



Neutral Citation Number: [2020] EWHC 559 (Admin)

Case No: CO/1914/2019

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

Between :

**THE QUEEN ON THE APPLICATION OF
CHRISTOPHER JACKSON**

Claimant

- and -

**THE PAROLE BOARD FOR ENGLAND
AND WALES**

Defendant

-and-

SECRETARY OF STATE FOR JUSTICE

**Interested
Party**

**Jake Rylatt (instructed by Swain & Co) for the Claimant
The Defendant and the Interested Party did not appear
and were not represented**

Hearing dates: 19 February 2020

Approved Judgment

Mr Justice Julian Knowles:

1. This is an application for judicial review with limited permission granted by His Honour Judge Wood QC following an oral renewal hearing on 15 October 2019.
2. The Claimant, Christopher Jackson, is a prisoner who is serving a sentence of life imprisonment for rape and threats to kill. I will set out the detail later. He is now aged 40. The sentence was imposed on 7 July 2003 by His Honour Judge Mettyear at Hull Crown Court. His tariff was set by the judge at six years and nine months. He is therefore now significantly post-tariff. He has been diagnosed with migraine with a functional overlay (although he does not accept this diagnosis). An initial diagnosis of stroke was discounted. He has a number of cognitive deficits.
3. In this application, as pleaded, he challenges the Parole Board's decision of 11 February 2019 refusing to direct his release or recommend his transfer to open conditions. In fact, at the hearing he only sought a move to open conditions and so that is the real focus of this application. In accordance with normal practice neither the Parole Board nor the Secretary of State have taken part in these proceedings.
4. The single ground on which permission was granted is that the Parole Board failed to take into account relevant considerations and irrationally refused or failed to obtain an up-to-date Structured Assessment of Risk and Need Report (SARN), but instead relied on a SARN which was, at the material time, nearly a decade old (from June 2010).
5. Let me explain at once what a SARN is. It is a psychological report that is often commissioned by the prison when an inmate has completed a fundamental course such as a Sex Offenders Treatment Program (SOTP). Once an inmate has finished such a program, a psychological assessment will take place to determine the extent to which they have benefited from the course. In the Claimant's case, the 2010 SARN was written following his completion of an Adapted (because of his cognitive deficits) SOTP at HMP Frankland in 2009. After setting out the background, at [1.3] the SARN described his life history and psychological functioning. It then set out his offending behaviour. The key part is section 3, which described dynamic risk factors in the Claimant's case. In short, this identified 'risky areas' for Mr Jackson; in other words, areas that needed to be addressed before risk could be considered to have been reduced. They are subsequently described as 'treatment targets'. They included: thinking about sex a lot of the time; preferring sex with violence; a belief that men should be in charge; as well as other factors. In total, 10 treatment targets were identified.

The factual background

6. The Claimant's offences were committed in May 2003. The victim was his uncle's former partner, who was aged 59. The Claimant was then aged 23. He attacked her in her home when he was under the influence of alcohol. He went into her bedroom with a screwdriver and threatened to kill her. The victim was then violently assaulted and raped. At some stage a knife was used, and the victim suffered injuries as a consequence. The Claimant had previous convictions for violent offences against women. The judge described the Claimant as 'a terrible risk to women'. In sentencing the Claimant to life imprisonment the judge said that the notional determinate term would have been 14 years

imprisonment, which produced a tariff of six years and nine months after adjustment for time spent on remand.

7. The key events are as follows:

Date	Event
17 August 1979	Claimant born
7 July 2003	Claimant receives life sentence with minimum term (tariff) of 6 years' 9 months for one offence of rape and one offence of making threats to kill
7 April 2010	Tariff expires
June 2010	Structured Assessment of Risk and Need (SARN) completed by Sharon Griffiths, trainee forensic psychologist, following the Claimant's completion of an Adapted SOTP
27 February 2016	Claimant admitted to hospital complaining of sudden onset headache and right sided weakness. Discharged following day with diagnosis of migraine and further diagnosis of previous alcohol abuse
5 July 2016	Claimant reviewed by Dr Iveson (Consultant Stroke Physician), who concluded that Claimant had suffered a mild stroke
23 August 2016	Claimant reviewed by Dr Iveson following an episode of 20 July 2016, a further left hemisphere event which was possibly a stroke
28 April 2017	Letter from Dr Paul Willcoxson (Consultant Stroke Physician) opining that the previous diagnosis of stroke was incorrect and the correct diagnosis is migraine with functional overlay
November 2017	Claimant's fifth Parole Board review commences following referral by the Interested Party

