Explanatory note in the Worboys case (*R (DSD & NBV; the Mayor of London; and News Groups Newspapers Ltd) v The Parole Board of England and Wales; the Secretary of State for Justice; and John Radford (formerly John Worboys) (Interested Party)*

The Divisional Court handed down judgment in this case today. The Claimants were represented by Phillippa Kaufmann QC and Nick Armstrong for DSD and NBV; Dan Squires QC and Sarah Hannett for the Mayor of London; and Gavin Millar QC and Aidan Wills for News Group Newspapers Ltd (all of Matrix Chambers).

What did the Court decide?

The Court is quashing the decision to release Mr Radford, and remitting his case back to the Parole Board for fresh determination. The Court decided that *on the information before the Board at the time of its decision* on Boxing Day 2017, there was "considerable force" in the criticisms of the decision which DSD and NBV advanced (see §123 – 127 of the judgment), and in particular about the failure to probe Mr Radford further about the account he had given of his offending (§132). However on the high standard required by the law in these cases, the decision to direct Mr Radford's release was not irrational.

The Court found, however, that it *had* been irrational of the Board not to have undertaken *further* inquiry of various matters, including (but not limited to) evidence of Mr Radford's wider offending (§159). It said that material would have provided a sound platform for testing and probing Mr Radford's account (§161) and was so obviously material that it would have had to have been considered (§163).

The Court also held that Rule 25(1) of the Parole Board Rules 2016, which prohibit *any* information about parole proceedings being made public, goes too far and is therefore unlawful (§199).

What will happen now?

Subject to any appeal and further order, Mr Radford will remain detained, and the Parole Board will reconsider whether he is safe to be released. The new Board will have to consider the Court's judgment; make or instigate further inquiries about a number of matters including the evidence of Mr Radford's wider offending; consider how that material can fairly be deployed at a future hearing; and then reassess his risk.

The Court has also said that the new Board should include someone with judicial experience (§164 and 202). There was no judicial chair on the last occasion and although there was a lawyer on the panel it is not clear whether that person had judicial experience.

Again subject to any appeal, Rule 25(1) of the Parole Board Rules will have to be amended, permitting at least *some* information about *some* parole proceedings to be made public. The precise scope of that new rule will be for the Secretary of State and ultimately Parliament.

What are the wider implications of the judgment?

The Court has been careful to emphasise that this was an exceptional case. It is not, therefore, opening any floodgates to challenges by victims of Parole Board decisions, nor to the routine admission of evidence of offences of which prisoners have not been convicted.

The exceptional features of this case include:

1. The fact that the CPS decided to charge Mr Radford on a sample offence basis (it should be noted that there was a late suggestion, in a CPS press statement dated 5 January 2018, that offences were not charged because they did not reach the evidential threshold. However that was not what the contemporaneous evidence said, nor what DSD in particular had been told. The Court accepted that at §57, and expressed doubt about the 5 January 2018 press statement at §58. How that press statement came to be written is of some concern to DSD).

2. The fact that there is and was, nevertheless, very powerful evidence and indicators in support of Mr Radford having offended much more widely. This included the underlying evidence itself (which the Court heard in some detail) but also:

    a. The High Court having found as a fact, in litigation against the police which found they had failed properly to investigate the offences, that much wider offending had occurred.
    b. The fact that Mr Radford himself had settled eleven civil actions against him for a total of £241,000.

    The Court recognised that Mr Radford had not been a party to the proceedings against the police, and that he had settled the actions against him without an admission of liability. But it also said, with regard to the £241,000 settlement, and in what may be thought to be a good example of judicial understatement, that "bearing in mind the size of the payment, such answers should have generated a modicum of scepticism in the minds of a forensically astute panel" (§61).

3. The fact that the Parole Board in this case placed so much emphasis on Mr Radford having now accepted "full responsibility for [his] offending", and his "openness and honesty", when there was significant evidence available which pointed the other way.

4. The fact that this was a case where impression management, and manipulation, were specific issues, and risk factors, and yet the possibility that "Mr Radford has provided what may be described as a carefully calibrated account, steering adroitly between admitting too much and too little, rather than one that is entirely open and forthcoming" (§127) had not been probed before the Board.

Another exceptional feature of this case was the public interest in it, which amongst other things, meant that DSD and NBV could successfully crowd fund to cover their costs (including their potential costs liability to Mr Radford should they have lost). DSD and NBV would like to repeat their particular gratitude to all those who contributed to the crowd fund.

The result is that should there be further claims of this kind, or attempts to deploy before the Parole Board extensive sub-conviction information, then they will likely be met by an argument that this case should be distinguished. The material in this case was readily available, the Board had been told of its existence, and it was particularly powerful. Those circumstances are quite unique.

It is also unlikely that the ruling on Rule 25 of the Parole Board Rules will lead to a great deal of further information about the parole process. In some cases, however, there will be more information, at least in gist form, and the Parole Board itself has said it would like the facility to

say more about its decisions. Such transparency is of course the fundamental guarantor of accountability, and by extension, of good quality decision making.

That is a further feature of this case and, it may be hoped, a key wider implication of the judgment. Decisions about the release of long term prisoners are difficult. Forensic psychology is not an exact science. Understanding of offending behaviour and what causes and reduces it is developing, and sometimes that understanding can be counter intuitive. However victims, prisoners, and the wider public are all entitled to good quality decision making. In that context we would echo the Court's suggestion that it is surprising that the Parole Board did not, in a case like this, have a judicial chair. We would add that it is surprising, in fact, that it did not have a High Court judge in the chair. It is equally surprising that the Secretary of State was not represented by counsel, who might have ensured that all relevant lines of inquiry were flagged to the Board. Both of us – the barristers for DSD and NBV – have long experience of appearing before the Parole Board. Not so many years ago a case like this would have had both a senior judge in the chair, and counsel for the Secretary of State. The fact that all this happened in a case of this size suggests that there are real issues about the proper resourcing of the Board, which remains a fundamental bulwark of the rule of law.

There is also a further lesson, which is about police investigation, and charging. The CPS may wish to consider, once again, its decision not to prosecute in the case of DSD, and in other cases.

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