



OUTER HOUSE, COURT OF SESSION

[2025] CSOH 63

P418/24

OPINION OF LADY DRUMMOND

In the Petition of

WILLIAM FREDERICK IAN BEGGS

Petitioner

for

Judicial Review of a decision of the Parole Board for Scotland dated 27 February 2024

Petitioner: Crabb; Drummond Miller LLP

Respondent: Lindsay KC; Brodies LLP

15 July 2025

Summary of the issues and the court's decision

[1] This case raises the issue of the legality of a decision by the Parole Board for Scotland refusing to release Mr Beggs from prison on licence. Mr Beggs is serving a life sentence for the murder of Mr Barry Wallace, imposed on 12 October 2001. The punishment part of his sentence was fixed at 20 years and expired on 28 December 2019, over 5 years ago.

[2] Mr Beggs challenges the decision on grounds that the Board:

(a) took into account an irrelevant consideration, namely the allegation that

Mr Beggs had been involved in the murder of Mr Barry Oldham in 1987, since

Mr Beggs' conviction for that murder had been quashed on appeal; and

- (b) failed to take into account a relevant consideration, namely an opinion from senior counsel that the evidence of a police officer who gave evidence in Mr Beggs' trial for the murder of Mr Wallace has been discredited in other proceedings.

[3] Mr Beggs seeks:

- (i) reduction of the Board's decision;
- (ii) an order directing that a differently constituted Board reconsiders his application for early release within a reasonable time;
- (iii) the expenses of the petition; and
- (iv) such other orders as to the court seems just and equitable in the circumstances.

[4] The issues are:

- (i) did the Parole Board take into account an irrelevant consideration?
- (ii) did the Parole Board fail to take account of a relevant consideration?
- (iii) if so, should the court grant the orders sought?

[5] On issue (i), I find that the Parole Board reached its own assessment on risk leaving the Oldham allegation and all other allegation information out of account (paragraphs 83 and 84). Thereafter the Board stated that although not necessary for its decision it accepted the evidence of Ms Webster, forensic psychologist (paragraph 90). They did so noting that her evidence was that the conviction information alone was sufficient to justify her conclusions on risk. I answer the first question "No".

[6] I give the same answer to issue (ii). The opinion of senior counsel was irrelevant to the Board's decision. Mr Beggs' conviction for the murder of Mr Wallace has not been successfully appealed. The Board had to proceed on the basis that Mr Beggs' conviction for the murder of Mr Wallace was a valid conviction.

[7] I therefore repel Mr Beggs' second and third pleas-in-law, sustain the Board's third and fourth pleas-in-law and refuse the petition. I award the expenses in favour of the Board against Mr Beggs as an assisted person, modified to nil.

Background

[8] On 12 October 2021, Mr Beggs was convicted of the murder of Mr Barry Wallace. He was sentenced to life imprisonment with a punishment part of 20 years backdated to 28 December 1999. The punishment part expired on 28 December 2019. Mr Beggs has previous convictions having been sentenced to 6 years imprisonment on 20 November 1991 for assault to severe injury, permanent disfigurement and danger of life.

[9] In 1987, he was prosecuted in England for the murder of Mr Barry Oldham and for five offences of wounding four other people. At trial, in relation to the murder charge, he maintained he acted in self-defence. He was convicted of murder and two counts of wounding. On appeal, the court held that the trial judge should have separated the murder charge from the wounding charges. There were striking dissimilarities in the nature of the violence used in the wounding and murder charge, with the result that the evidence on wounding was wrongly admitted. The court quashed Mr Beggs' conviction for murder but left the two convictions on wounding untouched. Mr Beggs was sentenced to 4 months custody for each.

[10] Although section 43 of the Criminal Justice Act 1988 changed the law in England relating to retrials, it did not apply retrospectively to trials that had already been concluded. It was not therefore possible for Mr Beggs to be re-tried for the murder of Mr Oldham.

