Neutral Citation Number: [2025] EWHC 424 (Admin)

Case No: AC-2023-LON-000471

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LONDON

Thursday, 27th February 2025

Before:
FORDHAM J

- -

Between:

THE KING (on the application of SEAN FITZGERALD)	**Claimant**
- and -	
PAROLE BOARD OF ENGLAND AND WALES	**Defendant**
- and –	
SECRETARY OF STATE FOR JUSTICE	**Interested Party**

- -
- -

Becket Bedford (instructed by Johnson Partnership Solicitors) for the **Claimant**
William Irwin (instructed by GLD) for the **Defendant**
The **Interested Party** did not appear and was not represented

- -

Hearing date: 11.2.15
Draft judgment: 12.2.25

- -

Approved Judgment

- -

FORDHAM J

Note: This judgment will be handed down virtually on 27.2.25
by circulation to the parties and uploading to the National Archives.

FORDHAM J:

Introduction

1. This case is about rights and remedies under the Human Rights Act 1998 ("HRA"), when there is delay in convening a Parole Board hearing to decide whether a post-tariff lifer is safe for release. The leading cases are R (Noorkoiv) v SSHD [2002] EWCA Civ 770 [2002] 1 WLR 3284 (CA 30.5.02); R (Sturnham) v SSJ [2013] UKSC 23 [2013] 2 AC 254 (SC 3.7.13); and R (Bate) v Parole Board [2018] EWHC 2820 (Admin) [2019] ACD 4 (DC 26.10.18). My attention was invited to the SSJ's Generic Parole Process Framework; and the Parole Board's Guidance on Judicial Review and Private Law Claims. The Claimant was released on licence on 7.11.23. The central question is whether the law entitles him to the compensatory damages which the Supreme Court identified in Sturnham at §§69-76 and 87 for unlawful parole delay and, if so, for what period. The claim is brought against the Parole Board. Previous grounds advanced against the SSJ were dropped, which makes the SSJ an interested party (see R (Adams) v Parole Board [2022] EWHC 3406 (Admin) at §2).

Relevant Statutory Provisions

2. By s.28(5)(6) of the Crime (Sentences) Act 1997, where a post-tariff lifer's case has been referred to it by the Secretary of State for Justice (SSJ) and the Parole Board directs that confinement for public protection is no longer necessary, the SSJ must release them on suitable licence conditions. By HRA s.6 it is unlawful for a public authority to act incompatibly with Convention rights. By Art 5(4) in the Schedule to the HRA, that includes the right of a person to a speedy decision by a "court" on the lawfulness of their detention. By HRA s.8, a court which finds a public authority unlawfully to have acted incompatibly with a Convention right is empowered to grant such remedy as it considers just and appropriate, including damages where necessary to afford just satisfaction.

The Legal Principles

3. The relevant legal principles are these:

   i) When seized of an SSJ referral (s.28(6)(a)) to decide necessity of confinement for public protection, the Parole Board becomes the "court" for the purposes of the Art 5(4) speedy decision guarantee. See eg. Bate §31.

   ii) Where a lifer is approaching the end of their tariff, the primary reference point for the Art 5(4) guarantee of a speedy decision by the Parole Board is the tariff expiry date. Art 5(4) requires a hearing at such a time that, "whenever possible", a lifer no longer assessed by the Parole Board to be dangerous can be released "on or very shortly after" the tariff expiry date. In practice, this means the Board holding an on-tariff hearing prior to the expiry date. See Sturnham §10. Also Noorkoiv §§49, 57-58, 64-65, 69. This is reflected in the Framework at §5.6.1, where the SSJ says that the lifer's first Parole Board review "must take place no later than their tariff expiry date".

   iii) In deciding whether delay is unlawful – so as to constitute an Article 5(4) violation – the judicial review court asks whether the delay deprived the prisoner

of their right to a speedy hearing having regard to the particular circumstances, applying an objective standard of reasonableness. See Bate §§68, 74.

