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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

AN APPLICATION FOR JUDICIAL REVIEW BY EDWARD WATTERS

WEATHERUP J

The Pre Release Unit at Crumlin Road Belfast.

[1] This is an application for judicial review of decisions of the Prison Service on 14 November 2007 to remove the applicant from the pre release unit at Crumlin Road, Belfast to HMP Maghaberry. Ms Askin appeared for the applicant and Dr McGleenan appeared for the respondent.

[2] The applicant is a life sentence prisoner who was first committed to prison in 1979 on a discretionary life sentence for rape. His tariff/minimum term was fixed at 11 years. When the applicant's case came before the Life Sentence Review Commissioners on 9 March 2006 the hearing was adjourned to afford the Prison Service the opportunity to produce a scheme that would move the applicant closer to eventual release. The Prison Service produced such a scheme and by its decision of 11 May 2006 the Life Sentence Review Commissioners stated their intention to review the applicant's case in one year's time "…. to monitor progress and in the meantime Mr Watters will remain in custody because of the danger he currently presents to the public."

[3] The Prison Service scheme for the applicant involved a transfer to the Pre Release Unit at Crumlin Road, Belfast under the terms of a strict supervision plan. Prisoners have either basic, standard or enhanced status and the applicant had attained enhanced status, which was a condition of transfer into the Pre Release Unit. The scheme required Ministerial approval and by submission of 22 May 2006 Governor Cromie of the Life Management

Unit at HMP Maghaberry recommended the applicant's transfer to the Pre Release Unit under the strict supervision plan and to report further in 3 months time on whether to recommend that the applicant move to the next stage which would include unescorted public contact. The recommendation was accepted and the applicant transferred to the Pre Release Unit in June 2006. By further submission of 13 September 2006 Governor Cromie recommended that the applicant should move to unaccompanied contact with the community, subject to monitoring and review arrangements. The applicant's strict supervision plan contained six stages and the applicant completed stage one and proceeded to stage two. Stage three was stated to be subject to satisfactory completion of stage two and multi disciplinary risk assessment. This stage would have involved unaccompanied temporary release. During his time in the PAU the applicant did not proceed to stage three.

[4] The unit at Crumlin Road became known as the Prisoner Assessment Unit (PAU). On 19 October 2007 the applicant was issued with an adverse report which arose because on 16 October 2007 the applicant, for the third time, had posted mail other than through a member of PAU staff. The adverse report did not make any recommendation about removal of the applicant's enhanced status but did state that any further breach of the rule would result in the applicant being placed on adjudication.

[5] On 14 November 2007 the applicant received a second adverse report which arose out of his behaviour at the podiatry clinic in the treatment room at HMP Maghaberry on 12 November 2007 when the applicant was alleged to have engaged in inappropriate conduct towards the nurse. The adverse report stated –

> "As this is your second adverse report your regime level is now reduced to standard and as a result of this you are now being returned to HM Prison Maghaberry.
>
> You have the right to appeal this adverse report through the Preps appeal system."

On 14 November 2007 the applicant was transferred from PAU Belfast to HMP Maghaberry.

[6] By notice dated 19 November 2007 the applicant appealed against the second adverse report and the regime change from enhanced to standard status. There was an exchange of correspondence between the Prison Service and the applicant's solicitors. The applicant was interviewed by a Governor. A meeting of the Lifer Management Unit took place on 30 November 2007 involving Governor Davis, Governor Caulfield and Senior Office Blackshaw to

discuss the applicant's position. The minutes of the meeting record that Governor Davis was satisfied with the rationale behind the adverse report and considered that the decision to return the applicant to HMP Maghaberry was appropriate and he was content that the report affected the applicant's regime level. Governor Davis was to make a final decision on the standing of the adverse report on foot of final submissions from the applicant and his solicitor. The applicant denied any inappropriate conduct. The applicant's solicitor considered that the adverse report lacked particularity. On 10 December 2007 Governor Davis accepted that the adverse report was valid and that the applicant could not be considered for further progression until he regained enhanced level status.

