OUTER HOUSE, COURT OF SESSION

[2020] CSOH 1

P509/19

OPINION OF LORD ERICHT

In the petition

MICHAEL GLANCY

Petitioner

for

Judicial Review of the actions of the Scottish Ministers in failing to provide him with rehabilitation or information about his rehabilitation

Respondents

Petitioner: Leighton; Drummond Miller LLP
Respondents: Ower; Scottish Government Legal Directorate

7 January 2020

Introduction

[1] The petitioner, a convicted prisoner, brought judicial review proceedings seeking the following orders:

(a) declarator that the respondents' failure to provide information about when rehabilitative work might be offered to him was a breach of his convention rights in terms of article 5 of the European Convention on Human Rights;

(b) declarator that the respondents' failure to provide rehabilitative work was a breach of his article 5 rights;

(c) declarator that the respondents had failed in their domestic law obligations to make provision for the rehabilitation of prisoners;

(d) declarator that the respondents had acted irrationally and unfairly in failing to provide the petitioner with sufficient information about when coursework might be provided to him;

(e) payment of £10,000 by way of just satisfaction.

Facts

[2] The first day of the substantive hearing proceeded on the basis of various agreed documents, two affidavits from the petitioner and an affidavit from Angela Holmes, Head of Psychology for the Scottish Prison Service ("SPS"). The hearing was continued to a second day to hear oral evidence from Miss Holmes to clarify her affidavit in certain respects. In the event, there was no significant dispute as to the facts, which I find to be as follows.

Rehabilitative work in prisons

[3] The Scottish Prison Service offers various rehabilitative programmes to prisoners. The particular programme with which this petition was concerned was the Self-Change Programme ("SCP"). This is a high intensity cognitive-behaviour programme that aims to reduce violence in high risk adult male offenders. It is for prisoners with a persistent and persuasive pattern of violence. It is for violent offenders who present the highest risk and is used for the top 2% to 5% of offenders in terms of risk.

[4] The SCP is delivered by a team of four consisting of three facilitators and a Treatment Manager. The maximum group size is eight prisoners. The SCP is an intensive

and expensive programme. The cost associated with staff alone, notwithstanding the resources attached to buildings etc are £215,587 for a single strand.

[5] The SCP is offered in three different strands, to suit different kinds of prisoners. The strands are:

1. A strand for offence protection prisoners who require protection because of the nature of their offence, for example men convicted of sexual offences.
2. Other protection prisoners, that is non-offence protection prisoners. Fewer courses are offered for this category due to the lower number of prisoners in the category.
3. General prisoners.

[6] In 2019 the SPS ran a total of 4 SCP strands, comprising 3 mainstream strands and one offence protection strand. There is no schedule to run a new non-offence protection strand before April 2020. The number of SCP courses for non-offence protection prisoners thereafter will be decided in April 2020.

[7] The petitioner is a non-offence protection prisoner. The particular complaint made by the petitioner in this petition was that there was no good reason why he could not have been offered a place on the strand for non-offence protection prisoners which commenced at the end of April 2018 or the strand for protection prisoners which began in January 2019.

[8] The process for enrolling a particular prisoner on an SCP course is as follows. Each prison operates a Generic Programme Assessment to establish the programme need of the particular prisoner for rehabilitative courses. A Prisoner Case Management Board ("PCMB") then meets to discuss and decide which programmes the particular prisoner should undertake. Where the PCMB are minded to recommend the SCP, the PCMB makes a referral to the Self-Change Programme Selection Board. If the SCP Selection Board confirms

the referral, the prisoner is placed on the national SCP waiting list. The prioritisation of prisoners on the waiting list is ascertained in accordance with a policy set out in Governors and Managers Action 30A/17. The policy involves identifying the prisoner's "critical date", which varies between different categories of prisoner so for example for a short term prisoner it is the Earliest Date of Liberation and for a long term prisoner is it the Parole Qualifying Date minus 2 years. The policy refers to SPS guidance:

> "which recognises the need, where practicable, to ensure that every effort is made to provide those within our care the opportunity to undertake specific offending behaviour work prior to their progression dates in order to allow prisoners the opportunity to prepare for progression. Whilst this cannot be guaranteed in all cases, this [policy] recognises the need to provide spaces on these interventions in a timely manner."

