



**In the High Court of Justice  
King's Bench Division  
Administrative Court**

**Ref: CO/3269/2022**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 9<sup>th</sup> November 2022

**Before: MR JUSTICE RITCHIE**

-----

**In the matter of an application for judicial review**

**The King on the application of**

**SCOTT NEWSON**

**Claimant**

**- and -**

**THE SECRETARY OF STATE FOR JUSTICE**

**Defendant**

**-and -**

**THE PAROLE BOARD FOR ENGLAND AND WALES**

**Interested Party**

-----

(Michael Bimmler instructed by Reece Thomas Watson Solicitors) for the Claimant  
(Naomi Parsons instructed by the Government Legal Department) for the Defendant

Hearing date: 2 November 2022

-----

## **Mr Justice Ritchie:**

### **The Parties**

- [1] The Claimant is in prison serving an indeterminate prison sentence.
- [2] The interested party is the Parole Board which has directed that the Claimant be released from prison.
- [3] The Defendant is the Secretary of State for Justice who is responsible for arranging the Claimant's release from prison pursuant to the Parole Board's decision.

### **Bundles**

- [4] For the hearing I had a main bundle, a supplementary bundle, an authorities bundle and skeleton arguments from both counsel.

### **The Issues**

- [5] This is a judicial review claim brought by the Claimant against the Defendant on the grounds that the Defendant has acted unlawfully in failing to arrange his release pursuant to a direction of the Parole Board made on the 28th of February 2022. That direction was issued on the understanding that a risk management plan to protect the public would be put in place and the direction included various conditions one of which was for the Claimant to live overnight at an address approved by his supervising officer.
- [6] In the claim form the Claimant sought a mandatory injunction that he should be released from prison; a declaration that he had been unlawfully detained; common law damages and damages for breach of Article 5 of the *European Convention on Human Rights* and costs.
- [7] By lunchtime on the day of the hearing the Defendant had offered an undertaking to release the Claimant from prison by the 16th of November 2022. That undertaking involved the Defendant agreeing to withdraw an application the Defendant had made on the 30th of September 2022 to the Parole Board to set aside its decision. The Claimant accepted the undertaking and so the first ground of relief was settled.
- [8] This judgment concerns two issues: (1) whether permission should be granted for the judicial review and (2) whether the Claimant has been unlawfully detained in prison as a result of the Defendant's failure to arrange the accommodation and support services required by the Parole Board in their decision as soon as was reasonably practicable.
- [9] 8 months and five days have passed since the Parole Board directed that the Claimant should be released from prison by the Defendant and yet he is still in prison.

## **Pleadings and Chronology**

- [10] The Claimant wrote a pre-action protocol letter to the Defendant on the 10th of August 2022 alleging unlawful detention and failure to release him from prison in breach of the duty to do so. The Defendant's response letter dated the 31st of August 2022 relied upon three matters. Firstly, that the accommodation in the risk management plan presented to the Parole Board had been withdrawn. Since then the Defendant asserted that it had sought new accommodation. Secondly, that the Claimant had assaulted a member of prison staff on the 5th of August which had delayed matters because the second supported accommodation provider which the Defendant had found had withdrawn as a result of the alleged assault. Thirdly, the Defendant asserted that the Secretary of State for Justice (SSJ) could not release the Claimant until accommodation and support had been put in place and that the delay in doing so was not unreasonable.
- [11] The claim form was issued on the 6th of September 2022 and in that the Claimant sought expedition for the claim. In the detailed Statement of Grounds the Claimant set out the relevant law including Sections 28 and 34 of the *Crime (Sentences) Act 1997* (CSA 1997) and Article 5 of the *European Convention on Human Rights* (ECHR), the right to liberty. The first ground asserted was unreasonable delay. The Claimant submitted that Section 28 of the CSA 1997 imposed an absolute duty to release subject only to the caveat that the Defendant may take a reasonable time to put any Parole Board conditions in place before release. It was asserted that domestic public law required the Defendant to operate a proper system and to act reasonably in putting in place accommodation and supervision under the Parole Board's risk management plan. Overall the Claimant asserted that the delay was *Wednesbury* unreasonable and pointed out that the information provided by the Defendant to the Claimant relating to his release plan had been inadequate. No explanation had been given as to how the first supervised accommodation had fallen through; no adequate steps had been taken to arrange alternative supported accommodation; the Defendant had failed to engage with the Claimant's solicitors between March and August 2022 and the Defendant's own Community Offender Manager (COM), Kathryn James-Moore (KJM) had herself described the Claimant's detention as "unlawful" in August. In addition, the Claimant alleged that the professional meetings arranged to implement the Defendant's duty had been unreasonably delayed.
- [12] In the second ground of claim the Claimant asserted a breach of Article 5 of the ECHR because the failure to release the Defendant was arbitrary and unlawful.
- [13] By an order dated 14th September 2022 Mr Justice Cotter required the Defendant and the Interested Party to file Acknowledgements of Service by the 26th of September and ordered that permission was to be decided within 14 days after the filing and service of those.

- [14] The Defendant served Summary Grounds of Defence at the last minute on the 26th of September 2022. Two overall points were made. The first was that the Claimant's release direction from the Parole Board was subject to a risk management plan which required the provision of supported accommodation. The Defendant asserted that the Defendant had not been able to find supported accommodation. The Defendant relied on section 256 AZC of the *Criminal Justice Act 2003* which came into force in June of 2022 and required the Defendant to give effect to the Parole Board's direction "*as soon as reasonably practicable in the circumstances including, in particular, the need to make arrangements in connection with any conditions that are to be included in the person's licence...*". I rule that that section only applies to determinate sentences so did not apply in this case but another similar section does apply.
- [15] The Defendant acknowledged that the delay in the Claimant's case had been "significant" but asserted that it was not unreasonable. The Defendant asserted that the Claimant had intensive accommodation needs and that there was limited availability of accommodation. The Defendant pleaded that the first supported accommodation which was proposed by the Defendant to the Parole Board had fallen through on the 25th of March 2022 when the landlord had been "*unresponsive attempts by the service provider and had left the country*" (sic). The SSJ pleaded that alternative accommodation had been identified "*on the 1st of August 2022*" subject to cost but that the Claimant's conduct had led to that being withdrawn. The Defendant asserted that the SSJ had acted diligently and the claim for delay was unarguable.
- [16] By an order dated 13th October 2022 Mrs Justice Foster ordered that the judicial review claim should be heard in a rolled up hearing dealing with permission and secondly, if permission was granted, the substantive judicial review. Bundles were ordered to be filed 14 days before the hearing and a skeleton argument 10 days before the hearing from the Claimant and five days before from the Defendant.
- [17] The claim was listed for hearing on 2<sup>nd</sup> November 2022 so the bundles should have been filed no later than the 19th of October.

### **The late evidence**

- [18] Disclosure is not required in judicial review claims unless the Court orders it but it must have been clear to the Defendant from the pre-action protocol letter and the Detailed Grounds that the Defendant's system for satisfying the Parole Board's decision to release the Claimant and the supported accommodation requirements and risk management requirements involved in the decision needed to be explained and evidenced. In particular the Defendant's actions to fulfil their duty between 28th February and the date of the hearing needed to be set out in evidence.
- [19] There is a duty of candour which all parties are bound by in judicial review claims. So in *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 4)* [2016] UKSC 35, at para 183-184 Lord Mance ruled as follows:

“183. A respondent's duty of candour in judicial review proceedings is summarised in *Fordham's Judicial Review Handbook*, 6th ed (2012), p 125:

“A defendant public authority and its lawyers owe a vital duty to make full and fair disclosure of relevant material. That should include (1) due diligence in investigating what material is available; (2) disclosure which is relevant or assists the claimant, including on some as yet unpleaded ground; and (3) disclosure at the permission stage if permission is resisted ... A main reason why disclosure is not ordered in judicial review is because courts trust public authorities to discharge this self-policing duty, which is why such anxious concern is expressed where it transpires that they have not done so.”

184. In *R (Quark Fishing Ltd) v Secretary of State for Foreign and Commonwealth Affairs [2002] EWCA Civ 1409* at [50] Laws LJ said, “there is a ... very high duty on public authority respondents, not least central Government, to assist the court with full and accurate explanations of all the facts relevant to the issue which the court must decide.”

The duty extends to disclosure of “materials which are reasonably required for the court to arrive at an accurate decision”: *Graham v Police Service Commission [2011] UKPC 46* at [18]. The purpose of disclosure is to

“explain the full facts and reasoning underlying the decision challenged, and to disclose relevant documents, unless, in the particular circumstances of the case, other factors, including those which may fall short of public interest immunity, may exclude their disclosure”: *R (AHK) v Secretary of State for Home Department (No 2) [2012] EWHC 1117 (Admin)* at [22].”

And at 192 Baroness Hale (dissenting) stated:

“It is a proud feature of the law of judicial review of administrative action ... that the public authority whose actions or decision are under challenge has a duty to make full and fair disclosure of all the relevant material. Only if this is done can the court perform its vital role of deciding whether or not those actions were lawful”

- [20] This is also set out in the Civil Procedure Rules at 54APD10.1 which states “*in accordance with the duty of candour, the Defendant should, in its detailed grounds or evidence, identify any relevant facts, and the reasoning underlying the measure in respect of which permission to apply for judicial review has been granted*”.

