Neutral Citation Number: [2020] EWHC 2320 (Admin)

Case No: CO/335/2020

IN THE HIGH COURT OF JUSTICE
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/09/2020

Before :

LADY JUSTICE MACUR
&
MR JUSTICE CHAMBERLAIN

- -

Between :

THE QUEEN ON THE APPLICATION OF MARY McCOURT	**Claimant**
- and -	
THE PAROLE BOARD FOR ENGLAND AND WALES	**Defendant**
(1) THE SECRETARY OF STATE FOR JUSTICE **(2) IAN SIMMS**	**Interested Parties**

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- -

Mr Tom Little QC, Mr James Thacker and Mr Tom Rainsbury (instructed by **Thompsons Solicitors**) for the **Claimant**
Mr Nicholas Chapman (instructed by **The Government Legal Department**) for the **Parole Board for England and Wales**
Ms Joanne Cecil and Ms Leonie Hirst (instructed by **Tuckers Solicitors**) for the **2nd Interested Party**

Hearing dates: 29 & 30 July 2020

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

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Lady Justice Macur and Mr Justice Chamberlain :

Introduction

1. This is the judgment of the Court to which both members have contributed.

2. In February 1988, Ian Simms murdered Helen McCourt. She was 22 years old. Forensic evidence suggests that he strangled her with a ligature. There was compelling circumstantial evidence which associated him with the offence. He demonstrably lied about his whereabouts and about injuries he sustained at relevant times. On 14 March 1989, he was convicted of the murder, despite his denials, and sentenced to life imprisonment. The minimum term was set at 16 years and one day. Simms sought to appeal his conviction, but was unsuccessful. He continues to deny his guilt and has never revealed the whereabouts of Helen's remains.

3. On 21 November 2019, after a hearing, a Parole Board panel directed that Simms be released. The decision was confirmed after an independent reconsideration by Sir David Calvert-Smith (a former Chairman of the Parole Board) on 8 January 2020. Simms was released in February 2020.

4. Mrs Mary McCourt is Helen McCourt's mother. The grief she has suffered has been compounded because Helen's remains have never been found. She has long campaigned for a change in the law to prevent the release of those who are convicted of murder but do not reveal the whereabouts of their victim's remains. In large part as a result of this campaign, the Prisoners (Disclosure of Information about Victims) Bill ("the Bill") has passed through the House of Commons and, at the present time, has received its second reading in the House of Lords. Although not yet enacted, it has come to be known as "Helen's Law". We refer to its terms below.

5. By this claim, Mrs McCourt seeks judicial review of the Parole Board's decision to release Simms. The application proceeds as a rolled-up hearing to determine permission, with the substantive hearing to follow if permission is granted. The grounds of challenge (re-ordered to reflect the way they were argued orally before us) are that the Parole Board: (1) misdirected itself as to the test to be applied; (2) failed to undertake reasonable inquiries and in particular failed to challenge Simms about his denials; (3) reached irrational conclusions; and (4) acted in a way that was procedurally unfair.

6. Simms disputes Mrs McCourt's standing to bring this claim and submits that the Parole Board's decision involved no public law error. The Parole Board appears and has made submissions both on standing and on the substance of the claim, but is neutral as to the outcome. The Secretary of State is not represented and has made no submissions.

7. This claim raises an important point that has not been decided: does a victim of crime, or (in a case where the victim is deceased) a relative, have standing to seek judicial review of a decision of the Parole Board to release an offender? In *R (DSD) v Parole Board* [2019] QB 285, the Divisional Court proceeded on the footing that the answer was "Yes", quashing a decision of the Parole Board to release a man who at the time of his offending was known as John Worboys (a taxi driver who had sexually assaulted a number of his passengers). In that case, however, there was no dispute as to the standing of the victims.

8. Mrs McCourt argues that the claim also raises important points about victim participation in Parole Board proceedings and about "the principles which the Board should apply when determining whether to release a convicted murderer who not only

denies his guilt but refuses to reveal information as to the whereabouts of the victim's body".

9. On 30 January 2020, Mrs McCourt applied to this Court for interim relief, including an order staying Simms' release and an order for disclosure. The application was heard on 4 February 2020 by a Divisional Court (Dingemans LJ and Fordham J): [2020] EWHC 433 (Admin). The application for a stay was refused. Specific disclosure was directed. Directions were given for the question of permission to be considered by a single judge. On 16 April 2020, Chamberlain J ordered this rolled-up hearing.

10. We heard oral submissions remotely over 1½ days. Mr Tom Little QC appeared for the Claimant, with Mr James Thacker and Mr Tom Rainsbury, all acting *pro bono*. Mr Nicholas Chapman appeared for the Parole Board. Ms Joanne Cecil and Ms Leonie Hirst appeared for Simms. We are grateful to all of them for their commendable submissions.

Factual background

11. The Parole Board review which led to the challenged decision was Simms' seventh review since the expiry of his tariff. On the sixth, in January 2016, the Parole Board had recommended that he be transferred to open conditions to enable identified "risk factors" to be tested. The recommendation was accepted by the Secretary of State and Simms was transferred in July 2016. He remained there until his release in February 2020.

12. The hearing in the present proceedings took place on 7 and 8 November 2019 before a panel consisting of a judicial member, a psychiatrist and an independent member. Exceptionally, Mrs McCourt's legal representative was granted permission by the panel chair to be present throughout the hearing to observe, though not to participate in, the proceedings. There was no objection to this procedure by the Secretary of State or by Simms. Undertakings were given by the nominated legal representative as to the use to which communications, documents and oral information could be put, and as to the disposal and safekeeping of that information. An additional request for disclosure of the prisoner dossier was refused at that stage. It has been disclosed in these proceedings by direction of the court.

13. The dossier considered by the panel contained a large quantity of materials, including numerous psychiatric and psychological reports from 2011 to date, offender supervisor and offender manager reports from 2017 to date and a detailed risk management plan. The dossier included evidence of how Simms had dealt with release on temporary licence since his move to open conditions.

14. The dossier also contained information submitted by Mrs McCourt to the Probation Service, which she said was pertinent to risk. This included a letter written by Simms in 1991 and a painting he had completed in prison which Mrs McCourt said conveyed a malign and macabre reference to Helen's fate. Mrs McCourt and her son Michael made victim impact statements and read them out to the panel on the day before the hearing. The victim impact statement of Michael's wife Susan was also read to the panel. At the hearing, the panel heard evidence from two psychologists, the offender manager and the offender supervisor. Simms gave evidence and was questioned by the panel, including about his offending and his behaviour in prison. All witnesses, including those instructed by the Secretary of State, supported release.

15. Simms was represented and sought release. The Secretary of State was represented and did "not express a view on whether the Panel should direct release on the facts of this

prisoner's case" but "urge[d] caution upon the Panel when arriving at a release decision in this case." The McCourt family opposed release.

