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Case No: AC-2025-LON-002415

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/01/2026

Before :
Mr Justice Calver

- -

Between :

THE KING **on the application of** **THE HOWARD LEAGUE FOR PENAL REFORM**	**Claimant**
- and -	
THE SECRETARY OF STATE FOR JUSTICE	**Defendant**
- and -	
EQUALITY AND HUMAN RIGHTS COMMISSION	**Intervener**

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- -

Adam Straw KC, Shu Shin Luh and Shanthi Sivakumaran (instructed by **Bhatt Murphy**) for the **Claimant**

Jason Pobjoy KC, Natasha Simonsen and Ava Mayer (instructed by **GLD**) for the **Defendants**

Ollie Persey (instructed by the **Equality and Human Rights Commission**) for the **Intervener**

Hearing dates: 09 and 10 December 2025

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JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:00 on Monday 19 January 2026.

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The Honourable Mr Justice Calver :

THE DECISION UNDER CHALLENGE

1. The Claimant challenges the lawfulness of the decision taken by the Defendant (the "**Secretary of State**") on 24 April 2025 to authorise the use of pelargonic acid vanillylamide spray ("**PAVA**") in three public Young Offender Institutions in England for a 12-month period ("**the Decision**").

2. The Decision permits the use of PAVA by specially trained members of staff in Young Offender Institutions at HMYOI Feltham A, HMYOI Werrington, and HMYOI Wetherby ("**the YOIs**")[1].

3. The Claimant challenges the Decision on three grounds: (1) an alleged breach of the public sector equality duty ("**PSED**") contained in s.149 of the Equality Act 2010 ("**the Act**"); (2) alleged failure to comply with the *Tameside* duty to make reasonable inquiries; and (3) unreasonableness and/or substantive irrationality. In his oral submissions, Mr. Adam Straw KC (who appeared as counsel for the Claimant, together with Ms. Shu Shin Luh and Ms. Shanthi Sivakumaran) focussed first on Ground 3, then Ground 1, and lastly Ground 2, which he pressed only lightly. I shall accordingly address the grounds in that order.

4. Before turning to individual consideration of these three grounds of challenge, I first address (i) the context in which the Decision was made and (ii) the process which led up to the taking of the Decision.

5. Before doing so, I should add that I granted the Equality and Human Rights Commission permission to intervene in the proceedings by way of written submissions. Those submissions provided helpful background to the taking of the Decision in this case, including information concerning an earlier application for judicial review of another decision by His Majesty's Prison and Probation Service ("**HMPPS**") to issue PAVA spray to nearly all adult male prisons, even though they had not completed their readiness assessments. That application was withdrawn on the basis of agreed safeguards.

CONTEXT IN WHICH THE DECISION WAS MADE

6. Mr. Edward Cornmell, Executive Director of the Long Term and High Security estate within HMPPS, sets out the background to the Decision in his witness statement dated 8 October 2025. It is as follows.

7. The YOIs accommodate young persons aged 15 - 18 years. There has been a steady decline in the number of custodial sentences imposed on those under 18 ("**young people**") over the last decade, such that in the year ending 31 March 2014 the average

[1] The policy was implemented at Werrington and Wetherby from 13 August 2025 and at Feltham A on 8 September 2025, pursuant to individual Readiness Assessments.

population of young people in custody was 1,216, whereas by 31 March 2024 this number had fallen to just 430. With fewer children entering custody, those who do are now far more likely to be serving sentences for serious or violent offences. In 2024/25, over two-thirds of children and young people in custody had committed offences of violence against the person[2]. The youth custodial population is also older than it used to be. Most of those now in youth custody are aged 16 or 17, with a growing proportion of 18-year-olds held in the youth estate while awaiting transfer or completing their sentences[3].

8. As Mr. Cornmell states in paragraph 17 of his witness statement:

> "*These recent trends mean that the youth custodial population in England is now smaller and more homogenous (by reference to age range and type of offending), consisting mainly of older children and young people who are disproportionately likely to have committed violent offences. This has produced a cohort with particularly complex needs. Many have experienced trauma, abuse, or exploitation, and have led chaotic lives, marked by adverse childhood experiences. Managing this population presents new and demanding challenges for the system, especially in terms of risk management, safeguarding, and keeping staff and children safe.*"

9. In consequence, the level of violence in the YOIs has been significant in recent years. In the 12 months to March 2025, the YOIs have recorded an average serious assault rate of 35.8 incidents per 100 children and young people per year, a 58% increase on the previous year's rate of 22.6. The number of serious assaults rose from 74 in 2023/24, to 121 in 2024/25. Serious assaults are defined as those in which the victim: (i) needs to be detained as an in-patient in an external hospital; or (ii) requires medical treatment for concussion or internal injuries; or (iii) suffers an injury that is a fracture, scald or burn, stabbing, crushing, extensive or multiple bruising, black eye, broken nose, lost or broken tooth, cuts requiring suturing, bites or temporary or permanent blindness; or (iv) is sexually assaulted.

10. These serious assaults in the YOIs frequently involve the use of weapons and multiple perpetrators. Many of these weapons are capable of inflicting serious harm. They are improvised from everyday items within the secure environment, such as sharpened

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2 Cornmell w/s, paras 13 and 15.

3 ibid, para 16.

plastic cutlery, pens with screws or nails embedded in their tips, or shards of plastic or metal sharpened as an edged or stabbing weapon[4].

11. These assaults also carry a real risk of life-changing injury or death.[5] Mr. Cornmell describes a five-on-one incident at Feltham A in July 2022 which left a child with critical brain damage; a four-on-one assault in Feltham A in February 2023 in which the victim and staff sustained serious injuries, including a torn liver; a six-perpetrator assault on staff at Werrington in August 2024 in which seven staff members were injured; and a three-on-one assault at Wetherby in which two assailants stamped on a young person when he was on the floor, and the victim required hospital treatment[6].

12. As Mr. Cornmell further explains[7], Youth Justice Workers, who are the equivalent of prison officers within the Youth Secure Estate, are authorised and trained to use force, but only where it is necessary, proportionate and appropriate. Some staff may carry soft restraints (fabric straps designed to secure the hands in a manner similar to handcuffs) and certain managers are authorised to carry metal ratchet handcuffs. Unlike their counterparts in the Adult Secure Estate, Youth Justice Workers do not have access to a wider range of control equipment such as batons or rigid bar handcuffs. Staff in the Youth Secure Estate do not routinely wear body armour, protective padding or helmets, although such personal protective equipment may be authorised in advance of a planned intervention where a known risk has been assessed. Staff operate day to day with young people in custody in a "soft uniform", often a polo shirt and trousers. They carry a body worn video camera to be activated to record incidents and often carry a personal radio for communication with colleagues.

13. With these limited tools at their disposal, assembling sufficient numbers of staff to intervene safely can take time, and in the meantime, children, young people and staff can be exposed to life-threatening harms.[8] Where one or more of the assailants has a weapon,

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4 ibid, w/s, para 22.

5 ibid, paras 22-24.

6 ibid, para 25.

7 ibid, para 29.

8 ibid, para 24.

getting close enough to the assailant to apply physical restraint can pose a risk of serious injury to staff[9].

14. PAVA has been available for use during serious incidents in YOIs since 2006. However, prior to the Decision, authorisation to deploy PAVA required approval by a "Gold Commander" (being a Prison Group Director who provides remote command authority and approval to the tactical management of serious incidents). PAVA could only be deployed by the National Tactical Response Group, a specialist unit of prison officers deployed nationally to respond to serious disturbances.[10] However, obtaining Gold Commander approval and awaiting attendance from the national specialist staff naturally takes time which is problematic if the threat is urgent.

15. PAVA has also been authorised for use (including on young people) by the police force in a non-custodial setting since 2004. Police may also use PAVA in Secure Children's Homes and Secure Schools when responding to incidents. In paragraph 44 of his witness statement, Mr. Cornmell states as follows:

> "*Home Office Police Use of Force statistics show that, during incidents involving children aged 11-17 in the year ending 31 March 2022, police officers drew irritant spray 619 times and used irritant spray 572 times. The corresponding totals for adults aged 18-34 were 5,001 and 7,382. In the subsequent year, ending 31 March 2023, the corresponding totals for children aged 11-17 were 760 and 561, and, for adults aged 18-34, 4,773 and 6,860 respectively. For the year ending March 2024, the corresponding totals for children aged 11-17 were 823 and 606, and, for adults aged 18-34, 5,248 and 7,060. This reflects "regular" use of PAVA with children over a protracted time period. From my review of evidence, I am not aware of any long-term medical impact on children and young people associated with the use of PAVA by police in England and Wales, although I recognise that the available evidence is limited.*"

DECISION-MAKING PROCESS

16. The decision-making process is apparent, in particular, from the extensive documentary record. The material aspects of it are as follows.

17. On 20 April 2023 the National Chair of the Prison Officers' Association wrote to the

9 ibid, paras 37-39.

10 ibid, para 45.

Lord Chancellor and the Secretary of State for Justice (Dominic Raab MP), asking for the roll out of PAVA for use in the YOIs as a result of the significant rise in violent incidents in the YOIs (including life-changing injuries). The Minister for Prisons and Probation (Damian Hinds MP) replied by letter dated 10 May 2023 in which he referred to the roll out of PAVA to the Adult (male) Secure Estate alongside personal safety training (known as SPEAR). Once the roll out was completed in June 2023, Ministers would then determine if the use of PAVA should be extended to the Youth Secure Estate.

(a) The YCS Working Group is set up

18. To this end, in May 2023 the Secretary of State set up a Working Group within the Youth Custody Service ("**YCS**") which was commissioned to consider the roll out of PAVA within the Youth Secure Estate. This group was tasked with, in particular, an evaluation of (i) the use of PAVA within the Adult Secure Estate (Mr. Bosworth and Ms. Travers were assigned responsibility for this role); (ii) the safety risk matrix of PAVA, focusing on physical injury, including trauma (with the consultant paediatrician Dr. Ian Maconochie[11], Ms. Sarah Ashcroft and Mr. Craig Lowe having responsibility); (iii) an Equality Impact Assessment ("**EIA**") (Mr. Bosworth having responsibility). In fact, as the group recorded, an EIA had been received on 25 May 2023 but not yet made public.

19. As tasked, Dr. Bosworth produced a report headed "Evidence regarding PAVA spray" sometime in 2023 ("**the 2023 Bosworth paper**"). In particular, he stated as follows in his report:

> "*The biggest and most sustained challenge the YCS is likely to face is the disproportionate use of PAVA. The disproportionate use of PAVA on young black men has remained ever present since the introduction of PAVA in four pilot sites in 2017, and is supported by international research on incapacitant sprays, and more generally inequalities in the criminal justice system.*
>
> *PAVA can be an effective tool when outnumbered, to cease serious incidents and life-changing injury, and to maintain a safe distance when needed, but it is unlikely to reduce overall violence, noticeably improve safety or enhance day-to-day interactions.*" (emphasis added)

[11] Consultant in paediatric emergency medicine at Imperial College Healthcare NHS Trust, who is also an HMPPS medical advisor.

20. This underlined passage became a "given" in all discussions about PAVA thereafter. As a result of the acknowledged risks of the use of PAVA, Dr. Bosworth advised as follows:

> "*To enhance the likelihood of a successful roll-out if the decision is made to introduce PAVA to the YCS, the risks should be acknowledged and mitigated where possible, sufficient resource should be provided to ensure meaningful oversight and scrutiny, proactive steps should be taken to carefully consider what response can be provided to disproportionate uses, open and transparent dialogue with staff, prisoners and interested third parties should occur from the early stages of planning, and importantly, adequate time must be given to prepare sites for the roll-out ensuring appropriate processes are in place including a renewed emphasis on de-escalation, up-to-date training, robust yet supportive governance, and other tools and techniques to compliment the roll out.*"

21. As will be seen below, this was precisely the approach which was then taken by the YCS and, ultimately, the Secretary of State in taking the Decision.

