



HUMAN RIGHTS LAWYERS' ASSOCIATION

HUMAN RIGHTS JUDICIAL REVIEW MOOT COMPETITION 2020

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

IN THE MATTER OF

Regina, on the application of ALI HUSSAIN

Claimant

-v-

THE PAROLE BOARD OF ENGLAND AND WALES

Defendant

BRIEF TO COUNSEL

Counsel is instructed to represent the Claimant, Mr Ali Hussain, and to prepare the grounds for an application for Judicial Review. Counsel is also instructed to attend any oral hearing of the application for permission, or any substantive hearing, as applicable.

We have set out a summary below of the factual material relevant to the resolution of the issues arising. There is no further information that we are able to provide Counsel with. The facts are not in dispute between the parties, as has been confirmed by the pre-action correspondence. Within the pleadings that Counsel shall draft we would ask Counsel to please highlight any factors considered relevant to the submissions to be advanced. An agreed summary of the facts, as per the below, has already been filed, so there is no need to recount all of the information which the Court possesses.

SUMMARY OF THE FACTS

The Claimant, Ali Hussain, was born on 1 January 2002. He was born in Syria but fled to the UK after his father and mother were killed by the Islamic State forces on account of their observance of the family's Shia Muslim faith not according with the extreme form of Sunni Muslim religion mandated by ISIS. He was ultimately granted asylum in the UK when still a child, then aged 13, where he has continued in his faith. He has

been diagnosed with Post-Traumatic Stress Disorder from which he continues to suffer flashbacks and disturbed sleep.

The Claimant suffers from poor mental health with a diagnosis of moderate depression. He also has a suspected learning difficulty of some degree.

The Claimant is serving a determinate 4-year sentence for domestic burglary, imposed on 29 September 2017 with a sentence expiry date of 1 September 2021. The Claimant has two previous convictions. One was for the theft of a bicycle in 2016; the other is for an offence of assault occasioning actual bodily harm. The Claimant was convicted of that ABH offence after trial in April 2017 in the Crown Court at Bristol. He continues to maintain that he is not guilty of that offence and was defending himself against a verbal racist assault and feared physical assault if he did not act. The incident occurred in a public house and the Claimant accepts that he picked up a chair and struck the other party, a Mr Smith, with it once, causing bruising and a small cut to the head of Mr Smith. Prior to the current sentence the Claimant breached the requirements of a community sentence that required him to attend supervision sessions, twice not attending, and testing positive for use of a proscribed drug on one occasion. He also failed to attend court on one occasion and was fined £50.

On 2 September 2019, the Claimant was automatically released from HMP Berwyn in Wales, where he had been held, at the half-way point of his sentence.

The Claimant was released with the condition of his licence that he attend the Beckenham Approved Premises ("AP") in London close to where his Offender Manager ("OM") was located. The Claimant had never previously attended that AP. He was required to arrive by 3pm. The Claimant was due to travel this approximately 220-mile journey on the day of his release.

The Claimant was given a sheet with instructions on how to reach the AP including the OM's direct number. The OM states that he "*ensured that he received clear directions to the approved premises on release*". The OM had never met the Claimant in person before, at the stage when these release arrangements were set. A transfer to a more local prison in London prior to release had been turned down by prison authorities due to lack of space.

The Claimant successfully reached London Bridge train station. However, at this stage he became lost. The Claimant says that he did not have a charger for his mobile phone and it was not capable of making calls on 2 September 2019. The Claimant travelled to Newham Probation Office which he knew but unfortunately arrived after it had closed. It closes at 4.30pm. Subsequently, he bought some food, rested at a bus stop and then made his way to the police station at Forest Gate, Newham. He arrived there at 11pm, and he stayed overnight until the morning of 3 September 2019. Police confirm his attendance there at these times. Police records state that when told he was being arrested in the morning, he was aggressive.

On 2 September 2019, the Secretary of State for Justice revoked the Claimant's licence at 6pm, as he had not attended the AP at 3pm that day as required. Accordingly, when police confirmed his details on the morning of 3 September 2019 he was arrested and returned to custody.

The revocation notice recorded that the Claimant breached the following licence conditions to:

5i. Be of good behaviour and not behave in a way which undermines the purpose of the licence period;

...

