Neutral Citation Number: [2024] EWHC 686 (Admin)

Case No: AC-2023-BHM-101

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/03/2024

Before :

THE HONOURABLE MR JUSTICE SAINI

- -

Between :

COLIN GUNN — **Claimant**

- and -

SECRETARY OF STATE FOR JUSTICE — **Defendant**

- -

- -

Leonie Hirst (instructed by **Tuckers/SL5 Legal**) for the **Claimant**
David Manknell KC (instructed by **Government Legal Department**) for the **Defendant**

Hearing date: 13 March 2024

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JUDGMENT

This judgment was handed down remotely at 10am on Monday 25 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SAINI

Mr Justice Saini :

This judgment is in 6 main parts with an Appendix as follows:

I.	Overview:	paras.[1]-[5]
II.	Factual Background	paras.[6]-[20]
III.	Legal Framework:	paras.[21]-[24].
IV.	Ground 1- irrationality:	paras.[25]-[49].
V.	Ground 2 - procedural fairness:	paras.[50]-[64]
VI.	Conclusion:	para.[65].

Appendix : the "dossier" entries concerning intelligence disclosed to the Claimant. The Claimant's current solicitors (Tuckers/SL5 and Carringtons) are not the solicitors referred to in the pre-2022 intelligence entries in this Appendix.

I. Overview

1. This is a case about escape risk classification ("ERC") of prisoners and, in particular, about an individual who complains about being classified as a "High Escape Risk" prisoner. As one would expect, such a classification carries with it a significantly more intrusive and restrictive regime within a prison. In the longer term it may also inhibit a prisoner's categorisation to a lower security category, and consequently may reduce his prospect of release on licence.

2. The Claimant, Colin Gunn, is serving a life sentence for conspiracy to murder. He is currently a Category A prisoner at HMP Long Lartin. A Category A prisoner is a person whose escape would be highly dangerous to the public, or the police, or the security of the State, and for whom the aim must be to make escape impossible. ERC is separate from categorisation. Category A prisoners have a specific ERC. Within HM Prison and Probation Service ("HMPPS") there is a 'Category A Review Team' ("CART") responsible for the management of Category A prisoners. In this case, the CART made a submission as to the Claimant's ERC to the Deputy Director of Custody (High Security) who then, acting on behalf of the Defendant, made the decision of 13 February 2023 which is challenged in these proceedings. At the core of the Deputy Director's basis for the classification is the assessment that the Claimant is likely to be a leading member of an Organised Crime Group ("OCG"). That assessment is one of the main issues raised before me.

3. Certain of the principles governing challenges to classification decisions in this context have been considered in five cases which I will identify at the outset, together with my shorthand references for them: R(Mohammed Ali) v Director of High Security [2009] EWHC 1732 (Admin) ("Ali"); R(Abdulla) v Secretary of State for Justice [2011] EWHC 3212 ("Abdulla"); R(Downes) v Secretary of State for Justice [2014] EWHC 581 (Admin) ("Downes"); R(Bieber) v Director of High Security Prisons [2014] EWHC 2582 (Admin) ("Bieber"); and R(Khatib) v Secretary of State for Justice [2015] EWHC 606 (Admin) ("Khatib").

4. These are not recent cases. It is fair to observe that some of these cases set out general principles which may be rather out of step with more recent developments in the law of procedural fairness. Counsel informed me that the case before me is the first in which the court has had to consider the entitlement, if any, of a prisoner to an oral hearing in advance of an ERC decision. Certain of the observations made in the earlier cases, particularly Ali at [22], would suggest that there is no right to such an oral hearing (or indeed to other more basic procedural fairness rights) in the context of ERC decisions. I was also taken to R(Bourgass) v SSJ [2015] UKSC 54; [2016] AC 384 at [96]-[100], which is not a case about ERC but concerns procedural fairness in the context of segregation within prisons. Strong reliance was also placed by Counsel for the Claimant on R(Osborn) v Parole Board [2014] 1 AC 1115.

5. The Claimant advances two grounds of review. Under Ground 1, irrationality, he argues that the ERC decision was irrational and relied on irrelevant factors. Under Ground 2, procedural unfairness, he argues that fairness required an oral hearing.

II. Factual background

6. Although the Claimant has a long history of prior offending involving violence, I begin with the nature of the index offence, which is one of main factors relied upon by the Defendant. The Claimant was convicted of conspiracy to murder on 30 June 2006 in the Crown Court at Birmingham. Treacy J sentenced him to life imprisonment with a minimum term of 35 years. The Claimant conspired to direct the murder of John and Joan Stirland in 2004. The Judge's sentencing remarks identify that this was a revenge attack with a high level of planning and premeditation. The Claimant's appeal against sentence was dismissed by the Court of Appeal (Criminal Division) on 3 May 2007 in a detailed judgment given by Sir Igor Judge P: [2007] EWCA Crim 1529.

7. As Treacy J explained, the victims were "totally innocent people…killed in their own home for no reason other than that one of the victims was the mother of someone you wanted to take revenge on". During his remarks, Treacy J observed that the Claimant was "deeply involved in criminal activities and that you are a dominating leader of others. Your own counsel acknowledged to the jury that you were a crook, a villain, and a large-scale drug dealer. Your own role in this case was that of the prime mover in this conspiracy. You were the leader of this criminal gang responsible for the death of the Stirlands. To your gang, your word was law". As further explained by Sir Igor Judge P, the conspiracy was financed and organised by the Claimant. In short, he gave the orders, he purchased the telephones used by the conspirators and was responsible for recruiting the gunmen who carried out the killing. The gunmen were never identified. He was also responsible for tracing the Stirlands to their new address by using contacts within British Telecom.

8. Following this conviction, and in unrelated proceedings, the Claimant was additionally given a sentence of 9 years in 2007 for bribery of two police officers and conspiracy to corrupt. The Claimant corrupted an officer stationed at Radford Road, Nottingham. The officer stole secret police information and faxed it to a middleman who, in turn, passed it to the Claimant.

9. The Claimant was originally classified as a High Escape Risk in 2005. This was upgraded in 2007 to an Exceptional Escape Risk due to intelligence suggesting that he and a second prisoner were planning an escape involving a helicopter and firearms.

10. The Claimant was also classified as an Exceptional Escape Risk on a second occasion, from 10 June 2010 until 18 April 2012 (similarly due to intelligence that he planned to escape via a helicopter) and again on a third occasion from 23 May 2013 to 24 September 2013 (due to intelligence that he had attempted to corrupt a member of staff by threatening a member of their family as part of a plan in an escape attempt). Since September 2013, the Claimant has been classified as High Escape Risk.

11. The OASys assessment from November 2021 notes risk to various groups should the Claimant escape and that this risk can be managed in part by security associated with his Category A and High Risk Escape classification. The Claimant's custody record shows a history of numerous events and intelligence reports including responsibility for assaults on other prisoners and on staff, and being in possession of prohibited items.

12. The Claimant has had periodic reviews of his ERC. I was taken to review letters of 29 January 2021 and 26 October 2021 pursuant to which the Claimant remained classified as High Escape Risk. A further review was carried out on 15 August 2022 and it was again concluded that he should remain at that level. The Claimant issued a claim for Judicial Review in respect of that decision on 22 November 2022. As a result of that claim, the Defendant agreed to withdraw the decision taken on 15 August 2022 and to retake it.

13. Ahead of the decision, on 20 January 2023, a dossier was provided to the Claimant, with so-called "gists" of relevant intelligence history, including seven recent entries in 2022 which are the focus of the challenge before me. I have attached to this judgment a document containing all of the dossier entries. The Claimant disputes many of the allegations in the entries. I underline that the Claimant's current solicitors (Tuckers/SL5 and Carringtons) are not the solicitors referred to in the pre-2022 intelligence reports/entries. The dossier also included detail of the circumstances of the index offence and additional background information.