22. In terms of the available literature on incapacitant sprays, Dr. Bosworth recognised that there were limitations in the available research, but noted that the "*little research that exists suggests, when used, sprays are effective in aiding 75-85% of incidents, but in some cases will make people more aggressive and resistant*". He set out the learning gained from PAVA use in adult prisons and importantly gave the likely explanation as to why PAVA use is associated with higher reported injuries than the use of other methods:

> "*The data shows that PAVA use is associated with higher reported injuries than other force. However, this is likely explained by several factors:*
>
> *o PAVA may be being used when responding to more serious incidents where injuries have already occurred.*
>
> *o Injuries may be from other sources than PAVA, for example from [control and restraint] following a PAVA use.*
>
> *o The injuries reported may be the short-term impact of the spray reported to healthcare following an incident.*"

23. On 28 June 2023 at the behest of the Working Group, Dr. Maconochie produced a paper which he had been commissioned to produce in order to answer questions about PAVA and its possible use in childhood, together with its medical effects ("**the 2023 Maconochie paper**"). In particular, he referred to the paucity of information about the use of PAVA in children and young people and its medical complications. In referring to the medical literature which was available, he noted that although the symptoms and signs of PAVA spray are often short lived, some people continue to feel the effects 2.5

hours or later after contact. That may be made worse in confined spaces. Dr. Maconochie stated that more evidence of the use of PAVA in the *adult* establishment and the medical effects of its use would be helpful, although caution must be applied when extrapolating those results to the setting of the children's estate as the development of a child's emotional and functional processing throughout adolescence differs from the way in which the brain of a mature adult works. Dr. Maconochie further observed that aside from the primary injury caused by the use of PAVA on a prisoner, secondary injury may be suffered by reason of flailing arms or legs making contact with a wall, for example. Moreover, staff may be less likely to offer immediate aid if there is a risk to themselves of suffering because of these secondary effects.

24. Dr. Maconochie produced a second paper on the same date setting out the nature of the aftercare which should be afforded to an affected prisoner after use of PAVA upon him.

25. One month earlier, in May 2023, Ms. Lauren Waterhouse, a forensic psychologist, and Ms. Alisa Purton, YCS Lead Psychologist, produced a document entitled "*Literature Review: Pava & Children*" at the request of the Working Group. This was a review of the evidence regarding the use of PAVA on children under 18. The authors referred to the fact that the current population of children in custody present with exceptionally complex needs, including developmental difficulties associated with complex trauma. As a result, the authors accepted that under certain circumstances proportionate use of physical force to maintain stability and safety might be inevitable. Their report included an analysis of the emotional and physical impact of PAVA on young people, how it might affect neurodiverse young people, young women, and the potential for the disproportionate use of PAVA on those of minority ethnic backgrounds (black children in particular).

26. Against this background, a series of meetings then took place over a period of time in order to discuss these various factors in considering the possible roll out of PAVA in the YOIs.

27. On 22 June 2023, the YCS set out a summary of the issues concerning the use of PAVA in a "Decision paper" to assist the YCS Operational Management Committee ("**YCS OMC**") in making a recommendation to the HMPPS Leadership Team ("**HLT**"), which would then in turn make its recommendation to the Minister on whether PAVA should be rolled out to the YOIs (which at that stage also included Cookham Wood, before it

was redesignated as an adult male prison). It is apparent at this stage that the only two options on the table were (i) a full roll out of PAVA for all operational staff at the YOIs or (ii) no roll out of PAVA at all to the YOIs. The YCS stated that

> "*PAVA should only be deployed as per policy, i.e.*
>
> *i. It is necessary for a member of staff to defend themselves or a third party from an attack, or an impending attack, where they perceive a threat of immediate serious harm; and*
>
> *ii. There is no other reasonable option open to the member of staff to protect themselves or another person and reduce the risk of immediate serious harm but to employ this defensive technique.*" (emphasis added)

28. The YCS also referred to the many ethical issues around the use of PAVA and that "*the evaluation of the roll out in the male adult estate shows that PAVA is consistently used in a disproportionate manner towards young Black men. An Equalities Impact Assessment … has been undertaken.*" In Annex A to the Decision paper, the arguments for and against the use of PAVA in the Children's Estate were comprehensively set out.

29. On the same date, the YCS OMC considered these complex issues, but no decision was made.

30. A further meeting took place on 28 June 2023 at which the question of deploying PAVA in the YOIs was again tabled. The decision taken was that a "partial" roll out of PAVA (i.e. PAVA would only be rolled out to Custodial Managers, MMPR co-ordinators or other select staff) could be recommended but that a live evaluation was required in the absence of further evidence, and that in making the decision there was a fine balance to be considered. There was no universal agreement amongst members of the YCS OMC[12].

31. There was then a meeting of the HLT on 4 July 2023. A paper was prepared for that meeting in which the current position was summarised including the YCS OMC recommendation for a partial roll out, noting the need for further evaluation of next steps, given the lack of consensus at the time. The recommendation was based upon "*the significant risk CYP and staff are exposed to from high-risk high harm incidents and the potential for a loss of life or life changing injuries*". The paper explained: "*This [a partial*

[12] Cornmell w/s, para 64.

roll out] would allow for further evaluation and evidence to inform any decision to progress to full rollout or withdraw PAVA, balancing the risk of deployment with the risk of serious injury or threat to life from incidents of serious violence". The paper noted in particular:

> "*There is limited evidence about the medical effects of using PAVA on CYP with comparable physiological impact as adults. Evidence from the adult estate suggests that PAVA is disproportionately used on young black men and does not in itself reduce overall levels of violence. Although, there is an indication that the roll out of PAVA has reduced the severity of violence.*" (emphasis added)

32. This is a good illustration of how evidence from the use of PAVA in the Adult Secure Estate assisted in informing the approach to be taken to the Youth Secure Estate. The paper refers to the fact that Dr. Bosworth from the Evidence Based Practice Team had provided a high-level evaluation of PAVA roll-out in the Adult (male) Secure Estate (which was attached as Appendix C). He advised that the evidence was limited. However, the findings included that the benefits in using PAVA were that officers had reported increased confidence and a reduction in serious violence/risk to life. Some of the prisoners themselves recognised PAVA as having utility, but highlighted that it is a painful weapon that officers may use inappropriately. While PAVA tends to be used infrequently, it may be used in questionable circumstances, including in confined spaces and in instances of self-harm. The evaluation also concluded that PAVA is disproportionately used towards young black men. These concerns about the use of PAVA meant that if it was to be used, stringent safeguards were required.

33. The HLT also had before it the 2023 Maconochie paper as to the medical effects of PAVA. The HLT recorded that when PAVA is used, people often feel severe pain in their eyes, cough a lot, find it hard to think straight and might feel a burning sensation on their skin. However, "*[t]hese are normal reactions, and the effects usually go away after about 20-40 minutes. Most people feel better within 40 minutes.*" The HLT further noted that there is no specific literature on the use or medical effects of PAVA on children and young persons and Dr Maconochie supported the need for further research. HLT recorded that "*[c]olleagues from NHS England have considered the impact of PAVA roll out on [Children and Young Persons] estate… From the limited evidence available on the use of PAVA spray in neurodiverse populations it is reasonable to conclude that autistic individuals may be differently affected by the effects of PAVA and may be slower to*

recover. This may also be true of other neurodiverse individuals. It is an area where more research should be done". These issues were emphasised at the HLT meeting of 4 July 2023 by Mr. Cornmell in particular.

34. HLT agreed to recommend the partial rollout of PAVA to the YOIs, to a limited number of people but with sufficient controls/safeguards. HLT referred to the fact that "*much has been learnt about its usage, effectiveness to mitigate harm, legal risks and harmonisation with SPEAR and C&R*[13] *[i.e. in adult prisons]. This would be applied in the [YOIs] but it is recognised that the two environments and populations are very different. Some members echoed the frequency and seriousness of assaults in the youth estate between children and to staff which can be life threatening*."

35. Following this meeting, on 13 July 2023, Mr. Cornmell wrote to members of the HMPPS Independent Advisory Forum providing an operational update and invited members to share insights regarding the potential deployment of PAVA in the YCS. Subsequently and throughout the summer of 2023 the YCS received stakeholder responses (including the Alliance for Youth Justice; Association of Directors of Children's Services; Local Government Association; Youth Justice Board) opposing the roll out of PAVA in the Youth Secure Estate.

36. On 5 September 2023, there was a meeting of the Ministry of Justice Executive Committee. The paper produced for that meeting noted that the issue of PAVA in the Youth Secure Estate was being "*Brought to ExCo, not for decision, but reflection and challenge on the HMPPS Leadership Team position and proposed advice to Ministers.*" The paper recognised[14], once again, that "*Improving safety in the youth estate is a complex issue with no single solution. It is important to note that introduction of PAVA is not expected to reduce overall levels of violence but has the potential to reduce its severity*[15]*, providing staff with a tool to protect themselves or children and young people in their care from the risk of life-changing or life-ending injury*". The paper again noted the limited evidence base in relation to children and the potential risks, including the risk of disproportionate use on those with protected characteristics. It also noted the

13 Control and restraint.

14 See paras 13-19 in particular.

15 Emphasis added.

opposition of most stakeholders (other than the Prisons Officers Association and prison staff).

37. The minutes of the meeting record the fact that: "*[r]obust controls around the use of PAVA in the youth estate would be required to ensure proportionate use. Inappropriate use in the adult estate was minimal but had happened*" and "*[t]he partial rollout would help mitigate the risk of inappropriate use. Only 24 staff members would have access to PAVA, allowing closer monitoring of use.*" It was also recorded as being "*important that any implementation plans considered how to minimise the differential use and effect of PAVA on particular groups, for example on the basis of race*" and that "*[t]here was evidence to suggest that PAVA could have a greater impact on those with mental health problems, pre-existing trauma or neurodiversity and impact their relationships. There were vulnerable people in the youth custody estate, and this was an important consideration in deciding how to proceed.*" It was recognised that the response to increasing levels of serious violence in the YOIs should be proportionate. Thus, the "*partial rollout would only be in YOIs where violence was highest. It would not be rolled out to Secure Schools, the Secure Training Centre or Local Authority run Secure Children's Homes at this stage*." The MOJ Executive Committee concluded that:

> "*Should it be decided that the partial deployment of PAVA go ahead, it would be important to demonstrate that this was a proportionate response and to include measures to limit the differential impact based on race. Evaluation of any rollout would be key.*"

38. As will be seen, the constant evaluation of PAVA in "real time" after its limited roll out was an important part of the Decision. As will also be seen, ministerial review of the operation of the scheme takes place monthly and there is the ability to recall the rollout at any time.

39. So far as children with protected characteristics are concerned, it is significant that on the same date, 5 September 2023, the Secretary of State for Justice received a letter from HM Chief Inspector of Prisons raising his concerns about the potential deployment of PAVA in the youth estate. The Secretary of State replied on 18 September 2023 noting that no decision had yet been taken but that in any case "*[t]he YCS are refreshing the Behaviour Management Strategy and doubling down on the key elements of SECURE*

STAIRS[16]*, which is based on clear evidence, so that each child receives a full needs assessment which informs a tailored Integrated Care Plan, ensuring that more complex children receive any additional support they need*." The letter noted that these steps would continue regardless of any decision on PAVA and that:

> "*There is clearly learning from the adult estate and officials have the initial evaluation from this deployment to inform our future considerations in the youth custody estate. An evaluation would be central in any consideration of implementing PAVA in the youth estate. All use of force techniques that are applied within the youth estate are, as you are aware, subject to significant scrutiny. The Independent Restraint Review Panel continues to provide a valuable source of learning to improve practice and a high proportion of staff time continues to be dedicated to refresher training to ensure that any use of restraint is a last resort and is proportionate. There is the need to respond to serious incidents and acts of violence in an appropriate manner, as you acknowledge, and a need to protect children and young people or staff who find themselves victim to an attack*."

(b) YCS submission to the Secretary of State

40. By this point, the YCS was ready to make its first submission to the Secretary of State and Lord Chancellor (then of the previous, Conservative government) on the use of PAVA in the children's estate, which it did on 28 September 2023. That submission is an important document. It expressly informs the Secretary of State/Lord Chancellor that:

> "*16. Improving safety in the CYPSE is a complex issue with no single solution. It is important to note that introduction of PAVA is not expected to reduce overall levels of violence but has the potential to reduce its severity, providing staff with a tool to protect themselves or children and young people in their care from the risk of life-changing or life-ending injury*." (emphasis added)

The YCS referred to several notable incidents where serious injury had occurred, or staff had had to place themselves at risk to avoid serious injury such that "*in the short term PAVA may be deemed appropriate to reduce the risk of life changing or life ending injury*." The YCS then stated in its submission as follows:

> "*Risk*

[16] A framework adopted in 2018 with the intention of improving the quality of care and outcomes for children and young people in the secure estate in England.

20. We cannot eradicate the possibility of the inappropriate use of PAVA completely once implemented and indeed the evaluation of implementation in the adult male estate (Annex A), whilst still subject to peer review, suggests that it is likely PAVA would be used inappropriately at times, particularly in emotive situations. The higher use on younger people in the adult estate indicates a potential for high use in YOIs. The presence and use of PAVA could potentially impact negatively on the culture of our YOIs and the staff child relationship, inhibiting their ability to successfully rehabilitate.