22 November 2017	Parole Assessment Report Offender Manager (PAROM 1) produced by Clare Matthews (Offender Manager) which references June 2010 SARN
27 November 2017	OASys Assessment completed by Shelly Mackenzie (Probation Officer) which references June 2010 SARN as a source on information on which it relies
17 April 2018	Independent Neuropsychological Report completed by Dr Annette Farrant, noting impairment in verbal fluency, verbal memory and information processing speed owing to one of three hypotheses: (i) stroke; (ii) lack of effort (of which there was no evidence of conscious malingering); or (iii) migraine with functional overlay
26 July 2018	Psychological Risk Assessment completed by Liz Horseman (Trainee Psychologist), making reference to June 2010 SARN
18 December 2018	Psychological Risk Assessment completed by Lucy Crundwell (Trainee Psychologist), making reference to June 2010 SARN and noting deterioration in cognitive functioning
18 January 2019	Sentence Planning and Review Report (SPR-L) completed by Mark Stewart (Offender Supervisor), opining that his experience of the Claimant does not accord with the traits identified in the previous SARN
17 January 2019	Addendum Parole Assessment Report Offender Manager (PAROM 1+) completed by Sam Bramley (Offender Manager) suggesting that some of the treatment needs identified in the 2010 SARN 'are no longer significant factors'
4 February 2019	Oral hearing held
11 February 2019	Decision letter of Defendant refusing to direct the release of the Claimant or recommend his transfer to open conditions
14 February 2019	Decision Letter disclosed to Claimant's solicitors via email

25 April 2019	Pre-action Protocol Letter sent by Claimant's solicitors
13 May 2019	Reply to Pre-action Protocol Letter sent by Defendant's Solicitors
14 May 2019	Claim brought
4 June 2019	Acknowledgment of Service from the Defendant
9 August 2019	Refusal of permission on the papers by HHJ Sephton QC
15 October 2019	Limited grant of permission following an oral renewal hearing before HHJ Wood QC

The Parole Board's decision

8. The Parole Board first met the Claimant for his fifth review on 8 October 2018. The hearing was adjourned. The Board reconvened on 4 February 2019. It heard from:
 - a. The Claimant's solicitor, who sought a recommendation that he be transferred to open conditions;
 - b. Ms Crundwell, who had conducted a WAIS-IV assessment (that is, an IQ test designed to measure intelligence and cognitive ability in adults and older adolescents) and a psychological report dated 18 December 2018, following a risk assessment by Ms Horseman dated 26 July 2018. Ms Crundwell started the hearing by recommending TC+ (ie, a therapeutic community for those with learning disabilities) but became unsure about this because of the lack of an up-to-date risk assessment. Despite what she wrote in her report, she was not comfortable in recommending a move to open conditions because 'we don't know what the risk factors are'. In the event that TC+ refused to accept the Claimant then she recommended closed conditions but did not think that the Claimant needed to be housed in the high security estate.
 - c. Dr Annette Farrant, clinical neuropsychologist, who prepared a report dated 17 April 2018. This did not suggest any significant general cognitive impairment but there was impairment in verbal fluency, verbal memory and information processing speed. She recommended a number of strategies to aid the Claimant's learning.