The circumstances of the petitioner

[9] In June 2015, at the High Court in Edinburgh, the petitioner was sentenced to a period of imprisonment of 4 years with an extension period of 2 years. He had been convicted of assault to injury, two charges of assault, a contravention of the Criminal Law (Consolidation) (Scotland) Act 1995, section 52 (vandalism), two charges of assault (domestic) and assault to injury, permanent disfigurement and danger of life.

[10] The petitioner had had previous convictions and for present purposes it is relevant to note that on 26 February 2013, when he was serving a previous sentence, an integrated case management (ICM) conference took place amongst the petitioner's case management team. A document entitled Record of Outcomes of the Case Conference relating to that conference was lodged with the court. The record includes the following summary of the ICM process:

> "The ICM process is designed, with the prisoner's input as well as input from prison and community based social workers, to best manage their time in custody. The aim of the process is to minimise the risk of the prisoner re-offending and causing harm in the community upon their release. This is achieved by identifying and addressing the prisoner's risks and needs. A prisoner's initial case conference is held after six

> months of sentence; thereafter they are held annually and three months prior to release. The output from these meetings is a prisoner's action plan."

[11] The document noted the following:

> "With regards to responsivity, prison records show that Mr Glancy has advised that he does not wish to engage in offence focused interventions both in custody or the community.
>
> This matter was discussed. Mr Glancy stated that he is resentful towards social workers as he feels has been badly let down by them in the past. The CBSW replied that their job was to help him move on in his life and that he needs to deal with situation as it is now and that the CBSW team is prepared to work to his benefit. Taking offence related programmes would be evidence of a change in behaviour for housing and the group encouraged Mr Glancy to consider engaging with programmes."

[12] During the meeting, a prison based social worker explained risk assessment. The presentencing risk had been assessed as a high risk of re-offending. The scenario most likely to de-escalate offending behaviour was engagement with programmes and support services.

[13] In relation to programme work, the document noted:

> "The Generic Prisoner Assessment (GPA) begun in Barlinnie prison was not completed. Mr Glancy was asked if he would be willing to undertake GPA whilst here in Edinburgh in order to identify his offending behaviour needs to which he replied yes. The ICM co-ordinator agreed to refer him for GPA but pointed out that there is a limited time scale for programme work."

[14] On 6 November 2013 the petitioner was released from custody in respect of that previous sentence.

[15] He was readmitted on 14 August 2014 on remand in relation to the charges for which he was later to be convicted in June 2015. A meeting of the Programme Case Management Board (PCMB) was held on 22 January 2016. The minutes include the following:

> " Mr Glancy stated that he is happy to participate in programmes as he wants to change his behaviour and wants to be in the best position for Parole although he feels he will not be granted this. His reluctance to leave his cell would need to be taken into consideration before commencing programme work as he may need some support in helping him feel comfortable to attend group work. ...

> The PCMB noted that Mr Glancy has stated that he is happy to participate on programmes and we believe that he would benefit from SROPB and SCP. However if Mr Glancy is assessed as unsuitable for the SCP programme then he should be returned to the PCMB for consideration for the CARE programme.
>
> Multiple treatment needs: SROBP [ie a Substance Related Offending Behaviour Programme], a referral to be assessed for SCP, intimate partner violence, fire-raising."

[16] The SCP Selection Board met on 1 March 2016 and confirmed the petitioner's referral for the SCP and that he was suitable for SCP.

[17] The petitioner's case was considered by the Parole Board on 21 June 2016. The Parole Board noted that during the current sentence the petitioner had had 13 misconduct reports, the majority of which were for fighting and assault, and went on to say:

> "The formal assessment of risk confirms the concerns expressed in the response to custody report, Mr Glancy is assessed as having very high risk and needs.
>
> He has failed to engage and continues to refuse to participate in undertaking structured work designed to address his offending.
>
> In the opinion of the community based social worker, if Mr Glancy continues with his current behaviour and attitude, he presents a serious risk of causing significant harm to others.
>
> ...
>
> **Having regard to all the foregoing, the Board was unanimous in agreeing not to recommend parole and gave the following reasons for its decision:**
>
> > "In light of the current circumstances, behaviour and attitude of Mr Glancy it is not possible to positively recommend his release on licence. It would appear that he is so engaged in extreme, violent and anti-authority type behaviour there is no possibility of his risk being managed in the community subject to licence conditions.
> >
> > There are significant concerns as to how Mr Glancy will be managed in the community, not least where he will live."