21. Evidence and understanding of the impact of PAVA is limited, notably upon children, with evidence from police use (including on children) and policing in the USA dominant. Our evaluation in the adult male estate indicates that officers reported increased confidence. Some adult prisoners recognised PAVA having utility, but highlighted it is painful and may be used inappropriately. While PAVA tends to be used infrequently, it may be used in questionable circumstances, including in confined spaces and in instances of self-harm (though in exceptional circumstances the policy supports this). The evaluation also concluded that it is disproportionately used towards young black men (who are overrepresented in the YOIs at present)."

41. However, under the heading "risk mitigation" YCS advised the Secretary of State and Lord Chancellor as follows:

"*30. Inappropriate use or excessive use of PAVA could be mitigated by limiting those staff with access to PAVA and increasing their level of training/briefing (e.g. on disproportionality, child first considerations, health considerations etc.) All uses of force in the YOIs have a high degree of governance, however, further control would come through PAVA use always being reviewed by the Governor and Deputy Director Operations as part of regular performance oversight and reported nationally. Any use would also be referred to the Independent Restraint Review Panel for their further scrutiny.*

31. To mitigate concerns regarding impact on a child centred culture a more limited and controlled rollout rather than allocation to all staff who have frontline operational engagement with children and young people would reduce the impact and potentially concerns stakeholders identify. <u>The exceptional use of PAVA for major incidents and acts of violence rather than as a core personal protection tool</u> (as in the adult estate) would speak to this same point in informing the culture of the YOIs." (emphasis added)

42. The recommendation of the YCS at this stage was as follows:

"*<u>Recommendation</u>*

35. Despite the lack of comprehensive evidence and research to show the impact of PAVA on children, it is clear that staff are dealing with significantly high levels of violence and do not have the tools to intervene in all instances safely and swiftly. Implementation would provide staff with the option to intervene from a safe distance and potentially prevent life changing or life ending injuries to children or staff.

36. The decision is finely balanced notably given the risk and controversial nature of the use of PAVA with children. There has not been full unanimity in making a recommendation but on balance it is recommended to agree the roll out of PAVA in under 18-year YOIs."

43. The YCS concluded that:

> "*If you (Lord Chancellor) agree with the recommendation, we will provide further advice on:*
>
> *a. options for a full or partial roll out including implementation plans.*
>
> *b. evaluation of any roll out and details of scrutiny, oversight and governance to mitigate risks where possible.*"

(c) Further consultation

44. On 27 November 2023, the Prison Reform Trust sent Mr. Cornmell a new briefing called "Equality Incapacitated" which argued that the disproportionate use of PAVA incapacitant spray on Black, Black British and Muslim prisoners was now so firmly established that it had become normalised. The Minister of State for Justice responded to this briefing by letter dated 6 December 2003. He explained that he shared the concerns of the Prison Reform Trust. He further stated that:

> "*[r]egarding any decision to roll out PAVA to the children and young people secure estate, I can assure you that we will consider all available information. This will include full consideration of the evaluation of use in the adult estate. Whilst this has not yet been published, my officials have had sight of this and have considered the findings of the evaluation in their advice to the Lord Chancellor and myself.*
>
> *Improving safety in Young Offender Institutions is a complex issue with no single solution. Despite existing work around violence reduction and improving behaviour management, no reduction in serious incidents such as multi-perpetrator assaults has been seen, and further action is needed to mitigate the risk of life changing or life ending injury. The potential introduction of PAVA is one action that we are considering due to the unique opportunity it presents for staff to intervene in serious multi-perpetrator incidents whilst maintaining a safe distance. However as you will agree there are many other factors that must be considered. Children*

are a vulnerable group with distinct protected health and safeguarding needs. My officials have been clear that should the decision be to roll out the use of PAVA this would be aligned to a live evaluation and enhanced scrutiny arrangements."

45. Mr. Cornmell sent a letter to the governors of the YOIs on 27 October 2023 in which he informed them that he did not know what the decision of the Secretary of State would be regarding the use of PAVA in the children's estate but that "*any rollout would be aligned to a robust evaluation and close scrutiny*". He further referred to the fact that "*[b]oth in regard to PAVA but also all uses of force we know from our equalities analysis, that there can be a disproportionate use of force both based on ethnicity towards particularly black boys and with the emergent findings of PAVA use in the adult estate to young people. This is clearly an area where we must have complete assurance that all establishments have a full understanding of disproportionality and are taking action to either explain why this exists or are taking actions to make changes that will reform and address this*." He asked the governors to confirm that they had in place suitable oversight and a personal grip of this issue.

46. On 14 December 2023, the YCS (Mr. Cornmell) sent the Lord Chancellor/Secretary of State for Justice a further briefing note concerning the use of PAVA on children at Feltham A in respect of a serious incident in 2019 (threats by three young people to stab and assault staff). PAVA was deployed through a smashed window where the young people had barricaded themselves in. The prisoners recovered from the effects of the spray within 20-30 minutes and the incident was resolved with no injuries to staff or young people.

(d) Updated briefing submission to the Secretary of State

47. On 5 January 2024, the YCS (Mr. Cornmell) sent the Lord Chancellor/Secretary of State for Justice an updated briefing submission (updating the first submission given on 28 September 2023) concerning the use of PAVA in the children's estate. As the submission stated: "*We committed to review PAVA use in the Children and Young People Secure Estate (CYPSE) following completion of roll out in the adult male estate. We are now at that point*." At this stage, the YCS presented the Secretary of State with three (rather than two) options for PAVA use in the YOIs: (i) full roll out; (ii) partial roll out; and (iii) no roll out. The recommendation was to roll out PAVA "*in a restricted manner*" (option (ii)). In particular and significantly, it recommended that:

"*The roll out (which could be achieved by May 2024) would be subject to stringent criteria against which it could be evaluated and withdrawn if necessary. A robust governance process, live evaluation, and scheduled reviews (around the impact medically and on disproportionality) would facilitate an increased evidence base to further inform any future roll out after a six-month period. Should this oversight raise significant concerns about its use, we would immediately recall PAVA whilst considering further options. In any event, we would undertake a thorough review of its use and provide you with advice (including about how to communicate its findings publicly).*"

48. In addition, the briefing submission expressly adverted to the PSED issues to which the Secretary of State needed to have regard as follows:

> "*Whilst a live document, in making your decision you should consider the PAVA Equality Analysis (Annex E). In particular, you should have regard to the following:*
>
> *a. Data shows that PAVA is used disproportionately on young black men in the adult male estate. Additionally, black boys are disproportionally represented in YOIs. It is likely that they will be disproportionately affected by the introduction of PAVA.*
>
> *b. The PAVA Equality Analysis also highlights the impact in relation to disability and that persons with disabilities are likely to be disproportionately affected.*
>
> *c. PAVA is currently not used as protective equipment in the women's estate and, as one of the YOIs houses girls, this would mean that a 17-year-old girl in the CYPSE could be exposed to PAVA where an equivalently situated 19-year-old woman could not. Equally, exclusion of girls from PAVA exposure could constitute discrimination towards boys. Gold command may still approve the use of PAVA in the women's estate for tactical intervention, equivalent to the "as is" position in the CYPSE.*"

(e) Further briefing of the Lord Chancellor/Secretary of State

49. There was then a meeting between the Minister for Prisons, Mr. Cornmell and PAVA stakeholders (including the Claimant) on 11 January 2024. At the end of the meeting the Minister confirmed that he was:

> "*committed to raising the following points with the Lord Chancellor before a decision is made on PAVA rollout in the youth estate:*
>
> *1. The overarching, and consistent, view of stakeholders is that as a matter of principle it is the wrong decision to introduce PAVA more widely into the youth estate.*

2. The concern that in addressing the immediate violence issues is that you create a long-term escalation and rising tenor of violent behaviour.

3. The data and evidence base are lacking, especially health data.

4. Notwithstanding concerns about disproportionately which talks to broader point about racial disparity as ethnic minorities are disproportionately represented.

5. The remand cohort is high, and many children do not end up serving a custodial sentence.

6. Concern and risk that PAVA use can become normalised, despite checks and balances."

50. The Minister did indeed raise these concerns with the Lord Chancellor at their meeting of the same date, as is apparent from the email from the Lord Chancellor's Permanent Secretary to the Minister and Mr. Cornmell dated 16 January 2024. This is a good summary of the essential complaints which are now made by the Claimant in this claim, and this shows that the Secretary of State had these concerns well in mind in formulating the Decision. Moreover, it is clear from the email dated 16 January 2024 that the Lord Chancellor/Secretary of State clearly took a very keen involvement in the decision making, asking a considerable number of detailed questions, such as:

"***Health Impact***

- *LC[17] asked about the health impact that PAVA has on children. LC notes from the submission that there is a recovery time of c.45 minutes. More specifically, LC queried the consequences of being sprayed and how serious it can be?*

- *EC[18] explained that there will be irritation to the eyes (may be unable to open them) and impacts on the sinuses, however, all medical views are associated with adults not children.*

- *AR agreed that PAVA can cause acute pain and clarified that other use of force techniques can cause pain. In the CYPSE pain inducing techniques are used in exceptional circumstances only but remain available.*

- *Officials confirmed there can be secondary exposure to staff and others from PAVA use*

Risk to Staff/Prisoners

17 Lord Chancellor.

18 Mr. Cornmell.

> • *LC noted that many of children in the estate are convicted of violent offences but can be victims in incidents of violence in custody also. The LC is mindful of the staff response in these situations and to support them in their roles.*
>
> …
>
> *LC noted that under Option 2, PAVA would be rolled out to c.125 staff who will be specially trained. EC noted that these individuals (CMs and Use of Force/MMPR Co-ordinators) hold higher levels of responsibility in establishments and will be trained to a higher level.*
>
> …
>
> • *LC noted PAVA use should not be the first response to violence but used to intervene to prevent potentially life changing or life ending injuries to staff or children.*
>
> • *LC noted the use of PAVA should not create an environment of excessive violence.*
>
> • *PC noted the risk that children in custody pose to one another and not just staff, an important factor to take into the decision-making process.*" (emphasis added)

51. There was then a full discussion of the concerns of the stakeholders.

52. Mr. Cornmell observed that "*the nature of these incidents can threaten life and cause serious harm. There are other strategic options for long-term to improve the CYPSE but this is something that is more immediate to address these risks.*" The Lord Chancellor then asked about the urgency of the decision: "*[he] wanted to know if the data on violence supported the need for a decision immediately*". Mr. Cornmell referred to "*the ongoing risk for injury to staff working in the youth estate which adds time pressure and need to act*" and there was also "*the ongoing risk to other children*". The Lord Chancellor was told that data can be provided to show the high levels of violence in the CYPSE and Mr. Cornmell told him that around 80% of the youth custody population is 17- or 18-years-old in YOIs.

53. So far as training of staff was concerned:

> "• *LC asked about what training staff who would be equipped with PAVA in Option 2 will receive?*
>
> • *EC noted that there is a standard training for any use of PAVA but there is a need for there to be a child focus, addressing issues such as*

disproportionality and need to make sure that this is signed off for each individual (included in Action 1).

• LC asked about whether this would be a trial and AR noted that this would be a rollout with ongoing evaluation."

54. It is clear that the Lord Chancellor was actively considering the necessity for an urgent rollout of PAVA in the children's estate and how the risks could most effectively be mitigated if he did go ahead with it.

55. Further to that meeting on 11 January 2024, the YCS provided the Lord Chancellor with more information regarding the use of PAVA in order to inform his decision, which included information concerning (i) the monitoring and evaluation arrangements with the roll out of PAVA; (ii) training of the staff who receive PAVA; (iii) model situations in which PAVA might be deployed to aid management of a protracted incident; and further data on violent incidents in the children's estate.

56. That further information was added to and updated by a further submission to the Lord Chancellor on 14 March 2024.

(f) Updating meetings with the Lord Chancellor/Secretary of State

57. Thereafter, dialogue continued between stakeholders and ministers, and continued fact-finding took place by the YCS, with corresponding update meetings between the YCS and the Lord Chancellor. For example, on 13 May 2024 there was such a meeting resulting in the following action items:

"*YCS to produce one-page brief on international comparisons to be drawn up (specifically looking at Norway, Germany and Denmark). To include details on sites PAVA is used, authorisation of use, in what scenario it will be deployed etc.*

…

YCS to produce data on the number of prisoner-on-prisoner and prisoner-on-staff assaults in the YCS and case study examples of times in which PAVA would have been deployed (already produced). Please include time series data going back as long as possible, minimum of 5 years.

…

YCS to provide note on calls from prison officers/POA on PAVA use and the standing mandate from the membership for this rollout."

The Lord Chancellor also asked detailed questions about live evaluation and training of staff, including how authorisation for the use of PAVA would be gained by a prison officer.

