

Neutral Citation No: [2026] NIKB 54

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Ref: ROO13140

ICOS No: 26/78659/01

Delivered: 13/09/2026

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY GARY AND SEAN ANDERSON
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**THE DECISION BY THE PRISON SERVICE OF NORTHERN IRELAND
TO REFUSE TO ALLOW THE APPLICANTS COMPASSIONATE
TEMPORARY RELEASE**

**Mr A Fitzsimmons (instructed by KRW Law) for the Applicants
Ms A Harty (instructed by the Departmental Solicitor's Office) for the Respondent**

ROONEY J

Introduction

[1] The applicants, Gary and Sean Anderson, are brothers. They are sentenced prisoners at HMP Maghaberry and HMP Magilligan respectively.

[2] The applicants' father, Cathal Anderson, died on Friday 11 September 2026. On the same date, both Gary and Sean Anderson brought applications requesting compassionate temporary release ("CTR") to attend the funeral of their father at St Mary's Church, 1 Fanad Drive, Creggan, Londonderry, on Monday 14 September 2026 at 10:00 hrs.

[3] The Prison Service accepted that both applications fell under its "Guidance on the Compassionate Temporary Release Scheme" which is a policy designed to allow prisoners the opportunity to visit members of their immediate family who are critically ill, to attend their funerals, or, in certain circumstances, to visit the graves of immediate family members in lieu of attendance at their funerals.

[4] Paragraphs 1, 2 and 9 of the Guidance provide as follows:

- “1. Compassionate Temporary Release (CTR) is granted under the general provision of Rule 27 of the Prison and Young Offenders Centre Rules (Northern Ireland) 1995, in recognition of prisoners’ rights under Article 8 (Right to Respect for Family and Private Life) of the European Convention on Human Rights (ECHR). *The Prison Service must have a lawful and/or reasonable reason to interfere with these rights and all such interference should be necessary and proportionate.*
2. All inmates and prisoners may apply for CTR. An application can only be considered in the following circumstances:
 - (a) In the case of the death of a member of the inmate’s/prisoner’s immediate family (which must be verified by the decision maker); or
 - (b) In the case of the critical illness of a member of the inmate’s/prisoner’s immediate family....
9. A risk assessment should be completed on each application. *It is vital to ensure that these assessments are soundly based and that they take account of every aspect of the potential risk presented by the prisoner, for example, the ACE score, other recorded violence factors, relevant information on sex offenders including a PPANI assessment, the likelihood of reoffending, the risk to others and other relevant material, ie information held on the Criminal Record Viewer. An area check should also be referred to the PSNI through Security Information Branch in PSHQ.” [emphasis added]*

[5] In a decision signed by the Unit Manager/Governor HMP Maghaberry on 11 September 2026, Gary Anderson’s application for CTR was refused. The decision, which will be considered in more detail below, refers to the applicant’s request to attend at the funeral mass in Derry and not the crematorium in Letterkenny, Co Donegal.

[6] In a decision dated 12 September 2026, the Duty Governor, HMP Magilligan, refused Sean Anderson's application for CTR. The basis for the decision will also be considered below.

[7] In reaching their decisions, both decision-makers recognised the rights of the applicants pursuant to article 8 of the ECHR. In his decision, the Duty Governor of HMP Magilligan went further and stated as follows:

"You are serving a lawful prison sentence imposed by a court. When considering any release from such a sentence, NIPS, as a public body, must consider wider article 8 obligations: protection of the rights and freedoms of others, prevention of crime and promotion of public safety. Therefore, all relevant information in your application, as mentioned above, together with relevant factors considered by NIPS, have been taken into consideration and have been weighed in the balance in the decision making process."

[8] The applicants initiated judicial review proceedings seeking leave to challenge the decisions. Due to the urgency of this matter and the fact that the funeral Mass was to take place on Monday 14 September, the court convened an urgent hearing at 2pm on Sunday 13 September. The hearing lasted over two hours.

Decision refusing CTR in respect of Gary Anderson

[9] The decision refusing CTR in respect of Gary Anderson is contained within a five-page document dated 11 September 2026. The relevant factors identified and considered in the decision-making process are detailed as follows.