5v. Reside permanently at an address approved by the supervising officer and obtain the prior permission of the supervising officer for any stay of one or more nights at a different address

The OM's Part A: Recall Report, written on 3 September 2019 and prior to speaking to the Claimant, stated "*Mr Hussain is likely to have relapsed into drug and alcohol use. This makes his behaviour more unpredictable*". However, there is no suggestion that the Claimant was intoxicated upon arrival at the police station. Furthermore, there has been no suggestion that the Claimant committed any offence, or engaged in any behaviour that gave rise to any risk of harm to the public, during his journey and prior to his attendance at the police station.

In the Part B: Recall Report, after the OM had actually met the Claimant, he states: "*What became apparent from my meeting with Mr Hussain was his limited comprehension and confusion when faced with a lot of information. In the circumstances I have to consider how realistic it was to expect him to go from north Wales to south London on his day of release*". He recommended re-release if suitable accommodation was available that could cater for drug misuse and provide intensive supervision.

A report by an Offender Supervisor ("OS"), based at the Claimant's new prison of HMP Bedford, recommended that the Claimant remain in custody until he demonstrated the ability to adhere to the prison regime and requirements that are placed upon him. The OS recorded that the Claimant has received an adjudication for disobeying an order to attend work on 4 November 2019, when he complained he was feeling unwell. He has not engaged with drugs counselling services since his return to prison, stating he does not need them anymore as he is no longer using substances.

The Public Protection Casework Section ("PPCS") referred the Claimant's case to the Parole Board to consider whether to re-release him on licence. A dossier was prepared containing material including the recall reports of the OM; a psychological assessment report prepared by a psychologist employed by Her Majesty's Prison Service which identified that the Claimant is of an IQ at the lower end of the spectrum and suffers PTSD but did not diagnose any learning disability; a report by the prison drugs counselling service; and an assessment by a psychiatrist instructed by the Claimant's legal representative reporting on the diagnosis of depressive illness and PTSD. The psychiatrist also noted that the Claimant had weakness to his ability to retain or comprehend complex information.

Considering the paper dossier, a Duty Parole Board member reviewed whether or not the Claimant's case should progress to a hearing or be concluded on the papers. The initial and provisional decision, dated 16 December 2019, declined to direct release or

to direct that the matter proceed to a hearing and directed that the matter be re-reviewed in 12 months' time. The Defendant had decided

Mr Hussain has a significant history of non-compliance with sentences and the recall circumstances re-enforce this. His case is complex in terms of his criminal history, mental health, inconsistent thinking and use of violence. Additionally, there was no accommodation in place and no risk management plan has been formulated. Therefore, it is concluded that the risk posed to the public by re-release is unacceptable and this case would benefit from a further review in 12 months' time. I refuse to direct that the matter be listed for hearing accordingly.

In response to that provisional decision, on 2 January 2020 the Claimant's solicitor submitted representations that sought a review of the Member Case Assessment ("MCA") decision to conclude the parole review, and requested that an oral hearing be listed to determine whether to release the Claimant. A direction was sought for the provision of a fully formulated risk management plan with accommodation proposal; and for the attendance of the psychologist to explore the intellectual functioning of the Claimant. Furthermore, it was specifically requested that the hearing be by means of live attendance. This was said to be appropriate due to the need for the Claimant to explain the events on his release; the circumstances of his disputed violent conviction; and to enable his effective participation as he suffers from depression and from suspected learning difficulties. It was also mentioned that he believes that as he is a Muslim, he feels he is discriminated against by the courts and police and that he is never listened to.

Having reviewed and reconsidered the matter on 10 February 2020, a second Parole Board duty member directed that the Claimant's case proceed to an oral hearing. It was directed that this shall be heard within a window for hearing identified as June 2020 to November 2020. Direction was made that a further psychological risk assessment be provided that shall test learning disabilities in intellectual functioning including retention of information, with a deadline of 6 May 2020. Direction was made that the OM provide an addendum report that sets out a full risk management plan including accommodation proposal, should release be directed at the hearing, by 6 May 2020. The OS was also to provide an addendum report by 6 May 2020 addressing conduct in prison. Witnesses to be examined at the hearing were directed to be the Claimant, the psychologist who conducts the fresh assessment, and the OM and OS. The member directed that "*Given Mr Hussain's possible cognitive issues, a face to face hearing is required*".

