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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY CK FOR JUDICIAL REVIEW

and

IN THE MATTER OF A DECISION BY THE PAROLE COMMISSIONERS FOR NORTHERN IRELAND

MAGUIRE J

Introduction

[1] The applicant in these proceedings is a life sentence prisoner. He is for present purposes known as CK. The respondent is a Panel of Parole Commissioners ("PCs") for Northern Ireland.

[2] In 1988 the applicant was convicted of the murder of a woman. The murder had significant sexual overtones as the victim was also raped. The applicant was subsequently given a tariff of 21 years which expired on 7 October 2008. Over the period of the last 8 years, the applicant's case has come before the Parole Commissioners for consideration with a view to a periodic conclusion being reached about his suitability for release consistently with the statutory test for release found in Article 6 (4) (b) of the Life Sentences (Northern Ireland) Order 2001.

[3] The most recent consideration of his case by the PCs resulted in an oral hearing of his case before three Commissioners on 15 September 2016. In a written decision promulgated by the PCs on 19 September 2016 the Panel indicated that it was not satisfied that it was no longer necessary for the protection of the public from serious harm that the applicant be confined. Accordingly, the Panel directed that he not be released at this time. In short, the risk CK represents, in the eyes of the PCs, remains too high for it to be managed in the community even with robust licence conditions. The PCs made a number of recommendations in relation to the future handling of CK's case and stipulated that it should be referred back to the Commissioners for further review in time for this to be completed not later than

9 months from the completion of the reference to them. It is thus the case that a further review of the applicant's case by the PCs will be carried out in or about June 2017.

[4] Plainly the applicant was disappointed at this 'knock back'. He had high hopes of a different outcome especially as a Single Commissioner had, on 21 July 2016, provisionally directed that he should be released. But such a recommendation is no more than that: and it is not in dispute that the panel of three Commissioners who decided the applicant's case in September were entitled, and indeed bound, to form their own view.

The Judicial Review Application

[5] The applicant applied for judicial review of the Panel's decision on 22 November 2016. In essence he asks the court to quash the decision. As drafted, and then as amended on 6 February 2017, the applicant's Order 53 Statement contained numerous grounds of judicial review but, as the proceedings have progressed, these have been whittled down.

[6] A leave hearing took place on 23 February 2017. As a result of this leave was granted on three grounds: those found at paragraph 3 (d), (g) and (j) of the amended Order 53 Statement. Following the filing of affidavits on behalf of the Panel by two of its members, at the full hearing, only one ground of judicial review was pursued, the others being abandoned. This decision is, therefore, focussed on a single issue which takes the form of a challenge to the Panel's decision on the basis that it had wrongly considered that it could not hear evidence from a Mr G, who is a Principal Psychologist employed by the Northern Ireland Prison Service.

The Parole Commissioners' (Northern Ireland) Rules 2009

[7] The above rules ("the 2009 Rules") are important to this case as they govern the practice and procedure which *inter alia* apply to hearings before a Panel of Commissioners. In the present context a number of individual rules are of significance. Accordingly the court will set these out. To orientate the reader, these proceedings are concerned with the regulation of the calling of witnesses at a Panel hearing.

Rule 3 (1)

Subject to the provisions of these rules, the Commissioners may regulate their own procedure in dealing with any matter as they consider appropriate.

Rule 18 (1)

Subject to paragraph (2), the chairman of the panel may give, vary or revoke directions for the conduct of the case allocated to the panel, including directions in respect of such as:

(a) The timetable for the case;
(b) The varying of the time within which or by which an act, required or authorised by these rules, is to be done;
(c) …
(d) The submission and production of evidence;
(e) …
(f) The listing, location and adjournment of hearings, including hearings under paragraph 7 (b);
(g) The calling of witnesses;
(h) …
(i) …

Rule 21 - Witnesses

(1) Where one party wishes to call witnesses at the oral hearing, that party shall make a written application to the chairman of the panel, and shall serve a copy on the other party at least 6 weeks before the date of the hearing, giving the name, address and occupation of the witnesses whom that party wishes to call and the substance of the evidence that party proposes to adduce.

(2) The chairman of the panel may grant or refuse an application under paragraph (1) and shall communicate within 7 days the decision to both parties, giving reasons in writing, in the case of refusal, for the decision.

