



HUMAN RIGHTS LAWYERS' ASSOCIATION

HUMAN RIGHTS JUDICIAL REVIEW COMPETITION 2018

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BRIEF TO COUNSEL

Instructing solicitors act on behalf of the Claimant, Mr Paul Cross, a British-national prisoner currently serving a sentence of Imprisonment for Public Prosecution (“IPP”) at HMP Woodhill in Milton Keynes. Mr Cross is presently of No Fixed Abode. He received this sentence on 1 October 2010 after being found guilty at trial of an offence of threats to kill and assault occasioning actual bodily harm. The sentencing judge set the IPP tariff (minimum term) at 4 years; and a concurrent term of 18 months’ imprisonment was imposed for the ABH offence.

In October 2013, after three years without any significant work done to enable rehabilitation, and a failure by various key prison personnel to provide any plan, a Sentence Planning and Review Meeting (“SPRM”) was held. The completion of the (*fictitious*) Angry Violent Temper Treatment Programme (“AVTTP”) was added as a sentence objective for Mr Cross. This was set to be a short-term target to complete in the following 12-months period.

In January 2014, Mr Cross suffered a stroke which left him paralysed down his left side; he has since been confined to a wheelchair.

No AVTTP was provided during the year. Mr Cross did not consider himself suitable as he suggests the assessment that he has an angry violent temper is wrong, though he also says he will comply with any requirements. Further, the prison explained that the only available rooms for the AVTTP group sessions were on the first floor of the prison and there was no access to that floor by wheelchair.

Shortly after the expiry of his tariff on 30 September 2014, Mr Cross’ case was considered by the Parole Board of England and Wales at an oral hearing. At that hearing, the Parole Board stated that he would not be released until he completed the outstanding AVTTP, and would also thereafter complete a number of periods of Release on Temporary Licence (“ROTL”) on Approved Premises (“APs”). The panel accepted the views of the supervising probation

officers that ROTL should be conducted in his home area as a step to resettlement and release. Following the recommendation of the Parole Board he was moved to open conditions in January 2015 (at HMP Spring Hill in Buckinghamshire).

In March 2015 a further SPRM identified the objective (as before) to complete the AVTTP, and added an objective to complete ROTL in preparation for a potential parole application for release. No other sentence plan objectives were set. Mr Cross completed the AVTTP in December 2016. He was able at HMP Spring Hill to attend all classes, held on the ground floor. Mr Cross applied to undertake ROTL to his brother's home address but this was never assessed by the probation officers (for whom the Secretary of State has responsibility) for suitability and no ROTL occurred.

A second parole hearing convened on 10 May 2016. All report writers supported release. His risk of serious harm was assessed by the reporting officers to be "low". The Parole Board however declined to direct release, and stated that the failure to complete sufficient ROTL meant the panel had no option but to refuse release.

A further oral hearing was held in January 2018 but the Parole Board deferred the hearing to July 2018 to allow further time for ROTL to be completed. In January 2018 Mr Cross stated that he will only accept release to an AP in Cornwall, his place of birth. No wheelchair accessible AP in Cornwall is available for ROTL until December 2018 at the earliest. Because the officers regard Cornwall as the proper location no checks had been made beyond Devon and Dorset, where the earliest any place was available for ROTL is October 2018.

In the County of Cornwall, there are presently three APs totalling 150 places. Only 1 of those places is suitable for persons wheelchair access. Across England there are a total of 35 APs totalling 1700 places. Only 92 of these places are wheelchair-accessible. In a report undertaken in 2015 the Secretary of State recognised that due to the aging prison population there is a need for at least 250 wheelchair accessible rooms in APs by 2018. No new rooms were adapted since 2015. Mr Cross has never lived anywhere other than Cornwall, all of his family live there, and he regards himself as Cornish not British.

In response to our pre-action protocol letter, the Secretary of State for Justice conceded that Mr Cross has standing to bring the proposed challenge, and that no alternative remedies are unused. It is accepted that Mr Cross is disabled within the meaning of the Equality Act 2010. However the claims are defended.

Counsel is instructed to settle grounds alleging:

- (1) Arbitrary detention contrary to Article 5 ECHR and/or breach of the common law duty to provide the systems and resources needed to afford indeterminate sentence prisoners a reasonable opportunity to demonstrate that they are no longer a risk to the public (the "*James*" / "*Walker*" duty); and
- (2) Discrimination or breach of duties contrary to the Equality Act 2010 and/or Article 14 of the European Convention on Human Rights ("ECHR") within the ambit of Article 5 (Counsel may use his or her discretion to select the appropriate specific ground(s) in this regard).

Counsel is asked to request appropriate relief.

For the purposes of these proceedings Counsel is instructed to confine arguments to those of the above points that counsel determines to be properly arguable, but to ignore any other common law duties, or Care Act 2014 or Housing Act duties.

Counsel is so instructed to settle proceedings and kindly advance the application for permission.

March 2018