



Neutral Citation Number: [2020] EWHC 487 (Admin)

Case No: CO/3905/2019

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 11/03/2020

**Before :**

**MR JUSTICE JULIAN KNOWLES**

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**Between :**

**THE QUEEN ON THE APPLICATION OF  
SHARON CARR**

**Claimant**

**- and -**

**SECRETARY OF STATE FOR JUSTICE**

**Defendant**

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**Rebecca Filletti (instructed by Swain & Co) for the Claimant**  
**Natasha Barnes (instructed by GLD) for the Defendant**

Hearing dates: 21 February 2020

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**Approved Judgment**

**Mr Justice Julian Knowles:**

1. This is a renewed application for permission to seek judicial review. The Claimant, Sharon Carr, is a Restricted Status prisoner. She challenges the decision of the Category A Team (CART), taken on behalf of the Defendant, not to downgrade her Restricted Status without holding an oral hearing. His Honour Judge Pearce refused permission on 26 November 2019.
2. The Claimant is represented by Ms Filletti. The Defendant is represented by Ms Barnes. I am grateful to both of them for their careful written and oral submissions.

**Factual background**

3. The Claimant is currently serving a life sentence imposed in March 1997 for the offence of murder. The killing took place in June 1992 when the Claimant was just 12 years old. She fatally stabbed an 18-year old female, who had recently left a nightclub and who was a stranger to her. She inflicted multiple stab wounds to her victim's torso and genitals with a seven-inch knife, and stole some of her jewellery.
4. The offence remained unsolved for some years. The Claimant's responsibility only came to light in 1995 when she boasted about the murder to an officer in HMP Bullwood Hall, where she was then serving an indeterminate sentence for stabbing a female school friend in June 1993.
5. The trial judge stated that the Claimant had a sexual motive for the murder, as evidenced by the mutilation of the victim and her diary entries, in which she recorded her actions and sexual excitement. Evidence from the Claimant's 1993 stabbing offence suggested that she formed intense relationships with females that turned into violent fantasies when thwarted.
6. Following the Claimant's arrest in 1993, she was initially held in various psychiatric units and Aycliffe Secure Centre where she continued to regularly seriously assault other females, including trying to strangle two nurses. She was initially transferred to Aycliffe's all-boys unit and then to HMP Bullwood Hall in September 1995 where her aggressive and sexualised behaviour could better be managed.
7. Following her murder conviction, the Claimant was held in HMP Holloway. She was transferred to Broadmoor Hospital in June 1998, to Rampton Hospital in 2007 and the (medium secure) Orchard Unit in 2008. She returned to HMP Bronzefield in February 2015 as she was presenting a risk to patients and staff. The warrant stated that she no longer required hospital treatment for a mental disorder or that no effective treatment could be given.
8. The Claimant has been a Restricted Status prisoner since 2015.
9. On 3 December 2018, the Claimant was moved to HMP Low Newton. She has since moved to HMP Bronzefield after a violent incident with another prisoner in August 2019.
10. The Chronology relevant to this claim is as follows:

14/6/19	Local Advisory Panel decides not to recommend that the Claimant be downgraded from Restricted Status
8/7/19	CART decision not to downgrade Claimant from Restricted Status
25/9/19	Decision maintained following receipt of a pre-action protocol letter from the Claimant's solicitors
7/10/19	Claim issued
30/10/19	Defendant's Acknowledgment of Service with attached minutes of 25/10/19 meeting of Case Referral and Review Board (CRRB) received.
26/11/19	Permission refused on the papers
10/2/20	Psychological report on the Claimant by Dr Motz
21/2/20	Renewed permission hearing

### **The decision**

11. A Restricted Status prisoner, *per* PSI 08/2013, [2.9], is 'any female, young person or young adult prisoner, convicted or on remand, whose escape would present a serious risk to the public and who is required to be held in designated secure accommodation. Separate procedural security arrangements apply to Restricted Status prisoners'. Broadly speaking, such prisoners are equivalent to Category A prisoners in the male prison estate.
12. Reviews in relation to Restricted Status prisoners are taken centrally by the Category A Review Team (CART) within the Ministry of Justice's Long Term and High Security Prisons Group. Paragraphs [4.1]-[4.2] of PSI 08/2013 provide:

"4.1 Each prisoner confirmed as Category A/Restricted Status at a first formal review will normally have their security category reviewed two years later, and thereafter annually on the basis of progress reports from the prison. These annual reviews entail consideration by a local advisory panel (LAP) within the establishment, which submits a recommendation about security category to the Category A Team. If the LAP recommends continuation of Category A, and this is agreed by the Category A Team, then the annual review may be completed by the Category A Team without referral to the DDC High Security (unless the DDC has not reviewed the case for 5 years, in which case it will be automatically referred). The DDC High Security (or delegated authority) will remain solely responsible for approving the downgrading of a confirmed Category A/Restricted Status prisoner, following consideration at the Deputy Director's panel.

