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Case No: AC-2025-CDF-000077

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

Bristol Civil Justice Centre
2 Redcliff St,
Bristol
BS1 6GR

Date: 04/06/2026

Before:

Mr Justice Eyre

- -

Between:

THE KING **On the Application of** **AOX**	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE	**Defendants**
(2) NHS ENGLAND	
-and-	
(1) CHIEF CONSTABLE OF DEVON AND CORNWALL POLICE	**Interested Parties**
(2) ROYAL CORNWALL HOSPITALS NHS TRUST	

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- -

Sam Jacobs and **Cian Murphy** (instructed by **Bindmans LLP**) for the **Claimant**
Matthew Hill (instructed by **Government Legal Department**) for the **First Defendant**
David Lawson (instructed by **Hill Dickinson LLP**) for the **Second Defendant**

Hearing dates: 25th – 26th February 2026

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Approved Judgment

This judgment was handed down remotely at 10.00am on 4th June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Eyre:

Introduction.

1. In November 2019 AOX, who was then aged 20, attended at the Royal Cornwall Hospital in Treliske on the outskirts of Truro ("the RCH"). The Claimant was treated by Iuliu Stan who was then a locum senior house officer in the Trauma and Orthopaedics unit at the RCH. I have set out the circumstances of that treatment and the effect it had on AOX in more detail below. It suffices to say at this stage that the treatment involved the administration of medication *per rectum* and that there is no dispute that this treatment was deeply distressing for AOX. There was also no dispute that Mr Stan treated a number of other young men in a similar way when he was employed at the RCH. It is also common ground between the parties that on at least some of the occasions when Mr Stan administered medication in that way he was doing so for sexual gratification.

2. The Claimant says that his treatment at the hands of Mr Stan amounted to inhuman or degrading treatment for the purposes of article 3 of the European Convention on Human Rights. He seeks a declaration that the Defendants are in breach of their investigative duties arising out of that article in that they have failed to establish an article 3 compliant inquiry "into the circumstances surrounding the abuses perpetrated by Mr Stan".

3. There are differences of emphasis in the contentions of the two Defendants and the cases against them will need to be considered separately. Both Mr Hill, for the First Defendant, and Mr Lawson, for the Second Defendant, were at pains to emphasize that their clients were very conscious of the distress the Claimant had suffered and that they were not seeking to diminish the gravity of impact on him of Mr Stan's actions. However, both Defendants contended that this treatment did not cross the high threshold needed as a matter of law in order to amount to inhuman or degrading treatment for the purposes of article 3. They also contended that, even if the treatment were to be seen as inhuman or degrading, there had not been any breach of their obligations under article 3.

4. The RCH was run by the Royal Cornwall Hospitals NHS Trust ("the Trust"). The Trust suspended Iuliu Stan from practising in September 2020 and dismissed him in March 2021. The Trust reported Mr Stan's conduct to the General Medical Council and on 8th February 2024 a Medical Practitioners Tribunal ("the Tribunal") found a number of allegations of misconduct proved against him. The Tribunal found that Mr Stan's fitness to practise was impaired by misconduct and directed his erasure from the medical register.

5. The Devon and Cornwall police are conducting an investigation into the actions of Mr Stan. The Claimant and a number of others who were treated by Mr Stan are contemplating bringing civil proceedings against the Trust, for damages for personal injury. Neither Mr Stan nor the Trust took part in the current proceedings and nothing in this judgment should be seen as a ruling on the criminal or civil liability of Mr Stan, the Trust, or of any other person or body. I am solely concerned with the question of the public law claim that the Defendants are in breach of obligations arising from article 3.

6. The matter came before me for a rolled-up hearing pursuant to the directions of O'Farrell J.

The Issues.

7. The Claimant does not seek an order that the First Defendant set up a statutory inquiry and accepts that the relevant duties could be discharged other than through such an inquiry. However, he does say that the court should declare that there has been a breach of the duties arising under article 3 and that it will then be necessary for the Defendants to put in place adequate measures to satisfy those duties. In that regard a significant feature of the Claimant's case is the contention that the Trust is not capable of putting in place an investigation which will have the required degree of independence and effectiveness.

8. The parties characterized the applicable legal test in different terms and it will be necessary to analyze the circumstances in which the law requires an investigation to be undertaken into alleged inhuman or degrading treatment. In that regard it will be necessary to consider by whom the investigation is to be undertaken and what is required for a sufficient investigation. It will be necessary then to consider in respect of each Defendant whether there was a relevant duty; whether the duty has been breached; and whether an investigation is necessary.

The Factual and Procedural Background.

9. Mr Stan began his employment at the RCH in 2015. He began to administer medication *per rectum* in November 2017.

10. The Claimant attended at the RCH in November 2019. The Claimant had cut his arm deliberately as an act of self-harm and had suicidal thoughts (though he did not disclose those matters to the staff at the RCH). The Claimant has a number of mental health difficulties including a history of PTSD, a diagnosis of ADHD, and a tentative diagnosis of anxiety and depressive disorder. The incident in November 2019 was not the first time when the Claimant had harmed himself nor when he had experienced suicidal thoughts.

11. The Claimant was alone in a hospital room with Mr Stan and asked if he could receive morphine and gas and air in order to relieve his pain. Mr Stan responded by saying that a suppository would be the most effective form of pain relief and that the other pain relief which the Claimant had sought would be unsuitable. The Claimant was reluctant to agree to this and said that he did not want to have a suppository. Mr Stan told the Claimant to think about it for five minutes. On Mr Stan's return the Claimant agreed to the proposed *per rectum* medication. It is to be remembered that the Claimant was in severe pain at this time.

12. The Claimant describes the administration of the medication and his reaction to it thus:

> "9. I recall pulling my trousers down to the top of my thighs and lying on my back with my legs in the air. Mr Stan told me that I had to pull my trousers all the way down or take my trousers off. I felt very uncomfortable and vulnerable. However, I took my trousers off as instructed by Mr Stan.
>
> …

> 11. I remember at the start of the procedure Mr Stan rubbed lubricant around my anus in a circular motion. He stopped to advise me that I was too tense and then he started the motion again. I remember that this continued for approximately five to seven minutes. I then remember that Mr Stan inserted the suppository pushing his entire finger into my anus. This was a very distressing experience. I felt debased, embarrassed, exposed and vulnerable. I was visibly distressed by the experience.
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> …
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> 14. I remember that I was very upset. I lay on the hospital bed and cried about the procedure for a very long time. I do not cry often. I had not cried when I had attempted to take my own life, but this experience caused me to feel very upset. I tried to reassure myself that the procedure was normal and that I should trust the doctor. Despite this I remained deeply uncomfortable about what had happened, I felt that it was not right. I was terrified and I felt shaken up."

13. The Claimant says that his confusion and distress continued in the months after he had received this treatment.

14. In March 2020 a complaint was made in respect of Mr Stan's actions by the father of a boy to whom he had administered medication *per rectum*. That led to a meeting on 27th May 2020 between Mr Stan and the Trauma Clinical Director at the Trust. At the meeting Mr Stan was given a letter as to his further actions. The Tribunal subsequently concluded that the letter "could have been a great deal clearer" in that it did not expressly tell Mr Stan that he should not both prescribe and administer medication; that when he prescribed such medication he should leave the administration of it to the nursing staff; nor that a chaperone should be present whenever he administered medication *per rectum*. The Clinical Director told the Tribunal that the terms of the letter which he had originally drafted had been revised after input from the Trust's Human Resources department. However, he said that in the course of the meeting he had made it clear to Mr Stan that he should not be administering analgesics himself and that at the very least Mr Stan understood he should not be administering Voltoral *per rectum* to children.