58. As a result, further research and materials concerning the use of PAVA by other European countries were provided by Mr. Cornmell to the Lord Chancellor on 23 May 2024.

(g) Full submission to new incoming Lord Chancellor/Secretary of State

59. In July 2024, Ms. Shabana Mahmood MP became Lord Chancellor after the Labour Party won the General Election. She requested a full submission on the use of PAVA in the children's estate to enable her to take a decision. Mr. Cornmell and the YCS made that submission on 16 August 2024.

60. The submission recommended the deployment of PAVA for male children and young people in the YOIs in England. The relevant ministerial submission once again emphasised that "*[i]t is important to note that the introduction of PAVA is not expected to reduce overall levels of violence but has the potential to reduce its severity, providing staff with a tool to protect themselves or children and young people in their care from the risk of life-changing or life-ending injury*."

61. The submission made clear that the use of PAVA was intended as an immediate, short-term solution to life changing/threatening violence: "*As we continue to reform our estate in line with evidence of what works, as set out at paras 9-10, we would anticipate the need for PAVA to reduce. However, in the short term, PAVA is deemed appropriate to reduce the risk of life changing or life ending injury*."

62. The submission explained once again the benefits of PAVA use, its risks, the risk mitigations to be put in place and contained a recommendation to agree to the roll out of PAVA in just the three YOIs. It included (i) the 2023 Bosworth Paper; (ii) the 1 June 2023 report by NHS England entitled "Consideration of the use of PAVA spray on children held on youth justice grounds in the Children & Young People Secure Estate"; (iii) the 2023 Maconachie Paper; and (iv) Collated stakeholder correspondence, including specifically the correspondence from the Youth Justice Board; the Alliance for Youth Justice (AYJ); Article 39; and the Claimant and Prison Reform Trust in order to ensure all views were considered in taking the Decision.

63. Furthermore, the submission also included, importantly, an *Equality Analysis*, as at February 2024, prepared by HMPPS. The Equality Analysis showed higher use of restraint and use of force rates among BAME children, Muslim faith individuals, girls, and those with disabilities or neurodiverse needs, raising concerns about equitable treatment and the need for ongoing scrutiny and action. It noted the need for staff to receive appropriate training on the use of force, bias awareness, and child development to reduce the risk of disproportionate use. It also noted the need for PAVA use to be continuously monitored both locally and nationally.

64. On 7 October 2024, Mr. Cornmell also took the Minister through video footage of incidents of violence showing where PAVA would and would not have been likely to prevent injury.

65. On 8 October 2024, the Lord Chancellor/Secretary of State and the Minister met Mr. Cornmell and the YCS. The Secretary of State took her decision in principle that there should be a <u>limited</u> roll out of PAVA in the YOIs subject to the following conditions:

> "*Appropriate safeguards are put in place including monthly scrutiny of all use which will be submitted for ministerial review (by Minister Dakin) which includes clear monitoring of any disproportionality of use.*
>
> *- A review of the roll-out in one year (to be conducted by the Lord Chancellor).*
>
> *- The roll-out to exclude use on girls in the YCS (unless this should occur incidentally).*"

66. The Lord Chancellor is specifically recorded as having made the following remarks to ensure constant monitoring of the limited roll out to the YOIs:

> "*LC opened the meeting by asking to understand two key points: what are our safeguards (in relation to the rollout of PAVA in the YCS)*
>
> *- LC highlighted that she does have concerns about disproportionate use on young black boys and other ethnic minorities.*
>
> *- LC suggested a scrutiny mechanism, which would be submitted to Minister Dakin to allow this to be monitored on a monthly basis and drive actions to address any concerns*
>
> *- LC noted that Lord Timpson had also provided his steers on this issue previously, which included a set of safeguarding measures (monthly reporting, additional training for staff). Lord Timpson asked to sunset the measure, to which she did not agree, though the LC did agree to a 1-year review*."

67. The Lord Chancellor expressed particular concerns about disproportionality of use of PAVA (on black children and other ethnic minorities (such as Muslims), stating that "*this is her red line and she would not defend disproportionality in use*."

(h) Further evidence gathering carried out by the YCS

68. There was then further work carried out by the YCS between October 2024 and April 2025 in order to strengthen the robustness of the decision-making process, which Mr. Cornmell describes in paragraph 97-112 of his witness statement.

69. In particular and first, on 24 November 2024 Mr. Cornmell emailed Professor Jason Payne-James, a specialist in Forensic and Legal Medicine. He referred to the fact that there was limited evidence about the impact of PAVA on children and that "*we are keen to exhaust all avenues to collect any evidence that can further inform decision making .. it is clear there is very limited research or evidence notably with children.*" He asked Professor Payne-James if he were able to "*guide us further regarding evidence or research that could inform our decision*" which would be "*extremely helpful and well received.*"

70. Professor Payne-James replied by email dated 25 November 2024, stating that: "*I think it is unlikely that there will be additional data but will explore*". In reply Mr. Cornmell thanked him, and specifically stated that he would be very grateful to hear from him if anything arose which might be helpful. But nothing further was received from Professor Payne-James and Mr. Cornmell states, with some justification, that he "*was therefore surprised to see that Professor Payne-James has provided a witness statement for the Claimant in these proceedings, in which he did not mention that I had sought his assistance at an earlier stage in the course of developing the policy.*"[19]

71. Mr. Cornmell also wrote to Dr Maconochie on 20 November 2024 in order to ask him whether, in the 18 months since he produced his 2023 paper, there was "*any emerging evidence or additional information that you were aware of and you felt was pertinent to any decision to increase the potential use of PAVA with young people and warranted an addition to your assessment from last year*?", including any medical data post-use of PAVA on children. Dr Maconochie replied that he had not found any relevant publications relating to the clinical effects of PAVA from 2023 onwards and also referred

[19] Cornmell w/s, para 98.

to the fact that he had contacted Professor Payne-James to see if he could assist (which he could not).

72. Second, and importantly, an *observational case review* of the use of PAVA in the Adult Secure Estate was carried out in respect of 120 PAVA events between January and October 2024. The intention was to focus on events most similar to those proposed for potential PAVA deployment in the Youth Secure Estate, namely where the perpetrators were under 25 years of age, and involving weapons and/or a number of perpetrators. This review found:

(1) PAVA use to be a necessary, reasonable and proportionate intervention in 106 of the 120 events reviewed (88%).

(2) The drawing/deploying of PAVA contributed to the stopping of the violence in 99 of the 106 events (i.e. in 93% of cases or 82.5% of the total events).

(3) The drawing/deploying of PAVA assisted staff in gaining control of the event in 97 of the 106 events (92%).

73. It is true that (i) some caution must be applied to these figures because, as the review stated, what the alternative outcome would have been, had PAVA not been deployed, is unknown and (ii) the sample size (120 events) is relatively small. However, this is nonetheless an important, recent study concerning prisoners under the age of 25 which the Secretary of State was entitled to take into account in reaching her decision. Considerable efforts were made to ensure the robustness of the observational review: reviewers were briefed on thresholds for use, incidents were checked for consistency by the ORRU Evidence Specialist and Head of Unit, and a further appraisal was conducted by the ORRU Senior Evidence Specialist, an expert in qualitative and quantitative research.

(i) Bundle of documents provided to Secretary of State

74. On 26 February 2025, Mr. Cornmell provided the Lord Chancellor/Secretary of State with an extensive bundle of documents which brought together all of the information and research carried out by the YCS over the past 2 years concerning the proposed limited roll out of PAVA to the Youth Secure Estate. This extensive bundle was reviewed by the Lord Chancellor/Secretary of State personally, as was confirmed by email from her Permanent Secretary dated 11 March 2025. It included (as Mr. Cornmell explains in his

witness statement and as is apparent from the bundle of documents before the court and exhibited to his witness statement):

(1) A series of hypothetical scenarios to be provided to members of staff explaining the circumstances in which PAVA use in the Authorised YOIs would meet the high threshold required for deployment (e.g. a multi-person violent attack; the use of a bladed article etc) and would not meet the high threshold required for deployment (e.g. a fight with no weapons involved; barricading of the prisoner's room; self-harming etc);

(2) Data regarding the use of force in the youth custody estate and evidence of disproportionate impact by ethnicity;

(3) A paper dated 2 January 2025 considering alternatives to PAVA in using force in order to intervene to prevent harm from serious violence in the youth estate;

(4) Home Office Police Use of Force statistics regarding the use of irritant spray on children aged 11-17;

(5) An analysis in 2023 by Dr. Bosworth and others of the *use of force* in (adult) prisons. The review found that PAVA was used on black prisoners (0.7% of cases) at more than twice the rate of white prisoners (0.2%), indicating this technique may significantly contribute to ethnic disparities in the use of force. To reduce the risk of illegitimate and disproportionate use of force, the review recommended establishing clear guidelines regarding the use of force, providing sufficient training for all staff members, and ensuring appropriate supervision and oversight during its application;

(6) Further stakeholder engagement, including from the Claimant, on the possible deployment of PAVA in the children's estate;

(7) A draft training package for all staff selected to carry PAVA to address issues of bias and to reduce the risk of disproportionate use of force against Black children and young people in custody;

(8) The terms of reference for the Independent Restraint Review Panel ("**the IRRP**"), which examines the use of pain-inducing techniques in youth custodial settings;

(9) A report prepared by Dr Bosworth on 24 January 2025 regarding the details of the live evaluation proposed to operate throughout the initial deployment of PAVA in the YOIs;

(10) An initial draft detailed Operational Guidance for use of PAVA; and

(11) The YCS Policy dated 17 August 2023 on the Use of Force, Restraint and Restrictive Practices in the children's estate.

(j) Secretary of State's conclusion after her review of all the evidence

75. Having been provided with and having reviewed all of this detailed information, the Permanent Secretary of the Lord Chancellor emailed Mr. Cornmell and the YCS on 10 April 2025 in order to record that "*we have all now agreed*":

> "*That the use of PAVA is subject to ongoing close scrutiny of all uses, and will be authorised for a 12 month period, subject to the following:*
>
> *o a full review being carried out 12 months after the policy going live, which re-examines the evidence of necessity of PAVA use, including quantitative data on both the appropriateness of use and its efficacy;*
>
> *o a live evaluation will operate throughout with specific evaluation of the impacts on children and young people subjected to PAVA, including:*
>
> *o any health impacts. Views and input must be sought from experts from the Department for Health and Social Care and NHS England.*
>
> - *any impacts on the emotional and behavioural wellbeing of children on whom PAVA is used, including how it affects them as they develop into adulthood.*
> - *the impact PAVA introduction has had on children and young people in these settings who are of black or mixed heritage, and on those who are neurodivergent (or both).*
>
> *o Prior to the full 12 month review, the live evaluation will collect the best available evidence on each of these themes. <u>It is recognised that, given the intended high threshold for use, the number of PAVA incidents in YOIs should be extremely limited</u>;*
>
> *o That MOJ/YCS will continue constructive and open engagement with DfE (on behalf of the Education Secretary), including being consulted during any reviews, and that regular data on the use of PAVA in YOIs is shared with DfE officials. Officials will formally meet at least 6 months after go-live to review the evidence position. o Any further use of PAVA beyond the formal review point is ,informed by the best available evidence from the live evaluation…*

That the Lord Chancellor's communications on this proposal include the detailed safeguards which are being put in place around its use, to ensure transparency and as far as possible reassure those who will have concerns about its use." (emphasis added)

76. This, then, is how the decision-making process developed and concluded. It is plain that the Secretary of State was closely involved in the formation of the PAVA policy and was insistent upon thorough safeguards being introduced concerning its use, as well as constant "live" monitoring and oversight of the limited use of PAVA which she expected to be extremely rare in view of the limitations upon its use: viz, as a last resort, and only where there is an immediate threat of life-changing or life-ending violence.

77. The decision-making process is characterised by a detailed analysis by the Lord Chancellor/Secretary of State (of both governments) of the issues for and against the use of PAVA in the YOIs, with the assistance of the YCS and relevant stakeholders. The contemporaneous documents demonstrate a continual testing of the arguments, coupled with repeated attempts to obtain as much literature and data as possible from experts in the field concerning the effects of PAVA upon young people, despite the limited extent of the same.

78. In summary, the decision-making process establishes that the following facts, in particular, were known to the Secretary of State in the taking of her Decision:

(1) There had been a significant rise in violent assaults since 2023 in the YOIs. These assaults frequently involve weapons and multiple perpetrators and carry a real risk of life changing injury or death to other children and staff within the YOIs. These incidents are exceptionally difficult to contain using traditional restraint methods. There was a pressing need to address this deteriorating situation.

(2) The decision as to whether to authorise the use of PAVA in the YOIs was a difficult one which was finely balanced because of the sensitive and countervailing considerations relating to young people.