16. In advance of the hearing, the Parole Board directed the parties to file skeleton arguments on the issues of Simms' denial of the offence and failure to reveal what happened to Helen McCourt's remains. An addendum psychology report was produced to deal with the impact upon risk of Simms' denial and failure to reveal the location of Helen's remains. A consultant clinical and forensic psychologist was instructed on Simms' behalf to prepare a review of the academic literature on the same issues, without reference to the circumstances of this case.

17. The release decision contained detailed reasons. The panel started by analysing the offence, including the trial judge's sentencing remarks. They noted that Simms had "disposed of the body which has never been recovered". They considered the risk factors applicable, including Simms's mental health stability, compliance with medication, compliance with rules and licence conditions and attitudes which condone the use of violence as a means of solving problems. Specific consideration was given to how he would cope with and react to the high-profile campaign against his release if, for example, he were located by the press; and to the possibility, in the light of the letter he wrote in 1991, that he would try to contact the McCourt family. The panel summarised the conclusions reached in the latest psychiatric reports. They considered in detail the evidence of how Simms had dealt with release on temporary licence, including how he had dealt with an enquiry from a member of the press.

18. In their assessment of current risk, the panel considered static and dynamic risk factors. The latter were affected by the fact that "there is no clarity as to why you committed the offence as a result of your continued denials". The panel noted, as the professional witnesses had, that "you have not done any offence focused work and the causes and triggers of your offending have not been explored". Nonetheless, the psychologists had concluded that, as a result of changes observed over the latter part of his sentence, the risk of serious harm posed by Simms had reduced substantially; and that there would be warning signs if the risk increased. The panel took into account the uncertainty created by their lack of understanding of the circumstances in which Simms committed the murder. Even taking this into account, however, they concluded that the risk of causing serious harm is "no greater than medium and is not imminent".

19. So far as risk to the McCourt family was concerned, the panel noted that it was likely that the campaign to make Simms reveal the whereabouts of his victim's body would continue. The panel considered that the letter sent in 1991 was deliberately threatening, and rejected his exculpatory explanation of it, but noted that he was mentally ill at the time when it was written. Taking all the evidence into account, the panel was "satisfied that your present intention is to avoid any possible contact with the McCourt family". This was based not solely on Simms' own evidence, but on the evidence of the psychologists who gave evidence before them. The panel went on to consider and evaluate the effectiveness of the risk management plan prepared by the offender manager.

20. In their conclusion, the panel cited relevant case law, including in particular excerpts from the judgment of Lord Bingham CJ in *R v Parole Board ex p. Oyston* [2000] Prison LR 45 and of King J in *R (Gourlay) v Parole Board* [2014] EWHC 4763 (Admin). They cited Parole Board guidance. They made clear that, having heard from the McCourt family, they were "well aware how great the impact on their lives has been from your failure to disclose the whereabouts of the body". The panel accepted the view of the psychologists who had given evidence before them that the most likely reason for non-disclosure was Simms' continued denial of the index offence, something which had become very important to him. There was, they said, no evidence that non-

disclosure was motivated by a desire to exercise control over the victim's family or to get media attention or that it was an act of sadism.

21. The panel was clear that it gave "no credence to your denial". It took "full account of the fact that you have completed no offence related work in custody" and that "your failure to disclose the whereabouts of the body is because you wish to maintain your false claim of innocence", which they said Simms had done "despite being well aware of the stress and misery that that failure has caused to the victims' families". This, the panel said, "demonstrates a high degree of callousness and lack of empathy to your victims". The panel considered that the continued denial and consequent failure to disclose where the body was left were "significant factors in assessing the risk presented released". Nonetheless, the central consideration was future risk. Simms had served more than 15 years in excess of the minimum period imposed. His continued denial of the offences had been one of the principal reasons for his failure to obtain release previously. The panel were satisfied that there had been a considerable change in his behaviour in the latter part of his period in custody. They considered reports as to his past and current mental health and took into account "the reduction in your risk as assessed by the psychologists" and "the robust risk management plan that we are satisfied has been put in place". The panel then noted as follows:

> "It is clear that you are now heavily invested in presenting yourself as someone who is innocent of the index offence and in avoiding any behaviour which would be inconsistent with his presentation of yourself. All the witnesses agreed that you were safe to release having taken into account the risk management plan. While we make up our own mind, and we look at the reasons which were put forward by the witnesses, we are satisfied that the professionals are right. In relation to the specific matters understandably raised by the victims, we consider that there is no prospect of you disclosing the whereabouts of your victim even if we kept you in prison until you died. That view is supported by the evidence of the psychologists and is really the only sensible inference that can be drawn."

22. The panel noted that the possibility of waiting until the Bill became law had been mentioned by the family, although no request to that effect had been made. They noted that the effect of the Bill would be simply to require the Parole Board to take into account any failure by the offender to disclose the whereabouts of the body, and the reasons for the failure, when considering the public protection test. The panel said: "We have done that in this case in accordance with the Parole Board advice." They concluded by agreeing with the view of all of the professional witnesses that, before any future behaviour causing serious harm, there would likely be a range of warning signs, which would enable those supervising Simms to intervene in order to address the emerging risks and ultimately, if necessary, to initiate his recall to prison. In the circumstances, the panel considered that his risk could be managed in the community and were therefore satisfied that it was no longer necessary for the protection of the public that he remain confined in prison. They directed his release. Licence conditions were specified.

23. The decision was notified on 21 November 2019. A summary of the panel's reasons was provided to Mrs McCourt. On 10 December 2019, following a request from Mrs McCourt, the Secretary of State applied for reconsideration of the release decision on the ground of irrationality, submitting that there was "erroneous conclusive reasoning" in two respects: an "irrational conclusion" on risk of harm and an "erroneous equation" of escalation of risk indicators.

24. On 8 January 2020, Sir David Calvert-Smith refused the application, finding it "impossible to characterise the Decision letter, its reasoning and conclusions as irrational."

The relevant law and guidance

25. The Parole Board is a statutory body constituted by s. 239 of the Criminal Justice Act 2003 ("the 2003 Act"). By s. 28(6)(a) of the Crime (Sentences) Act 1997 ("the 1997 Act"), it is required to direct the release of a life sentence prisoner where, a case having been referred to it by the Secretary of State, it is "satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined". In considering that issue, it is required to consider any documents given to it by the Secretary of State and any other oral or written information obtained by it: s. 239(3) of the 2003 Act.

