold added).

42. I decline the invitation to add any further gloss to the language used by Sir Anthony Clarke MR in *R (Gulliver) v Parole Board* (see above: "*evidence upon which he could*

reasonably conclude that there had been a breach”). This is partly due to the authority of the above statement. Furthermore, it seems to me that some care needs to be taken in applying the need for an “*identifiable supporting basis*” in the context of a decision to recall, where decisions – in contrast to those made under s244ZB(2) – may need to be made at speed. All that said, a duty to establish facts “with reasonable accuracy” has been accepted. See the observations on the extent of the investigatory duties of the Secretary of State in this context, as summarised in the recent decision of *R(Nguyen) v Secretary of State for Justice* [2025] EWHC 2024 (Admin) by Deputy High Court Judge Vikram Sachdeva KC (judge’s underlining retained):

“[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].”

The Grounds of Challenge

43. The parties have addressed these in chronological order and I do the same.

Ground 4 – Unlawfulness of the Recall Decision

44. The Claimant’s case is that the Defendant must prove that (1) the Claimant was on licence and subject to licence conditions at the time of recall; and (2) in light of that his licence revocation and recall was justified, for breach of those conditions. His case under this Ground thus involves a number of sub-issues:
- a. Was the Claimant ever ‘released on licence’ – the Claimant says that he was not;
 - b. Is it permissible to revoke a licence for reasons other than breach of conditions, or is the two-stage test laid out in *Calder* the sole means of assessing the legality of a recall decision – the Defendant says not, and that recall may take place for broader reasons of public protection;

- c. What in fact were the reasons for the recall decision and may the Defendant rely on reasons other than the breaches of condition 5(i) and 5(iii) that were specified in the Decision Notice?
- d. Was the decision that there had been breaches of conditions 5(i) and 5(iii), coupled with any further matters that the Defendant may rely on, a proper and sufficient justification for recall?

Release on Licence.

- 45. The Claimant's case is that not only was no licence given to the Claimant, but (a) no release ever occurred, relying here on the Defendant's witness statement ("*.. the Claimant was not automatically released at his CRD. Instead, .. he was moved from HMP Swaleside to HMP Wandsworth on 14 September 2022...*"); (b) no licence was ever signed for the Defendant; (c) no date of licence exists; and (d) the Claimant was not told he would be on licence in the UK if not released in the UK. It is said that it would be a fiction to invent (i) a non-existent UK release, plus (ii) a fictional licence document by operation of law despite no such document having been signed into effect, and (iii) its conditions. In short, no licence exists, and there were no conditions to be breached.
- 46. The Defendant responds that, first, this is not one of the Claimant's Grounds and was raised for the first time in his Skeleton argument (dated 2 September 2025). Mr Laverack points to paragraph 55 of the Claimant's Statement of Facts and Grounds, where in the context the challenge to the refusal to revoke the recall (Ground 1) it was said "*First, because it is no part of the Claimant's case that he was not "on licence" as a matter of law at the relevant time ...*" Consistently with paragraph 55, this point was not taken when Ground 4 (the challenge to the initial recall decision) was outlined in the Grounds (paragraphs 66 – 70). Mr Laverack suggested that not only had there been no permission granted to take this point, but the Defendant might have wished to file further evidence on the issue.
- 47. I did not understand Mr Rule KC to dispute that the point had not been set out in the Claimant's Grounds, but he pointed out that there had been no objection taken to the argument in the Defendant's Skeleton and he did not accept that any further evidence would have been of legitimate assistance.
- 48. It seems to me that the Defendant's objection is justified: this issue was not raised by the Grounds and there has been no application to amend them. A formal application would have enabled the Defendant to consider whether further evidence was needed. I am not persuaded that evidence on the normal process(es) of release or their formalities, and recordkeeping in this case would have been irrelevant, not least given the basis on which the Claimant sought to distinguish the case of *R (Keiserie) v Secretary of State for Justice* [2019] EWHC 2252 (Admin), which the parties agree is the most relevant authority on this issue.
- 49. However, I have not disposed of the issue on the basis of the status of the pleadings as I am also not persuaded that the argument has merit.
- 50. In *R(Keiserie)*, HHJ Keyser QC considered an argument that an offender who had been detained in hospital prior to the expiry of his custodial release date was not subject to a licence. In that case, "*On 17 October 2018, the claimant was formally released from custody under [s244(1) Criminal Justice Act 2003]. At that date, however, he was being*

held at Hellesdon Hospital, and upon his release from custody he remained in hospital.” (judgment, para 5). He had already been informed that he would continue to be detained in hospital under a notional hospital order (making his discharge a matter for the treating clinicians). He was not given a copy of any licence or told of its provisions (although a licence had been drawn up by the Prison Service). In proceedings triggered by the claimant’s absconding from hospital, HHJ Keyser considered whether there was nevertheless a licence and held:

