

Case Comment

**STRUCTURING THE NOTIONAL IMPRISONMENT PERIOD WHEN THE ACCUSED IS UNFIT TO PLEAD**

*Abdul Ghufuran bin Abdul Wahid v Public Prosecutor*

[2025] 3 SLR 1572

[2026] SAL Prac 13

This case comment examines how *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 brings clarity to Singapore’s “fitness to plead” regime by structuring the nominal imprisonment period (“NIP”) as a principled, non-punitive ceiling on confinement for unfit accused persons. It explains the General Division of the High Court’s four-step framework, the elevation of prevention over rehabilitation at the NIP stage, and the constrained role of mental disorders in adjusting the provisional term. It further highlights the decisive influence of psychiatric evidence and explores how the framework mediates between consistency, individualised justice, and public protection.

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- 1 This case comment is written in the author’s own capacity. The opinions expressed in this commentary are entirely the author’s own views and do not reflect the views or positions of Drew & Napier LLC or Singapore Management University.
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## I. Introduction

1 In the general scheme of criminal law, a foundational assumption is that an accused person is sufficiently mentally sound to understand the consequences of the proceedings and their decisions. This premise underpins both the legitimacy of criminal conviction and the moral justification for punishment, since culpability is ordinarily premised on the capacity to participate in criminal proceedings and consciously carrying out the offence. Yet, this assumption fails where an accused, though plainly having performed the physical acts of the offence, is incapable of making a defence because of mental or intellectual impairments that also affected the accused at the time of the offence.

2 How then should a court respond when it cannot seriously be disputed that the accused committed the *actus reus*, but the accused is unable to plead and therefore cannot be tried or convicted in the ordinary way? It is this precise dilemma that came before the court in *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* (“*Abdul Ghufuran*”), where the General Division of the High Court (“*General Division*”) articulated how the law should structure confinement for an unfit accused who has not been convicted at all. In doing so, the court set out key principles on the “fitness to plead” regime and the notional imprisonment period (“*NIP*”) that is now a fundamental part of Singapore’s criminal jurisprudence.

## II. Background and statutory framework

### A. Factual and procedural background of *Abdul Ghufuran*

3 The applicant, Abdul Ghufuran bin Abdul Wahid, was a 30-year-old man with a long-standing moderate intellectual disability.<sup>3</sup> He was charged with six offences of voluntarily causing hurt, outrage of modesty and insulting modesty.<sup>4</sup> There

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3 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [1].

4 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [3].

was no dispute that the applicant had committed the underlying physical acts.<sup>5</sup> His behavioural history included similar prior incidents, where he had been arrested three times previously, also for outrage of modesty and voluntarily causing hurt.<sup>6</sup>

4 At first instance, the State Court was not satisfied that the applicant could participate meaningfully in proceedings,<sup>7</sup> and ordered remand at the Institute of Mental Health (“IMH”) for forensic evaluation pursuant to s 247(4)(b) of the Criminal Procedure Code 2010<sup>8</sup> (“CPC”).<sup>9</sup> The IMH psychiatrist concluded that although he was not of unsound mind or psychotic, his moderate intellectual disability rendered him unfit to plead.<sup>10</sup> This is because he could not understand the charges, follow proceedings, or instruct counsel; treatment was unlikely to change this; his condition contributed to the offending; and his risk of recidivism towards elderly male strangers in wheelchairs was moderate to high.<sup>11</sup> On this basis, the court found him incapable of making his defence, stayed the proceedings under s 248(2) of the CPC, and triggered the “fitness to plead” regime under Pt 13, Div 5 of the CPC.<sup>12</sup>

5 The impact of this was that the district judge (“DJ”) then had to decide between his conditional release, or to report the case to the Minister with a NIP. It is useful at this juncture to outline the broad legislative framework of the “fitness to plead” regime.

### **B. “fitness to plead” regime**

6 The “fitness to plead” regime governs how courts deal with accused persons incapable of making their defence due

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5 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [3].

6 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [5(e)].

7 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [5(e)].

8 2020 Rev Ed.

9 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [4].

10 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [5(b)]–[5(c)].

11 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [5(b)]–[5(c)].