Rule 23 – Oral hearing procedure

(1) …

(2) Subject to this rule, the panel shall conduct the oral hearing in such manner as they consider most suitable to the clarification of the issues before them and generally to the just handling of the case and they shall, so far as appears to them appropriate, seek to avoid formality in the proceedings.

(3) Subject to paragraphs (5), (7) and (8) the parties shall be entitled to appear and be heard at the oral hearing and take such part in the proceedings as the panel considers appropriate and the parties may:

(a) Make submissions;
(b) Hear each other's evidence and submissions;

(c) Call any witnesses whom the chairman of the panel has authorised to give evidence in accordance with rule 21; and
(d) Put questions to any witness appearing at the oral hearing.

(4) Subject to rule 11 the parties may not, without the leave of the panel, rely on or refer to documents, information or evidence which do not appear in substance in the case papers.

[8] In cases of the nature of that of the applicant's, the way in which the Rules operate involves a range of documents, prescribed at Schedule 1 to the rules, being provided to the Parole Commissioners by the Department of Justice. The documents to be provided are wide ranging and involve information relating to the prisoner (see Part A of the Schedule) and reports relating to the prisoner (see Part B of the Schedule). Such provision enables the Commissioners (and the parties) to have a substantial amount of information about the applicant's case available to them. For example Part B dealing with reports relating to the prisoner requires the following to be provided:

- Any pre-trial and pre-sentence reports examined by the sentencing court and any police report on the circumstances of the offence(s).
- Any report on the prisoner while he was subject to a transfer direction under Article 53 of the Mental Health (Northern Ireland) Order 1986.
- Any current reports on the prisoner's performance and behaviour in prison, where relevant…including any
  - Prison reports;
  - Record of offences against discipline;
  - Reports on any temporary release;
  - Details of, and reports on compliance with any sentence management plan;
  - Reports on the prisoner's health including mental health;
  - Psychology reports;
  - Assessment of the likelihood of re-offending and the risk of the prisoner being a danger to the public if released immediately; or
  - Assessment of suitability for release on licence and licence conditions.

- An up to date report prepared for the Commissioners by a probation officer, including any reports on the following [list omitted].
- Any interview report prepared at the direction of the Chief Commissioner under rule 3 (4).
- Any other information which the Secretary of State considers relevant to the case and wishes to draw to the attention of the Commissioners.

[9] The "parties" to the proceedings are defined at Rule 2 as meaning "the prisoner and the Department of Justice".

Mr G's Role

[10] As already noted, Mr G is a Principal Psychologist employed by the Prison Service. His contribution prior to the hearing had been as the provider of certain reports about the applicant. These had built up over time. These reports had been provided to the Parole Commissioners for their use under Part B of Schedule 1 and had formed part of the case papers. Both the PCs and the parties had been provided with them as part of the case papers for the panel's September 2016 hearing of the applicant's case. The reports consisted of the following:

(a) A 17 page report on the applicant compiled on 22 September 2013.
(b) A 5 page report dated 21 August 2014.
(c) What is described as an update report of 2 pages dated 3 July 2015.
(d) A further update of half a page dated 7 July 2016.

In general, Mr G's reporting may be viewed as favourable from the applicant's point of view. The baseline was set by the 2013 report which noted that the applicant's risk of serious sexual offending and/or violent offending was low. There is an acknowledgment in the report that the applicant had engaged in extensive intervention aimed at risk reduction and that many of the factors relating to risk of future sexual offending had been addressed. While there remained, in the view of the author, some outstanding areas of concern, in particular, the applicant's ability to work openly with professional agencies, it was thought that, with the assistance of ongoing support in relation to managing relationships, he could progress towards phased release. The later short reports did not row back from this general posture and it appears that latterly the applicant had not been the subject of recommendations for further psychological intervention.

[11] Prior to the hearing of 15 September 2016 neither party to the proceedings made an application under rule 21 to have Mr G appear as a witness at the hearing. Similarly at the hearing there was no application made by a party to have Mr G give oral evidence at the hearing. It appears, however, that on the morning of the hearing Mr G had attended at the venue but, in view of the matters above, he left the venue.

[12] It is against this background that this judicial review has been mounted.