[7] During the time that these events were unfolding the applicant was due to reappear before the Life Sentence Review Commissioners. However because of the above developments and the launch of this application for judicial review the hearing before the Life Sentence Review Commissioners was postponed.

[8] The application for Judicial Review concerns three separate but related matters. The first is the adverse report of 14 November 2007. The second is the reduction in status from enhanced to standard on 14 November 2007. The third is the transfer from PAU Belfast to HMP Maghaberry on 14 November 2007. The applicant raises concerns about the circumstances in which each of the three decisions may be made.

The grounds for Judicial Review.

[9] The applicant's grounds for judicial review on the first matter relating to the adverse report are –

(a) The decision was unfair and contrary to natural justice in that the allegations against the applicant were vague and not properly particularised and so the applicant could not properly put his case or challenge the allegations against him. The applicant had a legitimate expectation that he would be told the specifics of the allegations against him.

(b) The decision was unfair and contrary to natural justice as witnesses named by the complainant were not questioned or asked about the allegations against the applicant. The applicant had a legitimate expectation that any complaint against him would be properly and fairly investigated.

(c) The decision was unfair and contrary to natural justice in that the applicant was not permitted to appear at any hearing of the allegation

and put his case or challenge the case against him. The applicant had a legitimate expectation that he would be able to appear at such a hearing for the purposes of challenging the allegations against him and putting his case.

(d) It was wrongly considered that the applicant's behaviour was directly related to risk issues and that it increased the applicant's level of risk.

(e) The decision failed to consider the opinion of a person qualified to make conclusions in relation to the applicant's risk.

The following additional grounds related to the second matter of the reduction from enhanced to standard status -

(f) The decision to reduce the applicant's regime level was unfair and contrary to natural justice in that the PREPS scheme and its application resulted in the applicant's regime level being automatically reduced once he had received two adverse reports and no discretion was exercised in this regard nor was the applicant permitted to make any representations nor have any hearing in this regard.

(g) The Governor failed to consider other relevant matters such as the applicant's work record, the applicant's behaviour record, the seriousness of the allegation against the applicant, the length of time since the previous adverse report against the applicant, the seriousness of the previous adverse report against the applicant, whether the previous adverse report against the applicant was of a similar nature, the consequences which this decision would have on the applicant.

(h) The Governor failed to consult other members of prison staff and professionals about their views in relation to the change of status of the applicant.

(i) No proper procedure was followed in relation to the decision to reduce the applicant's regime level. The applicant had a legitimate expectation that there would be a proper procedure in relation to such a decision.

(j) The decision to reduce the applicant's regime level did not follow the current PREPS procedure.

The following additional grounds related to the third matter of the removal from the PAU to Maghaberry –

(k) The Governor failed to consult other members of prison staff and professionals about the decision to return the applicant to Maghaberry.

(l) The decision engaged the applicant's Article 8 rights and was disproportionate in all the circumstances.

(m) The decision was unfair and contrary to natural justice and the applicant was not at any stage told that if he had two adverse reports he would be returned to closed conditions at Maghaberry. He had a legitimate expectation that he would be warned about an outcome with such serious consequences

(n) The applicant was not given sufficient reasons for his move to Magheraberry or given adequate opportunity to challenge those reasons and put his own case.

(o) No proper procedures were followed in relation to the decision to return the applicant to closed conditions at Magheraberry. The applicant had a legitimate expectation that there would be a proper procedure in relation to such a decision.

(p) The decision to return the applicant to the PAU did not follow the current PREPS procedure.

[10] It is proposed to consider the grounds under two broad headings. First the issues relating to procedures so as to identify the applicable procedures for adverse reports and reduction of status and removal from the PAU, whether, in the event of two adverse reports, prison staff had any discretion in deciding on reduction in status and removal from the PAU, whether there was compliance with the applicable procedures and whether the applicant had notice of the applicable procedures. Secondly the issues relating to a fair hearing in connection with the decisions on adverse reports, reduction of status and removal from the PAU.