*4.2 Before approving a confirmed Category A/Restricted Status prisoner's downgrading the DDC High Security (or delegated authority) must have convincing evidence that the prisoner's risk of re-offending if unlawfully at large has significantly reduced, such as evidence that shows the prisoner has significantly changed their attitudes towards their offending or has developed skills to help prevent similar offending."*

13. Oral hearings are addressed at [4.6] and [4.7]. At [4.6] the following points are made:
  - a. Firstly, each case must be considered on its own particular facts - all of which should be weighed in making the oral hearing decision;
  - b. Second, it is important that the oral hearing decision is approached in a balanced and appropriate way. The Supreme Court emphasised in *R (Osborn) v Parole Board* [2014] AC 1115 that decision makers must approach, and must be seen to approach, the decision with an open mind; must be alive to the potential real advantage of a hearing both in aiding decision making and in recognition of the importance of the issues to the prisoner; should be aware that costs are not a conclusive argument against the holding of oral hearings; and should not make the grant of an oral hearing dependent on the prospects of success of a downgrade in classification.
  - c. Third, the oral hearing decision is not necessarily an all or nothing decision. In particular, there is scope for a flexible approach as to the issues on which an oral hearing might be appropriate.
14. PSI 08/2013 goes on at [4.7] to list a number of factors which might weigh in favour of an oral hearing:
  - a. Where important facts are in dispute. Facts are likely to be important if they go directly to the issue of risk.
  - b. Where there is a significant dispute on the expert materials. These will need to be considered with care in order to ascertain whether there is a real and live dispute on particular points of real importance to the decision. Examples of situations in which this factor will be squarely in play are where the Local Area Panel, in combination with an independent psychologist, takes the view that downgrade is justified.
  - c. Where the lengths of time involved in a case are significant and/or the prisoner is post-tariff. It does not follow that just because a prisoner has been Category A for a significant time or is post-tariff that an oral hearing would be appropriate. However, the longer the period as Category A, the more carefully the case will need to be looked at to see if the categorisation continues to remain justified.
  - d. Where the prisoner has never had an oral hearing before, or has not had one for a long period.

15. On 14 June 2019, the Local Category A Panel at HMP Full Sutton met to consider the Claimant's case. It did not recommend any change in her category, concluding:

“Still some evidence of volatile relationships and needs to demonstrate further behaviours that show risk factors have been reduced.

[The Claimant] needs to engage with PIPE and needs to remain on I Unit throughout weekdays and weekend and only reside and sleep on F wing. This will reduce her risk factors and allow us to consider removal of RS Status.”

16. ‘PIPE’ stands for ‘Psychologically Informed Planned Environment’.

17. On 8 July 2019 the CART decided not to downgrade the Claimant's Restricted Status. That is the decision which is challenged on this application. The decision was made without an oral hearing. The Claimant did not request an oral hearing and made no representations. She was at that stage unrepresented. The CART's decision can be summarised as follows:

- a. It considered that the Claimant's offence showed she would pose a high level of risk if unlawfully at large, and that before her downgrading could be justified there had to be clear and convincing evidence of a significant reduction in this risk.
- b. Although reports noted that in general she posed no disciplinary problems there had been an altercation with another prisoner where the Claimant had had thoughts of harming her.
- c. The Claimant had been diagnosed with schizoaffective emotionally unstable personality disorder and had been prescribed antipsychotic medication. Sometimes she would not take her medication and mood changes were noted by staff.
- d. Sentence plan targets were set for her to work to reduce the risk of harm she presents by engaging with the Complex Needs Service, to reduce the number of self-harm/psychotic episodes, to increase association with law abiding peers, and to develop and consolidate her learning through undertaking a progressive PIPE. However, ‘reports indicate that CNS is not available to you at your present location. However, you have been engaging with psychological services to undertake PIPE outreach work, including consolidation of skills learnt from previous work.’
- e. It had been reported that the Claimant had been struggling with paranoid thoughts and had disclosed the desire to murder another prisoner.
- f. Overall, the CART concluded that the Claimant was still evidencing incidents of having volatile relationships and thoughts and it concluded the Claimant had yet to provide significant evidence of a reduction in risk. It noted that a place on a PIPE Unit had been identified as an appropriate way forward. It recommended that the Claimant continue to work with specialist staff in order to reduce risk areas. There were no grounds to justify a downgrade at the present time.