- d. Mark Stewart, who appeared on behalf of Sue Collins, the Claimant's Offender Supervisor (OS). He favoured a move to open conditions. He had prepared an SPR-L report on 18 January 2019 in which he said that in his limited dealings with the Claimant was such that the traits identified by the SARN in 2010 had not been apparent nor in his behaviour and attitudes as observed by officers.
 - e. Sam Bramley, the Claimant's Offender Manager (OM) since August 2018. She favoured closed conditions in the form of a move from Category B to C, but was not completely opposed to open conditions. Her addendum report of 17 January 2019 recalled the risk factors identified in the SARN in 2010 and concluded that, given the length of time that had passed since this assessment was completed, some of these were no longer 'significant factors' for the Claimant, especially given the change in his behaviour in custody and lack of evidence of sexualised behaviour in custody.
9. The Parole Board's decision can be summarised as follows.
 10. In deciding whether to direct release, the Board said it had to be satisfied that it was no longer necessary for the protection of the public that the Claimant remain in custody. In terms of a move to open conditions, which is what the Claimant was contending for, the Board considered the extent to which he had made sufficient progress in addressing and reducing risk to a level consistent with protecting the public from harm; the extent to which he was likely to comply with any form of temporary release; the benefits of testing him in a realistic environment; and the risk of absconding.
 11. The Board said that it did not consider the Claimant was yet safe to release into the community or to move to open conditions.
 12. In its decision, having stated this conclusion, the Board summarised the evidence it had considered. I have summarised the salient features of this above. It then set out an analysis of the Claimant's offending. It said that it was concerning that the Claimant had attacked three women with sexual intentions, two of whom he knew would be able to identify him. He had used force, in one case extreme force, with no concern for the suffering of his victims. The most recent index offence was an escalation in his sexually violent offending. Prison had not deterred him.
 13. The Board then listed risk and protective factors. Factors which made it more likely he might offend included a preoccupation with sex; preferring violent sex; impulsivity; poor emotional management; and alcohol abuse. Protective factors were said to include finding the self-confidence to interact socially with women and to form intimate relationships.
 14. The Board then turned to evidence of change since the Claimant's last review and progress in custody. It referred to the Claimant being an enhanced prisoner who was employed in the kitchens. He had undergone the SOTP in 2001, 2006 and 2009. He had not had any adjudications since 2003. In 2016 he suffered two episodes which resulted in a mild speech impediment and a limp. An initial diagnosis of stroke was rejected after further investigation and migraine with functional overlay was diagnosed instead. The evidence summarised above was then set out. It noted Ms Crundwell's

evidence that she was not entirely sure there were outstanding treatment needs. She queried whether the treatment needs identified in the 2010 SARN were still valid.

15. Next, the Board assessed the Claimant's current risk. The statistical probability of reconviction was assessed as low; probability of non-violent offending as medium; and probability of violent offending as low. If he did re-offend, the risk to the public was assessed as high. These calculations appeared in his 2017 OASys report. The OM had confirmed they were still current. He was also assessed as high risk of future sexual offending.
16. The Board next considered the effectiveness of plans to manage risk. It did not feel any plan would be sufficient to safely manage the Claimant in the community.
17. In its conclusion and decision, the Board said it had considered all of the written and oral evidence and that it had discussed his index offence. It complimented him on his good behaviour in prison. It said it had taken into account Mr Stewart's recommendation of open conditions, but said in 2018 his OS had not supported such a move but that he should first spend a short period in a Category C prison. Ms Crundwell thought he should stay in closed conditions.
18. The Board said that it was vital to identify the Claimant's risks and triggers so that there could be reassurance that he had developed sufficient internal controls to complement the support and restrictions which would be imposed by outside agencies if the Claimant were to be released, or that he had made sufficient progress to be trusted in open conditions.
19. It said he had had a lot of treatment over the years but that it was not sure if core risk reduction work or reinforcement work remained outstanding.
20. It said that the last SARN risk assessment was in 2010 following completion of his last SOTP. The Board said that it had considered whether to obtain a fresh assessment, but had decided that it had sufficient evidence to reach a decision. It said he had not done any recent work on his risk areas.
21. It said whatever risk may have reduced, the risk factors concerning sexual violence towards women overrode everything else. It said there was also the issue of whether he had improved his self-confidence and social skills sufficiently to be able to meet and form relationships with women, in the absence of which there was a risk of re-offending.
22. The Board said it had made allowance for the Claimant's cognitive difficulties, whatever their cause. It said his lack of insight was a concern because if he did not understand his triggers he would be unable to manage risks. It had not been established whether he needed more treatment or at least a booster course with a psychologist. It would not be sufficient to release the Claimant or recommend open conditions in a situation where management is almost entirely dependent on the external controls of the professionals.
23. The Board was not confident that the Claimant had reduced his risks sufficiently to be able to identify and manage them either in the community or in open conditions.

