Neutral Citation Number: [2024] EWHC 3464 (Admin)
IN THE ADMINISTRATIVE COURT AT LEEDS

Case No: AC-2024-LDS-000036

Courtroom No. 15

The Courthouse
1 Oxford Row
Leeds
LS1 3BG

Thursday, 12th December 2024

Before:
HER HONOUR JUDGE CLAIRE JACKSON
sitting as a Judge of the High Court

B E T W E E N:

THE KING
(on the application of SIMON GOLDSMITH)

Claimant

and

SECRETARY OF STATE FOR JUSTICE

Defendant

MR JUDE BUNTING KC appeared on behalf of the Claimant
MR RICHARD EVANS appeared on behalf of the Defendants

JUDGMENT
(Approved)

HHJ JACKSON:

1. I have before me a claim for judicial review of a decision of the Secretary of State for Justice dated 17 November 2023. In that decision, the Secretary of State rejected the advice of the Parole Board that the Claimant, Mr Goldsmith, be moved from the prison categorisation he was then in, which was Category B, to open conditions. The Secretary of State instead reached the decision that on the evidence at that time Mr Goldsmith should be placed on a form of transitional regime where he would move his way down through the categories of the prison service until such time as he reached open conditions and then eventually may be released.
2. Mr Goldsmith is a neurodiverse individual. He, unfortunately, for technological reasons, was missing for this morning's part of the hearing. He is absolutely not at fault for that, nor is the prison he is resident at, nor is the court service. It is one of those things. It happens. However, to help Mr Goldsmith understand this judgment, and to be able to follow it, I make clear at the outset that I am granting his claim. I will, therefore, be making a declaration that the decision by the Secretary of State was unreasonable and therefore unlawful, that it is quashed and that the matter is remitted to the Secretary of State to reconsider the issue.
3. I should also note in opening that this is an *ex tempore* judgment and, therefore, I will not be going to the levels of detail that have been seen in previous first instance decisions in this area, but rather will be dealing with the matters relevant to the decision before me. I have, however, read everything that has been filed in this case, so I have read the trial bundle, the supplementary trial bundle, which consists of the entire Parole Board dossier, the two skeleton arguments and the authorities bundles. If I do not refer to a document, it does not mean I have not read it, it simply means for the purpose of this *ex tempore* judgment I do not find it necessary to refer to that document. The same is true with the authorities.
4. By way of background, the Claimant is a prisoner at HMP Swaleside in Kent. At the time his case was referred to the Parole Board for a decision, being 13 June 2019, he was a Category A prisoner. By the time of the Parole Board's decision, and of the relevant decision before me, he was a Category B prisoner. I am told today by Mr Evans, counsel for the Defendant, that the Claimant has been re-categorised and he is now a Category C prisoner.
5. The Claimant is serving a life sentence. When his sentence was imposed on him he was sentenced to a minimum tariff of six years; that following an appeal by the Attorney General to the Court of Appeal. The index offences relating to the tariff were two convictions for rape and one conviction of false imprisonment. The sentences were to run concurrently. The tariff expired in relation to the Claimant in 2005. He has spent 23 years as a Category A prisoner and 25 years in prison.
6. As noted on 13 June 2019, his position was referred to the Parole Board for a decision by them as to whether he was suitable for release or whether he was suitable to be moved to open conditions. After a period of time has passed which occurred for various reasons which are clear in the dossier, a two-day hearing was held. The Parole Board, which sat on the case, consisted of three members, including a specialist member.
7. The Parole Board's decision on 30 August 2023, four months after Mr Goldsmith's re-categorisation to Category B, was that he should not be released but that he should be recommended to transfer to open conditions. The Parole Board in their decision rejected the contentions of Mr Goldsmith's POM, COM and the prison psychologist that he should be given a transitional move.
8. That decision, which as a matter of law, is advice to the Secretary of State was provided to

the Secretary of State and the case was reviewed internally. A recommendation proforma was produced whereby on 31 October 2023, the manager completing the proforma, Mr Bainbridge, did not recommend that the Parole Board's advice be followed. He recommended that the advice be rejected. That advice was provided to a senior manager, Emma Oakes, who on 2 November 2023, reached the decision that the Parole Board's advice should be rejected. Her reasoning was adopted in the Secretary of State's decision letter of 17 November 2023.