“Mr Rule treats the closing words of section 244(1) (“the duty of the Secretary of State to release him [the is the fixed-term prisoner] on licence under this section”) as imposing two distinct duties on the Secretary of State, the one to release the prisoner and the other to issue a licence. That disjunction seems to me be contrary to the scheme intended by the Act and by the provisions relating to conditions and the purpose of conditions in licences and recall. In my judgment, it is not a case of the Secretary of State doing two things—(1) releasing and (2) giving a licence —, as though a release under section 244 might be a release other than on licence if the Secretary of State complied with the first duty (release) but failed to comply with the second duty (licence). Release under section 244 simply is a release on licence. There is no doubt that the scheme for the inclusion both of standard conditions and of additional conditions means that something in the nature of a document is likely to be practical in the great majority of cases and necessary in many. However, the statutory provisions contain no particular requirement for any formality for the existence of the licence.”

And at paragraph 29:

“There is not a release and a licence. There is a release on licence”.

51. In this case, Mr Rule seeks to distinguish these conclusions on the basis that *R(Keiserie)* concerned the (non) issue of a licence to a person who “had been released” (see para 5 of the judgment, above) whereas in this case, the Claimant “had not been released”. In addition to the points outlined at para 45 above, he relies on the statement to this effect in the Defendant’s witness statement, also set out above.
52. This seems to me to place too much weight on language in a statement which is addressing the fact that Mr Quilligan was never discharged from custody. Rather, Mr Laverack submits that in law the authority for his detention passed from the custodial sentence (to 14 September 2022) to the extradition warrant (from 15 September 2022 onwards, until he left the UK on 28 September 2022).
53. I am far from persuaded that the Secretary of State failed to release the Claimant from the detention that was sanctioned by his sentence of imprisonment and must therefore have been in breach of the legal duty under s244(1), which is what the Claimant argues. That would involve, to adapt the language of the Claimant, a fiction: inventing a non-existent, continuing UK detention – i.e., a continuance of the detention that flowed from the sentence of imprisonment, as opposed to one arising from the extradition warrant. Just as in *R(Keiserie)*, the release was notional, as in practice detention continued – but under a different legal basis. If the continued detention had been challenged after 15 September 2022 (by an application for habeas corpus, for example), it would have been met by reliance on the extradition warrant and I do not consider that the absence of any

obvious formality attending the initial release from sentence would alter the position in law.

Conclusions – Issue 1

54. Accordingly, the position is not distinguishable from that considered in *Keiserie*, and the Claimant must be deemed to have been released on licence. This is despite the absence of notice to him of that fact, or of the licence's conditions, or any explanation of how the discussion that I accept took place on 26 August 2022 was of continuing relevance, despite the initiation of extradition proceedings.

Breach of Conditions and the *Calder* Test

55. The second limb of the Claimant's argument under Ground 4 involves the proposition that the authority of *R(Calder) v SSJ* [2015] EWCA Civ 1050 at [23] establishes a mandatory two-stage test for a lawful recall to take place, focussing on the need for there to have been a breach of licence conditions. Mr Rule KC argues that the *Calder* test is decisive; any wider power would be arbitrary and give the executive 'carte blanche' to recall, potentially unlinked to the conditions which the ex-prisoner knew that he had to comply with. He draws attention to the focus on breaches of conditions in s254(2B), which he says is consistent with this approach.
56. The Defendant submits that as a matter of law, the two-stage test in *Calder* applies only to cases where the reason for recall is a breach of conditions – here, the concerns were wider. The overarching basis for any return is the protection of the public and a failure of the licence to secure this; this can be the basis for a decision. It would be wrong to fetter the statutory discretion by imposing the requirement that there must be a breach of a licence condition.

Conclusions – Issue 2

57. I accept the Defendant's submission that as a matter of law, there is a power to recall for broader reasons than breach of conditions, in which case the first limb of the *Calder* test is not applicable (although the second must remain).
58. The starting point must be the statutory language of s254, set out at para 34 above. It is a broad and unqualified power, not linked or limited to a breach of conditions. "*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].
59. The Court of Appeal in *R (Gulliver) v Parole Board* [2007] EWCA Civ 1386; [2008] 1 WLR 1116 addressed the issue of whether the Secretary of State could revoke a licence and recall only if there was a breach of licence conditions, or whether he could act for broader policy reasons. Sir Anthony Clarke MR, with whom the other members of the Court agreed, stated that the purpose of recall "is to protect the public against risk" (para 19) and further observed that:

"Section 254(1) does not say that the prisoner must be in breach of his licence conditions before he can be recalled. It could easily have done so if that had been intended. There is, I think, much to be said for the view that the power to recall is not so limited, although it is not necessary to reach a concluded view on that

question in order to decide this appeal because, as I said earlier, it is accepted that the Secretary of State reasonably thought that the claimant was in breach of his licence conditions, and it cannot be said that the recall is unlawful.”