[18] A further PCMB meeting was held on 4 August 2016 and the minutes include the following:

"**Details of previous PCM recommendations, interventions already completed and behaviour since**

Mr Glancy's previous recommendations were SROBP, SCP, domestic violence needs and fire-raising (PCMB dated 22.01.16). Mr Glancy has not completed any offence-focused interventions. Mr Glancy was approached by SROBP facilitators on 30.05.16 where he advised he did not want to engage in programme work due to him not having enough time to progress to less secure conditions or receive parole. A member of the ICM team then re-approached the SROBP team advising that Mr Glancy was re-considering his stance. A member of the SROBP team tried to meet with Mr Glancy on 04.07.16 to discuss re-engagement, however he refused to meet with the facilitator.

DISCUSSION POINTS

- Mr Glancy has recently declined to engage in SROBP.
- Subsequent attempts were made to re-engage with him but he refused to attend a meeting with facilitators.
- Mr Glancy has a recommendation of SCP, however he does not have enough time complete the programme due to his liberation date of 18.04.17.
- The SCP selection board met on 01.03.16, where they discussed Mr Glancy's case. They noted along with attitudes supportive of the use of violence, there is evidence that emotion management has been a factor in some of his violence.
- The PCMB minute dated 22.01.16, also highlights poor emotion management alongside substance misuse as contributing factors to Mr Glancy's use of violence.
- Some of his treatment needs could be addressed through engagement in CARE; however it is recognised that this would not meet all of his treatment needs.

PROGRAMME RECOMMENDATIONS (include detail regarding timing and sequencing)

Previous recommendations still stand (SROBP, SCP, DV and fire-raising). However in the absence of being able to engage in SCP; CARE would help to begin to address Mr Glancy's emotion-focused violent offending."

[19] On 23 May 2017 the Parole Board made a decision setting out a licence condition for the petitioner's automatic release. The Parole Board gave the following reasons for its decision:

"**11. Reasons for Decision**

There is sufficient evidence in the dossier from which to conclude that the licence conditions set out below will help to manage the risks presented by Mr Glancy as safely as possible in the community at this time. Mr Glancy has a serious history of violence, much of it linked to his substance misuse. It is of exceptional concern that he has continued to resort to violence even whilst in custody. He has undertaken no relevant interventions to address his offending behaviour and has little, if any, insight in relation to the triggers of this behaviour. He is assessed as presenting a high level of risk and needs. His licence conditions will need to be robust to manage his level of risk and address his predisposition towards using violence.

12. Licence Conditions

Licence conditions are as attached. The conditions reflect his outstanding need to complete a range of appropriate offence-focussed work and his overall poor compliance with the prison regime that does not give confidence that he will fully comply in the community on licence."

[20] The petitioner was released on non-parole licence on 19 June 2017 and recalled to custody on 17 October 2017.

[21] On 7 December 2017 the Scottish Prison Service wrote to the petitioner in the following terms:

"**<u>General Programmes Assessment</u>**

You were recently approached to take part in a Generic Programme Assessment (GPA), which you declined.

You should be aware that declining this assessment may have consequences for you in relation to your progression. This could include the likelihood of you not being approved for transfer to less secure conditions or being eligible for parole.

Should you reconsider your decision please contact the psychology department via hall staff."

[22] In his unchallenged affidavit in the current proceedings, the petitioner explained that the reason he did not engage with the GPA at this time was because he was to be considered by the Parole Board for Scotland at a hearing, and he wanted to know the outcome of his parole before undertaking the GPA.