26. The Parole Board's rules of procedure are contained in the Parole Board Rules 2019 ("the Rules"). These differ significantly from the previous rules, which were amended in the light of the judgment in *DSD*. The key features of the Rules, insofar as material to the present challenge, are as follows:

i)The parties to Parole Board proceedings are the prisoner and the Secretary of State: r.2.

ii) A panel chair has a broad discretion to make any direction necessary in the interests of justice, to manage the case effectively or for such other purpose as he or she considers appropriate: r. 6(2).

iii) Except where the panel chair has made a direction under r. 6(2) permitting a third party to apply for directions, or where a third-party is himself or herself the subject of a direction, the Rules do not provide any mechanism for third parties to apply for directions.

iv) The rules provide a framework by which the parties may make representations and present and test evidence. There is no similar provision entitling third parties to make representations or to present or test evidence or otherwise to participate in the proceedings: rr. 13, 18 and 24.

v) All oral hearings "must be held in private": r. 15(3).

vi) The panel may, however, admit a third party observer to attend an oral hearing and may impose conditions on the observer's attendance: r. 15(4).

vii) The Parole Board must provide a copy of the panel's decision to the parties, but not to third parties: rr. 25(6) and 27.

viii) The panel must provide a summary of the reasons for any release decision upon request to a victim or any other person, unless the chair considers that there are exceptional circumstances where a summary should not be produced (and subject to a time limit of six months from the date of decision): r. 27(1).

ix) Aside from the summary of reasons, information about the proceedings may not be disclosed other than to the parties unless the chair directs disclosure: r. 27(5). The names of persons concerned in the proceedings other than the parties themselves may not be disclosed: r. 27(6).

x) Where the Parole Board directs release, the parties may apply for the case to be reconsidered on grounds of irrationality or procedural unfairness: r. 28. Third parties have no right to seek reconsideration.

27. Paragraph 6.26 of the Secretary of State's *Code of Practice for the Victims of Crime* ("the Victims' Code"), issued under s. 32 of the Domestic Violence, Crime and Victims Act 2004, entitles victims who have opted into the Victim Contact Scheme to be informed by the Probation Service if a Parole Board hearing is to take place, to make representations to the Parole Board about licence conditions, to be provided with reasons why a licence condition requested by the victim is not included in the offender's release license and to make a victim personal statement and apply to attend an oral hearing in order to present it. Paragraph 6.21 of the Victims' Code provides that the Parole Board will consider all representations made by victims about license conditions, provide an explanation why requested licence conditions have not been included, read any victim personal statement, consider any application from the victim for permission to attend the oral hearing and consent to such a request unless there are good reasons for declining to do so. The Parole Board understands this to confer on victims a right to attend to read their victim personal statements. Paragraph 6.32 makes clear that the victim has no right to attend the whole of the hearing.

28. On 22 July 2019, the Secretary of State published guidance entitled *Challenging a Parole Decision* setting out the procedure for victims to ask the Secretary of State to request reconsideration of a Parole Board decision.

The Prisoners (Disclosure of Information about Victims) Bill

29. Mrs McCourt has campaigned for legislation to address the position of murderers who refuse to reveal the location of their victim's body. In July 2019, the then Secretary of State for Justice confirmed that a Bill would be introduced to enact "Helen's law". A Bill was introduced on 14 October 2019, but was not passed before the dissolution. It was introduced again and had a second reading in the House of Lords on 28 April 2020. Clause 1 would insert a new s. 28A into the 1997 Act. In the version current at the time of the last recess, the material parts were as follows:

> "(1) The Parole Board must comply with this section when making a public protection decision about a life prisoner if—
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> > (a) the prisoner's life sentence was passed for murder or manslaughter;
> >
> > (b) the Parole Board does not know where and how the victim's remains were disposed of; and
> >
> > (c) the Parole Board believes that the prisoner has information about where, or how, the victim's remains were disposed of (whether the information relates to the actions of the prisoner or any other individual) which the prisoner has not disclosed to the Parole Board ("the prisoner's non-disclosure").
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> (2) When making the public protection decision about the life prisoner, the Parole Board must take into account—
>
> > (a) the prisoner's non-disclosure; and
> >
> > (b) the reasons, in the Parole Board's view, for the prisoner's non-disclosure.
>
> (3) This section does not limit the matters which the Parole Board must or may take into account when making a public protection decision."

Standing

An overview of the law

30. Every legal system has to determine who has "standing" to challenge the decisions of bodies subject to public law. In England and Wales, judicial review is the procedure for challenging such decisions. The standing requirement for judicial review is contained in s. 31(3) of the Senior Courts Act 1981, which provides as follows:

> "No application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with rules of court; and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates."

31. In defining the standing requirement, Parliament chose a deliberately open-textured phrase: an applicant must demonstrate a "sufficient interest in the matter to which the application relates". In *R (Jones) v Commissioner of Police for the Metropolis* [2020] 1 WLR 519, at [38], the Divisional Court (Dingemans LJ and Chamberlain J) cited Auburn, Moffett & Sharland, *Judicial Review: Principles and Procedure* (Oxford, 2013), paragraph 24.26, where it was said that:

> "The courts have adopted an increasingly liberal approach to both individuals and groups bringing judicial review claims in the public interest. If an individual or group seeking to represent the public interest demonstrates that they have a real and genuine interest in the decision under challenge, they are likely to have standing to bring a claim, although other factors to consider in this context will include the merits of the claim, the existence of better placed challengers, and the nature and the reputation of the individual or organisation in question."

32. This is an accurate high-level summary of the law on standing. It reflects a series of decisions in which the courts have accepted the standing of concerned individuals, public interest groups and non-governmental organisations to challenge decisions even though they cannot themselves claim to be more affected by those decisions than anyone else: see e.g. *R v HM Treasury ex p. Smedley* [1985] QB 657 (in which the Court of Appeal accepted the claimant's standing, "as a taxpayer", to challenge budget payments made by the UK to the European Economic Community without specific Parliamentary authority: see esp. at 669 (Slade LJ)); *R v Secretary of State for Foreign and Commonwealth Affairs ex p. Rees-Mogg* [1994] QB 552 (in which the Divisional Court accepted the claimant's standing to challenge the decision to ratify the Maastricht Treaty because of his "sincere concern for constitutional issues", despite the submission that the proceedings were "the continuation by other means of arguments ventilated in Parliament": see at 561 (Lloyd LJ)); and *R v Secretary of State for Foreign and Commonwealth Affairs ex p. World Development Movement* [1995] 1 WLR 386 (in which the Divisional Court accepted the standing of a UK-based pressure group to challenge the government's decision to allocate development aid to the Pergau Dam in Malaysia). In the latter case, Rose LJ explained at 395 that the factors justifying the conclusion that the claimants had standing were: "the importance of vindicating the rule of law", "the likely absence of any other responsible challenger", "the nature of the breach of duty against which relief is sought" and "the prominent role of these applicants in giving advice guidance and assistance with regard to aid".

33. There are, however, cases in which the standing requirement has been more restrictively interpreted. One such case arose from decisions taken in relation to the murderers of James Bulger. They were sentenced to detention during Her Majesty's pleasure in 1993. At that time, responsibility for setting the minimum term lay with the Home Secretary. In *V v UK* (1999) 30 EHRR 121, the European Court of Human

Rights held that this gave rise to a violation of Article 6 ECHR. To remedy this, legislation was introduced under which minimum terms would be set by the trial judge, subject to appeal to the Court of Appeal (Criminal Division) by the offender (where it was said that the term was manifestly excessive) or by the Attorney General (in cases of undue leniency). For existing detainees, the Home Secretary said that he would accept the recommendation of the Lord Chief Justice, which was to be made after considering representations, including from the victim's family. A recommendation in the case of the boys who murdered James Bulger was made by the Lord Chief Justice and accepted by the Home Secretary. James Bulger's father sought judicial review of both decisions.