The panel's reasons

[13] The outcome of the panel's consideration of the applicant's case has already been referred to. Its reasoning, however, is provided in its decision which extends over some 15 pages. In this document there is a substantial discussion about the applicant's index offence and about the history of his quest for a life licence over the prolonged period *post* the expiry of his tariff. The picture presented is one which the court suspects is not uncommon of periods of relative progress followed by periods of set-backs. A recurring theme is that the applicant when on periods of temporary release had not acted with openness and transparency in respect of the way in which

he has conducted himself and on occasions was guilty of breaches of trust. A measure of progress is noted in early 2015. While he had in the past been assessed as a person whose previous offending and/or current behaviour and/or current circumstances could cause serious harm through the carrying out of a serious sexual or violent offence, it was noted that a Risk Management Review in respect of him was to take place. Later in the decision the outcome of such a Review, carried out by Probation, is recorded in terms of the applicant no longer meeting the criteria for being a significant risk of serious harm. It was noted that this was because of consideration of his protective factors which were enumerated in the course of the Review.

[14] Following a review of the oral evidence at the hearing and a rehearsal of the test which must be applied, a series of paragraphs are devoted to the panel's assessment. The panel refer to the case as an extremely complex one. It clearly was concerned with the decision which had been made in relation to the downgrading of the risk the applicant represented. It is stated that "[w]e were not satisfied with the explanation we received here". The panel reminded itself that the index offence had been "entirely internally driven" and placed some emphasis on the circumstances which surrounded it together with concern in respect of what it described as the applicant's long history of deceptiveness and lack of transparency. In this regard, it appears clear that the panel had not been impressed by the applicant's oral testimony before it, especially when particular incidents had been discussed with him. In such discussions, it was the view of the panel that he had minimised his responsibility throughout. This threw doubt on his ability to be viewed as open in a key area which involved his relationships. The panel also drew attention to the absence of any past objective assessment, despite his years in custody, of whether the applicant suffers from a personality disorder. The Commissioners also felt it was concerning that there was no evidence that recommended follow up work specified in 2013 had in fact been carried out.

[15] In the above broad circumstances, the panel's view was that "we are satisfied that [CK's] risk of serious harm remains too high for it to be managed in the community even with robust licence conditions in place, given his continued lack of candour and the work identified which needs to be carried out" (paragraph 45). In its recommendations it referred to a full assessment of personality being needed; to a need for one to one work on relationships to be conducted; as well as other measures.

The panel's references to Mr G

[16] In its decision, the panel made reference to Mr G in a number of places as follows:

(i) At paragraph 27 there was mention of the fact that there was no representation at the hearing from the Department of Justice. The DOJ had specified the attendance of two witnesses. These were a probation officer and

the applicant's sentence manager. Notwithstanding this, it is noted that Mr G had attended. The paragraph goes on: "as no request had been made for him to give evidence…the panel was unable to hear from the potential witness. This was a matter of much regret as we considered that we would have been greatly assisted by hearing evidence from him".

(ii) At paragraph 40 the panel expressed their disappointment that the DOJ had not provided a representative to assist at the hearing. The consequence of this was that "we were unable to hear all the available evidence". There is no specific statement of what evidence they had been unable to hear. However, the paragraph went on: "[w]e were confident that there was sufficient evidence despite the above omissions to be satisfied that [CK's] risk of harm remained too high to enable it to be managed safely in the community for the reasons set out below". It is presumed that one of the omissions being referred to related to the absence of a DOJ representative at the hearing. It is suspected a second omission, in the eyes of the panel, may have been related to the inability of the panel to hear from Mr G, though whether the use of the word 'omission' is accurate in this context is questionable, as the evidence which was to be given at the hearing was known in advance and Mr G was not, in fact, due to give evidence, and the panel must have known this.

The Applicant's case

[17] Ms Askin BL for the applicant submitted that the panel's decision was legally marred by its failure to hear evidence from Mr G. This failure, she ascribed to the panel's posture that it could not hear the evidence, as no party had made an application in respect of it, in accordance with rule 21. In effect, in respect of this matter, the panel had misdirected itself to the disadvantage of the applicant. What should have occurred, in counsel's submission, was that the panel should itself have called and examined Mr G. If this had happened, given that Mr G's evidence would very likely have been favourable to the applicant, this would or may have made a significant difference to the outcome.

[18] In support of her argument, Ms Askin submitted that the rules were wide enough to accommodate the panel taking the step which she contended for. In particular, she referred to rules 3 (1), 18 (1), and 23 (2) and (4), emphasising what she viewed as the wide discretion which the panel had in respect of the way it conducted the hearing before it.