15. Further concerns were raised in August 2020 as Mr Stan was again both prescribing and administering medication *per rectum* to children. This led to an investigation by the Trust under the NHS Maintaining High Professional Standards Framework and the suspension of Mr Stan. The investigation found that on over 200 occasions in the preceding five years Mr Stan had both prescribed and personally administered medication *per rectum.* He sometimes did so repeatedly to the same patient. The investigation found that Mr Stan had done so without following the Trust's chaperone policy and had only done this in relation to male patients (in fact, as will be seen below there was one occasion when Mr Stan administered such medication to a woman). This pattern of behaviour had continued after the May 2020 meeting. In the internal investigation Mr Stan had contended that he believed that analgesia administered *per rectum* was longer-lasting and more effective than other forms. He also pointed out that this form of medication was used more frequently in Romania, where he had trained, than in the United Kingdom. At the Tribunal hearing an expert witness confirmed that this was, indeed, the practice in Romania but added that it was not the practice there for the medication to be administered by doctors themselves.

16. On 12th March 2021 the Trust terminated Mr Stan's employment and referred his conduct to the General Medical Council. That referral led to the hearing before the Tribunal in January and February 2024.

17. At that hearing Mr Stan faced 39 allegations. There was a question as to whether two of the patients were in fact the same person. As a consequence the Tribunal considered allegations relating to 34 patients (those did not include the Claimant).

18. Mr Stan did not take part in the proceedings before the Tribunal. The Tribunal heard from various staff at the RCH together with expert witnesses. It heard from only one patient. That was Patient 26 who, it appears, had heard of the Tribunal hearing by chance and had presented himself to give evidence. Mr Stan had undertaken a rectal examination of Patient 26 and had administered medication *per rectum*. This had made Patient 26 extremely uncomfortable to the extent that he had discharged himself from the RCH.

19. The Tribunal did not find all of the allegations against Mr Stan proved. It accepted that the prescription of analgesics to be administered *per rectum* could be clinically justified. However, it did find several of the allegations proved and concluded that Mr Stan's actions in respect of a number of patients were sexually motivated. In that regard it noted the evidence that over a five-year period Mr Stan had prescribed *per rectum* medication for roughly equal numbers of men and women (713 and 734 times respectively). However, he had administered such medication himself to men or boys on 277 occasions but only once to a woman. The Tribunal summarized its conclusion thus:

> "At the Facts stage of these proceedings, the Tribunal had found that Dr Stan's behaviour was sexually motivated in relation to multiple patients and multiple paragraphs of the Allegation. He had subjected patients to unnecessary, invasive and intimate procedures for his own sexual gratification. In some cases the same patient had been subjected to intimate and invasive procedures by Dr Stan on multiple occasions."

20. The Tribunal noted that Mr Stan's conduct was "sustained and had put some patients at a risk of potential harm" and directed his erasure from the Register.

21. In July 2024 the Trust wrote to the Claimant informing him that Mr Stan had been erased from the Register and that the Tribunal had found that his practice of administering medication *per rectum* had been sexually motivated.

22. On 13th August 2024 solicitors acting on behalf of the Claimant and a number of other former patients of Mr Stan wrote to the Trust inviting it to commission an independent investigation into his actions. The Trust's solicitors replied on 20th September 2024 declining to commission an investigation and saying:

> "[W]e do not therefore accept that the facts arguably meet the high threshold for a breach of Article 3 but even if they do (which is not admitted), we consider that the Article 3 positive obligation to investigate has been and continues to be met by the combination of an independent investigation by the professional regulator the GMC, a public MPTS hearing which has culminated in the erasure of Dr Stan from the medical register, and an independent investigation by the Police which is ongoing."

23. The Claimant's solicitors responded asking for disclosure of the Trust's fact finding investigation and the Maintaining High Professional Standards report saying that on

receipt of the response the Claimant intended to notify the First Defendant of the Trust's position and invite him to convene a public inquiry. The Trust's solicitors replied on 9th October 2024. In that letter they reiterated the Trust's position that the article 3 threshold had not been passed. They declined to disclose the reports and said that the Trust did not believe that it was obliged to disclose them. They said that any request for the disclosure of relevant documents should be made to the General Medical Council or to the Tribunal but the Trust did not anticipate that those bodies would disclose them. It said that this was:

> "because both the Trust's fact finding investigation and the MHPS report are confidential internal documents which rely on confidence being respected if Trust staff are to be expected to be open and transparent in raising concerns. In addition, because those documents are neither public nor independent they do not form part of the State's discharge of Article 3 investigative obligation, rather they were the trigger to make the referral to the GMC which led to the MPTS hearing. It would not therefore be appropriate for the Trust to disclosure [sic] these reports because they contain sensitive and confidential personal information both about patients and staff."

24. On 28th November 2024 the Claimant's solicitors wrote separately but in identical terms to the Defendants asking that either the First Defendant or the Second Defendant commission an independent inquiry into the actions of Mr Stan.

25. The Second Defendant replied on 24th January 2025. It declined to commission an investigation saying that it did not accept that article 3 was engaged but that even if it were the investigative obligation had been discharged by the internal and external investigations.

26. The First Defendant replied on 11th February 2025. He also declined to commission a further investigation. At that stage the First Defendant accepted that the treatment of the Claimant had "at least the potential to amount to degrading treatment of sufficient severity to cross the article 3 threshold". However, he did not accept that arguable breaches of either the systems obligation or the operational obligation had been shown.

27. The Claimant explains his reason for seeking an inquiry into the actions of Mr Stan thus:

> "I want an inquiry to be held into the actions of Mr Stan so that people within the Trust are held accountable for their failure to keep patients safe and to make sure changes are made to protect patients in the future[.] My experience with Mr Stan has been devastating. I now know that he sexually assaulted me. This happened in 2019 in an NHS hospital. I think that an inquiry is important to ensure that there is a proper investigation into what went wrong with the hospital systems which should have kept me and other patients safe from harm."

28. The claim was issued on 24th April 2025 and on 1st December 2025 O'Farrell J directed the "rolled-up hearing" which came before me on 25th February 2026.

29. The Claimant and a number of others who were treated by Mr Stan have intimated civil proceedings against the Trust. In January 2025 the Trust admitted that it was vicariously liable for the actions of Mr Stan. It accepted that Mr Stan's actions were negligent. In addition, while not admitting that Mr Stan's actions were sexually motivated in all of the cases the Trust said that it would not require any claimant to prove that the

administration of medication *per rectum* to him was sexually motivated. It accepted that compensation should be assessed on the basis that there was such motivation.

30. That letter had been preceded by the Trust's publication, in December 2025, of a compensation scheme for those who had been treated by Mr Stan with compensation to be paid on a tariff basis.

31. In pre-action correspondence in relation to those proceedings the Claimant's solicitors had sought disclosure of a number of internal documents in relation to the actions of Mr Stan. The Trust's letter of January 2025 had said that in light of the Trust's admission of liability such disclosure was neither necessary nor justified.

32. Gary Walker is the solicitor acting for the Claimant and for a number of other claimants in the proposed civil proceedings against the Trust. He says that "many of my clients have reported significant harm and psychiatric symptoms caused by the abuse perpetrated by Mr Stan. Many have reported a significant impact on their ability to work, it has affected their personal relationships and ability to carry out day-to-day activities".