iv) Where delay was unlawful, but that was attributable to the SSJ's actions or omissions, appropriate HRA s.8 damages are awarded against the SSJ rather than the Parole Board. See Sturnham §§81, 91. Another example is R (Knights) v Parole Board [2015] EWHC 136 (Admin) [2015] ACD 68 at §§83-84.

v) An absence of resources, including human resources in terms of sufficient personnel as Parole Board panel members, is no answer to an Art 5(4) claim; including an HRA s.8 damages claim against the Parole Board. See Bate §§32, 75, 87. Also Noorkoiv §§28, 31.

vi) Where the unlawful delay was more than 3 months, modest damages will ordinarily follow referable to frustration, anxiety and distress. See Sturnham §13(12) to (15); Bate §§35 and 88. Also Knights §84; Guidance §3.10.

vii) Where it is shown on the balance of probabilities that an Art 5(4) violation has resulted in detention of the prisoner beyond the date when they would otherwise have been released, compensatory damages for delayed liberty should ordinarily be awarded. Sturnham §13(6)(7); Bate §§35 and 89. Also Guidance §3.7.

Identifying the Facts

4. As I have explained, the Court has to ask whether the delay deprived the prisoner of their right to a speedy hearing having regard to the particular circumstances, applying the objective standard of reasonableness. The Court has to find the facts (Sturnham §37). I am not going to transfer the claim to the county court. Judicial review is not inappropriate: see Bate. No useful purpose would be served, in the circumstances, by transfer: see R (Pennington) v Parole Board [2009] EWHC 2296 (Admin) [2010] HRLR 1 at §4. The Parole Board and the SSJ have had a full opportunity to put materials before the Court. Each filed summary grounds with a statement of truth; and the Board provided a brief chronology (Guidance §3.16). What follows are the relevant facts. They incorporate my findings on the balance of probabilities, based on the materials provided, and in light of the evidential gaps in what I was told and shown by the Parole Board.

The Facts

5. The Claimant was sentenced to life imprisonment on 7.5.10 aged 36. That was for an offence of murder which he committed on 16.4.09. The sentencing judge imposed the mandatory life sentence and set the tariff (minimum term) at 13 years which, adjusted for qualifying curfew, gave a tariff expiry date of 14.9.22. Ten years later, on a "pre-tariff" parole review, the SSJ invited the Parole Board to consider recommending a transfer to open conditions. It did so (27.10.20) after an oral hearing (14.10.20). There were recent written reports by the POM (prison offender manager) Ami Grewal (26.8.20), the PP (prison psychologist) Emma Blane (18.9.20), and the COM (community offender manager) Kelly Wood (24.9.20). The professional witnesses were unanimous in recommending the transfer to open conditions. They and the Claimant gave oral evidence at the hearing. The Board's recommendation was accepted by the SSJ (5.11.20) and the transfer to open conditions (HMP Hollesey Bay) took place

(10.3.21). The Claimant accessed release on temporary licence, and monthly periods of resettlement overnight release began in mid-November 2021.

6. The Claimant's "on-tariff" review then proceeded. The SSJ's letter of 5.11.20 told the Claimant as follows: that this review was scheduled to begin in January 2022; that it was expected to take 26 weeks to complete; that the "month for consideration by the Parole Board" was "July 2020"; and that the review was scheduled to conclude at the Claimant's tariff expiry date (14.9.22). The SSJ's s.28(6)(a) referral was duly made on 29.12.21. That was in good time for everything to be done for the target month (July) and by the tariff expiry date (14.9.22). Relevant reports were duly compiled by the SSJ. There were a PP case note by Toni Edgell (17.1.22); a security report (26.1.22); a Sentence Planning and Review Report (28.1.22); a POM report by Alice Orr (7.2.22); and a COM report by Ms Wood (21.2.22). The professional witnesses were supporting release, as were written representations from the Claimant's solicitors (18.3.22).