(3) PAVA enables prison officers to prevent the infliction of immediate and serious harm/violence by a young prisoner upon other young prisoners/prison staff but it may not reduce harm and violence overall; indeed it may cause a long-term escalation and rising tenor of violent behaviour.

(4)(i) On the one hand, the efficacy of the use of PAVA in reducing the immediate risk of serious harm to young children and staff at the YOIs; (ii) on the other hand, the physical and psychological harm which PAVA spray could potentially cause to, in particular, the young people against whom it is used; (iii) the need to guard against the disproportionate use of PAVA, particularly on young black men and other ethnic minorities such as Muslims as well as persons with disabilities; (iv) PAVA should only be used, exceptionally, as a last resort in cases of imminent and very serious harm (see further [79] below); (v) the need for the "live" monitoring of the limited use of PAVA during the 12-month period, with constant oversight and the ability to end its use at any time; (vi) the need to design bespoke safeguards for the use of PAVA in the YOIs, including thorough training in the use of PAVA and tight controls on the personnel authorised to use it.

79. So far as those safeguards are concerned, it was known to the Secretary of State (and indeed insisted upon by her) that any deployment of PAVA within the YOIs would need to be subject to comprehensive safeguards, designed to mitigate the risks inherent in the use of PAVA therein. Those comprehensive safeguards, as finalised, are essentially as follows:

(1) PAVA is only to be deployed in the YOIs as a last resort where it is necessary to prevent an immediate risk of serious harm. As the detailed Operational Guidance ("the Operational Guidance") for the use of PAVA in YOIs expressly states:

> "*PAVA must only be used in exceptional circumstances and used as a last resort where all other options have been exhausted. It must only be used where it is necessary, reasonable, proportionate if it is proportionate to the circumstances.*
>
> *Deployment of PAVA will only be considered reasonable and proportionate where serious violence likely to cause serious harm is underway, or imminently likely to occur, and it cannot be effectively and safely managed by other methods.*
>
> *PAVA must only ever be drawn or deployed in proportionate response to the seriousness of the circumstances and only ever as the last resort*"[20];

[20] Cornmell w/s, paras 120-124 ("*genuine and imminent danger*"; "*rarest and most compelling cases*") and see Annex A to the Operational Guidance for Use of Pava, para 7.1.

(2) PAVA is only made available to small numbers of specially trained staff (namely either "band 5 custodial managers" or "band 4 specialist staff (of which there are only 4 or 5 at each YOI) who are qualified "use of force co-ordinators"), namely 25 staff at Feltham A; 26 staff at Werrington; and 36 staff at Wetherby.

(3) Before authorisation is granted, the specialist staff must undergo a suitability assessment and complete a comprehensive programme of training and briefing. No officer may carry, draw, or deploy PAVA other than those who have completed the requisite training and passed this individual suitability assessment. PAVA-specific training is provided in addition to the existing training given to members of staff as part of the Minimising and Managing Physical Restraint ("**MMPR**") syllabus, including training on the use of force and pain-inducing techniques.[21] The training will be reviewed and updated in light of any learning arising from the ongoing live evaluation. Staff must hold a current Enhanced DBS certificate, have no outstanding child protection referrals, be up to date with MMPR training, and have completed SPEAR training, PAVA training, and disparity awareness training, in order to pass this suitability assessment[22]. Importantly, this comprehensive training includes:

(a) Training covering the legal framework governing the use of force, the threshold for PAVA deployment, and the specific circumstances in which its use may be justified. This includes practical training on simulated scenarios that mirror real-life incidents, enabling staff to develop their judgement around when and how PAVA might be used responsibly. Particular emphasis is placed on de-escalation and the need to use PAVA only as a measure of last resort[23].

(b) Training on the need to undertake a dynamic risk assessment in each case of PAVA use, and to specifically consider any known behavioural triggers, including mental health crises, or intellectual and physical disabilities of the prisoner[24].

(c) Training addressing the risks of disproportionate use of force against Black children within custodial environments. This module seeks to examine the factors

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21 Cornmell w/s, paras 31-35.

22 ibid, paras 128-130.

23 ibid, para 130.1.

24 ibid, para 130.2.

which contribute to existing disproportionate use of force against Black children, young people and adults, and to prevent any disproportionate use of PAVA on Black and minority ethnic children and young people in the YOIs[25].

(d) Training on the immediate steps following PAVA deployment, including monitoring and supporting affected children and young people, and liaising with healthcare professionals for assessment and ongoing care[26].

(4) The use of PAVA in the YOIs is limited to a 12-month period. During this period, data relating to each use will be recorded in a national log, capturing the context, rationale for deployment, alternatives attempted, and outcomes. The log will also record the protected characteristics of each young person involved (including victims), and will be reviewed by operational leads on-site and centrally by YCS to ensure consistency and robust oversight in each use case[27]. At the end of that period, the Secretary of State will conduct a further review of the policy, in light of all of the evidence, following which a decision will be taken to continue, change or stop the use of PAVA[28]. The policy will continue only "*if it proves to be both effective and safe. Evidence will be kept under review. If that evidence shows the policy is not working as intended, it can be changed or brought to an end*"[29].

(5) A high level of governance and oversight is in place to ensure PAVA is used only in exceptional circumstances to prevent the risk of serious injury or harm[30]. Throughout the 12-month deployment, its use and efficacy will be closely monitored, with scrutiny and oversight at local operational level; national operational level; and even at ministerial level. Further still, the IRRP, whose members include a medical professional, will independently review every instance of PAVA use and will include this in their report to ministers annually, which is published on the GOV.UK website[31].

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25 ibid, para 130.4.

26 ibid, para 130.3 and see the Operational Guidance at paras 7.8, 8.1-8.6.

27 Cornmell w/s, at para 136.

28 See the Decision.

29 Cornmell w/s, paras 125-127.

30 See section 11 of the Operational Guidance.

31 Cornmell w/s, para 137.

(6) Deployment was subject to completion of detailed readiness assessments, at both the individual and establishment levels. PAVA was not authorised for use in any YOI until each readiness assessment had been formally approved by a senior civil servant external to the relevant YOI.

(7) In each case in which PAVA is used on a child or young person, staff are required to notify the NHS-commissioned healthcare team. Any young person exposed to PAVA must be placed under regular observation (at intervals of no fewer than four times per hour) until the effects have subsided. The policy also requires longer-term support for children and young people following exposure to PAVA[32].

The Decision

80. The wording of the Decision, contained in a statement made on 24 April 2025 by the Lord Chancellor/Secretary of State, is entirely consistent with the foregoing. In particular:

(1) She refers to the fact that those who are in youth custody today are predominantly older teenage boys, aged 16 to 18 years of age. Over two-thirds of these children are in custody for violent offences.

(2) She explains that the levels of violence across the Children and Young People's Secure Estate are unacceptable and that today, levels of violence are higher than in the adult prison estate. For the 12 months to December 2024, the rate of assaults by children and young people, on staff across the three YOIs increased by almost 25% compared to the previous year.

(3) She states that the level of violence is very serious: in recent months, incidents have seen staff members act as human shields to protect victims from attack where they have been stamped and kicked in the head by numerous assailants. This has seen young people in custody and staff sustain serious injuries including fractures, dislocations, puncture wounds and lacerations. The nature of this violence presents a high risk to life-changing injury including the trauma for staff and the young people in custody experiencing this violence.

[32] Operational Guidance, Section 9.

(4) She explains that "*after considering the evidence carefully and listening closely to a range of views, I have decided to authorise the issuing of PAVA …. to a specially trained and selected group of staff in the three YOIs for a 12-month period*".

(5) She emphasises, consistently with the decision-making process that PAVA will only be authorised for use as a last resort: this means when it is necessary, proportionate and appropriate to reduce the risk of serious or life-threatening injury to a young person in custody or member of staff. This will allow staff to respond to these serious incidents more effectively. It will potentially reduce the severity of injury and will help restore control much more quickly.

(6) Next, she explains about the close scrutiny and oversight that will be in place to safeguard the use of this tactic. There will be a suitability assessment and training for the limited staff that will be authorised to carry and draw or discharge PAVA. The authorisation for this policy will only be for a 12-month period, allowing further ministerial review of whether to continue, change or stop the use of the tactic.

(7) She further explains about the live monitoring that will take place as a safeguard: A live evaluation will be conducted reviewing each and every incident in which PAVA is used, collecting data and evidence focused on necessary, appropriate and proportionate use of PAVA, and its efficacy, considering the impact of PAVA. There will be a monthly review of incidents by ministers.

(8) She emphasises that "*there will be a clear focus on any disproportionality and neurodiversity*."

(9) Having summarised the safeguards, she then refers to the difficult nature of the decision but explains that she has concluded that it is necessary to make this limited roll out of PAVA in the YOIs, subject to the safeguards, because of the risk of imminent harm to young people and the prison staff: "*[t]his is not a decision I have taken lightly, but I am clear that this vital measure is needed to <u>urgently</u> prioritise safety in these three YOIs at this present time. I believe that failing to act will place young people in custody and staff at risk of serious harm*."

(10) Finally, she emphasises that this is a short to medium term measure, intended to reduce the highest level of risk and severity of violence. Whilst the measure is

necessary, it is not sufficient alone in preventing violence in YOIs and other improvement plans for the YOIs are in train.

GROUNDS OF CHALLENGE

Ground 3: Irrationality?

81. In oral submissions, Mr. Straw KC focused first on Ground 3 of the Claimant's grounds of challenge, contending that the Decision was unreasonable or irrational. His argument was that the central and only justification which the Secretary of State gave for deciding that the roll out of PAVA in the YOIs was necessary was that PAVA would reduce violence and harm. But, he maintained, there was *no evidence* that the roll out of PAVA for use on children in custody would reduce harm and violence *overall* and in fact there was substantial evidence that having regard to the particular characteristics of children in custody, it may instead, increase harm and violence. It is said that the Defendant failed to take this into account.

82. It was common ground between the parties that this is a complaint of process irrationality, rather than outcome irrationality.

83. The difference between process rationality and outcome rationality was succinctly summarised by Chamberlain J in *R (KP) v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] EWHC 370 (Admin) at [55]-[57]:

> "*55. In most contexts, rationality is the standard by which the common law measures the conduct of a public decision-maker where there has been no infringement of a legal right, no misdirection of law and no procedural unfairness. It encompasses both the process of reasoning by which a decision is reached (sometimes referred to as "process rationality") and the outcome ("outcome rationality"): see e.g. R (Law Society) v Lord Chancellor [2018] EWHC 2094 (Admin), [2019] 1 WLR 1649, [98] (Leggatt LJ and Carr J).*
>
> *56. Process rationality includes the requirement that the decision maker must have regard to all mandatorily relevant considerations and no irrelevant ones, but is not limited to that. In addition, the process of reasoning should contain no logical error or critical gap. This is the type of irrationality Sedley J was describing when he spoke of a decision that "does not add up – in which, in other words, there is an error of reasoning which robs the decision of logic": R v Parliamentary Commissioner for*

Administration ex p. Balchin [1998] 1 PLR 1, [13]. In similar vein, Saini J said that the court should ask, "does the conclusion follow from the evidence or is there an unexplained evidential gap or leap in reasoning which fails to justify the conclusion?": R (Wells) v Parole Board [2019] EWHC 2710 (Admin), at [33].

57. Outcome rationality, on the other hand, is concerned with whether – even where the process of reasoning leading to the challenged decision is not materially flawed – the outcome is "so unreasonable that no reasonable authority could ever have come to it" (Associated Wednesbury Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223, 233-4) or, in simpler and less question-begging terms, outside the "range of reasonable decisions open to a decision-maker" (Boddington v British Transport Police [1999] 2 AC 143, 175)."

84. So far as the standard of review is concerned, the Claimant argues that in this case highly sensitive interests are engaged (the wellbeing of children and young persons) and the potential adverse effects of the Decision are grave. This means, it maintains, that the court ought to apply anxious scrutiny and a stricter standard of review. In particular, PAVA is a dangerous pain-inducing technique which could potentially increase violence and harm in custody, and which could cause serious psychological or physical harm to the children on whom it is used behind closed doors, which include vulnerable children with neurodivergent characteristics. PAVA may also be used, it is said, in a racially discriminatory way.