[10] Firstly, Gary Anderson was committed to HMP Maghaberry on 26 April 2022 and sentenced on 3 June 2022 for murder, with a life tariff of 15 years and a tariff expiry date of 11 August 2034.

[11] Secondly, reference was made to the pre-sentence report which noted the following:

"Mr Anderson went on to advise, after he kicked the victim once, he lifted two knives, as he didn't want them being used, and took them back to his home and left them on the kitchen table. The defendant states he never observed anyone use the knives, nor did he notice any blood at the scene. Mr Anderson was adamant he removed the knives as he just wasn't thinking straight at the time. Mr Anderson states his mother subsequently came down the stairs and a short time later they were

arrested. The defendant confirmed he had not known either of the two males who entered their home that evening and there were no previous grievances between them. The defendant states he realises his actions that night were bad and he could have handled the situation differently. He advised, he should not have left the house, assaulted the victim or lifted the knives and brought them back to the house. He went on to state, he had a lot of regret about what happened as a man lost his life that night."

[12] Thirdly, it is stated that the applicant had been given extensive opportunities to demonstrate his ability to comply with supervision since his return from Magilligan but has consistently failed to do so. No further details are provided, except to state that "this is of serious concern to NIPS." The decision refers to a record of the applicant's adjudications, to include refusing a direction to move landings in Davis House (29.12.2025); damaging his cell window (8.2.2026); concealing in his clothing an unauthorised article, namely an orange capsule (25.4.2026); and destroying the contents of his cell and activating the sprinkler in Davis House (8.7.2026). The decision also specifies that the applicant was placed on Rule 32 on seven occasions, to include three refusals of x-ray body scanner, extreme disruptive behaviour, assault on staff/prisoner and damage to prison property/cell.

[13] As part of the balancing process, the following positive factors are specified;

"You are currently on a standard regime and have remained so since 29 January 2026, this shows a period of civilisation. You have engaged in education since your return to Maghaberry, attending Essential Skills in ICT and Numeracy and have remained adjudication free since the start of July."

[14] In relation to providing a staff escort, whereas this is not precluded, it is provided that the applicant's article 8 rights must be weighed against the article 2 rights of prison staff and, in particular, their safety in the event that they were required to attend the location at a date and time which has been pre-determined. In its balance of the relevant factors, the decision states that the escort requires that the applicant be handcuffed at all times to prison staff and that the Prison Service were concerned about "what reaction in the community your presence either with or without staff could trigger." This also stated that NIPS sought up-to-date advice regarding currently security of prison staff in the area of St Mary's Church, Creggan, and that the PSNI advised that at present the threat level in this area is substantial.

[15] Under the heading "Decision", the following is stated:

“You are serving a lawful prison sentence imposed by a court. When considering any release when subject to a sentence NIPS, as a public body, must consider wider article 8 obligations, protection of the rights and freedoms of others, prevention of crime and promotion of public safety.

Each application for temporary release is considered on a case-by-case basis with the nature of the event, the relationship to you of those involved and all other relevant information in your application with relevant factors considered by the NIPS, have been taken into consideration and had been weighed in the balance in the decision-making process.

Having completed this process, NIPS are not persuaded to exercise their discretion in granting unescorted temporary release on this occasion.

Of particular concern is the very worrying nature and circumstances of your offending behaviour, which is outlined above. Using PBNI's approved ACE assessment tool, you have been assessed as a high likelihood of general offending within the next two years. This review took place on 17.2.2026. Your score increased from 26 (medium likelihood) to 32 which is of concern to NIPS.

NIPS are concerned about your likelihood of reoffending which is heightened by your poor prison record. NIPS have also considered, but are not persuaded, to have staff escort you to the funeral mass. NIPS are concerned about what reaction in the community your presence either with or without staff could trigger.” [Emphasis added]

Legal submissions

[16] Mr Fitzsimmons appeared on behalf of each applicant instructed by KRW Law. He advanced submissions under five headings, namely:

- (a) The relevant legal principles;
- (b) Family background;
- (c) The circumstances surrounding the murder convictions, including the Court of Appeal's judgment at [2025] NICA 15; and

(d)&(e) The personal circumstances in respect of both Gary and Sean Anderson.