7. In these circumstances, the Parole Board single panel member (SPM Hall) issued a decision (22.4.22), having reviewed the 179-page dossier. SPM Hall directed a 4.5 hour oral hearing, recording the case as "ready to list", and giving a deadline of 1.7.22 for updated POM and COM reports. The hearing was to be by video link and no specialist panel member was needed. SPM Hall's directions said:

> ***The case should be listed for the next available date in accordance with the Board's listing priorities.***

The addendum report of POM Jo Frost followed, dated 30.6.22, ahead of the directions deadline (1.7.22). There is a reference to the Parole Board case manager awaiting outstanding "reports" on 1.8.22 and 2.8.22. In fact, it was only COM Wood's addendum report. That was written on 28.7.22, 27 days after the deadline (1.7.22) and it was added to the dossier by the SSJ by 3.8.22. COM Wood identified that a bed space at approved premises, were he released on suitable licence conditions, was "assured" for the Claimant from 7.11.22. Nothing else was now awaited.

8. The Parole Board case manager had identified a hearing date of 11.8.22. As at 26.7.22 it was hoped that this hearing date would still work. However, on 1.8.22 the case manager decided that "outstanding reports" – which was COM Wood's addendum report – meant that the hearing on 11.8.22 would be ineffective. There was no judicial decision adjourning the hearing or deferring it (cf. Guidance §3.20). The case manager continued to monitor the position on 2.8.22 and 3.8.22. By 3.8.22 the case manager was aware that the dossier was complete, because COM Wood's addendum report (28.7.22) had now been added by the SSJ. No action was taken by the case manager at this point. Nothing was done with a view to getting the hearing restored, or fixed or refixed. Nothing was done when the Claimant's solicitors chased for an update (18.8.22). There was no active case management (cf. Guidance §3.14).

9. The Claimant's tariff expiry date then passed (14.9.22). The Claimant's solicitors escalated their request by making a formal request for prioritisation (4.10.22). They emphasised Article 5(4) and the expiry of the tariff (14.9.22). They referred to the target month (July 2022) and the SPM's directions for the oral hearing (25.4.22). Prioritisation was refused by a decision (17.10.22) by the Board's Duty Member (DM). The DM recorded having considered the application; and having reviewed the 290-page

dossier. The DM recorded that SPM Hall's directions (25.4.22) had not been reviewed, as they were not in the dossier. The DM's decision concluded as follows:

> ***The timescales associated with the case were reviewed and the appropriateness of prioritising or expediting the listing of the case was considered. However, the Duty Member concluded that the circumstances were not sufficiently exceptional to warrant this. The application is therefore refused.***

10. There was no active case management at this stage: the Claimant's case stayed within a queue, where it was "stuck and just waiting for events to move forward" (Guidance §3.14). Around this time, there were some 3,273 "ready to list" cases. There was no problem of financial resources. There was, however, a real problem of an insufficiency of human resources, in terms of persons to chair oral hearings. That was an administrative delay (Guidance §3.21).

11. Meanwhile, there had been attempts by the Claimant's representatives by way of judicial review. There were letters before claim written to the Parole Board and SSJ (15.11.22). There was a substantive response on behalf of the Parole Board (6.12.22) expressing neutrality, in the context of listing as a judicial function (cf. Adams at §28), and providing its brief chronology, with some submissions based on some of the case-law. A response from the SSJ referred to the Board's Prioritisation Framework (which nobody has filed, referenced or relied on before me). Judicial review proceedings were commenced (17.1.23), in Birmingham. The High Court gave directions (23.1.23) for expedited acknowledgments of service. Then (on 10.2.23) Eyre J gave permission for judicial review for the unlawful delay claim against the Parole Board. Permission for judicial review was refused on systemic grounds raised against the SSJ (and the Parole Board). The judicial review claim was transferred to London where it should have been started. The Administrative Court order directed an expedited hearing as soon as practicable after 31 March 2023, with relevant abridgments of time.