[23] A further Parole Board hearing took place on 11 February 2018. Due to a technical error, this hearing was invalid and reheard in April 2018. The minutes of the April hearing note that using the LS/CMI risk assessment tool the petitioner was assessed as presenting a maximum level of risk and needs, and was assessed as posing as a risk of serious harm. The Board was satisfied that it was necessary for the protection of the public from serious harm for the petitioner to remain in prison. The minutes noted:

> "Mr Glancy's case will be reviewed by a Tribunal in 12 Months' time from the date original Oral Hearing. It is hoped that during this period he will complete Pathways, remain free of further misconduct reports, obtain low supervision status and be considered for progression."

Pathways is a substance related offending course which has replaced SROBP. There was no reference to completing SCP.

[24] A further hearing of the Parole board took place on 11 February 2019. At the hearing the Early Liaison Release Officer reported *inter alia* that:

> "there was still an outstanding need for Mr Glancy to engage in the Self-Change Programme (SCP); he would require to transfer to either HMP Low Moss or HMP Shotts in order to undertake the programme which would require to be done under protection; the availability of SCP under protection was limited and it was unknown when the next SCP for protection prisoners would take place" (para 18)

[25] The Board refused the petitioner's request for immediate release. It noted that he was assessed as presenting a Very High level of risk, and that at the time of his recall he was assessed as presenting a Risk of Serious Harm to others. The Board was satisfied that it was necessary for the protection of the public that he be confined. His compliance with supervision and licence conditions had been poor. There had been no improvement in his behaviour in custody since recall: he had incurred 3 misconduct reports for violence and/or aggression in the last six months and had fractured another prisoner's cheekbone for which he had been reported to the police. There was no evidence that he would comply with

supervision and licence conditions on release. He required to be tested in conditions of lesser security. After setting out these reasons in detail, the Board briefly stated : "Furthermore, Mr Glancy has an outstanding need to undertake the Self Change Programme" (para 44).

[26] In his unchallenged affidavit the petitioner accepted that he did not want to undertake any offence focused rehabilitative work until the Parole Board hearing in February 2018. He explained that he thought that if he was assessed as requiring work, this would be the reason the Parole Board would refuse his release. His position with regard to engaging with offence focused programmes changed immediately upon receipt of the Parole Board's decision.

[27] The petitioner asked to be referred back for a Generic Programmes Assessment and was given a form which he completed and returned on 10 February 2018. He was referred for a GPA on 12 February 2018. On 7 March 2018 he was transferred from HMP Barlinnie to HMP Kilmarnock and subsequently filled in a further form. On 22 March 2018 he formally consented to a GPA. A file review was held on 5 April 2018. The GPA review was held on 20 April 2018. A PCMB was held on 7 May 2018 where he was identified with a need to complete the SCP.

[28] A SCP course for non-offence prisoners commenced in April 2018. Prisoners would be accepted on to that course if they were referred to it by around the end of April 2018. Had a PCMB been held and the referral received by the end of April 2018 the petitioner would have been offered a place on the course. Had the petitioner engaged with the process for admission to the SCP on his return to prison on recall, the PCMB and referral would have been completed in time for him to be included in the April course and he would have been admitted to the course. As the petitioner did not engage with the admissions process

until February 2018, the PCMB and the referral was not completed until May 2018 which was too late for admission to the April course.

[29] An Integrated Case Management Meeting was held on 25 October 2018 at which he was noted that petitioner was eleventh on the SCP waiting list.

[30] On 10 March 2019 the petitioner made a prisoner complaint. His complaint was as follows:

> "I AM LOOKING FOR ANSWERS TO FIND OUT THE REASONS WHY I HAVE BEEN IN FOR SEVENTEEN MONTHS AND I AM IN THE EXTENDED PART OF MY SENTENCE AND HAVE NOT BEEN OFFERED REHABILITATION. BY WAY OF COURSE WORK AND I AM CONCERNED THAT DETENTIONS BECOMING ARBITRARY."

[31] In the box in the form entitled "What in your view would resolve the problem?" the petitioner stated: "GET ME ON THE COURSE IMMEDIATELY".