[17] Mr Fitzsimons advised at the commencement of the hearing, that if the court was minded to grant CTR, a named prison officer would act as a chaperone for Sean Anderson and would bring him to the funeral service and return him to the prison. The court was later advised that after contact with the duty governor, the named prison officer withdrew his offer. Regarding Gary Anderson, the court was told that the applicant's uncle, Damien Meehan, had prepared an affidavit stating that he would act as his chaperone and that he would be willing to abide by all conditions imposed, to include staying in contact with the prison and to provide an update. The court was told that Mr Meehan had no criminal record and had a good relationship with both applicants.

The legal principles

[18] The relevant legal principles have been summarised by Humphreys J in *Re Matthew Johnston's Application* [2024] NIKB 1:

“[10] It is well-established through a series of cases over the last 10 years or more in this jurisdiction including *Re McGlinchey's Application* [2013] NIQB 5, *Re Smith's Application* [2014] NIQB 50 and *Re Kelly's Application* [2017] NIQB 99 that it is incumbent upon decision-makers in this arena to consider the Convention rights of prisoners and, particularly, the article 8 right to family life, which is not, of course, a fundamental right, it is a right that can be interfered with, but if it is to be interfered with it must be done in a proportionate manner, recognising that there is a legitimate aim and it is in accordance with law.

[11] In this case there is no dispute that the applicant's article 8 rights are engaged. He, in all normal circumstances, would be expected to attend the funeral of his aunt with whom he has said he enjoyed a close relationship. The question is, in the exercise of the discretion by the governor, whether the refusal of temporary release constitutes a disproportionate interference with that article 8 right. The starting point has to be that the decision maker enjoys a margin of appreciation. The courts are not here to substitute their views for those of prison governors who have expertise in this area and who are required by the prison rules and by Parliament to make these decisions. However, the court will scrutinise any interference with Convention rights carefully and will particularly examine whether or not the

balancing exercise that is required to be carried out in any proportionality case has been done so in a lawful fashion.

[12] In order to carry out the balancing exercise it is necessary for a decision-maker to identify the factors which weigh in favour of the grant of temporary release against those factors that weigh against and then make a decision according to each of those factors [giving] such weight as he sees fit. If the decision-maker does that then the court will necessarily afford a margin of appreciation and as counsel have observed will be slow to intervene on *Wednesbury* grounds."

[19] It should be made clear that in accordance with the principles which were affirmed most recently by the Supreme Court in *Svidler v Secretary of State* [2025] UKSC 30, when reviewing the decision of a public authority on proportionality grounds, a court of first instance will determine for itself whether any interference with qualified Convention rights is disproportionate, bearing in mind the relevant margin of appreciation. It will make that assessment independently of any separate challenge on *Wednesbury* irrationality grounds.

The balancing exercise

[20] Applying the relevant legal principles and in consideration of the factors which the decision-maker weighed in favour of and against the grant of compassionate temporary release, Mr Fitzsimmons drew the court's attention to the paragraph in the Duty Governor's decision that stated, "... using PBNI's approved ACE assessment tool, you have been assessed as a high likelihood of general reoffending within the next two years. This review took place on 17 February 2026. Your score increased from 26 (medium likelihood) to 32 which is of concern to NIPS."

[21] Mr Fitzsimmons expressed his concerns in relation to the nature of this assessment and its accuracy. In support of this submission, he referred to paragraph 16 of the decision of the Court of Appeal in *R v Sean Anderson and Gary Anderson* [2025] NICA 15, which states as follows:

"[16] The judge then deals with Gary Anderson's pre-sentence report and representations as follows. He refers to the fact that Gary Anderson was 21 years old at the time of the murder. He was living at 8 Grafton Street with his mother, younger sister and brother. He attended school but left prior to his GCSEs but then achieved some qualifications in maths, English and joinery thereafter. He had a history of anxiety and depression. No history of alcohol or illegal drug use. He clearly realised according

to the pre-sentence report that his actions that night ‘were bad and he could have handled the situation differently.’ The report said that the offence before the court evidences a number of offending related factors, but he has made references of regret regarding his actions and as such he was assessed as presenting a medium likelihood of reoffending, but he has not been assessed to be a significant risk of serious harm.”