14. Having received this dossier, the Claimant was given the opportunity to make submissions before the decision was made. He took up this opportunity. His detailed submissions of 23 January 2023 (drafted by specialist prison law solicitors), put and developed his case on the intelligence material, challenged the assertion that he was the head of an OCG, and included the submission that he should have an oral hearing in his case. Following such submissions, an Escape Risk Review decision was taken on 13 February 2023 and that is the decision challenged in this claim ("the decision letter").

15. The decision letter referred to the representations that had been received and the legal framework and continued:

> "…It can be seen that you, via your legal representatives, have provided copious representations. These can largely be broken down into three themes: Factors considered relevant by you, your response to intelligence reports and your desire to have

> your case heard at an oral hearing in the event of you remaining high escape risk following this review. The Deputy Director stated that the relevant factors part of your representations appear to place a high degree of importance on you being informed that you are not subject to monitoring under the Serious and Organised Crime Policy Framework. The decision to monitor prisoners via that mechanism sits with the prison and is not for the Category A Team to influence. That said the Category A Team disagrees with that decision. When considering recent intelligence, the concerns of the police and the very nature and circumstances of your offence, the Category A considers its position that you are considered to be the head of an OCG is reasonable. Furthermore, the police continue to assist your external escorts with firearms officers. Firearms escorts are not a mandatory requirement for high escape risk prisoners, so it is reasonable to infer that the police are concerned that you continue to pose an escape risk. This adds further credence to the Category A Team's assessment that you are the head of an OCG with associates able to assist in an escape attempt."

16. The decision letter went on to note the Claimant's objections to a lack of security grading or "the source of information" being disclosed in the gists and continued:

> "…Paragraph 3.4.5 of the Intelligence Collection, Analysis and Dissemination Policy Framework and the NOTICE TO STAFF - Disclosing Intelligence Evaluation Codes to Third Parties state that reliability codes attributed to intelligence will not normally be shared with prisoners. The Deputy Director stated there is nothing to suggest the need to depart from that guidance in this review. It is apparent from this and previous reviews that the absence of gradings does and has not prevented you from submitting detailed representations. In relation to the intelligence summaries themselves, the Deputy Director noted that you either refute the information or, on two instances, accepts the report before describing it as irrelevant. The Deputy Director confirmed the gists are intelligence and, naturally, are subjective and staff will submit reports of what they observe and with consideration to other, relevant factors, you being a Category A prisoner being one such factor. Your representations are similarly subjective and offer your opinion on how your actions should be viewed. Furthermore, representations deal with reports as individual entities but it is wholly reasonable to view recent intelligence reports across the piece to create a rounded picture of you and your activities. It was noted that some of your representations appear to misrepresent the intelligence stated. You have indicated that it is an inaccurate assumption to state you may have access to social media and go on to say that you may ask your family to contact associates via social media. However, the intelligence

> specifically states that an associate is believed to have asked you to keep in touch with associates of his via social media. The area of concern is what your associate possibly said, not what you have said. The Deputy Director also disagreed it is an "irrational leap" from you engaging DST [Dedicated Search Team] in conversation to you potentially being aware that a prisoner may be in possession of an illicit telephone. It is entirely reasonable for staff to reflect their concerns if they felt certain prisoners may have been attempting to impede their search and the reasons behind this. It is noted that you accept that you misused the pin phones by accepting you went on to speak to three further people during a call. You have, however, stated that this is irrelevant to your escape risk classification. This can be seen as testing the response to security breaches and therefore is extremely relevant. Attempting to circumnavigate security procedures rightly causes concern. It is reasonable that a high escape risk prisoner, who requires a firearms escort, discussing a future escort to a less secure MRI scanner with associates is considered as relevant when the Deputy Director is considering your future risk of escape. As with all intelligence, in isolation it may appear innocuous, however it is right to give appropriate weight to this when considered alongside all other security concerns."

17. As to the Claimant's request for an oral hearing, the decision-letter stated:

> "With regards to an oral hearing, your representations quote paragraphs from PSI 2013/08 that deal with the review of a prisoner's Category A status. <u>The Deputy Director confirmed the policy on the review of escape risk classification appears earlier in the PSI and makes no provision for oral hearings.</u>"
>
> (my underlined emphasis)

18. The decision-letter concluded that in light of the matters set out in the letter "and based on the criteria set out in the relevant PSI, current intelligence concerns, the position you are said to hold in an OCG and time left to serve means high escape risk remains appropriate".

19. In the Defendant's response of 19 April 2023 to the Claimant's letter before claim, the Defendant said "…As per PSI 08/2013 there is no requirement for an oral hearing when conducting escape risk reviews. You refer to the case of *Osborn*, however, this case applies to the Parole Board, not the Category A Review Team which have very different functions so does not apply to this case". So, at this stage, the Defendant's position was that no oral hearing would be provided or even considered.

20. On 12 May 2023, the Claimant issued the present claim. His claim included a submission that he should have been given an oral hearing, even if PSI 08/2013 did not provide for this in respect of ERC. The Defendant gave that matter further consideration. By letter dated 25 May 2023 he concluded that there was no reason

why an oral hearing was required in this case "outside the policy". The letter stated that:

> "…the Category A team note your representations submitted, dated 25 January 2023, relying upon PSI 08/2013 as the basis to assert an oral hearing was required in relation to your escape risk review. As previously explained in your decision letter, dated 13 February 2023, PSI 08/2013 does not contain a provision for oral hearings in relation to escape risk reviews. The Summary Grounds of Claim, dated 12 May 2023, assert there should have been an oral hearing in this case. The Category A Team can confirm an oral hearing has been considered. The decision maker would be able to hold an oral hearing in circumstances other than those stated in the policy, but in general terms, the policy provides the guidance as to when an oral hearing would be required. The Category A Team have considered whether, exceptionally, an oral hearing should be conducted in this case, outside the circumstances provided for in the policy. The Category A Team do not consider that there is any reason why it should be in this case. Furthermore, in respect of the intelligence relied up and disclosed to you previously, as much information as possible has been disclosed and an oral hearing would not permit any further exploration of these issues."

III. Legal Framework

21. The regulation and organisation of prisons and prisoners is governed by mandatory instructions, known as Prison Service Instructions ("PSI"). PSI 08/2013 (referred to in the correspondence cited above) governs the categorisation and escape-risk classification of "Category A" prisoners. It explains: "A Category A prisoner is a prisoner whose escape would be highly dangerous to the public, or the police or the security of the State, and for whom the aim must be to make escape impossible" (paragraph 2.1). It further provides that "all category A prisoners are placed in one of three escape risk classifications". They are as follows:

> "**Standard Escape Risk:** A prisoner who would be highly dangerous if at large. No specific information or intelligence to suggest that there is a threat of escape.
>
> **High Escape Risk:** As Standard Escape Risk, however, one or more of a number of factors are present which suggest that the prisoner may pose a raised escape risk. The factors include:
>
> - Access to finances, resources and/or associates that could assist an escape attempt
>
> - Position in an organised crime group
>
> - Nature of current/previous offending

- Links to terrorist network

- Previous escape(s) from custody

- At least one of the above factors plus predictable escorts to be undertaken (e.g. court production, hospital treatment).

- Length of time to serve (where any of the other factors above are also present)

Exceptional Escape Risk: As High Escape Risk, however credible information or intelligence received either internally or from external agencies would suggest that an escape attempt is being planned and the threat is such that the individual requires conditions of heightened security in order to mitigate this risk."

22. PSI 08/2013 sets out guidance on the procedure for "reviewing" a prisoner's ERC. Given the complaint of procedural unfairness under Ground 2, I need to provide an extended quotation from it:

"Escape Risk Classification

3.11 The Category A Team will co-ordinate reviews of the escape risk classification of each exceptional risk prisoner every 6 months and each high escape risk prisoner every 12 months as a minimum.

3.12 Where new information comes to light that suggests a prisoner's escape risk classification is either too low or too high a review will be completed regardless of the review cycle noted above.

Escape Risk Review Preparation

3.13 When preparing to complete a high or exceptional risk review the caseworker will gather and ensure that all relevant information is summarised in the submission to be put to the DDC (or delegated authority).