18. On 13 September 2019 the Claimant's solicitors sent a letter before action challenging the CART's decision and its failure to hold an oral hearing. The Defendant replied on 25 September 2019 maintaining the decision. It said, in essence, that although the Claimant had made some progress, further intervention was necessary. It rejected the suggestion that there was an impasse because her security status meant that she could not access PIPE, as the letter before claim had suggested. It said that the means were available within her current security categorisation to provide evidence of insight and reduced risk. It also rejected the suggestion that there should have been an oral hearing. It said there were no issues which required such a hearing.

### **Grounds of challenge and the single judge's decision**

19. The Claimant challenged the CART's decision on the following grounds.
20. Firstly, the Defendant failed properly or fairly to apply PSI 08/2013 by not holding an oral hearing. This is a case where an oral hearing was required.
21. Second, to refuse to downgrade the Claimant and deny her the opportunity to try to demonstrate how her attitudes have changed to show a reduction in risk without a hearing was unfair.
22. Third, the Defendant failed to take into account the risk reduction through positive custodial behaviour.
23. In his careful and detailed reasons for refusing permission on the papers, His Honour Judge Pearce, sitting as a judge of the High Court, said as follows.
24. He said that the substance of the Defendant's reasoning for declining to declassify the Claimant was that she had not yet provided significant evidence of a reduction in risk. The Defendant had noted that a place on a PIPE had been identified as an appropriate way forward and that the Claimant should continue to address treatment intervention to assist in risk reduction.
25. The argument that there should have been an oral hearing was raised subsequently to the decision. That decision was rational. There was nothing to justify an oral hearing.
26. The Claimant submitted that she will not be placed in a PIPE unit whilst she is a Restricted Status prisoner and that therefore an impasse had arisen. The failure to hold an oral hearing was contended to be unfair for the reasons the judge summarised in [7], including the suggested impasse, and the absence of expert evidence.
27. At [8] the judge summarised the Defendant's grounds of opposition. These were that the Claimant was substantially post-tariff, but the length of time she had been in custody was not itself a reason of itself to convene an oral hearing. The Defendant also said that the situation was not one of impasse because the minutes of the meeting of 25 October 2019 showed that a PIPE Unit is not necessarily suitable in any event and that other work is available to reduce her risk of re-offending. Also, there was no dispute in expert evidence so as to require an oral hearing. In [8] the judge noted the Defendant's reliance on the minutes of the meeting on 25 October 2019 that a PIPE Unit is not necessarily

suitable for the Claimant and that other work was being carried on with her to deal with her risk of re-offending.

28. In refusing permission, the judge said at [9] onwards that:
- a. The mere fact that the Claimant had not requested an oral hearing could not excuse the failure to hold one, had it been necessary. The Claimant's length of time in custody (especially post-tariff) and the absence of any previous oral hearing were plainly relevant factors. However, this was not a case with any significant dispute of fact.
  - b. An impasse had not been reached in that there was the possibility of further work being done with the Claimant.
  - c. The Claimant had not shown an arguable case on the first and second grounds.
  - d. As to the third ground, the Claimant had failed to show that the Defendant had not paid sufficient regard to positive evidence of the Claimant's character. The Defendant had been entitled to find that the Claimant's risk of offending if unlawfully at large was not sufficiently reduced. Thus, there was no arguable case on the third ground.

### **Arguments on this renewed application**

29. On this renewed application Ms Filletti submitted that the single judge was wrong to refuse permission for the following reasons.
30. First, she said that he wrongly took into account a document that was not before the CART, namely the minutes of the meeting on 25 October 2019 which made reference to the Claimant not being suitable for a PIPE because of her Restricted Status, but that other work was being done to deal with her risk of re-offending. She said that if such a document had been prepared in advance of the initial decision then there is a high possibility that this would have been challenged by the Claimant. She may have requested an oral hearing to do so.
31. Next, she said that the lack of expert evidence was not dealt with by the single judge. She said that to assess risk reduction on the papers in the absence of this expert evidence is contrary to the interests of justice and fairness.
32. Third, she said the judge failed to assess whether the evidence of negative behaviour is of sufficient weight as to negate the argument that the Claimant should be downgraded to access PIPE.