33. The Devon and Cornwall Police are currently investigating the actions of Mr Stan with a view to a determination in due course of whether a criminal prosecution is warranted. Statements have been taken from some of those who were treated by Mr Stan including the Claimant.

34. Neither of the Interested Parties took part in the proceedings save that the Trust sought permission to attend the hearing remotely on a noting basis. I declined to grant such permission and directed that if the Trust wished to take part in the hearing even on that basis there would need to be attendance in person. In light of that direction the Trust chose not to take part in the hearing.

The Applicable Principles.

35. I will address separately below the approach to be taken to determining whether particular treatment is of sufficient gravity arguably to constitute inhuman or degrading treatment for article 3.

36. I was taken to a number of decisions reached at the European level and by domestic courts in relation to the nature and scope of the duties flowing from articles 2 and 3. It is common ground that decisions in respect of the former article are potentially relevant to the question of the duties arising under the latter. As Mr Hill rightly put it, the court's analysis of the duties flowing from article 3 is to be informed by decisions setting out the duties arising from article 2. However, two distinctions between the circumstances in which the duties arise are to be noted. First, as Mr Jacobs pointed out, although death can be the result of natural causes and, indeed, is most commonly the result of those, there is no scope for inhuman or degrading treatment to be the result of natural causes. Second, in cases of inhuman or degrading treatment contrary to article 3 the victim of such treatment will typically be available to provide evidence of what happened and to seek to vindicate his or her rights in a way which will not be possible in cases of death.

37. The correct analysis of the duties flowing from articles 2 and 3 has been set out definitively in the trio of recent domestic cases to which I will now refer. In light of that it is neither necessary nor appropriate to analyse the earlier authorities in detail. The

earlier authorities are to be seen in the light of the recent binding analysis. They are helpful to the extent that they throw light on the application of the principles set out in the recent authorities but it is not open to me to recast the interpretation of those principles by reference to earlier authorities most of which have been considered in those recent cases.

38. It is, moreover, necessary to be cautious in seeking to apply more widely statements of principle made in cases where the court was concerned with death caused by or inhuman or degrading treatment inflicted by state agents. The first reason is that many of such statements were made before the effect of the decision of the European Court of Human Rights in *MC v Bulgaria* (2005) 40 EHRR 20 was fully appreciated. In that case the court explained that the obligations under article 3 extend to addressing inhuman or degrading treatment inflicted by private individuals as well as such treatment inflicted by state agents – a point not fully understood before. Second, in *D v Metropolitan Police Commissioner* [2018] UKSC 11, [2019] AC 196 Lord Mance said at [151] that the scope of the investigative duties flowing from article 3 will be different depending on whether the relevant inhuman or degrading treatment has been inflicted by a state agent or a private individual. In the same case at [87] Lord Neuberger had rejected any suggestion that the duty to investigate inhuman or degrading treatment was "different in kind" depending on whether it was inflicted by state agents or others. Nonetheless, Lord Neuberger accepted that the standard to be applied "when considering whether the investigatory duty has been satisfied may well be more stringent" in cases where the ill-treatment had inflicted by state agents. On either view very different considerations apply when the alleged inhuman or degrading treatment has been inflicted by a state agent from those which come into play when it has been inflicted by a person who is not an agent of the state. It follows that whichever of the approaches articulated in *D* is taken care is needed in applying generally statements made when the court was addressing inhuman or degrading treatment inflicted by state agents.

39. The first in time of the trio of recent cases which are to govern my approach is the decision of the Divisional Court in *R(Morahan) v West London Assistant Coroner* [2021] EWHC 1603 (Admin), [2021] QB 1205. The court was concerned with the duties flowing from article 2 following the death of a person with mental health difficulties who had been a voluntary inpatient at an NHS rehabilitation unit and who had died because of an overdose of drugs after leaving that unit.

40. Popplewell LJ, with whom the other members of the court agreed, identified three relevant duties thus at [30]:

> "Article 2 has been interpreted as imposing three distinct duties on states and those exercising state functions:
>
> (1) There is a *negative duty* to refrain from taking life without justification…
>
> (2) There is a *positive duty* to protect life which has two aspects:
>
> (a) There is a duty to put in place a legislative and administrative framework to protect the right to life, involving effective deterrence against threats to life, including criminal law provisions to deter the commission of offences, backed up by a law enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions; and in the healthcare context having effective administrative and regulatory systems in place… This is the

framework duty, of which the latter aspect is sometimes referred to as a systems duty.

(b) There is a duty, first articulated in *Osman v United Kingdom* (1998) 29 EHRR 245, to take positive measures to protect an individual whose life is at risk in certain circumstances. This is the *positive operational duty*. … [T]here is often no clear dividing line between this operational duty, and the systems duty below the national level.

(3) There is an investigative duty to inquire into and explain the circumstances of a death. As I explain below, there are two different investigative duties which have a different scope and different juridical basis. One is a substantive duty to investigate every death as an aspect of the framework duty; the other is a procedural obligation which arises in some cases, and is parasitic on the possibility of a breach by a state agent of one of the substantive operational or systems duties. When the latter arises, it is a duty of enhanced investigation, to initiate an effective public investigation by an independent official body. This is the *enhanced investigative duty*."

41. At [38] and [39] Popplewell LJ began his analysis of the positive operational duty thus:

"[38] The positive operational duty arises where the state agency knows or ought reasonably to know of a real and immediate risk to an individual's life, and requires it to take such measures as could reasonably be expected of it to avoid such risk… In this context:

(1) *Risk* means a significant or substantial risk, rather than a remote or fanciful one. In *Rabone* [2012] 2 AC 72 the risk in question was one of suicide and was quantified as being between 5%, 10% and 20% on successive days, which was held to be sufficient (see paras 35–38).

(2) An *immediate* risk to life means one that is 'present and continuing' as opposed to 'imminent'…

(3) The relevant risk must be to life rather than of harm, even serious harm…

(4) *Real* focuses on what was known or ought to have been known at the time, because of the dangers of hindsight…

(5) Overall, in the light of the foregoing considerations viewed cumulatively, the test is a stringent one… It will be harder to establish than mere negligence, but that is not because reasonableness here has a different quality to that involved in establishing negligence; rather it is because it is sufficient for negligence that the risk of damage be reasonably foreseeable, whereas the operational duty requires the risk to be real and immediate…

[39] It is also clear that the existence and scope of the duty must not impose an impossible or disproportionate burden on state agencies in carrying out their necessary state functions and must take into account the individual's right to liberty… and private life…"

42. Having analysed the authorities the judge then said:

"[65] I derive three important and related points from this analysis. First, the existence or otherwise of the operational duty is not to be analysed solely by reference to the relationship between the state and individual, but also, and importantly, by reference to the types of harm of which the individual is foreseeably at real and immediate risk. …

[66] Secondly, the foreseeable real and immediate risk of the type of harm in question is a necessary condition of the existence of the duty, not merely relevant to breach. Without

identifying such foreseeable risk of the type of harm involved, it is impossible to answer the question whether there is an operational duty to take steps to prevent it.

[67] Thirdly, in cases where vulnerable people are cared for by an institution which exercises some control over them, the question whether an operational duty is owed to protect them from a foreseeable risk of a particular type of harm is informed by whether the nature of the control is linked to the nature of the harm."