The Parole Board for Scotland

[11] The Parole Board for Scotland is a statutory body responsible for discharging functions conferred on it by virtue of section 2(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Under section 2(4) the Board is responsible for directing the release on licence of a life prisoner. The Board will only direct release where it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined (section 2(5)(b)).

[12] On 8 January 2020 a tribunal of the Parole Board refused to direct Mr Beggs' release on licence. The Board next reviewed Mr Beggs' application for parole on 20 November 2023 when it heard evidence from Ms Webster, forensic psychologist, and Mr Clapton, prison based social worker, before deferring the case to 22 January 2024. The Board heard further evidence on 22 January 2024 including from Mr Beggs, Ms Webster and two community based social workers. On 27 February 2024, after hearing submissions from Mr Smith, the solicitor representing Mr Beggs, the Board again refused to direct Mr Beggs' release on licence. That is the decision under challenge in these proceedings.

[13] Within the dossier before the Board was an opinion from senior counsel, dated 15 January 2024 as well as the trial judge's report to the Board following the trial for the murder of Mr Wallace. The dossier also contained the decision of the English Court of Appeal quashing Mr Beggs' conviction for the murder of Mr Oldham.

Submissions

Petitioner

[14] The petitioner, Mr Beggs, argued that his second and third pleas-in-law should be sustained. He submitted that in relation to cases involving post-tariff indeterminate

sentence prisoners, the Board should scrutinise ever more anxiously whether the level of risk is unacceptable, the longer the time the prisoner has spent in prison following the expiry of his tariff (*Osborn v Parole Board* 2014 AC 1115 at paragraph 83). Anxious scrutiny may be more accurately described as meticulousness (*O'Leary v Parole Board for Scotland* 2022 SLT 623 at paragraph 16).

[15] The Board's sole duty is to assess risk. The Board accepted the entire terms of the risk assessments before it. However, it failed in its assessment of risk and the manageability of risk in the community by relying on the allegation relating to the death of Mr Oldham. The allegation was a material factor in those risk assessments notwithstanding that the conviction had been quashed. The Board accepted Ms Webster's evidence, describing her risk assessment dated December 2021 as involving "painstaking attention to detail" and concluding that "it could rely on her report and upon her assessment of risk" (at paragraph 90). Her risk assessment refers to the Oldham allegation in significant detail (at paragraphs 5.1 to 5.7). Furthermore, her conclusions on risk repeatedly refer to the Oldham allegation (at paragraphs 7.22, 7.24, 7.25, 7.34, 7.37 and 8.3). Ms Webster's evidence, as accepted by the Board in its entirety, was that her risk assessment remained valid (at paragraphs 35 and 90).

[16] The Board also relied on Mr Clapton's assessment of risk (at paragraph 79). That risk assessment refers to the Oldham allegation and is a material aspect of the consideration of risk (pdf p123-125). Mr Clapton has also considered Ms Webster's risk assessment as part of his assessment (p122).

[17] Should the Board have wished to rely on risk assessments which included the Oldham allegation as a material consideration, it should have explored the allegation in order to make findings on the balance of probabilities (*R (on the application of Pearce) v Parole*

Board for England and Wales 2023 AC 807, at paragraph 74). It failed to do so and acted unlawfully and unreasonably.

[18] Additionally, the Board failed to take into account a relevant factor, namely the opinion of senior counsel. When assessing risk, it must act fairly. It is apparent that it placed significant weight on the index offence, the murder of Mr Wallace (paragraph 81).

The Board had the trial judge's report for the index offence in the dossier. The factual matrix in the judge's report came from a police officer's evidence through which the statement of Kenneth Petrie (deceased) had been introduced. Senior counsel raised serious concerns regarding the reliability of that police officer. The Board should have addressed those concerns in the course of considering the index offence. It should be remembered that anxious scrutiny applies not just to the decision, but also to the standard reasons (*Crawford v Parole Board for Scotland*, 2021 SLT 822, at [12]). Accordingly, the Board acted unlawfully by failing to address a relevant factor.