### **Discussion**

33. Despite Ms Filletti's valiant efforts, like His Honour Judge Pearce, and for essentially the same reasons that he gave, and those advanced by Ms Barnes on behalf of the Defendant, I am satisfied that this claim is not arguable. I therefore refuse permission.

34. The starting point is that the test the CART had to apply was a straightforward one, namely, whether there was convincing evidence that the Claimant's risk of re-offending if unlawfully at large had significantly reduced. As an expert body, the CART was well able to make that assessment, which was essentially one of fact. Although not determinative, the fact that the Claimant had made no representations nor requested an oral hearing weighed in favour of the CART taking its decision on the papers. The case law indicates that oral hearings will rarely be required in relation to decisions as to a prisoner's security status: see eg *R (Hassett) v Secretary of State for Justice* [2017] 1 WLR 4749, [51], where it was pointed out that decisions made by the Parole Board are judicial determinations of rights, whereas those made by the CART are administrative decisions with a particular focus on ensuring the administration of prisons is carried out properly and effectively in the public interest. There is nothing in this case which puts it into that small category of case where an oral hearing is required.
35. The CART was entitled to take into account that the Local Area Panel (LAP) had not recommended a downgrade, and there was no psychological evidence supporting a downgrade. In the three months leading up to the LAP recommendation, the Claimant had disclosed thoughts of wanting to murder another resident by splitting her head open with a flask and throwing her down the stairs to snap her neck, whilst also being involved in an altercation with another resident with whom she had previously been in a relationship. There was a psychological report from 2018 which was apparently not in the dossier which the CART considered, and there is a post-decision report from Dr Motz from February 2020, however neither of these recommended a downgrade. Paragraph 6.20 of the latter report concluded:
- “It is my opinion that, although Ms Carr still requires the support and containment of secure conditions to develop these skills further, and to consolidate a strong sense of identity, she would need a further brief period of focussed intervention at HMP Bronzefield before she moves on to the next stage of progress.”
36. Although there were factors (eg, that the Claimant is substantially post-tariff) which, under PSI 08/2013, weighed in favour of an oral hearing, they were not dispositive and did not in my judgment mandate a hearing. The key issue remained whether there has been a diminution of risk justifying a change in categorisation and the CART was able properly and fairly to determine that question on the papers.
37. I do not accept the Claimant's submission that she is in a position of impasse which justified an oral hearing. It is correct that Dr Motz recommended in her 2018 report that the Claimant be subject to a progression PIPE and that this was not possible during her time at HMP Low Newton due to her Restricted Status. However, the Claimant was instead subject to PIPE outreach work with a member of the PIPE team. As the Defendant pointed out, a decision was subsequently taken to suspend this work so as not to 'overload' her whilst she continued with one-to-one intervention.
38. On this point I do not accept that the judge erred by referring to the minutes of the October 2019 meeting. The judge was merely reciting the Defendant's submissions, which did make reference to the minutes. But in any event, the point the Defendant made (namely that the minutes referred to the Defendant undertaking other risk



reduction work) was one contained within the original decision. The judge did not therefore improperly take into account material not before the decision maker. In any event, as the Defendant submitted, these meeting minutes are relevant because they tend to suggest that, even if the Defendant was required to reconsider his decision, the Defendant would still come to the view that an oral hearing was not necessary.

39. The Defendant was right to submit that it is not a function of CART to make decisions in respect of sentence planning. The critical point in this case was that there was no convincing evidence to demonstrate that the Claimant's risk had significantly reduced.
40. In respect of expert evidence, although the dossier stated that 'there are no reports completed to date' when in fact there was a report from July 2018 by Dr Motz, completed for a Parole Board review, the Defendant pointed out that that had been provided to the Claimant. There is nothing in that report which compelled an oral hearing. There is no divergence of expert opinion.
41. In short, whether the case is put on the basis of illegality by virtue of not having an oral hearing, or procedural impropriety for the same reason, for these reasons and those given by His Honour Judge Pearce, the claim is not in my view arguable.