[32] On 13 March 2019 the residential first line manager gave the following response:

> "FURTHER TO YOUR COMPLAINT I HAVE CONTACTED PSYCHOLOGY WHO HAVE IN RETURN STATED THAT DUE TO YOU BEING PROTECTION STATUS THE SELF CHANGE COURSE AT THIS TIME IS ONLY RUNNING FOR SEX OFFENDERS AND YOU DO NOT MEET THIS CRITERIA FOR SELF CHANGE ALSO WE DO NOT KNOW WHEN THIS WILL BE RUNNING FOR NORMAL PROTECTION REGIME."

The petitioner was dissatisfied with the response and exercised his right to ask the Internal Complaints Committee to consider it. The response from the ICC dated 2 April 2019 was as follows:

> "Mr Glancy after investigating your complaint I agree with the original answer. After speaking to Psychology I have been informed that the self-change course is only running for sex offenders and you don't meet the criteria ...
>
> Will speak to Psychology to see if there is any option to start the course on a one-two-one basis."

[33] The decision of the ICC was endorsed by the governor on 3 April 2019. The governor noted:

> "The SPS provide the self change programme with prisoners being listed as appropriate. HMP Kilmarnock do not facilitate this and when you meet that criteria in line with dates etc you will be transferred to facilitate this programme need. I have requested the date and where you are on the list Mr Glancy I will advise you when I am notified."

[34] The next Parole Board review is due to take place around January or February 2020. The petitioner's Sentence Expiry Date ("SED") is 18 November 2020. Although the petitioner is on the waiting list for the SCP, he is now unlikely to be admitted to it as he would not have time to complete the programme before his release on 18 November 2020.

Submissions for the petitioner

[35] Counsel for the petitioner submitted that there were clear obligations to provide rehabilitation to prisoners (*Haney* v *Secretary of State for Justice* [2015] AC 1344 at paragraph 41; *Brown* v *Parole Board for Scotland & Others* 20-18 AC 1 at paragraphs 62 and 63). The complete absence of provision as in the present case was objectionable. There were two occasions when the respondent ought to have offered rehabilitative work to the petitioner and did not do so. They should have offered him a place on the non-offence protection stream of the SCP that started in April 2018 or the protection stream that started in January 2019.

[36] Counsel further submitted that there was an obligation both at common law and under article 5 of the European Convention and Human Rights to provide the petitioner with information about when rehabilitation might be provided. He referred to *R* v *H&C* [2004] 2 AC 134 at paragraph 11, *Mooren* v *Germany* (2010) 50 EHRR 23 at paragraph 76 and *O'Neil, petitioner* 2015 SLT 820 at paragraphs 25 and 26.

[37] In respect of damages, he submitted that if the court came to the view that the petitioner's article 5 rights had been infringed then an award of damages might be appropriate to provide just satisfaction. Applying the awards made in *James Wells, and Lee* v *United Kingdom* (2013) 56 EHRR 12 at paragraph 244 to the 30 month period between April 2018 and the expiry of his sentence in November 2020 an award of about £7,700 would be appropriate.

Respondents' submissions

[38] Counsel for the respondents submitted that they had provided to the petitioner adequate opportunities to participate in courses to assist in his rehabilitation. He had been advised by letter dated 7 December 2017 that his failure to engage might have consequences. The petitioner's failure to have participated in and/or completed the SCP is a result of his own actings. The respondents had complied with their duty under *Haney v Secretary of State for Justice* to provide the petitioner with a real opportunity in all the circumstances to rehabilitate himself to demonstrate that he no longer presented an unacceptable danger to the public. And considering these matters, the court must take into account all the circumstances: the prisoner's history and prognosis, the risks he presents, the competing need of other prisoners, the resources available and the use made of opportunities for rehabilitation (*Knights and O'Brien* v *Parole Board of England and Wales and the Secretary of State for Justice* [2015] EWHC 136 (Admin) at paragraph 73 to 82). On the facts of the case, the respondents had acted reasonably in the management of the petitioner allowing him sufficient opportunity for rehabilitation. They had formulated and implemented a management plan. Regular case management meetings and risk management team meetings had taken place at which the petitioner's progress and his management plan had

been discussed. No failure to provide course work or unreasonable delay in so doing had been suffered by the petitioner.