- [21] No evidence was served or filed by the Defendant in time and the Summary Grounds of Defence failed to identify many of the relevant facts relating to what the Defendant did to fulfil the duty to release the Claimant as soon as was reasonably practicable in the circumstances.
- [22] On the 1st of November 2022, the night before the hearing, an application was made for permission to rely on a witness statement from Miss Goodrham, the head of the Parole Eligible Casework Team within the Defendant's PPCS (a relevant department which I will explain below). In addition permission was sought for the admission into evidence of a report dated 14th February 2022 from Kathryn James-Moore (KJM) the Claimant's community offender manager (COM).
- [23] The Claimant did not object to this late evidence being admitted. I granted permission subject to the Defendant paying the costs of and occasioned by the late service of the evidence.
- [24] As I shall explain below the late served evidence did not come anywhere close to providing an explanation of the Defendant's systems for satisfying the Parole Board's directions, for instance supported accommodation conditions and the other conditions (or for the risk management programme) and no witness evidence was produced from KJM or adult social services about what she or they did or did not do in relation to accommodation between the month before the Parole Board hearing and the date of the judicial review hearing.

### **The Evidence**

- [25] The evidence which was put before the Court consisted mainly of emails which had been sent by the PPCS and the Claimant's COM to the Claimant's lawyers alongside the witness statement of Miss Goodrham and the decision of the Parole Board.
- [26] The Claimant also provided a large bundle of documents which were considered by the Parole Board and a small bundle relating to a self harm incident which occurred on the 5th of August 2022 in prison during which a prison staff member suffered a cut to his hand and was sent to hospital.
- [27] It is not the function of this Court on judicial review to second guess or comment on the Parole Board's decision.

### **Permission**

- [28] Having heard the submissions of the parties and read the evidence I grant permission for the Claimant to bring judicial review proceedings on the grounds pleaded. I consider that the grounds are arguable.

### **The Relevant Law**

[29] Article 5 of the *European Convention on Human Rights* (the “ECHR”) provides as follows (so far as is relevant for this case):

**“5 1. Everyone has the right to liberty and security of person.**

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court; ...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.”

**Probation Services**

[30] The relevant law relating to the probation services is set out in S.s 1 and 2 of the *Offender Management Act 2007*. It makes logical sense for me to set out S.2 before S.1. Those sections provide as follows (so far as is relevant):

**“S. 2 Responsibility for ensuring the provision of probation services**

(1) It is the function of the Secretary of State to ensure that sufficient provision is made throughout England and Wales–

(a) for the probation purposes;

(b) for enabling functions conferred by any enactment (whenever passed or made) on providers of probation services, or on officers of a provider of probation services, to be performed; and

(c) for the performance of any function of the Secretary of State under any enactment (whenever passed or made) which is expressed to be a function to which this paragraph applies; and any provision which the Secretary of State considers should be made for a purpose mentioned above is referred to in this Part as “*probation provision*”.

(2) The Secretary of State shall discharge his function under subsection (1) in relation to any probation provision by making and carrying out arrangements under section 3.

(3) The Secretary of State must have regard to the aims mentioned in subsection (4) in the exercise of his functions under subsections (1) and (2) (so far as they may be exercised for any of the probation purposes).

(4) Those aims are–

- (a) the protection of the public;
- (b) the reduction of re-offending;
- (c) the proper punishment of offenders;
- (d) ensuring offenders' awareness of the effects of crime on the victims of crimes and the public; and
- (e) the rehabilitation of offenders.

(5) The Secretary of State is not required by subsections (1) and (2) to take any action in relation to the making of provision for a purpose mentioned in subsection (1) if it appears to him that appropriate provision is being or will be made by any person acting otherwise than in pursuance of arrangements under section 3.”

**S. 1 Meaning of “the probation purposes”**

(1) In this Part “*the probation purposes*” means the purposes of providing for—

- (c) the supervision and rehabilitation of persons charged with or convicted of offences;

(2) The purpose set out in subsection (1)(c) includes (in particular)—

- (c) supervising persons released from prison on licence;
- (d) providing accommodation in approved premises.”

**The duty to release**

[31] The law relating to the Defendant’s duty to release the Claimant from prison is contained in the following provisions.

[32] Chapter II of the *Crime (Sentences) Act 1997* is headed “Life Sentences”. By s 34 of the CSA 1997 Act, a “life prisoner” includes any person serving a life sentence, which includes a sentence of imprisonment for life as well as a sentence of imprisonment for public protection under section 225 of the *Criminal Justice Act 2003* (an “IPP”) which was Mr Newson’s sentence.

[33] S.28. of the CSA 1997 states:

**“28 Duty to release certain life prisoners.**

(1A) This section applies to a life prisoner in respect of whom a minimum term order has been made; and any reference in this section to the relevant part of such a prisoner’s sentence is a reference to—

- (a) the part of the sentence specified in the minimum term order, or
- (b) in a case where one or more reduction orders has been made in relation to the prisoner (see section 27B), the part of the sentence specified in the most recent of those orders.

(1B) But if a life prisoner is serving two or more life sentences—



- (a) this section does not apply to him unless a minimum term order has been made in respect of each of those sentences; and
- (b) the provisions of subsections (5) to (8) below do not apply in relation to him until he has served the relevant part of each of them.

.....

- (5) As soon as—
  - (a) a life prisoner to whom this section applies has served the relevant part of his sentence; and]
  - (b) the Parole Board has directed his release under this section, it shall be the duty of the Secretary of State to release him on licence.”

[34] The Claimant argued in his grounds (para. 35) that this duty was absolute, mandatory and unambiguous (para. 36), but also conceded (para. 37) that it was qualified “in practice” by the allowance of a “short amount of time” for the SSJ to arrange the licence conditions. I reject the “short amount of time” argument for the reasons set out below.

**Conditions attached to the release**

[35] S.31 of the CSA 1997 states:

**“31 Duration and conditions of licences.**

- 1. ...
  - (1A) Where a prisoner to whom section 31A below applies is released on licence, the licence shall remain in force until his death unless—
    - (a) it is previously revoked under section 32(1) or (2) below; or
    - (b) it ceases to have effect in accordance with an order made by the Secretary of State under section 31A below.
- 2. A life prisoner subject to a licence shall comply with such conditions as may for the time being be specified in the licence; and the Secretary of State may make rules for regulating the supervision of any description of such persons.
  - (2A) The conditions so specified shall include on the prisoner’s release conditions as to his supervision by—
    - (a) an officer of a local probation board appointed for or assigned to the local justice area within which the prisoner resides for the time being or (as the case may be) an officer of a provider of probation services acting in the local justice area within which the prisoner resides for the time being;

...

3. The Secretary of State must not include a condition in a life prisoner's licence on release, insert a condition in such a licence or vary or cancel a condition of such a licence except—
  - (a) in accordance with recommendations of the Parole Board, or
  - (b) where required to do so by an order under section 62A of the Criminal Justice and Court Services Act 2000 (compulsory electronic monitoring conditions).”

### **Timing of the release**

[36] As to the timing of the release, S.32ZB of the CSA 1997 states:

#### **“Release at the direction of Parole Board**

##### **32ZB Release at direction of Parole Board: timing**

(1) This section applies where the Parole Board directs the release of a life prisoner under section 28 or 32.

(2) The Secretary of State must give effect to the direction of the Parole Board as soon as is reasonably practicable in all the circumstances including, in particular, the need to make arrangements in connection with any conditions that are to be included in the life prisoner's licence under this Chapter.”

[37] This section came into force on 28<sup>th</sup> June 2022, by virtue of reg. 5 of the *Police, Crime, Sentencing and Courts Act 2022 (Commencement No1 and Transitional Provision) Regulations 2022/520* which triggered S.139 of the *Police, Crime, sentencing and Courts Act 2022*, which inserted S.32ZB into the CSA 1997. It is this section which applies to prisoners serving an IPP.

[38] So from 28<sup>th</sup> June 2022 under S.32ZB the SSJ’s duty to release was clearly not immediate. It was qualified. The qualification being that release was required “*as soon as is reasonably practicable in all the circumstances including, in particular, the need to make arrangements in connection with any conditions that are to be included*”

[39] There were no reported cases put before me on the interpretation of the words “as soon as reasonably practicable” in this Act.

[40] What then was the law on the required timing of the Claimant’s release before the introduction of S.32ZB? This was considered by Whipple J. in *R (Bowen and Stanton) v Secretary of State for Justice* [2016] EWHC 2057 (Admin), and subsequently on appeal by Sir Terence Etherton MR, McCombe LJ and Ryder LJ reported at [2017] EWCA civ 2181.

[41] Bowen was sentenced to life imprisonment for murder with a 14 year minimum term. He was 64 years old at the date of the hearing. The 14 year minimum term had

expired in 2011 and after a move to an open prison the offender managers contacted Mandeville House a supplier of Approved Premises in 2014 and were told that a space would become available in January 2015. In November 2014 the Parole Board directed his release to Mandeville House specifically alongside other conditions. It took 69 days for a bed to become available at Mandeville House in January 2015 as predicted.