What are the applicable procedures?

[11] Progressive Regimes and Earned Privileges (PREPS) was introduced to prisons in November 2000. There are three levels of regime applied to prisoners, namely basic, standard and enhanced. A prisoner is assessed through a reporting process involving staff report, staff contribution/input form, personnel officer/senior officer report and residential report. Status may be advanced or reduced in the light of reports. In particular there may be regression from enhanced to standard regime. The documents published by the Prison Service do not speak with one voice as to the circumstances in which regression from enhanced to standard status will occur.

[12] In PREPS "Information for Prisoners" it is stated that if a prisoner receives two adverse reports within a three month period recommending that they drop a regime level and the unit manager endorses this the prisoner will be placed on the next lower regime level.

[13] In the PREPS "Staff Policy Document" it is stated that if a prisoner receives two adverse reports within a three month period recommending that they drop a regime level and this is endorsed by the senior officer and a residential report is raised and completed they should then be placed on the next lower regime. It will be noted that rather than endorsement by the unit manager this description involves endorsement by the senior officer and a residential report being raised and completed.

[14] The PREPS "Guidance for Prisoners" states that if the prisoner receives two consecutive reports recommending a drop from the current regime which is endorsed by the senior officer and the unit manager the prisoner will be placed on the lower regime immediately. It will be noted that this refers to two consecutive reports rather than two reports over a three month period and that the report must be endorsed by the senior officer and the unit manager.

[15] Thus the documents produced on this application for judicial review contain three different descriptions of the manner in which there may be regression from enhanced to standard status. In addition there was produced during the hearing of the judicial review, by mistake as it later transpired, a PREPS "Corporate Framework" describing demotion from enhanced to standard status where a prisoner failed to engage fully in activities outlined in their resettlement plan, received two adverse reports in any three month period from any member of staff, failed or refused to take a voluntary drug test or was found guilty of two lesser offences in any 6 month period. While this was initially relied on as representing current policy it transpired that the Corporate Framework was a draft document that had not been adopted.

[16] The respondent's final position was that the operative procedure on regression from enhanced to standard status was set out in the Staff Policy Document requiring two adverse reports within a three month period recommending a drop in regime and endorsed by the senior officer with a residential report being raised and completed.

[17] The above procedures apply to prisoners generally. It is also necessary to identify the additional procedures that apply to those in the PAU. The PREPS "Information for Prisoners" states that "…. all prisoners who fall within the criteria for the Pre Release Unit must be on the enhanced regime level."

[18] On 13 June 2006 the applicant entered a contract for the Pre Release Unit. This contained various co-operation commitments from the applicant and the statement that failure to comply with the commitments would be investigated

and may result in de-selection from the regime in the unit. On 30 November 2006 the applicant entered a further contract with the same commitments. In addition the later contract contained terms and conditions of temporary release which comprised general conditions, seven special temporary release conditions and further conditions relating to periods of temporary release and paid employment. The contract contained the warning that any contravention of the conditions would result in immediate recall to custody and render the applicant liable to a disciplinary charge.

[19] The respondent relies on the Staff Policy Document for the applicable statement of the procedure relating to two adverse reports and reduction from enhanced to standard status and on the PREPS Information for Prisoners for the applicable statement that enhanced status is a requirement for a placement in the PAU so that loss of enhanced status results in a transfer out of the PAU.

Is there discretion to reduce status or transfer out of PAU?

[20] What each of the versions of the procedure applicable to adverse reports and reduction in status has in common is that two adverse reports are the starting point for a reduction in status. The applicant contends that reduction in status after two adverse reports should be a matter of discretion and refers to Matthews Application [2004] NIQB 9 which dealt with the Foyleview Resettlement Unit. As appears from paragraphs [13] to [19] of the judgment, under the discussion of the operation of a blanket policy or the exercise of discretion, the relevant document was a Code of Conduct which stated that two adverse reports "could" result in reduction in status, thus importing a discretion into the exercise.

