

Parole Hearings—consideration of unproven allegations (Morris v Parole Board)

06/04/2020

Corporate Crime analysis: A Parole Board is not only entitled to consider unproven criminal allegations made against the prisoner, but is expected to do so. The 2019 ‘Guidance on Allegations’ issued by the Secretary of State for Justice (SSJ) is consistent with decided authority and is not unlawful. ‘Mere allegations’ with no evidential basis whatsoever should not be considered. However, where there is sufficient evidential material for a Board to make ‘at least some findings of fact’, an unproven allegation should be taken into account as part of the Board’s overall risk assessment. The strength or weakness of the supporting material will go to the weight that a Board is entitled to place on the allegation in that assessment. Consideration of unproven allegations is subject to relevance and the overriding requirement that a Parole Board must act fairly. Written by Georgia Beatty, barrister, and Joe O’Leary, pupil barrister, at 5 St Andrew’s Hill, Chambers of David Josse QC.

R (on the application of Morris) v Parole Board and another [\[2020\] EWHC 711 \(Admin\)](#)

What are the practical implications of this case?

The upshot of this decision is that allegations made against prisoners, even if unproven, should be considered by Parole Boards as a matter of course, subject to the general requirements of relevance and fairness.

This case considered and developed upon several key authorities concerning the question of what material a Parole Board is entitled to consider. Previous decisions had confirmed that Parole Boards may rely on a broad range of information regardless of whether it would be admissible in a court of law, including hearsay evidence. This judgment confirms that unproven allegations are included within the wide ambit of information that a Parole Board can and should take into account.

While the court was clear that a ‘mere allegation’ which ‘has no evidential basis whatsoever’ should be disregarded, at para [55], it was also clear that unproven allegations should be taken into account where there is a sufficient evidential basis to allow the Board to make ‘at least some findings of fact’. This is plainly a low bar, especially considering that in the present case the Board made findings of fact without referring to any witness statements or case summaries. However, where the factual basis is weak, the allegation will likely carry little weight.

The obiter of McGowan J suggests an onus on those representing prisoners at Parole Board hearings to take a proactive stance in challenging unproven allegations that are denied, for example by ensuring that any directions obliging the SSJ to obtain certain evidence in advance of a hearing are followed and enforced, at para [59], and by producing evidence on behalf of the claimant to disprove such allegations where possible, at para [54].

This judgment also serves as a reminder to practitioners that a Parole Board is not a court, but a specialist decision-making body tasked with evaluating risk. The judgment points out that ‘in considering risk, the Board is not determining a criminal charge’ at para [35] and therefore principles such as the presumption of innocence and the burden of proof do not apply, at para [52].

What was the background?

On 19 December 2017, Mr Morris was sentenced to an indeterminate 'IPP' sentence, with a minimum term of two years, for threatening to kill his ex-partner, her brother, and his eight week-old daughter.

On 1 March 2014, while released on licence, Mr Morris allegedly grabbed another ex-partner by the throat. The claimant admitted presence at the complainant's address and that the situation became 'verbally heated', but denied any physical aggression. The complainant's statement was later retracted and no criminal charges were brought. However, by failing to inform his offender manager of this relationship, Mr Morris had breached his licence conditions and was therefore remanded back into custody.

Mr Morris was later transferred to open conditions, but in 2017 he was transferred back to closed conditions for two further breaches of his temporary licence. One of the alleged breaches was that he failed to disclose an intimate relationship with another individual (AW). AW had contacted a domestic abuse intervention service, complaining that Mr Morris had been harassing her following the end of their relationship. Mr Morris denied harassing AW and denied that their relationship was intimate. No action was taken by the police due to insufficient evidence, but a harassment prevention letter was issued.

Following a parole hearing on 10 September 2018, the Parole Board refused to direct Mr Morris' release. The Board considered the allegations from 2014 and 2017 as part of its overall risk assessment. Notably, attempts were made to obtain further information relating to both allegations, such as case summaries and witness statements, but these attempts were unsuccessful. The information considered by the Board included the fact of Mr Morris' arrest following the 2014 incident, the conclusions of a Panel meeting in 2015 at which the 2014 allegation was 'extensively explored', and the fact that a harassment prevention letter was issued in 2017.

Mr Morris challenged the Parole Board's decision on two grounds:

- the decision was procedurally unfair due to the Board's reliance on unproven criminal allegations
- the Secretary of State for Justice's 2019 'Guidance on Allegations' is flawed

What did the court decide?

Mr Morris' claim for judicial review was rejected on both grounds. It was held that the decision not to direct release was not procedurally unfair, and that the 2019 'Guidance on Allegations' was not unlawful.

In relation to the first ground, the court noted that the only constraint on the nature of the information that the Parole Board may consider is that the Board must act fairly, citing a number of previous authorities on this issue. It was held that consideration of unproven allegations is not intrinsically unfair, however the question of fairness will depend on the facts of each case.

In deciding whether it would be fair for a Parole Board to consider an unproven allegation, the court recommended the following approach:

- 'Mere allegations' should be disregarded. There must be sufficient evidential material for a board to make 'at least some findings of fact' (citing Baker J in *R (Delaney) v Parole Board* [\[2019\] EWHC 779 \(Admin\)](#) at para [10])
- where an evidential basis is present, the strength of that evidence will determine the weight that the Board ought to attach to the allegation

Applying this test to the facts, the court held that there was sufficient evidential material to allow the Board to have made 'at least some findings of fact'. It was conceded that the Board would have been in a better position to assess the truth of the allegations had it obtained

further material in advance, however McGovern J observed that ‘so long as there was a sufficient factual basis, however limited, on which to take the allegations into account, the Board was not acting unfairly’ at para [57]. She further held that, although the evidential basis was not strong, no undue weight was attached to the allegations.

The court also noted that a Parole Board is not a criminal court, and that rules of evidence, the presumption of innocence and the burden of proof do not have any real role to play in a hearing of this nature. A Parole Board’s paramount consideration is the need to protect the public from serious harm, and its primary function is one of risk assessment. If the Board is aware of unproven allegations that are relevant to its global assessment of risk it will be expected to consider them, subject to the overriding requirement of fairness.

On the second ground, the court rejected the submission made on behalf of Mr Morris that the 2019 Guidance ‘encourages the Board to rely on adverse “preconceptions” or “speculations”’ at para [61]. It was observed that the Guidance ‘merely confirms the ability of the Board to consider allegations when it has not been possible to prove that allegation on the balance of probabilities’, and that ‘it is clear from reading the guidance as a whole that the Board should approach allegations with care’ at para [63]. The Guidance was held to be consistent with the previous authorities and is not unlawful.

Case details

- Court: High Court, Queen’s Bench Division (Divisional Court)
- Judge: Irwin LJ and McGowan J
- Date of judgment: 25 March 2020

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