[19] Ms Askin also argued that there were common law authorities which supported the approach she contended for. She relied on R (Gardner) v Parole Board [2006] EWCA Civ 1222; R (McGetrick) v Parole Board [2013] EWCA Civ 182; and Re Olchov's Application [2011] NIQB 31. These authorities demonstrated that the powers of the PCs under the rules were wide, counsel argued.

The Respondent's case

[20] Mr Sayers BL appeared for the respondent. In his submission, the PCs in this case were correct in approaching the question of Mr G's evidence in the way in which they did. In particular, they lacked the power to call Mr G themselves and had to rely in this sphere on the initiative of the parties in respect of witnesses, as set out in rule 21. It was not the scheme of the legislation that the PCs would call a witness themselves. If this had been the intention of the legislature this would have been expressly provided for but no such provision had been made.

[21] In counsel's submission it was a misreading of the rules to suggest that rule 21 was subordinate to the wider statements found in the rules which Ms Askin relied on. On the contrary, rules 3, 18 and 23 were about the conduct of the proceedings against the backdrop of the rules and not in defiance of them. In particular, Mr Sayers argued that rule 21 was a key provision in the rules which had been carefully calibrated to regulate the calling of witnesses within a context where the rule contained important safeguards, in the interests of fairness, in respect of the steps which had to be taken in advance of a witness being called. Thus rule 21 contained provisions dealing with the notice which had to be given of the calling of a proposed witness and requiring the personal details of the witness together with a statement of the substance of the evidence which the witness proposes to adduce. These safeguards were not easily to be overridden.

[22] Counsel further argued that the cases relied on by Ms Askin were not, on careful analysis, contrary to his submissions. In this area, it was submitted, that there were important differences between the model which lay behind the rules dealing with the parole authorities in England and Wales and the equivalent model in Northern Ireland.

[23] Mr Sayers accepted that there may be situations where the rules had to be interpreted in the light of human rights requirements but he pointed out that this was not a case where it had been alleged that there had been an infringement of human rights norms.

[24] Finally, at the factual level, counsel pointed out that there was no warrant in the panel's decision for believing that the panel was unable to carry out its statutory function in this case. At paragraph 40 the panel had indicated that it was in a position confidently to reach a conclusion in relation to the statutory test – a point disputed by Ms Askin.

The case law

[25] Three cases were relied on by Ms Askin.

[26] The first of these was Gardner. In this case the applicant/appellant was a prisoner who challenged a decision of the Parole Board in England. The Board had

knocked him back following an oral hearing. At the hearing important evidence about the risk the applicant/appellant represented was given by his estranged wife. This evidence was adduced in his absence as she had been afraid to give her evidence in his presence. The panel had agreed to this as otherwise the evidence would not have been heard. The applicant/appellant was, however, legally represented at the hearing and his lawyer heard the prisoner's wife give evidence, was then able to consult with the prisoner, and thereafter cross-examine her. The prisoner later gave his own evidence, knowing what his wife's evidence had been.

[27] In a subsequent judicial review application, it was alleged that the Board had no power to do as it had done and it was further argued that what had occurred meant that the proceedings had been conducted unfairly. At first instance, the application for judicial review was dismissed. On appeal, the Court of Appeal dismissed the appellant's appeal, holding that the Board had, in the circumstances of this case, the power to exclude the prisoner from the proceedings while his wife gave her evidence. The proceedings, moreover, were not conducted unfairly to the appellant.

[28] In respect of the powers of the Board, the relevant rules bear some similarity to those operating in Northern Ireland, which have been referred to above. The English rule 19 dealt with the subject of "Hearing Procedure". At paragraph (2) it stated: "The panel shall avoid formality in the proceedings and so far as possible shall make its own enquiries in order to satisfy itself of the level of risk of the prisoner; it shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings". Notably, the words underlined by the court above are not found in the equivalent rule in Northern Ireland (rule 23 (2)). Later paragraph (3) of the English rule goes on: "The parties shall be entitled to appear and be heard at the hearing and take such part in the proceedings as the panel thinks fit; and the parties may hear each other's evidence, put questions to each other, call any witnesses who the Board has authorised to give evidence in accordance with rule 15, and put questions to any witness or other person appearing before the panel". This paragraph is materially similar to rule 23 (3) of the Northern Ireland rules.

[29] The Court of Appeal held that rule 19 paragraphs (2) and (3) gave the panel the power to exclude the applicant (see paragraph [24] of the judgment of Tuckey LJ with which the other members of the court agreed).