60. That was not a “concluded view”; but it is powerful authority, accepted also in *R(Keiserie)* at paragraph 30: “*the basic position is that the prisoner has been sentenced to a term of imprisonment, from which he is given an early release on licence subject to the Secretary of State's discretion to revoke the licence and recall to prison under section 254(1). In my judgment, in respectful agreement with the obiter dicta at paragraph 21 of R (on the application of Gulliver) v Parole Board [2007] EWCA Civ 1386, [2008] 1 WLR 1116, that provision does not require the existence of a breach and cannot in itself be regarded as penal.*”

61. I also respectfully agree, and would adopt the same approach. I note that it is also consistent with the Defendant’s Policy Framework (see paragraphs 4.3.1 and 4.3.3), although of course that policy could not be relied upon if contrary to the statutory framework and purpose. Para 4.3.1 of the Policy Framework provides:

“4.3.1 COMS/Probation Practitioners must consider recalling an individual where one or more of the following occurs:

- (i) they have breached a specific condition of their licence, or*
- (ii) either the behaviour being exhibited, or their change in circumstances, means that the risk posed is assessed as no longer safely manageable in the community, or*
- (iv) [sic] where contact between the COM/Probation Practitioner and the individual has broken down.”*

62. Paragraph 4.3.3 continues: “*The decision to recall must be based on an individual's behaviour or circumstances presented whilst on licence. This will not necessarily be directly linked to a breach of a specific licence condition.*”

63. In reaching this conclusion on the breadth of the discretion, I acknowledge Mr Rule’s submission that it may be hard to envisage a situation in which the circumstances justify recall but there have been no breaches, given the breadth of the conditions which are included in a licence, including the “good behaviour” condition. Perhaps a ‘change in circumstances’ might qualify. However, that proposition is relevant to the facts in any case, and does not seem to me to justify narrowing the breadth of the statutory language in s254, as a matter of principle.

The reasons for recalling the Claimant

64. The third sub-issue under this Ground is a factual dispute about the breadth of the reasons relied on by the Defendant for recalling the Claimant. The Claimant says whether or not there was a power to recall for reasons other than breaches of licence conditions, in this case the reasons were confined to the breaches of the two conditions specified in the Defendant’s Notice of Recall. Any attempt to rely on wider reasons amounts to mere post-facto rationalisation or the admission of extraneous material and should not be allowed.

65. As I have set out at paragraph 24 above, the “*Secretary of State’s Reasons for Licence Revocation*” refers first to breaches of his licence conditions 5(i) and (iii). It then continued:

“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.”

66. The Claimant’s case is that (i) the recall here was for breach of these two licence conditions, but applying *Calder*; (ii) there was no rational basis on which it could be determined that there had been breaches of condition, and nor (iii) could it be rationally said that recall was necessary for the protection of the public.
67. The Defendant, first, disputes the proposition that the only relevant reasons for recall were the breaches of condition. It is said that the wider points set out in the Recall Report compiled by the Probation Service may also be relied upon, and demonstrates a wider concern to secure the protection of the public. This was material supplied to the Claimant after he was recalled, and compiled by the Probation Service contemporaneously with the recall decision. As the statement from Ms Shuttlewood states (para 10), once the recommendation of recall has been completed, an official of the Public Protection Casework Section (“PPCS”) “*on behalf of the Defendant, reviews the information in the Part A report and decides whether there are sufficient grounds to recall the offender to custody and the type of recall appropriate.*” (see also para 13, which notes that the report is “*used by Case Managers at PPCS in reaching their decision to authorise the recall*”). The fact that the Part A report was relevant to the decision is apparent, the Defendant says, from the concluding words of the Secretary of State’s Reasons for the Licence Revocation (see above), which incorporate reference to the Recall Report. This does not amount to post-decision rationalisation or ‘expansion’ of the true reasons.
68. The opening sentence of the Recall Report reads “*This report forms the basis to request the recall of all types of offenders...*”. The passages relied on by the Defendant in the Report relate to the references to absence of knowledge of the Claimant’s whereabouts, and the statement that “*Probation were not notified of Mr Quilligan returning to the UK and he has not been in contact with probation and there is no means to contact Mr Quilligan. Mr Quilligan’s risk is therefore not manageable in the community.*” At para 22 of the Recall Report, the point is repeated “*... he is out of contact with probation and risk is not manageable.*” The Line Manager endorsed the recommendation “*I am satisfied that alternatives to recall in this case have been considered in this case and in my assessment the risk posed by this offender is no longer manageable in the community.*” The endorsement confirmed that it was considered that “*Alternatives to recall have been fully explored.*” The Defendant submits that this material demonstrates that the licence was revoked not only for breach of conditions but on the basis that (i) the Claimant was not manageable in the community; and (ii) the absence of contact between him and the Probation Service, which are general concerns going to public protection: see paragraph 4.3.1 of the Policy Framework, set out above.
69. The Claimant in turn submits that reliance on the Recall Report is impermissible, as it was compiled by the Probation Service rather than the Defendant, the decision-maker.