34. Rose LJ (with whom Sullivan and Penry-Davy JJ agreed) acknowledged at [20] that "the threshold for standing in judicial review has generally been set by the courts at a low level". This was "because of the importance in public law that someone should be able to call decision-makers to account, lest the rule of law break down and private rights be denied by public bodies". But this case was different, because "the traditional and invariable parties to criminal proceedings, namely the Crown and the defendant, are both able to, and do, challenge those judicial decisions which are susceptible to judicial review". At [21], Rose LJ said this:

> "It follows that in criminal cases there is no need for a third party to seek to intervene to uphold the rule of law. Nor, in my judgment, would such intervention generally be desirable. If the family of a victim could challenge the sentencing process, why not the family of the defendant? Should the Official Solicitor be permitted to represent the interests of children adversely affected by the imprisonment of their mother? Should organisations representing victims or offenders be permitted to intervene? In my judgment, the answer in all these cases is that the Crown and the defendant are the only proper parties to criminal proceedings. A proper discharge of judicial functions in relation to sentencing requires that the judge take into account (as Lord Woolf CJ said he did in this case) the impact of the offence and the sentence on the public generally, and on individuals, including the victim and the victim's family and the defendant and the defendant's family. The nature of that impact is properly channelled through prosecution or defence."

The only further question was whether the fact that the claimant had been invited to make representations conferred standing on him. The answer given at [23] was that it conferred "at best only limited standing to enable him to challenge any failure to have regard to the impact of the offence on him personally" and not to challenge the minimum term itself.

35. In *Axa General Insurance v HM Advocate* [2012] 1 AC 868, the Supreme Court considered the Scottish standing rules, which had until then required petitioners for judicial review to show that the challenged decision affected a private legal right (in the Scots terminology, the petitioner had to establish "title" as well as "interest"). Lord Reed explained why this was too restrictive:

> "169. The essential function of the courts is however the preservation of the rule of law, which extends beyond the protection of individuals' legal rights… There is thus a public interest involved in judicial review proceedings, whether or not private rights may also be affected. A public authority can violate the rule of law without infringing the rights of any individual: if, for example, the duty which it fails to perform is not owed to any specific person, or the powers which it exceeds do not trespass upon property or other private rights. A rights-based approach to standing is therefore incompatible with the performance of the courts' function of

> preserving the rule of law, so far as that function requires the court to go beyond the protection of private rights: in particular, so far as it requires the courts to exercise a supervisory jurisdiction. The exercise of that jurisdiction necessarily requires a different approach to standing.
>
> 170. For the reasons I have explained, such an approach cannot be based upon the concept of rights, and must instead be based upon the concept of interests. A requirement that the applicant demonstrate an interest in the matter complained of will not however operate satisfactorily if it is applied in the same way in all contexts. In some contexts, it is appropriate to require an applicant for judicial review to demonstrate that he has a particular interest in the matter complained of: the type of interest which is relevant, and therefore required in order to have standing, will depend upon the particular context. In other situations, such as where the excess or misuse of power affects the public generally, insistence upon a particular interest could prevent the matter being brought before the court, and that in turn might disable the court from performing its function to protect the rule of law. I say 'might', because the protection of the rule of law does not require that every allegation of unlawful conduct by a public authority must be examined by a court, any more than it requires that every allegation of criminal conduct must be prosecuted. Even in a context of that kind, there must be considerations which lead the court to treat the applicant as having an interest which is sufficient to justify his bringing the application before the court. What is to be regarded as sufficient interest to justify a particular applicant's bringing a particular application before the court, and thus as conferring standing, depends therefore upon the context, and in particular upon what will best serve the purposes of judicial review in that context."

36. In *DSD*, there were two claims, one brought by two victims and another brought by the Mayor of London. All sought to challenge the Parole Board's decision to direct the offender's release. The Divisional Court (Sir Brian Leveson PQBD, Jay and Garnham JJ) held that the Mayor lacked standing to bring the claim. He was "in no different position from any other politician or, indeed, any member of the public": [108]. This, the Court said, was not one of the situations in which the court adopts "a very liberal approach to standing": [110]. Denying the Mayor standing "would not disable the court from performing its function to protect the rule of law". He could not be regarded as a proxy for the interests of the victims because they had brought proceedings of their own: [111]. The victims' standing was not disputed, so that issue was not decided, but the court nonetheless said at [114]:

> "there is considerable force in the contention that had the standing of DSD and NBV been placed in issue that would have disabled this court from performing its function (if it considered it appropriate) to protect the rule of law. Accordingly, it may well be that the present case is distinguishable from [*Bulger*] where it was held that Mr Bulger did not have standing to bring judicial review proceedings against the setting by Lord Woolf CJ of the tariffs in the cases of Thompson and Venables. This was because Lord Woolf CJ was performing judicial functions in relation to sentencing, and 'the nature of [the] impact … [of that decision] was properly channelled through the only proper parties, the Crown and the defendant'. In the end, however, we have not had to resolve these questions."

Submissions for the Claimant

37. For the Claimant, Mr Little QC submits that *Bulger* is: (a) not binding and, in any event, (b) distinguishable, since it was concerned with a different issue: whether a

victim's relative could challenge a tariff set by the Lord Chief Justice as (essentially) part of a sentencing exercise. He relies on the judgment of Haddon-Cave J, as he then was, in *R (Allen) v Parole Board* [2012] EWHC 3496 (Admin), [25]-[29], in analysing the different functions and principles of the sentencing judge and Parole Board.

38. In any event, Mr Little submits that times have changed significantly in the recognition now afforded to victims of crime, as demonstrated by the publication of the Victims' Code in October 2015. Applying the principles enunciated by Lord Reed in *Axa*, Mr Little invites us to conclude that Mrs McCourt plainly has a "particular interest" in the matters complained of. In the alternative, he submits that to deny her standing would prevent the court from considering matters of public importance, including: the decision to release a convicted murderer into the public domain; the approach to murderers who refuse to provide information about their victim's bodies; the approach to victim participation; and, the transparency of the parole process more generally being considered. The public interest is demonstrated by the large number of members of the public who have signed a petition to change the law on non-disclosure by convicted murderers and the debate during the second reading of the Bill in the House of Commons, in which several MPs emphasised the need to improve victim participation and protection in Parole Board proceedings.

Submissions for the Parole Board

39. Mr Chapman, for the Parole Board, suggests that a distinction may properly be drawn between standing to challenge decisions about the challenger's right to participate in Parole Board proceedings and decisions about whether to release an offender. As to the latter, the court should not adopt a restrictive approach which would disable the court from performing its function to protect the rule of law: see e.g. *Axa*, [169]-[170]. Conversely, where a better placed challenger chooses not to bring judicial review proceedings that is a relevant and potentially determinative factor in deciding whether an individual has standing to bring a case founded on the public interest: see e.g. *Durayappah v Fernando* [1967] 2 AC 337, 352G-353C.

