



Neutral Citation Number: [2022] EWHC 3051 (Admin)

Case No: CO/2178/2022

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

Leeds Combined Court Centre
1 Oxford Row, Leeds, LS1 3BG

Date: 02/12/2022

Before :

MR JUSTICE JULIAN KNOWLES

Between :

**THE KING ON THE APPLICATION OF
JOHN NEWTON**

Claimant

and

**THE PAROLE BOARD FOR
ENGLAND AND WALES**

Defendant

and

SECRETARY OF STATE FOR JUSTICE

**Interested
Party**

Michael Bimmler (instructed by Bhatia Best) for the Claimant

**The Defendant and the Interested Party did not appear
and were not represented**

Hearing date: 30 November 2022

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

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Mr Justice Julian Knowles:

Introduction

1. This is an application for judicial review of the Parole Board's decision of 21 March 2022 not to direct the Claimant's release following his recall to prison in August 2021 (the Decision).
2. Permission was granted by Her Honour Judge Jackson on 27 September 2022 and she ordered the hearing be expedited. The Claimant is due for release on 18 December 2022 and Mr Bimmler accepted that even in the event I were to quash the Parole Board's Decision, it would not be possible to convene a new Parole Board hearing before his release. Nonetheless, he submitted that the claim was not academic and that if the Decision was unlawful then the Claimant was entitled to have a court say so, and that any such ruling might have significance in the future in the event, for example, that the Claimant were again to be involved in parole proceedings. I agree.
3. The Parole Board and the Secretary of State for Justice have both adopted a neutral stance to this application.

Factual background

4. The Claimant is a determinate sentence prisoner, having been sentenced on 20 March 2020 to 36 months' imprisonment for drug supply offences and two months' imprisonment (concurrent) for arson. He was in the community on a home detention curfew licence between 16 February 2021 and 19 June 2021, and an ordinary licence thereafter, until his recall to custody on 24 August 2021.
5. The background to the recall is set out in Box 19 of the Probation Service's 'Part A Recall Request', namely allegations of domestic abuse in the form of threats against his partner. The Claimant, who had agreed to meet with police officers in light of these concerns, had been arrested on 22 August 2021 and charged with threatening to destroy or damage property. The Claimant's risk of serious harm at the time of recall was assessed to be 'medium' to a known adult, prisoners and staff and 'low' to the public and children and his compliance with supervision on engagement was described as 'positive'.
6. Following the Claimant's return to custody, the Secretary of State for Justice referred his case to the Parole Board pursuant to s 255C(4) of the Criminal Justice Act 2003. In a 'Part B Post Recall Risk Management Report' of 14 September 2021, the Claimant's Community Offender Manager did not support re-release on licence due to the Claimant's pending trial (he had pleaded not guilty since recall), and his lack of stable accommodation.
7. In written submissions to the Parole Board dated 19 October 2021, the Claimant's legal representatives indicated that the criminal charges against him had been discontinued, as there had not been sufficient evidence to provide a realistic prospect of conviction and included a notice of discontinuance from the CPS. The Claimant's solicitors also made submissions on release addresses and his custodial conduct. The Parole Board was requested to direct his release on the papers. The parole dossier also included

confirmations by HMP Nottingham and Nottinghamshire Police that the case had been discontinued.

8. On 29 October 2021 a member of the Parole Board directed the Claimant's case to an oral hearing and directed the disclosure of further reports and police documentation. Pursuant to these directions, a compilation of so-called police callout logs for any addresses involving the Claimant since January 2015 were disclosed to the panel and added to the parole dossier. These callout logs included various references to alleged incidents of domestic abuse which did not result in further action or conviction.
9. In a 'Part C: Ongoing Reviews – Release and Risk Management Report' dated 1 March 2022, the Claimant's Community Offender Manager assessed the risk posed by the Claimant as 'medium' to known adults and low in all other respects and recommended his re-release on licence, as his risk could be managed in the community with a suitable risk management plan
10. At the oral hearing on 15 March 2022, evidence was given by the Claimant, his Community Offender Manager, Ms Conway, and his Prison Offender Manager, Ms Kirkbride.
11. The Panel gave its Decision on 21 March 2022. It noted, in [1.9], that in his evidence to the Panel, the Claimant had denied the allegations of domestic assault and criminal damage dating from 2019, which had been ordered to lie on file, save that he 'admitted that he had pushed her on one occasion, after she had pushed him, but denied using any other physical violence'.
12. The Panel further noted, in [1.11], the list of police callouts disclosed to it and said that 'they indicated a pattern of callouts to Mr Newton's intimate partners and family members' It then summarized information found in these police callouts about individual incidents, noting that no further action had been taken ([1.12]-[1.19]). Turning to the allegations which had led to the Claimant's recall and abandoned prosecution in 2021, the panel noted that the Claimant had denied all the allegations and denied being in the vicinity of the complainant's address when the allegations were made ([2.11]). He then also expressly denied the other allegations made by him by (former) partners ([2.12]).
13. In reviewing manageability of risk, the Panel recorded that

“3.2 He is assessed as a medium risk of serious harm to known adults, namely his last three partners. Despite all of them alleging controlling and coercive conduct in their intimate relationships and violence, he has not been convicted of any offences, although the Panel noted than offence of Assault (2019) was ordered to lie on file. [...]

