



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF STANTON AND BOWEN v. THE UNITED KINGDOM

(Application no. 49096/19)

JUDGMENT

Art 5 § 1 • Lawful arrest or detention • Delay in the release of two indeterminate sentence prisoners, who had completed their minimum terms of imprisonment, due to a lack of immediate availability of accommodation at designated Approved Premises at the time the Parole Board directed release • Continued detention, pending availability of accommodation, in conformity with domestic law and the consequence of the risk that the applicants were perceived to pose to the public if released directly into the community • Causal connection between the applicants' conviction and sentences and their continued detention not broken • No structural issue • In case circumstances delays not rendering detention, or any part of it, arbitrary

Prepared by the Registry. Does not bind the Court.

STRASBOURG

22 September 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Stanton and Bowen v. the United Kingdom,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen, *President*,

Saadet Yüksel,

Jovan Ilievski,

Péter Paczolay,

Stéphane Pisani,

Juha Lavapuro,

Hugh Mercer, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to:

the application (no. 49096/19) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two British nationals, Mr Christopher Stanton (“the first applicant”) and Mr Raymond Bowen (“the second applicant”, together “the applicants”), on 16 September 2019;

the decision to give notice to the United Kingdom Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 1 September 2026,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applicants were indeterminate sentence prisoners whose release after the expiry of their minimum terms of detention was subject to a risk assessment by the Parole Board. In both of their cases, the Parole Board ordered release subject to the condition that they reside at designated Approved Premises as part of the risk management plan for their release. They complained under Article 5 §§ 1 and 4 of the Convention about the delay of 118 days and 69 days respectively in their release from detention on account of a lack of immediate availability at the designated Approved Premises when the Parole Board directed release.

THE FACTS

2. The applicants were born in 1974 and 1952 respectively and live in Newport. They were represented by Mr K. Kesar, a lawyer practising in Bromley.

3. The Government were represented by their Agent, Mr F. Janeczko, of the Foreign, Commonwealth and Development Office.

4. The facts of the case may be summarised as follows.

I. BACKGROUND FACTS

A. The first applicant

5. The first applicant was found guilty of offences of wounding with intent to cause harm and unlawful wounding. He was sentenced to an indeterminate sentence of imprisonment for public protection (“IPP sentence”) on 8 October 2010. The minimum term was set by the sentencing court at two years and 228 days (three years less time on remand). It expired on 24 May 2013.

6. On 11 December 2013 the Parole Board recommended that the first applicant be moved to open prison conditions. In accordance with that recommendation, he was moved to open prison conditions on 4 February 2014. Following the next review, the Parole Board convened an oral hearing to take place on 26 March 2015.

7. Shortly before that hearing, on 13 February 2015, the first applicant’s offender manager, Ms C., contacted Mandeville House Approved Premises, in south Wales. Approved Premises offer residential provision to selected offenders and some persons on bail in order to provide enhanced levels of protection to the public and reduce the risk of further offending (see paragraph 44 below). Ms C. asked Mandeville House for a place for the first applicant on the basis that placement in an Approved Premises was to form a necessary part of his risk management plan on release. Mandeville House responded that a place would become available in July that year, and the date was subsequently confirmed as being 23 July 2015.

8. At the oral hearing on 26 March 2015, the Parole Board considered the proposed risk management plan for the first applicant’s release containing the recommendation that he reside at Mandeville House. The Parole Board heard oral evidence on behalf of his offender manager, from his offender supervisor, and from the first applicant himself.

9. The Parole Board issued its decision letter on 27 March 2015 directing the first applicant’s release to Mandeville House. The decision stated:

“**7. Evaluation of effectiveness of plans to manage risk:** The risk management plan is based around a period of residence at Mandeville House – a bed is available from 23rd July 2015.”

10. The Parole Board noted that the first applicant was expected to stay at Mandeville House for around three months before returning to the Newport area in south Wales where the local authority would house him. It noted that his former partner, his young daughter and his mother lived in that area.

11. The Parole Board’s conclusion was as follows:

“**8. Conclusion and decision of the panel.** You got your sentence after committing an extremely serious piece of violence that could have ended up with someone being killed. It was made worse by the fact that you have a long history of committing violent offences (both convicted and unconvicted), often against partners, and often using

weapons of various types. You have been in prison now for almost five years, and it is to your credit that you have made the most of the opportunities available to you both in closed conditions and in open ...

Having considered all the evidence before it, the panel has decided that your risk is now manageable in the community subject to the risk management plan that has been proposed and directs release subject to additional licence conditions. It notes that Mandeville House do not anticipate having a bed available before late July, but assumes that release would be brought forward if that availability date should change for any reason.

...

You must reside at Mandeville House approved premises and not leave to reside elsewhere, not even for one night, without the prior approval of your supervising officer. Thereafter you must reside as directed by your supervising officer.”

12. In addition to this condition of residence at Mandeville House, other licence conditions were recommended.

13. Following the Parole Board’s decision letter, Ms C. made a number of enquiries with Mandeville House to confirm the placement date of 23 July 2015 and to check whether a bedspace would become available earlier. On each occasion, she was informed that there was no available earlier space. These communications took place on 31 March, 23 April and 30 April 2015.

14. Mr H. took over from Ms C. as the first applicant’s offender manager from 20 May 2015. He had discussions with Mandeville House concerning a curfew, signing times and employment, in preparation for the first applicant’s release. He also made enquiries on 10 July 2015 with Mandeville House, along with all three other Approved Premises in Wales, regarding the availability of a space for the first applicant in advance of 23 July 2015. All confirmed that they did not have such availability.