3.14 In some reviews the caseworker will consider that information from police sources is required. In such instances a request for information will be made using the form at annex C.

3.15 The caseworker will then prepare a submission to be put to the DDC for consideration and decision. When reports are received the caseworker will assess the content as to what information is relevant to the prisoner's escape risk. Any information that is not relevant will not be included in the submission.

3.16 A copy of the submission intended to be put before the DDC (or delegated authority) must be disclosed to the prisoner

at least six weeks prior to the review to allow representations to be submitted.

3.17 Any and all representations must be received by the Category A Team within four weeks of disclosure of the submission.

Escape Risk Classification Review

3.18 Following these preparations and two weeks prior to the review the caseworker will pass the submission and representations to the CART.

3.19 Based on the submission and representations the CART will assess the case and make a recommendation on whether a prisoner's current escape risk classification should be retained or downgraded. The submission, representations and the CART's recommendation will then be forwarded to the Head of High Security Prisons Group.

3.20 The Head of High Security Prisons Group will review the documents noted above and the recommendation of the CART and make a decision as to whether a prisoner's escape risk is to remain at the current level or to refer the case to the DDC High Security (or delegated authority)

3.21 There is no requirement for the Head of High Security Prisons Group to refer the case to the DDC High Security unless:

• A recommendation for downgrade has been made by the CART

• The Head of High Security Prisons Group would recommend downgrading

• It is the third consecutive review where no downgrade recommendation has been made

3.22 Where an escape risk classification review has been referred to him/her, the DDC High Security (or delegated authority) will conduct the review with an advisory panel including police advisers, a psychologist and staff from the Category A Team; meetings will normally take place once a month.

3.23 The DDC High Security and the advisory panel will consider the submission provided to the prisoner, any and all representations made by or on behalf of the prisoner and the recommendations of the CART and Head of High Security Prison Group.

> 3.24 Where escape related information is reported in the period between the disclosure of the submission and the date the decision is made and this informs or helps to inform the decision the DDC (or delegated authority) will provide a summary of this in the decision letter to the prisoner
>
> 3.25 The Category A Team will inform the prison of the final decision immediately after the decision is taken. It will also immediately put into effect any decision to downgrade a prisoner to a lower escape risk classification.
>
> 3.26 The Category A Team will send the prisoner a notification of the decision detailing the reasons four weeks after the DDC's panel.
>
> 3.27 The same procedures apply to confirmed Category A prisoners who remain in high or exceptional escape risk classification.
>
> 3.28 The Category A Team will consider and respond to representations against a decision to keep a prisoner high or exceptional escape risk. The DDC High Security (or delegated authority) may retake the decision where s/he considers the representations highlight information not previously considered that could materially affect the decision."

23. In respect of disclosure of security information, the Defendant has a published policy called the "Intelligence Collection, Analysis and Dissemination Policy Framework". That Framework provides, at 3.4.5 that: "Intelligence Evaluation codes…are not disclosed to offenders, their next of kin or legal representatives to enable the protection of sources and tactics."

24. The Defendant has also unpublished internal guidance to staff headed "NOTICE TO STAFF – Disclosing Intelligence Evaluation Codes to Third Parties". Insofar as material this guidance provides that:

> "5. Long Term High Security Estate Reviews and Discrete Units
>
> In the case of Category A decisions, including escape risk classification reviews… information may be disclosed as part of the routine information sharing to prisoners and their legal representatives to justify and explain decisions made about referral and placement. This does not mean that intelligence reports should be disclosed and whilst each case will be managed on a case by case basis, the expectation should be that Intelligence Evaluation codes should not be disclosed but a sufficient summary of the information will be provided to the prisoner or their legal representative in the form of a gist or sanitised report where appropriate. Any decision to provide intelligence codes to the prisoner through these routes does not,

> however, amount to an acknowledgement that it is their personal data - and that should be made to clear to the offender...".

IV. Ground 1: irrationality

25. In her very well-structured and focused submissions, Counsel for the Claimant divided this ground into 4 sub-grounds which challenge the "factors" on which the ERC decision was based. In her written submissions the factors were taken in the following order, which I will adopt below:

    (1) The current intelligence concerns.

    (2) The Claimant's status within an organised crime group.

    (3) The significance of a firearms escort.

    (4) Length of time left to serve.

26. As a threshold submission, Leading Counsel for the Defendant argued that the court should be "very slow" to find that the expert assessment by the CART on matters of public safety has been irrational. I do not accept that submission, at least in the broad way it was put. Even allowing for the fact that this is an area of sensitivity where evaluative judgments have to be made, if a court concludes that a decision under challenge does not rationally follow from the evidence before the decision maker, it is required to find it irrational. There is no test of "super-irrationality" which applies in this field to remove it from the normal approach in public law. That said, I accept that the Director assesses risk as an expert and in the light of experience. I also consider that when subjecting a conclusion as to possible future risks to a rationality analysis, and once some evidential basis has been established for a concern as to substantial escape risk posed by a Category A prisoner, it is likely to be an uphill struggle for a claimant who asserts a conclusion to classify him as high escape risk is irrational. This is an area where the decision maker has to draw inferences based on experience which a court may not have. As to the nature of reasons to be given and the lack of an obligation to make findings on disputed intelligence material, see [71] of Khatib.

27. In approaching the rationality challenge, I will adopt the following approach. Although the Claimant's approach is to isolate each factor underlying the decision, I will consider the decision-letter as a whole, together with all the intelligence reports provided in the review dossier (see the Appendix). I will also consider the evidence of Mr Freed, the Operational Manager of the CART. There is an issue as to whether I should consider this evidence (which I address below at [36]). I will then assess whether in the round the reasons for the ERC are based on evidence, or appropriate inferences, and whether the ultimate decision, as a matter of judgment, logically flows from those reasons. Any assessment of rationality is evidence-based.

28. I turn to the first of the four factors.

Factor (1): intelligence concerns

29. As identified above, the decision-letter relied what it termed 'current intelligence concerns'. The letter referred to 'gisted' intelligence summaries or entries which had

been disclosed to the Claimant as part of the dossier. The entries dated May-December 2022 ("the entries") were included for the first time with the January 2023 escape risk dossier and are the particular focus of the challenge. All the entries appear on the schedule I have attached to this judgment. I will return to the entries after briefly addressing the issue of "gisting".

30. For reasons which may be obvious, the nature of the gists of intelligence material that can be provided to a prisoner is limited. As in other contexts such as national security, gists are limited primarily for the protection of sources (either human sources of intelligence) or to prevent detection of aids or tactics used to gather intelligence. In particular with human sources, if a gist of intelligence was provided with such detail that the source could be identified, that would give rise to significant risk to the safety of that source. In a case involving a prisoner said to have connections to an OCG and with a history of using violence as retribution, the concerns about identification of a human source are substantially heightened.

31. On the evidence before me in the present case, given the grievance underlying the Claimant's index offence, which evidenced a high level of determination to seek retribution and willingness to enact that retribution in a highly violent fashion, any person who had provided intelligence could be placed at serious risk of danger if the gisted intelligence was any more specific. I also accept the basic point made in Mr Freed's evidence that it is unrealistic to expect the gists in these circumstances to address specific factors, or to spell out in detail why they were considered important. I consider that the broad gists provided were sufficient for the Claimant to understand the essence of the issue raised (and the fact of its existence) but the determination of the relevance of that intelligence is under established public law principles a matter for the CART/Deputy Director, who have both the detail and the context. I return to the intelligence entries from 2022 which are the subject of this first ground.

32. The Claimant contends that the Defendant acted irrationally by relying on the seven May-December 2022 entries to justify his ERC. In his detailed written submissions to the Deputy Director of 25 January 2023 the Claimant set out his case in relation to these entries and Counsel took me through these submissions at the hearing.