9. The Secretary of State rejected the advice of the Parole Board on two grounds being that Mr Goldsmith had not made sufficient progress during the sentence in addressing and reducing risk to a level consistent with protecting the public from harm and that there was not a wholly persuasive case for transferring Mr Goldsmith from closed to open conditions. The reasons underlying those grounds were set out in three bullet points whereby the Secretary of State, acting through Ms Oakes, rejected the Parole Board's advice that a transitional move was not required and rejected the Parole Board's advice that a move straight to open conditions was suitable; that rejection being on the basis that Mr Goldsmith had unaddressed risks and that the case was not overwhelming.

10. Counsel before me have both taken me in detail through the law. This was partly because the claim was issued, and I am not making criticism here, simply an observation, before the decision of the Court of Appeal in *Sneddon* and *Oakley* [2024] EWCA Civ 1258. That decision has simplified the position for any first instance judge dealing with cases of this nature. Judges no longer have to trawl through 35 first instance decisions to find the relevant test, nor do they have to weigh up whether they prefer the reasoning of Fordham J in *Sneddon* or HHJ Keyser KC in *Oakley*. Both those judges are linked to the court at Leeds and trying to choose between them is very difficult for a judge sitting in Leeds as they are both judges of eminent calibre.

11. Thankfully, the Court of Appeal's decision has made it much simpler and the very clear findings of the Lady Chief Justice, supported by the President of the King's Bench Division and William Davis LJ, has simplified the matter and made the test clear. I am not going to, in this *ex tempore* judgment, set out the test because I can do no better than the Lady Chief Justice. I have however read the entire decision, and I note the key findings of the Court of Appeal at paragraphs 24 through to 47, which I would summarise in my amateurish way compared to them as being that:

    a) The decision in a case of this nature is that of the Secretary of State.

    b) The Secretary of State is advised by the Parole Board, which is an expert body, but the Secretary of State and her department are also an expert body.

    c) The Parole Board sits as a Court or a Tribunal but its advice is not a Court or Tribunal's decision and therefore the Secretary of State can accept the advice or can reject the advice.

    d) However, in choosing whether to do so the Secretary of State must act lawfully and that means the Secretary of State must act rationally, which means she must act reasonably.

12. In terms of what the test of rationality or reasonableness is I repeat without setting it out what is said at paragraphs 34 through to 36 of the decision of the Court of Appeal. That is the test I have applied in reaching the decision I have reached. In simple terms, I have looked at whether the decision of the Secretary of State is rational or not. As already noted, I have reached the conclusion it is not.

13. The reason why I have reached that conclusion requires or required me to look in detail at

the decision of the Parole Board, at the PPCS open recommendation proforma and at the Secretary of State's decision. Of those documents it is the latter to which the test of rationality applies. I have reached the conclusion that the decision is not rational because in my judgment the decision does not attach adequate weight to the Parole Board's conclusions, and it departs unreasonably from the Parole Board's recommendation when in relation to specific issues on risk the Parole Board did have a particular advantage over the Secretary of State.

14. It is clear from the Parole Board's report that they heard evidence over two days and then took time to reach their decision. Amongst the people they heard evidence from were Mr Goldsmith, his POM, his COM, the prison psychologists and two independent psychologists, Dr Pratt and Dr Crisanti. Leaving to one side Mr Goldsmith and dealing with the professional witnesses before the Parole Board, they were divided as to what their recommendation to the Parole Board was.

15. The COM, the POM and the prison psychologists all recommended no release and no move to open conditions but rather for transitions through the closed estate. Dr Pratt recommended release. Dr Crisanti was conflicted. In her report she balanced whether Mr Goldsmith should be released or progressed to open conditions, but on balance, both in her report and before the Parole Board, she thought he met the test for release.

16. As I say, the panel heard evidence. They heard evidence of positive behaviour, of negative events and of Mr Goldsmith's neurodiversity. Taking all of that into account, they reached their advice to the Secretary of State that Mr Goldsmith be moved to open conditions.

17. I am now going to cite some of the conclusions of the Parole Board but by no means all as their advice to the Secretary of State is extremely lengthy and this is an *ex tempore* judgment:

> "The panel assessed that Mr Goldsmith has good insight into his autistic traits and understands the indirect links with sexual risk. He maintains that autism cannot be blamed for his offending, though professionals assessed that there was an indirect risk. There is little evidence from Mr Goldsmith's 23 years in custody that he has displayed sexually inappropriate or sexually preoccupied behaviour at any time. Mr Goldsmith was reported by professionals as being irritable and verbally challenging at times and to demonstrate an overconfidence that he is right. This was observed during the hearing. The POM and COM noted that he can come across as arrogant, but the panel assessed that these are traits linked to his personality and whilst difficult with staff to deal with at times are not linked to a future risk of sexual reoffending. The panel also assesses that there are issues of control and that it will be important for Mr Goldsmith to continue to attempt to see the perspective of others he is working with. Mr Goldsmith has participated in appropriate programmes relevant to his risk factors and has made good progress. The future risk of sexual offending that Mr Goldsmith poses is assessed as low in the short to medium term and moderate in the longer term. The risk is not imminent but if he were to reoffend harm may well be high. Mr Goldsmith's resolve to manage his key risk factors cannot be tested in high secure conditions. In open conditions then these factors could be tested as well as providing him with an opportunity to further his already detailed work plans and to acclimatise himself to the AP environment on ROTLs. The panel noted that the COM, POM and prison psychologist all recommended a