15. On 6 July 2015 the first applicant issued an application for a writ of habeas corpus for release from prison on account of the delay in releasing him. On 10 July the application was refused on the papers with the judge noting that detention remained lawful until the condition recommended by the Parole Board had been met. He further observed that the Parole Board had considered that the applicant would not be released until the end of July, unless a place became available earlier, and that release was now due to occur in 18 days’ time. Following an oral hearing on 21 July 2015, the application for habeas corpus was refused in view of the first applicant’s imminent release and the judge directed that the application proceed by way of an application for permission to apply for judicial review.

16. The first applicant was released to Mandeville House on 23 July 2015. This was 118 days after the Parole Board decision of 27 March 2015 (see paragraph 9 above). He stayed at Mandeville House for a period of almost 11 weeks, following which he moved to other accommodation within the community.

17. Between the date of the Parole Board hearing on 26 March 2015 and his release on 23 July 2015, the first applicant had at least two periods of release on temporary licence (“ROTL”), on 29 April 2015 and on 6 July 2015.

B. The second applicant

18. The second applicant was convicted of the murder of his wife and sentenced on 29 May 1998 to life imprisonment. The minimum term to be served was set by the sentencing court at 14 years. It expired on 22 August 2011.

19. On 12 September 2012 the Parole Board recommended the second applicant’s move to open prison conditions. In accordance with that recommendation, he was moved to an open prison on 31 October 2012.

20. Following the next review by the Parole Board, an oral hearing was set for 1 March 2014. In February 2014 Ms L.J., the second applicant’s offender manager, contacted Mandeville House to explore the possibility of a place for him. She was told that no place would be available for him until 21 January 2015.

21. For reasons unconnected with availability at Mandeville House, the date of the second applicant’s oral hearing was subsequently changed to 30 October 2014. The second applicant was already having periods of ROTL and these continued in the run-up to the Parole Board hearing. His periods of ROTL took place at Mandeville House or with his son or daughter, both of whom lived in the south Wales area.

22. At the oral hearing on 30 October 2014 the probation service recommended that the second applicant be released to an Approved Premises because his risk of harm was assessed as high at the point of release. The Parole Board was made aware that no guaranteed bedspace was available at Mandeville House until January 2015.

23. The Parole Board issued its decision on 13 November 2014. It directed the second applicant’s release subject to additional licence conditions. In its decision letter, the Parole Board addressed the documentary evidence before it (including psychological assessments) and oral evidence from Ms L.J., Mr L. (his offender supervisor) and from the second applicant himself. The Parole Board noted, amongst other things:

“5. ... Your return into the community needs to be gradual and measured ... [R]elease after such a long time in prison is not easy. The panel recognises that you are anxious to return to work but has no doubt that a gradual approach with a period in Approved Premises where you will not only be able to turn to your supervising officer but also your key worker, where you can show respect for the rules of the establishment before moving on perhaps to your son’s home and then to employment, is likely to be of much greater benefit to you, allowing you to make the difficult steps necessary to achieve a resettlement smoothly ...”

24. The Parole Board took the view that the second applicant’s risk of reoffending was now manageable within the community. The Parole Board

recommended additional licence conditions including his residence at Mandeville House for as long as directed by his supervising officer and reporting requirements while resident at Mandeville House. It noted:

“The risk management plan proposed by your Offender Manager is based on your residing at Approved Premises for 4-6 [weeks], where you will be supported by your key worker. After this it is recommended that you reside at the home of your son ... in Newport, South Wales or otherwise within your own independent housing in the same area. The panel endorses your additional licence conditions as being robust and comprehensive.”

25. There was ongoing communication between Ms L.J. and Mandeville House to check if a bedspace would become available before the anticipated date of 21 January 2015. Such communication took place on 14 November, 19 November, 15 December, 19 December and 22 December 2014. Telephone calls were also made to Approved Premises in the wider area, including Gloucester, Bristol and Swansea, but no space was available in advance of 21 January 2015.

26. Meanwhile, on 15 December 2014 the second applicant issued applications of a writ for habeas corpus and judicial review. On 19 December 2014 no order was made upon the application for habeas corpus but the second applicant was permitted to renew the application at an oral hearing. He did so on 23 December and a hearing was listed for 19 January 2015. The application for habeas corpus was withdrawn on 16 January 2015 following confirmation that his release would take place on 21 January, and the hearing fixed for 19 January was vacated.

27. The second applicant was released to Mandeville House on 21 January 2015 once a place became available for him there. This was 69 days after the Parole Board decision (see paragraph 23 above). He remained at Mandeville House for eight weeks and then moved to other accommodation in the community.

II. THE DOMESTIC PROCEEDINGS

28. In the subsequent judicial review proceedings, each applicant claimed that the periods spent in custody after the Parole Board decisions and before release constituted a breach of section 28 of the Crime (Sentences) Act 1997 (“the 1997 Act” – see paragraphs 38-39 below) and a breach of Article 5 §§ 1 and 4 of the Convention.

29. Their claims were heard together in the High Court, which dismissed them on 5 August 2016. The judge considered that there was no breach of domestic law nor of Article 5 §§ 1 and 4 of the Convention. She found, considering the domestic law arguments, that the delay between the Parole Board decision and release was reasonable.

“43. Mr Bowen does not advance any case of unreasonableness in his grounds of challenge. That is perhaps unsurprising, given that the wait for a place at Mandeville

House was in his case around two months, in the context of a life sentence with a minimum term of 14 years. Ms [L.J.], his Offender Manager, did try to find an alternative AP and called Bristol, Gloucester and Swansea, but none had availability. Mr Bowen himself was only willing to consider Cardiff or Swansea, so that he could be close to family members and maintain family ties. The delay was not in the circumstances excessive or unreasonable.