33. In summary, Counsel for the Claimant advanced the following submissions in relation to the seven 2022 entries:

(1) Two of the entries pre-dated the Claimant's previous escape risk review in August 2022, but had not been relied on or referred to in that review. All bar one of the entries pre-dated the Claimant's Category A classification dossier produced in November 2022, but were not relied on or referred to in the security report for that dossier. If the relevant entries were not considered significant for those reviews, it was irrational for the Defendant to rely on those reports for the purposes of this review.

(2) Most of the entries were described by Counsel as "speculative" ("this could suggest access to illicit telephony") and/or did not refer to the Claimant himself ("a prisoner on the wing may have access to a mobile phone"). As the February decision recognised, in relation to the allegation that an associate had asked the Claimant to use social media, "The area of concern is what your associate possibly said, not what

you have said". Those concerns could not, without considerably more evidence, rationally be relied on as indicating current risk posed by the Claimant.

(3) The entries did not address the factors identified in PSI 08/2013 as relevant to escape risk classification.

(4) Several of the entries were entirely innocuous and were not capable without more of constituting evidence of 'access to finances, resources or associates who could assist an escape attempt' (references to the description of those within the High Escape Risk ERC).

(5) The Claimant accepts that in September 2022 he spoke to three further people during a PIN telephone call to his daughter; those individuals were all approved visitors whose direct numbers are cleared on the Claimant's PIN account. As the Claimant is aware, calls made using the prison PIN phone system are monitored either live or within 24 hours of the call. There is no suggestion in the intelligence report that the content of the Claimant's conversation gave rise to any concerns, let alone concerns relevant to escape risk, and the incident was therefore not relevant to the Claimant's escape risk classification.

34. The focus of the criticisms made by Counsel for the Claimant is principally on the point that the seven 2022 entries were not relevant to assessing his escape risk, as opposed to the nature of the disclosure (that is, inappropriate gisting). It was also argued that in so far as the Defendant now seeks to suggest that greater weight was placed on the specific intelligence in the Claimant's case than would otherwise have been the case (because of the Claimant's past history of exceptional escape risk classification) that is improper ex post facto rationalisation. I do not accept this. The decision-letter focused on the particular points made by the Claimant in his representations. The fuller explanation in the evidence of Mr Freed identifies all the relevant points considered when reaching the ERC decision, many of which are evidenced by the entries reproduced in the Appendix.

35. I reject the complaints in relation to this factor for essentially the reasons given by Leading Counsel for the Defendant in his concise and forceful submissions. My overall conclusion is that the arguments under this head make the mistake of isolating individual complaints about the entries while overlooking the bigger intelligence picture demonstrated by the material in the Appendix. There are three particular points which answer the complaints. First, all of the entries (not just the seven from May to December 2022) were plainly relevant to escape risk. Subject to a rationality test, the importance or weight to be attached to them was a matter for the judgment of the Defendant. The Defendant does not need to have proof of these matters but has to undertake an overall assessment of risk. The Claimant's own views (however forcefully expressed in his written submissions) as to what may or may not be important in assessing escape risk were of little weight. Second, ultimately when assessing a prisoner's escape risk, a decision maker is considering, pursuant to the wording of 2.6 of the PSI, any intelligence which may suggest that a prisoner may pose a raised escape risk. The manner in which the gists are phrased in the escape risk review in the Claimant's case is to balance the requirement of providing the Claimant with a chance to respond to intelligence which suggests an increased escape risk, while protecting the sources which provided that intelligence (entries of October and December 2022 are particularly sensitive in this regard). The entries cannot for

obvious reasons capture and disclose the full intelligence picture. Third, the majority of the recent intelligence concerns relate to illicit mobile phone use. In his witness statement, Mr Freed rightly stresses the importance of the intelligence concerning the Claimant's possible use of mobile phones, and its ramifications for the escape risk assessment. As he explains, the possession and use of mobile phones by prisoners with a history of escape intelligence or who are classified as having a heightened escape risk is a matter that a decision maker will look upon with the utmost suspicion. His evidence identifies that a number of the most recent high-profile escapes from custody involved those prisoners having possession of and/or access to mobile phones.

36. Further, Mr Freed explains that in the Claimant's case, he had previously been classified as having an "exceptional" escape risk due to past intelligence of escape attempts, that he has ties to serious organised crime groups, and has been sentenced to imprisonment for index offending which evidenced a high level of determination to enact severe retribution. Therefore, he says that in a serious case such as this, where gisted intelligence indicates the possible possession or use of a mobile phone or illicit telephony, this suggests that a prisoner may be attempting to access associates or resources that could assist in an escape attempt. He explains that in consequence any type of gisted intelligence of this nature, even if phrased in relatively general terms, is taken extremely seriously. I accept this evidence. The points he makes are rational and indeed obvious.

37. I also reject the complaint of ex post facto rationalisation. As Mr Freed's witness statement makes clear, he is explaining and giving context to the decision that was taken, and he is providing the statement as the Operational Manager in charge of the Category A Team that prepared the submission for the Deputy Director. There was no requirement for the level of explanation contained in Mr Freed's statement to have been included in the decision letter, but that does not mean that it is inappropriate to explain the Team's analysis of the intelligence to a greater extent (within the restrictions that he explains) in response to the criticisms being made by the Claimant in these proceedings. There is no evidential basis for a submission that the matters referred to by Mr Freed were not part of the ERC decision-making process.

38. Counsel for the Claimant argued that his previous exceptional escape risk was of very limited if any relevance, since his downgrading by definition meant that the concerns which formed the basis for his previous classification were "no longer valid" (by reference to the test in the PSI). I reject the logic of this submission. As explained by Mr Freed, the previous exceptional escape risk categorisation was because of intelligence suggesting that that the Claimant and a second prisoner were planning an escape involving a helicopter and firearms. The fact that the Defendant was later prepared to downgrade his ERC does not mean that this history should have been disregarded when new concerns (such as the illicit telephony) came to light. The history forms part of the overall evidential picture.

39. The Claimant also complains of the fact that two entries pre-dated the previous (withdrawn) decision, which had not referred to them, and that they had not appeared in the (separate) Category A review. This complaint fails both in principle and on its facts. Even if for any reason there had been a failure to refer to this in the earlier, withdrawn, decision, it does not mean that it was irrational to take account of a genuine concern in the re-taken decision. In any event, as explained in the witness

statement of Mr Freed, there is a gap in timing between the completion of the gisted intelligence and the ERC being made. When the gisted intelligence is completed, it is sent to the prisoner, who then has a period of four weeks to review and make representations. These representations are then added to the ERC form, which is considered by the Category A review team, and then considered by the Deputy Director. I accept his evidence that this process can take over eight weeks and is likely to be the explanation for their omission from the withdrawn decision. The Claimant suggests that even if they were too late for the dossier, they should have been referred to in the withdrawn decision, but there is no reason why this should be the case.

40. I also reject the complaint about the security report in the Category A review. The point made is that this report does not include in that review the intelligence reports used in the ERC process. However, the two processes are distinct. Specifically, the decision maker in a categorisation review must consider the dangerousness of a prisoner to the public if at large, while in an escape risk review, the decision maker is considering the risk of a prisoner becoming at large, and how likely that is to occur. Intelligence is therefore used differently in the two processes. In fact, in this case, enquiries with the Head of Security at HMP Long Lartin have revealed that the reason for the omission in the Category A review was error.

41. Finally, Counsel for the Claimant argued that the gisted entries were “speculative”. Any assessment of a future risk might be called “speculative”. In my judgment, it was a matter for the Defendant to assess whether the actions indicated illicit telephony, and it was rational to conclude that the indication of social media, and the misuse of the PIN phone (admitted by the Claimant) were relevant on the basis described in the decision letter.

42. For these reasons, I reject the first submission under this head that reliance on the intelligence concerns was irrational.

Factor (2): the Claimant’s status within an Organised Crime Group

43. The second factor which is the subject of complaint is the Defendant’s view of the Claimant’s status within an OCG. The argument of Counsel for the Claimant can be summarised as follows.