[22] The review that took place on 17 February 2026 and the assessment of the scores is not referred to specifically by the decision-maker under the heading “Relevant factors considered by NIPS” in the decision. Plainly, in the overall risk assessment for the purposes of the impugned decision, the outcome of the claimed updated review was given substantial weight by the duty Governor.

[23] Mr Fitzsimmons was sceptical about the contents of the document and requested the court to obtain a copy and consider its relevance, particularly in light of both applicant’s previous clear criminal record and the observations of the Court of Appeal at para [16] of its judgment.

[24] Mr Fitzsimmons also stated that the decision-maker failed to take into account relevant matters, such as he claims, the fact that he passed every drug test and had completed various risk reduction courses.

[25] Ms Harty, counsel on behalf of NIPS, informed the court that, when making a decision on whether or not to grant CTR, the Duty Governor would have access to a file, which would have included the review document. If this document had been taken into account by the Governor and given weight in the risk assessment and/or the proportionality analysis, I considered that disclosure would be necessary in the interests of justice. Accordingly, I directed Ms Harty to make contact with the duty governor to ascertain whether he did have access to the review and also to obtain a copy of the review document. The hearing was adjourned for a short period so that Ms Harty could make the necessary contact with the Duty Governor.

[26] When the hearing recommenced, Ms Harty advised that she needed to be entirely candid with the court and that she had been advised by the Duty Governor that the information containing the increased ACE score came, not from his personal knowledge, but from a colleague. When the Duty Governor checked the system, the score was at sitting at 27 and not at 32 as stated in the decision letter. The decision letter was therefore materially incorrect. The court was also advised that the ACE score on 6 July 2022 was 27. Therefore, as stated by Ms Harty, either the ACE score had not changed since 2022, or the system had not been updated. In any event, it is clear that the refusal decision includes materially incorrect details.

[27] Following further submissions, I gave Ms Harty a further opportunity to consult with the Duty Governor and to provide further details about the conduct of

the review that took place on 17 February 2026 and the role played by the ACE assessment score. It is relevant that Ms Harty also advised the court that, although not included in the decision letter, the applicant had refused two mandatory drug tests in 2024 and 2025. These details were provided in response to Mr Fitzsimmons' assertion that the applicant had passed all drug tests.

[28] When the hearing resumed, Ms Harty advised the court that the Duty Governor had spoken to his colleague who could not recall from where he had obtained the information regarding the ACE assessment which had been referred to in the decision letter and which erroneously stated that the score had increased from 26 (medium likelihood) to 32. Furthermore, the Duty Governor stated that on rechecking the system, he was unable to see any reference to the alleged increase in the ACE assessment. No reference was made to the review which is alleged to have taken place on 17 February 2026 and any corroborating documentation. I expressed my concern.

[29] I have no hesitation in accepting that the Duty Governor and Ms Harty, counsel for NIPS, were candid and open with the court. Accordingly, I invited the Duty Governor to reconsider and to review the decision. This invitation was not accepted. Ms Harty's response was that she had no instruction to concede the application and that the matter should be left in the court's hands.

[30] The result of all of the above is that when refusing the CTR application, the Duty Governor relied upon information about an updated ACE risk assessment score which had been provided to him by a colleague, rather than by securing for himself and reading the assessment document. There is no evidence that an updated review actually took place and the information given to the Duty Governor is now accepted to be both erroneous and materially disadvantageous to the applicant. The Duty Governor clearly took account of this incorrect information when making his own risk assessment and when conducting a proportionality assessment. This is the inevitable and obvious inference which arises from the content of the decision letter. Despite invitation from the court, the Duty Governor has declined to review the assessment of risk and has instead invited the court to make a decision on compassionate temporary release.