43. The investigative duty was explained in these terms at [68] and [69]:

"[68] The existence and scope of the investigative duty was identified and expounded by Lord Bingham of Cornhill in *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653 and *Middleton* [2004] 2 AC 182. In *Middleton*, having referred in para 2 to the negative duty not to take life without justification, and the framework duty, Lord Bingham expressed the investigative duty in these terms at para 3:

> 'The European court has also interpreted article 2 as imposing on member states a procedural obligation to initiate an effective public investigation by an independent official body into any death occurring in circumstances in which it appears that one or other of the foregoing substantive obligations has been, or may have been violated and it appears that agents of the state are, or may be, in some way implicated.'

[69] This is the enhanced investigative duty. Its content is flexible and depends on the circumstances in which it is to be applied, but it is sufficient for the present case to take the summary given by Lord Phillips of Worth Matravers PSC in *R (Smith) v Oxfordshire Assistant Deputy Coroner (Equality and Human Rights Commission intervening)* [2011] 1 AC 1, para 64:

> 'The procedural obligation requires a state, of its own motion, to carry out an investigation into a death that has the following features: (i) It must have a sufficient element of public scrutiny of the investigation or its results. (ii) It must be conducted by a tribunal that is independent of the state agents who may bear some responsibility for the death. (iii) The relatives of the deceased must be able to play an appropriate part in it. (iv) It must be prompt and effective. This means that it must perform its essential purposes. These are to secure the effective implementation of the domestic laws which protect the right to life and to ensure the accountability of state agents or bodies for deaths occurring under their responsibility. These features are derived from the Strasbourg jurisprudence, as analysed in the *Middleton* case and *R (L (A Patient)) v Secretary of State for Justice* [2009] AC 588. I shall describe an investigation that has these features as an "article 2 investigation".'"

44. Having analysed the authorities in relation to the investigative duty Popplewell LJ said at [120]:

"This analysis reinforces the distinction between the two aspects of an article 2 investigative duty which Lord Phillips had identified in *L's* case and *Smith*. One is a substantive investigative duty, which arises as a positive article 2 obligation to comply with the framework duty, and arises irrespective of any breach of the systemic or operational duty. The other is a procedural investigative duty, which is parasitic upon a breach of the systemic or operational duty. There is not a separate third category of cases in which the procedural duty arises automatically where there is no question of a breach of the systemic/operational duty."

45. The claimant in *R(MG) v Secretary of State for the Home Department* [2022] EWHC 1847 (Admin), [2023] 1 WLR 284 was an asylum seeker who had been stabbed by a

fellow asylum seeker while they were both being accommodated by the defendant at a hotel. The claimant challenged the Secretary of State's refusal to hold an independent investigation into the events leading to that attack saying that the refusal was a breach of the defendant's duties under article 3. Johnson J dismissed the challenge and found that there had been no breach of the relevant duties. He described those as being a systems obligation, an operational obligation, and an investigation obligation and set out the content of those duties as follows:

> "[5] Articles 2 and 3 have been interpreted as imposing certain positive obligations on public authorities. The adjectival descriptions of the different positive obligations are not always consistent. I will use the language of a 'systems obligation', an 'operational obligation' and an 'investigative obligation.' …
>
> [6] *Systems obligation*: the authorities establish that:
>
> (1) The state must put in place a system that protects life and safeguards against IDT…
>
> (2) This systems obligation operates at different levels…
>
> (3) At a 'high level', the state must ensure that there are effective criminal law provisions to deter offences against the person, a police force to investigate such offences, and a court and judicial system to enforce those criminal law provisions…
>
> (4) In certain situations, public authorities fall under a 'lower level' duty to adopt administrative measures to safeguard life…
>
> (5) Such additional administrative measures are required in the context of any activity in which the right to life may be at stake…
>
> (6) In particular, the lower level duty arises whenever a public body undertakes, organises or authorises dangerous activities… It also arises in the context of public health and social care…
>
> (7) The contexts in which such additional measures are required therefore include hospitals…
>
> (8) The contexts in which the Strasbourg court has found that the systems duty applies are not exhaustive of the situations in which it may apply…
>
> (9) Where the lower level system obligation arises, the public authority must implement measures to reduce the risk to a reasonable minimum…
>
> (10) In interpreting and applying the systems obligation, the court must not impose an impossible or disproportionate burden on public authorities and must have regard to the operational choice made by public authorities in terms of priorities and resources…
>
> [7] *Operational obligation*: The authorities establish that:
>
> (1) An operational obligation arises where a public authority knows or ought to know of the existence of a real and immediate risk of IDT from the criminal acts of a third party…
>
> (2) In deciding what a public authority 'ought to know' a court should take account of risks that the public authority ought to have appreciated on the information it had available… It might also extend to risks that the public authority would have appreciated if it had carried out reasonable enquiries…
>
> (3) Serious physical assaults causing significant harm amount to IDT for these purposes…

(4) A risk may be 'real' if it is substantial or significant, but not if it is remote or fanciful…

(5) A risk that is 'present and continuing' may amount to an immediate risk…

(6) In practice, in cases involving risk due to the criminal acts of someone who is not a state agent, the level of risk required to cross the 'real and immediate' threshold is very high: *Van Colle* per Lord Brown of Eaton-under-Heywood at para 30, *G4S Care and Justice Services Ltd v Luke* [2019] Inquest LR 150, paras 74–75, *R (Kent County Council) v HM Coroner for Kent (North West District)* [2012] Inquest LR 110, paras 44–47…

(7) In assessing whether there was a real and immediate risk, the court must only take account of that which was known, or ought to have been known by the public authority. Hindsight must be left out of account…

(8) It is not necessary that the identity of the target of the risk is identifiable in advance of the risk materialising…

(9) Where the 'real and immediate' threshold test is met, the obligation is to take measures, within the scope of the authority's powers, which, judged reasonably, might be expected to avoid the risk…

(10) This is an obligation of means, not result. If reasonable measures are taken to avert the risk, then there is no breach of the operational obligation if the risk nonetheless materialises…

[8] *Investigative obligation*: The authorities establish that:

(1) An obligation to investigate arises in different circumstances, including deaths in custody and the use of lethal force by the state. It also arises whenever a person is (arguably) unlawfully killed or is (arguably) subject to IDT. In such a case there is a requirement for a police investigation which must be capable in principle of leading to the identification of those responsible…

(2) An obligation to investigate also arises where it is known that there is an arguable breach by a public authority of one or more of its positive obligations under articles 2 or 3 ECHR…

(3) The purpose of such an investigation is to secure the effective implementation of the rights guaranteed by the Convention and accountability for any breaches of those rights…

(4) That means that (depending on the context) the investigation must ensure so far as possible that the full facts are brought to light, that culpable and discreditable conduct is exposed and brought to public notice, that suspicion of deliberate wrongdoing (if unjustified) is allayed, that dangerous practices and procedures are rectified, and that (where appropriate) lessons are learned… The precise requirements of an investigation are dependent on the context—more is required in the case of a suspected unlawful killing or torture by a public servant than in cases which result from negligence on the part on non-State agents…

(5) An investigation must be effective so as to be capable, in principle, of securing those objectives. This means that the investigation must be thorough, in that the authorities must make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decision. They must take all reasonable steps available to them to secure the evidence…

(6) The investigative duty is an obligation of means, not result. The obligation may be discharged even if it does not (in the particular circumstances) result in the identification of those responsible, or punishment, so long as the public authority took the steps required to carry out an effective investigation…