(1) The ERC decision was materially based on the CART team’s assessment that “you are the head of an OCG with associates able to assist in an escape attempt”. That assessment was unsupported by any evidence before the decision maker; indeed, it was actively contradicted by evidence before the decision maker. The Defendant’s reliance on it as a factor was therefore irrational.

(2) The assessment of whether the Claimant was associated with an OCG, let alone the head of an OCG, is not properly a matter for the Defendant’s subjective judgment. That is because the determination of whether a prisoner is associated with an OCG, and his management thereafter, is governed by the Serious Organised Crime (‘SOC’) Policy Framework.

(3) This framework creates mandatory requirements on law enforcement agencies, the SOCU and on prison governors to ensure that prisoners identified as SOC

offenders are identified as such on the C-NOMIS system and managed according to their Band 1 / 2 status. If the Claimant were in fact the head of an OCG, or were identified as such by either law enforcement or the prison authorities, the SOC policy would therefore require that he be identified as a SOC offender, classified as Band 1 or 2, and managed under the SOC policy with regular reviews of his status. That information would be available to the CART panel considering escape risk classification.

(4) In fact, however, the Claimant was not and is not managed under the SOC policy, as the Governor at HMP Long Lartin previously confirmed in 2021 and re-confirmed to the Claimant in response to his request of 25 August 2022. Counsel took to me to this letter and submitted that this evidence was before the decision maker at the time of the decision under challenge. It was also said that the prison has also previously confirmed that the Claimant has not been managed under the SOC policy in the past.

(5) For these reasons, in stating that the Claimant was "said to be" the head of an OCG, the Defendant either (i) made a material error of fact, since the only entity saying this was the CART panel itself, and/or (ii) reached an irrational conclusion which was unsupported by the evidence. It was argued that in either respect the Defendant's approach was irrational and unlawful. There is a preliminary dispute between the Claimant and the Defendant in respect of how this issue (membership of an OCG) should be approached. Counsel for the Claimant argues that the assessment of whether the Claimant was associated with an OCG, let alone the head of an OCG, is not properly a matter for the Defendant's subjective judgment. This is said to be because the determination of whether a prisoner is associated with an OCG (and his management thereafter) is governed by the SOC Policy Framework to which I have made reference above. The Defendant disagrees and submits that it is a matter for the judgment of the Director as to whether the Claimant's relationship with an OCG was sufficiently evident and concerning that it should be taken into account. Counsel for the Defendant submitted that there is no particular standard of proof that applies, and the only question is whether the Defendant could rationally have concluded that the Claimant may have had status in respect of an OCG. I agree with the Defendant. This is a matter for the Director, subject to rationality review. He is not applying standards such as a balance of probability. He is simply making an assessment of the likely position on the evidence. Insofar as this is said, as a complaint, to be a "subjective" assessment, I do not find that a helpful description.

44. I turn then to the decision itself. In his witness statement, Mr Freed states that: "it is the position of the Category A team, based on recent intelligence, police concerns, and the Claimant's index offending, that the Claimant is still connected to an organised crime group, and that he should be managed under the Serious Organised Crime Framework. That is the view of the Category A team, based on our own assessment of the Claimant, and irrespective of whether the prison is managing him under that framework". He also confirms that he has raised this matter directly with the Head of Security of HMP Long Lartin, expressing his concern that the Claimant still has links to organised crime, and that they ought to consider managing the Claimant under the SOC Framework.

45. In my judgment, it cannot be said that it was irrational for the Defendant to consider that the Claimant had a connection as head of an OCG even taking into account the SOC Framework decision. The nature and the circumstances of the index offence self-

evidently show the Claimant to have been the head of an OCG at the time (see the sentencing remarks of Treacy J set out above, as well as those in the CACD). The Deputy Director's view that the Claimant should be considered as the head of an OCG or associated with an OCG for the purposes of escape risk classification is a prototypical example of a matter for his judgment once an evidential basis has been supplied for the conclusion. There is an ample evidential basis.

46. In my judgment, the Defendant was not bound by the fact of whether staff at HMP Long Lartin manage the Claimant under the SOC Framework or outside that policy. It is not determinative in relation to the matters before the Deputy Director. Indeed, as I ultimately understood her submission Counsel for the Claimant accepted the Deputy Director was not bound but that it was relevant. Her argument was that the Deputy Director had to have very good reason to depart from it and to give cogent reasons for such a departure. As stated in the decision letter, "The decision to monitor prisoners via that mechanism sits with the prison and is not for the Category A Team to influence. That said the Category A Team disagrees with that decision. When considering recent intelligence, the concerns of the police and the very nature and circumstances of your offence, the Category A considers its position that you are considered to be the head of an OCG is reasonable". The fact that the Claimant was not being managed under the SOC Framework was accordingly taken into account and reasons were given for not agreeing with that position.

Factor (3): the significance of a firearms escort

47. The use of a police firearms escort during the Claimant's transfer from HMP Full Sutton to HMP Long Lartin in February 2022 was a factor relied on in the Defendant's assessment that the Claimant was the head of an OCG and had associates able to assist in an escape attempt. The Defendant accepts that this was not based on specific intelligence from the police. Counsel for the Claimant argued that reliance on the fact of the use of a firearms escort, without evidence from the police about the basis of that escort, was irrational and unfair. It was submitted that there could be other reasons for deploying a firearms escort in February 2022 which could include, for example, police intelligence of an operational risk to the Claimant's life during the transfer.

48. I reject this head of challenge. In my judgment, this factor was a legitimate consideration to be taken into account. The Defendant is not provided with the risk assessments made by the police. However, the Defendant, using his expertise, is well aware that an armed escort is not provided unless the Police's firearms risk assessment has decided that it is necessary. I note that the decision letter stated in terms that "Firearms escorts are not a mandatory requirement for high escape risk prisoners so it is reasonable to infer that the police are concerned that you continue to pose an escape risk". In my judgment, the inference drawn by the Defendant was a legitimate inference and using his own expertise as to its relevance. Even aside from the Defendant's expertise, judicial notice can be taken of the fact that such escorts are rare and are commonly arranged when there is an escape risk.

Factor (4): time left to serve

49. The fourth factor which is the subject of complaint is reliance by the Defendant on the length of time the Claimant has left to serve. Counsel for the Claimant accepts this is

a legitimate matter to take into account but argues this point on the basis that pursuant to paragraph 2.6 of PSI 08/2013, length of time to serve can be an indicator of high risk where any of the other factors are present (which include position in an OCG), and the Claimant denies that he should have been treated as having a position in an OCG. As I have concluded above, it was open to the Defendant to proceed on the basis that the Claimant holds a position in an OCG. This head of complaint accordingly fails.

V. Ground 2: procedural unfairness

50. PSI 08/2013 sets out the circumstances in which an oral hearing will be appropriate in respect of categorisation decisions. The policy provides that in some limited circumstances it may be appropriate to hold an oral hearing for the substantive determination of whether a Category A prisoner should be downgraded away from the High Security estate. PSI 08/2013 is silent on the issue of oral hearing in ERC decisions. Given that it sets out quite an elaborate procedural regime for prisoner participation and disclosure, a fair reading is that oral hearings will not be provided. That was certainly at one stage the position of the Defendant.

51. Counsel for the Claimant forcefully argued that the procedure adopted in the process leading to the 23 February 2023 ERC decision was unfair. Her principal submission was that under modern public law procedural fairness standards an oral hearing was required in her client's case. In particular, substantial reliance was placed on R(Osborn) v Parole Board [2014] 1 AC 1115. Although that case sets out helpful general principles, caution needs to be exercised in importing the content of procedural standards from a very different context into the present. R(Hassett & Price) v SSJ [2017] EWCA Civ 331; [2017] 1 W.L.R. 4750 is relevant in this regard. Sales LJ at [56] explained that even in substantive categorisation decisions for Category A prisoners (not escape risk determinations), Osborn cannot be simply read across and applied in other areas:

> "The guidance given by the Supreme Court in Osborn's case was clearly fashioned in a manner specific to the Parole Board context and factors given particular weight in that context either do not apply at all or with the same force in the context of security categorisation decisions by the CART/director…".