- [42] Stanton, who was 41 years old at the time of the judicial review proceedings, had been sentenced to an indeterminate sentence of imprisonment for public protection in 2010 for wounding with intent to cause harm. The specified tariff was three years. That expired in 2013. After a move to an open prison in 2014 the Parole Board directed his release in March of 2015. In advance of the Parole Board hearing the offender managers contacted Mandeville House asking for a place and they responded informing the managers that a place would become available in late July 2015. The delay between the Parole Board's direction to release Mr Stanton, subject to a condition that he resided in Mandeville House, and him actually being released was 118 days.
- [43] The Claimants brought judicial review proceedings on three grounds: breach of Section 28 of the CSA 1997; unlawful detention contrary to Article 5 ECHR and breach of the Defendant's public law duty to provide sufficient approved accommodation premises to house released prisoners.
- [44] Whipple J. ruled that on the proper interpretation of S.28 of the CSA 1997 the law did not require the SSJ to release a prisoner immediately on receiving a Parole Board decision directing his release subject to various conditions.
- [45] Whipple J. considered the Court of Appeal ruling on the mandatory nature of a direction by the Parole Board in *R (Girling) v Parole Board* [2007] QB 783, where Sir Anthony Clarke MR stated at para. 15:

“15. The starting point is that the role of the board, when deciding whether or not to direct the release of a prisoner, is judicial. As Sir Thomas Bingham MR explained in *Ex p Watson* [1996] 1 WLR 906, 916 E – F, the Secretary of State is a party to the review procedure, whereas the board is the decision-maker. Submissions are made to the board on behalf of the Secretary of State which are often directly opposed to those made on behalf of the prisoner. Where the board directs release, the effect of section 28(5) of the 1997 Act is that the Secretary of State must release the prisoner. He has no discretion. As we understand it, this was accepted on all sides before the judge, in our opinion correctly.”

[46] In addition Whipple J. considered the ruling of Sales LJ in *R (John Gilbert) v Secretary of State for Justice* [2015] EWCA Civ 802 at para 57:

“...In any event, the Board has an overriding statutory duty under Article 5 and section 28 of the 1997 Act to direct release of a prisoner if satisfied that the risk criterion set out in that provision has been satisfied, and nothing in paragraph 1 of the Directions could detract from that.”

[47] Those rulings were put into their true light by the practical force of the judgment of Langstaff J. in *R (Elson) v Greater Manchester Probation Trust* [2011] EWHC 3692 (Admin) where, faced with submission that immediate release was required following a Parole Board’s decision, he ruled as follows, at para. 23:

“[23] ...s 28 of the 1997 Act cannot sensibly be interpreted to provide that as soon as a Parole Board takes a decision in which it directs release, albeit under conditions or at some future time, the Secretary of State is under a duty there and then and thereby to ensure that that release takes place forthwith. That would give no effect to the provisions of s.31; it would not recognise the difference in language between s.28 and s.32; it would in my view simply have been beyond the contemplation of Parliament that the alternative, which would need to have been in place (*for*) immediate release to be effected, would operate in an impractical way – as Ms Davies points out, if it were to be the case that it was anticipated that a Parole Board might make a direction which was conditional as to time or circumstance, that (so far as a circumstance such as accommodation in a hostel was concerned) the hostel would have to be held available just in case the Board at its hearing might decide that particular prisoner under review was to be released, even though it equally might not. Supervision arrangements would have to be made in anticipation of a possible outcome; appointments with psychiatrists and the like would have to be in place – all of which would be on a provisional basis which, given that the decision lies in the power of the Parole Board which has not yet considered it, might or might not be given effect to. I cannot sensibly construe s.28 in such a way that it would have that effect.”

The word (*for*) in italics above in this extract is my addition to make sense of that particular phrase – I have been unable to find the case report in any of the main case report online services.

[48] Whipple J. noted that the release conditions applied to Bowen and Stanton were to a specified place: Mandeville House (para. 36). It was known by the Parole Board when the release directions were given that the actual places there would not become available for many months. The prisoners' reasonable expectations were informed by the information given to them and the Parole Board about when the places at Mandeville House would be available for them. Whipple J. ruled that the conditions were to be viewed as part of the release directions not separate from them.

[49] As to what the law would consider to be a reasonable timeframe for Mr Stanton's release, noting that there had been four months of delay (Bowen did not assert unreasonableness for his 69 day delay) Whipple J. ruled as follows at para. 41:

“41. It comes from domestic public law, which requires the Secretary of State, as a public body, to operate a proper system, to act reasonably and to apply its own published policy to those within the contemplation of that policy, see *R (Kaiyam) v Justice Secretary* [2015] AC 1344 at [41] (Lord Mance and Lord Hughes JJSC) where the Court identified the following “ordinary” public law duties owed by the Justice Secretary:

“... 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 [see *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223] or any failure to apply established policy.”

42. These duties provide the safeguard for any life prisoner who believes that his continued detention, pending a placement at an AP, is excessive or unreasonable.”

[50] Whipple J. listed various considerations which were relevant to her decision on reasonable timescale. These included: the fact that residence at Mandeville House was specifically ordered by the Parole Board; the closeness of Mandeville House to the Claimant's family; the same support organisation being able to support Stanton at Mandeville House as had done so in the past; the fact that there was no availability in another Approved Premises (Quay House) and there was a shortage of Approved Premises in Wales; the nature of Stanton's sentence: it was indeterminate (IPP); Stanton's own wishes to be in the Cardiff/Newport area. Taking these factors into account Whipple J. ruled that the 4 months of delay between the Parole Board decision and the actual release was not unreasonable.

[51] On appeal the Court of Appeal upheld Whipple J.'s ruling on the proper construction of S.28 of the CSA 1997. On the reasonableness of the timing of the release of Stanton the Court ruled that such decisions were based on the specific facts of each

case and the Court of Appeal would be reluctant to overturn the decision of the first instance Judge who had read the evidence in full and heard the submissions at the hearing. Per McCombe LJ at para. 83:

“83 In general terms, it seems to me that the decision as to whether any particular period prior to release of a life/IPP prisoner, with a residence condition, is unreasonable or not, will depend entirely on the facts of the particular case, unless it appears that national unavailability of Approved Premises placements has had a genuinely adverse effect on an individual prisoner. The “national” question is, of course, ground (5) to which I will come, although, as I recognise above, the point arises as one of the factors affecting the reasonableness or otherwise of any specific waiting period.”

### **Findings of fact**

[52] On the evidence put before me I make the following findings of fact on the balance of probability.

### **Inferences**

[53] To make these findings I have, where indicated, had to draw inferences because the Defendant has failed to provide any witness statements from the probation service or from KJM, the Claimant’s COM, or from adult social care, or any evidence about the SSJ’s own system for satisfying the Parole Board’s conditions.

[54] Although no authorities were put before me on the Court’s power to draw adverse inferences where the Defendant has failed to comply with the duty of candour in a judicial review case and that failure disadvantages the Claimant’s claim by making it more difficult for the Claimant to prove that any delay allegation is sufficiently unreasonable to satisfy the test for judicial review, Claimant’s counsel submitted that adverse inferences of fact should be drawn in such circumstances.

[55] The Defendant’s failure to provide any evidence to explain whether there was a system for finding, quality control inspecting, listing, and securing supervised accommodation was stark in this claim.

[56] The Defendant’s failure to provide any witness statements or internal emails or external emails to show the actual efforts made to secure supported accommodation was equally stark, as was the Defendant’s failure to provide evidence of any lists of supported accommodation providers (if the Defendant had any).

[57] As to whether this Court may or should draw an adverse inference when the information relevant to the issues is wholly within the Defendant’s control and has not been provided to the Claimant or the Court, the Supreme Court held in *Efobi v Royal Mail Group Ltd* [2021] UKSC 33; [2021] 1 W.L.R. 3863 at para. 41 that this is a

matter of ordinary rationality. Per Lord Leggatt (with whom the rest of the Supreme Court agreed):

“41. The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in *Wisniewski v Central Manchester Health Authority [1998] PIQR P324* is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules.”

[58] Further in *R (DAS) v SSHD [2014] EWCA civ 45*, Beatson LJ in the Court of Appeal stated at para. 80:

“The judge stated the correct position clearly. He observed [2013] EWHC 682 at [21]:

“Where a Secretary of State fails to put before the court witness statements to explain the decision-making process and the reasoning underlying a decision they take a substantial risk. In general litigation where a party elects not to call available witnesses to give evidence on a relevant matter, the court may draw inferences of fact against that party ... The basis for drawing adverse inferences of fact against the Secretary of State in judicial review proceedings will be particularly strong, because in such proceedings the Secretary of State is subject to the stringent and well-known obligation owed to the court by a public authority facing a challenge to its decision, [in the words of Lord Walker of Gestingthorpe in *Belize Alliance of Conservation Non-Governmental Organisations v Department*

*of the Environment* [2004] Env LR 761 , para 86] ‘to co-operate and to make candid disclosure, by way of affidavit, of the relevant facts and (so far as they are not apparent from contemporaneous documents which have been disclosed) the reasoning behind the decision challenged in the judicial review proceedings’.”

[59] An example of a Court drawing such adverse inferences is found in *R (Quark Fishing) v SSFCA* [2002] EWCA civ 1409 at para. 53 where Laws LJ stated:

“If the court has not been given a true and comprehensive account, but has to tease the truth out of late [disclosure], it may be appropriate to draw inferences against the Secretary of State upon points that remain obscure.”