That the decision did not simply ‘import’ or adopt the reasons of the Recall Report is apparent from the fact that the recommendations relied on three purported breaches of condition, not two: there was an erroneous reliance on the fact that the Claimant had committed a further offence, which was not a reason accepted or relied on by the Secretary of State.

Conclusions – Issue 3

70. It seems to me that the terms of the Recall Report and the reference to it in the Secretary of State’s short reasons demonstrate that its contents not only form part of the decision-making process, but may be relied upon to show the Secretary of State’s reasoning. The situation seems to me to be broadly analogous to the principle in a planning context, that “*Where a planning decision is taken in line with an officer's report, then there is an assumption that the reasons for that decision are those set out in the report*” (see *Bates v Maldon DC* [2019] 2019] EWCA Civ 1272 at [16(vi)], citing *Palmer v Herefordshire Council* [2016] EWCA Civ 1061 at [7] per Lewison LJ). That approach does not require the prisoner to embark on a hunt for the ‘true’ reasons, given the fact that a dossier including the Recall Report is supplied post release to the offender, and it enables the Secretary of State’s reasons to be brief, rather than repetitious.
71. The fact that the decision-maker may – as happened in this case – depart from the reasons set out in the Recall Report does not alter this analysis. If there are differences of approach (as in the reliance on the breach of two, not three, licence conditions), then plainly that part of the reasons in the recall dossier cannot stand. But that merely underscores the default position, that where there is consistency, the assumption that the Secretary of State agrees with and has accepted the reasons given for recommending recall is, in my view, a reasonable one.
72. In addition, a key aspect of the passages relied upon by Defendant directly concern the assessment of the ‘necessity of recall’, the second limb of *Calder*. It would in my view be artificial to argue that the Secretary of State failed to consider this issue, merely because the reasoning about it was found in the Recall Report rather than in a decision based upon that report. This supports the conclusion that both must be read together to ascertain the reasons for the recall decision.

Rationality of the Decision to Recall

73. The key is rather, in my view, whether the Defendant’s reasons were rational ones, having regard to the statutory purpose (protection of the public) as well as the principles set out at paras 38 - 42 above. In assessing this, I have borne in mind the imperative of assessing those reasons in the light of the information that was available, or should reasonably have been known, at the time the decision was taken, in March 2023. Even accepting, as I do, that the broader concerns set out in the Recall Report (“... *he is out of contact with probation and risk is not manageable*”) were also relevant, still breaches of licence conditions formed a material part of the reasons given by the Secretary of State and must be assessed as part of the legality review by this Court.
74. The first matter relied upon was that the Claimant had breached the condition to ‘be of good behaviour and not to behave in a way that undermines the purpose of the licence period’. The second was a purported breach of the condition to ‘Keep in touch with the supervising officer in accordance with instructions given by the supervising officer’.

75. The Defendant now concedes that this second limb, a breach of Condition 5(iii), cannot be relied upon, given that the Claimant had never received any instructions from a supervising officer. To that extent, it is accepted that the reasoning was defective. But the Defendant says that broader rationale, of recall being necessary to re-establish contact with the Claimant, is still relevant and, considered with the breach of the first condition, properly justified recall.
76. As to the first breach of licence condition relied upon, to ‘be of good behaviour’, the Defendant says that this was breached as a result of the arrest for ‘drunk and disorderly’ conduct in January 2023. There were reasonable grounds to consider that the Claimant had acted in such a manner. The Defendant and Probation Service had been informed of the Magistrates’ Court charge by the Court – a reliable source - and appearance and there was no ‘heavy duty’ to investigate further (see *R (Wilson) v Secretary of State for Justice*, paragraph 42 above). At the date of the decision, the information available was that the charge had not been proceeded with as the Court believed that Mr Quilligan was subject to post-sentence supervision – it was not suggested that the charge was dropped as the evidence was weak (and the Parole Board was wrong to so conclude, later).
77. The Defendant also submits that the Claimant was behaving in a manner “undermining the purpose of the supervision period”, by “going between the Republic of Ireland and the UK and not submitting to his licence while in the UK” (see the Detailed Grounds of Defence at para 44). This is despite the Claimant’s lack of knowledge that he was subject to such conditions, ignorance not being an excuse (*Keiserie*).
78. The Claimant argues that the fact that a charge was brought was not sufficient to ground a recall – instead, enquiries into the underlying circumstances were necessary. Mr Rule KC points out that the offence of being ‘drunk and disorderly’ is a (relatively) minor one which is not punishable by imprisonment but by sanctions such as a fine. In addition, the condition should be read as a whole (“*be of good behaviour and not behave in a way which undermines the purpose of the licence period*”) – a requirement to be of ‘good behaviour’ is too wide and uncertain to be lawful, unless linked to the ‘purpose of the licence period’. Here, there was no such purpose – or, at least, not one known to the Claimant – because he had never been notified that he was on licence following his release from prison in Ireland in 2023. Similarly, he could not rationally have been criticised for failing to ‘submit’ to the licence in the UK when he had never been told he was subject to it.