Submissions for Simms

40. Whilst recognising the importance of judicial review to ensure the protection of the rule of law, Ms Cecil and Ms Hirst, on behalf of Simms, nevertheless submit that the court must differentiate between challenges to administrative decisions and challenges to judicial decisions in criminal cases. They rely on *Bulger* for the proposition that, in the latter case, it is necessary strictly to circumscribe what counts as a "sufficient interest". Because the Parole Board is exercising an independent judicial function, this case is not distinguishable from *Bulger*. Furthermore, there is an obviously better placed challenger, the Secretary of State, who is one of the only two parties to the Parole Board proceedings. Accordingly, the Claimant's standing for the purpose of making application for judicial review of the Parole Board's decision is, or should be, limited to challenging decisions as to her permitted participation in the Parole Board proceedings and (possibly) the impact upon her personally of the licence conditions.

Discussion

41. In any democracy subject to the rule of law, all public power is limited by law. When Parliament establishes a public body such as the Parole Board, it confers on that body limited powers. When the body exceeds those limits, it oversteps the authority given to it by Parliament. The main task of the courts in the field of public law is to ensure that those exercising public power do not overstep the legal limits on their powers. But courts can only perform that task if arguably unlawful exercises of public power are brought before them. Their ability to preserve and vindicate the rule of law depends on

the existence of effective mechanisms which enable that to happen. Without such mechanisms, "laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade": *R (Unison) v Lord Chancellor* [2017] UKSC 51, [2017] 3 WLR 409, [68] (Lord Reed).

42. That was said in the context of a challenge to a decision to set tribunal fees at a level which the court held was unaffordable to many litigants. As the *Axa* case shows, standing rules can also prevent the courts from performing their vital function of policing the limits of public power. That is not to say that standing rules must permit every allegation of unlawful conduct by a public authority to be examined by a court. But overly restrictive rules, such as those applied in Scotland prior to *Axa*, can be inimical to the rule of law.

43. What counts as a "sufficient interest" for the purposes of s. 31(3) of the Senior Courts Act 1981 will vary depending on what the rule of law requires in the particular context of the decision under challenge. For some decisions (such as those in the *Smedley*, *Rees-Mogg* and *World Development Movement* cases), it may not be possible to identify any class of persons, or any class of persons within the jurisdiction, who are more affected than the public at large. In other cases, the direct impact of the challenged measure falls on a class whose members are likely to lack the financial and organisational resources required to litigate. This is one reason why organisations like the Child Poverty Action Group, the Joint Council for the Welfare of Immigrants and the Howard League for Penal Reform (to name a few) have sought to challenge measures of general application in areas falling within their purview, for the most part without dispute as to their standing. Another reason is that a suitably expert organisation may be better placed to present arguments about the impact of policy on the affected class as a whole, rather than one individual in particular.

44. Decisions taken by the Parole Board in individual cases, however, are different from measures of general application. In one sense, they affect the population as a whole, because the task of the Parole Board is to assess risk; and any member of the public could in principle be exposed to risk by the release of an offender. But the rule of law does not require that Parole Board decisions in individual cases should be challengeable by any member of the public. In most cases, there is likely to be a small class of persons who are much more directly affected than the public at large. If no-one in this class is prepared to bring a challenge, it can be properly assumed, without offending the rule of law, that there is no need for the court to entertain one.

45. The members of this class obviously include the offender himself and the Secretary of State, both of whom are parties to the Parole Board proceedings. *DSD* establishes that they do not include the Mayor of London or elected local politicians in a comparable position. Do they include the victim or, in a case where the victim is deceased, the victim's close relative?

46. Looking at the matter from first principles, we would answer that question in the affirmative. We do not see how it could be said that the victims in *DSD* were other than directly affected by the decision to release the offender. Not only were they victims of serious sexual assaults by him; on their case, he posed a continuing risk to them. By the same token, it seems to us that Mrs McCourt is directly affected by the decision to release Simms. Not only had he killed her daughter; one of the issues before the Parole Board was whether his refusal to reveal the whereabouts of her remains was motivated by a desire to exert psychological control over the remaining family members. In those circumstances, it would in our view be inappropriate to make the possibility of a challenge to a Parole Board decision dependent upon a decision of the Secretary of State to bring judicial review proceedings. If that had been the position, there would

have been no way for the court to examine and quash the Parole Board's unlawful decision to release Worboys.

47. We do not consider that *Bulger* requires, or even suggests, a contrary conclusion. That case is distinguishable in several respects. In the first place, it arose in the interregnum between the Strasbourg Court's decision in *V v UK* and the introduction of legislation to procure compliance with Article 6 ECHR. Today, setting the minimum term is the sole preserve of the sentencing judge. That exercise is governed by statute (Schedule 21 to the Criminal Justice Act 2003 in murder cases; ss. 224-229 of the Act in other cases) and by the relevant Definitive Sentencing Guidelines insofar as consistent with statute. Sentencing decisions relating to trials on indictment can be appealed by the offender or by the Attorney General, but are not and never have been amenable to judicial review, whether at the instance of a victim or anyone else: s. 29(3) of the Senior Courts Act 1981. Although one of the decisions under challenge in *Bulger* was a decision of the Home Secretary (and so was in principle amenable to judicial review), both the recommendation of the Lord Chief Justice and the decision of the Home Secretary to give effect to it were, in essence, sentencing decisions balancing the requirements of retribution, deterrence, reform and rehabilitation. The concern expressed in [21] of Rose LJ's judgment in *Bulger* was about challenges to "the sentencing process". The decision under challenge here, by contrast, is not part of the sentencing process. As Haddon-Cave J (as he then was) said in *Allen*, the Parole Board's functions are quite different from those of the sentencing judge; it applies different legal tests and standards of proof; and the evidential basis for its decisions is much broader. It concentrates on the question of risk to the public and takes the sentence of the court as its given starting point. Decisions of this kind have historically been subject to judicial review, albeit not, until *DSD*, at the instance of a victim.

48. Contrary to the submissions advanced by Ms Cecil and Ms Hirst, the decision in *Bulger* does not establish any wider general principle that a decision taken by an independent judicial authority in proceedings between an offender and the state can only be challenged by the parties to that decision. There is nothing in the judgment to indicate that the Court was considering anything other than the narrow case before them. The decision makes clear that, *in criminal proceedings*, the public interest is properly represented by and channelled through the Crown. That reflects the established role of the Crown in criminal proceedings as guardian of the public interest. Decisions in that role are taken independently of the executive. Likewise, although the function of deciding whether to refer a sentence to the Court of Appeal as unduly lenient is conferred on the Attorney General, when exercising that function she acts not as a member of the executive, but independently as a law officer of the Crown. The position of the Secretary of State for Justice is quite different. We have no reason to doubt the conscientiousness or propriety with which he performs his functions relating to Parole Board proceedings, but he does so as a member of the executive. The analogy between the role of the Crown in criminal proceedings and that of the Secretary of State in Parole Board proceedings is inexact in this key respect.