### **Burden of proof**

- [60] The burden of proof in judicial review claims generally rests on the Claimant. However, in cases such as this, where the Court is assessing what could and should have been done against what has been done by a Secretary of State who is under a qualified duty to act to liberate a person from prison, “as soon as was reasonably practical in the circumstances” by reference to the Parole Board’s direction, the Claimant faces an evidential impossibility if the burden of proof is wholly on his shoulders. The Claimant will not have within his possession, in prison, much or perhaps any of the factual evidence of the circumstances and will not know what the SSJ did or could have done.
- [61] All or almost all of the factual evidence of the relevant circumstances will usually be within the Secretary of State’s possession or control.
- [62] Some information may have been passed on to a claimant, as was the case with this Claimant, via his solicitors in emails or phone calls. But the vast majority of the information and factual evidence relating to reasonable practicability will be wholly within the Defendant’s power and control.
- [63] How then could any such claimant succeed if the Secretary of State were allowed to withhold or to refuse to disclose the relevant facts and circumstances to the Claimant or the Court?
- [64] It is here that the duty of candour assists. But in addition, in my judgment, the burden of proof assists too.
- [65] Once a claimant in a case such as this, where his liberty is at stake, where the Defendant carries a statutory duty to release him as soon as reasonably practicable, and where the Defendant must satisfy certain Parole Board conditions before releasing the



claimant, raises a prima facie allegation of unreasonable delay, in my judgment the burden rests on the Defendant to show: (1) what the Defendant did to fulfil the duty and (2) that the delay was not unreasonable.

[66] I draw justification for this ruling from the following factors: (1) nearly all of the facts and matters relevant to the circumstances and hence the test are within the Defendant's power and control, not the Claimant's. (2) The Claimant is in prison and lacks funds so is at a huge financial disadvantage. (3) Although Legal Aid is granted for judicial review a wide ranging set of freedom of information and other requests for factual evidence from witnesses about the Defendant's efforts would be very difficult for the Claimant and his lawyers to achieve in a short timescale, would be costly and the results would not guarantee anything like a full picture of what the Defendant had been doing (or not doing). (4) The Defendant is required by the duty of candour to provide the information in any event. (5) A line of case law authorities dealing with the liberty of the subject and the burden of proof. I start with *Eshugbayi Eleko v Government of Nigeria* [1931] AC 662, in which Davidson J. at p 670 said:

“As the executive he can only act in pursuance of the powers given to him by law. In accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a court of justice.”

This was applied and explained further in *R v SSHD ex p Khawaja* [1984] AC 74, by Lord Scarman thus:

“Secondly, there is the problem of proof. The initial burden is upon the applicant. At what stage, if at all, is it transferred to the respondent? And, if it is transferred, what is the standard of proof he has to meet? It is clear from the passages cited from Lord Atkin's opinions in [Liversidge v. Anderson \[1942\] A.C. 206](#) and [Eshugbayi Eleko v. Government of Nigeria \[1931\] A.C. 662](#) that in cases where the exercise of executive discretion interferes with liberty or property rights he saw the burden of justifying the legality of the decision as being upon the executive. Once the applicant has shown a prima facie case, this is the law. It was so recognised by Lord Parker C.J. in [Reg. v. Governor of Brixton Prison, Ex parte Ahsan \[1969\] 2 Q.B. 222](#) , and by Lord Denning M.R. in the Court of Appeal in [Reg. v. Governor of Pentonville Prison, Ex parte Azam \[1974\] A.C. 18](#) , 32. And, I would add, it is not possible to construe section 3 of the Habeas Corpus Act 1816, as meaning anything different.”

## **The chronology of events – findings of fact**

### **The original offences**

[67] The Claimant was serving a sentence of four years imprisonment imposed at Derby Crown Court in April 2003 for two offences of unlawful sexual intercourse and two offences of assault occasioning actual bodily harm over an 8 month period on his 15 year old girlfriend. The original charges included vagina and anal rape. The Defendant's guilty pleas to unlawful sexual intercourse led to the charges of rape not being pursued.

[68] Whilst the Claimant was still in prison he made a phone call during which he was over heard to make threats to kill his mother. He was sentenced at Leicester Crown Court to a an IPP sentence with a tariff of 2 years imprisonment. He pleaded guilty. The Claimant was considered dangerous. This sentence was imposed when he was aged 21.

### **The Parole Board decision**

[69] By the time of the Parole Board hearing the Claimant was aged 37 years. He had been in prison since 2003, a total period of 19 years. He had been through multiple Parole Board hearings which had been unsuccessful.

[70] As a result of a hearing which took place on the 17th of February 2022 the Parole Board issued its decision on the 28th of February 2022. The Board directed that the Claimant was to be released on licence subject to conditions.

[71] In the Parole Board's conclusions at paragraph 4 the panel stated that they took into account all of the evidence that had been put before the panel. On balance the panel concluded that what the Claimant was telling the panel genuinely reflected his motivation and intentions. The panel found that the Claimant had a somewhat better understanding of his personality issues and the risks that he presented. They found that he could recognise his own risk factors and was willing to seek help and to work with those supervising him to address his issues. The panel found that in the lead up to the hearing the Claimant was reducing if not eliminating his self-harming. The panel noted the recommendation of the Claimant's COM was for release which matched the recommendation of Ms Hassall, the prison psychologist, for release. The panel noted that the Claimant had worked with ACORN and psychology experts to address his risks although not always entirely in a satisfactory manner. The panel was persuaded that the very comprehensive risk management plan (RMP) would exercise "*the requisite tight and effective external control*" of the Claimant. Therefore the panel concluded:

“4.8 accordingly and in all the circumstances the panel is satisfied Mr Newson does meet the legal test for release and that it is no longer necessary for the protection of the public that he remain confined. It therefore directs Mr Newson's release from custody on the proposed RMP.”

The panel went on in the decision to direct that release was based upon the expectation that the RMP would be applied.

- [72] The licence conditions imposed by the Parole Board in addition to the standard licence conditions were as follows:
- a. One and two: related to a ban on living with male or female children under the age of 16 or having unsupervised contact with such children without prior approval from the supervising officer.
  - b. Three: required the Claimant to comply with any requirements of the supervising officer in relation to drug offending.
  - c. Four: required the Claimant to notify the supervising officer of any developing intimate relationships.
  - d. Five: required the Claimant to notify the supervising officer of any developing personal relationships with any person known or believed to be living with children under the age of 18.
  - e. Six: was to attend the Derwent Centre to give samples to test for drugs in the Claimant's body.
  - f. Seven: was to prevent the Claimant from taking action that would hamper drug testing.
  - g. Eight: was to ban the Claimant from contact with a named person.
  - h. Nine: was to confine the Claimant to an approved address between 7:00 PM and 7:00 AM each night (no specific address was given). The address was to be approved by the supervising officer.
- [73] At the Parole Board hearing the Parole Board heard that the Claimant had made the threat to kill his mother in the presence of others so that he could stay in custody. He was assessed as having an emotionally unstable personality disorder with borderline paranoid and anti-social personality traits. Although there was no documented mental health diagnosis the Claimant had twice spent time in a medium secure psychiatric hospital, the first time between November 2010 and March 2011 and the second time between January and February 2012. He was averse to group work but did complete a victim one to one module with his offender supervisor. There had been no recent incidents of aggression or violence to other prisoners in the three years before the hearing. He had displayed some childish behaviour. He had also displayed positive behaviour: helping staff. There were no suspicions of drug misuse. The Claimant had self harmed on numerous occasions whilst in prison Had reduced that behaviour over the year before the hearing save for the night before the hearing.
- [74] The Claimant was fearful of being released. He expressed hopelessness but did not wish to get his hopes up. The panel was of the view that the Claimant was torn between the "familiarity and comfort" of custody and the desire to be released to live in the community.

- [75] The Claimant had engaged with a psychologist for compassion focused therapy. He had worked with two doctors from ACORN and developed a better self management and understanding. He had attended most appointments. He had made numerous attempts to withdraw but had continued to engage. The panel noted childhood trauma which was unaddressed. The panel noted that the Claimant would need to seek and undertake further work with ACORN.
- [76] Overall the panel took the view that the work which the Claimant had done had helped him improve his self management and insight and thereby reduce his risk. Miss Hassall, the prison psychologist, considered that the old risk assessments might be overstated because of the lack of violence by the Claimant over many years. She recommended release. Miss James-Moore (KJM), the Claimant's COM, recommended release. She considered that she had a very positive working relationship with the Claimant who was proactive in contacting her. She considered that the proposed release package was comprehensive. She offered that the Claimant would be collected from custody and taken to the planned accommodation. He would have structured days engaging with agencies and support staff. There was no definitive length of stay at the proposed supported accommodation. She considered that there would be warning signs if things were going wrong which would be picked up by the professionals.
- [77] The Claimant was assessed, using three different scales, as presenting a medium probability of future offending. If he were to reoffend in the community his COM assessed that the offence would present a high risk of serious harm to the public. However, there was a consistent view from the professionals that the "risks" as assessed might be overstated because of the young age at which the Claimant had entered the prison system and the absence of any risk testing over many years since the old risk test results.
- [78] KJM presented a comprehensive risk management plan to the Parole Board involving release into supported premises arranged by Ridgeview Supported Living Limited (Ridgeview). The manager there was a mental health nurse. They had skilled staff. The proposed address was 26 Eton St, Wilmorton, Derby. This accommodation was a one bedroom ground floor flat with an enclosed garden. The Claimant was to have daytime support workers and designated night staff and 20 hours of individual one to one support for days out in the community. There would also be weekly face to face supervision.
- [79] I shall now make findings of fact on what occurred after the Parole Board's direction for release.