Legal principles

24. These are uncontroversial and I take the following summary broadly from Mr Rylatt's Skeleton Argument, with some additions.
25. The Defendant is responsible for directing the release of those sentenced to indeterminate and certain determinate sentences of imprisonment if it is satisfied that it is no longer necessary for the protection of the public that they be detained. It is also routinely invited to make recommendations as to a prisoner's suitability to progress to open conditions.
26. The Claimant's case was referred to the Parole Board by the Secretary of State under s 28(6)(a) of the Crime (Sentences) Act 1997. Section 28 applies to a life prisoner in respect of whom a minimum term order has been made. Section 28(5) provides that as soon as a life prisoner to whom s 28 applies has served the relevant part of his sentence; and the Parole Board has directed his release under this section, it shall be the duty of the Secretary of State to release him on licence. Section 28(6) provides that the Parole Board shall not give a direction under s 28(5) with respect to a life prisoner unless, first, the Secretary of State has referred the prisoner's case to the Board (s 28(6)(a)); and, second, the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined (s 28(6)(b)). The key question, therefore, is one of risk and whether it is still necessary for the protection of the public for the prisoner to be confined.
27. In reaching its decision, the Defendant is empowered by the Parole Board Rules 2016 (SI 2016/1041) (replaced from 22 July 2019 by the Parole Board Rules 2019 (SI 2019/1038)) to:
 - a. Issue directions for further evidence, pursuant to Rule 10; and
 - b. Order a hearing is adjourned, pursuant to Rule 12.
28. Obviously, the Defendant must execute its functions according to public law principles and it must therefore take into account all relevant considerations before making its decision as to whether to direct the release of a prisoner or to recommend a transfer to open conditions. Irrelevant considerations must be ignored. While the weight to be given to a relevant consideration is a matter for the Parole Board, with which the Court will not readily interfere (*R(DSD and NBV) v Parole Board* [2018] EWHC 694 (Admin), [118]), it may sometimes be irrational for the Parole Board to pay too much (or too little) regard to relevant considerations: *R (Khatun) v Newham LBC* [2005] QB 37, [35]. In relation to the test for irrationality, in the recent case of *R (Wells) v Parole Board* [2019] EWHC 2710 (Admin), Saini J explained that:

“32. A more nuanced approach in modern public law is to test the decision-maker's ultimate conclusion against the evidence before it and to ask whether the conclusion can (with due deference and with regard to the Panel's expertise) be safely justified on the basis of that evidence, particularly in a context where anxious scrutiny needs to be applied.

33. I emphasise that this approach is simply another way of applying Lord Greene MR's famous dictum in *Wednesbury* (at p230: 'no reasonable body could have come to [the decision]') but it is preferable in my view to approach the test in more practical and structured terms on the following lines: does the conclusion follow from the evidence or is there an unexplained evidential gap or leap in reasoning which fails to justify the conclusion?"

29. In *DSD* supra, the decision of the Parole Board to direct the release of the prisoner was held by the Divisional Court to be irrational on the basis that further inquiries should have been carried out in relation to the prisoner's possible wider offending [159]; a broader challenge to the decision to release *per se* was rejected [132]. In a joint judgment of the Court, Sir Brian Leveson P, Jay J and Garnham J drew the logical distinction between: (a) whether there was a duty to undertake further inquiries; and (b) whether evidence of wider offending should have been taken into account [144]. It was held that it was irrational in the circumstances of that case not to have undertaken further inquiries [159], rationality providing the standard against which the decision not to undertake further inquiries was to be judged [156]. It was further held that it was impossible to conclude that the additional material which would have resulted from further inquiries would not have made any difference to the outcome [163].
30. In the specific context of out-of-date psychological risk assessments, in *R (Mordecai) v Parole Board* [2016] EWHC 2601 (Admin) the Court quashed a decision of the Parole Board in circumstances where the weight placed upon a two-year-old report completed by a psychologist was misplaced [18]. The psychologist in that case had neither updated the report nor assessed the prisoner's progress and, in circumstances where the prisoner had done everything recommended in that report, it was held that the Parole Board should have asked the psychologist why she was still recommending that he remain in closed conditions at the time of the hearing [19-20]. In contrast, the Offender Manager and Offender Supervisor had both explained why they felt open conditions would be appropriate, including with reference to two factors which had been troubling the Parole Board at that time [20-22]; the Court said that inadequate consideration had been given to their evidence [24]. The over-reliance placed upon the evidence of the psychologist and the inadequate consideration of the evidence of the Offender Manager and Offender Supervisor rendered the decision irrational [25].

