



Neutral Citation Number: [2022] EWHC 1238 (Admin)

Case No: CO/1870/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/05/2022

Before :

THE HON. MR JUSTICE TURNER

Between :

JD	<u>Claimant</u>
- and -	
Secretary of State for Justice	<u>Defendant</u>
- and -	
Parole Board for England and Wales	<u>Interested Party</u>

Matthew Stanbury (instructed by **Reece Thomas Watson**) for the **Claimant**
Jason Pobjoy and Will Bordell (instructed by **Secretary of State for Justice**)
for the **Defendant**
Fraser Campbell (instructed by **GLD**) for the **Interested Party**

Hearing date: 19 May 2022

Approved Judgment

The Hon Mr Justice Turner :

INTRODUCTION

1. The Parole Board (“PB”) was established in 1968. Since then, no member has ever had his or her membership terminated on disciplinary grounds. Until now.
2. On 24 February 2021, the defendant terminated the claimant’s membership because of a seriously flawed decision she had reached on 3 December 2019 ordering the release of a prisoner on a false basis of fact.
3. The claimant’s application for permission for judicial review of that decision was refused by the single judge and she now renews that application before me.
4. Since this is an application for permission and not the substantive hearing, I will keep this judgment short.

THE GROUNDS

5. The grounds relied upon are:
 - i. The proceedings were vitiated by procedural unfairness in that:
 - a. the PB failed to make any attempt at local resolution, and to follow any internal disciplinary process and the Termination Panel concluded that such measures might have enabled the issue to be resolved without recourse to the Protocol;
 - b. the PB failed to properly or adequately particularise its case when making the referral, and its case evolved over time;
 - c. the PB disclosed important evidence late in the evening before the hearing, and further evidence on the morning of the hearing, causing unfairness to the Claimant in circumstances whereby she had requested an adjournment, or for the evidence to be excluded, and the Panel did not rule on her application but proceeded with the hearing.
 - ii. The SSJ’s acceptance of the recommendation to terminate the Claimant’s PB membership was unreasonable in circumstances where:
 - a. the PB had failed to make any attempt at local resolution, and to follow any internal disciplinary process and the Termination Panel concluded that such measures might have enabled the issue to be resolved without recourse to the Protocol;
 - b. the recommendation arose from a single, isolated incident in which the Claimant was acting alone as a single member

Panel, and no or no sufficient consideration was given to alternative sanctions.

THE BACKGROUND

6. The claimant, a non-practising barrister, was appointed a member of the PB in October 2016 following the usual formal recruitment process.
7. It is not disputed that, for the purposes of the disciplinary process, she had performed her duties without relevant mishap until she came to be allocated to perform a Member Case Assessment in respect of one William Pullman (“WP”).
8. On 20 December 2013, WP had been sentenced to nine years imprisonment in respect of serious offences of domestic violence. The claimant was given responsibility for considering his eligibility for release. In accordance with usual practice, she was provided with a parole dossier which ran to just over two hundred pages together with a coversheet which set out an outline chronology of certain key dates. The details on the coversheet were capable of giving the impression, through omission, that there was a period between 11 October 2017 and 12 June 2019 during which WP had been released on licence. In fact, he had spent most of this period in custody in Scotland; as was fully evidenced in the papers in the dossier.
9. On 2 December 2019, the claimant directed WP’s release noting, wrongly, that he had managed nearly two years on licence without reoffending.
10. When the circumstances of the claimant’s decision came to light, disciplinary proceedings were eventually initiated which culminated in a recommendation by the Panel that her membership of the PB should be terminated. This recommendation was followed by the defendant.

THE CLAIMANT’S EXPLANATION

11. On the day after her decision, WP’s Senior Probation Officer emailed the claimant pointing out that, over the relevant period, WP had only been in the community for days rather than nearly two years. The claimant responded saying: *“I only authorised release on the basis of my understanding that he had spent 2 years in the community. [...] The two year period on licence was the only justification for release and without that there is nothing”*
12. As a result, the claimant’s decision was quashed in the context of judicial review proceedings which were settled by consent and the case of WP was referred to a different member of the PB for a fresh decision to be made.
13. On 6 February 2020, the chair of the PB referred the matter to a Panel pursuant to the protocol which was incorporated within the claimant’s terms of appointment and provided:

“The Secretary of State may at any time terminate your appointment on the recommendation of an independent panel established under an agreement between the Parole Board and

the Secretary of State. That agreement shall set out the procedures to be taken by the panel when considering whether or not to make a recommendation, and shall provide that a recommendation can be made if you: [...]

(b) have failed to comply with the Parole Board's Quality Assurance Framework or the Parole Board's Code of Conduct [...]."