44. Mr Stanton does advance a case on paper that his continued detention for approximately four months after the Parole Board's decision was unreasonable ... I am unclear whether it still forms part of Mr Stanton's case before me. In case it does, I have noted the account advanced by Ms [C.] and Mr [H.] (Mr Stanton's Offender Managers) to the following effect:

i) Mandeville House is in Cardiff, and is the closest [Approved Premises] to Newport where Mr Stanton's family lives. Family links were an important part of Mr Stanton's resettlement and Mr Stanton was very keen to be placed in that area. That was why Mandeville House was selected.

ii) Mr Stanton had been supported by an organisation called Invisible Walls. That organisation could continue to support him if he was placed in the Newport/Cardiff area. That was a further reason for selecting and sticking with Mandeville House.

iii) Mandeville House could not take Mr Stanton until 23 July 2015. There was no bed available until then.

iv) Mr [H.] inquired whether Quay House, another [Approved Premises] in Wales, could take him, but was told that there was no availability there either, and indeed that there was a shortage of [Approved Premises] spaces in Wales at that time, although steps were being taken to increase vacancies.

v) The Parole Board was fully aware of the waiting time for Mandeville House, but nonetheless specified residence there as a condition of release, noting that release would be brought forward if a bed became available earlier (in fact it did not).

45. Against that, I note that Mr Stanton argued that he should have had the benefit of a bed reserved for another prisoner he knows, who was not in fact released by the Parole Board at his hearing in April 2015. Ms [C.] knew nothing about this other prisoner, and (correctly) said that allocation of beds is a matter for Mandeville House ...

46. The real point for Mr Stanton is the four-month delay: was it excessive? In answer, I note two things. First, as a matter of context, Mr Stanton was subject to an 'indeterminate' sentence for public protection. He had no right to release at any date certain following conviction. His only expectation was that he would be released if he could demonstrate that his continued detention was no longer necessary for public protection. He knew (or should have known) that any direction for release might be subject to a residence condition, fulfilment of which would depend on a suitable placement being found. That is what happened; that was in line with his reasonable expectations. Secondly, on the facts, his release could only have been secured earlier by sending him to a different [Approved Premises], because Mandeville House was full. But Mr Stanton wanted to be in the Cardiff area, which was undoubtedly the best place for him given his family and community ties, and that was what the Parole Board had specified, even knowing there would be a delay of around 4 months. Overall, and if this matter is part of Mr Stanton's case, I conclude that his detention until 23 July 2015 was reasonable, while accepting that this case falls closer to the line."

30. As regards the allocation of resources and provision of Approved Premises, the High Court referred to a witness statement provided by Mr L.,

the Head of Approved Premises for the National Offender Management Service. The judge recorded Mr L.’s evidence to the effect that that there had to date been sufficient provision of Approved Premises, noting his comment that Approved Premises were “beginning to approach the limit of what they can achieve”. Mr L. had explained that a national planning exercise was underway and that to assist with ensuring sufficiency of provision, the referral system had been reformed and centralised so that vacancies could be reduced to a minimum. The judge accepted Mr L.’s evidence that the provision of Approved Premises was sufficient, noting “[t]hat is not simply to accept an assertion, but to accept the detailed explanation which underpins that assertion”. In light of Mr L.’s evidence, the judge rejected the submission that there was any systemic insufficiency or consequential breach of duty. She added:

“77. ... There may be strains on the system, and in some cases there may be delays in finding a suitable placement (as suggested by the witness evidence by the various solicitors), but I am not persuaded that those problems represent any form of systemic failure.”

31. In respect of the Convention arguments, the High Court found that that there was no break in the causal connection between conviction and detention following the Parole Board’s direction in each case, no arbitrariness in the applicants’ detention until their release to Mandeville House, and no ancillary duty under Article 5 to make Approved Premises available

32. The High Court granted permission to appeal to the Court of Appeal on the ground that there had been a breach of section 28 of the 1997 Act (see paragraphs 38-39 below). It refused permission to appeal on the Convention grounds.

33. The applicants sought permission from the Court of Appeal to appeal on their Convention arguments. A rolled up hearing to consider the permission arguments and the substantive appeal took place. On 20 December 2017 the Court of Appeal refused permission to appeal on the Convention grounds and dismissed the appeals. Lord Justice McCombe, with whom the other judges agreed, explained:

“43. In my judgment, it is clear from s. 28(6) [of the 1997 Act – see paragraph 39 below] that the Board cannot give a direction for release under s. 28(5) [see paragraph 38 below] unless it is satisfied that it is no longer necessary to confine the prisoner for the protection of the public. While there is no express provision empowering the Board to compel particular licence conditions, it is clear from s. 31(3) [see paragraph 40 below] that the scheme envisages that the Board will in fact make recommendations as to the conditions that are desirable in order to achieve the protection of the public and it would be entitled to determine that it is not ‘safe’ to release the prisoner without such conditions being in place.

44. It is common ground that in making a direction with recommended conditions, the [Secretary of State] can only have a reasonable time in which to put the conditions in place. Thus, for example, as here where it is envisaged that release might be directed, enquiries are made (with regard to availability of Approved Premises), before the

hearing takes place before the Board. The panel is then informed when a place will be available.

45. In the present cases, the panels knew when places were to be available at [Mandeville House] for these appellants and on that basis were prepared to direct release, compatible with public protection, with the recommendation that the appellants should reside at those premises when first released. It can safely be assumed, I think, that if that accommodation had not been available as part of the risk management plan, the panels would not have directed release at all.

46. The working of the Act is that the Board will direct a release in a manner that [is] consistent with the protection of the public. It may do so absolutely or it may do so, with the knowledge that certain safeguards can be put in place to achieve that result. The prisoner can have his release on that basis or not at all. In these cases, the appellants were released from custody in accordance with the release arrangements which the Board considered to be consistent with the protection of the public.