52. These points apply with equal force to the further removed context of ERC decisions. Sales LJ's judgment at [52] and following also contains a comprehensive summary of the relevant principles to be applied in identifying the requirements of procedural fairness in particular situations. I will not accordingly set out the now familiar case law from Ridge v Baldwin [1964] AC 60 onwards. The basic point is that procedural fairness requirements are fact and context specific.

53. In the ERC context before me, the courts have imposed more limited procedural safeguards. So, it has been held that, as a matter of common law fairness, a prisoner in these circumstances is not in fact required to be given any opportunity to answer the case put before the Defendant or indeed to be given prior disclosure of material: see for example Ali at [26] as endorsed in Downes at [35]. The law may have moved on from these observations but I do not need to resolve such issues because it is clear that the Defendant's policy on ERC decision-making, reflected in the PSI, goes beyond

the rudimentary standards identified in those cases. In this case the Claimant was in fact given advance notice of the key concerns through provision of the dossier and made detailed responsive representations drafted by Solicitors. The real issue is the lack of an oral hearing and I turn to that matter.

54. One needs to distinguish between two different issues: whether it is lawful to provide that in no circumstance will an oral hearing be provided in any ERC case, and whether in this case an oral hearing should have been provided. The first is an issue of legal principle. The second is essentially a fact-specific matter which falls to be determined on the particular issues which arise in any specific case. In evidence, the position of the Defendant did not always distinguish between the two issues. PSI 08/2013 does not on its face permit oral hearings at all in ERC decisions, and in the Defendant's response of 19 April 2023 to the Claimant's letter before claim, the Defendant appeared to state that at the level of principle an oral hearing would never be provided. However, after the claim was issued (and I suspect following wise legal advice about the public law risks of a blanket exclusion of hearings) specific consideration was given to the request for an oral hearing in the Defendant's letter of 25 May 2023. That letter accepted the possibility of an oral hearing "outside the policy" but concluded that there was no reason why an oral hearing was required in this case. It appeared to me to be the case that the Defendant was not arguing a hearing would never be justified as a matter of principle.

The issue of principle: no hearings at all?

55. By the end of the hearing before me the position had to my mind become unclear and the Defendant in certain respects appeared to be arguing on the issue of principle and contending a hearing could never be necessary. Out of an abundance of caution I will address the issue of principle. I note that, in particular evidence was put forward from Mr Freed explaining why oral hearings were not provided and Counsel for the Defendant placed particular emphasis on this evidence. That evidence does not appear to accept that there may be a need for an oral hearing in any ERC case in any circumstance. In his statement Mr Freed explains that, unlike in the context of categorisation, the assessment of ERC does not depend on resolving disputes of fact or expert opinion, but on whether there are factors which he says "may" "suggest" to the decision maker that the prisoner "may" pose a raised escape risk. In addition, he explains that due to the gisting of intelligence in ERC decisions, there would be few benefits, and little in terms of a constructive dialogue, in an ERC hearing. He says that because of the nature of gisted intelligence a prison official or witness would be unable to elaborate further on the nature of the intelligence which formed the assessment.

56. In general, I accept that these are valid points which justify not having an oral hearing in the normal run of cases, particularly when a prisoner will have had disclosure and an opportunity to make written representations. However, I consider that (as in the case of categorisation decisions) the policy itself should identify that consideration will be given to an oral hearing in an appropriate case. The context of ERC decisions justifies a default rule that there will be no oral hearing but the possibility of such a hearing being necessary should be recognised on the face of the policy. The 25 May 2023 letter from the Defendant essentially confirms the potential to have an oral hearing but "outside the policy". What fairness requires is fact specific and a blanket rule, even if simple and administratively convenient, risks common law unfairness if

it is not capable of responding with flexibility to the circumstances. I do not accept cost can be legitimate reason for refusing a hearing. That was a factor relied upon by Mr Freed.

57. Counsel for the Defendant argued that there was nothing in the policy which operated as a “blanket” rule excluding oral hearings. Factually that may be true, but it is not an answer to the point that a prisoner can only operate according to what he/she can read in a published policy. Such a prisoner would not know (unless he/she had litigated like Mr Gunn) that in fact the Defendant may allow an oral hearing “outside the policy”. Transparency and accessibility of processes are important public law values. They are particularly important when an individual is vulnerable and generally without access to legal advice, such as a prisoner. Such persons should be able to identify from the Defendant’s published materials concerning prison regulation, such as PSIs, the processes which govern decision-making. Being able to discover the potential for an oral hearing only because the prisoner has litigated is not consistent with principles of transparency or accessibility.

58. The PSI already provides detailed guidance on when such hearings may be required in categorisation decisions and it would not be difficult to fashion similar guidance for ERC decisions.

59. So, insofar as the Defendant disputes the issue, my conclusion is first that oral hearings in ERC cannot be excluded in all cases, and secondly, that considerations of good practice and procedural fairness require that a prisoner be able to discover he may be able to at least ask for an oral hearing. He should be able to do this after looking at published policy, as opposed to waiting to be told when he litigates that the Defendant may “outside the policy” give consideration to an oral hearing.

60. I turn to consider whether the Defendant acted lawfully in deciding not to have an oral hearing on the facts. This issue is not to be approached on a rationality basis but according to what is required by procedural fairness according to standards applied by the court.

Was a hearing required by procedural fairness on the facts?

61. Counsel for the Claimant argues that a hearing was necessary because there are significant disputes of fact material to the criteria for the decision, including (i) whether the Claimant may properly be regarded as the head of (or involved with) an OCG given that he is not managed under the SOC Framework, (ii) the credibility and relevance of intelligence reports dated May-November 2022, and (iii) whether there is any other evidence (not disclosed or gisted for the Claimant) that the Claimant currently poses a heightened escape risk. The last point does not arise and I do not accept that the first and second issues fairly required hearing from the Claimant himself, as argued by Counsel for the Claimant. The Claimant has put his case in detailed written submissions and the Defendant had to make a predictive judgment when assessing ERC. Given the background to this case, I do not consider hearing from the Claimant oral statements to the effect that he is not a member of an OCG would lead to a better or more informed predictive assessment of escape risk. I have already addressed the entries and relevance of the SOC Framework.

62. I conclude that the decision in this case not to have an oral hearing was lawful. On the facts before me it would have served no purpose: this was a case of a risk assessment where there was ample material justifying the judgment made (not least the nature of the index offence and concerning material from the dossier reproduced in the Appendix). This was not a close case where I am persuaded the Claimant could have added anything of value orally to his already detailed written representations of 25 January 2023, which were drafted by Solicitors. I asked Counsel for the Claimant what Mr Gunn could have added but I concluded that she did not identify any real matter of substance which he had not already addressed. She pointed to the fact that the "OCG point might require ventilation" in an oral hearing. I remained unpersuaded that such ventilation would take matters further. I also do not accept the submission that this is a case where the credibility of the assertions about mobile phone use could be usefully tested in an oral hearing. When I pressed Counsel for the Claimant in relation to what would take place at the hearing, she was ultimately inviting me to endorse a process where Mr Gunn could undertake what seemed to me to be a free-wheeling "testing" of all evidence in what she said would be an "inquisitorial process". I do not consider that in the present context public law fairness standards require such a process. Indeed, PSI 08/2013 at 4.6-4.7 makes clear that even in Category A categorisation reviews that is not the way in which oral hearings function when they are used.

63. I reject the submission of Counsel for the Claimant that an oral hearing may be necessary because "dignity" related considerations demand a prisoner have a right of oral participation. That would suggest all ERC decisions require an oral hearing. Public law fairness is not based on such considerations in the present context but rather on the twin aims of ensuring an individual can make his position on the disputed issues known to a decision maker (which a prisoner can do in written representations) and production of a better-informed decision by the Deputy Director. One must not lose sight of the fact that ERC is ultimately a matter of prison management and of the risks of judicialisation in this context. ERC decisions are very far removed from the situation in cases such as Osborn.