12. The Parole Board oral hearing was, in due course, fixed for 15.8.23. There was attendance at the hearing by the new POM John Campbell, by COM Wood, as well as the Claimant. They all gave oral evidence. The professional witnesses continued to support the Claimant's release. The Board decided, on the day of the hearing (15.8.23), to direct the Claimant's release pursuant to s.26(6)(b). After a 21-day window for challenge by the SSJ, the decision became final as was confirmed by letter (15.9.23). After a delay by the SSJ, not explained but in circumstances of securing approved premises in line with appropriate licence conditions, the Claimant was released on licence to approved premises on 7.11.23.

A Missed Opportunity

13. I have referred to the fact that on 10.2.23 the High Court granted permission for judicial review against the Parole Board for unlawful delay, directing an expedited hearing as soon as practicable after 31.3.23, with relevant abridgments of time. The Court's deadline for the Parole Board's detailed grounds was 24.2.23. No expedited hearing took place. The case having been transferred to London, the parties were eventually contacted (28.6.23) with a view to listing a 3-hour substantive hearing in October 2023. It does not appear that any party chased the Court for the expedited hearing, which could have been as early as April 2023, by order made by the Court. The Claimant's representatives, for their part, decided to request reconsideration at an oral hearing of permission for judicial review on the systemic points raised involving the SSJ. There

was no agreement for a 'rolled-up' consideration, for which Eyre J's order provided. The Court, for its part, said it had not received the notice of renewal. I think it is fair to describe the expedited hearing in the High Court after March 2023 as a missed opportunity. After the Claimant's release (7.11.23), the Parole Board and the SSJ each then taking the position that no "public law" issue remained, but only so-called "ancillary" matters. The substantive judicial review was listed (23.8.24) against the Board only, to be heard on 11.2.25. The remedies sought were declarations of unlawfulness, quashing of the SM decision (17.10.22), and HRA damages. The Board continued to adopt a position of participating neutrality; neither conceding nor contesting the claim. The SSJ has not participated.

Analysis

14. My conclusions are as follows. In light of the facts, and applying the legal principles (all described above):

    i) The Board violated the Claimant's Art 5(4) right to a speedy hearing, having regard to his particular circumstances, applying an objective standard of reasonableness. There was unlawful delay after 3.8.22. The Parole Board hearing should have been promptly rescheduled at the latest for 11.10.22, albeit that the hearing of 11.8.22 was reasonably assessed on 1.8.22 as ineffective. A declaration of unlawfulness is an appropriate remedy.

    ii) On the balance of probabilities, the Parole Board's actions in violation of Art 5(4) resulted in the Claimant's detention beyond the date when his release would otherwise have been directed, because the Panel would at the relisted hearing (by 11.10.22) have directed release. On the balance of probabilities, with a promptly rescheduled hearing (by 11.10.22), COM Wood would have identified an assured bed space at the approved premises with a deferred timing of 7.1.23 (instead of 7.11.22). It follows that compensatory damages for delayed liberty should be awarded. But I am not going to award additional damages confined to frustration, anxiety and distress. The appropriate level of compensatory damages is £10,000 in respect of the ten months from 7.1.23 to 7.11.23.

    iii) Further, it was unlawful for the DM on 17.10.22 to decline to prioritise the case, securing an expedited hearing. A further declaration is appropriate but no further monetary remedy.

15. My reasons are as follows. I will not repeat the facts, but incorporate them by reference.

    i) The absence of active case-management after 3.8.22 was not objectively reasonable, viewed against the Art 5(4) reference-point of the tariff expiry date, in all the circumstances. There were SPM Hall's directions (22.4.22) for a hearing on the "next available date in accordance with the Board's listing priorities". There was the tariff expiry date of 14.9.22 itself, when the review was intended by the SSJ to have been completed. There was the SSJ's target month was July 2022. There had been a delay in accessing a final addendum document. The 11.8.22 hearing was viable up to 1.8.22, and within 48 hours that final addendum report had been located as added by the SSJ (3.8.22), and the dossier was complete. No evidence has been put forward of any action explored, considered or taken, on or after 3.8.22 when the complete dossier was identified. Instead, the