Respondent

[19] The respondent, the Parole Board, invited the court to sustain its third and fourth pleas-in-law and refuse to make the orders sought. The Board's tribunal correctly applied the statutory test set out in section 2(5)(b) to the facts and circumstances of the application.

[20] The tribunal did not take into account, directly or indirectly, any irrelevant considerations relating to the death of Mr Oldham. Mr Beggs admits that he killed Mr Oldham and abandoned his body on the North Yorkshire Moors. At his trial, he alleged that he had been sexually assaulted by Mr Oldham and had killed him in self-defence. When assessing the risk posed by Mr Beggs, the Board's tribunal decided not to place any weight on the information relating to the allegation of the murder of Mr Oldham. The

tribunal considered that the level of risk disclosed by the matters for which Mr Beggs had been convicted was of such a degree and nature that it was unnecessary to determine whether this allegation information regarding Mr Oldham could or should also be taken into account (paragraph 83).

[21] Further, the Board did not take into account the risk assessment when deciding that the high level of risk posed by Mr Beggs could not be safely managed in the community (paragraph 89). Rather, the Board had regard to the risk assessment, as a cross-check, after it had already decided to refuse the petitioner's application for release on licence (paragraph 90). Accordingly, if there is any error of approach in the risk assessment, any such error did not vitiate the decision as it was taken, in the first instance, without any reference to the risk assessment.

[22] Mr Clapton and Ms Webster's risk assessments were carried out on the basis that Mr Beggs' conviction for the murder of Mr Oldham had been quashed. The conviction and subsequent successful appeal are part of the relevant background circumstances. Mr Beggs' account of how he killed Mr Oldham was a relevant and material consideration that required to be taken into account when assessing the level of risk posed by the petitioner (paragraphs 5.3 to 5.6 of Ms Webster's assessment).

[23] In any event, in her evidence at the hearing on 20 November 2023, Ms Webster stated that the evidence relating to the death of Mr Oldham and the evidence relating to other allegations did not affect the overall serious harm risk rating or scoring; and the conviction information on its own was sufficient to justify her conclusions in relation to the assessment of the risk posed by Mr Beggs (paragraph 41 of the Minute of 20 November 2023). Accordingly, any error on the part of Ms Webster in taking into account Mr Beggs'

description of how he killed Mr Oldham was immaterial, as it did not affect the overall serious harm risk rating or scoring.

[24] Since the Board did not attach any weight to the evidence relating to the death of Mr Oldham and, in the first instance, did not take the assessment into account when refusing Mr Beggs' application, any error of law relating to the evidence about Mr Oldham's death was immaterial as his application would have been refused in any event. The immateriality of any error relating to this evidence is made clear by Ms Webster's evidence that it did not affect the overall serious harm risk rating or scoring; and that the conviction information on its own was sufficient to justify her risk assessment conclusions.

[25] Although the opinion of senior counsel was before the Board, Mr Beggs' solicitor made no reference to it in his submissions and it was not drawn to the attention of the Board. Accordingly, there was no need for the Board to refer to it in its decision.

[26] In any event, the opinion was wholly irrelevant to the assessment of whether the statutory test in section 2(5)(b), was satisfied. The conviction for the murder of Mr Wallace has not been successfully appealed. The Board had to proceed on the basis that Mr Beggs was properly convicted and that he murdered Mr Wallace in the manner set out in the indictment. The Board cannot look behind the conviction and nor can it second guess the outcome of any further appeal that has not yet been made. The opinion was an irrelevant consideration and the Board did not err in law when it did not have regard to it.

[27] If the opinion had any relevance, which is doubtful having regard to its paucity of reasoning and lack of analysis, it is limited to the issue of whether there are any statable grounds for a further appeal against conviction. The opinion had no relevance to the petitioner's application for release on licence. The presence of the trial judge's note in the dossier did not render the opinion relevant for the purposes of the petitioner's application

for release on licence. It remained wholly irrelevant to the issue of whether the statutory test for release on licence, in section 2(5)(b) of the 1993 Act, was satisfied.