47. If, as I see it, the appellants would not have been released at all if Approved Premises could not be made available, they can hardly complain if they are released in accordance with a direction that release will occur on a defined date when the premises are known to be available. This is subject to the points arising under ground 1(b) [the issue of reasonable time to provide Approved Premises] and under ground (5) [the issue of any resource obligations].

48. In my judgment, each of these Parole Board decisions are properly to be read as directing release subject to the risk management plan, including residence at the Approved Premises ... [T]he conditions imposed are ‘part and parcel of’ and ‘integral to’ the decision to direct release.

...

52. ... Parliament cannot have intended [section 28] to work in a way that would have the impracticable results that flow from the construction which [the appellants] would have us adopt. Of course, prior planning is made by the offender manager to see when a place at Approved Premises would be available, as happened here. It enables the panel to know that, if it directs release to Approved Premises, the release can be safely achieved with the relevant risk management precautions in place. However, to my mind, an intention to require immediate release at a time before such precautions are known to be available is not something that one should readily attribute to Parliament. ... [I]f a prisoner is released on condition of residence at a place which is not available to him it would have the result that he would have to be brought back to prison immediately the condition was broken on the first day out of custody. Such a result can hardly have been intended.”

34. The Court of Appeal observed that it was common ground that the Secretary of State was under a public law duty not to delay a prisoner’s release beyond “a reasonable timeframe”. The court considered the High Court’s findings on the reasonableness of the delay (see paragraph 29 above) and the applicants’ arguments on appeal. McCombe LJ concluded:

“81. ... [I]t seems to me that a particular feature of the case made for each of these appellants is that focus is directed simply to the bare number of days for which each appellant had to wait for a place at [Mandeville House] after the Board’s decision before being released. There is an inadequate focus, to my mind, on the overall context of the two cases. The appellants simply present the 69 and 118 days periods and then compare them with other unrelated periods: the periods in custody, the periods waiting for the

working through of the parole process, the periods spent in residence at [Mandeville House] and (even more remotely) the periods of delay found to have given rise to breaches of the [Convention] in entirely different contexts ...

82. As the [High Court] judge in her judgment and [counsel for the Secretary of State] on the appeal point out, it was of the nature of the sentences imposed upon the appellants that they were indeterminate and that release would only be achieved upon the Board being satisfied that release could be managed in the community, with suitable risk strategies in place. Residence conditions on initial release are only to be expected in such cases.

83. In general terms, it seems to me that the decision as to whether any particular period prior to release of a life/IPP prisoner, with a residence condition, is unreasonable or not, will depend entirely on the facts of the particular case, unless it appears that national unavailability of Approved Premises placements has had a genuinely adverse effect on an individual prisoner. The ‘national’ question is, of course, ground (5) to which I will come [the question of resource obligations], although, as I recognise above, the point arises as one of the factors affecting the reasonableness or otherwise of any specific waiting period.

84. In my judgment, however, the judge’s conclusions on the present issue ... were correct. Certainly, having regard to the material we were shown during the oral submissions, they were not obviously wrong.

85. First of all, it was not clear to the judge what point was being taken by either of these appellants on this issue. Mr Bowen appeared to advance no case on the matter and Mr Stanton’s point was mixed up with submissions on s.28. That is not the best foundation for an appeal challenge to the judge’s findings. As it is, the answer to the point, in Mr Bowen’s case was given shortly, and in the proper context of the 14 year minimum term passed, in paragraph 43 of the judgment. Similarly, in Mr Stanton’s case the judge answered the criticism convincingly in paragraph 46 [see paragraph 29 above] ...”

35. The Court of Appeal noted that there was nothing in the material presented to show that national shortage of Approved Premises places had had any real effect upon the period for which the applicants had been kept waiting before release. It observed that in each case, enquiries had been made before the Parole Board hearing in question about the availability of places at Mandeville House. Each applicant’s case had local aspects which dictated a preference for these particular Approved Premises to be specified in any licence conditions. Residence at those premises was beneficial for rehabilitation close to family and, in the first applicant’s case, in view of his work with the Invisible Walls organisation operating in the local area (see paragraph 29 above). Enquiries had been made about accommodation at other premises, but without success. The Parole Board had been fully aware of the reality of the situation in these cases and had tailored their release direction decisions accordingly.

36. As regards Article 5 of the Convention, the court noted the applicants’ argument that the directions for release given by the Parole Board decisions broke the “chain of causation” between their continued detention and the original sentences passed upon them; and that a detention which was ended by the executive making available places at Approved Premises was

incompatible with the requirement that judicial control over detention must be retained. It underlined that the applicants were being detained under the original sentences imposed on them. The Parole Board had decided judicially the conditions upon which it would be safe to release them; without the conditions, there would have been no release. Until those conditions could be achieved and provided that that was within a reasonable timeframe, there could be no breach in the relevant “chain of causation”. The court further found that the executive did not determine when detention should end. Rather, detention would end when, in accordance with the Parole Board’s judicial decision, the applicants could be released consistently with the protection of the public.

37. On 18 March 2019 the Supreme Court refused the applicants permission to appeal on the basis that the case did not raise an arguable point of law.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DUTY TO RELEASE

38. Section 28(5) of the 1997 Act provides that as soon as prisoner who is serving a life or IPP sentence has served the minimum term and the Parole Board has directed his or her release, it “shall be the duty of the Secretary of State to release him on licence”.

39. Pursuant to section 28(6) of the 1997 Act, the Parole Board must not direct release unless it is “satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined”.