64. The Claimant's case for an oral hearing accordingly fails on the facts.

VI. Conclusion

65. Finally, although I do not need to determine this point, I consider that there was force in the submissions of Counsel for the Defendant that even if errors were established under Grounds 1 and 2, it was highly likely the decision would have been the same for the purposes of section 31 (3C) of the Senior Courts Act 1981. The claim is dismissed.

APPENDIX

Redacted in relation to medical matters.

The Claimant's current solicitors (Tuckers/SL5 and Carringtons) are not the solicitors referred to in the pre-2022 intelligence reports.

March 2009	Information stated that Mr Gunn self-reported that a treatment was not working. It was not known if this report was genuine or an attempt to go outside hospital. It is known that Mr Gunn did have to be seen by a hospital consultant on the advice of healthcare, due to a medical condition. When at the hospital he was given options by the doctor for treatment, which he declined. There were concerns that he may have been watching procedures.
July 2010	Concerns were raised with regards to Mr Gunn's motive in obtaining information about [REDACTED] and requesting information about the medication required for [REDACTED]. It was suggested that Mr Gunn may have been planning to feign an illness in an attempt to facilitate a move to outside hospital. Mr Gunn was aware of these concerns and dismissed such motives, stating he would be able to get his friends to go up against armed police and helicopters.
August 2010	Information received stated that Mr Gunn was attempting to condition and manipulate staff. It was further stated that Mr Gunn was overheard discussing the possibility of corrupting a jury member involved in the case of one of his associates, suggesting that Mr Gunn continued to be an authoritative figure within the criminal fraternity.
October 2010	Information received stated that Mr Gunn was attempting to coerce another prisoner into gaining access to outside hospital possibly by feigning illness. It was thought Mr Gunn could possibly be intending to use another prisoner to test the security procedures in place during escort. This theory however was not corroborated.
June 2011	Information received suggested that Mr Gunn requested information on the condition '[REDACTED]' to be sent to him. There have been previous concerns that Mr Gunn had attempted to gain in depth knowledge of certain medical conditions and their symptoms in order to facilitate a move to outside hospital. Information received during this period stated that in an outgoing letter sent in April 2011 to Mr Gunn's brother he made reference to the 'bark ways' going down and states that it would be an 'opportune time to escape'. During the June 2011 review the following information was also received: • Two social visitors appeared to be checking the security of the SSU, and questioned staff about who was on the SSU. • There were two incidents where Mr Gunn's social visitors claimed to have lost their visitor's passes. On the second occasion, the pass was not recovered.

	These incidents took place in close succession. • A close associate, and cleared visitor was said to have a pilot's licence and access to a fixed wing aircraft. • Mr Gunn attempted to make a three way phone call. • Mr Gunn attempted to ostracise certain members of staff, and spread malicious allegations about them. He tries to dictate to staff and manipulate them. • Mr Gunn made threats against staff on the PIN phone system.
Dec 2011	Mr Gunn threatened to abuse the Rule 39 privilege by having paperwork which is not of a legal nature sent into the establishment via his solicitor. Mr Gunn threatened to take this action after the establishment withheld paperwork which was deemed inappropriate for Mr Gunn to have in his possession. While in the association area of the Special Secure Unit, Mr Gunn threw a pot of excrement and then picked up a chair which he then threw down the stairs. Mr Gunn was locked in his cell pending a transfer to the SSU Segregation Unit. Mr Gunn continued to use threats to try and dictate to staff what actions they should take. As a result he spent a period of time on basic regime.
Sept 2012	While on the SSU exercise yard Mr Gunn was given an instruction to cease exercise and leave the yard, Mr Gunn refused the instruction.
Nov 2012	Mr Gunn made a PINS telephone call to an individual listed as a friend. During the call the recipient referred to Mr Gunn writing to someone, she then stated "or you could always text him". Mr Gunn made a PINS telephone call to the sister of a second prisoner. During the conversation the recipient asked Mr Gunn if he has got his own phone in there, to which he replied "Yeah you have to be good and work your way up, you know what I mean". Given the context of both of these telephone calls it was suggested that it was plausible that Mr Gunn may have access to a mobile phone.
October 2012	Information states that Mr Gunn continued to attempt to condition staff using confrontational and intimidating behaviour. Information states that Mr Gunn continued to challenge the regime and staff instructions. Mr Gunn was said to openly encourage the other prisoners to do the same. Information stated that Mr Gunn was rude and abusive to staff. As a result his IEP level was reduced to Basic and a TASA document was opened. Information states that Mr Gunn continued to communicate with former criminal associates whilst in custody and attempted to issue threats and instructions via PIN phone system and outgoing mail. During this review period it became apparent that Mr Gunn had previously used his solicitor to forward on letters to others, specifically to those in a foreign country. There are concerns that in doing so Mr Gunn was once again abusing the Rule 39 privilege and bypassing censors in the process.
February 2013	Information was received from an establishment outside of the High Security Estate, following a prisoner at that prison being placed in the E-list. The prisoner was placed on the E-list following the discovery of a well detailed escape plan found within his cell. This included; a map of the prison, the name and address of a member of staff intended as a hostage, staff locations within the prison and the address of two members of the public. The establishment believed that these two members of the public were Mr Gunn's brother and his brother's daughter, given this establishment linked Mr Gunn to this information.
April 2013	Information received suggested that a high profile prisoner at HMP Frankland is planning to escape by threatening the family of a prison Officer. This information was however graded as; 'untested and cannot be judged'.
May 2013	Information received following Mr Gunn's arrival into the SSU at HMP Belmarsh that Mr Gunn appears to be influential amongst other prisoners.
June 2013	Mr Gunn made a telephone call to an individual listed as a friend. Mr Gunn spoke about going through paperwork and information for his appeal. Mr Gunn requested that his friend make sure that when sending any incoming post he marks it as Rule 39 to ensure no one opens it. Given the fact that this person was listed as a friend rather than a legal representative of Mr Gunn, this suggested that Mr Gunn was attempting to abuse the Rule 39 privilege and bypass security procedures Mr Gunn states that this information has been recorded as a result of the misinterpretation of the call by the monitoring officer. Mr Gunn states that he is aware that his calls are monitored and it does make sense that he would discuss this abuse when he can see the officer monitoring his call while he makes it. Mr Gunn states that during this call he instructed his friend to contact his new solicitor as he himself was having difficulty doing so. Mr Gunn states that he asked his friend to instruct the solicitor to ensure that any correspondence sent to him by his firm was franked and