Submissions

31. On behalf of the Claimant, Mr Rylatt submitted that the Parole Board had failed to take into account relevant considerations because there was an onus upon it to adjourn proceedings and obtain an up-to-date SARN, which it had failed to do. He said its failure to conduct such further inquiries was irrational, and resulted in it failing to take into account or attach appropriate weight to the following relevant considerations:
- a. The Claimant's cognitive deterioration since his last SARN was completed in 2010, as reflected in the evidence of Ms Crundwell [610] and Dr Farrant [437]. He noted that the psychologists Ms Crundwell [at 608] and Liz Horseman (Trainee Psychologist) [at 574; 580; 581] made reference to the June 2010 SARN in conducting their assessments.

- b. The evidence of three professionals involved in the hearing:
- (i) Mark Stewart (Offender Supervisor), who opined that his experience of the Claimant did not accord with the traits identified in the previous SARN [617];
 - (ii) Sam Bramley (Offender Manager), whose PAROM 1+ of 17 January 2019 suggested that some of the treatment needs identified in the 2010 SARN ‘are no longer significant factors’ [622]; and
 - (iii) Ms Crundwell (Trainee Psychologist), whose psychological risk assessment of 18 December 2018 made reference to the June 2010 SARN [608] and noted the Claimant’s deterioration in cognitive functioning [610]. At the hearing, Ms Crundwell questioned whether the treatment needs identified in the SARN were still valid [635], and accepted that ‘she could not identify [the Claimant’s] risk factors or outstanding treatment needs’ [637].
- c. The Board’s own concerns, encapsulated in its conclusions that it was ‘not sure if core risk reduction work or reinforcement work remains outstanding’ [637] and ‘it has not been established whether you need more treatment or at least a booster course with a psychologist’ [*ibid.*]. Mr Rylatt said that such statements were to be juxtaposed with the Board’s earlier statement that ‘[i]t is therefore vital not just for the panel but for you to identify your risks and triggers ...’ and its statement that ‘the risk factors concerning sexual violence override everything else’ [*ibid.*].
32. Mr Rylatt submitted that it was not enough for the Parole Board to simply turn its mind to the question of whether an up-to-date SARN was required (which it did in its decision, concluding that it had sufficient information). He said that the only rational conclusion was that one was required and should have been obtained.
33. Furthermore, he submitted the fact that the Claimant’s solicitors had not sought an up to date SARN (a point which His Honour Judge Sephton QC made when refusing permission) was irrelevant. He relied on *DSD*, supra, in which there was no suggestion that either of the parties to the Parole Board proceedings had sought an adjournment from the Panel for the provision of further evidence as to the prisoner’s wider offending (in circumstances where a representative for the Secretary of State for Justice was in attendance). He said this did not preclude the Divisional Court finding that the Panel acted irrationally in failing to undertake further inquiries.
34. As such, and further noting the comparison which can be drawn with the case of *Mordecai*, supra, where what Mr Rylatt said was a similar challenge succeeded, he submitted that the Defendant acted irrationally in failing to adjourn the hearing and direct the provision of further evidence. He said that the Defendant’s actions reflected a failure to give any or appropriate weight to the relevant considerations identified above, and further reflect a failure to give the requisite anxious scrutiny to the Claimant’s case.