85. In support of this submission Mr. Straw KC relied upon *R (C) v Secretary of State for Justice* [2008] EWCA Civ 882 at [58] in which it was stated that: "*Two circumstances that have been identified as imposing special obligations on the state are that the subject is dependent on the state because he has been deprived of his liberty; and that he is young or vulnerable.*"

86. That was said in the context of an *article 3* challenge; references to the court applying anxious scrutiny are frequently made in the context of human rights challenges. Whilst that is the usual context of the requirement for anxious scrutiny, the context is not limited to human rights challenges. As Chamberlain J noted in *KP* at [62]-[63]:

> "*62. In R (King) v Secretary of State for Justice [2015] UKSC 54, [2016] AC 384, Lord Reed explained at [126], by reference to Pham, that "the test of unreasonableness has to be applied with sensitivity to the context, including the nature of any interests engaged and the gravity of any adverse effects on those interests".*

> *63. In R (Hoareau) v Secretary of State for Foreign and Commonwealth Affairs [2020] EWCA Civ 1010, [2021] 1 WLR 472, the Court of Appeal (Sir Terence Etherton MR, Green and Dingemans LJJ) undertook a review of the case law concerning "anxious scrutiny" in the context of rationality review, concluding at [154] that the intensity of review depends on both the legal context (the nature of the right asserted) and the factual context (the subject matter impugned). However, the court was careful to add that a recognition that a case concerns an important right "does not answer the question about the extent to which a court, in the absence of any applicable statutory duties or statutory limitations on the decisionmaker, will recognise that the evaluative judgement involved is a matter for the decision-maker". This might be particularly so in areas touching on national security, foreign relations and the allocation of resources: see at [155].*"

87. I agree with Chamberlain J (in *KP* at [76]) that "*the court's approach to assessing the rationality of a decision varies depending on the importance of the interests affected by it or, to put the point another way, the gravity of its potential consequences. In this connection, it is not necessary to identify a "right" impacted by the challenged decision*."

88. The present case is a case where I accept that the potential gravity of the consequences of the use of PAVA – namely the physical and potentially psychological effects of it on young persons in custody – should lead the court to apply anxious scrutiny to the process rationality of the Decision. The heightened standard of review will lead the court to subject the decision to "*more rigorous examination, to ensure that it is in no way flawed*" (*KP* at [77]).

89. Mr. Pobjoy KC (who appeared for the Secretary of State, together with Ms. Natasha Simonsen and Ms. Ava Mayer) accepted in his submissions that some "heightened scrutiny" was appropriate in the present case, but that a margin of discretion or latitude should be afforded to the Secretary of State in the context of a policy area – the management of risk in custodial settings – which calls for political judgment: see e.g., *R (Ali) v Secretary of State for Justice* [2015] EWHC 2221 (Admin) at [27]; *Re Kane's Application for Judicial Review* [2014] NIQB 118 at [5] and [9]; and *R (Allen) v Secretary of State for Justice* [2024] EWHC 2370 (Admin) at [37].

90. I agree with Mr. Pobjoy KC that the Decision concerns the management of risk and safeguarding in YOIs, which requires the weighing by the Secretary of State of difficult and competing considerations, in particular the risk of physical and psychological harm caused by the use of PAVA as against the need to protect children and staff from serious

and imminent harm from violent young offenders (bearing in mind the limits of alternative methods for managing violent behaviour and the challenges of maintaining the welfare of a vulnerable custodial population with finite resources). These are matters which have a bearing upon the rationality of the *outcome* of the Decision: if the final decision is finely balanced then it may be appropriate to give a margin of discretion or latitude to the Secretary of State in the taking of that Decision.

91. But in a *process* rationality challenge to a Decision such as the one in the present case, which has potentially serious physical and psychological repercussions for young people held in custody, I consider that the process must be rigorously examined by the court, and ultimately in taking the Decision, the Secretary of State is required "*to show by [her] reasoning that every factor which might tell in favour of an applicant has been properly taken into account*" (*KP* at [77], citing *R (YH (Iraq)) v Secretary of State for the Home Department* [2010] EWCA Civ 116, at [24]).

92. In the present case the Claimant contends that there was process irrationality in the taking of the Decision because "*there was "no evidence to support an important step in the reasoning, or … the reasoning involved a serious logical or methodological error*": *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin) at [98]. Or, to put it another way, there was "*an unexplained evidential gap or leap in reasoning which fails to justify the conclusion*" … "*particularly in a context where anxious scrutiny needs to be applied*": *R (Wells) v Parole Board* [2019] EWHC 2710 (Admin), at [32]-[33]; and *KP* at [56].

93. So what is the gap or leap in the reasoning alleged by the Claimant in the present case? Mr. Straw KC submits that:

    (1) First, there was no evidence to support "*critical steps in the reasoning*" leading to the conclusion that "*PAVA would reduce violence and harm*" overall[33]; and

    (2) Second, there is "unchallenged evidence" that there will be an increase in violence overall in YOIs in the longer-term (by way of the secondary impact of the use of PAVA) which would not be offset by any reduction in violence in the immediate term by its use.

[33] Claimant's skeleton argument, at paras [13] and [34]-[36].

94. The fundamental flaw in the first of these submissions is that it misrepresents the reasoning of the Secretary of State in the decision-making process. As can be seen above, the reason for the taking of the Decision was not to reduce overall levels of violence and harm in YOIs. The Decision arose out of serious concern regarding the significant increase in the *severity* of violent incidents in the YOIs against prison staff and young prisoners. Indeed, in his reply Mr. Straw KC said that "*we readily accept that there was a pressing and urgent issue of violence in custody*". The Decision authorises the use of PAVA as a measure of last resort where serious violence, likely to cause serious harm to staff and young persons in the YOI, is *underway or imminently likely to occur* and it cannot be safely managed by other methods. This is why the Operational Guidance expressly states that: "*Deployment of PAVA will only be considered reasonable and proportionate where serious violence likely to cause serious harm is underway, or imminently likely to occur, and it cannot be effectively and safely managed by other methods.*"

95. The purpose of the Decision was not to seek to reduce violence overall in the longer term in the YOIs. The Secretary of State knew that it was unlikely to do that (see paragraph 19 above), but it was not intended to do that (there are other long-term measures in place intended to bring about that result). The Secretary of State (of both governments) was expressly informed of the fact that the use of PAVA was unlikely to reduce overall violence in YOIs and had his/her specific attention drawn to it (see paragraphs 40 and 60 above). Indeed, this was a point repeatedly made by a number of different stakeholders who had statutory responsibilities and expertise for advising on these issues and providing services to children in custody.

96. Mr. Straw KC drew an analogy with the expertise of the UNHCR which the court relied upon in *R (AAA (Syria)) v Secretary of State for the Home Department* [2023] UKSC 42 at [64]-[66] (in determining whether an asylum seeker would be at serious risk of ill treatment in his country of origin), and submitted that the Secretary of State should have given more weight to these stakeholders as "expert bodies", having particular expertise in matters concerning the welfare of children and young people. He argues that she did not give reasons for departing from their views, in particular the view that overall violence may increase as a result of the use of the PAVA.

97. I do not accept that submission. There was extensive engagement between the Secretary of State, the YCS and these stakeholders over a period of years. Their genuine concerns

were taken seriously by the Secretary of State and indeed had a significant influence on the formulation of her decision. In particular they played a part in convincing her that PAVA should only be authorised for use by a small number of highly trained personnel as a last resort when necessary, proportionate and appropriate, and in formulating the very important safeguards to the use of PAVA. There was no unexplained gap or leap in her reasoning in this respect.

98. It follows that the core complaint advanced by the Claimant, that there was insufficient evidence to support critical steps in the Secretary of State's conclusion that PAVA would reduce *overall* violence and harm, misstates her conclusion. The Decision was not taken in order to reduce overall levels of violence; on the contrary it was taken in the knowledge that it was unlikely to reduce overall violence; rather it was taken in order to seek to prevent serious and immediate harm to prison staff and young prisoners.

99. The Claimant then contends that, even in the case of PAVA being deployed to prevent *immediate* harm, "*other evidence indicates that immediate harm or violence overall may increase [with PAVA use]: there are 4-6 times the injury rates when PAVA (or a baton) is used than otherwise*"[34].

100. That is a reference to Dr. Bosworth's 2025 Use of Force Review (see paragraph 74(5) above) in which it is stated that "*injury rates for prisoners following baton and PAVA use are between 4-6 times the injury rates when these techniques are not used*". This is said to indicate that PAVA may increase harm and violence in adult prisons.

101. However, first, this statistic concerns baton use as well as PAVA, and baton use is not permitted in the YOIs. Accordingly, little or no reliance can be placed on this statistic. Second, as the Secretary of State rightly points out, the statement is made in the context of addressing the health implications for prisoners subjected to these techniques: that a use of force results in injury to the individual against whom it is deployed is self-evident and sheds no light on its efficacy in safeguarding other prisoners from immediate harm. Third, and importantly, the review itself specifically cautions that "*further investigation is needed to clarify if this is due to the technique, or whether these rates reflect the serious nature of the incidents that prompted officers to use batons or PAVA in the first place*". Fourth, PAVA is deployed much more widely in the adult estate than in the youth estate. It is issued to all officers as a standard part of their uniform, and the threshold for its use

34 ibid.

is lower. The Decision, in contrast, contains important safeguards concerning the use of PAVA in YOIs. These are material differences, and it was open to the Secretary of State to conclude that the use of PAVA in YOIs as a result did not pose the same risk. Dr. Bosworth's report was before the Secretary of State.

102. Nor do I accept Mr. Straw's second submission in paragraph 93 above. I agree with Mr. Pobjoy KC that there was more than sufficient evidence to allow the Secretary of State to take the view that the use of PAVA *would* have the immediate effect of reducing the risk of imminent, serious harm, including for example, the 2023 Bosworth Paper ("*PAVA can be an effective tool when outnumbered, to cease serious incidents and life-changing injury, and to maintain a safe distance when needed, but it is unlikely to reduce overall violence, noticeably improve safety or enhance day-to-day interactions*") and the Observational Case Review (which was specifically commissioned by the Secretary of State in January 2025 to better understand the efficacy of PAVA to de-escalate the risk of imminent serious injury): "*This review found PAVA use to be a necessary, reasonable and proportionate intervention in 106 of the 120 events reviewed*"[35]). There was no gap in the reasoning of the Secretary of State in this respect.

103. Indeed, Mr. Straw KC accepted that there was indeed evidence before the Secretary of State that PAVA can reduce *imminent* violence (and therefore serious harm) during the course of specific incidents in *adult* prisons, but contended that there is no evidence of the extent to which the findings in adult prisons can be translated to *children in custody*.

104. I do not accept that submission and there was no gap in the Secretary of State's reasoning in this respect. She was fully aware of the need for caution in translating the findings in adult prisons to children in custody. Those findings nonetheless had some utility.

105. First, the PAVA Observational Case Review was designed to address the potential impact of PAVA in YOIs, which is why it focussed on young adults between 18 and 25 years old. Accordingly, it did provide some useful evidence as to the effectiveness of the immediate impact of PAVA on young persons in custody. But second and in any event, as can be seen from the analysis of the decision-making process above, the formulation of the safeguards to the use of PAVA in YOIs was specifically designed to reduce the risks of the use of PAVA on young people (recognising that those risks are greater than

[35] See the results of the Review contained in paragraph 72 above which provide evidence of the efficacy of PAVA in de-escalating the risk of serious injury.

the risks posed to the adult prison population), particularly those with neurodivergent characteristics, of which the Secretary of State was fully aware. The Secretary of State did not simply translate the findings in adult prisons into the youth custody setting. There is accordingly no gap in her reasoning or in the evidence in this respect.

106. In all the circumstances, the challenge under Ground 3 fails. There was no process irrationality in the taking of the Decision.

Ground 1: Breach of the Public Sector Equality Duty in s.149 of the Equality Act 2010?

Legal principles

107. Section 149 of the Act provides as follows:

"***149 Public sector equality duty***

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

…

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) tackle prejudice, and

(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are—

age;

disability;

gender reassignment;

pregnancy and maternity;

race;

religion or belief;

sex;

sexual orientation.

…"

108. It is common ground that the PSED is a duty of process and not of outcome; but that does not diminish its importance.

109. In *R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 at [60]-[61], McCombe LJ explained:

> "*The 2010 Act imposes a heavy burden upon public authorities in discharging the PESD and in ensuring that there is evidence available, if necessary, to demonstrate that discharge … It is for this reason that advance consideration has to be given to these issues and they have to be an integral part to the mechanisms of government.*"

110. The PSED is not a duty to bring about a particular result (e.g. to eliminate unlawful racial discrimination). It is a duty to have due regard to the need to achieve the stated goals, which is the regard that is appropriate in all the circumstances: *Baker v Communities and Local Government Secretary* [2008] EWCA Civ 141 at [31] per Dyson LJ. Nor does the PSED prescribe any particular procedure for the discharge of the duty: *R (Brown) v Secretary of State for work and Pensions* [2008] EWHC 3158 (Admin) at [89].