Conclusions – Limb 1 and Condition 5(i)

79. Despite the absence of details about the underlying facts, I accept that the Defendant’s submission that notification of the fact that charges had been brought against the Claimant was sufficient “*evidence upon which [the Defendant] could reasonably conclude that there had been a breach*” of the ‘good behaviour’ condition, at the material time. I do not accept that, at the stage of recall, there was an obligation to find out more about the underlying facts or the evidence leading to this reasonably straightforward offence, and the fact of the charges implied that there had been an assessment of the evidence by the prosecuting authorities. The Probation Service had also learnt that the reason why the allegation was not proceeded with was due to the belief that the Claimant was subject to supervision (rather than through evidential weakness).

80. Although the Claimant argues that the alleged offence was a minor one, I note that “*excessive alcohol use and illicit drug use acting as disinhibitors*” were factors in the index offences of January 2022, contributing to the risk of serious harm (see the Pre-Sentence Report). So there was a real reason to be concerned about the allegation, and also to decide that such conduct would, in principle, ‘*undermine the purpose of the licence period*’.
81. However, I am not satisfied that there were reasonable grounds to further conclude that the Claimant had been “*undermining the purpose of the supervision order*” because he had been “*going between the Republic of Ireland and the UK and not submitting to his licence while in the UK*”. This is the second limb of 5(i) and which the Defendant continues to rely upon. There are two reasons to be seriously concerned about this conclusion:
- a. There is nothing in the Recall Report which explained to the Secretary of State that there were reasons to suspect – as a minimum – that the Claimant did not know he was subject to supervision on licence, and/or had not been told of this on release from prison in Ireland. The Report does disclose that “*Mr Quilligan was extradited from custody and has had no contact with probation*”, but that falls short of acknowledging the lack of evidence of discussion with the Claimant about continuing licence obligations post extradition, etc, or absence of any request to him to make such contact. That was a material omission, also reflected directly in the decision that Mr Quilligan had breached condition 5(iii) – a decision that the Defendant now concedes cannot be relied upon. As a result, the material that was provided to the decision-maker for this aspect of the decision was not reasonably accurate.
 - b. Second, and linked to this, there was no discussion of the Claimant’s culpability for this potential breach, or the lack of it. *Benson* establishes that the question of whether the breach was culpable should be considered, but it was not. I accept that there was no ‘explanation’ from the Claimant to consider at this stage, but the file showed the unusual circumstances of the Claimant’s release and the lack of evidence that a completed licence had been explained to him.
82. As to the issue of whether ‘ignorance is an excuse’, the Defendant draws a distinction between a breach of condition for a reason which is outside the Claimant’s control (e.g., arriving late back at his approved premises due to being taken ill) and “lack of awareness” of a licence and its conditions. In the second case, the risk to the public remains – and this the key issue.
83. Despite the careful way in which this argument was framed by Mr Laverack, it seems to me that ultimately this is an oversimplification. The question of ‘culpability’ or intentionality remains relevant, even if it is not the only issue. This is not only out of fairness to an offender, but also because the extent of any risk to the public is affected by whether any failure to ‘submit to the licence’ was deliberate or unintentional; it affects the issue of whether and how supervision might be restored.
84. These issues are therefore linked to the second *Calder* condition, the necessity of recall.

Limb 2: The Necessity of Recall

85. The Claimant says that this issue forms the second limb of *Calder* (but that the first limb, breach of conditions, was not satisfied). The Defendant contends that it forms part of a free-standing reason for recall, based on the assessment that the Claimant was “... *out of contact with probation and risk is not manageable*.” The Claimant criticises the Defendant for failing to make any real assessment of potential alternatives to recall and for failing to seek further information about the same.
86. Ultimately, the distinction between these two approaches seems to me to be largely immaterial, at least in this case; they require assessment of the same issues. On either approach, the question of alternatives to recall should have been carefully examined (see the attention to these issues required by the questions in the Recall Report), to assess ‘necessity’.
87. It is true that the Claimant was out of touch with the Probation Service or had never been in touch with it. However, the Claimant submits that inquiries should have been made:
- a. Of his uncle: In the UK, when release in August 2022 had been contemplated, his uncle’s address had been canvassed as the place to which the Claimant would be released. His uncle could have been contacted, to see if the Claimant (who in March 2023 was believed to be in the UK) was living there, or if any other address was available for him;
 - b. Of the police or the Manchester City Magistrates’ Court: to ascertain more about the facts underlying the charge and/or how the proceedings on 23 March had been disposed of – it was not until the Parole Board proceedings that information was obtained showing that the proceedings had been discontinued as the Claimant was thought to have been extradited;
 - c. Of the police and/or prison service in the Republic of Ireland.
88. Given the fact of extradition in summer 2022; that nothing was known about what had happened since; that there was no suggestion that any steps had been taken to bring the fact that he was under licence in the UK to the Claimant’s attention since August 2022; and the impression gained by the Manchester City Magistrates’ Court that the Claimant had been extradited back to Ireland, this last enquiry seems to me to have been particularly relevant.
89. I have reminded myself that:
- a. On the one hand: “*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*”;
 - b. However: “*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*” – and, I would add, complete, since there may be inaccuracy by omission of material information; and
 - c. Whether a fair procedure has been followed by a decision maker is a question for the court;
(see the principles set out in paragraph 42 above).