On 28 February 2020 a hearing was fixed to convene with all relevant persons present, at the Claimant's current prison, HMP Bedford, on 10 June 2020.

On 23 March 2020 the UK commenced measures commonly referred to as the 'lockdown' to prevent the spread of coronavirus COVID-19. On 12 April 2020 the Parole Board wrote to the Claimant and all parties and notified that the hearing on 10 June 2020 had been cancelled, and that consideration was being actively given to which cases might be able to be listed for a remote hearing and which would be rescheduled for oral hearing on a date to be notified.

On 5 May 2020 the OM provided an addendum report which provided a proposed robust licence with condition of residence to be as directed by the OM. The OM had obtained confirmation that a place at a suitable AP would be available to the Claimant on 20 July 2020.

The OS addendum report dated 6 May 2020 recorded that the Claimant has not received any adjudications nor negative behaviour entries since 4 November 2019. The OS records that there has been “*no issue regarding his conduct, behaviour or compliance with the regime*”. The addendum report of the OS did not state her current view on whether or not the Claimant may be safely released.

A psychologist visited the Claimant twice between 25 February and 20 March 2020. By 6 May 2020 however no report had been disclosed. The psychology department wrote to the Parole Board on 10 May 2020 indicating that it was unable to provide the assessment of the Claimant’s cognitive functioning. The psychologist who had visited him had retired following illness; and there was no ability for any new assessor to undertake any assessments in person. Any assessment could not be expected to be conducted before 2021 due to staffing issues and restrictions on entry to prisons since the COVID-19 outbreak. Application was made to have the direction discharged because “*On 01/05 Psychology services considered whether or not it was possible for them to complete the assessment ... It was concluded that a remote (e.g. telephone) assessment would be inappropriate due to questions over Mr Hussain’s cognitive functioning, meaning it would be important to interview him face-to-face. It would be destabilising for Mr Hussain to start the process again, particularly due to the suggested issues relating to his cognitive functioning alongside the restrictions in place at the establishment*”. The application was served on the Claimant’s representatives. No response was entered.

The Defendant explained in a letter dated 14 May 2020 that it had (a) commenced paper review of all hearings listed in June and July 2020, with a view to concluding them on the papers or finding an alternative way to conclude them via remote hearings; (b) progressed some hearings using telephone and video links where it has been possible to do so; (c) provided its members with published Guidance enabling them to review cases, conclude cases on the papers where possible, and find alternatives to face to face oral hearings.

On 25 June 2020 the Claimant’s case was reviewed by a duty member of the Parole Board. The duty member decided that-

- i. I have considered the previous directions in this case and the representations made on behalf of the Claimant by his representatives. I have considered all relevant Guidance issued by the Parole Board to assist in considering whether an oral hearing ought to be face to face or not.*
- ii. The direction for the provision of a further psychology report be revoked. It is not possible to obtain a further report within a reasonable timescale, and I do not consider that the issues proposed to be addressed would necessarily assist the panel to determine the case;*

- iii. *In the light of the COVID-19 restrictions it would not be possible to relist an oral hearing in person until February 2021 at the earliest. Therefore the hearing shall be by videolink with all witnesses, and the Claimant, appearing by videolink. I understand a hearing of this type may be held on 10 November 2020 and I so fix this matter for hearing on that date. The panel shall include a psychologist member and a judicial member shall Chair the panel;*
- iv. *Whilst it might have been preferable to have heard from the Claimant in this case in person I balance this against the unfairness of delaying his case further. I have therefore listed the case as a priority matter on 10 November 2020.*
- v. *The witnesses to be in attendance remotely at the hearing shall be the OM, OS and the author of the previous psychological assessment or a representative of the psychology department familiar with Mr Hussain's file and able to answer questions concerning psychology records.*

This decision is challenged. The Claimant's solicitors wrote to the Parole Board identifying two grounds of challenge requesting that the decision be withdrawn and that the case be listed for an oral hearing by in-person attendance. The Defendant has declined to withdraw the decision and the matter remains listed for a videolink hearing on 10 November 2020.