[39] In relation to the petitioner's submissions on the provision of information, counsel for the respondents submitted that there was no obligation on the respondents to provide information to prisoners as to exactly when coursework would be made available. The allocation and timetabling of rehabilitative courses was a matter for the expertise and experience of the Scottish Prison Service. The respondents had consistently provided the petitioner with information as to the rehabilitative coursework available to him. He benefits from an action plan, which had been agreed with him and was being implemented. He is being managed in accordance with an action plan agreed with him at the ICM meeting on 25 October 2018.

[40] Counsel further submitted that the order sought served no practical purpose and the petition ought to be dismissed *Beggs* v *Scottish Ministers* [2018] CSOH 3 at paragraph 19. The petitioner's next Parole Board hearing was due to take place in January 2020. It would not be possible for the petitioner to complete the SCP prior to that date. The petitioner is unlikely to be released at his next parole board hearing but this is due to violent incidents committed by him in prison rather than lack of completion of the SCP.

[41] Counsel made no substantive submissions on damages, but invited me to put the case out for a separate hearing for specific submissions on damages in the event that the court found against the respondents on liability.

Discussion and decision

[42] The duty of the respondent in respect of the provision of rehabilitative work was set out in *Haney* in respect of domestic law and Article 5 as follows:

> "As a matter of domestic public law, complaint may be made in respect of any systemic failure, any failure to make reasonable provision for an individual prisoner so egregious as to satisfy the Wednesbury standard of unreasonableness or any failure to apply established policy." (para 41)

> "Article 5 does not create an obligation to maximise the coursework or other provision made to the prisoner, nor does it entitle the court to substitute, with hindsight, its own view of the quality of the management of a single prisoner and to characterise as arbitrary detention (in the particular sense of *James* v *United Kingdom 56 EHRR 399*) any case which it concludes might have been better managed. It requires that an opportunity must be afforded to the prisoner which is reasonable in all the circumstances, taking into account, among all those circumstances, his history and prognosis, the risks he presents, the competing needs of other prisoners, the resources available and the use which has been made of such rehabilitative opportunity as there has been." (para 60)

[43] In this case, the petitioner does not seek to argue that there is a systemic failure to provide rehabilitative programmes. The claim is limited to failure to provide one specific course, that is the SCP, in respect of one specific prisoner, the petitioner.

[44] The respondents offer the SCP course to prisoners. They offer a special strand of the SCP course which is suitable for non-offence protection prisoners such as the petitioner. It is simply not the case that there is a complete absence of provision of this course, and the petitioner's submission to that effect is totally without merit.

[45] The details of how and when rehabilitative courses are run and which prisoners are admitted to them are matters for the Scottish Prison Service with which the court will not lightly interfere. As Lord Clarke put it in *Mackie v Scottish Ministers*, (a case where like the present case there were courses on offer to prisoners):

> "The quite unacceptable absence of <u>any</u> provision of any rehabilitation courses and procedure, which formed the basis of the decision in *James*, and the backdrop to the *Haney* claim, did not, apparently, exist in the Scottish prison system. The demands for these facilities will vary from time to time, given the numbers of prisoners and the nature and prevalence of particular offending conduct. As the cases have now made clear the carrying out of the relevant duty under article 5 has to take into account the particular circumstances of the particular prisoner. Some prisoners may need little in the way of rehabilitation training. Others may need a great deal, even after the critical date. The allocation and timetabling of these resources is

> quintessentially a matter for the experience and expertise of the prison authorities and those specialists employed by them to put into effect their application. These are not matters, in my judgment, in respect of which the courts should be over-zealous to set out a timetabling which does not, and cannot, adequately have regard to the foregoing considerations." (para 29)