90. Against that background, I have concluded that the Defendant acted unfairly and unlawfully by failing to initiate enquiries before deciding to recall in March 2023, to explore whether the Claimant could be contacted, and notified of the requirements of the licence – including meeting with his supervising officer – without use of the power of recall. I bear in mind and fully accept the importance of not placing a heavy or unrealistic duty of investigation upon the Defendant and Probation Service. But this was an unusual case, raising the real possibility that the Claimant knew nothing of the licence and had never been asked to comply with any conditions. Furthermore, the circumstances in which he came to the Defendant’s attention in February, although concerning, were not suggestive of an immediate risk to the public (see the delay in ascertaining the appropriate course of action, after the initial information had been received). Those circumstances, however, revealed both a lack of information about the Claimant and his circumstances, and a muddle or mistake evident in the reasons given by the Magistrates’ Court for discontinuance (i.e., post-sentence supervision), which in my view raised questions about what the Court had learnt about the Claimant’s circumstances, including the possibility of a UK address. In those circumstances, I consider that fairness required those investigatory steps to be taken, to assess whether contact was possible, the licence requirements could be discussed with the Claimant, and his intentions explored – all steps going directly to the question of ‘culpability’, risk and ‘necessity’.
91. The Defendant submits that none of these enquiries would have made a difference or revealed anything. Of course, the test is what it might reasonably have been thought enquiries would add (addressed above), rather than what it is now apparent might well have been the results. But looking at what might have been learnt:
- a. I accept that the potential results of any contact with the uncle is unknown.
 - b. As to the second, further checks with the Magistrates’ Court might well have raised a query, at least, about the Claimant’s continued presence in the UK (given the evidence that proceedings had been discontinued as the Claimant had been extradited).
 - c. It now appears that enquiries of the Irish authorities might also have revealed that by 9 March 2023, the Claimant was back in custody in Ireland. This is the inference that I would draw from the certificate of his later conviction and sentence (on 28 July 2023), in which the sentence is expressed to run from that date. Even if that is wrong, it is possible that more information about his situation in the Republic of Ireland could have been forthcoming – since by March 2023 he seems to have been facing charges. In either event, further consideration as to how a UK licence could and should be managed and supervised should have followed.

Conclusions: Ground 4

92. To summarise: I have concluded that:
- a. There was, in March 2023, sufficient evidence upon which the Defendant could reasonably conclude that there had been a breach of the ‘good behaviour’ limb of condition 5(i);
 - b. However, in relation to the second limb of 5(i), the Defendant did not have reasonable grounds for considering that the Claimant had acted so as “undermine the purpose of the supervision order”, given the absence of information about the

Claimant's knowledge of any licence or system of supervision in his particular case;

- c. It is accepted by the Defendant that the view that there had been a breach of condition 5(iii) is no longer defensible;
- d. Whether the issue of the 'necessity' of recall, and the Defendant's underlying view that the Claimant was not manageable on licence (being out of contact) is considered under Limb 2 of *Calder*, or as a free-standing reason for the recall, it was not an issue considered fairly by the Defendant. In the particular and probably unusual circumstances of this case, fairness required that further investigations were undertaken, to see whether there was any real prospect of securing contact with the Claimant, short of recall.

93. For these reasons, I have decided that the decision to recall was unlawful.

94. I record for the sake of completeness that I have reached these conclusions independently of the findings of the Parole Board. That decision records that the Community Offender Manager ("COM") then responsible told the Parole Board that if he had been in post at the time of recall, he would have made enquiries of the police to find out the facts of the allegation and why it was not being pursued. The Board *"agrees that this would have been the only reasonable response of a Probation Officer"* in the circumstances. It also accepted that the COM at the time, in March 2023, should have made further enquiries to consider the question of whether the Claimant had any knowledge of the licence – it being an unusual case in which the Claimant was extradited at the end of the custodial period. But despite its very considerable expertise, it seems to me that it would be wrong for me to place too much reliance on its findings when it heard different evidence (including the Claimant's own account of the drunk and disorderly allegation).

Grounds 1 and 2 – alleged irrationality and error of law in the s.254(2A) cancellation decision - and Ground 3 (reasons).