40. In so far as relevant to the present case, section 31(3) of the 1997 Act precludes the Secretary of State from including, inserting, varying or cancelling a condition in a licence on release except in accordance with the recommendation of the Parole Board

41. On 28 June 2022, a new section 32ZB was inserted into the 1997 Act. It applies where the Parole Board directs the release of a life prisoner under section 28 and provides:

“(2) The Secretary of State must give effect to the direction of the Parole Board as soon as is reasonably practicable in all the circumstances including, in particular, the need to make arrangements in connection with any conditions that are to be included in the life prisoner’s licence under this Chapter.”

42. The Explanatory Notes accompanying the bill which introduced the amendment to the 1997 Act explained the reason for the change:

“... [I]n practice, decisions described as requiring ‘immediate release’ are unhelpful and unnecessary. They may create an expectation that release will take place immediately after the Board decision is made, which may not be possible due to the need to make necessary arrangements for the licence conditions the Board stipulates the

prisoner must be subject to on release (for example, a requirement to reside in approved premises).”

II. APPROVED PREMISES

43. According to section 2 of the Offender Management Act 2007 (“the 2007 Act”), it is the function of the Secretary of State to ensure that sufficient provision is made for probation purposes. Section 13 of 2007 Act provides that the Secretary of State may approve premises in which accommodation is provided for persons granted bail in criminal proceedings, or for the supervision or rehabilitation of persons convicted of offences.

44. Approved Premises (formerly known as probation or bail hostels) offer residential provision to selected offenders and some bailees in order to provide enhanced levels of protection to the public and reduce the likelihood of further offending. They are principally reserved for prisoners released on licence who pose a high or very high risk of harm in the community. They are resource intensive locations, with 24-hour staffing and enhanced supervision of residents, often in the context of delivering specific interventions for individual prisoners. Residence at an Approved Premises is temporary, usually in the region of three months, as an intended transition to living in the community. If the resident reoffends or breaches any licence conditions during that period, the Secretary of State can recall that individual to prison.

45. At the relevant time, strategies had been employed to ensure efficient use of Approved Premises, including tighter controls over admission and shorter stays. Specifically, the use of Approved Premises had focused on high risk offenders and the length of stay in them had been reduced (an average of 78 days in 2016, compared to 90 days in 2011/12). To assist with ensuring sufficiency of provision, the referral system had been reformed and centralised so that vacancies could be reduced to a minimum.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

46. The applicants complained that their detention following the Parole Board direction to release them was in violation of Article 5 § 1 of the Convention, which reads, in so far as relevant, as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

...”

A. Admissibility

47. The Government argued that this complaint was manifestly ill-founded and that, in any event, the applicants had suffered no significant disadvantage as the alternative would have been for the Parole Board simply to adjourn their cases until such time as spaces had become available at Mandeville House. The applicants contested these arguments.

48. The Court considers that the complaint raises serious issues under Article 5 § 1 of the Convention which cannot be dismissed as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Moreover, in the light of the prominent place that the right to liberty has in a democratic society, the Court has so far rejected the application of the “no significant disadvantage” admissibility criterion in relation to complaints under Article 5 of the Convention (see *Zelčs v. Latvia*, no. 65367/16, § 44, 20 February 2020). In view of the nature of the applicants’ complaint, it sees no reason to reach a different conclusion in the present case. It further finds that no other ground for declaring the complaint inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. *The parties’ submissions*

(a) *The applicants*

49. The applicants submitted, first, that their detention was not in accordance with the domestic law. They made a number of arguments in this respect, concerning the correct construction of the statutory framework and the relevance of the delay to lawfulness under domestic law.

50. They further argued that the quality of the domestic law did not meet the standard of lawfulness required by Article 5 § 1 of the Convention because it did not meet the principles of legal certainty and foreseeability. They alleged that the Secretary of State had acknowledged a breach of domestic law in previous cases concerning delay in effecting release and had, in their cases, acted inconsistently with this previous practice. They further referred to the fact that the Parole Board had no power to order conditional or future release. This was clear from guidance documents that formed part of the domestic legal framework and constituted the accessible law, with adequately foreseeable application, but had been ignored in the applicants’ cases. The applicants moreover contended that the public law requirement that public officials must act reasonably was a highly uncertain concept in circumstances where actual release depended on actions taken by such officials. There was, therefore, uncertainty in terms of the practices applied by the authorities that prevailed at the time of the applicants’ Parole Board hearings and release processes.

51. The applicants also submitted that the Parole Board decisions in their cases broke the causal link between the criminal court sentences and their continued detention. With the Parole Board having determined that the test for further detention was no longer met, there could be no margin for officials acting on behalf of the Secretary of State to determine that further detention was in fact justified unless and until some future step had been taken by those officials. Such detention no longer had the requisite causal link with the index offences and convictions, or with a risk that rendered continued detention lawful.

52. Finally, the applicants argued that the Parole Board's directions were, properly construed, directions to release the applicants at the time the decisions were given. The Parole Board did not make "residence at Mandeville House a condition of release", as argued by the Government (see paragraph 56 below), because the Parole Board did not have the power to set conditions of release or licence conditions. It was clear in the statutory language that once a release direction had been given pursuant to section 28(5) of the 1997 Act, it was for the Secretary of State to draw up the relevant licence (see paragraph 38 above).