	has rule 39 on it to clearly show who the sender was. Mr Gunn states the reason he instructed his friend to do this was because it was his friend who had managed to get the new firm to represent Mr Gunn. Mr Gunn provides supporting evidence of this account in the form of a letter from his solicitor apologising for difficulties he was having with his telephony at this time dated 13.06.14. The information referred to in this report was generated 11.06.13.
January 2014	There have been concerns that Mr Gunn is abusing the PIN phone system by means of call diverts. Following a call made by Mr Gunn to a landline, there was a long delay before the recipient of the call eventually answered on a mobile phone evidenced by the fact that the recipient was driving. Diverting calls is a breach of procedure and is strictly prohibited. Mr Gunn states that he should not be held responsible for the diversion of one call made by himself to a cleared individual. Mr Gunn states that he is informed the recipient of the call, who Mr Gunn states diverted the call independently, of how this affected him and has instructed the recipient not to answer a call from him (Mr Gunn) again if his phone is diverted. Finally Mr Gunn states that this occurred as a result of an accident and that he has never asked someone to divert a call on his behalf.
April 2014	Mr Gunn received a letter. The letter reads "I'll tell you what Colin whatever you been up to, your planned escapes, we all throw our hats off to you, I suppose it's something that gives you hope and keeps you focused to face the term you have. There are lots of things I'd like to say but I don't know how much of it would be crossed out so for now I will leave a little bit untold until I know all the rules and regulations Theirs not yours." The lady writing the letter may have heard rumours and speculation about how Mr Gunn has planned previous escape attempts but it cannot be ruled out that she has been made aware of a future planned escape attempt.
April 2014	There was a positive drug dog indication on Mr Gunn's visitor. The visit took place in closed conditions.
Nov 2014	There was a positive drug dog indication on Mr Gunn's visitor. The visit took place in closed conditions.
Dec 2014	Information received suggests that a prisoner location at another prison has been named as target for an attempt on his life at some time in the near future. It is believed that an improvised weapon is trying to be smuggled into the prison in order to carry out the attack. It has been suggested that Mr Gunn is orchestrating the attack as he believes the prisoner to be an informant in a case regarding the Gunn family. There was a positive drug dog indication on Mr Gunn's visitor. The visit took place in closed conditions.
Feb 2015	During a search of Mr Gunn's cell, a small bag was found containing a rubber glove and a small amount of white cream. Mr Gunn stated that he had used these items to help remove the package up his backside. He stated the item secreted was liquid steroids and he wanted the item removed by healthcare. In his cell was a plastic knife which had a hook at one end, Mr Gunn stated he has pushed this up his anus in an attempt to retrieve the package. Mr Gunn was asked how his mother had reacted to news of his hospital admission when he had rung her today, he stated that she had been worried. Before he left the wing on Monday to come to HCC, he had left phone numbers with his friends to ring his mother if he didn't come back to the wing so she would know that he was in HCC or at outside hospital. Inference might be made from the information and supporting information that an associate of Mr Gunn may have access to a mobile phone and they have contacted Mr Gunn's mother to keep her informed of current events.
June 2015	Information suggests that Mr Gunn and a fellow prisoner were involved in an assault on another prisoner who had drunk hooch brewed for Mr Gunn. The prisoner's head had been banged against the wall and he had been warned to get off the wing by the weekend.
June 2015	Information received suggests that Mr Gunn and a fellow prisoner have steroids in their possession.
June 2015	Mr Gunn refused to relocate to a different wing. He stated that he would not go, the officer stated that he was giving him an order and Mr Gunn again stated that he would not go and that he would rather go to the segregation unit or be shipped out as he had been at Full Sutton too long. Mr Gunn was calm throughout and did not become aggressive at any point.
Sept 2015	An Officer had excrement thrown over him by a prisoner. Information received suggests that this was ordered by Mr Gunn.

Oct 2015	Mr Gunn was observed sat at the table in his cell with the tall locker door open which obscured the officer's view of what he was doing with his hands. The officer believed that he may have been using a mobile phone.
Nov 2015	Whilst undertaking a H/R check of Mr Gunn, staff observed him sat on his chair facing the window bent over. As soon as the observation panel was opened he turned his upper body around to look in the direction of the officer. His body language and reaction to being checked at that point appeared to be suspicious. Inference might be made from the information that Mr Gunn's behaviour is suspicious and suggests that he may have access to a mobile phone.
March 2016	Information suggests that Mr Gunn is selling spice and Subutex on Echo Wing. Information received suggests that Mr Gunn is part of a group of prisoners that share access to a mobile phone in HMP Full Sutton. It is believed this phone is used to arrange the supply of drugs in the prison.
	A prisoner phoned his son and asked him to send £500 to Mr Gunn's mother.
April 2016	When carrying out routine checks, Mr Gunn was seen to be in a compromising position, which may indicate that he was either trying to plug or retrieve something from his anus area.
May 2016	Information suggests that Mr Gunn has arranged for some money to be sent in for another prisoner. This would suggest that Mr Gunn us circumventing prison rules that prisoners should not be sending money to other prisoners.
July 2016	Information received suggests that a prisoner acts as lookout whilst Mr Gunn uses a mobile phone.
	Information received suggests Mr Gunn is planning to escape from prison.
	Information suggests that Mr Gunn has access to a mobile phone. Further information suggests that Mr Gunn uses Rule 39 to organise the delivery of drugs.
Oct 2016	Information suggests that drugs and phones are being held for Mr Gunn in the prison.
	Information received suggests that Mr Gunn is planning an imminent escape from HMP Whitemoor. It is also believed that Mr Gunn has a mobile phone in his cell which he changes the number on a regular basis.
	There has been a noticeable drop in the number of calls Mr Gunn is making on the PIN phone system. This could indicate that Mr Gunn is communicating with associates by other means, such as a mobile phone.
Nov 2016	Mr Gunn wrote a letter to his mother. In the letter Mr Gunn states he has [REDACTED]. This could potentially be seen as ground work to get to outside hospital.
	During a PIN phone call to his mother, Mr Gunn makes abusive comments about someone believed to be a police officer. It is believed that Mr Gunn blames this officer for his transfer from HMP Whitemoor to HMP Frankland.
April 2017	Information received suggests that Mr Gunn made arrangements to make a PIN phone call to his female friend on the pretext that his associate, recently released from HMP Nottingham, would answer the phone. The following day, Mr Gunn called his female friend and this associate answered. This is a breach of the PIN compact.
Oct 2017	Information suggests that members of a gang on the outside may be under threat from Mr Gunn and his associates.
Oct 2017	Information suggests that a prisoner who gave evidence against Mr Gunn is to be assaulted.
Sept 2018	Information suggests that Mr Gunn is getting SIM cards and SD cards smuggled into prison within legal document bundles.
Oct 2018	Information states that Mr Gunn has access to a mobile phone.
	During a search of the freezers, a sharpened toilet brush was found inside a clear bag of frozen veg inside the freezer bag of Mr Gunn.
Jan 2019	Information suggests that SD cards are being smuggled into the prison on behalf of Mr Gunn.
Mar 2019	A letter sent into Mr Gunn tested positive for spice.
Apr 2019	Mr Gunn received letter that stated "I know you're looking well as I've seen a pic of you on Facebook".
May 2019	Information suggests that Mr Gunn has put a price on the head of a prisoner at another establishment.
June 2019	Information suggests that Mr Gunn may be sending death threats to a prisoner at another establishment.

Nov 2019	Information suggests that Mr Gunn is exerting a negative influence over weaker prisoners.
Nov 2019	Information suggests that Mr Gunn may be planning to get staff assaulted.
	Information suggests that Mr Gunn sent out a threatening letter using another prisoners details.
	Information suggests that Mr Gunn is paying to get a prisoner at another establishment assaulted.
	Information suggests that Mr Gunn may have planned for an officer to get assaulted.
Mar 2020	Information suggests that Mr Gunn is instigating assaults on staff.
Sept 2021	No further information.
Mar 2022	No further information.
May 2022	Information suggests that Mr Gunn has informed an associate at another establishment that his daughter has a SIM card and intends to by a cheap throwaway so that Mr Gunn could reactivate the mobile.
July 2022	At the end of a pin phone call, Mr Gunn said “Call me babe yeah”. This could suggest access to illicit telephony.
Sept 2022	Information suggests that Mr Gunn discussed with his visitors that the prison has an MRI scanner outside and that he might need it.
Sept 2022	Information suggests that Mr Gunn is disappointed that his recent risk score has increased and he has been refused the PIPE in Frankland. He is believed to have said he I going to just ignore how the prison is dealing with him for the next year, is going to have his MRI and continue training to bulk up then the prison can “go f**k themselves”.
Sept 2022	Information suggests that during a pin phone call to his daughter, Mr Gunn goes on to speak to three further people. This is a misuse of the pin phone system.
Oct 2022	Information suggests that an associate is in contact with Mr Gunn, and he wants Mr Gunn to keep in touch with one of his associates on WhatsApp and two others on Facebook. This could suggest that Mr Gunn has access to social media or may keep in contact via third party.
Dec 2022	DST Staff attended the wing and as they entered the landing from the staff area they were immediately engaged in conversation by Mr Gunn and another prisoner. The conversations seemed very forced and DST could sense these prisoners were attempting to divert their attention. It is believed that a prisoner on the wing may have access to a mobile phone or may be holding a mobile phone for other prisoners.