12 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [6].

to mental or physical conditions. This current regime was substantially revised by the Criminal Justice Reform Act 2018<sup>13</sup> that, among other things, introduced the NIP concept as part of a broader move towards a “progressive, balanced and modern” criminal justice system.<sup>14</sup>

7 This regime was intended to balance public protection with respect for the fact that such persons have not been convicted, providing opportunities for recovery in a controlled environment and channelling the court’s response through defined stages (investigating fitness, determining capacity, and then deciding between conditional release and confinement) so that any curtailment of liberty occurs within a structured, principled framework.<sup>15</sup> In this regard, the General Division in *Abdul Ghufuran* helpfully outlined the four distinct stages in the “fitness to plead” regime.<sup>16</sup>

**(1) Stage 1: Court investigates whether accused person is capable of making the defence**

8 Once the court has reason to suspect that an accused person is incapable of making a defence, it must investigate whether the accused is so incapable.<sup>17</sup> For this purpose, the court may obtain evidence from a medical practitioner either through oral testimony,<sup>18</sup> or a written certificate addressing the accused’s incapacity to make a defence or suitability for observation and treatment in a psychiatric institution.<sup>19</sup>

9 If the court remains unsatisfied that the accused is capable of making a defence, it must postpone the proceedings and order the accused to be remanded in a psychiatric institution for up to

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13 Act 19 of 2018.

14 Singapore Parl Debates; Vol 94, Sitting No 69; [19 March 2018] (Indranee Rajah, Senior Minister of State for Law).

15 Singapore Parl Debates; Vol 94, Sitting No 69; [19 March 2018] (Indranee Rajah, Senior Minister of State for Law).

16 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [28]–[42].

17 Criminal Procedure Code 2010 (2020 Rev Ed) s 247(1).

18 Criminal Procedure Code 2010 (2020 Rev Ed) s 247(3).

19 Criminal Procedure Code 2010 (2020 Rev Ed) s 247(3)(a).

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one month.<sup>20</sup> During remand, a designated medical practitioner (“DMP”) must observe and treat the accused,<sup>21</sup> and certify in writing its opinion on the accused’s ability to make a defence, the risk of injury to self or others if released, the extent of such risk, and any conditions necessary to mitigate it.<sup>22</sup> Where the DMP is unable to reach a conclusion within the remand period, it may seek extensions in blocks of up to two months,<sup>23</sup> which the court may grant in its discretion.<sup>24</sup>

(2) *Stage 2: Court finds whether accused person is capable of making his defence*

10 The court must thereafter determine whether the accused is in fact capable of making a defence, taking the DMP’s certified opinion as the starting point. If the DMP certifies that the accused is *capable* of making his defence, the court must proceed with the proceedings unless satisfied otherwise.<sup>25</sup> Conversely, if the DMP certifies that the accused is *incapable* of making his defence, the court must stay the proceedings unless satisfied otherwise.<sup>26</sup>

(3) *Stage 3: Court orders accused person’s conditional release or reports case to Minister*

11 The court then shifts from determining fitness to deciding the disposition of an accused found incapable of making a defence. Section 249 of the CPC draws a distinction between bailable and non-bailable offences.<sup>27</sup> Where *all the charges are bailable*, the court may either order the accused’s conditional release,<sup>28</sup> or report the case to the Minister.<sup>29</sup> If *any charge is*

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20 Criminal Procedure Code 2010 (2020 Rev Ed) s 247(4).

21 Criminal Procedure Code 2010 (2020 Rev Ed) s 247(5).

22 Criminal Procedure Code 2010 (2020 Rev Ed) s 247(6)(a).

23 Criminal Procedure Code 2010 (2020 Rev Ed) s 247(6)(b).

24 Criminal Procedure Code 2010 (2020 Rev Ed) s 247(8).

25 Criminal Procedure Code 2010 (2020 Rev Ed) s 247(1).

26 Criminal Procedure Code 2010 (2020 Rev Ed) s 247(2).

27 The classification of offences into bailable and non-bailable offences is set out in the fifth column of the First Schedule to the Criminal Procedure Code 2010 (2020 Rev Ed).