Decision

[31] Applying the legal principles as stated above, when carrying out the balancing exercise, it is necessary for the decision maker to identify the factors which weigh in favour and against a grant of compassionate temporary release. Also, as emphasised by Stephens J in *Re McGlinchey's Application* [2013] NIQB 5 at para [19]:

“[19] I turn to consider the legal basis upon which a court could interfere in the decision. The decision-maker has to take into account all relevant matters in arriving at the decision and has to leave out of account any irrelevant

matter. The decision should not be *Wednesbury* unreasonable. These are what are termed the traditional grounds for judicial review. If such a ground is made out the decision would be quashed, but it is most likely that the decision-maker will then be required to reconsider the matter.”

[32] In this case, there is no dispute that the applicant’s article 8 rights are engaged. In normal circumstances, he would be allowed to attend the funeral of his father with whom he has said he enjoyed a close relationship. Article 8 is not a fundamental right; rather, it is a qualified right (see article 8(2)). However, any interference with the right must be done in a proportionate manner, in pursuit of a legitimate aim and in accordance with the law.

[33] The question in this case is whether the refusal of CTR constituted a disproportionate interference with the applicant’s article 8 right, recognising that the decision-maker enjoys a margin of appreciation.

[34] As stated by the English Court of Appeal in *Independent Workers Union of Great Britain v The Mayor of London* [2020] EWCA Civ 1046 at para [38], it is well-established that it is for the court to conduct a critical and thorough evaluation of the evidence in order to decide whether the decision was proportionate.

[35] The objective assessment of the evidence reveals that the Duty Governor, when carrying out the necessary balancing exercise, identified and took into consideration an ACE assessment that was apparently incorrect and could not be verified by any document or entry in NIPS’s system. In his decision, express reference was made to a review which is claimed to have taken place on 17 February 2026, and in which it is also claimed that the applicant’s ACE assessment had increased from 26 (medium likelihood) to 32. Despite requests to see the said review, no document was produced.

[36] The Duty Governor was allowed further time to locate the document and to review his decision. The opportunity to review the decision was not taken up. It is therefore clear that the decision was based upon inaccurate information which was material to the key issue of the potential risks posed by the applicant. The information which was considered was also materially disadvantageous to the applicant. The refusal by the Duty Governor to reconsider the decision in light of the correct risk information gives a further procedural disadvantage which I consider should form part of my overall proportionality assessment. Taking account of all of these factors, in my judgment, the decision to refuse CTR is flawed and constitutes a disproportionate interference with the applicant’s article 8 rights. For the reasons given, the irrelevant and apparently incorrect factors have been taken into consideration in the balancing exercise and, accordingly, it cannot be said that the interference with the applicant’s article 8 right has been carried out lawfully. In addition to the article 8 grounds of challenge, the consideration of incorrect and

irrelevant information and the failure to secure and take account of the correct risk assessment is unlawful on the basis of ordinary public law principles and constitutes *Wednesbury* unreasonableness.

[37] Accordingly, I order that leave to apply for judicial review is granted. Secondly, the decision refusing the applicant CTR will be quashed. Thirdly, in light of the somewhat surprising refusal of the Duty Governor to reconsider the decision and to invite the court to take a decision on release, I consider that the appropriate order is an order of mandamus requiring the applicant to be released from HMP Maghaberry for the sole purpose of attending at his father's funeral mass on Monday 14 September 2026 at 10:00 hrs. In making that order, I recognise the limitations on the role of the court when making specialised assessments of this nature. However, the court has been left with no alternative in light of the circumstances. It is common case that the refusal of the CTR application amounts to an interference with the Article 8 rights of the applicant and the proposed respondent has declined to put before the court updated evidence upon which it might consider the issue of justification. In the absence of updated, reliable and accurate evidence upon which it may assess the lawfulness of the interference, the position is that an unjustified interference with Article 8 rights has been established. The only remaining issue for the court is the question of remedy. Since the proposed respondent has adopted the unusual course of expressly inviting the court to make that assessment for itself, I consider that it is appropriate for the court to take the exceptional course of making an order of mandamus.