Decision

[28] The approach that should be taken by the court to decisions of the Parole Board under section 2(5)(b) was explored by the Inner House in *Ryan v Parole Board for Scotland* 2022 SLT 1319. In the opinion of the court, delivered by the Lord Justice Clerk Lady Dorrian, under reference to *Brown v Parole Board for Scotland* 2021 SLT 687 it was held that the court must adopt anxious scrutiny of the Board's decision. It can interfere if the reasoning falls below an acceptable standard in public law. The longer the prisoner serves beyond the tariff the clearer should be the Parole Board's perception of public risk to justify the continued deprivation of liberty. While a cautious approach is appropriate when public protection is in issue, as time passes it is not only legitimate but necessary for there to be appropriate appreciation of the impact of confinement beyond the tariff. The decision-maker should ensure that it is apparent that this approach has been adopted and its reasoning should provide clarity as to why confinement remains necessary in the public interest (paragraph 14). When assessing risk the Board must take a 360° view taking account of all relevant factors (paragraph 15). Confinement beyond tariff is something that cannot be condoned unless the decision withstands the closest analysis. "The need to recognise the expertise of the tribunal does not, indeed cannot, prevent the court from interfering with the decision if it is satisfied that the decision cannot withstand the appropriate level of scrutiny." (paragraph 16). The Board should scrutinise ever more anxiously whether the level of risk is unacceptable, the longer the time the prisoner has spent in prison following the expiry of his tariff (*Osborn v Parole Board* 2014 AC 1115 at paragraph 83). I follow that approach applying

anxious scrutiny to the Board's decision of 27 February 2024, recognising that the punishment part of Mr Beggs' sentence expired over 5 years ago.

The Oldham allegation

[29] The question of how the Board should deal with allegation information was considered by the Supreme Court in *R (on the application of Pearce) v Parole Board for England and Wales*. The court, summarising its conclusions at paragraph 87, stated there is no rule of substantive fairness, akin to a legitimate expectation, which requires the Board to have regard only to found facts in its assessment of risk. If weight is to be given to an allegation of criminal or other misbehaviour in the risk assessment, the Board should first attempt to investigate the facts to enable it to make findings on the truthfulness of the allegation. However, the court recognised that in some circumstances, the Board may not be able to make findings of fact as to the truth of an allegation either because of an inability to obtain sufficiently reliable evidence or because it would be unfair to expect the prisoner to give an answer to the allegation when he is facing criminal or prison disciplinary proceedings in relation to that allegation.

[30] In such circumstances the Board, having regard to public safety, may take into account the allegation and give it such weight as it considers appropriate in a holistic assessment of all the information before it, where it is concerned that there is a serious possibility that those allegations may be true. But the Board must proceed with considerable caution in this exercise because of the consequences of its decision on the prisoner. Procedural fairness requires the Board to give the prisoner the opportunity to make submissions about how the Board ought to proceed. There may be circumstances where, because of the inadequacy of the information available to the Board, it concludes that it

should not take account of an allegation at all. There may also be circumstances where the information is less than would be desired, but the allegation causes sufficient concern as to risk that the Board treats it as relevant. Its assessment of the weight to be attached to an allegation is subject to the constraints of public law rationality. Thus, a failure to make findings of fact where it was reasonably practicable to do so or an irrational reliance on insubstantial allegations could be a ground of a successful public law challenge.

[31] Thus the court did not rule out the possibility that in some circumstances it might be appropriate for the Board to take into account allegation information without determining the facts, albeit that it should proceed with caution in the manner set out in *Pearce*.

[32] It was not disputed that the social workers and psychologist when assessing risk were entitled to take into account the allegation information in accordance with their professional responsibilities to carry out a full risk assessment. Nor was it in dispute that both the social workers and the psychologist Ms Webster referred in their assessment to Mr Beggs' conviction for the murder of Mr Oldham, each time recognising it had been quashed on appeal. What the petitioner complains about is that the Board when it came to assess the statutory test under section 2(5)(b) whilst purporting to leave out the Oldham allegation in fact took it into account when it accepted the risk assessments which made reference to it.