**28 February 2022 – 4<sup>th</sup> April 2022 – 35 days**

- [80] Miss Goodrham asserts that on the 7th of March 2022 the PPCS contacted the probation service to request the Claimant's release information. No response was

received from the probation service. She gave evidence that these details were chased again on the 6th of May 2022. Thus it is admitted by the Defendant that there was a delay of two months in the PPCS chasing the probation service for release information. That was not a good start.

[81] On the 22nd of March 2022 the 21 day period for the SSJ to apply for reconsideration of the Parole Board's decision expired. A letter was sent to the Claimant on that date by the PPCS reconsideration team stating that the Parole Board decision was final and "*you will be released on a date in accordance with your release plan.*"

[82] I consider that the direction of the Parole Board and that letter gave rise to a reasonable expectation in the Claimant's mind of release within a reasonable period of time.

[83] According to Miss Goodrham, on the 25th of March 2022 Ridgeview withdrew the supported accommodation at 26 Eton Street, Derby without warning. The Defendant was not told this at the time though. She asserts that the PPCS were informed of this on the 6th of May 2022 by the probation service. So there was a delay of 6 weeks between the accommodation being withdrawn and the PPCS being told. I remind myself here that the Defendant pleaded in the Grounds of Defence that before the withdrawal the landlord was "unresponsive" and that he then "left the country." No details about those matters were provided to the Court.

[84] Miss Goodrham states that Ridgeview had indicated to the probation service that they would try to find alternative accommodation but on the 4th of April 2022 informed adult social care who informed the probation service that they had no placements available for the Claimant. Again the PPCS were not provided with this news at the time.

[85] No evidence has been produced by the Defendant to explain how the original accommodation offered by Ridgeview was found, negotiated, quality controlled, assessed and secured before the Parole Board hearing. No evidence has been produced of emails or phone calls. No evidence has been produced of any framework agreement, licence or tenancy or draft licence or draft tenancy. No evidence has been produced of any Defendant designed system under which Ridgeview were engaged. No documents were provided showing any contract under which their services were utilised.

[86] No evidence has been produced by the Defendant as to the communications between the probation service or any arm of the Defendant's organisation and Ridgeview from the date of the Parole Board decision on the 28th of February 2022 to 25<sup>th</sup> March 2022. The Defendant has produced no written evidence that they did anything substantive between the 28th of February 2022 and the 25th of March 2022 when Ridgeview dropped their bombshell, "without warning".

**5<sup>th</sup> April 2022 to 28 June 2022 – 84 more days**

- [87] On the 21st of April the Claimant's solicitors wrote to KJM asserting that the Claimant had heard that the RMP has been withdrawn and asked what was going on.
- [88] A chaser was sent on the 25th of April. A response was received on the 25th from KJM informing the Claimant's solicitor that the accommodation package had fallen through and also that the original mental health social worker had left post. A new mental health social worker called Victor Joel had been allocated and a professionals meeting had been called for the 26th of April 2022.
- [89] The Defendant has provided no evidence to the Court about why it took 4 weeks between the 25th of March and the 25th of April for the Defendant to inform the Claimant that his accommodation and support package had fallen through.
- [90] No evidence has been put before this Court that any professionals meeting actually took place on the 26th of April 2022.
- [91] On the 27th of April 2022 the Claimant solicitors wrote to KJM asking whether the professionals meeting had moved things on. No response was received.
- [92] On the 3rd of May 2022 the Claimant solicitor wrote to KJM chasing for an update. No response was received.
- [93] On 6<sup>th</sup> May 2022 the probation service finally responded to the PPCS requests for a release plan. Miss Goodrham gives evidence that after chasing, the Claimant's COM (unnamed) had informed the PPCS that the original Ridgeview accommodation had been withdrawn without warning, that Ridgeview had offered to find alternatives but informed the COM by 4<sup>th</sup> April that none were available; that:
- "a number of new care providers had been identified and would be approached – including Breakthru care".*
- [94] The "new" providers were not listed.
- [95] Thereafter no evidence has been provided to the Court about any activity by the probation services or the PPCS from 6<sup>th</sup> May to 24<sup>th</sup> May 2022.
- [96] On the 24th of May 2022 a professionals' meeting took place (a later email discloses this). No notes of that meeting have been produced to this Court and nobody from the Defendant's organisations informed the Claimant or the Claimant's solicitors in advance or in arrears of that professionals meeting or the outcome thereof or the content thereof. The PPCS were not informed either.

- [97] Miss Goodrham, in her witness statement, asserts that after the update received from the probation service by the PPCS on the 6th of May 2022 the PPCS attempted to contact the probation service by phone calls and e-mails on the 10th, 14th and 20th of June but such attempts failed. No explanation was provided as to why the chaser emails were not started for 4 weeks.
- [98] On the 23rd of June 2022 an e-mail was received by PPCS from the probation service advising that adult social care were “*continuing to work together to identify accommodation to meet the Claimant’s needs and that release was not possible at this time.*” There was no substance in that email. I judge that it was merely a stalling communication. On the evidence before me the PPCS did nothing in response and did not escalate their involvement.
- [99] So by 28<sup>th</sup> June 2022, when S.32ZB of the CSA 1997 came into force, no progress had been made to secure alternative supported accommodation according to the evidence put before the Court by the Defendant. The PPCS had been frustrated by the probation service due to a lack of any substantive feedback and progress but no one had escalated the Claimant’s case up the chain of command to achieve progress. The PPCS had very little information about what was going on and had not warned of any breach of any policy or system for obtaining supported accommodation. No mention is made in Miss Goodrham’s witness statement or in any of the emails, about the existence of any system created or maintained by the Defendant for finding, listing, quality assessing, hiring and recommending supervised accommodation for soon to be released prisoners. There was no evidence of any Defendant policy or guidance on such matters put before the Court. There was no evidence of urgency.
- [100] I am driven to find on the evidence put before this Court by the Defendant, or rather the lack thereof, that the Defendant had no or no adequate policy or system for finding, listing, quality assessing, hiring and recommending to the Parole Board supported accommodation for prisoners who are to be released. Further the Defendant had no system for escalating systemic failures or delays.
- [101] As to the communications with the Claimant’s lawyers I make the following findings of fact for this period.
- [102] **Red Flag letter:** On 9th of June 2022 the Claimant solicitors wrote to the prison, the Parole Board and the Defendant at various offices and reminded all that despite the Parole Board’s direction to release made on 28 February 2022 the Claimant remained in prison awaiting a release plan and date. The solicitor complained that the Claimant’s COM had changed three times and his RMP had fallen through and raised the concern that it was not clear who had picked up this responsibility and was dealing with it. In my judgment this was a clear red flag warning to the Defendant about delay, lack of system and lack of reasonable progress.

- [103] On the 13th of June Miss Rossella Termine emailed to state that she had taken over the Claimant's case (I do not know from whom) and had been "chasing" probation for a release update. She was a member of the Defendant's Parole Eligible Casework team based in Croydon. On the same day the Claimant's solicitor asked for details of the current COM. The response given by Miss Termine on the same day was that there were two names on the computer system: KJM and Miss Linda Penman. She did not say which one was in control and I find that she did not know.
- [104] On the 14th of June Rossella Termine emailed the Claimant's solicitors, the prison, a wide range of individuals at the Defendant's organisation and KJM informing them that she was now the case manager and she "had chased the COM". But KJM was the COM and no chasing email with any substantive contents has been disclosed. By this stage in my judgment a forceful PPCS hand on the tiller was required to find out substantively what had been done and to determine what needed to be done. Instead as I shall set out below the boat was left with sails flapping, travelling in circles.
- [105] On the 17th of June the Claimant's solicitors chased the Defendant for an update. No response was received.
- [106] On the 21st of June 2022 the Claimant's solicitors again chased the Defendant for an update. No response was received.
- [107] So by 28<sup>th</sup> June 2022, 119 days after the Parole Board's decision, as far as the Claimant was aware no progress had been made by the Defendant in securing his supported accommodation for his release. His solicitors did not know who his COM was and were getting no substantive information about professionals' meetings or the system or progress. The PPCS had been wholly ineffective in escalating the work and the Claimant was in the dark.
- [108] On 28th June 2022 S.32ZB came into force.

**29<sup>th</sup> June – 2 November 2022 - 127 more days**

- [109] On the 30th of June 2022 at 15.01 John Lambert, a team leader and the London NPS division SPOC (single point of contact) for Parole Eligible Casework, a member of the Defendant's Public Protection Casework Section (PPCS) based in Croydon, wrote to the Claimant's solicitor informing her that the Claimant's COM had advised that a suitable placement had not yet been found and therefore there was no confirmed release date. He wrote that adult social care were involved and trying to source a suitable placement for him based on his support needs. There had been a professionals meeting on the 24th of May at which the social worker had confirmed that there *were a few providers he was looking into* but he needed further to correspond with them. In addition the social worker needed to meet the Claimant by video link to get an update on his current needs and that video meeting had been set up for the 4th of July. At 15.05 PM the Claimant's solicitors chased the Defendant (and John Lambert) for the



name of the COM who had provided this information. One minute later Mr Lambert responded by saying that the COM who provided the update was “Samantha Dawkins”. This is the name of a person who had not appeared before in the email trail and whose involvement is wholly unexplained by Miss Goodrham in her witness statement. As I shall show below Miss Dawkins name never appeared again in the email trail.