[38] I will therefore order that the Governor should allow Applicant's application for CTR, subject to the following conditions:

- (i) The applicant will be released from HMP Maghaberry and brought by NIPS staff to Londonderry Courthouse on or before 09:30 hrs on Monday 14 September 2026.
- (ii) The applicant will be collected at Londonderry Courthouse by his uncle, Damien Meehan, in a Volkswagen Passat vehicle, registration [...].
- (iii) Damien Meehan is to remain with the applicant throughout the period of his release and shall return him to Londonderry Courthouse on or before 11:30 hrs.
- (iv) The applicant must attend the funeral of his father at St Mary's Church, 1 Fanad Drive, Creggan, Derry, and must stay within the confines of the church. After the service, the applicant must return to Damien Meehan's car and thereafter return to Londonderry Court by 11:00 hrs. He is not permitted to go for refreshments or to a bar or café or anywhere else.
- (v) The applicant is not to consume alcohol or any non-prescribed medication.

- (vi) The applicant is not to use any electronic communication device.
- (vii) The applicant must be returned to HMP Maghaberry directly from Londonderry Courthouse.

Sean Anderson

[39] As stated above, the decision to refuse Sean Anderson CTR was made by the Duty Governor, HMP Magilligan, on 12 September 2026. The decision is contained within a seven-page document which I have carefully considered.

[40] The decision clearly sets out the relevant factors considered by the Duty Governor. Firstly, under the heading “Offending”, it is stated that on 9 June 2022, the applicant was sentenced to life with a tariff of seventeen years for murder. The tariff expiry date was specified to be 2 September 2036. In the pre-sentence report dated 11 August 2022, the following is stated:

“On the 4 March 2018 after an incident in his family home in which Mr Anderson was assaulted by the deceased man and another male, Mr Anderson was to go to the kitchen, lift a knife and go outside. Mr Anderson chased the deceased. The deceased had a number of lacerations from knife wounds in both his head and face. A knife wound to the chest region was to penetrate the heart. An autopsy report deemed this injury to be responsible for the death of the victim.

At the court case the judge stated there were 5 aggravating features.

1. This was an attack in which three persons were involved.
2. The deceased had become a vulnerable victim because he had been isolated from his friend and was at that time helpless on the ground.
3. This was a sustained attack which probably occurred in two different locations.
4. There was a use of a weapon, two knives.
5. The number of injuries and the brutality of the injuries demonstrated gratuitous violence in which at least seven stab wounds were inflicted on the deceased.

6. There was, the judge found, on Sean Anderson's part, a minimum level of remorse at best."

[41] Secondly, adopting the PBNI risk assessment, it is stated that the applicant was assessed as a high likelihood of reoffending with an ACE score of 38. Factors supporting this assessment include his age/level of maturity; the applicant's use of alcohol and its links to offending; a lack of coping skills to manage situations of conflict, to include poor self-control; impulsive and risk taking behaviour; a lack of consequential thinking skills; limited victim awareness; mental/emotional health issues; lack of structures and purpose in his life setting and associating with like-minded peers, including a family member.

[42] Thirdly, at a risk management meeting convened on 29 July 2022, the applicant was assessed by the PBNI as meeting the threshold for serious risk of serious harm (SROSH). The relevant factors identified included escalation in offending, breach of court sanctions; general antisocial behaviour; impulsiveness and preparedness to engage in risk taking behaviour; possession and use of a weapon demonstrating the level of recklessness; the repeated use of violence; poor self-control; failing to take personal responsibility and limited insight into his actions; lack of victim empathy and mental/emotional health issues.

[43] Thirdly, it had been noted that the applicant had been subject to nine guilty adjudications since January 2025, events included being abusive to healthcare staff, refusing to attend drug tests and causing damage to prison property. Of particular concern, it is noted that the applicant was found guilty of assaulting another prisoner which highlighted his propensity to violence even within a prison setting.

[44] Furthermore, the applicant has four outstanding charges relating to another drug test refusal, accessing the roof, damage to a sprinkler system within the CSU and smearing excrement on his spy glass.

[45] Since March 2025, the applicant refused to attend five mandatory drug tests. Although he passed one MDT in May 2025, it was concerning that he continued to refuse to attend drug tests.