28 Criminal Procedure Code 2010 (2020 Rev Ed) s 249(2).

29 Criminal Procedure Code 2010 (2020 Rev Ed) s 249(8)(b).

*non-bailable*, however, the court has no discretion to order conditional release and must report the case to the Minister.<sup>30</sup>

**(a) Stage 3A: If court orders conditional release of accused**

12 Where the court orders the conditional release of the accused, the conditions imposed may be designed to ensure the accused's care and public safety, including care arrangements, restraints against self-harm or harm to others, and attendance before the court or any appointed officer.<sup>31</sup> Further conditions may include residence at a specified facility, mandatory treatment or medication, provision of security, or supervision by a named person.<sup>32</sup> The court may also vary or revoke the order where circumstances change or where conditions are breached.<sup>33</sup>

**(b) Stage 3B: If court reports the case to Minister**

13 Where the court reports the case to the Minister, it must also determine and specify the accused's NIP in its report, regardless of whether the offences are bailable or non-bailable.<sup>34</sup> In fixing the NIP, the court first determines the total term of imprisonment it would have imposed had the accused been convicted on all charges, considering the possible combinations of consecutive and concurrent sentences, and ensuring that the resulting period is "just and appropriate", having regard to the totality of the accused's criminal conduct.<sup>35</sup> The court may, in its discretion, receive any evidence that would assist it in fixing an appropriate NIP.<sup>36</sup>

**(4) Stage 4: Minister orders accused person's conditional release or his confinement**

14 The focus shifts from the court to the Minister once the case has been reported. Where *any* charge is a "capital or

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30 Criminal Procedure Code 2010 (2020 Rev Ed) s 249(8)(a).

31 Criminal Procedure Code 2010 (2020 Rev Ed) ss 249(2)(a)–249(2)(c).

32 Criminal Procedure Code 2010 (2020 Rev Ed) s 249(2)(d), read with s 294(4).

33 Criminal Procedure Code 2010 (2020 Rev Ed) ss 249(6)–249(7).

34 Criminal Procedure Code 2010 (2020 Rev Ed) s 249(9)(a).

35 Criminal Procedure Code 2010 (2020 Rev Ed) ss 249(10)(a)(i)–(10)(a)(ii).

36 Criminal Procedure Code 2010 (2020 Rev Ed) s 249(10)(b).

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life imprisonment offence” within s 249(21) of the CPC, the Minister must order the accused’s confinement in a psychiatric institution, prison, or other place of safe custody, potentially for the term of the accused’s natural life.<sup>37</sup> Where *none of the charges fall within that category*, the Minister must either order: (a) the confinement of the accused subject to the ceiling imposed by the NIP, ensuring that the total period of confinement does not exceed the NIP;<sup>38</sup> or (b) the conditional release of the accused on terms ensuring proper care, prevention of harm to self or others, attendance in court when required, and any other necessary conditions.<sup>39</sup> In all cases, the court must give effect to the Minister’s order.<sup>40</sup>

15 It should be noted that the Minister’s power to order conditional release is constrained by public safety safeguards. Conditional release may be ordered only if a DMP certifies that there is no risk of injury upon release, or, notwithstanding some risk, the Minister is satisfied that conditional release is not contrary to the public interest.<sup>41</sup>

16 Finally, upon the expiry of the confinement ordered by the Minister, an accused who remains unsuitable for release may be further detained in a psychiatric institution under the Mental Health (Care and Treatment) Act 2008,<sup>42</sup> as contemplated by s 249(20)(d) of the CPC.<sup>43</sup> At that point, the criminal charge element falls away, and confinement continues solely for treatment purposes, typically at IMH, subject to periodic review of suitability for discharge.<sup>44</sup>

17 This takes us to the *Abdul Ghufuran* decision, where the General Division addressed how to structure the NIP for an accused who is not fit to plead but is not convicted yet.

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37 Criminal Procedure Code 2010 (2020 Rev Ed) s 249(9)(b).