(7) An investigation must be conducted by a person or body that is institutionally, hierarchically and practically independent from those involved in the events…

(8) A victim (or next of kin) of an arguable breach of articles 2/3 ECHR must have effective access to the investigative procedure to the extent necessary to safeguard their interests. There must also be a sufficient element of public scrutiny of the investigation or its results to secure practical accountability…

(9) In some cases, the investigative obligation must include recourse to the criminal law. In other cases, the obligation can be satisfied if civil, administrative or disciplinary remedies are available to the victim…

(10) An investigation must take place within a reasonable time…"

46. The Supreme Court considered the duties flowing from article 2 in *R(Maguire) v Blackpool & Fylde Senior Coroner* [2023] UKSC 20, [2025] AC 63. At [9] – [12] Lord Sales, with whom the other members of the court agreed, set out the overall position in these terms:

> "[9] In addition to prohibiting certain conduct, article 2 imposes a positive obligation on contracting states to take 'appropriate steps to safeguard the lives of those within [their] jurisdiction'… This is a very general statement and the various aspects and specific content of this positive obligation have been clarified in a substantial body of case law both in Strasbourg and domestically.
>
> [10] It has been held that article 2 imposes certain substantive positive obligations on a state to take steps to protect life. These are typically analysed as being of two types, an obligation to have appropriate legal regimes and administrative systems in place to provide general protection for the lives of citizens and persons in its territory ('the systems duty') and an obligation to take operational steps to protect a specific person or persons when on notice that they are subject to a risk to life of a particularly clear and pressing kind ('the operational duty').
>
> [11] The distinction between these two types of substantive positive obligation has been emphasised at the highest level in the domestic case law and the Strasbourg case law… As it was put in *Oliveira*, these are 'distinct albeit related positive obligations under article 2'. The operational duty derives, in particular, from the judgment of the Strasbourg court in *Osman v United Kingdom* (1998) 29 EHRR 245 ('*Osman*').
>
> [12] In addition, article 2 imposes certain positive obligations of a procedural nature regarding investigation of and the opportunity to call state authorities to account for potential breaches of the substantive obligations to which it gives rise. The precise content of the procedural obligation on a state varies according to the context in which an issue regarding the application of article 2 arises. There is no simple monolithic form of procedural obligation which applies in every such case. Rather, the procedural obligation applies in a graduated way depending on the circumstances of the case and way in which in a particular context the state may be called upon to provide due accountability in relation to the steps taken to protect the right to life under article 2."

47. At [14] – [19] Lord Sales described the "three different levels of the graduated procedural obligation" which are:

    i) The basic procedural obligation which in cases of death is the obligation on state authorities to take steps to ascertain whether the death was from natural causes or as the result of criminal activity.

    ii) The enhanced procedural obligation which arises when there is "a particularly compelling reason why the state should be required to give an account of how a person came by their death". Such an obligation arises where a state agent has used lethal force or where there has been a death in custody. It also arises where there are grounds for believing that there has been a breach of the systems duty or the operational duty by a state agent.

    iii) The redress procedural obligation arises where the compelling reason which would give rise to the enhanced procedural obligation is not present but where "there is still a possibility that the substantive obligations in article 2 have been breached". The obligation in such circumstances is "to provide means by which a person complaining of such possible breaches may ventilate that complaint, have it investigated, and obtain redress". The investigation which is needed to satisfy this obligation will vary with civil or disciplinary remedies potentially being sufficient in cases of negligence.

48. The basic procedural obligation identified by Lord Sales requiring determination of whether a death is from natural causes or from criminal activity arises in the context of article 2. There is less scope for such an obligation in the context of article 3 where the victim of the alleged inhuman or degrading treatment is available to say what happened. In those circumstances it adds little, if anything, to the systems duty.

49. At [145] and [146] Lord Sales explained that in the context of healthcare services "the systems duty… operates at a high level, is relatively easily satisfied, and it will only be in rare cases that it will be found to have been breached". Moreover, "individual lapses in putting a proper system into effect are not to be confused with a deficiency in the system itself."

50. At [159] Lord Sales cautioned against "reverse engineering". It is not appropriate to judge the adequacy of particular systems with hindsight but instead regard is to be had to the systems which it was reasonable to have expected to be in place "in advance of any particular incident".

51. *Maguire* is a binding exposition of the duties flowing from article 2. It is common ground that the duties flowing from article 3 mirror those flowing from article 2. It follows that I am to apply the approach set out in *Maguire* subject only to such modification as results from the different subject matter of articles 2 and 3. In my judgement the analysis of the duties flowing from article 3 which Johnson J set out in *MG* is compelling and accords with the analysis of the duties flowing from article 2 set out in *Maguire* subject only to revision to reflect the refinement of the architecture and description of the duties in the latter case. This has the effect that Johnson J's summary of the approach to the investigative obligation (now to be described as a procedural obligation) is now to be seen in the light of the breakdown of that obligation into the basic procedural obligation (to the extent that it arises in article 3 cases); the enhanced

procedural obligation; and the redress procedural obligation. However, the force of Johnson J's analysis of the approach to be taken and of the effect of the authorities is otherwise unaffected.

52. Mr Jacobs submitted that the court should reject any sharp distinctions between the duties. Instead the court is to have regard to the purpose of the duties which is to ensure that effective protection is given to a person's article 3 rights. In light of that, he submitted, there is need for a degree of flexibility. I accept that, as the authorities indicate, there is a degree of overlap between the duties but I do not accept that the classification of the different duties can be overlooked and still less that a claim which is not founded on a breach of an identified duty can succeed. It is necessary to have regard to the particular duties in order to ascertain what the relevant public authority has to do and so to assess whether there has been a breach of duty. When in *Maguire* at [12] Lord Sales said that "The precise content of the procedural obligation on a state varies according to the context in which an issue regarding the application of article 2 arises" he was not saying that the nature of the duty varied but was explaining that what had to be done to discharge the duty would vary depending on the circumstances of the particular case.

53. At points in his submissions Mr Jacobs appeared to be contending that the need to learn lessons so as to prevent a recurrence of particular conduct could, without more, give rise to an obligation to investigate. I do not accept this contention. The importance of learning lessons from past failings and of preventing their recurrence is one of the reasons for the various duties and one of the ways in which they operate to give effect to the rights flowing from article 3. However, that does not mean that the prospect that lessons would be learnt from an investigation can operate as a freestanding trigger for an obligation to investigate.

The Context to which those Principles are to be applied in this Case.

54. The first point to be noted is that the Claimant is bringing this claim as an individual and his claim is based on treatment which he suffered on a particular occasion in November 2019. There is an issue between the parties as to the extent to which I should take account of the actions of Mr Stan towards others.

55. It is to be noted that, unlike the conduct which gave rise to the claim in *R (AM) v Secretary of State for the Home Department* [2009] EWCA Civ 219, the treatment of the Claimant was not associated with the treatment of others in the course of the same incident or series of incidents. In this case the extent to which it will be appropriate to take account of the actions of Mr Stan against other patients at the RCH will be different at different stages in the process.