95. Given my conclusion on Ground 4, I can take these points more swiftly.

96. The power to rescind a recall order is set out at s254(2B) of the 2003 Act. It is common ground that the power may be exercised at all times, including after, rather than before, a review by the Parole Board. The Claimant's case is that, in essence, it was both unlawful and irrational for the Defendant not to rescind the recall in the light of the Parole Board's conclusions. He further argues that the exercise carried out by the Secretary of State should have been focussed on the issue of breach of conditions. It was mandatory for the Secretary of State to consider whether or not conditions had been breached, since the offender may only be released if the Secretary of State concludes that there has been no breach of conditions. Here, as the Parole Board had said that there had been no breaches and recall had not been appropriate, the recall decision should have been rescinded. Further (Ground 3) he argues that the Secretary of State should have given reasons for his refusal to rescind the decision.

97. I prefer to take Ground 3 first. It is accepted that there is no statutory duty to give reasons for the decision not to cancel a recall. However, the Claimant relies on *R(Doody) v Secretary of State for the Home Department* [1994] 1 AC 531 at 564H, where a duty to give reasons for tariff decisions which departed from the judicial view

was implied by the Court for reasons of fairness; fairness requires a similar approach in this case, it is said.

98. In the particular circumstances of this case, I accept that there was a duty on the Defendant to explain why he had not rescinded the recall decision. The Parole Board had made a series of highly material findings after a hearing, including that there had been no breach of licence conditions, and “*nor could it be reasonably concluded that there was a breach, or that recall was necessary*” (para 4.57). It held also that the Claimant could be managed safely on licence (para 4.62). Although it declined to order release, it did so on the basis of risk after the sentence expiry date. Given the direct conflict between the Board’s findings and the Secretary of State’s approach when he made the decision to recall, I find that there was a duty on the Defendant to show that he had considered this material, and what he made of it. The first limb of s254(2B) (absence of breach of conditions) had – on these findings – been satisfied and the information on risk was materially different from that previously available to the Secretary of State, in March 2023.
99. The first statement of Ms Shuttlewood on behalf of the Defendant sets out the Defendant’s policy on use of the power to rescind:

“6.6 Rescind of Recall

“6.6.1. PPCS [Public Protection Casework Section], on behalf of the Secretary of State, has the power to rescind or cancel a recall decision in certain circumstances where the decision was based on erroneous information or the Secretary of State is satisfied that all conditions have been complied with or have been breached in circumstances beyond the control of the individual.

6.6.2 Rescind applications made after an individual’s return to prison custody will only be considered where information is subsequently provided that was not available to the Secretary of State at the time the recall decision was taken.”

100. Ms Shuttlewood explains that “*My predecessor as Head of PPCS was the decision-maker in this instance. He will have reviewed the file and discussed with the Probation Service and seen that the requirements of para 6.6.1 were not met There was no new information relevant to the decision to recall the Claimant which was provided in the request to cancel the recall.*” (para 35). She cannot, thus, attest to the reasons directly (this is not a case in which the Court is later given full reasons). But in any event, the explanation given in this statement fails to address the Parole Board’s conclusions when (for example) it reiterates that the Claimant had breached the ‘good behaviour’ condition, or fails to consider whether ‘circumstances beyond the individual’s control’ played any part in the sequence of events. Given all the matters explored by the Parole Board and its findings and conclusions, I do not consider that it was open to the Defendant’s decision-maker to conclude (as the statement suggests was concluded), that “*the request does not contain any information not already available to the decision-maker at the time of the initial recall*”.
101. In reaching this conclusion about the need for proper reasons (and their absence), it will be apparent that I have based my decision on the facts and circumstances of this case, and in particular the timing and nature of the Parole Board’s decision. It may be unusual for representations to follow a Parole Board decision, rather than to precede it.

This case raises questions which may differ materially from those which arise when representations are made shortly after recall (at which point reasons have, of course, been provided).

102. In the light of this conclusion on Ground 3, I do not need to express a view on the other grounds argued before me (Grounds 1 and 2), challenging the refusal to rescind the recall. Those Grounds raise questions about the Secretary of State's acceptance – or rejection – of the Parole Board's findings and, potentially, whether there is any entitlement to maintain the decision on the same basis as the Parole Board, i.e., risk after the sentence expiry date. If any of these points were to need consideration, it should be done after adequate reasons have been provided.