Parole Board hearing took place a full 12 months later. The problem of panel member resources is in law no answer.

ii) The decision on 17.10.22 not to prioritise the case was itself not objectively reasonable, viewed against the Art 5(4) reference-point of the tariff expiry date, in all the circumstances. The DM said the "timescales" had been "reviewed" and that the case was not "sufficiently exceptional" to prioritise it. But this is unexplained. The "timescales" were documented. This was a review intended by the SSJ to have been concluded in September 2022 which had narrowly missed its intended hearing (11.8.22), but with no judicial decision or direction. The DM had been referred by the Claimant's legal representatives to Art 5(4); to SPM Hall's directions (22.4.22); to the tariff expiry date (14.9.22); and to the SSJ's target month (July 2022). The DM's decision and reasons did not address Art 5(4) at all. Emphasis was placed on SPM Hall's directions not being in the dossier, but they could and should have been obtained and considered. Viewed in Art 5(4) terms, the refusal to prioritise was unjustified (as in Bate at §90). Instead, the Parole Board hearing took place a full 10 months later. Again, the problem of panel member resources is in law no answer.

iii) The compensatory measure of damages is fully warranted. When the Panel finally scrutinised the case at the oral hearing eventually convened (15.8.23), it decided the same day to direct the Claimant's release on licence. That was a decision in light of the professional witnesses' continued support for release. That support had been expressed in POM Frost's addendum report (30.6.22) – with which new POM Campbell agreed – and COM Wood's addendum report (28.7.22). The decision did not rest on anything new. It did not rest on anything not already established and evidenced as at August 2022. It was stated in the updated POM report (6.7.23) and the COM report (4.8.23) that there were no significant changes or developments. There is every reason to conclude, as I do, that a hearing by 11.10.22 would have led to a prompt direction at that stage for the Claimant's release.

iv) I do not accept that there were 14 months of unlawful delay suggested by Mr Bedford. Despite the limitations of the Parole Board's evidence, I am not satisfied – on the balance of probabilities – that lawful case-management action after 3.8.22 would have retained or restored the original hearing date (11.8.22); nor the original approved premises bed space (7.11.22). I find that the timing of the COM Wood addendum report (28.7.22), and it being added to the dossier by the SSJ (3.8.22), would have had a knock-on loss of two months as to the hearing date (11.10.22) and as to a new approved premises bed space (7.1.23). None of that was properly attributed to the Parole Board's conduct of the case, and I find that the case manager could not reasonably have avoided it. The relevant period for compensatory damages is ten months: 7.1.23 to 7.11.23.

v) Mr Bedford does not point to any fact or circumstance of the present case for seeking to improve on the guideline measure of compensatory damages for delayed liberty which the Supreme Court identified in May 2013 (Sturnham §87). That was £6,500 for ten months in that case. It is the £650 per month referenced by the Parole Board: see Guidance §3.7. Mr Irwin rightly accepts that, in principle, uprating for inflation is appropriate. He suggested £894.32, calculated using the Bank of England's CPI-based measure. But he accepted that Mr

Bedford's suggested £1,000 was an accurate application (deriving £1,019.46) of Lawtel's RPI-based measure. In the absence of being given any good reason to the contrary, I will take a broad RPI-based £1,000 as invited by Mr Bedford for the Claimant. That produces £10,000 compensatory damages in respect of the ten months.