14. The claimant's case before the Panel was one which appeared to contrast very significantly with her earlier stance. She claimed that that she had known that WP had not spent two years in the community on licence but asserted that there was a Parole Board policy that required her to "adopt the content of the cover sheet into her decision notwithstanding that she knew the information to be wrong."
15. Unsurprisingly, particularly in the absence of any satisfactory evidence supporting the existence of such a wholly absurd policy, the Panel concluded that what had actually happened was that the claimant "did not properly read the dossier before directing release and that her explanation concerning the cover sheet was not true".
16. The Panel duly recommended to the defendant that the appointment of the claimant should be terminated and, despite receiving further detailed written submissions from the claimant, the defendant subsequently followed that advice.

PROCEDURAL UNFAIRNESS

17. I will deal with each of the three procedural grounds in turn:
The PB failed to make any attempt at local resolution, and to follow any internal disciplinary process and the Termination Panel concluded that such measures might have enabled the issue to be resolved without recourse to the Protocol.
I am satisfied that it is not arguable that it behoved the PB to initiate any internal disciplinary process before the matter was referred to the Panel. No such requirement is to be found in the Agreed Protocol followed by the PB. The claimant relies upon a draft Policy document entitled "Breaches of Conduct by Members" which does make reference to the consideration of informal action to be considered at an early stage. However, this document was not in force at the time when the disciplinary action was being taken in this case. Furthermore, even if it had been in force, it provides that if a matter is too serious to be classed as minor then formal action should be taken. On any view, at the time the matter had been referred to the Panel, the claimant's admitted conduct could not properly be characterised as being "minor". I can detect no procedural unfairness arising from the sequence of events leading to the Panel hearing.

18. **The PB failed to properly or adequately particularise its case when making the referral, and its case evolved over time.**

This ground is hopeless. The central, substantive issue between the claimant and the PB was simplicity itself and remained so throughout. She had authorised the release of a prisoner on grounds which were deeply flawed and which, had she read the papers with any care, she would have realised were deeply flawed. She was fully equipped to deal with this point at the hearing. The Panel disbelieved her explanation and its conclusion in this regard cannot be faulted. No amount of further particularisation was necessary or, indeed, appropriate.

19. **The PB disclosed important evidence late in the evening before the hearing, and further evidence on the morning of the hearing, causing unfairness to the Claimant in circumstances whereby she had requested an adjournment, or for the evidence to be excluded, and the panel did not rule on her application but proceeded with the hearing.**

The evidence disclosed on the evening before the hearing was in response to a witness statement from the claimant running to no fewer than 325 paragraphs dated but two days earlier. Her counsel argued before me that the PB's witness statements in response contained little that was new. I agree. The claimant's original counsel was given plenty of time to read this material before the hearing commenced and she made no complaint at the time that this had been inadequate.

20. It follows that I am satisfied that there are no arguable grounds for giving permission in respect of the grounds relating to alleged procedural unfairness.

SUBSTANTIVE GROUNDS

21. For reasons which I have already given, there is no merit in the complaint that the PB ought to have made an attempt at local resolution.

22. This leaves the final ground:

The recommendation arose from a single, isolated incident in which the Claimant was acting alone as a single member panel, and no or no sufficient consideration was given to alternative sanctions.

I readily appreciate that the claimant faces an uphill challenge in persuading the court that the Panel's choice of sanction was so flawed as to be properly reviewable within the constraints of judicial review. As the Panel rightly pointed out, this was a release decision resulting from an act of gross negligence which had the potential to compromise public protection and undermine the public confidence in the PB.

23. It must be said, however, that the detail behind the Panel's reasoning was relatively sparse. In particular, little or no reference was made to any of the following:

- (i) Why, despite the noted and undoubted seriousness of the claimant's conduct, no measures short of termination had fallen to be considered and why, if considered, they had been rejected. (I note, in passing, that it may have been open to the Panel to have considered that the claimant's untruthful explanation for what she had done (the coversheet policy) may have militated against the suitability of a lesser sanction but no such conclusion, had it been reached, was articulated.)
 - (ii) Any matters of personal mitigation relating, by way of example only, to the claimant's ill-health and years of service.
 - (iii) The fact that when another Panel Member reviewed WP's file, they, too, concluded that WP should be released, notwithstanding correction of the error made by the claimant.
24. Furthermore, there was an unresolved issue between the parties as to the relevance of the distinct legal and procedural framework within which the decision to terminate was made. At one end of the spectrum, it was argued before me, on behalf of the claimant, that a greater degree of reticence was called for to take into account the quasi-judicial nature of the functions performed by members of the PB. At the other, it was suggested by the PB that the potentially serious consequences of a single act of gross negligence were more likely to undermine the confidence of the public than would actions taken by those performing less critical functions and would thereby strengthen the justification for a more robust approach to termination.
25. In my view, whether or not termination fell within the legitimate parameters of the defendant's options in this case may depend upon where those parameters are drawn.
26. It would be inappropriate, within the scope of a permission renewal hearing, for me to pass any finely articulated view on the relative merits of the respective contentions of the parties. However, I conclude that there is, at least, an arguable claim on the final ground. The claimant should not, however, allow this conclusion to generate undue optimism as to her prospects of eventual success.
27. Accordingly, I give permission only on the final ground and refuse permission on all those which precede it.