111. It was stated by the Court of Appeal in *R (Bracking)* at [24]:

"*A Minister must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy and not merely as a "rearguard action", following a concluded decision.*"

However, the Court went on to state at [78] that:

"*the concept of due regard requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria, but if that is done the court cannot interfere with the decision simply because it would have given greater weight to the equality implications of the decision than did the decision maker.*"

112. And as was stated in *R (Bridges)* at [181]:

> "*We acknowledge that what is required by the PSED is dependent on the context and does not require the impossible. It requires the taking of reasonable steps to make enquiries about what may not yet be known to a public authority about the potential impact of a proposed decision or policy on people with the relevant characteristics.*"

113. It is accordingly for the decision-maker (here the Secretary of State) to decide upon the manner and intensity of inquiry to be undertaken into any relevant factor, subject to a *Wednesbury* rationality review: *R (Khatun) v Newham LBC* [2004] EWCA Civ 55 at [33]-[35] per Laws LJ. See also *R (Hollow) v Surrey CC* [2019] EWHC 618 (Admin) at [83] per Sharpe LJ:

> "*The starting point must be that it will only be unlawful for a public body not to make a particular inquiry if it was irrational for it not to do so; and further, that it is for the public body, not the court to decide on the manner and intensity of any inquiry: see R (Khatun) v Newham LBC [2005] QB 37 at paras 33 to 35 per Laws LJ. See further, R (Hurley) v Secretary of State for Business, Innovation and Skills [2012] HRLR 13 at para 89.*"

114. In *R (Bridges)* the Court of Appeal helpfully summarised the required approach of the decision-maker in this regard, and that summary was approved by the Supreme Court in *R (Marouf) v Secretary of State for the Home Department* [2023] UKSC 23 per Lady Rose JSC at [14]:

> "*… (1) The PSED must be fulfilled before and at the time when a particular policy is being considered. (2) The duty must be exercised in substance, with rigour, and with an open mind. It is not a question of ticking boxes. (3) The duty is non-delegable. (4) The duty is a continuing one. (5) If the relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consultation with appropriate groups is required. (6) Provided the court is satisfied that there has been a rigorous consideration of the duty, so that there is a proper appreciation of the*

potential impact of the decision on equality objectives and the desirability of promoting them, then it is for the decision-maker to decide how much weight should be given to the various factors informing the decision."

Claimant's submissions and discussion

115. Mr. Straw KC relied upon the fact that the Secretary of State must "*assess the risk and extent of any adverse impact*" of the proposed measure and he argued that in the present context this accordingly meant assessing the risk and extent of any adverse impact of using PAVA on Black, Muslim, and disabled children in custody in particular. Similarly, s.149(3)(a) of the Act requires the Secretary of State to have due regard to the need to remove or minimise the disadvantage that will be suffered by Black, Muslim, and disabled children in custody as a result of authorising the use of PAVA. In order to do so, the Secretary of State must have due regard to the disadvantage that PAVA will cause to those children.

116. Moreover, Mr. Straw KC argued that the Secretary of State must assess the ways in which the risk of adverse impact on Black, Muslim, and disabled children by using PAVA "*may be eliminated*". This, he maintained, is linked to s.149(1)(a) of the Act, which requires the Minister to have due regard to the need to eliminate discrimination.

117. The starting point is that the Claimant's argument that there has been a breach of the PSED rests on very shaky foundations by reason of three matters in particular:

(1) First, a number of equality analyses addressing the potential impact of PAVA in the children and young persons' estate were undertaken in 2023, August 2024 and April 2025 (which included a disability assessment, a race assessment; a religion and belief assessment; and a sex assessment) prior to the taking of the Decision and the consequent limited rollout of PAVA in the YOIs (as well as subsequently on 1 August 2025). Accordingly, before taking the Decision, the Secretary of State did have due regard to the potential impact on children with protected characteristics, including disabled children. Inquiries were undertaken to assess the risks of disproportionate effects, with particular focus on neurodivergent and disabled children and Black and minority ethnic children, and the analysis stressed the importance of tailored staff training and rigorous oversight to mitigate these risks which led to the adopted safeguards (referred to above). This was

certainly not a case, therefore, of the Secretary of State adopting a "rearguard action" following a concluded decision[36].

(2) Second, a Child Rights Impact Assessment on the use of PAVA in the YOIs was also carried out on 13 February 2025, before the Decision was taken. This again shows that the Secretary of State carefully considered the impact of PAVA spray on children with protected characteristics, including Black and minority ethnic children and those with disabilities, as well as its impact on race and religion. Once again, the assessment emphasises the need for strict oversight and comprehensive staff training to reduce any disproportionate impacts of the use of PAVA.

(3) Third, the Secretary of State's attention was specifically drawn to the Equality Analysis in the briefing note of 8 January 2024 (see paragraphs 47-48 above) and the submission of 16 August 2024 (see paragraphs 60-63 above), and in particular to the PSED issues to which the Secretary of State needed to have regard as follows:

(1) "*Data shows that PAVA is used disproportionately on young black men in the adult male estate. Additionally, black boys are disproportionally represented in YOIs. It is likely that they will be disproportionately affected by the introduction of PAVA*" and

(2) "*The PAVA Equality Analysis also highlights the impact in relation to disability and that persons with disabilities are likely to be disproportionately affected.*"

118. There are numerous other contemporaneous documents which demonstrate that the Secretary of State had regard to the impact of her decision on those with protected characteristics. Indeed, these equality issues shaped the specific safeguards which were an integral part of the Decision. It is impossible to understand how it can be said that the Secretary of State did not have due regard to her PSED in these circumstances or that she failed to have a proper and conscientious focus on the statutory criteria.

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[36] Contrary to Mr. Straw KC's submission, this is certainly not a case where a cursory equalities assessment was carried out as an afterthought or not carried out at all, as in *R (C) v Secretary of State for Justice* [2008] EWCA Civ 882. The Secretary of State fully accepted the need to mitigate the (accepted) likelihood of disproportionate impacts on children with protected characteristics and that formed an essential part of her Decision, leading to the adoption of the critical safeguards in the policy.

119. However, despite this unpromising start, the Claimant nonetheless submits that there was a breach of the PSED in this case for three reasons as follows.

120. First, the Claimant advances the same point which it advanced under Ground 3, namely that the Secretary of State failed to have due regard to whether PAVA would reduce violence. That is because, so it is said by the Claimant, the assumption that PAVA will reduce violence was the central justification put forward for using it. Section 149 (1) of the Act requires due regard to the need to eliminate discrimination. The Claimant argues that the relevant discrimination here is section 15 (discrimination arising from disability), section 19 (indirect discrimination) and/or section 20/21 (failure to make reasonable adjustments). In all cases, a disadvantage is not discrimination if it is justified. Thus, in order to have due regard to the need to eliminate discrimination, it is necessary to have due regard to whether a disadvantage was justified. That requires due regard to the only justification relied on by the Defendant: that PAVA would reduce harm or violence, but, submits the Claimant, the Defendant failed to have due regard to, and to assess, whether PAVA will reduce harm or violence, for the same reasons relied upon under Ground 3 of its challenge.

121. I reject this submission for the same reasons that I reject it under Ground 3 above. It misrepresents or misunderstands the reasoning of the Secretary of State and rests on a false premise. The reason for the taking of the Decision was the significant increase in the severity of violence in the YOIs against prison staff and young prisoners. The Decision was intended to address the problem of the commission of immediate and serious violence against staff and young persons within the YOIs: using PAVA under strictly controlled conditions to seek to prevent potentially life-changing injuries. The Decision was not taken in order to reduce violence or harm overall in the YOIs. In any event, the Secretary of State understood that it was unlikely that that would be the case. It follows that the Secretary of State did not wrongly assume that PAVA would reduce serious harm/violence overall in the YOIs and nor did she fail to have due regard to the fact that it would not.

122. Second, the Claimant argues, applying *Bracking* at [24] (*supra*) that the Defendant failed to have due regard to the risk and extent of the adverse impact that PAVA would have on disabled children in custody. The Claimant maintains that further enquiries should have been but were not carried out to evaluate the extent of the impact in relation to neurodiverse children in custody (including in particular autistic children); children in

custody generally most of whom will have experienced significant trauma; and disabled children.

123. In support of this submission, the Claimant relied upon four pieces of evidence.

124. First, it relied upon a report of NHS England of 1 June 2023 (referred to in paragraph 62 above), commissioned by the YCS. That report, which considers the use of PAVA on children held in custody in the Youth Secure Estate, refers to the fact that NHS England had written to the author of a "prospective British study" concerning the effects of CS spray on 14 - 18-year-olds, of which 12% were exposed to PAVA, asking if he would share his findings. The Claimant argues that this further information ought to have been obtained by the Secretary of State but was not. However, the author of this prospective British study was Professor Payne-James. As explained above, in November 2024 Mr. Cornmell had written to him asking for his assistance in gathering further information about the potential use of PAVA upon young people (paragraphs 69-70 above) but Professor Payne-James told him that he thought it unlikely that there would be any additional data but he would explore. After that, he did not revert to Mr. Cornmell on the topic. The Secretary of State can hardly be criticised in those circumstances for not pursuing this further.

125. The Claimant also relies upon the fact that the NHS England report concludes by referring to the "*limited evidence available on the use of PAVA spray in the neurodiverse populations*" and that more research should be done in the case of its effects on autistic individuals. The Claimant argues that this further information ought to have been obtained but was not.

126. I do not accept that submission. The Secretary of State knew that there was limited information about the use of PAVA upon children and young people in custody. But she was faced with a pressing need to take steps to protect young prisoners and prison staff from the risk of imminent harm. Further enquiries can always be made in an attempt to evaluate the extent of the impact of any particular policy (and indeed were made in this case by the Secretary of State following the publication of the NHS England report). But the PSED only requires the taking of reasonable steps to make enquiries about what may not yet be known to a public authority about the potential impact of a proposed decision or policy on people with the relevant characteristics.

127. The decision-making process set out above shows that the Secretary of State took more than reasonable steps to inform herself about the potential impact of her proposed decision upon young people in custody with the relevant characteristics, in particular neurodivergent, disabled, Black, and Muslim children. Indeed, these concerns were what led to the formation and implementation of the essential and thorough safeguards in respect of the use of PAVA in the YOIs which are described above. In the light of the enquiries which were made on behalf of the Secretary of State, which led to the Equality Analysis and of which she was fully aware when taking the Decision, it cannot be said that it was irrational for her not to have delayed the Decision whilst she made yet further enquiries about the effect of PAVA on neurodivergent children, particularly in view of the urgency of the Decision. Indeed, it is not at all clear what further enquiries could have been made that would have led to any further useful information nor how long it would have taken to obtain any further useful information.

128. Second, the Claimant relies upon the Maconachie Medical Impact Report in so far as it refers to a "*paucity of information specifically about [PAVA's] use in children and young people, and medical complications.*" The Claimant argues that more information should have been sought about the duration of the effects of PAVA upon young people in custody, particularly those with sensory issues. In particular, they point to the fact that Dr Maconachie referred to the fact that "*the use of PAVA in the adult establishment and medical effects of its use would be helpful.*"

129. As to this submission however, Dr Maconachie himself referred to the fact that "*caution must be applied when considering translating impact of such data [in then adult estate] to potential effects on children.*" It is again not at all clear what further enquiries could have been made that would have led to any further useful information nor how long it would have taken to obtain any further useful information.

130. Indeed, as explained in paragraph 71 above, Mr. Cornmell wrote to Dr. Maconochie in order to ask him whether, in the 18 months since he produced his paper, there was "*any emerging evidence or additional information that you were aware of and you felt was pertinent to any decision to increase the potential use of PAVA with young people and warranted an addition to your assessment from last year?*", including any medical data post-use of PAVA on children. Dr. Maconochie replied that he had not found any relevant publications relating to the clinical effects of PAVA from 2023 onwards and also referred to the fact that he had contacted Professor Payne-James to see if he could assist (which

he could not). Once again, the Secretary of State can hardly be criticised in those circumstances for not pursuing this further.

131. Third, the Claimant relies upon the *Literature Review: PAVA and Children* dated May 2023 for the submission that, as this review considers the adverse effects of PAVA on young persons, those adverse effects ought to have been investigated further. I do not consider that this adds anything to the Claimant's argument. The Secretary of State took this review into account, as described in paragraph 25 above. It is again not at all clear what further enquiries could have been made that would have led to any further useful information, nor how long it would have taken to obtain any further useful information.