vi) That, in my judgment, is where the HRA s.8 damages end. I have been unpersuaded that any additional damages are appropriate for frustration, anxiety and distress, either in respect of the unlawful delay after 3.8.22 or in respect of the unlawful refusal to prioritise the case (17.10.22). That would have been £75 per month (£750), uplifted from £50 in May 2013 (Sturnham §91); but with no further damages in respect of the non-prioritisation decision (Bate §90). I am not going to add on any damages for frustration, anxiety and distress. It is true that Bate referred to the claimant being entitled not just to damages for frustration, anxiety and distress (§88), but "also" compensatory damages (§89), awarding both (§97), albeit with submissions to follow on quantum. I am satisfied that the compensatory damages which I am awarding encompass all relevant loss and damage, including frustration, anxiety and distress. My view is that this is what the Supreme Court was recognising in Sturnham. I do not think Mr Faulkner's compensatory damages (Sturnham §87) was a measure for a delayed liberty case which stood in addition to Mr Sturnham's damages confined to frustration, anxiety and distress (§91). I see in Lord Reed's compensatory measure a global measure which would include frustration, anxiety and distress; but not confined to frustration, anxiety and distress. The compensatory measure was encompassing the "additional harm" of "deprivation of liberty", so as to include all relevant losses (§53). Hence the references to compensatory damages instead of awards for frustration and anxiety "alone" (§75); and to compensatory damages for "the harm … suffered" (§84). The case-law discussed in Sturnham does not appear to add frustration, anxiety and distress to compensatory damages in a delayed liberty case.

Conclusion

16. In the light of my findings and reasons, I consider it appropriate to make declarations of unlawfulness both in respect of the inaction from 3.8.22 and in the decision on 17.10.22. There is however no point or purpose in quashing the decision of 17.10.22, and I decline in my judgment and discretion to do so. I will award the Claimant compensatory damages in the sum of £10,000 in respect of the 10 months of delayed liberty by reason of unlawful delay in breach of his Art 5(4) rights. I decline to order the full measure of damages of £15,000, sought by Mr Bedford, in respect of the suggested 14 months of compensatory damages and with his suggested additional measures for frustration, anxiety and distress.

Order

17. I will order that the claim is allowed. I will declare that the Parole Board acted unlawfully and in breach of the Claimant's Article 5(4) rights (a) by failing after 3.8.22 to take any or any appropriate steps to secure the timely hearing and (b) by failing on 17.10.22 to prioritise to expedite the Claimant's parole review. I will order that by 4pm on 10.3.25 the Parole Board pay the Claimant compensation in the total sum of £10,000 in damages.

Costs

18. Having received this judgment as a confidential draft, the Claimant's representatives advanced lengthy submissions (in total, some 20 pages), with an eye-watering volume of authorities (some 57 of them, nearly 1500 pages), seeking an order that the Parole Board should pay the Claimant's costs. It was argued on Davies principles that the Board had failed to adopt a neutral position and had become an active party (Administrative Court Judicial Review Guide 2024 §25.12), but in my judgment the Board retained neutrality. Alternatively, it was argued that the Parole Board had unreasonably refused to sign a consent order, as in R (Somers) v Parole Board [2023] EWHC 2962 (Admin), but I cannot accept that submission. Indeed, there were three "without prejudice save as to costs" offers from the Claimant's representatives (9.1.24, 15.2.24 and 20.8.24), but all of these were insistent on the damages of £15,000 which I have rejected (§16 above). There was no cross-offer from the Board, but nor is the Board asking for its costs. More ambitiously, it was argued for the Claimant: (a) that ECHR Art 6 or Art 5(4) require that costs from the Parole Board must follow the event; (b) that costs are themselves part of "just satisfaction"; and (c) that the Court must have regard to the Claimant's legal aid position. Nothing was identified from the 57 authorities as direct support of these contentions. The costs principles applicable to the Parole Board as a defendant court in an Art 5(4) context have authoritatively been identified by the appellate courts: see especially R (Gourlay) v Parole Board [2017] EWCA Civ 1003 [2017] 1 WLR 4107 at §64 (applicability of Davies principles) and at §61 (legal aid position). Before leaving costs I should record that in fact there is a factor in the present case which reinforces the inappropriateness of a costs order. It is the clear missed opportunity for an expedited substantive hearing shortly after 31.3.23 (§13 above). There will be no order as to costs.