49. All counsel before us agreed that, if the only party who could challenge a release decision were the Secretary of State, the latter's decision whether to bring such a challenge would itself in principle be amenable to judicial review at the instance of a victim or relative. The prospect of this sort of satellite litigation is unattractive. Many of the same points as could be taken in a direct challenge to the Parole Board's decision could be taken in a challenge to a decision of the Secretary of State not to bring a challenge himself, though the success of any such points would depend on the basis for the Secretary of State's decision. If a challenge were successful, it might then be too late for separate proceedings to challenge the Parole Board's decision. Even if it were not, the result would be complexity and delay, with the prospect that a release decision might be either delayed or quashed long after it had been given effect. The better

course, in our view, is to recognise that, in an appropriate case, a victim or (where the victim is deceased) a relative will have standing to challenge the Parole Board's decision directly. Whether the victim or relative can identify an arguable challenge sufficient to justify the grant of permission to apply for judicial review is, of course, another question. We shall say more about this below.

50. It was suggested to us by Mr Little that the enhanced procedural rights accorded to victims and relatives in Parole Board proceedings may themselves help to justify a conclusion that victims and relatives should be accorded standing to challenge Parole Board decisions. This seems to us to be putting matters the wrong way round. To our mind, the procedural rights are a reflection of the victim's or relative's interest in the outcome of the proceedings; but the interest would subsist even if the procedural rights were absent. We would also reject the suggestion that Mrs McCourt's work campaigning for "Helen's Law" assists in establishing a "sufficient interest". In our view, her interest is established by the effect of the decision on her and her family, and by a consideration of what the rule of law requires in this context, not by her campaigning activities and certainly not (as was at one stage suggested) by the public and Parliamentary support which those activities have attracted. Successful campaigners do not, by virtue of their success as campaigners, acquire standing to challenge public decisions with which they disagree; conversely, popularity or a high profile in the media or in Parliament is not, and must not be allowed to become, a precondition of access to the court.

51. Mr Chapman has helpfully provided some details of the Parole Board's immense workload for the year from April 2019 to March 2020: 17,172 new cases were referred to the Parole Board; 8,264 oral hearings were conducted and 8,282 cases were decided on the papers. The Board directed the prisoner's release in 3,157 cases and recommended prisoner transfer to open conditions in 689 cases. We have considered in the light of these figures whether permitting victims and relatives to challenge Parole Board proceedings could burden the Parole Board with a flood of judicial review challenges. We consider that unlikely. In the first place, there is no evidence of any such flood of claims since the decision in *DSD* in March 2018.

52. Secondly and importantly, the new right for victims or relatives to invite the Secretary of State to seek an independent review, taken together with the requirement for permission to apply for judicial review, represent a significant protection for the Parole Board. If a victim or relative has not invited the Secretary of State to seek independent review, permission to apply for judicial review is likely to be refused on the basis of failure to exhaust an alternative remedy. If the challenged decision has survived a reasoned independent review, that is likely to weigh heavily with the court at the permission stage, unless there is a clearly arguable error in the review decision. In considering whether to grant permission, the gravity of the index offence or the notoriety of the offender will never be enough; what must be shown is a properly arguable public law error.

53. Thirdly, judicial review proceedings need not – if properly managed – become a tool to obtain disclosure to which the claimant would not otherwise be entitled. The extent of the Parole Board's disclosure obligation prior to the grant of permission will depend on the grounds of challenge. It should not be assumed that merely intimating proceedings, or even filing them, will in all cases generate an obligation on the Parole Board to disclose documents to which the victim or relative would not have been entitled in the Parole Board proceedings themselves.

54. For these reasons, we reject the submission that permission should be refused on the ground that Mrs McCourt lacks a sufficient interest in the matter to which the application relates. Nor do we consider it appropriate to hold (as Mr Chapman

suggested we might) that her standing is limited to challenging those aspects of the procedure relating to her participation in it, or to those aspects of the licence conditions relating directly to her and her family. If, as Mrs McCourt submits, the decision were vitiated by an error of law in assessing the significance of Simms' failure to accept responsibility for his crime, we cannot see that her interest in challenging that failure is any less than her interest in challenging the decisions taken as to her own participation in the proceedings. For these purposes, "the matter to which the application relates" is the decision to release Simms. In our view, Mrs McCourt has a sufficient interest in that matter to challenge it if – but only if – she can identify an arguable basis for doing so.

The merits of the claim

55. We begin by noting that much emphasis has been given to the circumstances of this case, which have been described as "exceptional" both as respects the heinousness of the crime and as respects the impact of Simms' failure to disclose the whereabouts of Helen's remains on Mrs McCourt and her family. Regrettably, their situation is not unique, although fortunately it is rare. We have great sympathy for Mrs McCourt's plight. Like the Parole Board, we recognise the ongoing distress and misery that Simms' actions continue to cause and have every admiration for her fortitude and resilience. However, as Chamberlain J indicated when giving directions for this rolled-up hearing, "[t]he claim faces considerable hurdles. The fact that the challenged decisions have been criticised in Parliament and by members of the public does not assist in overcoming those hurdles".

56. The question we have to ask is whether the Claimant has established that the decision involved an arguable public law error. Mrs McCourt asserts that it involved four such errors: (1) misdirection in law; (2) failing to make reasonable enquiries; (3) and irrationality and (4) procedural unfairness.

(1) Misdirection in law

57. The centrepiece of Mr Little's argument is the decision of Laws J in *R v Secretary of State for the Home Department ex p Hepworth and others*, 25 March 1997 (unreported). Summarising "the essential approach to be derived from the cases", Laws J said this:

> "(1) The Parole Board must assume the prisoner's guilt of the offence or offences of which he has been convicted.
>
> (2) The Board's first duty is to assess the risk to the public that the prisoner might commit further offences if he is paroled.
>
> (3) It is therefore unlawful for the Board to deny a recommendation for parole on the ground only that the prisoner continues to deny his guilt.
>
> (4) But in some cases, particularly cases of serious persistent violent or sexual crime, a continued denial of guilt will almost inevitably mean that the risk posed by the prisoner to the public or a section of the public if he is paroled either remains high or, at least, cannot be objectively assessed. In such cases the Board is entitled (perhaps obliged) to deny a recommendation.
>
> ...
>
> The fourth proposition which I have earlier set out is important in this context. It shows that there will be cases where the Board may properly

> give decisive weight to a continued denial. So much was explicitly recognised by Stuart-Smith LJ in *Zulfikar No 1*. The cases of *Hepworth* and *Winfield*, being concerned with very serious and repeated sexual crime, are examples. The very gravity of the original offences must mean that the starting point is one of unacceptable future risk. It could only be dispelled by some material to show that the offender has changed, is motivated to avoid such conduct if and when he is released. But if he cannot or will not confront his guilt and so undertake a programme such as SOTP, then absent some other special circumstance no such material will be available."