[33] At paragraph 68 of the Board's decision, they record that they invited submissions from Mr Smith, Mr Beggs' solicitor, in relation to what weight, if any, the Board could place on the Oldham allegation. Mr Smith submitted that findings in fact should not be made without further inquiry. He explained that Mr Beggs accepted that an individual died but maintained that he had acted in self-defence. Mr Smith submitted that everything to do with the death of Mr Oldham should be disregarded and no weight should be placed on it.

The three convictions, including the conviction for the murder of Mr Wallace, were sufficient to allow the Board to come to a view as to the risk posed. So far as assessment of risk was concerned, Mr Smith accepted that the Board had been presented with evidence on the risk posed by Mr Beggs and said he was not able to contradict that evidence (paragraph 72). Thus it was clear that Mr Smith was not suggesting to the Board that the risk assessors' opinions could not be taken into account by the Board.

[34] How did the Board deal with the Oldham allegation in light of those submissions and *Pearce*? The Board provides reasons for its decision at paragraphs 80-97.

At paragraph 81-82, it notes that the index offence discloses that Mr Beggs has been capable of inflicting serious harm to lone single men. It concludes that in the absence of any work to address the index offending behaviour and in the absence of testing in more open conditions, it cannot be satisfied that it is no longer necessary for the protection of the public that Mr Beggs should be confined. They note that Mr Beggs has been convicted of two counts of unlawful wounding in 1987 and of assault to severe injury, danger of life and permanent disfigurement in 1991.

[35] At paragraphs 83-84, the Board directly addresses what weight to place on the Oldham allegation and states:

"83. In assessing the risk posed by Mr Beggs the panel has decided not to place any weight on a third strand of information concerning the allegation of the murder of Barry Oldham in May 1987. The panel considered that the level of risk disclosed by the matters for which Mr Beggs has been convicted is of such a degree and nature that it is unnecessary, at this stage, to determine whether this allegation information can or should also be taken into account (R (*Pearce*) v Parole Board and another [2023] A.C. 807).

84. The panel has also disregarded all the other allegation information contained in the dossier." (emphasis added)

[36] The Board clearly states that it places no weight on the allegation and that it is therefore not necessary to decide at this stage whether it can be taken into account. That is

consistent with what was envisaged in *Pearce* where the Supreme Court note that there can be circumstances where the Board concludes that an allegation should not be taken into account at all. The Board concluded in this paragraph that the conviction information alone is sufficient to determine the level of risk posed by Mr Beggs.

[37] Thereafter at paragraphs 85-89 the Board explains its view that Mr Beggs poses a risk of serious harm and cannot be managed in the community. In doing so it makes no reference to the Oldham allegation and refers to Mr Beggs' convictions alone. The Board states at paragraph 87 that it accepts the evidence of Mr Clapham (presumably referring to Mr Clapton) and the community based social workers that the risk posed by Mr Beggs cannot be managed in the community. A record of Mr Clapton's evidence on risk of harm and management in the community to the Board is found in the 20 November 2023 Board minute (paragraphs 72-91). His evidence on risk is given without reference to the Oldham allegation. When referring to 1987 offending, Mr Clapton refers only to the two 1987 convictions for unlawful wounding (paragraph 80) and not to the murder allegation.

[38] It is plain from these paragraphs and up to this point that the Board is assessing risk for itself without placing any weight upon or making any reference to the Oldham allegation in accordance with its expressed intention in paragraph 83.