38 Criminal Procedure Code 2010 (2020 Rev Ed) s 249(9)(c)(i).

39 Criminal Procedure Code 2010 (2020 Rev Ed) s 249(9)(c)(ii).

40 Criminal Procedure Code 2010 (2020 Rev Ed) s 249(9)(d).

41 Criminal Procedure Code 2010 (2020 Rev Ed) ss 249(13)(a)–249(13)(b).

42 2020 Rev Ed.

43 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [41]–[42].

44 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [41].

### III. *Abdul Ghufuran decision*

#### A. *District Court's decision*

18 In the State Court, the DJ had two options under s 249 of the CPC, since all charges were bailable: order conditional release with safeguards,<sup>45</sup> or report the case to the Minister with a specified NIP.<sup>46</sup> Relying on IMH's assessment of the accused's moderate-to-high risk of reoffending, the vulnerability of the victims, and his parents' limited supervisory capacity, the DJ declined conditional release.<sup>47</sup> Instead, the case was reported to the Minister, with the court undertaking a notional sentencing exercise by assigning terms to each charge and ordering the sentences for the first and fourth charges to run consecutively, yielding an NIP of nine months.<sup>48</sup> The accused was remanded at IMH under s 249(12) of the CPC, pending the Minister's order.<sup>49</sup>

19 Pertinently, the DJ prioritised the principle of "prevention" in determining the NIP, emphasising the link between the applicant's mental condition and the offences, and his moderate-to-high risk of recidivism, which made public protection paramount, particularly for vulnerable victims.<sup>50</sup> The applicant then applied for criminal revision under s 400 of the CPC – the only available route given that s 249(11) of the CPC bars appeals against NIP determinations.<sup>51</sup>

#### B. *General Division of the High Court's approach in determining nominal imprisonment period*

20 The General Division first set out the four-step framework in determining the NIP, before applying it to determine whether the DJ's decision was correct. The framework

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45 Criminal Procedure Code 2010 (2020 Rev Ed) s 249(2).

46 Criminal Procedure Code 2010 (2020 Rev Ed) ss 249(8)(b) and 249(9)(a); *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [7].

47 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [8].

48 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [9]–[10].

49 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [11].

50 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [11].

51 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [71].

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was derived by first distinguishing the NIP exercise from ordinary sentencing, then identifying the dominant sentencing objectives in this context, clarifying the limited evidential role of the Prosecution, and finally distilling these strands into the four-step framework above. These analytical issues are critical to understanding how the framework functions, and are dealt with in greater detail below.

### **(1) Differences between the sentencing exercise and the nominal imprisonment period exercise**

21 The first difference lies in the accused's status.<sup>52</sup> An ordinary sentence is imposed on a convicted person and is at least partly punitive, with his mental disorder only being considered only as an aggravating or mitigating factor.<sup>53</sup> By contrast, a NIP applies to a mentally disordered person who is unfit to plead and has not been convicted.<sup>54</sup> The NIP therefore functions as a non-punitive ceiling on confinement, focused on the management of the accused and the protection of the public, rather than on meting out deserved punishment.<sup>55</sup>

22 The second difference concerns the evidence available to the court.<sup>56</sup> In ordinary sentencing, the court has a full evidential record from trial or plea proceedings and can calibrate punishment against established facts and principles. In contrast, a court considering the NIP likely has only the accused's charges and antecedents. While the court may, at its discretion, receive additional evidence under s 249(10)(b) of the CPC, this does not mandate a full evidential inquiry.<sup>57</sup> The evidential gap is further compounded since criminal case disclosure may be stayed under s 249(9B)(c) of the CPC, so the Prosecution's case may be unavailable at the NIP stage.

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52 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [45].

53 *Public Prosecutor v Kong Peng Yee* [2018] 2 SLR 295 at [59(a)]; *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 at [25].

54 Singapore Parl Debates; Vol 94, Sitting No 69; [19 March 2018] (Indraneel Rajah, Senior Minister of State for Law), referred by *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [45].

55 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [45].

56 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [46].

57 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [46].