3.3 The dossier did not contain the outcome of the SARA [Spousal Assault Risk Assessment]: an assessment of the risk of future intimate violence, but Ms Conway believed that she had recently completed one and that the outcome was medium. She confirmed that she had not used the

Police call-out information in the dossier to inform the assessment. The Panel queried whether the score was underestimated given the historic allegations against Mr Newton and the ones made within the last 12 months by 2 ex-partners, one of their friends and a member of the public (a neighbour). The Panel assessed that the risk of future intimate partner violence was heightened, and that Mr Newton has yet to acknowledge or address his risks associated with it.”

14. The Panel did not record any findings of fact in its decision regarding the unproven allegations against the Claimant (or any of the constituent facts of the allegations) which the Claimant disputed. In its conclusion, the Panel gave the following reasons for declining to direct the Claimant’s release:

“4.1 The Panel considered all the information available to them: in the dossier and the oral evidence at the hearing. They also considered the closing submissions made on Mr Newton’s behalf by Ms Hanson, who asked the Panel to direct his release. Ms Hanson asserted that Mr Newton had complied with his licence in the community and has not been convicted of any new offences. She said that he had complied in custody since his recall and is committed to engaging if he is re-released on licence. She asserted that he is currently single and therefore the risk to a future partner is not imminent. She reminded the Panel that Ms Conway is in a position to undertake one-to-one work with Mr Newton and that he does not need to remain in custody to complete it with Ms Kirkbride. Ms Hanson said that the additional oversight by the domestic abuse IOM team makes the proposed risk management plan more robust and capable of managing his risks.

4.2 The Panel noted the serious nature of Mr Newton’s offending history and the patterns of allegations made against him by former intimate partners. Whilst the Panel notes that he has not been charged or convicted of nearly all of them, apart from the Arson offence, the Panel must consider all behaviours that are indicative of risk and did place some weight on the pattern of allegations by three unconnected females, including their friend and neighbours.

4.3 The Panel was satisfied that the recall was proportionate and necessary in this case to ensure the safety of others.

4.4 The Panel noted Mr Newton’s good custodial conduct since recall and that Ms Conway supported his re-release. However, the Panel noted that she had not met or spoken with him prior to the hearing and was not fully aware of Mr (Newton’s behaviour in the community. The Panel placed

more weight on Ms Kirkbridge's assessments and recommendations as she has met with him weekly since the new year and taken the opportunity to explore his insight with him.

4.5 The Panel was not satisfied that Mr Newton did demonstrate any insight into his offending or risk factors. They speculated that this may be due to his learning difficulties or his shame/embarrassment at his behaviour. The Panel assessed that Ms Kirkbride had already established a working relationship with Mr Newton and was well placed to undertake the recommended one-to-one work with him.

4.6 The Panel was not satisfied that Mr Newton's risks could be safely managed in the community and did not direct his release."

Submissions

15. The short and simple submission made by Mr Bimmler on behalf of the Claimant is that the Panel fell into error when it expressly took into account unproven (and denied) allegations in its assessment of the risk posed by the Claimant, without making any findings of fact on the allegations, or their constituent facts. He said this approach fell foul of the Court of Appeal's decision in *R (Pearce) v Parole Board* [2022] 1 WLR 2216 at [3], [26], [35], [43], [47] and [49]. The judgment of the Court of Appeal predated the Panel's decision by about nine weeks. In that case, Macur LJ, with whom Lewison and Snowden LLJ agreed, said that the evaluation of risk can only take place upon 'undisputed or established facts' and that unproven allegations should not be taken into account. (Mr Bimmler helpfully told me that the Supreme Court heard an appeal by the Parole Board in *Pearce* in early November 2022; judgment is awaited. He did not suggest that I should await the outcome of the appeal.)

Discussion

16. I agree with Mr Bimmler that the Parole Board erred in taking into account (the unproven and denied) allegations against the Claimant when it came to assess risk. Its approach, most clearly set out in [4.2] which I quoted earlier, is plainly at odds with the following passages in *Pearce*:

"35. The question of what constitutes a fair procedure to make findings of fact, or evaluations of the information, will be fact-specific as explained in *West* [2003] 1WLR 705 and is unlikely to entail the formality of public law family proceedings. The test posed in *Considine* [2008] 1 WLR 414, para 37 provides that a fair analysis of all the information should inform the necessary judgment in relation to risk. Nevertheless, what is clear to me is that the panel must conscientiously evaluate the information before it to make findings of fact upon which to make the assessment of the prisoner's

risk; in these circumstances neither public protection nor public law fairness will be compromised. Established or undisputed constituent or consequential facts to an overarching allegation may provide compelling and convincing indications of risk in themselves, whereas simply to assess the seriousness of the nature of an allegation, provided there is some evidential basis for it is to embark down the route of ‘no smoke without fire.’

...

43. ... I cannot conceive how the touchstone of ‘public law fairness’ can operate in the circumstances in which an allegation which is not proved on the balance of probabilities is taken into consideration in the assessment of risk.

...

47. ... An assessment of risk can only be made upon undisputed or established facts.

...

49 Subject to one correction, I also agree with the analysis that Bourne J provided in paras 38 and 39 of his judgment. That correction relates to Bourne J’s example of a domestic violence case in which it is alleged that the prisoner assaulted his partner during an altercation. Bourne J stated that ‘If the Board can only conclude that there might have been an assault, that conclusion may be of little assistance to it’. In my judgment, in such a case the Board should disregard the unproven allegation of assault entirely. As Bourne J went on to say, however, if the Board was satisfied on the balance of probabilities that there was an altercation, it could take that established fact into account in its risk assessment.”

Conclusion

17. The Panel’s Decision not to direct the Claimant’s release was therefore legally flawed and cannot stand. I therefore quash it. No other substantive order is necessary.