56. The treatment of the Claimant is to be assessed on its own and in isolation from the other conduct of Mr Stan for the purpose of assessing whether it amounted to inhuman or degrading treatment. For that purpose the primary focus must be on the individual who is said to have suffered that treatment. In the context of this case it is not suggested that the Claimant would have a sufficient interest to bring the claim if his treatment did not amount to inhuman or degrading treatment for the purposes of article 3. It is possible to conceive of circumstances where treatment which, if standing alone, would not have been of sufficient gravity to amount to inhuman or degrading treatment became so because it was associated with the treatment of others. Thus it is possible that treatment

which was not degrading when applied to one person in private would become so if applied to a number of persons together at the same time. However, such circumstances will be rare and the treatment of the others would need to be very closely associated with the treatment in issue. Here the treatment of the Claimant was in private and was separate from Mr Stan's administration of medication *per rectum* to other men and boys. It is of note that the Claimant did not learn of the treatment of others until he received the letter from the Trust over 4½ years after his treatment.

57. The position changes, however, for the purpose of considering the Defendants' article 3 duties and whether those duties had been breached. For those purposes it is necessary to have regard to the context of Mr Stan's similar treatment of other patients. It would be wholly unrealistic to approach the treatment of the Claimant as being some form of isolated or out of character "one-off" act. It was clearly part of a pattern of similar behaviour towards others and is to be seen as such. Account is to be taken of that behaviour as a whole when considering the Defendants' duties (see *AM* at [35] per Sedley LJ) though even when that is done regard must be had to "specific allegations of mistreatment of particular individuals not generalised statements to that effect" (*ibid* at [91] per Longmore LJ). Here, the effect of the Tribunal's careful analysis of Mr Stan's behaviour is that he repeatedly administered *per rectum* medication himself and did so for reasons of sexual gratification. It is understandable that such behaviour would cause others to feel the intense distress suffered by the Claimant. However, the evidence of Mr Walker, summarized above, about the effect on others of his clients is in the most general of terms and I do not have particularised evidence, let alone expert medical evidence, about the effect on those persons. In those circumstances I will proceed on the basis that Mr Stan's actions would have caused deep distress to others as well as to the Claimant but I am not in a position to go further than that.

58. Next, it is necessary to remember that Mr Stan was not acting as an agent of the State. On behalf of the Claimant it was accepted that Mr Stan was not to be seen as falling into that category nor as being a person exercising the powers of the State. As I have noted at [38] above the action needed to discharge an article 3 duty may well differ depending on whether the relevant inhuman or degrading treatment has been inflicted by a person who is an agent of the State or by a person acting as a private individual.

59. Mr Stan was employed by the Trust and it was the Trust which operated the RCH. In his Statement of Facts and Grounds the Claimant focused on the failings of the Trust and on the need for an adequate investigation in general terms and did not address the particular roles and responsibilities of the Defendants. There was only limited expansion of this position in the skeleton argument from Mr Jacobs and Mr Murphy. In that document they said that both Defendants "share statutory responsibilities in respect of the operation and performance of the NHS" but did not identify the statutory responsibilities which were said to be relevant. They made the point that only the First Defendant could establish a statutory inquiry though in that regard the Claimant's case is that although such an inquiry would be a sufficient form of independent investigation such an inquiry is not necessary. They also said that the Second Defendant was "well-placed to commission an independent non-statutory inquiry" pointing out that it had done so in other cases. They referred to the Second Defendant's description of its mission and responsibilities as "including the delivery of safe and high-quality care and overseeing the delivery of safe and effective NHS services". They went on to criticize the Second Defendant for failing to give an account of its function and responsibilities

to the extent that they bear on the appropriateness of it being the body to commission an investigation. However, that criticism is misplaced because it is for the Claimant to set out the basis on which he says that the Second Defendant has a duty of which it is in breach.

60. The investigations and other procedures which have already been undertaken or which are underway are a further and important part of the context in which this claim is to be considered. The Trust has undertaken an internal investigation; it has dismissed Mr Stan; and it has referred his case to the General Medical Council. That referral led to an investigation by the General Medical Council and to the hearing before the Tribunal which resulted in Mr Stan's erasure from the register. A police investigation is underway. In addition, civil proceedings are contemplated in respect of which the Trust has already admitted vicarious liability for Mr Stan's actions.

61. At the heart of the Claimant's case was the assertion that it was not possible for the Trust to hold an independent investigation sufficient to discharge any duty arising under article 3. This was founded on two contentions. First, it was said that the Trust had demonstrated a settled attitude which was incompatible with it holding an investigation which would be and which would be seen to be independent. Mr Jacobs submitted that the Trust's actions amounted to "a long history of a lack of openness". This was said to have been demonstrated by the Trust's refusal to hold a further investigation; its refusal to disclose its internal investigation or the report of the Maintaining High Professional Standards exercise; and the refusal to give further pre-action disclosure in the contemplated civil proceedings. Second, it is said that it will not be possible for an inquiry set up by the Trust to have the necessary degree of independence. Mr Jacobs submitted that this would be the position even if an independent person or persons were engaged to conduct the inquiry because the terms of reference of any inquiry would be set by the Trust. For the following reasons I do not accept either of those contentions.

62. The Trust's behaviour to date is not such as to justify the court proceeding on the basis that the Trust's attitude is such as to prevent it from holding an adequate investigation if that is required by reason of article 3. The Trust has refused to commission an investigation or to disclose the results of its fact finding investigation or of the Maintaining High Professional Standards exercise. However, it has given a reasoned explanation for why it has not done so and why it believes that the disclosure sought is not appropriate. In the civil proceedings the Trust has declined to provide further disclosure but has admitted vicarious liability; accepted that the claimants need not prove that Mr Stan's actions were sexually motivated; and has set up a compensation scheme. The Claimant believes that the Trust's assessment of what is required by article 3 is wrong but the Trust's actions are far from indicating a determination to avoid responsibility. There is nothing in the Trust's attitude as shown by its actions which suggests that if a court were to hold that it was obliged to hold an inquiry it would not engage with such an obligation properly and in good faith.

63. There is also no basis for the assertion that the Trust would not be able to conduct a sufficiently independent investigation. The Claim Form describes the investigation which the Claimant seeks as being "in respect of the actions of Mr Stan". In practice what is being sought is an investigation into how Mr Stan was allowed to act as he did and why his conduct was not identified and stopped earlier. Any such investigation would have to be "by a person or body that is institutionally, hierarchically, and practically independent from those involved in the events" (*MG* at [8(7)] and see also

MA v Secretary of State for the Home Department [2019] EWHC 1523 (Admin) at [39] and [42(i)]). The requisite independence has to be "from those involved in the events". Here the relevant events were the conduct of Mr Stan and the failure of those responsible for the RCH to stop that behaviour earlier. There is no basis for believing that the Trust is not capable of setting up an investigation which has the necessary degree of independence from those involved in the relevant events at the RCH. If necessary that can be achieved by commissioning an external expert or experts (whether that expertise be legal, clinical, or by way of knowledge of the management of hospital procedures) to conduct an investigation and by giving such expert or experts authority to do so. The fact that the terms of reference of such an investigation would be drawn up by the Trust does not mean that the investigation would necessarily lack the required degree of independence. That is because the drawing up of the terms of reference by the Trust does not of itself mean that those investigating could not have the necessary degree of independence from those involved in the relevant events and it is that independence which is relevant for these purposes. To the extent that any investigation commissioned by the Trust was inherently deficient, whether by reason of the terms of reference or in some other respect then it would be open to challenge by way of judicial review if necessary.