53. The Court had clearly set out that it was not permissible to delay the implementation of a judicial release direction for reasons of an essentially administrative nature (the applicants cite, among other cases, *Ruslan Yakovenko v. Ukraine*, no. 5425/11, § 68, ECHR 2015, and *Nikolov v. Bulgaria*, no. 38884/97, § 82, 30 January 2003). This applied just as much to an assertion of non-availability of bedspaces at Approved Premises. The Government's argument that in the absence of a place at Mandeville House then, regardless of the length of any such delay, ongoing justification would be provided for continued detention (see paragraph 57 below) would clearly undermine the protection of Article 5 § 1 of the Convention to a wholly unacceptable and arbitrary degree. A system in which effective control of detention and release rested to such an extent with executive officers was not compatible with Article 5 § 1. It was for the respondent State to ensure that the domestic procedures and structures were arranged in a manner that permitted the release and adequate supervision of prisoners such as the applicants from the moment their release was directed, rather than at a moment in time more convenient to the Government several months later. Furthermore, the facts in this case were not explained by the finite reality of resources even in a well-run system: the evidence demonstrated that there was wide under-provision that impacted on the ability to release individuals such as the applicants in timely fashion and without unacceptable delay. The clearest evidence of the under-provision was the delay in the applicants' cases: there was nothing to suggest that their treatment was anything other than a usual result of the limitations of the system. The applicants also challenged the Government's submissions concerning the reasonableness of their additional periods of detention of 69 and 118 days following the release

directions, in the context of their overall sentences and tariffs (see paragraph 57 below). These matters were immaterial: reasonableness fell to be assessed simply in terms of the time delaying implementation of the Parole Board's release direction, causing additional unnecessary detention and loss of liberty.

(b) The Government

54. The Government contended that the applicants' detention was lawful under domestic law. Properly interpreted as had been decided by the domestic courts, sections 28 and 31 of the 1997 Act (see paragraphs 38-40 above) authorised detention unless and until licence conditions recommended by the Parole Board could be complied with.

55. The Government further submitted that domestic law complied with the standard of lawfulness required by the Convention. The nature of an indeterminate sentence was that there was no expectation of release at a defined point. The legislative regime, in particular section 28(6) of the 1997 Act (see paragraph 39 above), provided that release was only to take place if it was consistent with the objective of public protection. It was therefore entirely foreseeable that release of a prisoner would not take place until that objective could be complied with, which might involve a period of detention until appropriate release arrangements (such as securing a placement at an Approved Premises where the risk could be managed) could be put in place. It was also clearly foreseeable for these particular applicants that release would not occur until places at Mandeville House had become available. That was the basis of the recommendation of the probation officers to the Parole Board. It was likewise the basis of the Parole Board's decision, as set out in the Board's recommended conditions requiring residence at Mandeville House. Indeed, in the present cases even the approximate dates of release were foreseeable, as they had been provided to the Parole Board and the applicants. The interpretation of the legislation by the High Court and the Court of Appeal in the applicants' case (see paragraph 29-31 and 33-36 above) was plainly foreseeable.

56. The Government maintained that there was nothing arbitrary about the applicants' continuing detention while waiting for places to become available at Mandeville House, that the causal connection between the applicants' criminal sentences and their continued detention had not been lost and that the relationship between the ground of deprivation of liberty and the place and conditions of detention had not broken down. The applicants' detention had been entirely in accordance with the directions of the Parole Board: the Parole Board had made residence at Mandeville House a condition of release and had done so in the full knowledge that places at Mandeville House would not become immediately available. The Parole Board had been clear that the applicants could not be released from prison until those places had become available, for sound reasons of mitigation of risk and protection of the public. The applicants' continued detention after the Parole Board decisions

had resulted from their convictions for serious offences. Release arrangements had had to be put in place and once they had been, the applicants had been released. Detention had continued to be pursuant to their indeterminate sentences of imprisonment imposed after conviction by a competent court, in accordance with Article 5 § 1 (a) of the Convention.

57. As a matter of principle, a delay in the applicants' release to Mandeville House caused by the limited number of spaces in that institution was incapable of leading to a breach of Article 5 § 1. Regardless of the length of any such delay, ongoing justification would be provided for by the applicants' indeterminate sentences and the Parole Board's decisions that public protection meant they could only be released once bedspaces at Mandeville House were available. Even if the length of time between the Parole Board's decision and release to Mandeville House Approved Premises were relevant, the periods involved in the present case were plainly not unreasonable. First, both applicants had been in prison for substantial periods by the time of their Parole Board hearings: four and a half years in the case of the first applicant and 17 years in the case of the second applicant. The first applicant's 118-day wait and the second applicant's 69-day wait were not disproportionate in that context. Second, both applicants were subject to indeterminate sentences, the nature of which was that there was no expectation of release at a defined point. Third, the Parole Board had directed release to a specific Approved Premises, namely Mandeville House. A condition of residence at a defined facility, where there were a finite number of spaces, might inevitably not be capable of immediate fulfilment. Fourth, there were compelling reasons why each applicant needed to be accommodated at Mandeville House rather than any other Approved Premises, notably the family links which would aid resettlement and thereby assist with public protection, the expressed wish of both applicants to be placed in that area, the applicants' completion of ROTLs to Mandeville House and the area generally and, in the case of the first applicant, the prospect of continued support from Invisible Walls (see paragraphs 29 and 31 above). Fifth, regular enquiries had been undertaken in both applicants' cases as to whether bedspaces might become available earlier. Finally, the timescale for availability of bedspaces at Mandeville House had been known to the Parole Board when directing release of both applicants subject to the residence condition. The Parole Board had necessarily been envisaging both applicants remaining in prison for the intervening period.

2. The Court's assessment

(a) General principles

58. The relevant principles relating to Article 5 § 1 of the Convention are set out in *S., V. and A. v. Denmark* ([GC], nos. 35553/12 and 2 others, §§ 73-77, 22 October 2018), and *Denis and Irvine v. Belgium* ([GC],

nos. 62819/17 and 63921/17, §§ 123-32, 1 June 2021). The relevant principles concerning specifically the notion of arbitrary detention in the context of Article 5 are summarised in *Saadi v. the United Kingdom* ([GC], no. 13229/03, §§ 67-74, ECHR 2008); *James, Wells and Lee v. the United Kingdom* (nos. 25119/09, 57715/09 and 57877/09, §§ 191-95, 18 September 2012); and *Denis and Irvine* (cited above, §§ 129-32).