Relief

103. The proper order in respect of the failings in relation to the decision not to revoke the recall decision (Ground 3) would be a quashing order, requiring the Secretary of State to retake the decision, giving adequate and proper reasons.
104. The parties are at odds on the potential consequences of any finding (and/or declaration) that the initial decision to recall, in March 2023, was unlawful.
105. For the Claimant it is submitted that the consequence should be a quashing order, with the result that the Claimant should – at least absent any further decision-making by the Defendant - be released on licence. He relies on the Divisional Court decision of *Rodgers v (1) the Governors of Brixton Prison (2) the Secretary of State for the Home Department* [2003] EWHC 1923 Admin, where faced with an argument that the unlawfulness of a recall decision should not lead to a quashing order, Lady Justice Hale stated that: “*Although discretionary review is a discretionary remedy, if the Court concludes that the Secretary of State did act outside his powers when recalling the claimant in the way that he did, the court is bound to quash his decision to recall the claimant, with the inevitable effect that the claimant is entitled to be released.*” [18] (Moses J agreeing).
106. The Defendant, noting that the grant of remedies is always discretionary, submits:
- a. First, it would be an abuse of the process of the Court, or of the principle that judicial review is a ‘last resort’, for the Claimant to be granted a quashing order when he failed to take advantage of his right to make representations to the Defendant within 28 days of recall; or to bring judicial review proceedings promptly following recall but before the Parole Board's hearing; and/or judicial review of the Parole Board's decision. He should not now be allowed to ‘knock out the bottom brick’ by challenging the earliest decision;
 - b. Second, it would be wrong to order release when the Parole Board has confirmed risk to the public – it is the Parole Board and not the Court which is the expert on risk. Mr Laverack points to the decision of HHJ Gore in *Calder* (where, obiter at [30] and [33], the Court decided that it would have limited any relief to a declaration of unlawfulness, leaving open any further action in the event that the Secretary of State “*decided to flout a declaration by simply keeping the claimant in prison*” or issued a fresh decision for revocation, with further reasons). Rather,

Gulliver demonstrates that it is for the Parole Board to decide whether detention should be maintained;

- c. Third, s31(2A) of the Senior Courts Act 1981 is relied on, with an invitation to find that it is *“highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.”* At the hearing, it was explained that this submission only related to potential findings on the inadequacy of the Defendant’s reasons – e.g. if the reliance on public protection factors had not been properly explained.

107. I have decided that the proper relief is, however, a quashing order. As to the factors relied on by the Defendant:

- a. The delay from 7 March 2024 was indeed a real one and risked refusal of a grant of permission. However, an extension of time was granted. At the substantive hearing, the issue is whether granting the remedy would be likely to cause substantial hardship to, or would substantially prejudice the rights of any person, or would be detrimental to good administration (Judicial Review Handbook, para 12.9.2.1). None of these factors apply. As might be expected, this approach is consistent with that of the Court of Appeal in *Calder*, which considered the relevance of the Parole Board’s duty to consider the decision on recall as an alternative remedy and concluded: *“In my view the question of the alternative remedy is therefore a question generally for consideration at the permission stage. Once permission is granted, bearing in mind the duty of the court to protect the liberty of the subject and determine for itself issues of liberty, it is unlikely generally to be a factor of material weight at the hearing of the judicial review.”* [50]. That being so, I do not think that it could be said that the application is abusive.
- b. I fully accept that this Court is not the expert on risk, which has been assessed by the Parole Board in declining release. But in my view, the case of *Rodgers v (1) the Governors of Brixton Prison (2) the Secretary of State for the Home Department* nevertheless provides a clear steer towards the making of a quashing order. On risk and protection, I note that Lady Justice Hale continued: *“I would add this. The public is not deprived of protection if the claimant is released now. Firstly, it would be open to the Secretary of State to reconsider his decision to recall. If he did so, he would have to address the right question and he would have to explain himself properly, and the matter would then be subject to challenge before the Parole Board. Secondly, if, on reflection, the Secretary of State does not consider recall a necessary response to the further offending in the light of all the circumstances, the public will still be protected. The claimant will still be on licence. The supervision condition can be re-imposed.”* [32]. It is not for me to express a view on whether reconsideration remains an option, but Mr Rule KC submitted that any release of the Claimant would be on licence. The Parole Board’s view was that the licence system would manage risk to the public until the sentence expiry date, at least.
- a. Finally, there are no grounds on which to hold that it is *“highly likely that the outcome for the applicant would not have been substantially different if the*

conduct complained of had not occurred,” not least in the light of my observations at paragraph 91 above.

Damages for false imprisonment

108. In the event that the recall decision is quashed, the Claimant seeks damages for false imprisonment. The Defendant responds that there is no such entitlement; any further imprisonment on recall is lawful pursuant to the original sentence of imprisonment.

109. This issue was debated before HHJ Gore in *Calder* but not determined. I have been briefly referred to *R(Lumba) v Secretary of State for the Home Department* [2012] 1 AC 245 and mention was made of *R v Governor of Brockhill Prison, ex parte Evans (No. 2)* [1999] 1 WLR 103. However, there appears to be no concluded decision on the issue, and the issues were not properly developed, either on paper or orally. In my view, if this claim is pursued it will require further and fuller argument before determination.

Conclusion

110. I am grateful to all the advocates for their full and careful arguments, and for their further assistance on the order that will follow this judgment.