64. It is apparent that until a few months before he started these proceedings the Claimant himself believed that the Trust was able to commission an adequate investigation. In their letter of 13th August 2024 the Claimant's solicitors invited the Trust to "commission an independent investigation". The solicitors set out the conditions which would need to be satisfied for an adequate investigation and asked that the Trust set up such an investigation. They added that they would "be happy to support the panel in determining the terms of reference and associated matters" and recommended that "the panel take advice from specialist organisations about how to communicate with the patients with a trauma-informed approach". It is right to note that in the same letter the solicitors said that they had also been asked to write to the First Defendant inviting him to order a public inquiry. Nonetheless, the Claimant was clearly indicating that an investigation commissioned by the Trust would be capable of meeting the needs of article 3. He was right to do so and the fact that Trust declined to commission an investigation does not change that position.

The Claimant's Argument based on the Defendants' Status as Emanations of the State.

65. The Claimant advanced a number of detailed submissions in relation to alleged failings on the part of the Trust in terms of both the systems and the operational duties. It was nonetheless against the current Defendants that he sought relief. The relief sought in the claim form was "a declaration that the First and Second Defendants are in ongoing breach of the investigative duty arising pursuant to article 3 and in respect of the actions of Mr. Stan". In the claim form the Claimant also sought a mandatory order directing an article 3 compliant investigation but as I will explain below that aspect was not pressed.

66. In part the Claimant sought this relief against the First and Second Defendants on the basis that the Trust was not capable of undertaking an investigation which would satisfy the requirements of article 3. As has just been explained I reject that contention.

67. However, the Claimant's submissions were also based on the Defendant's status as emanations of the state. In their skeleton argument Mr Jacobs and Mr Murphy pointed

to the wide-ranging responsibility of the Defendants in respect of the operation and performance of the National Health Service and said that the article 3 investigative duty "arises against the State generally and could be discharged by either the Secretary of State or NHSE". In his oral submissions Mr Jacobs said that the issue of whether a further investigation was needed on behalf of the state was different from the question of which organisation should undertake or commission the investigation. He did not contend that the investigative duty could only be discharged by a statutory inquiry directed by the First Defendant but did say that a further investigation was needed. Mr Jacobs said that either of the Defendants could have discharged the duty by causing an appropriate investigation to be undertaken but that each had failed to do so and that a declaration should be made saying that both were in breach. On behalf of the Claimant, he did not seek a mandatory order at this stage and went so far as to say that it was not for either the court or the Claimant to say who should perform the duty as between the Defendants. Instead he said that there should be a further hearing after the declaration had been granted at which the Defendants should explain the steps they proposed taking in response to the declaration with the possibility of a mandatory order being made at that time.

68. The Claimant's case in this regard comes down to saying that there should be a further investigation; that the Defendants are both emanations of the state who have the power to cause an appropriate investigation to be undertaken but have not done so; they are, therefore, both in breach of their obligations flowing from article 3; and a declaration should be made as a consequence. It is to be noted that the declaration sought is that both the Defendants "are in ongoing breach" of the investigative duty.

69. I do not accept that the question of whether there has been a breach of the article 3 duties can be approached in this broadbrush way. Instead, the court has to consider the duty which is owed by a particular defendant in the particular circumstances (which will include the powers and responsibilities of the defendant and of others involved) and then consider whether there has been a breach of that duty by the defendant in question. The focus must be on the powers, responsibilities, and duties of the particular state entity against whom the claim is brought. This is the approach which is required as a matter of principle before any declaration that any defendant is in breach of duty can be made. It also reflects the fact that a number of different duties flow from article 3. Moreover, it accords with the approach which has consistently been taken when the court has been considering claims alleging breaches of the duties flowing from article 3.

70. Thus, in *Morahan* at [38] Popplewell LJ said that "the positive operational duty arises when the state agency knows or ought reasonably to know" of the relevant risk. The relevant knowledge is that of the state agency which is said to owe that duty and not of the state generally.

71. In *MG* Johnson J talked at [6(3)] of the state's high level duty to ensure that there are effective criminal law provisions together with a police force to investigate and a court and judicial system to enforce them. However, when he turned from that high level duty to consider the other duties flowing from article 3 he referred to "the public authority" or "a public authority". In doing so Johnson J was addressing the duties which were to be imposed on particular public authorities and the circumstances in which such authorities would be in breach of duty rather than the obligations of the state in some more general or amorphous sense.

72. Claims for breach of the operational duty flowing from article 3 have been made against particular public bodies. Thus, in *Van Colle v Chief Constable of Hertfordshire* [2008] UKHL 50, [2009] 1 AC 225 and in *Savage v South Essex Partnership NHS Foundation Trust* [2008] UKHL 74, [2009] 1 AC 681 claims alleging breach of the operational duties were made against the particular public bodies said to have owed the relevant operational duties. It is readily understood that an allegation of a breach of an operational duty is to be made against the person or body said have the duty to perform in a particular way. However, the same is true of allegations of a breach of the investigative duty. There are certain forms of investigation which can only be undertaken by a person of high authority but even then the claim is to be made against the person or public body which is said to have the particular obligation to investigate in the circumstances of the case in question. Thus, in *Morahan,* and *Maguire* and many other instances proceedings have been brought against coroners contending that article 2 requires them to exercise their powers in a particular way. In relation to article 3 *D v Metropolitan Police Commissioner* shows a claim for breach of the article 3 investigative duty being made against the particular relevant public body with the court considering what the duty required the Commissioner to do in particular rather than considering what was required of the state in abstract terms.

73. There will be occasions when it is appropriate to bring a claim directly against the relevant Secretary of State either because there is no other person or body with power to investigate or because the investigation is to be into matters under the direct control of the Secretary of State (as was the position in *AM*). Even in those cases the claim is not made against the Secretary of State simply because he or she is an emanation of the state in general but rather because the particular investigative duty is owed by the Secretary of State in the circumstances of the case in question.

74. It follows that in the domestic (as opposed to the European) context the question is whether the particular defendant is in breach of that defendant's duties under article 3. I will, accordingly, consider the claim against the First and Second Defendants by assessing in respect of them separately whether the Claimant has shown that the Defendant under consideration is in breach of the duties which that Defendant has by reason of article 3.

Did the Treatment of the Claimant arguably amount to Inhuman or Degrading Treatment for the Purposes of Article 3?

75. While they acknowledged the distress which the Claimant felt as a result of Mr Stan's actions the Defendants did not accept that those actions amounted to inhuman or degrading treatment. For the First Defendant Mr Hill invited me to proceed on the footing that it was not necessary to determine whether the treatment of the Claimant amounted to inhuman or degrading treatment. Mr Hill submitted that even if that treatment had been of the requisite degree of severity the Claimant's case of a breach of duty was not made out. As a consequence, he said, the court did not need to engage in the exercise of attempting to characterize the gravity of the treatment of the Claimant. I was not able to accede to that invitation. There is an issue between the parties as to whether the relevant threshold has been crossed and a determination on that issue is required.

The Test to be applied.

76. In *R(ASK) v Secretary of State for the Home Department* [2019] EWCA Civ 1239 at [68] Hickinbottom LJ (with whom Longmore and Peter Jackson LJJ agreed) approved the principles expressed thus by Singh J, as he then was, in *R(HA (Nigeria)) v Secretary of State for the Home Department* [2012] EWHC 2012 (Admin) at [174]:

> "(1) Article 3 enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances of the victim's behaviour.
>
> (2) However, ill-treatment must attain a minimum level of severity if it is to fall within the scope of article 3. The assessment of that minimum is, in the nature of things, relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim.
>
> (3) The Court has considered treatment to be inhuman because, inter alia, it was premeditated, was applied for hours at a stretch, and caused either bodily injury or intense physical or mental suffering.
>
> (4) It has deemed treatment to be degrading because it was such as to arouse in the victim feelings of fear, anguish and inferiority capable of humiliating and debasing them.
>
> (5) On the other hand, the court has consistently stressed that the suffering and humiliation involved must go beyond that inevitable element connected with a given form of legitimate treatment or punishment. Measures depriving a person of liberty may often involve such an element."