- [110] It is of note at this time that there was no mention made to the Claimant’s solicitors of the actual names on the list of new accommodation providers which the COM had informed the PPCS had been identified as long ago as 6<sup>th</sup> May 2022.
- [111] Miss Goodrham gives evidence that several more emails were exchanged between the PPCS and the probation service “throughout July”. She summarised these by saying “*whilst efforts were ongoing to secure accommodation none had been confirmed.*” None of the communications have been disclosed to the Court.
- [112] On 25<sup>th</sup> July 2022 the Claimant chased KJM for an update on the stage reached for the Claimant’s release. No response was received.
- [113] So, by the end of July 2022 five months had passed since the Parole Board’s decision. The Claimant was languishing in prison. His lawyers had chased and chased but had received no substantive response about the progress of the Defendant’s search for supported accommodation and construction of the required RMP and no details of the system operated by the Defendant had been provided to the Claimant.
- [114] I consider, on the evidence put before this Court, that by the end of July 2022 the Claimant’s legitimate expectations of release with support within a reasonable time after the Parole Board’s decision had probably been substantially crushed by the Defendant’s delay and obfuscation.
- [115] Things changed at the start of August. Miss Goodrham states: “*However on 1st August 2022 PPCS were notified of a significant update by the probation service, namely that a provisional placement had been agreed with break through care and a final decision imminent.*”
- [116] This is a significant event in my judgment. The first people who should have been told about it were the Claimant and his lawyers. However, there is no evidence that the Claimant was told on the 1<sup>st</sup>, or the 2<sup>nd</sup>, or the 3<sup>rd</sup> or the 4<sup>th</sup> of August.
- [117] On 5<sup>th</sup> August 2022 an incident occurred in the Claimant’s cell at prison. I was provided with a “Notice of Report” from HMP Whatton dated 7.8.2022. In that it was asserted that at 16.43 in cell A3-102 the Claimant was self harming by cutting his right arm which a shard of broken porcelain mug when SO Turner asked him to stop and hand it over. It would appear that at least up to that point the facts are agreed by

the Claimant. The report details went on to say that the Claimant then stabbed SO Turner in the hand causing severe bleeding which required attendance at hospital for treatment. The case was sent to the adjudication officer and various adjudication hearings took place. The first was on the 8th of August and the second was on the 23rd of September. It appears that the adjudicator referred the matter to the police due to the seriousness of the charge.

- [118] I have read the representations provided on behalf of the Claimant for the adjudication which were provided by his solicitor, Kathryn Reece-Thomas and are undated. They make it quite clear that the Claimant had suffered hugely as a result of the failure of the Defendant to institute the RMP required by the Parole Board back in February 2022. It was asserted that (1) the Claimant had felt suicidal due to the delay and uncertainty; (2) the Claimant had committed many acts of deliberate self harm during the delay period; (3) the Claimant had not been provided with any clear information on key achievements towards release by the probation services during the period; (4) his COM had changed several times during the delay; (5) he was anxious and worried.
- [119] The Claimant's lawyer relied on a Justice Select Committee report on prisoners who had been sentenced to IPPs which set out the emotional and mental deterioration and high levels of self harm and suicide in such prisoners. The Claimant's lawyer produced data showing that in 2020 a total of 2066 self harm incidents were recorded for IPP prisoners.
- [120] As to the alleged assault event itself the Claimant's lawyers submitted that the Claimant's version was that he was asked to stop self harming and refused and as a result SO Turner grabbed his hand and was injured in the process. No body cam (video) had been worn by SO Turner during the event and the Claimant's lawyer raised the HMPPS guidance which suggested that any officer who was going to use force should turn on his body cam. The Claimant's lawyer also suggested there was some camera footage of the time directly following the incident during which SO Turner can clearly be heard stating the event was "an accident".
- [121] The police closed the investigation in early September of 2022. I have no evidence as to what happened in relation to the adjudication.
- [122] My findings of fact about what happened after the 5th of August now follow.
- [123] On the 8th of August 2022 HMPPS emailed the Claimant's solicitors and various of the Defendant's staff informing them of the incident on the 5th of August. In that e-mail it was alleged that the Claimant stabbed a member of staff. It was also alleged that the officer suffered a "dislocated jaw" but in relation to this they added the words "*it is unclear however whether this is the same officer or another.*" The prison asked for this information to be sent to the Parole Board for their consideration.

- [124] On the same day the Parole Board responded informing the prison that the Parole Board's function ended with its decision.
- [125] On the same day the Claimant's solicitors informed the Defendant and the prison that the Claimant pleaded not guilty to the asserted assault.
- [126] On the 9th of August the prison service informed the Claimant's solicitors that the incident had been referred to the police for investigation.
- [127] On the 10th of August the Claimant sent his letter before action to the Defendant. In that letter the Claimant asserted that the Defendant had breached its duty to release the Claimant within a reasonable period of time after the Parole Board's decision. Interestingly, in that letter, it stated that the Claimant himself had been informed by his COM on the 24th of March 2022 that his risk management plan had fallen through. I suspect there may be typing errors in this letter in paragraphs 11 and 12 about the dates when the Claimant's solicitors were informed of the fall through of the Ridgeview accommodation. A summary of the law was set out in the letter including Section 28 of the CSA 1997 and Article 5 of the ECHR and a claim for damages for unlawful imprisonment was advanced.
- [128] If the seriousness of the delay had not been apparent to the Defendant before then (for instance from the red flag letter) it should have been apparent by the date of the pre-action protocol letter.
- [129] Interestingly on the 12th of August 2022 Rossella Termine wrote to KJM asking whether she had made any amendments to the RMP and stating *"if you're happy that the risk is managed by the current RMP, then can we proceed with release?"* In my judgment the drafting of that e-mail discloses a complete lack of understanding by Rossella Termine of the situation. The Parole Board's conditions had not specified a particular accommodation building or supplier as a condition of release. What was required to comply with the Parole Board's conditions was supported accommodation and the other matters set out in the conditions including the support services set out by KJM to the Parole Board as necessary. It is not clear to me how Rossella Termine could have proceeded with release in the absence of any supported accommodation having been found.
- [130] On the 15th of August the prison service e-mailed to multiple staff of the Defendant and the Claimant's solicitors seeking an update and informing Rossella Termine that any update of the current RMP would have to come from the COM who was KJM.
- [131] On the 17th of August the Claimant's solicitors emailed multiple employees of the Defendant asking for an update and informing them that *"Mr Newson is being told a whole manner of things from the prison, none of which are relating to his release and*

*he is very distressed. I understand that there is now accommodation in place and release should be proceeded with.”*

- [132] Only 17th of August at 16.39 hours the Claimant’s solicitor emailed two of the Defendant’s staff asking for an urgent review of the Claimant’s case and asserting that the Claimant now had “accommodation ID” and that there is no reason to delay release.
- [133] No response was provided to those urgent requests for 6 days.
- [134] On the 23rd of August 2022 KJM e-mailed the Claimant’s solicitors. She apologised for being away from work for a significant length of time. No one has explained how long for or when this absence occurred. KJM went on to state that the Claimant was being held in custody *unlawfully*. KJM asserted that she had been holding “*regular professionals’ meetings*” and negotiations with adult social care namely Victor Joel, to secure alternative supported accommodation. She asserted a placement and funding was in the process of being finalised when the 5th of August incident occurred. She asserted that the incident resulted in Breakthru care concluding that they could not accommodate the Claimant. She asserted that she had made emergency referrals to Approved Premises hostels but these had been “deemed unsuitable”. She asserted she would also be making a referral to MAPPA level two management which had not previously been deemed necessary because the services had been actively working together to secure the best outcome. If the Claimant was to be released without a support package then level two management would be required to gain additional resource for support. She informed the Claimant’s solicitors that she worked on Mondays, Tuesdays and Fridays only.
- [135] Miss Goodrham gave evidence that on the 6th of September 2022 a level 2 MAPPA meeting took place. The Claimants COM advised the meeting that adult social care had agreed to support the Claimant if he had to be released to emergency Approved Premises accommodation as an alternative to supported housing subject to funding approval however adult social care informed the Defendant that there was no availability for local Approved Premises at that time.
- [136] On 7th September 2022 the claim form for the judicial review was issued.
- [137] On 21st September 2022 the PPCS contacted the national Approved Premises team. Delphicly Miss Goodrham states that “*several emails were exchanged*” exploring various avenues but does not descend into any detail. The emails have not been disclosed to the Court.
- [138] On the 23rd of September 2022 Miss Goodrham asserts that the Claimant’s COM informed the PPCS that Hegarty Housing, a “new” supported housing provider, had been identified for the Claimant and the assessment would take place on the 4th of

October 2022. No explanation was provided to the Court as to what “new” meant. I infer it meant that Hegarty Housing had only recently been contacted.

[139] On the 4th of October the Hegarty Housing assessment took place but the Claimant was not suitable.