[21] In the present case the respondent contends that there is no discretion in relation to reduction in status when a prisoner receives two adverse reports. The Staff Policy Document and the Information for Prisoners and the Guidance for Prisoners all proceed on the basis of adverse reports recommending reduction in status and endorsement by a specified officer. However each suggests that it is not merely the adverse report but the recommendation for reduction in regime that must be endorsed by another officer, thus appearing to import a discretion as to whether the adverse report should be accepted and whether the recommendation should be accepted. On the other hand the Corporate Framework, initially relied on by the respondent by mistake, provides that demotion from enhanced status to standard status "will take place" when specified events occur, one of which is that the prisoner receives two adverse reports within three months. Reliance on this document will have affected the approach of prison staff endorsing adverse reports.

[22] With the reduction to standard status came the automatic transfer from the PAU to Maghaberry. As indicated above the PREPS "Information for

Prisoners" states that all prisoners who fall within the criteria for the Pre Release Unit must be on the enhanced regime level. It is implicit that should a prisoner in the Pre Release Unit cease to be on the enhanced regime that they will lose entitlement to remain in the Pre Release Unit. The applicant contends that there is no provision for automatic transfer from the PAU in the event that enhanced status is lost and that it ought to be a matter of discretion in each case. In Matthews Application at paragraph [4] of the judgment it is stated that the applicable conditions made clear that the prisoner must retain enhanced status while he was in Foyleview and should he be reduced in status he would be removed from Foyleview. It is clear that in relation to the Foyleview regime the requirements in relation to status are set out in the criteria for admission to the scheme. In the present case the criteria for admission to the PAU have not been included in the papers. While it may be implicit in the available documentation that there is automatic transfer from the PAU on loss of enhanced status it is clearly desirable that such a consequence should be expressly stated in the information furnished to prisoners.

[23] Nevertheless the applicant contends that there should be a discretion as to a reduction in status and as to transfer from the PAU and that other circumstances should be weighed in the balance in deciding whether to reduce status or transfer from the PAU. Thus it is said that automatic reduction in status and automatic transfer are an unreasonable fettering of discretion. I would be unable to accept this contention if the relevant terms of the policy document stated in express terms the intention that there should be automatic reduction in status following two adverse reports. The policy of the prison authorities in relation to status and placement are essentially matters for the management of the prison. Whether, after two adverse reports, status is to be reduced automatically or by discretion or whether transfer from the PAU is to be automatic or by discretion, are matters on which the prison authorities could reasonably adopt either approach.

[24] In the end the respondent relies on the applicable procedure in relation to adverse reports and reduction in status as being that set out in the Staff Policy Document and in relation to removal from the PAU as being that set out in the Preps – Information for Prisoners. Under those procedures there is automatic reduction in status after two adverse reports appropriately endorsed and consequential automatic removal from the PAU. Additional obligations arise under the pre release unit contracts.

Was there compliance with the applicable procedures?

[25] The description of the procedure on which the respondent relies, as contained in the Staff Policy Document, indicates first, that there should not merely be two adverse reports but that secondly, the two adverse reports

should recommend reduction in regime and thirdly, this should be endorsed by the senior officer and fourthly, that a residential report should be raised and completed. The applicant contends that the applicable procedures were not adhered to in the present case.

[26] Ms Askin for the applicant points out that the first report of 19 October 2007 did not recommend a drop in regime but warned that a further breach of the rule would result in adjudication. It may be that all reports described as adverse reports are to be taken as amounting to a recommendation for a reduction in status but that is not apparent from the papers. Thus there is a question mark over whether the adverse report of 19 October 2007 qualifies as the first of the reports that would lead to regression from enhanced to standard status.