> gradual transition through the prison estate. The panel were not convinced of the appropriateness of this or what it could achieve. If Mr Goldsmith went to a Category B prison, the environment there is not too dissimilar to a Category A and there would still be no specific testing of his key risk factors. He would then need to be re-categorised to Category C and spend time in a Category C environment before then being assessed for a transfer to open conditions or release. The panel noted that this could take a significant length of time and were unsure of the purpose of this suggestion. Mr Goldsmith has a very positive prison behaviour record. There is no core risk reduction work left to complete, and it is unclear what a progression through the prison estate would achieve other than perhaps having fewer negative warnings and less verbal encounters with staff, but as his autistic traits are well known then the panel assessed that as these were not directly linked to risk then it was unnecessary. Given the length of time he has time spent in custody adjusting to life in the community is likely to be difficult. From his evidence, the panel was of the view that Mr Goldsmith has underestimated the change in society in the 23 years since he was last in the community. He needs to show that his risk can be managed and that he is capable of adapting in a controlled and measured manner. The panel consider Mr Goldsmith to be overconfident in this respect. The panel went on to consider his suitability for a move to open conditions. On the evidence presented to the panel, the panel concluded that he has made sufficient progress during the sentence in addressing and reducing risk to a level consistent with protecting the public from harm in circumstances where he in open conditions may be in the community unsupervised under licence temporary release and so a move to open conditions can be considered. There is no core risk reduction work outstanding. There is the need for a period of consolidation and testing".

18. In short, the Parole Board considered, and all of the witnesses agreed, there was no risk reduction work that could be done in the prison estate. Rather, Mr Goldsmith needed to begin being tested and acclimatised to be ready for release, and the challenges in that regard were likely to be his personality traits, which were linked to his neurodiversity, with his neurodiversity being an indirect risk regarding sexual offending but not a direct risk.

19. It is correct that as a matter of law the matters the Parole Board considers in its recommendation and advice are different to the matters the Secretary of State considers. The Parole Board considers whether the prisoner has made sufficient progress during the sentence in addressing and reducing risk to a level consistent to protecting the public from harm and whether the prisoner is assessed as low risk to abscond. The Secretary of State considers both of those matters and if there is a wholly persuasive case for transferring the prisoner from closed to open conditions. There is, therefore, an overlap but not an identical decision-making process. This, in part, is the reason why the Parole Board provides advice and not decisions to the Secretary of State.

20. It is correct that in both the open recommendation proforma and in the decision letter the Parole Board's recommendation is referred to. In the open recommendation proforma it is referred to by Mr Bainbridge in his notes on the case, re-referred to in "Parole Board background information relating to assessment in treating through offending behaviour programmes", albeit I note that the matters noted there mainly relate to the evidence by way

of background. Mr Bainbridge refers to matters considered and addressed by the Parole Board in relation to negative behaviour. He lists five matters therein, four which were expressly addressed by the Parole Board and on which they heard evidence. Immediately after those matters are set out by way of factual setting out without an analysis, Mr Bainbridge moves on to statements made by the POM, the COM and one of the prison psychologists.

21. What he does not do in that section of his report is refer to anything said by the independent psychiatrists in relation to what is said to be the negative behaviour, or the findings of the Parole Board in that regard. That is in direct contrast to his considerations in relation to positive behaviour. There, he sets out the views of the POM, the views of the independent psychologists, the view of the prison psychologist and then the conclusions of the panel.

22. Moving to the recommendation, Mr Bainbridge sets out facts and then under the relevant headings sets out what his conclusions are. In relation to the first criteria of addressing and reducing risk, he sets out the interventions Mr Goldsmith has completed whilst in custody and then sets out the evidence of the POM, the COM, the three prison psychologists, the two independent psychologists and then the recommendations from the panel. What he does not do again is go back to the negative behaviour comments from earlier and link what the panel says to them.

23. In his conclusion on this section, Mr Bainbridge is, remarkably, brief:

> "In the information available to me, I cannot agree with the panel's decision, and I do not access that Mr Goldsmith has made sufficient progress during his sentence in addressing and reducing his risk to a level in which he may be in the community under licence to temporary release."