[140] The Claimant’s COM arranged for an assessment at an alternative supported accommodation provider called Langley House Trust and this took place on the 13th of October. Langley House Trust agreed they would accommodate the Claimant if funding was provided. The offer was confirmed but as at the 31st of October no bed was available.

[141] The Court was not provided with any information about when Langley House Trust were first contacted. I infer it was shortly before 13<sup>th</sup> October 2022.

[142] On the 28th of October funding was agreed for Langley House Trust and a transition plan was being drawn up.

#### **The application to set aside**

[143] Whilst seeking accommodation for the Claimant the Defendant took the decision on the 30th of September 2022 to apply to the Parole Board to set aside the Parole Board’s release decision, on the basis of the alleged assault which took place on the 5th of August. This was done despite the fact that the police had closed their investigation and no adjudication had taken place within the prison. Miss Goodrham does not say whether KJM supported this application or opposed it.

[144] Rule. 28A of the *Parole Board Rules* (the relevant parts only) states:

#### **“28A. Setting aside final decisions**

(1) The Board may set aside a final decision made under rule 19(1)(a) or (b), 21(7) or 25(1)—

- (a) on application by a party; or
- (b) on initiation by the Board chair.

(2) An application or initiation under paragraph (1)(a) or (b) must be considered on the papers by a decision maker.

(3) A final decision may be set aside under paragraph (1) by a decision maker if—

- (a) it is in the interests of justice to do so; and
- (b) one or more of the conditions in paragraph (4) are satisfied.

(4) The conditions are—

- (a) the decision maker is satisfied that a direction given by the Board for, or a decision made by it not to direct, the release of a prisoner would not have been given or made but for an error of law or fact;

(b) the decision maker is satisfied that a direction given by the Board for the release of a prisoner would not have been given if—

- (i) information that was not available to the Board when the direction was given had been so available, or
  - (ii) a change in circumstances relating to the prisoner that occurred after the direction was given, had occurred before it was given.
- (5) An application or initiation to set aside a decision under paragraph (1)(a) or (b) must be made—
- (a) within 21 days of the decision; or
  - (b) if the application or initiation relies on a condition in paragraph (4)(b), before the prisoner is released.
- (6) Where an application is made under paragraph (1)(a)—
- (a) the party who made the application must serve the application and any representations in support upon the Board and the other party;
  - (b) the Secretary of State must serve all relevant information and reports upon the Board and the other party; and
  - (c) the other party may make any representations in reply, and those representations must be provided to the Board and the party who made the application within 7 days of service of the application.
- (7) Where an initiation is made under paragraph (1)(b)—
- (a) the Board must notify both parties of the initiation by the Board chair and serve any reasons in support of the initiation upon the parties;
  - (b) the Secretary of State must serve all relevant information and reports upon the Board and the other party; and
  - (c) the parties may make any representations in reply, and those representations must be provided to the Board and the other party within 7 days of service of the initiation.
- (8) Where the decision maker directs that a final decision should be set aside, they must also direct that the case should be—
- (a) decided again on the papers by the previous panel or a new panel appointed under rule 5(1), or
  - (b) decided again at an oral hearing by the previous panel or a new panel appointed under rule 5(2).
- (9) The decision of the decision maker under paragraph (3) must include the reasons for that decision.
- (10) Any requirement on the Secretary of State to give effect to a Parole Board direction to release a prisoner under Chapter 2 of Part 2 of the 1997 Act or Chapter 6 of Part 12 of the 2003 Act, **is suspended**

when an application is made under paragraph (1)(a) or (b), pending the decision under paragraph (3).”

[145] It is sub paragraph 10 which was the sting in the tail for the Claimant. The release decision is suspended pending the application to set aside. This must have been a hammer blow to the Claimant if he was told about it. I have no evidence about whether he was.

[146] Despite this application the Defendant was actually still working to accommodate the Claimant throughout October 2022 and this issue fell away at the hearing when the Defendant withdrew the application to set aside and agreed to undertake to release the Claimant by 16 November 2022 to be accommodated at Langley House Trust.

### **Applying the law to the facts**

[147] It is clear from the Court of Appeal judgment in *Bowen and Stanton* that each case is fact specific in relation to the reasonableness of the time frame for release after a Parole Board decision which had conditions attached to it.

### **Factors**

[148] When considering the issue of the reasonableness of the timeframe of the Defendant’s past actions in relation to securing the Claimant’s release from prison by arranging supervised accommodation and support all of the circumstances are relevant.

[149] I asked the parties’ counsel to assist the Court with the provision of an agreed list of factors. The following were the agreed factors:

- (1) The length and nature of the Claimant’s sentence.
- (2) The Claimant’s mental and physical health.
- (3) The availability of suitable supported accommodation.
- (4) The staff available and the changes in staff responsible for the Claimant’s case.
- (5) The steps taken or not taken to progress the case.
- (6) Whether any delay was caused by the Defendant’s fault or culpability.
- (7) The decisions taken relating to withdrawal of any accommodation offered.

[150] To those agreed factors, in my judgment, the following factors should be added:

- (8) The existence and effectiveness of the Defendant’s system and policies for gathering, quality assessing, listing, securing and providing supported accommodation and the requisite supervision and support.
- (9) The Claimant’s personal and family circumstances and their geographical location.
- (10) The complexity of the conditions applied to the direction to release by the Parole Board.

[151] I consider some of these ten factors to be relevant to the reasonableness of the Defendant's actions because they were expressly considered by Whipple J. in *Bowen and Stanton* cited above. In addition others of these factors are relevant because they directly affect the work which the Defendant has to do to fulfil the SSJ's duty to arrange safe release in accordance with the Parole Board's direction.

[152] Before I analyse the factors sequentially to determine the reasonableness of the Defendant's actions a few overarching matters arise.

[153] In a simple case where no conditions were imposed by the Parole Board the duty to release will require quick release held back only by paperwork and administration.

[154] In the most complicated cases the amount of work required to be done by the SSJ to set up the Risk Management Plan may be substantial. Release will foreseeably be more delayed.

#### **Availability of Supported Accommodation**

[155] Three "new" supported accommodation suppliers were identified by the Defendant or those reporting to the Defendant during the 7 month period from 25 March 2022 (when Ridgeview withdrew) to the date of the hearing: Breakthru care, Hegarty Housing and Langley House Trust. The use of the term "new" is instructive. If they had been on a Defendant compiled list in February 2022 they would not be new, they would be established and known providers.

[156] I take judicial notice of the fact that Langley House was not a "new" supplier. It was the relevant accommodation supplier in *R (Taylor) v SSJ* [2015] EWHC 3245 (Admin), a case on delay argued on different grounds for a physically disabled prisoner where there were funding issues between the SSJ and the social services.

[157] No evidence was put before this Court to show that there was an inadequate supply of supported accommodation for the Claimant. So I make no such finding. Therefore I infer that the supply of supported accommodation available to the Defendant was adequate during the delay period.

#### **System for satisfying the Parole Board's conditions**

[158] The Defendant provided no evidence that the Defendant had a list of adequate quality controlled suppliers of supported accommodation and support services or that the Defendant sub-contracted that function to another who had such a list. I infer and find as a fact that the Defendant had no such list.

[159] In the absence of any evidence from the Defendant that the SSJ had a written system or policy for satisfying the Parole Board's conditions for the Claimant's release I infer and find as a fact that the SSJ had no such system. On the evidence before me the



approach appears to have been ad hoc and left to the individual COM or local arm of the Defendant's service with no guiding system or policy.

[160] The PPCS chased the COM and the probation service from time to time but allowed weeks or months to go by before a response was received. The chasing was intermittent and patchy. I find as a fact that the chasing by the PPCS was ineffective and in-substantial and their supervision of the process was inadequate.

[161] When responses were received from the probation service or the COMs which were insubstantial or blocking the PPCS did not escalate the case to higher management and did not dig into the detail of what was actually being done. They just accepted blocking responses to the effect that efforts were ongoing and let time pass by.

[162] As to the system operated by KJM and which ever other COMs were allocated to the Claimant's case, no evidence has been provided by KJM or the probation service or adult Social Care as to what that system was.

**What was actually done to find supported accommodation**

[163] I have made findings of fact as to what occurred above on the evidence put before me.

[164] The Defendant has not produced evidence showing that the SSJ kept in contact effectively and substantially with Ridgeview before or after the Parole Board decision. The assertion by the Defendant that the accommodation was withdrawn because the landlord of Eton Street had gone abroad and before he left had stopped communicating gives rise to the question: "what quality control systems were in place to filter out unreliable accommodation suppliers before the Parole Board hearing?" I find as a fact by inference that the SSJ's interactions and contracts and systems involving Ridgeview were probably inadequate.

[165] Despite being in possession of the evidence the Defendant has wholly failed to explain what was done to find accommodation after Ridgeview withdrew. There is no evidence about why it took so many months to contact Langley House Trust, Hegarty Housing or Breakthru care. The Defendant has failed to state when the Defendant's staff or their subcontractors or adult social services first contacted each of these supported accommodation providers.

[166] Breakthru care was listed as a possible provider by 6 May 2022 by the Claimant's COM but the arrangement was not secured in principle until 1<sup>st</sup> August 2022. No explanation has been provided as to why that delay occurred or how it arose. It took the Defendant 2.75 months to arrange only a conditional placement there, not a firm one.