[27] In relation to endorsement of the adverse reports the respondent contends that the first adverse report was endorsed by Senior Officer Blackshaw on 19 October 2007 as his signature appears at the foot of the report. The second adverse report was signed by the reporting officer Governor Caulfield on 14 November 2007 and the respondent contends that that amounts to endorsement of the report for the purposes of the procedure. It appears that it is not only the adverse report as such that is endorsed by the Senior Officer but also that it is the recommendation of a reduction in status.

[28] In relation to residential reports the respondent further contends that the residential reports were raised and completed in the form of the standard handwritten reports on the applicant. The Staff Policy Document certainly suggests that the residential report will be raised and completed in response to the adverse report. The documents relied on by the applicant in the present case would not indicate that this occurred.

[29] Ms Askin for the applicant further contends that the adverse report itself states that the applicant's regime level was reduced to standard. The Staff Policy Document suggests that on the issue of two adverse reports recommending a drop in regime the senior officer would consider whether to endorse the reports and that the relevant residential reports would be raised and completed. The papers in the present case suggest that further to the second adverse report the applicant was treated, without more, as subject to regression in status and removal from PAU.

Did the applicant have notice of the applicable procedures?

[30] Further the applicant contends that he did not have notice of the applicable procedures and was not aware that two adverse reports would effectively result in removal from the PAU. It appears that the Staff Policy Document on which the respondent relies as containing the accurate statement

of the procedural requirements for adverse reports and reduction in status was not circulated to prisoners. However I am satisfied that the PREPS information sheet and the guidance sheet were available to prisoners, although as set out above each has a different description of the applicable procedures. The information and the guidance do explain that two adverse reports recommending reduction in status and duly endorsed will result in reduction in status. One has to look elsewhere to discover the consequences of reduction in status for a prisoner in the PAU, namely that they will be removed from the PAU and returned to the prison regime.

[31] The applicant contends that he was unaware that two adverse reports would result in his removal from the PAU and return to prison until he was informed of this by SO Blackshaw when he received the first adverse report. I am not satisfied that there was sufficient clarity provided to prison staff and to prisoners about the workings of the system of adverse reports and reduction of status and removal from the PAU.

[32] In the course of this application for judicial review it was by no means a straightforward exercise to identify the relevant polices in relation to adverse reports, regression from enhanced to standard status and transfer from the PAU back to Maghaberry. There is no consistent statement of the applicable procedures. There is a confusing array of documents and explanations in the documents. For prisoners and prison staff alike the literature should be clear as to the nature and consequences of adverse reports, the circumstances giving rise to regression of status and of removal from the PAU.

Was there procedural fairness?

[33] The second broad heading for consideration of the applicants grounds for judicial review concern procedural fairness. The applicant contends that the respondent did not comply with the requirements of procedural fairness in relation to the making of the adverse reports and the reduction from enhanced status to standard status and the removal from the PAU.

[34] In general it is a central requirement of procedural fairness that a party has the right to know the case against him and the right to respond to that case. The right to know and to respond requires the disclosure of material facts to the party affected and the statutory context may allow disclosure of the substance of the material facts and may not require the details or the sources of those facts. In the context of prison management and the assessment of the needs of good order and discipline within the prison and the need to protect sources of information there may be necessary limitations on the extent of disclosure of such information to a prisoner. R (Duddy) v. Secretary of State for the Home Department [1994] 1 AC 531 at 560.

[35] The right to know and to respond extends to a prisoner who has been suspended from a pre release scheme. "When he must be informed and whether any of the information on which the decision is based may be withheld from him will depend on the particular circumstances of the individual case" per Kerr J in McDonald's Application [2001] NI QB 10.