Discussion

35. The question for me is whether it was irrational for the Board to have concluded that it did not need an up to date SARN because it had sufficient information in the evidence before it to determine the question of whether the Claimant's risk had decreased to the point that he could be transferred to open conditions. *DSD*, supra, makes clear at [156] that the test is one of rationality where a failure by the Parole Board to make further enquiries is challenged.
36. The Board's decision is a detailed and carefully written document of some seven pages. It is plain that the Board directed itself correctly on the issues that it had to determine in relation to release and transfer to open conditions. It set out comprehensively all of the relevant matters that had to be considered and the evidence it had heard and read. It gave reasoned conclusions in relation to each of these matters. It is clear that the Board had well in mind throughout its decision-making that the key question was one of risk.
37. It seems to me that the starting point in considering the question of rationality is the fact that the Claimant was represented by experienced solicitors at the hearing and no application was made for an up to date SARN, even after the hearing was adjourned from October 2018 to February 2019. I accept that this is not a complete answer, but it is something to be weighed in the equation of whether what the Board did was something which no rational Board could have done. The fact that no such request was made would tend to favour the conclusion that the Board did not behave irrationally because even the Claimant's legal advisers – who were there to advance his best case - did not think one was necessary. If they thought one was required, they would have said so. The short point is that if they did not think one was necessary – notwithstanding the qualifications which some of the professionals expressed about the SARN due to the passage of time – then at least on the face of it - it was reasonable for the Board to conclude likewise.
38. I also consider it significant that in none of the up to date reports which the Board had did any of the professionals suggest that an up to date SARN was required. Given that several of them referred to the 2010 SARN, they were alive to the fact that it was nearly a decade old. Again, if the need for an up to date SARN was so obvious as to make the failure to obtain one irrational, I would have expected that the need for one would have been identified by the professionals involved.
39. I think the high points of Mr Rylatt's case are, first, the comment by Sam Bramley in her PAROM 1+ report of 17 January 2019 that the SARN had listed eleven outstanding treatment needs, but that 'given the length of time that has passed since this assessment was completed, I would suggest some of these are no longer significant factors for Mr Jackson'. (In fact, there were only ten treatment needs identified). Second, there is the comment by Mark Barton in his SPR-L that he had read the psychologist's report that gives a list of 'outstanding treatment needs', which he said he understood arose from the SARN. He then commented 'My experience of Mr Jackson is obviously limited but these traits have not been apparent in my dealings with him, nor in his behaviour and attitudes observed by officers over the recent years of his sentence'.
40. On closer analysis, however, I do not consider either point carries the Claimant as far as he needs to go to show that the Board's decision was irrational.

41. The psychologist's report in question is the psychological risk assessment written by Liz Horseman dated 26 July 2018. At [4.7] she listed seven risk factors as relevant to his life and offending which she took from the 2010 SARN. At [4.8] she identified two further factors. At [4.9] she wrote, 'Please see section 5 for an overview of the progress made whilst Mr Jackson participated in [Adapted] SOTP'. Then, at [7.11] she wrote, 'Given the information from his participant (sic) on the ASOTP, Ms Griffiths highlighted the following essential treatment needs for Mr Jackson, which remain outstanding', and the same seven factors as in [4.7] are listed. At [8.2] Ms Horseman wrote that, 'It is my view that Mr Jackson requires further support to meet outstanding treatment needs before he is considered for placement outside closed conditions', and she then identified the same seven treatment needs as being outstanding.
42. Hence, the up to date material before the Board did not reflect the full range of treatment needs identified in the 2010 SARN Report – as Ms Bramley surmised might be the case - but recognised that some of them had been met. Nonetheless, a number still remained. Further, Mr Barton's opinion was expressly qualified by his acknowledgement that his dealings with Mr Jackson had been limited. There is nothing in Ms Horseman's report which suggests that an up to date SARN would have been in such markedly different terms that the outcome might have been different. Indeed, the opposite is the case. Notwithstanding that she recognised that the number of treatment needs had reduced, she still did not recommend a move to open conditions. Also, notwithstanding Ms Bramley's comment, she too did not recommend a move to open conditions. Finally, there was Ms Crundwell's opinion at the hearing that she did not recommend a move to open conditions.
43. For these reasons I conclude that the Board's decision not to seek an up to date SARN was not irrational. It had before it up to date material identifying the Claimant's treatment needs and his risk factors. These demonstrated some progress but not sufficient progress to justify a move to open conditions.
44. Attractively argued though the case was by Mr Rylatt, this application for judicial review is dismissed.