(b) Application of the general principles to the facts of the case

59. The Court considers that applicants' challenge to their detention following the Parole Board direction for release in each of their cases can be separated into three broad arguments: that detention was not lawful as a matter of domestic law; that the system in place did not have the quality of law required by Article 5 § 1 of the Convention because it was not sufficiently foreseeable; and that the decision of the Parole Board broke the causal connection between the conviction and the detention and the delay in their release rendered detention arbitrary. The Court will examine each of these three arguments in turn.

60. As to the lawfulness of their detention as a matter of domestic law, the Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law. The judgments of the High Court and the Court of Appeal in the applicants' case concluded that their detention was lawful under section 28 of the 1997 Act (see paragraphs 29 and 33-35 above). While the applicants disagree with this conclusion, there is no indication that the domestic courts' assessment was arbitrary or manifestly unreasonable (see *S., V. and A. v. Denmark*, cited above, § 148, and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018). The Court accordingly accepts that the applicants' detention was "lawful" in the sense of conforming to the substantive and procedural rules of national law.

61. As to whether domestic law met the requirements of Article 5 § 1 regarding quality of law, the Court is persuaded that it would have been clear to the applicants, if necessary with the advice of their counsel, that their release would not necessarily be immediate but contingent upon available places at Mandeville House and that they would continue to be detained until such places were available (see in a similar sense, *mutatis mutandis*, *Mooren v. Germany* [GC], no. 11364/03, § 91, 9 July 2009). The purpose of the Parole Board decisions in their cases was to direct release but also to indicate that release was considered safe, pursuant to the test to be met under section 28(6) of the 1997 Act (see paragraph 39 above), if certain conditions were in place, including the condition that they reside at Mandeville House. As the Court of Appeal explained, the conditions imposed were integral to the decision to direct release (see paragraph 33 above). That being the case, it would quite clearly have been a matter of some concern had the Secretary of State proceeded with release in circumstances where the material conditions

identified by the Parole Board to regulate risk had not yet been met. The central role of the Parole Board in identifying the appropriate licence conditions to ensure that release is compatible with public safety is reflected in the requirement in section 31(3) of the 1997 Act (see paragraph 40 above). In these circumstances, it cannot reasonably be suggested that the applicants believed they might be released immediately after the Parole Board decisions in their cases even though their release to Mandeville House was, at that time, impossible. The 2022 amendment to the 1997 Act (see paragraph 41 above), to which the applicants refer, is undoubtedly welcome in so far as it states in plain terms how the system operates. But the absence of this explicit provision at the time the applicants were being considered for release is not proof of any lack of clarity: indeed, as the Court has explained, there can be no doubt as to how the system operated in practice.

62. The Court does not exclude that an issue of lawfulness might arise in circumstances where the consequence of a direction for release subject to licence conditions requiring resource allocation is to leave a prisoner in a significant amount of uncertainty as to when, or even if, his release will actually take place. However, that was not the consequence of the Parole Board directions in the applicants' cases. Indeed, it is quite clear that no uncertainty arose whatsoever since the availability of a place at Mandeville House was ascertained in advance of the applicants' Parole Board hearings, all parties – including the Parole Board – were aware of the specific dates on which it was expected that places would become available and, in the event, places were available on the dates envisaged and the applicants were accordingly released on those dates (see paragraphs 7, 9, 11, 16, 20, 22, 27 and 33 above).

63. The real question, therefore, is whether the delay between the Parole Board decisions in the applicants' cases and their eventual release resulted in detention lacking a causal connection to the original grounds for detention or which was otherwise arbitrary.

64. The Court observes that indeterminate sentences were imposed on the applicants (see paragraphs 5 and 18 above) because they were considered to pose a risk to the public. Their release was therefore contingent on their demonstrating to the Parole Board's satisfaction that it was no longer necessary for the protection of the public that they should be confined (see paragraph 39 above). As already explained, it was an integral part of the Parole Board's conclusion on this question that they be released to Approved Premises (see paragraph 61 above). Their continued detention was based on the conclusion of the Parole Board that they posed a risk to the public unless released to Approved Premises. The Court is therefore satisfied that the applicants' continued detention was the consequence of the risk that they were perceived to pose to the public if released directly into the community and that the causal connection between their conviction and sentences and

their detention while awaiting places in Approved Premises was not broken (see, in a similar sense, *James, Wells and Lee*, cited above, §§ 198-99).

65. The fact that the applicants' release was at the discretion of the Parole Board meant that it was inherent in the sentences imposed on them that there was uncertainty as to when exactly release would be ordered and what precise conditions would be recommended. As the Court has explained (see paragraphs 61 and 64 above), the system for release of indeterminate sentence prisoners in England requires a direction by the Parole Board and the putting in place of the necessary facilities to implement the licence conditions recommended by the Board and imposed by the Secretary of State in consequence. It follows that there will necessarily be some delay, following the Parole Board direction, in effecting release. While mere administrative formalities connected with release cannot justify a delay of more than several hours (see, for example, *Nikolov*, § 82, and *Ruslan Yakovenko*, § 68, both cited above), where release is contingent on the availability of required facilities, a longer delay resulting from resource considerations cannot be considered incompatible with Article 5 § 1 provided that it remains reasonable. The Court explained in *James, Wells and Lee* (cited above, § 194), in the context of a complaint about a lack of access to rehabilitative courses in prison, that it would be unrealistic, and too rigid an approach, to expect the authorities to ensure that relevant treatment or facilities be available immediately. It observed that for reasons linked to the efficient management of public funds, a certain friction between available and required treatment and facilities is inevitable and must be regarded as acceptable (*ibid.*). However, any restrictions or delays encountered as a result of resource considerations must be reasonable in all the circumstances of the case (see *James, Wells and Lee*, cited above, §§ 210-22, and *Kaiyam and Others v. the United Kingdom* (dec.), nos. 28160/15 and 2 others, §§ 70 and 73-83, 12 January 2016).