[36] The application of the right to know and to respond to the removal of a prisoner from association under rule 32 was considered by the Court of Appeal in Conlon's Application [2002] NIJB 35. It is important to bear in mind the essentially flexible nature of the principles; a decision to remove a prisoner from association may have to be taken and put into effect quickly and it may not be appropriate to enter into a debate about the matter before removal; in some cases it may not be possible to disclose to the prisoner the information on which the decision is based, in which case any uninformed representations which he may make may be of little value; a Governor should at any early stage but not necessarily before removal from association give the prisoner where possible and where necessary sufficient reasons for taking that course and afford him the opportunity to make representations; there is no hard and fast requirement about the form in which the reasons are given to the prisoner; the important thing is that he be given sufficient information to permit him to understand why he was removed. The same considerations apply in the present case.

[37] The application of the right to know and to respond to a prisoner removed from association, where it is not considered appropriate to disclose the details and source of information on which the decision was based, was considered in Henry's Application [2004] NI QB 11. Fairness requires a system of anxious scrutiny of the all relevant information by those charged with making the decision; where there are persons with a supervisory role in relation to the decision (in that case the Board of Visitors and the Secretary of State) they too should have access to all relevant information and subject it to such scrutiny as they consider necessary; the gist of the information relevant to the decision should be disclosed to the prisoner; the details of the information and the sources should be protected to the extent that it was considered necessary in the interests of the informants; while the effects of the decision are continuing there should be on-going assessment of the information and of the risks to informants. The same considerations would apply to removal from the PAU, were it to be the case that the adverse reports were based on information that was judged to be such that the details or sources should not be disclosed.

[38] The applicant contends that fairness required disclosure to the applicant of the particulars that founded the adverse reports; that the information should have been disclosed to the applicant at the earliest opportunity; that there should have been further investigation of the particulars of complaint by the prison authorities; that the applicant should have been afforded a hearing before any decision was made on the adverse report, reduction in status and removal from the PAU.

[39] The particulars of the applicant's behaviour that founded the second adverse report were not disclosed to the applicant prior to his removal from the PAU. There is no procedural impropriety in principle in removal of a prisoner without notice of the grounds, where that is required by considerations of risk that are judged to demand such removal. However the right to know and to respond continues to apply after the event where it cannot be satisfied before the event. Initially the applicant was informed that the second adverse report related to "inappropriate behaviour to a nursing officer on 12 November 2007". Later the particulars of complaint emerged. The applicant lodged an appeal in which he denied any inappropriate conduct. It is not clear exactly when the particulars provided by the complainant were made known to the applicant but they are now known. The applicant complains that the complaint is vague and not sufficiently precise to have enabled a proper response to have been provided on behalf of the applicant. I do not accept that the particulars set out in the complainant's statement are not sufficient for the applicant to provide a proper response. A number of aspects of the applicant's behaviour are referred to in the statement of complaint. The applicant's response has been to the effect that he engaged in no conduct of which any complaint could have been made.

[40] The applicant contends that the prison authorities should have undertaken an investigation of the adverse report by examining the complainant and those who were referred to as having witnessed the conduct in question. A decision maker would have to be satisfied as to the reliability of the material grounding the adverse report. When a prisoner contests the contents of an adverse report, that assessment of reliability may involve examination of the complainant and any witnesses and the decision maker will determine if such examination is required, subject to judicial review. The decision maker in the present case did not consider such examination to be required. I have not been satisfied in the present case that there are any judicial review grounds for setting aside the decision in that regard.

[41] Further the applicant contends that he was entitled to an oral hearing, by which there would be cross examination of those who made or supported any complaint. In the alternative there might be oral representations to the decision maker. The respondent replied to the applicant's request for an oral hearing by stating that the procedure did not admit of oral hearings. The process with which this application is concerned involves administrative arrangements relating to removal from the placement in the pre release unit. This does not involve the requirements of fairness in the context of adjudication hearings when a prisoner is subject to disciplinary proceedings. Nor does it involve the requirements of fairness in the context of recall from release on licence where a prisoner is subject to loss of conditional liberty. Nevertheless the application of procedural fairness to the process may give rise to cases where the opportunity to hear oral representations from the prisoner would be appropriate. The underlying requirement is the prisoner's right to know and the right to

respond. The manner in which the right to know and the right to respond may be achieved will vary from case to case. The right to respond requires the opportunity to make an effective response and there may be cases where that involves oral representations. There should be no blanket rejection of the prospect of oral representations.

