EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 30205/23
Dean PEARCE
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 1 April 2025 as a Committee composed of:

Ana Maria Guerra Martins*, President*,
Tim Eicke,
András Jakab*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 30205/23) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 21 July 2023 by a British national, Mr Dean Pearce, who was born in 1982 and lives in Lincoln ("the applicant"), and was represented by Mr M. Bridger of Luke & Bridger Law, a law firm based in Nottingham;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present application concerns Guidance published by the Parole Board ("the Board") in March 2019, and amended in 2021, pertaining to the correct approach to take with respect to allegations made about a prisoner beyond offences of which he was convicted. The Guidance directed the Parole Board to assess the relevance and weight of the allegation and either: choose to disregard it; make a finding of fact; or make an assessment of the allegation to decide whether and how to take it into account as part of the parole review. The applicant relied on Article 5 §§ 1 and 4 of the Convention.

2. The 2019 Guidance was published following a highly publicised case in which the Board, in accordance with a practice which it had developed over time, had ruled out of consideration the fact that some eighty or so

additional complainants had recorded allegations of rape against a prisoner, beyond the twelve counts on which he had been convicted, and moreover had alleged, apparently in many cases independently, an unusual and strikingly similar *modus operandi*. Two of the complainants judicially reviewed the Board's decision and the Divisional Court held that there was no bar to it considering the additional allegations, in particular as a means of testing the truthfulness of the prisoner's circumstantial account of his offending and its origin.

3. The applicant pleaded guilty to two counts of rape. On 13 October 2010 he was sentenced to imprisonment for public protection with a specified minimum term of three years and twenty three days. The minimum term expired in November 2013. Thereafter, the applicant remained in prison under the sentence of the court, his release on licence dependent on the Parole Board being satisfied that it was no longer necessary for the protection of the public that he should be confined. In May 2019 the Board carried out its fourth review of the applicant's detention. It declined to direct his release but instead recommended his transfer to an open prison. During the May 2019 review the Board was made aware of a number of allegations (including a number of arrests) beyond those comprised in his index offences and previous convictions. The Board's panel questioned the applicant about six of these complaints and concluded that all six allegations were relevant to his risk of sexual offending and of causing serious harm if at liberty in the community.

4. The applicant challenged the Board's Decision and the Guidance by way of judicial review, arguing that, in the absence of findings of fact, an allegation was simply a "non-fact" and, as such, it was not permissible for the Board to pay any attention to it at all. As a consequence, he argued that both the Decision of May 2019 and the Guidance more generally were contrary to the requirements of procedural fairness and/or Article 5 § 4 of the Convention. The High Court dismissed both arguments. On appeal, the Court of Appeal held that the parts of the Guidance which countenanced the carrying out of a risk assessment by reference to allegations which had not been proved were unlawful. However, the Decision itself was proper and justified on the facts.

5. The Board appealed to the Supreme Court, arguing that the Court of Appeal was wrong to hold that parts of the Guidance were unlawful. Before the Supreme Court there was no longer any dispute about the Board's decision in relation to the applicant; only the challenge to the lawfulness of the general Guidance remained. The Supreme Court unanimously allowed the appeal.

6. The Supreme Court nevertheless invited the Board to review the Guidance in light of its judgment, to make clear that the Board should, if it reasonably could, make relevant findings of fact.

7. According to the Supreme Court, there was no rule of substantive fairness which required the Board to have regard only to found facts in its

assessment of risk, but if weight was 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 its truthfulness. If the Board could not make findings of fact as to the truth of an allegation, it could take it into account and give it such weight as it considered appropriate in a holistic assessment of all the information before it, if it was concerned that there was a serious possibility that it might be true. However, the Board had to proceed with considerable caution in this exercise because of the consequences of its decision on the prisoner. 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.

8. The applicant argues that the Parole Board does not satisfy the requirements of Article 5 § 4 of the Convention, insofar as the Guidance permits it, in deciding whether or not to direct the release of a prisoner on licence, to take into account allegations which have not been proved on the balance of probabilities. The applicant also complains that the Guidance is inconsistent with the requirements in Article 5 § 1 that detention must be in accordance with a procedure required by law; must not be arbitrary; and must remain causally linked to the conviction.

THE COURT'S ASSESSMENT

9. The applicant did not invoke Article 5 § 1 before the domestic courts and has not, therefore, exhausted domestic remedies in respect of this complaint. In any case, given that the applicant did not challenge before the Supreme Court the finding of the Court of Appeal that the Board's Decision of May 2019 was proper and justified on the facts, he cannot now argue that his detention is arbitrary, unlawful or not causally linked to the conviction.

10. One of the applicant's written grounds before the High Court and the Court of Appeal was that the amended Guidance "did not meet the requirements of common law fairness and/or Article 5 § 4". It was the Board that appealed to the Supreme Court, but the applicant did contend in his response that the Board complied with its Article 5 § 4 duty by finding the facts on which to determine its risk assessment. Nonetheless, the applicant's Article 5 § 4 arguments were not addressed by the courts at any level of jurisdiction, which would suggest that they were secondary to his arguments under the common law. It is therefore not wholly clear whether the Article 5 § 4 complaint was raised "explicitly or in substance" before the national courts so as to give them a genuine opportunity to address the Convention issue (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III; see also *Peacock v. the United Kingdom* (dec), 52335/12, § 33, 5 January 2016).

11. However, it is not necessary for the Court to determine whether or not the applicant in fact exhausted domestic remedies in respect of his

Article 5 § 4 complaint. That is because he cannot claim to be a "victim" of the alleged violation, within the meaning of Article 34 of the Convention.

12. The Court of Appeal found that the Board's Decision in May 2019 not to direct the applicant's release was proper and justified on the facts, and the applicant did not challenge this decision before the Supreme Court. In the Court's view, this amounts to a tacit acknowledgement that regardless of any potential flaws in the Guidance, the Board was in principle capable of conducting an Article 5 § 4 compliant review of the applicant's detention. The alleged flaws were not structural, so that any future decision of the Board would necessarily be tainted by them. Consequently, regardless of the merits of the applicant's Convention challenge to the Guidance, he has not yet been directly affected by the alleged breach of Article 5 § 4. He has not been detained following a review that did not comply with the requirements of that Article, nor is he being detained without any possibility to bring a Convention-compliant review of that detention (see *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 105, 27 November 2023). As such, his Article 5 § 4 complaint is alleging a violation of the Convention *in abstracto* (ibid, § 106).

13. If the applicant were to consider that any future review by the Board failed to comply with Article 5 § 4 of the Convention, due to the application of the impugned provisions of the Guidance, it would of course be open to him to make a fresh application to the Court once domestic remedies had been exhausted.

14. As things currently stand, however, the Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, the applicant's complaints do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention.

15. It follows that the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 April 2025.

Simeon Petrovski Deputy Registrar	Ana Maria Guerra Martins President