

HDC

R (on the application of Rebecca Noone) v Governor of HMP Drake Hall & SSJ [2010] UKSC 30* [judgment](#)

This now well-known case concerned the calculation of eligibility for HDC for prisoners serving consecutive sentences made up of terms of more and less than 12 months. The Appellant was sentenced to consecutive terms totalling 27 months, but because of the way in which the SSJ interpreted the relevant provisions she was deemed eligible for release on HDC about 100 days later than a prisoner who had been sentenced to a single term of 27 months. The Supreme Court were unanimous in allowing the appeal and did so in the most forthright terms, the Lord Chief Justice observing: "I have studied the judgments of Lord Phillips and Lord Mance. Their judgments tell the lamentable story of how elementary principles of justice have come, in this case, to be buried in the legislative morass. They have achieved a construction of the relevant legislation which produces both justice and common sense. I should have been inclined to reject the Secretary of State's contention on the grounds of absurdity – absurd because it contravened elementary principles of justice in the sentencing process – but Lord Phillips and Lord Mance have provided more respectable solutions, either or both of which I gratefully adopt. Nevertheless the element of absurdity remains. It is outrageous that so much intellectual effort, as well as public time and resources, have had to be expended in order to discover a route through the legislative morass to what should be, both for the prisoner herself, and for those responsible for her custody, the prison authorities, the simplest and most certain of questions – the prisoner's release date."

It is clear that many low-risk prisoners should be immediately released as a result of this decision, although the SSJ has delayed in implementing the judgment by issuing the necessary PSI. In recent JR proceedings arising from that failure the SSJ undertook to issue the instruction by 13th August 2010 but has so far failed to do so.

*GCN's Pete Weatherby and Andy Fitzpatrick appeared for the Appellant, instructed by Deborah Russo of the [Prisoners Advice Service](#) [read more](#)

Failure to provide oral hearing

R (oao Roose) v SSJ and the PB [2010] EWHC 1780 [judgment](#)

In seemingly the first successful case of its type for some time the Divisional Court (Hooper LJ and Keith J) held that the PB had acted unlawfully in failing to provide a post-tariff lifer with an oral hearing (a more oblique challenge to the SSJ was dismissed.) What makes the case interesting is that the prisoner was on the cusp of a DSPD referral, which had been floated as a possibility by a psychologist. Adopting its usual approach of latching on to such potential and loose proposals the PB refused to convene an oral hearing. Despite having no support from the report writers the court allowed the claim, noting the importance of the issue to the Claimant's general progress and, in particular, to the prospect of him progressing to open conditions.

Refusal to re-categorise

R (oao Krstic) v Secretary of State for Justice [2010] EWHC 2125 ** [judgment](#)

Although not the type of case to crop up every day this decision at least marks a victory for common-sense. The Claimant had been an Army Commander during the Balkans conflict, and was later convicted at the International Criminal Court of permitting others to use personnel and resources at his command to facilitate the murder of up to 8, 000 Bosnian Muslims. He was sentenced to 35 years and transferred to the UK to serve out his sentence. He was allocated to Category A on the basis that his dangerousness was self-evident (presumably on the basis that he could re-assemble an army in order to allow others to utilise it for murder in another yet-to-be-identified conflict.) HHJ Pelling Q.C. did not appear to share this view and quashed the most recent CART decision, concluding [16]: "it is to be borne in mind that the Claimant was not sentenced on the basis that he posed a future risk.... the issue for the Defendant is not and never was the seriousness of the offences for which the Claimant was convicted but whether he was so highly dangerous to either the police or the public... No attempt has been made to identify the categories of person to whom the Claimant was considered to be highly dangerous or what it was in the

circumstances of the offences that justified the conclusion that the Claimant continued to be highly dangerous." Whether the CART responds to this in a favourable way remains to be seen.

** Pete Weatherby of GCN and Peter Mahy and Sarfraz Ahmed of [Howells](#) represented Mr Krstic [read more](#)

Coroners & Justice Act 2009

On 2nd August 2010 section 145 of the Coroners and Justice Act also came into force and provides that the SSJ is now bound by recommendations for release made by the PB in the case of long-term 1991 Act prisoners. That section also reinstates the power of the PB to fix, amend and revoke licence conditions in such cases.

Risk Aversity at the Parole Board

The PB recently opened its doors to the Guardian newspaper, which was granted access to sit in on paper reviews:

<http://www.guardian.co.uk/law/2010/jul/19/parole-board-members-speak>

You will form your own view on the results, but of particular interest is the case involving a woman impliedly considered to present little or no risk, who is refused parole for not having undertaken courses that do not exist, who is refused parole and instead advised to consider appealing her sentence!

PSI 36/2010 - The Indeterminate Sentences Manual (PSO 4700)

Chapter 4 of the ISP manual has been amended in various ways, some of which might be seen as a cynical attempt to ward off the steady stream of litigation arising from ongoing failures to provide necessary offending behaviour work to ISPs. <http://www.hmprisonservice.gov.uk/resourcecentre/psisp/sos/listpsis/>. Most notably short-tariff ISPs are now classed as those serving 3 years or less (rather than 5.)

All is not lost, however, as the new section of policy rightly provides for similar, important concessions, in particular that:

- Identified risks will be addressed by a range of interventions, having regard to the availability of resources, and the ISP sentence plan must take

account of what may be reasonably delivered through the sentence;

- The offender's sentence plan will be managed and sequenced through the sentence, with actions aimed at their individual needs rather than interventions available at an establishment, so as to assist the offender to reduce their risk
- The ISP should be offered, as far as possible, reasonable opportunity to address these risk factors in time for their Parole Board review, although, in the case of very short tariffs, it must be accepted that it may be difficult for an ISP to address all his/her risk factors in time for the review.

Party Poopers

The prize for the most short-lived PSI of all time (still in force at the time of writing) goes to PSI 38/2010, which stated that: "*the Ministry of Justice (MoJ) recognises the valuable contribution that creative activities can make, particularly with those prisoners who are hard to engage in other types of programme, in tackling offending behaviour, in ensuring their engagement with the regime and the offender management process, and in improving prisoner behaviour and tackling safer custody issues. The appropriate use of such activities is perfectly acceptable.*" Not so acceptable to No 10, however, as the tabloids soon provoked a knee-jerk reaction from the PM that prison 'parties' were not acceptable, and Crispin Blunt received a sharp telling-off.

Matthew Stanbury
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