[46] In exercising its operational judgment in relation to the offer of courses the SPS are entitled to take into account the resources implications of the particular courses. They are entitled to design and offer courses which involve group work, rather than one to one courses. In selecting participants for any particular course, they are entitled to balance the needs of one prisoner against the needs of another prisoner, for example by taking into account prospective release dates. They are entitled to design and offer courses in strands to cater for the specific needs of specific categories of prisoners, such as protection prisoners and non-offence protection prisoners. They are under no obligation to offer any particular course, or to do so in any particular year: their obligation is to offer rehabilitation over the period of a prisoner's sentence (eg *M v Scottish Ministers* at para [100]). In exercise of their operational judgment the respondents have decided to offer the SCP, to offer it in different strands to suit the needs of different categories of prisoners, and to select prisoners for admission to the course under the policy set out in GMA 30A/17. It cannot be said that in exercising that operational judgment the SPS acted irrationally or unreasonably in the *Wednesbury* sense. The respondents have made adequate provision of the SCP course to comply with their obligations under article 5 and at common law.

[47] As the respondents have made adequate provision of the SCP course, the petitioner's case resolves itself into a complaint that he was not admitted to a SCP course. The petitioner avers that there was no good reason why the petitioner could not have been offered a place on either the April 2018 non-offence protection strand or the January 2019 protection strand.

[48] In my opinion there was good reason why he could not have been offered a place on the January 2019 strand. This strand was designed for protection prisoners. It was not designed for non-offence protection prisoners such as the petitioner. The respondents are entitled to provide different courses to meet the needs of different categories of prisoner. The respondents are under no obligation to admit a particular prisoner to a course which is not designed to meet the needs of the category to which that particular prisoner belongs.

[49] The April 2018 course, on the other hand, was designed to meet the needs of the category of prisoners to which the petitioner belonged. Nevertheless, in my opinion there was good reason why the petitioner was not offered a place on the April 2018 strand. Rehabilitation involves a careful matching of the courses which are available to the needs of the particular prisoner. The respondents have in place a process for this matching whereby detailed consideration can be given to the prisoner's needs. That process involves a Generic Programmes Assessment, a Programme Case Management Board and the SCP Selection Board. That process takes time. Had that process been completed by the end of April 2018, the petitioner would have been admitted to the April 2018 course. However, the petitioner did not initiate the process in time for it to be completed then. He declined to take part in a Generic Programmes Assessment in 2017. The prison authorities were sufficiently concerned to encourage the petitioner to participate in the rehabilitative opportunities open to him that they wrote to him the letter of 17 December explaining that declining the assessment could have consequences for the likelihood of being eligible for parole. The process could only commence when the petitioner changed his mind after the February 2018 Parole Board hearing, and was not completed until after the end of April.

[50] The respondents have, over the course of the petitioner's incarceration, offered him a real opportunity for rehabilitation. Had it not been for the petitioner's decision not to

engage with the opportunity for rehabilitation after his recall in 2017, then he would have been admitted to the April 2018 SCP. In all the circumstances, I find that the respondents have neither failed to provide rehabilitative work in breach of article 5 nor failed in their domestic law obligations to make provision for the rehabilitation of prisoners.

[51] Moreover I find that the respondents have not failed to provide information about when rehabilitative work might be offered in terms of article 5, or acted irrationally in failing to provide him with this. The minutes of the various case management meetings show that there was extensive discussion with the petitioner throughout the period of his incarceration about the courses available to him. In response to his complaint, the prisoner was informed that the SCP course for non-protection prisoners was not running at that time but he would be notified of the date of the course applicable for his category of prisoner. No date for such a course has since been fixed.

[52] As the above is sufficient to dispose of the petition, I do not require to decide whether the petition should be dismissed as having no practical effect in relation to the 2020 Parole Board hearing. However, had I decided in favour of the petitioner on the substantive points, I would not have dismissed the petition on this ground. Rehabilitative courses perform a broader function than merely enabling prisoners to demonstrate improvement to the Parole Board. They have practical effect in themselves even when parole is not imminent or is refused on other grounds: they rehabilitate the prisoner, enabling him to live a better life and be of lesser risk to the public on his release. In any event, in this case, the petitioner sues for damages for just satisfaction, and if the petitioner had been successful and damages had been awarded this would have been a practical effect.

Order

[53] For these reasons I shall uphold the respondents' pleas-in-law, repel the petitioner's pleas-in-law and dismiss the petition.