



28 October 2024

[2024] EWCA Civ 1258

CA-2024-000111

CA-2024-000494

PRESS SUMMARY

SNEDDON AND OAKLEY V SECRETARY OF STATE FOR JUSTICE

On appeal from *R (on the application of Sneddon) v The Secretary of State for Justice* [2023] EWHC 3303 (Admin); [2024] 1 WLR 1894 and *R (on the application of Oakley v The Secretary of State for Justice* [2024] EWHC 292 (Admin)

SUMMARY OF THE DECISION OF THE COURT OF APPEAL (The Lady Chief Justice, President of the King’s Bench Division, Lord Justice Davis)

BACKGROUND TO THE APPEALS

1. These two conjoined appeals concern the power of the Secretary of State for Justice (SoS) to transfer prisoners to open prison conditions under s. 12(2) of the Prison Act 1952. In exercising that power, the SoS can call for “advice” from the Parole Board (the Board). If the SoS does so, “*it is the duty of the Board to advise the [SoS] with respect to any matter referred to it by [her] which is to do with the early release or recall of prisoners*” (see s239(2) of the Criminal Justice Act 2003) [1].
2. The appeals raise important questions of principle as to the correct approach to be adopted by the SoS to such advice from the Board. In the case of both Robert Sneddon and Karl Oakley, the SoS decided not to accept the Board’s advice to transfer the prisoner to open conditions [2]. There have been numerous first instance decisions on the correct approach to be taken by the SoS to Board advice, not all of which have spoken with the same voice [23].

JUDGMENT

3. The Court of Appeal unanimously:
 - (i) Allows the appeal against the judgment of Fordham J in the case of Mr Sneddon; and
 - (ii) Dismisses the appeal against the judgment of HHJ Keyser KC (sitting as a Deputy High Court Judge) in the case of Mr Oakley [65].

REASONS FOR THE JUDGMENT

4. The SoS is the primary, indeed sole, decision maker (see s. 12(2) Prison Act 1952). The SoS is not obliged to consult the Board for advice, and is not bound by the advice, should the SoS choose to ask for it. The Board has relevant expertise, and has been recognised as carrying out a judicial function, comprising specialist members who



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consider often very large volumes of material and hear evidence, all subject to rules of procedural fairness [24] to [28]. However, if the SoS does seek advice from the Board, the Board provides just that: advice [29].

5. The SoS must consider the advice of the Board with care and accord it such weight as is appropriate [35] and [66]. Nonetheless, the SoS is entitled to reject it if the SoS (reasonably) concludes that the advice is not “wholly persuasive”. The SoS is entitled to reject even a reasonable recommendation on the basis of his own (reasonable though different) assessment [29].
6. Thus, in assessing the lawfulness of the SoS’s decision, the exercise is not to identify whether the SoS has relied on a “good” (or “very good”) reason for departing from a Board assessment [44]. Rather, the question is simply whether or not the SoS’s decision was rational, that is to say, reasonable, in all the circumstances. The SoS does not have to identify error or deficiency in the Board’s findings or reasoning in order lawfully to disagree with the Board’s advice [30]. Fordham J’s approach fetters the SoS’s discretion in a manner not contemplated by Parliament [45].
7. None of this is to undermine the importance or value of the work of the Board as an expert adviser to the SoS on the question of prisoner transfer to open conditions, when called upon. The SoS must consider the advice of the Board with care and accord it such weight as is appropriate, given the nature, extent and context of the Board’s findings and recommendations. But the statutory scheme is clear: the SoS is the sole decision maker, and the Board acts as adviser. The Board’s advice is not binding on the SoS, who has their own independent expertise; nor does the SoS have to identify error or deficiency in the Board’s findings or reasoning in order to disagree with the Board’s recommendation. What is required of the SoS on the ultimate question of whether to transfer a prisoner into open conditions is a rational, that is to say reasonable, decision in all the circumstances. [66]

NOTE

This summary is provided to assist in understand the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://www.judiciary.uk/judgments/>