[30] At paragraph [13] of the judgment a number of more general sentiments were expressed. Thus is was stated that "[t]he short procedural code set out in Rule 19 contains the essential features of fairness but it is obviously not designed to deal expressly with every eventuality and so is couched in flexible rather than absolute language. It is similar to the procedural rules for other tribunals which are designed to confer the widest possible procedural discretion to enable the tribunal to discharge its duties".

[31] The second case relied on by Ms Askin was McGetrick. In this case the issue related to documents which had been provided in the applicant/appellant's case to the Parole Board by the Secretary of State. These were contained in the case dossier. They contained allegations of further offences which had been prepared for but which had not been used in the applicant/appellant's original trial before the Crown Court. In the Board's view, it had no power to accede to a request to exclude the allegations from the dossier before passing it on to a panel and it was this stance that precipitated a judicial review. Before a Divisional Court the judicial review was dismissed but the Court of Appeal allowed an appeal.

[32] The relevant statutory provision at issue was section 239 (3) of the Criminal Justice Act 2003. *Inter alia*, this had stated that the Board "must…consider- (a) any documents given to it by the Secretary of State". At paragraph [35] Pill LJ who gave the leading judgment for the Court of Appeal stated:

> "I see no reason why section 239 (3) must be read as to prevent the board having a power, in a rare case where it may be necessary, to make arrangements whereby a document or documents may be excluded from the dossier prepared for the panel making recommendations to the Secretary of State, provided a member or panel of the board considers all documents given to the board by the Secretary of State".

Later, at paragraph [36] he went on:

> "I repeat that I would expect such cases to be extremely rare but I would uphold the power of the board, a statutory body, acting judicially, to exclude a document or documents from consideration by the panel making the recommendation. I do not consider this would breach section 239 (3). The duty in the section is imposed on the board, a statutory body, and not on a particular panel of its membership. The duty in the subsection is performed, in my judgment, provided a member or members of the board have considered all documents given by the Secretary of State even if the panel making the recommendation has not".

[33] In a concurring judgment Toulson LJ referred to the judicial function which the Board was performing, commenting that "[a]s a matter of general principle, every judicial body has inherent jurisdiction to establish its own procedure for dealing with cases justly". Moreover, this general principle was "part of the wide

principle of judicial independence, which is an important aspect of the rule of law" (see: paragraphs [45] and [46]).

[34] The third case relied on by Ms Askin was Olchov's application for judicial review. In this case it had been held by Treacy J that the Parole Commissioners' Rules (Northern Ireland) 2009 as a matter of statutory interpretation did not apply to determinate sentence prisoners.

Provisions in the England and Wales Rules in respect of calling of witnesses

[35] In the course of his submissions to the court, Mr Sayers drew the court's attention to provisions in the 2004 and 2016 Parole Board Rules for England and Wales dealing with the calling of witnesses. These are of interest in that both sets of rules make clear that the Board itself has the power in those jurisdictions to call a witness. For example, in the 2004 Rules one finds at rule 15 (2) the following:

> "Where the Board wishes to call witnesses at the hearing, the chair of the panel should notify the parties, within 21 weeks of the case being listed, giving the name, address and occupation of the witness it wishes to call and the substance of the evidence it proposes to adduce".

[36] Mr Sayers made the point that a different approach has been adopted in Northern Ireland. He thought this may reflect a less inquisitorial role for panels in this jurisdiction compared with England and Wales.

The court's assessment

[37] In the court's view, at the heart of this case lies the issue of the width of what might be described as the general powers of a panel which is dealing with an oral hearing. The language of powers, such as that found in rule 23, may *prima facie* be viewed as broad in so far as it extends discretion to conduct a hearing in such manner as the PCs consider most suitable to the clarification of the issues before them and generally to the just handling of the case. It appears to the court that the breadth of such powers is not accidental and that it should follow from this that the court should be slow to interpret the language with undue rigidity.

[38] Such a position is, moreover, consonant with other factors which have influenced the courts when dealing with this subject area. As noted by Tuckey LJ in Gardner, the rules cannot deal with every eventuality and so should be approached flexibly and in a way that can take into account the unexpected factual scenario or the exceptional case and the need to equip the panel to perform its function judicially and in a manner which balances appropriately the interests involved, particularly the public interest in protecting society from the risk which a prisoner

may represent together with the interest of doing justice to the individual whose liberty is at stake.

[39] It should usually be possible to read the rules in a way which is capable of dealing with the situation which has arisen.