GROUND

Counsel is instructed to address on behalf of your client the two grounds of claim upon which the Court is to be asked to adjudicate

1. The contention that the convening of the parole hearing in this case by means of a videolink hearing is unfair as a matter of common law and/or a breach of the Defendant's own applicable policy; and/or
2. The contention that the lack of face to face hearing in this Claimant's case is a violation of Article 6 of the European Convention on Human Rights, as given effect in domestic law.

Counsel should please identify the Order that it is requested that the Court shall make if counsel's submissions are accepted.

Unusually, there is no requirement for counsel to deal with costs issues in this case. For reasons we need not go into it has been agreed that neither party shall seek an order for costs whatever the outcome.

PR. 27.8.20

[end of moot problem]

Rules

1. Applications must be made in teams of two.
2. A person is eligible only if currently studying for (whether on a full-time or part-time basis): a law undergraduate degree or certain postgraduate studies in law (LLM, GDL, BPTC or LPC). Those who have already begun their period of recognised training as either a barrister or solicitor; been called to the Bar; or admitted as solicitors are ineligible.
3. Written Submissions must be made in the form of a Judicial Review Claim Form N461. A blank N461 can be found here:
<https://www.gov.uk/government/publications/form-n461-judicial-review-claim-form-administrative-court>
4. Applicants' statements of facts and grounds must not exceed 1000 words in total. N.B. As there may be insufficient space for your statement of grounds, Claimants are permitted to attach grounds with their Claim Form.
5. All forms and any attached grounds must be submitted to the HRLA Administrator by email (administrator@hrla.org.uk) by 23.00 on Monday 12 October. N.B. If you are using Adobe Reader you will not be able to save an electronic copy of your Form N461. If you do not have access to a programme allowing you to save information into PDF forms, Foxit Reader can be downloaded at <https://www.foxitsoftware.com/pdf-reader/> and used for this purpose.
6. Oral submissions for the permission stage (on the evening of Thursday 12 November) are limited to 7.5 minutes per advocate (15 minutes in total). Further time may be provided at the discretion of the Court for answers to judicial questions.
7. Oral submissions for the substantive stage (on the evening of Wednesday 2 November) are limited to 10 minutes per team member (20 minutes in total).
8. Judicial interruptions may occur during as opposed to at the end of submissions. This is entirely at the discretion of the Court.
9. Each team is limited to referring to 6 authorities as well as to the White Book, Supplements, and legislation.
10. If Counsel is unable to attend the oral hearing, Counsel's team will be disqualified from the competition. The team with the next highest score will take their place.
11. All written submissions and preparation for the oral hearings must be the work of the team only.
12. The teams for the final will be randomly assigned to either pursue the application or defend it.

13. The decision of the Judges and the Committee shall be final.

Timetable

12 October 2020: Deadline is 23.00 for written submissions (to be emailed to administrator@hrla.org.uk), via a Judicial Review Claim Form (N461), for permission to apply for judicial review. N.B Claimants are permitted to attach grounds with their Claim Form.

2 November 2020: Eight successful teams will be granted leave to apply for permission orally, to be notified by email. Teams must confirm via email by **Friday 6 November** that they remain able to attend the oral hearing on 12 November 2020.

12 November 2020: Oral hearings for permission for judicial review will take place in the evening at a central-London set of Chambers, judged by human rights practitioners. The two teams progressing to the final will be informed on the night, and will also be informed of whether they will be acting as the Claimant or Defendant in the final.

19 November 2020: Claimant to submit their grounds and skeleton argument.

26 November 2020: Defendant to submit their grounds of defence and skeleton argument.

29 November 2020: Parties to submit their agreed bundle by email by 23.00 to administrator@hrla.org.uk. Parties citing case law should include the best report of the case in full. Parties citing legislation should only include the relevant section(s) of the legislation, not the entire Act/SI.

2 December 2020: The Final – substantive application for judicial review will be heard at the Royal Courts of Justice before an eminent panel of three judges.

The winning team will be announced that evening. Prizes to be announced.

Enquiries

Any questions about the competition should be directed to hrla.younglawyers@gmail.com. Each subject line should be prefaced with '2020 JR Competition'. Please note that this email is different to the email to which forms, grounds and bundles must be submitted.

Disclaimer

All locations set out in the timetable are subject to Covid-19 restrictions and dates may also be liable to change. In the event that physical meetings cannot take place in the planned venues, the oral rounds will be heard online, via Zoom. If this is necessary, further details will be sent to participants.