58. Mr Little submitted that proposition (4), taken together with the last passage quoted above, establishes a category of case where "the very gravity of the original offences must mean that the starting-point is one of unacceptable future risk". If a case falls into that category, Mr Little argues, the Parole Board is obliged to refuse to release an offender who continues to deny his offence, absent material to show that the prisoner had changed and is now motivated to avoid his offending behaviour if released. In oral argument, Mr Little confirmed that the essence of his submission was that, if a case was serious enough to fall within the terms of Laws J's proposition 4, there was a presumption against release; and that Parole Board misdirected themselves here by failing to recognise that presumption and consider whether it was rebutted.

59. In our judgment, this argument misreads Laws J's judgment in *Hepworth* and is in any event inconsistent with later authority. The judgment in *Hepworth* dealt with two challenges by prisoners to Parole Board decisions *not* to recommend release. Proposition (4) was simply that "*in some cases*… a continued denial of guilt will almost inevitably mean that the risk posed by the prisoner to the public or a section of the public if he is paroled either remains high or, at least, cannot be objectively assessed". In the later passage, Laws J noted that "*there will be cases* where the Board may properly give decisive weight to a continued denial". In our view, he was saying no more than that continued denial *can sometimes* be determinative against release; he was not seeking to create a new, mandatory, structured approach according to which a decision-maker must first consider whether a case falls into category 4 and, if so, whether the presumption against release is rebutted.

60. If, contrary to our view, there were any doubt about this, it would be dispelled by *R v Parole Board ex p. Oyston* [2000] Prison LR 45. There, Lord Bingham CJ said this in his concurring judgment at [43]:

> "Convicted prisoners who persistently deny commission of the offence or offences of which they have been convicted present the Parole Board with potentially very difficult decisions. Such prisoners will probably not express contrition or remorse or sympathy for any victim. They will probably not engage in programmes designed to address the causes of their offending behaviour. Since they do not admit having offended they will only undertake not to do in the future what they do not accept having done in the past. Where there is no admission of guilt, it may be feared that a prisoner will lack any motivation to obey the law in future. *Even in such cases, however, the task of the Parole Board is the same as in any other case: to assess the risk that the particular prisoner if released on parole, will offend again.* In making this assessment the Parole Board must assume the correctness of any conviction. It can give no credence to the prisoner's denial. Such denial will always be a factor and may be a very significant factor in the Board's assessment of risk, but it will only be one factor and must be considered in the light of all other relevant factors. In almost any case the Board would be quite wrong to treat the prisoner's denial as

irrelevant, but also quite wrong to treat a prisoner's denial as necessarily conclusive against the grant of parole." (Emphasis added.)

61. This and other passages from the judgments in *Oyston* were set out by King J in *R (Gourlay) v Parole Board* [2014] EWHC 4763 (Admin). He said at [26] that the effect of the previous case law was that "a prisoner's denial may well be a determinative consideration but not necessarily so". This meant that "a very careful assessment has to be taken by the Parole Board of all the competing factors in coming to its conclusions as to whether or not a prisoner's risk has been sufficiently reduced so as to enable a recommendation that he can be safely transferred to open conditions".

62. These authorities confirm that the same legal test and approach is to be applied in every case. There is no special test applicable to particularly heinous offences. In some cases, particularly (as Laws J said in *Hepworth*) in cases of serious, *persistent* violent or sexual crime where the denial makes it impossible properly to assess risk, the denial may in practice be determinative if and insofar as it prevents the Parole Board from properly assessing risk. In other cases (as in *Oyston*), there may be other evidence upon which the Parole Board can properly reach the conclusion that the prisoner presents a manageable risk of reoffending, notwithstanding any gap in understanding occasioned by the offender's continued denial of the index offence.

63. It follows that the panel did not err in law by failing to apply a special presumption against release. The panel's conclusions on risk expressly dealt with the circumstances of denial and lack of disclosure, but properly overlaid the results of objective, static and dynamic risk assessments reported by psychologists and the views of the offender management team. They considered the evidence about the motivation for the non-disclosure and reached conclusions in line with the experts who appeared before them and whose reports they had considered. They examined the risk management plan in detail. They concluded, correctly, that the critical issue was whether the level of risk could be managed in the community. They accepted the view of all the professional witnesses that it could and were therefore satisfied that it was no longer necessary for Simms to remain confined in prison. Having considered the panel's decision with care in light of the submissions made to us, we can detect no arguable error of law or misdirection.

64. If Mrs McCourt's representative did suggest the possibility of delaying the decision until the Bill became an Act, the panel was right not to entertain it. Unenacted Bills are not law. Prisoners whose cases are referred to the Parole Board are entitled to have their cases determined according to the law in force at the time of their review. It would not be proper to delay proceedings in the hope or expectation of a change in the law. In any event, if the Bill is enacted in its current form, it would require only that the panel take into account Simms' non-disclosure and what they considered were the reasons for it. As the panel said, they had taken these into account anyway, so the enactment of the Bill would not have made any difference.

(2) Failure to undertake reasonable enquiries

65. For Mrs McCourt, Mr Little argued that the Parole Board failed to undertake reasonable enquiries to ascertain the reasons for Simms' non-disclosure of the whereabout of Helen's body. Reliance was placed on the Divisional Court's decision in *DSD*, where at [117] it was said that the Parole Board was "entitled, indeed obliged, to undertake a proactive role in examining all the available evidence and the submissions advanced". There were "obviously material" considerations identified within the dossier itself which, if correct, plainly undermined the Panel's assessments that: (1) the only reason for Simms' non-disclosure was his denial of guilt (and that there was "no evidence" of

any other motive such as a desire to control others or sadism); and (2) the "only sensible inference" was that he would never disclose the whereabouts of the body.

66. Mr Little submitted that the Panel should have made further enquiries into the source and reliability of this information and questioned Simms about it, before reaching its conclusions; and they should also have obtained reports of previous conduct before the murder and documents from the Court of Appeal proceedings, which appeared to show Simms' counsel accepting that he was responsible for the manslaughter of Helen McCourt. There was a lamentable failure to challenge Simms about his denial of the crime and his refusal to disclose the whereabouts of the body. These were questions of central importance. There was no attempt to challenge Simms on the veracity of his position, or to assess the credibility of his answers.

67. We do not accept that, individually or cumulatively, these complaints disclose any arguable public law error. In *R (Walker) v Secretary of State for Justice (Parole Board intervening)* [2010] 1 AC 553, Lord Judge CJ noted at [134] that choices as to the process by which it arrives at its decision are "pre-eminently for the Parole Board itself" and the Administrative Court "cannot be invited to second-guess" these choices, save in an "extreme" case. *DSD* was such an extreme case because, unusually, the Parole Board had decided to release a category A prisoner without testing him in a lower security environment and because the prisoner had executed a "dramatic *volte face*" in his attitude to his offences, which there was good reason to believe might not be genuine: see [123]-[124]. The present case has none of these features. This was Simms' seventh review. He had been tested in open conditions following the recommendation made on the previous occasion. His attitude to the index offence had remained constant for very many years. The risk posed to the public at large and the McCourt family in particular was addressed by numerous experts, who had reached the same view.