Risk assessment.

[42] The second adverse report referred to the applicant's behaviour being directly related to the risk issues in his case. The further assessment by prison staff of the second adverse report included a view on the potential risk from the reported conduct of the applicant. The applicant objects that the prison staff were not qualified to undertake any risk assessment and should not have included any view of risk in their deliberations. The notes of the meeting of the Lifer Management Unit of 30 November 2007 refer to the interviews with staff where the applicant's version was minimised and this was believed to have increased his level of risk and further that the similarities to the index offence meant that the issue needed further investigation. The action points in the notes of meeting indicated that the independent assessment should be expedited as a matter of urgency. A report from a consultant clinical psychologist had been commissioned in any event.

[43] The staff in the Lifer Management Unit are engaged in the assessment of the risk posed by prisoners. The reports from Governor Cromie in the Lifer Management Unit to prison service headquarters on the management of the applicant indicate clearly that the issue of risk is a core consideration in relation to the placement of prisoners. That other professionals contribute to the consideration of risk does not detract from the requirement of those involved in the management of prisoners to make assessments of risk, nor does it detract from their capacity to do so, consistent with and to the extent that their experience permits.

[44] Ultimately the applicant's placement is subject to an assessment of risk. The report of a consultant clinical psychologist was produced on 14 February 2008 based on interviews of the applicant in January 2008 together with access to the documentation related to the applicant's case and consultation with the Senior Officer at the pre release unit. The report concluded that the applicant continued to exhibit factors indicative of high risk of reoffending in the area of sexual and physical violence. The report agreed with previous suggestions that the risk of unaccompanied temporary release was unacceptable.

[45] Since the applicant was removed from the PAU to HMP Maghaberry he has regained his enhanced status. The applicant may become eligible for a return to the PAU subject to a full evaluation of his risk. A further submission to the Minister will be required to authorise the applicant's return to the PAU.

[46] The applicant relied on the right to respect for private life under Article 8 of the European Convention on Human Rights. To the extent that removal from the PAU engages and amounts to an interference with Article 8, by reason of the reduction of privileges previously accorded to the applicant (which is assumed for present purposes but not decided), and requires justification, I am satisfied that Article 8 does not add to the substantive or procedural requirements of the common law discussed above.

[47] As set out above there are a number of shortcomings in the process that applied to the applicant. There is confusion on the part of prisoners and staff as to where the applicable procedures are to be found. There is uncertainty about the detailed requirements of the applicable procedures. There has not been compliance with all aspects of the applicable procedures in the present case. There appears to be a blanket rejection of oral representations. In particular there is no common description of the approach to reduction in status in the Staff Policy Document, the Information for Prisoners and the Guidance for Prisoners; or as to the identity of the officer who should endorse adverse reports; or as to the input of the completion of residential reports; there is lack of clarity as to whether a recommendation for loss of status is an essential ingredient of an adverse report; whether the endorsement by a senior officer is of the adverse report and/or the recommendation and whether there is any discretion on reduction in status.

[48] In light of the shortcomings in the process there are grounds for quashing the decision to transfer the applicant from the PAU. The applicant contends that he should be returned to the PAU for supervised contacts, in accordance with his former placement. The respondent contends that a review of the applicant's placement should be left to the Life Sentence Review Commissioners.

[49] Risk assessment is a central ongoing consideration in relation to the placement of the applicant. For that reason it is not proposed to quash the decisions in relation to the adverse reports and the reduction in status and the transfer of the applicant from the PAU or to interfere with the applicant's current placement. Rather it is proposed to apply section 21 of the Judicature (NI) Act 1978 to remit the decisions to the prison authorities with a direction to reconsider the decisions in the light of this judgment and to take account of the current risk assessment to determine the applicant's placement.