23 The last difference concerns the role of the court.<sup>58</sup> In ordinary sentencing, the court alone imposes a determinate term directly governing the offender’s incarceration. In the NIP regime, the court sets only an upper limit;<sup>59</sup> the Minister decides whether and for how long to confine the accused. The court’s role is thus “facilitative”, providing a reasoned advisory assessment of the notional sentence, intended to inform but not legally constrain the Minister’s decision.<sup>60</sup>

(2) *Prosecution does not need to adduce evidence to establish elements of offence*

24 Under s 249(10)(a) of the CPC, the court determines the NIP by hypothetically assessing the imprisonment terms that would have been imposed had the accused been convicted of all charges.<sup>61</sup> Furthermore, s 249(10)(b) of the CPC does not require the court to verify that every element of each offence is proven. Critically, on the basis of the statutory regime, the court held that the Prosecution does not bear its usual burden of proof beyond reasonable doubt to prove its case at this stage.<sup>62</sup> Nonetheless, the court must have a factual record showing, on its face, that the physical elements of the offences are satisfied, even if not actually proven.<sup>63</sup> Given the limited evidence typically available in the NIP exercise, the Prosecution is expected to provide a statement or account of the relevant facts, ensuring the NIP is based on a minimally adequate factual matrix rather than bare charges alone.<sup>64</sup>

(3) *“prevention” is the main sentencing consideration, while “rehabilitation” has limited relevance*

25 In the ordinary sentencing exercise, the court balances the four classic objectives of deterrence, rehabilitation, retribution,

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58 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [47].

59 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [1].

60 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [47].

61 See para 14, above.

62 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [49].

63 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [50].

64 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [50]–[51].

and incapacitation.<sup>65</sup> Generally, rehabilitation (as opposed to deterrence) often takes precedence where a mental condition is causally linked to the offence.<sup>66</sup> This is because in such cases, the disorder impairs the offender's ability to make proper choices or appreciate the nature of their actions.<sup>67</sup> Focusing on treatment promotes both the accused's reform and public protection by reducing recidivism.<sup>68</sup> Incapacitation (or prevention) may assume greater weight where the offender is recalcitrant,<sup>69</sup> or where the offence is premeditated or reflects a conscious choice to offend despite the disorder.<sup>70</sup>

26 Crucially, in *Abdul Ghufuran*, the court recalibrated these sentencing principles in the NIP context. It held that prevention, understood as incapacitation to protect the public (and sometimes the accused), is the primary consideration while rehabilitation has "limited relevance".<sup>71</sup> This reflects the court's modest, facilitative role within the "fitness to plead" regime, leaving treatment and recovery decisions to the Minister.<sup>72</sup> Furthermore, placing prevention at the fore also aligns with the NIP structure as psychiatric reports assess the risk of harm upon release; conditional release narrows with offence severity; and any release is framed to prevent injury to self or others.<sup>73</sup>

(4) *Accused's mental condition should only be considered if it has a material bearing on notional imprisonment period*

27 In the ordinary sentencing exercise, the accused's mental condition is usually a relevant factor,<sup>74</sup> with a "potentially paradoxical effect" on the sentence imposed.<sup>75</sup> On one hand,

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65 *Public Prosecutor v Goh Lee Yin* [2008] 1 SLR(R) 824 at [58].

66 *Public Prosecutor v Lim Chee Yin Jordon* [2018] 4 SLR 1294 at [40].

67 *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 at [26] and [36]–[37].

68 *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 at [37].

69 See *Iskandar bin Muhamad Nordin v Public Prosecutor* [2006] 1 SLR(R) 265.

70 *Public Prosecutor v Kong Peng Yee* [2018] 2 SLR 295 at [59].

71 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [53] and [56].

72 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [56].

73 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [53(a)]–[53(d)].

74 *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 at [25].