[40] In the present case, the problem which has arisen relates to the calling of witnesses. Where a party wishes to call a witness rule 21 should be capable of operation without significant difficulty. The court believes that it would be a rare case where rule 21's provisions require much, if any, adjustment. The rule plainly contains in-built and important safeguards, which are both valuable and should be preserved. But this is not to say that a panel could not, for example, direct that a lesser notice period be given than that set out in the rule or otherwise adjust the procedural process. In a proper case, it seems to the court, there is room for sensible adjustment within the rules, though it equally seems to the court that any panel should have at the forefront of its mind the need to maintain the rule's evident purpose of preventing, by control of the process of adducing oral evidence, the risk of unfairness to a party or forensic ambush.

[41] This case, however, is not directly about the sort of adjustment discussed above. The question in this case is more pointed and relates to the powers of the panel to call a witness. In this regard, the court acknowledges that there is a contrast between the rules in England and Wales and those in Northern Ireland dealing with this issue – with the former expressly authorising a panel to call a witness. But, even so, it is to be noted that the 2009 rules in Northern Ireland do not expressly forbid the panel from calling a witness.

[42] Consistently with the court's acceptance that the rules should not be given an unduly confined or rigid reading, the better view, in the court's estimation, is to hold that the language of the rules read as a whole does not rule out the use of general powers, such as those found in rule 23, from enabling the panel itself to call a witness. This conclusion requires a number of suitable reservations, however. It seems to the court that the recognition of the existence of such a power does not mean that it should become a regular feature of the operation of panels. If that had been the intention, the court is inclined to accept that a rule modelled on the England and Wales rules would have been the appropriate course for the rule maker to have adopted. But it should not be impossible for the panel to call a witness in a case in which there is a compelling justification for doing so. Such a case might arise where the failure to hear from a witness, whom neither party has chosen to call, might significantly impede the panel from being able to carry out its function or where to leave matters without calling the witness might cause a substantial injustice or a fundamental procedural unfairness. Where a problem of this sort arises the panel would, in the court's opinion, before exercising its power to call a witness, be wise to explore whether there are other ways of obtaining the oral evidence it feels it should have (for example, by encouraging a party to call the witness) before acting itself. But if, in an exceptional case the panel, for the reasons given, feels impelled to act,

the court does not believe that, given the width of the rules read as a whole, it is forbidden from doing so.

[43] In addition, should the panel choose this course, it ought also to bear in mind the need to ensure that it builds in sufficient safeguards, much in the same way as the procedural regime in rule 21 of the 2009 rules in Northern Ireland, does so.

The application of the above principles to this case

[44] The court returns to the facts of the present case and the application before it to quash the decision of the panel not to call Mr G. At paragraph 27 of the panel's decision there is a clear reference to the panel being of the view that it was unable to hear from Mr G as a witness as neither party had called him. Given the court's conclusion, as expressed in the last section of this judgment, it seems to the court that the panel's view on this point was strictly speaking incorrect, though, as the court has been anxious to point out, while it accepts that a power to call a witness does vest in the panel, it would expect it only to be used sparingly and in a case which cried out for its use.

[45] In the above circumstances the court is unpersuaded that this is a case where the failure to use the power could be viewed as rendering the decision of the panel unlawful. This is because on the facts of this case there was no compelling reason why it was necessary to call Mr G. In the court's opinion the case falls considerably short of the sort of circumstances which it would regard as suitable for the use of the panel's power. It is not to be forgotten that the panel did have the reports of Mr G before them. These reports were generally favourable to the applicant and the court has no reason to believe that if he had given evidence there was a significant likelihood of him altering his outlook to the case. The case seems to be a long way away from a case in which the witness was required to avoid substantial injustice or fundamental unfairness or where the panel, in the absence of Mr G's oral evidence, was being significantly impeded in its ability to perform its statutory function.

[46] However, even if the court is to be viewed as wrong in this last conclusion and even if it had been the position that it was unlawful for the panel not to have called Mr G, the question would nonetheless arise as to whether it would be appropriate to quash the decision of the panel, given the imminence of a further hearing of the applicant's case before the PCs in June of this year. In this circumstance it seems unlikely to the court that a quashing order would in fact be likely to assist the applicant by materially shortening the already existing time table in respect of a further hearing. In the scenario under discussion, therefore, the court considers that in its discretion it would not have quashed the panel's decision in any event.

Conclusion

[47] For the reasons the court has given, it dismisses this judicial review application.