[167] Langley House Trust and Hegarty Housing do not make any appearance in the Defendant's evidence until late September 2022. No explanation has been given as to

whether they were gathered onto the possible list mentioned on 6<sup>th</sup> May 2022 when the Claimant's COM informed the PPCS that "*a number of new care providers had been identified and would be approached – including Breakthru care*". The use of words like "a number" is instructive. It would not have been difficult to give the number. If it was one, the PPCS were entitled to know. If it was 5 then so much the better.

[168] I find as a fact on the evidence before me, by inference, that Langley House Trust and Hegarty Housing were not contacted by the Defendant or the Defendant's subcontractors or agents or anyone on the Defendant's behalf until mid September 2022.

[169] In the absence of any explanation or evidence from the Defendant about what the Defendant did and on the evidence which was put before this Court I infer that the Defendant, through its servants or agents or through delegating the tasks to others and waiting for a response, failed to exercise due diligence to find suitable supported accommodation providers between 26<sup>th</sup> March 2022 and mid September 2022. In my judgment the Defendant's efforts to find suitable supported accommodation between 25 March 2022 and late September 2022 were inadequate.

#### **The Breakthru care withdrawal**

[170] In the light of the known mental health challenges faced by the Claimant which were put before the Parole Board, I find that the Defendant and in particular the Claimant's COMs, including KJM, knew of the risk of self harm faced by the Claimant which would arise out of delay and uncertainty about his release date. In addition I note the Claimant's solicitors letter to the adjudication panel which detailed that his self harming increased as the delay increased. This assertion was not disputed.

[171] The evidence before me about the incident on 5<sup>th</sup> August lacks any statement from then victim or any eye witness. I can draw no conclusions as to whether it was a simple accident or an assault. I note that the police dropped their investigation within 4 weeks and that no prison adjudication panel has made any findings in relation to the incident.

[172] In my judgment the risk of self harm was growing as the Claimant was left in the dark about his release date and the weeks mounted up. By the end of July I have already found he was probably crushed and I suspect he was losing hope. He self harmed on 5<sup>th</sup> August. Taking all these matters into account I do not consider that the responsibility for the withdrawal of Breakthru care due to the events arising out of the self harm incident can be placed on the shoulders of the Claimant. They are directly and causally linked to the delay caused by the Defendant.

#### **Liberty of the subject**

[173] The final overarching factor is the sanctity of the right to liberty of all subjects in England and Wales. This is enshrined in the common law and in Article 5 of the ECHR. It is to be respected and preserved. Where the SSJ is exercising a duty which interferes with the liberty of the subject in my judgment it is incumbent on the SSJ to act with due diligence in carrying out the necessary duties.

### **The Factors**

#### **The length and nature of the Claimant's sentence**

[174] The Claimant was made subject to an IPP with a tariff of 2 years. The Claimant had been in prison for 19 years. He was well over his term. He had spent more than half his life in prison.

#### **The Claimant's mental and physical health**

[175] I consider that this Claimant is to be regarded as very mentally vulnerable to delay after the Parole Board's decision. Such delay was foreseeably likely to cause anxiety and a risk of self harm and in the event did so.

#### **The availability of suitable supported accommodation**

[176] I have found above on the evidence put before the Court that an adequate supply of suitable supported accommodation was available to the Defendant.

#### **The staff available and the changes in staff responsible for the Claimant's case**

[177] KJM appears on the evidence before me to have been the Claimant's COM throughout, but was away for a significant period of time during which 2 other COMs may have taken her place. Wholly inadequate communication of any such change overs is evident from the email evidence put before the Court. However a shortage of COMs is not put forwards by the Defendant as a reason for or the cause of any of the delay.

#### **The steps taken or not taken to progress the case**

[178] For the reasons set out above I find as a fact that the cause of the delay in the provision of supported accommodation to the Claimant with the necessary support services was the inactivity of the Defendant.

#### **Whether any delay was caused by the Defendant's fault or culpability**

[179] In my judgment the Defendant was at fault for the delays. The faults consisted of having no system or policy in place to implement Parole Board decisions and no adequate supervisory system operated by the PPCS to ensure that the Defendant's duty was fulfilled promptly.

#### **The decisions taken relating to withdrawal of any accommodation offered**

[180] I find as a fact that the withdrawal of Breakthru care was not the Claimant's fault. It was a foreseeable consequence of the delay caused by the Defendant's lack of system,

inactivity and poor communication with the Claimant in the light of the Claimant's fragile mental state.

**The existence and effectiveness of the Defendant's system and policies for gathering, quality assessing, listing, securing and providing supported accommodation and the requisite supervision and support.**

[181] I have already found on the evidence before this Court that the Defendant had no written system or policy for gathering, quality assessing, listing, securing and providing supported accommodation and fulfilling Parole Board decisions.

**The Claimant's personal and family circumstances and their geographical location**

[182] No submissions were made upon this factor and it does not have any effect on my decision relating to timeframe in this case.

**The complexity of the conditions applied to the direction to release of the Parole Board.**

[183] The conditions applied by the Parole Board did not specify the exact accommodation into which the Claimant would be placed. This permitted the Defendant to find alternative accommodation. The supervision and support provisions were substantial and to that extent the time necessary to put them in place would be more than would be required in a less complex case.

**Analysis**

[184] On the findings I have made above I must now consider whether the Defendant's delay was lawful or unlawful.

[185] I consider that under the common law, before 28 June 2022 when S. 32ZB came into force, *Wednesbury* unreasonableness was required. Was there unreasonable delay such that no reasonable Secretary of State would have acted as the Defendant did in this case in the 4 months from 28 February to 28<sup>th</sup> June? I would not quite have found unlawful delay by the 28<sup>th</sup> of June 2022 despite my findings of fact above. I shall explain why in the next paragraphs.

[186] I consider that a simple way to characterise the delay in this case is to use a traffic lights system:

- a. **Green:** For the 21 day period during which the SSJ was permitted to review the Parole Board's decision and perhaps challenge it the delay was expected and reasonable. Then thereafter, for the period needed administratively to set up the release, which I would judge to be the end of April, the delay was reasonable despite the inadequate information flow provided to the Claimant and his solicitors.

- b. **Orange:** For the period from May 2022 to 28<sup>th</sup> June when, despite Breakthru care having been found and other accommodation suppliers too (albeit unnamed but stated as “a number” on a list), nothing was done to contact them and secure a place. Professionals’ meetings did not occur when they were said to have been listed and the PPCS failed to escalate the case after receiving no substantive responses to their chasing enquiries for 6 weeks from early March to 6<sup>th</sup> May. The information flow to the Claimant and his solicitors was inadequate. In this period I would characterise the delay as “orange” so becoming unreasonable.
- c. In June nothing much happened. During this period in my judgment Orange was approaching Red (unlawful) through a lack of escalation and a lack of contact with various accommodation suppliers including Hegarty Housing and Langley House Trust and a lack of accurate feedback to the Claimant. In addition the lack of an effective or any policy or system was hampering the process.
- d. **Red:** At some time after 28<sup>th</sup> June 2022 I judge that delay became unlawful. I set out the start date below. I make this decision because the Defendant was:
  - (1) breaching the Claimant’s reasonable expectations of release; and
  - (2) communicating inadequately with the Claimant and his lawyers; and
  - (3) suffering from the lack of an adequate system for fulfilling the duty to release the Claimant and satisfy the Parole Board’s conditions; and
  - (4) failing to contact and engage the available supported accommodation suppliers in good time.

[187] On 28<sup>th</sup> June S.32ZB came into effect. Under that section the Defendant’s actions are made unlawful if the Defendant does not achieve the release of the Claimant as soon as is reasonably practicable in all the circumstances of the case, in particular the need to make arrangements in connection with any conditions imposed by the Parole Board and those inherent in the licence.

[188] I consider on the evidence before me that if the Defendant had devised a system for fulfilling its duties and had put it in place before February 2022, and if the Defendant had contacted all 3 accommodation suppliers: Hegarty Housing, Langley House and Breakthru care in March or April 2022, that the Claimant would have been offered funded and supported accommodation at the latest by the end of July and probably by May - June 2022. Thus I consider that it was reasonably practicable for the Defendant to release the Claimant at the latest by 31 July 2022.

[189] Taking all of the above factors into account and in the circumstances of this case I consider that the delay in releasing the from prison had become wholly unreasonable and so unlawful by the first day of August 2022.

[190] In my judgment from 1<sup>st</sup> August 2022 to the date of the hearing and going forward to 16 November 2022 when he will be released, the Claimant was and will be unlawfully

detained by the Defendant in prison in breach of Art 5. of the ECHR and S.28 and S.32ZB of the CSA 1997. That is the red period in my judgment.

**Conclusions**

[191] I make a declaration that the Defendant unlawfully failed to release the Claimant from prison by 31 July 2022 and that the Claimant's detention in prison from 1<sup>st</sup> August 2022 onwards was unlawful.

[192] I give judgment for the Claimant for damages to be assessed for unlawful imprisonment and breach of his Article 5 rights under the ECHR.

**NOTE**

[193] Costs and consequential orders, including an order for the assessment of the quantum of damages in the King's Bench Division will be determined either on paper on submissions or at a short additional hearing before me if the parties so request.

END