75 *Public Prosecutor v Soo Cheow Wee* [2024] 3 SLR 972 at [51].

it may mitigate the sentence by reducing culpability where the mental disorder is causally linked to the offence, but it may also justify a longer sentence to address the need for prevention and public protection.<sup>76</sup>

28 For this reason, in the NIP exercise where evidence is limited, *Abdul Ghufuran* held that the accused's mental condition is considered only if it clearly has a material bearing on the NIP.<sup>77</sup> In the absence of full psychiatric and factual evidence, a court is not well placed to perform the detailed balancing required in ordinary sentencing,<sup>78</sup> so a high threshold guards against speculative adjustments. Even then, where the mental condition of the accused both lowers culpability and increases risk to the public, the court resolves the tension in favour of prevention, lengthening the NIP; whereas mental conditions falling short of that threshold are disregarded.<sup>79</sup>

### **C. Court's four-step framework to determine nominal imprisonment period**

29 Tying all the above considerations together, the court articulated a four-step framework for determining the NIP, where the accused's mental condition is excluded at the outset and only brought in, if at all, at the final stage.<sup>80</sup> The court must first arrive at a provisional NIP on "ordinary" sentencing principles, and only then consider whether the mental condition clearly has a material bearing on the accused's culpability to justify adjustment.<sup>81</sup>

30 First, under ss 249(10)(a) and 249(10)(a)(ii) of the CPC, the court should assume that the accused committed, and has been convicted of, every offence with which he is charged.<sup>82</sup> This assumption of conviction is purely notional, but it is essential to

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76 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [58].

77 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [62]–[63].

78 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [64].

79 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [63]–[64].

80 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [66]–[70].

81 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [66].

82 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [67].

anchor the NIP in the same sentencing structure that would have applied had the accused been convicted after trial.

31 Second, the court must determine the individual sentence that would notionally have been imposed for each offence.<sup>83</sup> This is to be done like an ordinary sentencing exercise, taking into account offence-specific and offender-specific factors and any applicable sentencing frameworks or precedents. However, the court should be minded to not give any discount on the basis of a guilty plea, since an accused who is unfit to plead cannot be assumed to have pleaded guilty.<sup>84</sup>

32 Third, the court must determine the total term of imprisonment that would notionally have been imposed had the accused been convicted of all the charges. Pursuant to s 249(10)(a)(i) of the CPC, this requires the court to consider the possible combinations of consecutive sentences and concurrent sentences that might have been imposed on the accused.<sup>85</sup> This exercise is guided by s 397(1) of the CPC, the one-transaction rule and the general rule of consecutive sentencing for unrelated offences.<sup>86</sup>

33 Finally, after determining the total imprisonment term, the court must then consider whether the accused's mental condition clearly has a material bearing on the NIP.<sup>87</sup> If this high threshold is met, the mental condition may justify a shorter NIP by substantially reducing culpability, or a longer NIP by greatly engaging the need for prevention.<sup>88</sup> However, where the mental condition simultaneously mitigates the culpability of the accused and heightens the risk to the public, the court held that prevention should prevail and that the NIP should ultimately be lengthened.

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83 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [68].

84 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [68].

85 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [69].

86 *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [52].

87 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [70].

88 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [70].

34 Ultimately, the General Division dismissed the criminal revision and affirmed the DJ's nine-month NIP,<sup>89</sup> holding that the DJ had properly come to this conclusion, by foregrounding prevention and public protection in light of the applicant's moderate-to-high risk of reoffending against vulnerable elderly victims.<sup>90</sup> The court acknowledged that although the DJ did not directly apply the four-step framework it had articulated, it had come to the right conclusion.<sup>91</sup>

#### **IV. Brief observations**

##### **A. Importance of psychiatric evidence in the nominal imprisonment period exercise**

35 In light of *Abdul Ghufuran*, a practical outcome to note is that the importance of the psychiatric report is enhanced when it comes to the NIP exercise, as compared to the ordinary sentencing exercise. Fitness to plead, risk of harm, amenability to treatment, and even whether the mental condition crosses the "material bearing" threshold, are all mediated through the DMP's report. As a result of the legislative regime, the court is likely to place heavy reliance on this report because it lacks the full amount of evidence on record. The psychiatric report thus has a great bearing on the final term of the NIP. If it is thin, conclusory or misdirected, the entire NIP analysis risks being skewed in ways that are difficult to correct on revision.

36 It thus becomes imperative to ensure that such psychiatric reports have factual and logical coherency, and do not merely present conclusions without also presenting the underlying evidence and the analytical process by which the conclusions are reached.<sup>92</sup> The practical implication of this is that policing the reliability of the psychiatric report is not a peripheral issue; it is the core of NIP cases. Courts and practitioners should be

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89 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [77].