Having read that one is left thinking but why?

24. One is left posing that question even more when one reads the analysis of Mr Bainbridge under criteria three, a wholly persuasive case because under criteria three Mr Bainbridge after setting out the panel's conclusion then sets out why he is not convinced that there is a wholly persuasive case and analyses that matter. He gives reasons for coming to his conclusion. It is clear, therefore, from that proforma that Mr Bainbridge knew of the panel's advice. He had read it. He quoted at length from it. He decided to reject their advice on criteria one, but what he did not do was set out his reasoning for doing so.

25. He did not explain why he had concluded the Parole Board were wrong and why he was better placed than them to assess the risk. That is not to say that those employed by the Secretary of State are not experts in assessing risks, they are and that is made clear by paragraph 36 of the decision in *Sneddon*. However, if somebody is disagreeing with advice one expects to see an explanation of why and, in this case, it is not there. The explanation of why comes on the next page of the proforma from Ms Oakes who in three paragraphs sets out why she is rejecting the Parole Board's advice. Again, she finds: "I do not believe there is a wholly persuasive case for transferring Mr Goldsmith at this juncture, nor do I believe there is sufficient evidence of reduced risk."

26. In that regard, Ms Oakes refers to the views of the POM, the COM and a prison psychologist, unnamed, and then she refers to the evidence of Dr Crisanti regarding how Mr Goldsmith's diagnosis of autism may impact on his ability to deal with a number of transitions as opposed to one transition. Once again, however, there is no explanation of why on the issue of risk there is a decision to depart from the advice of the Parole Board and the nuanced findings the Parole Board made.

27. In particular, there is no explanation of why the Parole Board having concluded as it did in

relation to the interlocking issues of the diagnosis of autism, Mr Goldsmith's personality traits and direct and indirect risks, the advice is not being followed. As to that latter point, on the interlocking matrix of those issues, the Parole Board was, in my judgment, better placed and had a particular advantage over Ms Oakes. The panel had an expert member. It had heard and had had the opportunity to question the expert psychologists who appeared before it, five of them, and the two other professional witnesses and they had reached a firm conclusion.

28. Ms Oakes's decision in the proforma ignores that conclusion and instead goes with the comments of the POM in the dossier that: "There was a fine line between evidence, frustration and high security conditions and actual risk of serious harm in open conditions or on release."

That had been rejected by the Parole Board in its advice. There was in this case on the facts before me a diagnostic finding and, therefore, a finding on which in accordance with the relevant authorities, whether it be *Sneddon* or paragraph 48 of the first decision in *Oakley*, the Parole Board had a particular advantage in relation to.

29. The three paragraphs in proforma become in the decision letter the reasons for the decision. I fully acknowledge that the decision letter sets out at length the conclusion of the panel and the Parole Board. It cannot be said that the Parole Board's conclusions were, therefore, ignored in the process but is not apparent to me from the documents I have looked at that they were given adequate weight. Instead, the conclusions are simply put in the letter and the divergences are not engaged with.

30. In this case, in my judgment, it was not enough for the Secretary to State to simply say they had carefully considered the Parole Board's recommendation. More was needed because in doing so the Defendant was rejecting the diagnostic conclusion of the Parole Board and was ignoring the specific advice given in relation to the complicated interlocking features in this case.

31. For a decision of this nature to be rational, the decision needs to be taken on the basis of evidence, and it needs to be properly explained. This is a decision which flies in the face of the evidence given to the Parole Board and is not adequately explained. The decision is therefore, in my judgment, not rational and is therefore unreasonable and for those reasons I, therefore, quash the decision as made.

32. I would make one general point in this case which is this, as I read *Sneddon* and *Oakley*, decisions by Courts as to whether the Secretary of State has made a rational decision or not, in rejecting the Parole Board's advice, are case specific. Each case will be fact specific and, therefore, I do not intend by this judgment to set any form of precedent or to say or to be seen to be saying that in every case the Secretary of State must set out in detail and at great length exactly which parts of the Parole Board's advice has been read, exactly which parts have been accepted and which have not been accepted, nor do I intend to set any parameters by which the Secretary of State must produce their reports.

33. All I am concluding is that on the facts before me and the particular interlocking factors which led to the assessment of risk, which the Parole Board had come to, what then happened in this case was not enough and did not give adequate weight to the Parole Board's advice. I will, therefore, with that comment made, enter judgment as stated at the start of this judgment.

End of Judgment

Transcript of a recording by Acolad UK Ltd
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