66. In *James, Wells and Lee* (cited above, §§ 210 *et seq.*), the Court found a violation of Article 5 § 1 where a structural lack of capacity had led to significant delays in the applicants' progress towards release (see also *Brand v. the Netherlands*, no. 49902/99, § 66, 11 May 2004). By contrast, notwithstanding the present applicants' allegations to the contrary, no such structural issue has been identified here. Although it was accepted that there might have been some strains on the system, the High Court explicitly rejected the submission that there had been a systemic failure (see paragraph 30 above). The Court of Appeal, for its part, recorded that it had found nothing to show that national shortage of Approved Premises places had had any real effect upon the period for which the applicants had been kept waiting before release (see paragraph 35 above). No evidence has been presented to suggest that these findings of fact were arbitrary or manifestly unreasonable and it is accordingly not appropriate for this Court to call them into question (see *Zubac v. Croatia* [GC], no. 40160/12, § 79, 5 April 2018).

67. As to whether the particular delays encountered were reasonable in the applicants' cases, the Court notes that the first applicant appears to have progressed in a timely way through the prison system following the imposition of his IPP sentence. He was moved to open conditions on 4 February 2014, just under two months after the move was recommended by the Parole Board (see paragraph 6 above). His subsequent oral hearing before the Parole Board was carefully prepared and a risk management plan formulated (see paragraphs 7-8 above). As part of that process, and even before release had been directed, enquiries as to availability were made with Mandeville House (see paragraph 7 above). Mandeville House itself had been selected for a number of relevant and rational reasons, notably its location in an area where the first applicant had family and community ties and where he could continue to be supported by Invisible Walls, an organisation which had been supporting him in prison (see paragraphs 10 and 29 above). Following the Parole Board decision to direct release, the first applicant's offender managers enquired regularly into availability at Mandeville House and, eventually, more widely even though the first applicant was "very keen" to be placed in the Newport area, where Mandeville House is situated (see paragraphs 13-14 and 29 above). He was ultimately released to Mandeville House 118 days after the Parole Board decision (see paragraph 16 above). In all the circumstances of his case, the Court finds that this delay was not such as to render his detention during this period, or any part of it, arbitrary and thus in breach of Article 5 § 1 of the Convention.

68. The second applicant was sentenced in 1998 to life imprisonment with a tariff expiry date of August 2011 (see paragraph 18 above). He was moved to an open prison on 31 October 2012, seven weeks after the move had been recommended by the Parole Board (see paragraph 19 above). Ahead of his subsequent oral hearing before the Parole Board, enquiries had been made as to availability at Mandeville House (see paragraph 20 above). For unknown reasons, about which the second applicant does not complain in the present proceedings, the date of his Parole Board hearing was changed to a date some eight months later. By the time the oral hearing took place, he had been enjoying periods of ROTL at Mandeville House, which was located in the area where his son and daughter resided (see paragraph 21 above). The decision to release him to Mandeville House reflected his own wishes and his family ties, in the context of the recognition that his return to the community after a lengthy detention had to be gradual and measured (see paragraph 22-24 above). Following the Parole Board decision, there were regular enquiries with Mandeville House and more widely to try to secure earlier availability (see paragraph 25 above). In the event, he was released to Mandeville House 69 days after the Parole Board decision (see paragraph 27 above). The Court is satisfied in all the circumstances of his case that this delay was not such as to render his detention during this period, or any part of it, arbitrary and thus in breach of Article 5 § 1 of the Convention.

69. In conclusion, the applicants' detention between the Parole Board decisions in their cases directing their release and recommending that they reside at Mandeville House Approved Premises, and their release 118 and 69 days later, respectively, to Mandeville House, did not result in a violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

70. The applicants complained that their release depended upon the actions of the executive and that they did not, therefore, have the lawfulness of their detention determined by a judicial body with the power to order release. They relied on Article 5 § 4 of the Convention, which reads as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

71. The Government argued that this complaint was manifestly ill-founded. They pointed out that in the applicants' cases, the Parole Board had made its directions in the knowledge of when spaces were anticipated to become available at Mandeville House, such that the judicial body was well aware of the timing of release. The fact that the implementation of the Parole Board's decisions happened precisely in accordance with the timescale given to the Board made the applicants' challenge “particularly hopeless”.

72. The applicants submitted that even allowing for the fact that the Parole Board had been informed of the likely timing of the applicants' release (namely, the date on which a space was estimated to be available), this was a date given to the Board not set by it. Further, the Parole Board was not empowered to intervene if that date had subsequently changed and release postponed. As such, it could not provide the effective and ongoing control of length of detention and timing of release foreseen by Article 5 § 4.

73. The Court notes that the Parole Board was clearly aware of the availability of spaces at Mandeville House and, therefore, of the anticipated timing of the applicants' release when it directed release subject to the condition that they reside at Mandeville House (see paragraphs 9, 11, 22 and 33 above). In view of these facts, the suggestion that there was inadequate review by the Parole Board of the timing of the applicants' release is unsustainable. The Court further notes that the applicants were released to Mandeville House in accordance with the timetable which had been presented to the Parole Board (see paragraphs 16, 27 and 33 above). In these circumstances, the applicants' arguments as to the scope for Parole Board oversight had the anticipated dates ultimately changed are purely hypothetical.

74. The complaint under Article 5 § 4 is accordingly manifestly ill-founded and must be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 5 § 1 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 1 of the Convention.

Done in English, and notified in writing on 22 September 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Arnfinn Bårdsen
President