132. Fourth, the Claimant relies upon the letter from the Youth Justice Board to the Minister of State for Justice dated 10 August 2023 which suggests that a paediatric assessment of the use of PAVA should include a consideration of how the routine deployment and use of PAVA may impact on trauma. It is again not at all clear what further enquiries could have been made that would have led to any further useful information, nor how long it would have taken to obtain any further useful information. Moreover, the enquiries carried out on behalf of the Secretary of State already included the obtaining of a significant body of evidence concerning both physical and mental injury caused by the use of PAVA. This is apparent from the decision-making process (set out above), and in particular:

    (a) the Equality Analysis;

    (b) the NHS England Paper (specially commissioned by the Youth Custody Service to consider the impact, including on those with neurodiversity);

    (c) the Literature Review: PAVA and Children dated May 2023;

    (d) the 2023 Maconochie paper;

    (e) the Maconochie Medical Impact Report;

    (f) the Working Group within the YCS which was commissioned to consider the roll out of PAVA within the Youth Estate;

    (g) the reports of the YCS Operational Management Committee; the HMPPS leadership; and the Ministry of Justice;

    (h) specific discussion in ministerial submissions and meetings; and

(i) discussion of these concerns at stakeholder meetings.

133. Mr. Straw KC fairly and realistically accepted that the suggestion that further enquiries should have been undertaken in respect of issues of trauma was "*not our strongest point.*"

134. The third and final reason why the Claimant submits that there was a breach of the PSED in this case is said to be that the Secretary of State failed to assess the extent of the discriminatory impact of PAVA upon Black and Muslim prisoners and how it might be eliminated. I do not accept that submission. As set out in paragraphs 66-67 above, the Secretary of State is specifically recorded as having concerns about the disproportionate use of PAVA on young black boys and other ethnic minorities (such as Muslims). She said that she would not defend disproportionality in use and this was her "red line". She had a proper and conscientious focus on this issue.

135. There was no duty resting upon her to commission further studies in an attempt to find the precise extent of the disproportionate impact: in taking her decision she accepted that there was such an impact.

136. The PSED does not impose a duty on the Secretary of State to determine the precise extent of any potential adverse impact, which would impose an impossible burden upon her: see *R (Hurley and Moore) v Secretary of State for Business Innovation and Skills* [2012] EWHC 201 (Admin) in which the court stated at [87]:

> "*it is quite hopeless to say that the duty has not been complied with because it is possible to point to one or other piece of evidence which might be considered relevant which was not specifically identified in the EIA*".

In *R (Hurley and Moore)* the court also endorsed the observations of Davis LJ in *Bailey v Brent LBC* [2021] EWHC 2572 (Admin) at [102]:

> "*Councils cannot be expected … to apply, indeed they are to be discouraged from applying the degree of forensic analysis for the purpose of an EIA and of consideration of their duties under s.149 which a QC might deploy in court.*"

137. See also to like effect, *West Berkshire v SS Communities and Local Government* [2016] EWCA Civ 441, in which the court stated:

> "*… a consideration of the potential for adverse impact on protected groups. The requirement to pay due regard to quality impact under section 149 is just that. It does not require a precise mathematical exercise to be carried out*".

138. In summary, the Secretary of State was fully aware that, despite reasonable attempts to obtain it, there existed limited medical evidence regarding the adverse impact (both physically and psychologically) of PAVA on young people in custody. Indeed, she had been told (see for example Professor Payne-James's email dated 25 November 2024) that it was "unlikely" that there would be any additional data over and above that which the YCS already had concerning the effect of PAVA on young people in custody.

139. Nonetheless, in assessing the risk and extent of the proposed measure, the Secretary of State proceeded on a "worst case" basis, namely that there was indeed evidence to suggest that there was a disproportionate use of PAVA on Black boys and other ethnic minorities; that persons with disabilities were also likely to be disproportionately affected; and that PAVA could have a greater impact on those with mental health problems, pre-existing trauma and neurodiversity and that this was an important consideration as to how she should proceed. But she had to balance this factor against the urgent need to protect the staff and young offenders in the YOIs from the risk of immediate and life-changing violence. She did that by implementing all of the safeguards described above, including the fact that this was to be a limited roll out to highly trained staff with stringent oversight and evaluation, such that the use of PAVA could be halted at any time. In doing this, she took account of the risk of the adverse impact of the limited roll out of PAVA in the YOIs and she took steps to address it. She had full regard to the equality issues which were in play.

140. As Whipple J (as she was) stated in *R (Motherhood Plan) v HM Treasury* [2021] EWHC 309 (Admin) at [86]:

> "*The Court should not go further than to identify whether the essential questions have been conscientiously considered and that any conclusions reached are not irrational.*"

141. I am fully satisfied that the relevant questions within the Act have been conscientiously considered in this case by the Secretary of State and that any conclusions reached by her in that respect are not irrational.

Ground 2: Breach of the Tameside duty?

142. The final ground of challenge, Ground 2, is an allegation that the Secretary of State failed to gather sufficient relevant information to arrive at an informed and rational decision to

use PAVA spray on children and young people in the YOIs, in breach of the *Tameside* duty, and in breach of the duty to have regard to the best interests of children in custody. In particular, the Claimant contends that the Secretary of State failed to conduct reasonable inquiries into: (i) whether PAVA would reduce or increase violence and harm overall; (ii) the physical and mental health damage that PAVA would inflict on children in custody; and (iii) the extent to which PAVA may be used discriminately in respect of race, religion and disability, and how those risks may be eliminated.

143. The *Tameside* duty requires only the taking of reasonable steps: *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1997] AC 1014, at 1065B.

144. As the court stated in *R (Balajigari) v Secretary of State for the Home Department* [2019] EWCA Civ 673 at [70]:

> "*… in R (Plantagenet Alliance Ltd) v Secretary of State for Justice [2014] EWHC 1662 (Admin) at paras. 99-100 … having referred to the speech of Lord Diplock in Tameside, Haddon-Cave J summarised the relevant principles which are to be derived from authorities since Tameside itself as follows. First, the obligation on the decision-maker is only to take such steps to inform himself as are reasonable. Secondly, subject to a Wednesbury challenge, it is for the public body and not the court to decide upon the manner and intensity of enquiry to be undertaken: see R (Khatun) v Newham LBC [2004] EWCA Civ 55, [2005] QB 37, at para. 35 (Laws LJ). Thirdly, the court should not intervene merely because it considers that further enquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the enquiries made that it possessed the information necessary for its decision. Fourthly, the court should establish what material was before the authority and should only strike down a decision not to make further enquiries if no reasonable authority possessed of that material could suppose that the enquiries they had made were sufficient. Fifthly, the principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant but rather from the Secretary of State's duty so to inform himself as to arrive at a rational conclusion. Sixthly, the wider the discretion conferred on the Secretary of State, the more important it must be that he has all the relevant material to enable him properly to exercise it.*"

145. This court has established what material was before the Secretary of State when she made her decision (under the heading "Decision Making process" above). It follows that this court should only strike down the Secretary of State's decision not to make further enquiries if no reasonable Secretary of State possessed of that material could suppose that the enquiries that they had made were sufficient. This court should not intervene merely because it considers that further inquiries would have been sensible or desirable: see *R v Kensington and Chelsea RLBC ex p. Bayani* (1990) 22 HLR 406 per Neill LJ at 415.

146. Once the question is posed in that way, it is plain that this ground of challenge must fail for the same reasons that the challenge under the PSED must fail. It cannot sensibly be contended that no reasonable Secretary of State could have been satisfied on the basis of the enquiries made that she possessed the information necessary for her decision to authorise a limited rollout of PAVA to the YOIs, particularly in view of the extensive safeguards that she insisted upon.

147. Nor can it be said that she did not have regard to the welfare and best interests of children and young people in custody when she reached the Decision. Indeed, as explained above, on 13 February 2025 a specific Child Rights Impact Assessment on the use of PAVA in the YOIs was carried out before the Decision was taken. The Secretary of State carefully considered the impact of PAVA spray on children with protected characteristics, including Black and minority ethnic children and those with disabilities. Emphasis was placed on the need for strict oversight and comprehensive staff training to reduce any disproportionate impacts.

148. In the circumstances this ground of challenge must fail.

ADDITIONAL EVIDENCE

149. Finally, a dispute between the parties arose before the start of the hearing by reason of the Claimant's application dated 22 October 2025 for permission to rely upon two witness statements, namely (i) a witness statement of Professor Payne-James dated 17 July 2025 and (ii) a joint witness statement of Dr. Celia Sadie and Dr. Clare Holt dated 21 July 2025 ("**the joint statement**"). The Secretary of State objected to the admission in evidence of these two statements on the grounds that (a) they were not witness

statements but rather expert opinion evidence and (b) they were not reasonably necessary for resolving these proceedings in any event.

150. I indicated at the outset of the hearing that, for practical reasons (so as not to reduce further the court hearing time for the main challenge to the Decision) I would allow reference to these statements *de bene esse* and that I would rule on the application after the hearing had concluded.

151. In the event, the Claimant barely referred to these two statements during the course of the hearing. I consider that to be unsurprising, as I agree with the submissions of Mr. Pobjoy KC that these statements are not reasonably necessary for resolving these proceedings. I also agree that they are inadmissible, in containing expert evidence for which permission has not been sought and without their containing the required experts' declaration.

The objectionable evidence

152. So far as Professor Payne-James' statement is concerned, he confirms that there is very limited clinical research or data available on the use and health implications/effects of PAVA (witness statement, para 3.1) and that this lack of evidence is a long-standing issue (ibid, para 3.2). He states that there is further research which could be done to understand the physical health impact of PAVA use on children by carrying out further studies <u>on adults</u>. It is not at all clear how far this would assist in assessing any impact upon children[37]. He gives his expert opinion that it is important to do these kinds of studies before introducing a new substance (ibid, para 4.2) and then goes on to give his expert opinion as to the types of study which could be carried out, what they would likely show and how quickly they could be carried out (ibid paras 4.3-4.6). Yet he did not suggest to Mr. Cornmell that these further studies should be carried out when asked about this in November 2024 (see paragraphs 70 and 124 above).

153. So far as the joint statement is concerned, that is almost entirely made up of expert opinion evidence. The authors also agree that there are no studies anywhere in the world investigating the implications of the use of PAVA spray against children in secure settings (joint statement, paragraph 3.1). However, the joint authors then go on to give their joint expert opinion as to what other available research arguably shows and as to

[37] Sadie and Holt refer to the fact that findings relating to the adult prison estate cannot easily be transposed into the children's estate (witness statement, para 5.11).

the efficacy (or otherwise) of PAVA in reducing violence and what yet further research might be carried out. At least the following paragraphs of the joint statement contain what is clearly expert opinion evidence (by the use of phrases such as "*this suggests*", "*we would suggest that*", "*it is likely that*", and "*in our clinical experience*"): paragraphs 3.2(b); 3.2 (d); 3.4, 3.5; 4.3; 4.6, 4.8. 4.10, 4.12, 4.13, 5.8, 5.11, 5.13, 6.1, 6.2, 6.6, 7.2, and 7.3.

Requirements for the adducing of expert evidence

154. By CPR 35.1, expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.

155. The expert's overriding duty is to the court (CPR 35.3). CPR Part 35 provides that there are the following general requirements of expert evidence:

2.1 Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.

2.2 Experts should assist the court by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate.

2.3 Experts should consider all material facts, including those which might detract from their opinions.

156. Further, the report must contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based (PD Part 35, para 3.2(3)).

157. As PD Part 35, para 3.3 makes clear, an expert's report must be verified by a statement of truth in the following form –

> "*I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.*
>
> *I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.*"

158. Neither of the additional statements upon which the Claimant wishes to rely contain the required statement of truth. Nor do they refer to the expert's instructions. It is not at all clear whether the authors of these statements would have understood the nature of an

expert's duties in giving expert evidence to the court. Indeed, Professor Payne-James provided this statement to the Claimant after he had told the Secretary of State that there was no further useful data upon which he would be able to comment (and without referring to that fact in his statement), which might suggest that he did not.

159. In the circumstances it would not be appropriate to admit these two statements into evidence and for the court to rely upon them and I refuse permission for the Claimant to admit them in evidence.

160. In any event, these statements are not reasonably required for resolving these proceedings. The fact that there were potentially yet further studies which could be put in train which might (or might not) provide some further useful information at some future date about the potential effects and implications of PAVA use on young people does not advance the Claimant's case for the reasons set out above. There was no process irrationality; the Secretary of State took more than reasonable steps to make enquiries about the potential impact of her proposed decision on young people in custody, in particular those with the relevant characteristics, before making her Decision which she took in order to address a serious and urgent problem in the YOIs; and it cannot be said that no reasonable Secretary of State possessed of the material which was before her could suppose that the enquiries that she had made were sufficient in all the circumstances.

CONCLUSION

161. In the circumstances, each of the Grounds of Challenge fail and the claim is dismissed.