68. It may be that Simms could have been questioned in a more sustained manner, but criticism of the way in which questions are asked will rarely give rise to an error sufficient to vitiate a Parole Board decision. In any event, we do not accept that there is any cause for criticism in this case. The fact of and reasons for the non-disclosure had always been a feature of this case. They had been explored extensively by the experts whose reports were before the panel. Whether to embark on detailed questioning of its own on this topic was, quintessentially, a matter for the judgment of the panel, which included an expert member. It was open to the panel to take the view that the experts, who were unanimous, had already probed and tested this issue to the extent that probing and testing was possible.

69. As to the suggestion that the panel erred by not requesting reports about Simms' conduct prior to the index offence, we note that they had before them a dossier running to some 693 pages, including numerous psychiatric and psychological reports discussing Simms's background in great detail. In almost every case, it will be possible to point to some piece of information that is not in the dossier. There is nothing to indicate that the Parole Board exceeded its broad procedural discretion in deciding that the dossier contained the material necessary for the panel to reach its decision. The suggestion that the panel erred by not questioning Simms about the arguments made on his behalf by his counsel in appeal proceedings that took place nearly 30 years ago is, in our view, plainly unrealistic. It is vanishingly unlikely that this material, or Simms' reaction to it, would have cast any light on his attitude to the offence, when, as all the reports confirmed, his position had remained unchanged for so long.

(3) Irrational conclusions

70. Mr Little submitted that there was evidence which undermined the panel's conclusion that Simms was not motivated by a desire to control the McCourt family. Reliance was placed on comments drawn from various past reports to demonstrate that it was irrational to conclude that the risk of serious harm was "no greater than medium". If, as the panel recognised, "it is impossible to say whether your risk factors have been identified," then risk could not be quantified. The panel's conclusion that the prisoner was "no longer exhibiting signs of aggression and violence" was wrong and irrational. It was contrary to evidence in the dossier, as were findings made about Simms' mental health. The panel had failed, in reaching these conclusions, to assess Simms' credibility and had ignored what were said to be the "demonstrable lies" he had told during the hearing itself.

71. We reject this submission. It is for the Parole Board, not for this court, to decide what weight to give to the evidence before it and what inferences to draw. The panel did not have to refer in their reasons to every piece of factual evidence, provided it is clear that they have addressed the substance of the issues before them: see e.g. *R (Alvey) v Parole Board* [2008] EWHC 311 (Admin), [1.26-1.27] (Stanley Burnton J). We have considered each of the factual points made by Mr Little and we mean no disrespect to him or to Mrs McCourt if we do not refer to them all here. None of them seemed to us to undermine the carefully reasoned conclusions of the panel, which in our view plainly addressed the substance of the issues.

72. The conclusion that Simms was no longer exhibiting signs of aggression or violence was in line with the thrust of the reports before the panel. An isolated incident in which his behaviour might be described as aggressive, though not violent, did not undermine that conclusion. It is impossible to say that the panel's assessment of Simms' mental health was other than a fair reflection of the material before them. The panel did not assume that everything Simms had said to them was true. They started from the proposition that his denials of the offence were untrue and his refusal to reveal the whereabouts of Helen's body deliberate. They were careful to base their conclusions as to the risk he posed largely on the evidence of experts. The suggestion that their carefully reasoned conclusions were irrational is not even arguably sustainable.

(4) Procedural unfairness

73. Mr Little did not pursue with any vigour the case that the way the hearing was conducted was procedurally unfair. This ground of challenge amounted to no more than a generalised plea that victims should be afforded limited rights: (1) to know which documents are being considered by the panel (unless there is good reason not to); (2) to provide additional information to the panel which may be relevant to the issue of risk; (3) to know what has happened at a hearing without unnecessary obstacles (unless there is good reason not to), and; (4) to know sufficient information about the reasons for the panel's decision.

74. The role of victims in Parole Board proceedings is circumscribed by the Rules and relevant guidance, including the Victims' Code. Victims are not parties to proceedings before the Parole Board. We heed the caution urged upon us by Ms Hirst, on behalf of Simms, not to dispense general guidance. There is no challenge to the legality of the Rules, nor to relevant paragraphs in the Victims Code, nor to the Probation Service's updated guidance to victims. We therefore consider any suggested unfairness by reference to these. The question for us is whether the process adopted in this particular case accorded with the Rules, the Victims' Code and the guidance and was fair.

75. The Rules confer on the panel chair the discretion to decide whether to provide the dossier, or particular information in it, to a victim. It was not arguably unlawful or unfair to refuse to provide the dossier to Mrs McCourt in this case. The dossier contained a large quantity of information that was confidential to Simms on which the Rules gave her no right to comment. She had the opportunity, and took it, to submit information to the Probation Service which she considered relevant to current risk. The Panel had regard to Simms' correspondence with her and the painting made by him. We do not consider that fairness required the Parole Board to provide Mrs McCourt in addition with an index of the dossier: that was unnecessary (given her right to submit material of her own) and would not have been useful (given that she was not in a position to know whether there was other confidential material that had been omitted).

76. Nor, in our judgment, was it arguably unlawful or unfair to require an undertaking from the claimant's legal representative as a condition of her attendance at the hearing. Material disclosed for the purposes of legal proceedings is generally subject to limitations on its use: see e.g. CPR r. 31.22. The Parole Board could properly conclude that such an undertaking was necessary in this case, to preserve the integrity of the proceedings.

77. Finally, the summary of the decision given to Mrs McCourt in our view adequately informed her of the panel's reasons. In any event, she has since seen the full reasons, as have we.

Conclusion

78. We would not have refused Mrs McCourt permission to apply for judicial review on the ground that she lacked standing to bring this claim. Nevertheless, having carefully considered her grounds of challenge and the Parole Board's full reasons, we have concluded that the panel's decision involved no arguable public law error. The panel were acutely aware of the sensitivities in this case and adopted a careful and balanced approach both to the procedure to be adopted and to the assessment of Simms' current risk.

79. We therefore refuse permission to apply for judicial review.

80. Although we are refusing permission, our judgment addresses a number of issues of principle. We accordingly give permission for it to be cited.

ORDER

UPON the Claimant having applied for permission to bring judicial review proceedings against the Defendant's decision to release the Second Interested Party;

AND UPON the application having been adjourned for a rolled-up hearing by the order of Mr Justice Chamberlain dated 20 March 2020;

AND UPON hearing Leading Counsel for the Claimant and Counsel for the Defendant and Second Interested Party on 29 and 30 July 2020;

IT IS ORDERED THAT:

1. Permission is refused.

2. The Claimant is to pay the Second Interested Party's costs, to be assessed if not agreed and are not to exceed (including VAT) the total sum in the GoFundMe crowd fund *Justice for Helen*, less the administration fee, on 1 September 2020.

3. Save for paragraph 2, there is to be no order for costs.