[46] The applicant was placed on Rule 32 on four occasions since May 2025. On 19 March 2026 he climbed on to the roof of the mental health hub causing extreme disruption to prison routine. He remained on Rule 32 until 16 June 2026. When he returned to House 1, he stated to staff that he could not guarantee the safety of staff and prisoners if he was not removed off the landing. He was subsequently returned to the CSU under Rule 32 and remained there until 15 July 2026. He also refused to attend the Rule 32 case reviews throughout his time in the CSU.

[47] The decision provides again that it is very concerning that the applicant continued to exhibit lack of consequential thinking, impulsiveness, poor self-control

measures, failure to adhere to rules and procedures within a structured and secure environment. It is stated that his continued rule breaking activity and attitude to authority is very concerning.

[48] The applicant's security category is CAT B. The definition of Category B is "Prisoners for whom the very highest conditions of security are not necessary, but for whom escape must be made very difficult."

[49] On the positive side, it is noted that the applicant completed a period of eight months on bail and successfully completed two periods of compassionate bail prior to his conviction. It is noted that his behaviour has improved over the past eight weeks. He attends the gym on a regular basis. The Duty Governor considered the above factors to be positive and supportive of temporary release.

[50] The Duty Governor, at all times, remained cognisant of the applicant's article 8 ECHR rights. However, having identified and taken into consideration the relevant factors, the Duty Governor decided that he was not persuaded to exercise his discretion in granting unescorted temporary release to the applicant on this occasion.

[51] In carrying out the balancing exercise, the Duty Governor stated as follows:

"NIPS are concerned about your high likelihood of reoffending and of presenting a significant risk of serious harm to the public. NIPS are also concerned by your inability to adhere to prison rules and procedures. You continually demonstrate lack of consequential thinking, impulsiveness, and poor self-control. Acts of indiscipline have consistently occurred during your stay in Magilligan.

In considering an escorted temporary release, due to the risk to staff in the locations of the funeral service and burial and the pre-determined nature of funeral arrangements, this is also not possible. NIPS are unable to consider escorted temporary release to the Crematorium in Letterkenny as it is outside the jurisdiction of Northern Ireland.

It is fully recognised and appreciated by NIPS that being unable to attend the funeral of your father will be difficult for you. NIPS acknowledge that these decisions are never easy and have to be weighed up in the balance, as has been done.

As an alternative we can explore the possibility of you viewing the funeral service via a virtual link and offer an additional visit with your family at this difficult time. There are a number of services available that can support you including chaplaincy and the prisoner safety and support team. If you wish to avail of any of these, please speak with your Senior Officer for arrangements to be made.”

Decision in respect of Sean Anderson

[52] In respect of Sean Anderson’s application for CTR, there is no dispute that the applicant’s article 8 rights are engaged. In normal circumstances, he would be expected and permitted to attend the funeral of his father with whom it is said he enjoyed a close relationship. However, as stated above, article 8 ECHR is a qualified right. Therefore, interference with the right to respect for private and family life is permissible if in accordance with law and in pursuit of a legitimate aim.

[53] In this case, the question is whether the decision is proportionate and strikes a fair balance between the competing factors. Focus is directed at proportionality. As stated, this requires an assessment of the balancing exercise NIPS has carried out, paying particular attention to the relevant weight attached to the competing considerations. It must be emphasised that the decision-maker enjoys a margin of appreciation. It is the function of the supervising court to scrutinise any interference with Convention rights carefully and, in particular, examine whether or not the balancing exercise has been carried out in a proportionate and lawful manner.

[54] Having carefully considered the decision of the Duty Governor of HMP Magilligan, in respect of Sean Anderson, I conclude that the decision to refuse CTR constitutes a proportionate interference with the article 8 rights enjoyed by the applicant. The relevant factors were identified, considered and balanced in a proportionate exercise. On the basis of this assessment, the Duty Governor cannot be criticised for reaching a decision that there is a high likelihood of reoffending in respect of the applicant who presents a significant risk of serious harm to the public. The justification for reaching this decision is clearly specified. There is no basis upon which a court could rule that the decision was *Wednesbury* unreasonable or unlawful.

[55] Accordingly, I refuse leave to apply for judicial review. Costs are also refused.