[39] At paragraph 90, the Board continues:

"Although not strictly necessary for its decision, the panel accepted the evidence of Ms Webster narrated above and in the decision minute for 20 November 2023. She is an impressive witness. Her Psychological Risk Assessment Report (PRA) dated 14 December 2021 involved painstaking attention to detail. Despite the length of time and opportunity permitted to Mr Beggs and his representatives to provide a critique of her report and her evidence, the formulation, and overall conclusions of risk within the PRA were not successfully challenged by any alternative expert evidence. Although it was maintained that her risk assessments were 'out of date' no attempt was made to identify what specific elements of these were no longer applicable or in what respect, if any. The panel accepted her evidence that it could rely on her report and upon her assessment of risk."

[40] Here the Board is explaining that it is not strictly necessary for its decision to refer to Ms Webster's evidence. From that the Board makes plain that it has reached its own assessment independently of that evidence. It does nonetheless record that it accepts Ms Webster's evidence that it can rely on her assessment of risk. As explained above Ms Webster does refer to the Oldham allegation, and other allegation information, in her risk assessment report. However, the Board are careful to record that her evidence both to the Board and as explained in her report is that the allegation information did not affect her overall assessment of risk. Her evidence was that the conviction information on its own was sufficient to justify her conclusions in relation to the assessment of the risk (paragraph 41 and 59 of the Minute of 20 November 2023; paragraphs 7.22 and 7.24 of her report). Thus even if the Board had based its decision on her assessment, it is clear that her assessment was justified by the conviction information alone. That is entirely consistent with the Board's declared intention to give the Oldham allegation no weight at paragraph 83. Close scrutiny of the Board's decision does not therefore reveal that the Board has taken into account an irrelevant consideration and this ground of challenge fails.

Senior counsel's opinion

[41] Little reference was made to this further argument in oral submission. I accept the respondent's submissions as set out above and can deal with it briefly. The opinion from senior counsel is short, confined to a single page and limited reasoning. Senior counsel raises a question about the evidence of a police officer who was a witness in Mr Beggs' trial for the murder of Mr Wallace. Senior counsel states that;

"His {the police officer's} evidence was about a statement he said was given to him by a man who was deceased at the time of the trial. This evidence was very

important as a reading of the Advocate Depute's speech, and as its inclusion in the Trial Judge's Note, makes clear. Put shortly this statement alleged that Mr Beggs had told him (the deceased) that he, Beggs, was in the habit of picking up young drunk men for sexual purposes which was what the Crown argued had in fact happened in this case".

Counsel states that an issue had now arisen as another judge had made scathing comments about that officer in unrelated civil proceedings and that an investigation was underway in relation to that. Senior counsel stated he had his own experience of the officer in another trial where he had given evidence about a statement that had not been written down by him. He then states that he offers "no concluded opinion" on whether the matter could found an appeal against conviction. Nonetheless, he continues that:

"However, the relevance of this to an application for Parole is much clearer. The Parole Board will consider future risk to the public. The evidence of [the police officer] is relevant to that. However, if, as I would argue, that evidence can no longer be relied upon that puts the question of risk in a very different light".

[42] Counsel's opinion is predicated on the view that the evidence cannot be relied upon, despite the fact that is something that has not been determined or been the subject of any appeal. I agree with the respondent's submission that if there is any relevance to the opinion it can only be to the possibility of an appeal founded on the alleged discredited evidence. But the opinion does not recommend that an appeal should be made or what the prospects of that might be. To date, there has been no appeal against conviction on the basis of this evidence. Counsel advised me at the hearing that an appeal is still under consideration. Whether there ever will be an appeal on this ground, and if so, whether it will succeed, is unknown.

[43] No mention was made of the point by Mr Smith in submissions. Unsurprisingly the Board made no mention of it in its reasons. It did not err by failing to take into account a relevant consideration. Contrary to senior counsel's assertion, the matter was not of any

direct relevance to the Board's assessment of whether the statutory test under section 2(5)(b) was satisfied. The conviction for the murder of Mr Wallace remained valid and the Board had to proceed on that basis.

[44] I therefore refuse to make the orders sought and refuse the petition. I repel the petitioner's second and third pleas-in-law and sustain the respondent's third and fourth pleas-in-law. I award expenses against the petitioner, modified to nil as an assisted person.