90 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [74].

91 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [77].

92 See the observations in *Miya Manik v Public Prosecutor* [2021] 2 SLR 1169 at [49]–[53].

cognisant of reports that merely recite diagnoses and risk labels without explaining the assessment tools used, the factual basis for the conclusions, or how the condition actually operates on the accused's choices and self-control.

**B. “prevention” is elevated; “rehabilitation” is relegated**

37 As was seen earlier, the court in *Abdul Ghufuran* re-calibrated the relevant sentencing principles to be applied in the NIP exercise, as compared to the ordinary sentencing exercise. Pertinently, it held that rehabilitation has only “limited relevance” when fixing the NIP,<sup>93</sup> which significantly narrows the space for it to operate as a weighty consideration. In doing so, the court effectively treated the assessment of prevention and rehabilitation as institutionally different – with the court’s focus being on prevention through fixing the NIP, and the more detailed evaluation of rehabilitation to be more appropriately taken by the Minister. While the court’s role remains facilitative and the Minister ultimately decides on treatment,<sup>94</sup> that is not to say that that rehabilitation is of reduced importance in the overall scheme. The NIP nonetheless still fixes the hard ceiling within which any rehabilitative plan must operate.

38 That said, for practitioners, the consideration of rehabilitation remains relevant at two junctures. First, rehabilitation may remain relevant as a moderating (though not dominant) principle that could inform submissions on where within the range of preventive confinement the NIP ought to be pitched on the particular facts. Secondly, in advising a client on the broader regime of the legislative framework, considerations of rehabilitation, particularly in relation to fashioning the societal and familial support for the accused, must come to the forefront.

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93 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [53] and [56].

94 *Abdul Ghufuran bin Abdul Wahid v Public Prosecutor* [2025] 3 SLR 1572 at [56].

**C. Four-step framework ensures consistency and individualised justice**

39 In addition to balancing the four sentencing objectives, the court must also ensure consistency in sentencing and individualised justice.<sup>95</sup> Consistency in sentencing fosters public confidence in the court’s administration of justice through fairness and equal treatment.<sup>96</sup> On the other hand, however, it is also important to ensure that in pursuing consistency, it does not detract from the goal of ensuring individualised justice (*ie*, to ensure that the accused is sentenced on the facts in question, so that every case turns on its own unique facts).<sup>97</sup> However, in setting out the framework in NIP, these ideals were not explicitly touched upon in *Abdul Ghufuran*. At the outset, it can be appreciated that due to the limited evidence that is available before the court at this stage, the structure of this regime makes perfect realisation of consistency and individualised justice difficult, but it does not make those values irrelevant.

40 It would be observed that the four-step NIP framework inherently balances consistency and individualised justice. Steps two and three promote consistency through the use of offence-specific sentencing precedents and standardised totality principles like the one-transaction rule. Step four enables individualised justice, permitting adjustments only where the psychiatric evidence shows the mental condition materially affects the culpability or risk of the accused. Taken together, the framework allows consistency in sentencing, while being sensitively attuned to the individual offender’s circumstances.

**V. Conclusion**

41 Abdul Ghufuran brings clarity to the “fitness to plead” regime by turning the NIP exercise into a structured process based on ordinary sentencing principles, giving courts a clear way to set limits on preventive confinement without a conviction.

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95 *Public Prosecutor v ABJ* [2010] 2 SLR 377 at [16].

96 *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [19].

97 *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [19].

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This framework balances public safety with the interests of the mentally disordered accused through a step-by-step hypothetical with the limited amount of evidence that is available before the court.

42 At the same time, this case comment has drawn attention to the central practical role of psychiatric evidence and the allocation of responsibilities between the courts and the Minister. Since a large portion of the NIP exercise depends heavily on psychiatric reports, their quality and reasoning become key to how the NIP is calibrated in individual cases. The elevation of prevention at the NIP stage, with rehabilitation taking a back seat and featuring more prominently when the Minister is to make a decision, reflects a deliberate policy choice about how best to safeguard both public safety and the interests of mentally disordered accused persons within the statutory framework.