77. As Hickinbottom LJ emphasized at [69] "a high level of suffering is usually required" and a level of intensity is normally necessary.

78. The determination of whether particular treatment suffices to trigger the investigative duties under article 3 will be highly fact specific and the guidance to be derived from other cases is limited as a consequence.

79. In *Bouyid v Belgium* (2016) 62 EHRR 32 the European Court of Human Rights found that in the particular circumstances of the applicants in that case slapping to the face by police officers had amounted to inhuman or degrading treatment for the purposes of triggering the investigative duty. The court explained that treatment could be degrading even if the victim was humiliated in his or her own eyes even if not in those of others saying, at [87] and [105] – [106]:

> "[87] Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these aspects, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in art.3. It should also be pointed out that it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others.
>
> …
>
> [105] The court reiterates that it may well suffice that the victim is humiliated in his own eyes for there to be degrading treatment within the meaning of art.3 of the Convention. Indeed, it does not doubt that even one unpremeditated slap devoid of any serious or

> long-term effect on the person receiving it may be perceived as humiliating by that person.
>
> [106] That is particularly true when the slap is inflicted by law-enforcement officers on persons under their control, because it highlights the superiority and inferiority which by definition characterise the relationship between the former and the latter in such circumstances. The fact that the victims know that such an act is unlawful, constituting a breach of moral and professional ethics by those officers and—as the Chamber rightly emphasised in its judgment—also being unacceptable, may furthermore arouse in them a feeling or arbitrary treatment, injustice and powerlessness."

80. It is to be noted that the court regarded it as significant in that case that the slaps had been inflicted by police officers on persons under their control (see [88], [100], and [106]).

81. In *Khalifa v Italy* (December 2016) the ECHR explained the approach to be taken in this way at [159] and [160]:

> "[159] Nevertheless, according to the Court's well-established case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of that level is relative and depends on all the circumstances of the case, principally the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim. …
>
> [160] In order to determine whether the threshold of severity has been reached, the Court also takes other factors into consideration, in particular:
>
> (a) The purpose for which the ill-treatment was inflicted, together with the intention or motivation behind it …, although the absence of an intention to humiliate or debase the victim cannot conclusively rule out its characterisation as 'degrading' and therefore prohibited by Article 3…
>
> (b) The context in which the ill-treatment was inflicted, such as an atmosphere of heightened tension and emotions…
>
> (c) whether the victim is in a vulnerable situation, which is normally the case for persons deprived of their liberty…, but there is an inevitable element of suffering and humiliation involved in custodial measures and this as such, in itself, will not entail a violation of Article 3."

82. In *AO v Home Office* [2021] EWHC 1043 (QB) Morris J explained that articles 3 and article 8 of the European Convention are addressing different concerns and that something more is needed to show inhuman or degrading treatment than simply a heightened version of conduct which would amount to a breach of a person's article 8 rights. At [257 (1) and (2)] Morris J said that:

> "(1) Inhuman or degrading treatment within Article 3 involves a high level of suffering, usually actual bodily harm or intense physical or mental suffering. Treatment is inhuman or degrading if, to a serious detrimental extent, it denies the most basic needs of any human being. The treatment must achieve a minimum standard of severity: *Limbuela* §7 and *Humnyntski* §202.
>
> (2) Other than in the case of actual injuries, the burden is on the complainant to demonstrate a breach of Article 3 and it is a very high hurdle: *ASK* §72 and *Limbuela* §7."

83. It is, however, to be noted that Morris J went on, at [257(4)], to explain that article 3 could be breached in instances of street homelessness and that the want of accommodation could amount to inhuman or degrading treatment.

84. In *GM v Moldova* (44393/15) (22nd November 2022) the ECHR was concerned with a case where women who suffered from intellectual disabilities and who had been detained in a psychiatric asylum were subjected to forced abortions and had contraceptive devices implanted without their consent. At [84] the court said that medical interventions undertaken without the consent of a patient would normally fall to be seen as breaches of a person's article 8 rights but that "under certain conditions" medical interventions could amount to a breach of a person's article 3 rights. That had been the case in *Salmanoğlu & Polattaş v Turkey* (15828/03) (17th March 2009) where forced gynaecological examinations had amounted to severe ill treatment sufficient to bring article 3 into play. The court in *GM* found that in the particular circumstances of that case the behaviour was a breach of the applicants' article 3 rights even though it consisted of medical interventions which would otherwise have been appropriate. This was because of the invasive nature of the interventions; their non-consensual nature; and the vulnerability of the applicants. At [86] the court said:

> "The Court observes that cases concerning medical interventions, including those carried out without the consent of the patient, will generally lend themselves to be examined under Article 8 of the Convention… In a number of cases the Court has nonetheless accepted that under certain conditions, medical interventions can reach the threshold of severity to be regarded as treatment prohibited by Article 3 of the Convention."

85. The assessment of whether Mr Stan's treatment of the Claimant amounted to inhuman or degrading treatment must, therefore, be made with close attention to the particular circumstances. A high hurdle is to be surmounted although, as Mr Jacobs rightly emphasized, the investigative duty will be triggered by treatment which arguably amounts to inhuman or degrading treatment. It has not been established either that the administration of medication *per rectum* to the Claimant was unnecessary medically nor that Mr Stan's actions in treating the Claimant were sexually motivated and I am not in a position to make a definitive finding in that regard. It is, however, highly arguable that such was the position and for the purposes of this issue I will proceed on the basis that the administration of medication in that way was unnecessary and that Mr Stan's decision to administer the medication himself (rather than for a nurse to do so) was sexually motivated.

<u>The Factors against a Finding that the Threshold was crossed.</u>

86. There are several matters which support the Defendants' characterization of the treatment of the Claimant and which point to the conclusion that it did not amount to inhuman or degrading treatment for the purposes of article 3.

87. The Claimant was not in custody and nor was Mr Stan acting as an agent of the State. The Claimant was, moreover, given a degree of choice. His circumstances were rather different from those of persons who are beaten by police or prison officers when in custody and from those of persons forcibly subjected to medical interventions.

88. The treatment which the Claimant received was treatment of a kind which was capable of being legitimate for the purpose of pain relief. As was accepted at the Tribunal hearing, the administration of pain relief by way of a suppository can be appropriate

and there can be circumstances in which it is the most appropriate form of treatment. Although the administration of the medication *per rectum* caused the Claimant considerable distress it is not suggested that it was not effective to relieve the pain from the injury to his arm. However, account is to be taken here of the manner of the administration of the treatment as described by the Claimant. In addition, the facts that the treatment could have been legitimate and that Claimant would have reacted in the same way to it do not prevent the treatment from being inhuman or degrading treatment. Legitimate medical treatment can be degrading (though not inhuman) but does not fall foul of article 3 because of its purpose.

89. The Claimant has suffered no adverse medical consequences of the treatment. He was markedly distressed at the time and his feelings of distress and confusion persisted but there is no expert evidence of the kind which would be needed to establish that the Claimant's reaction amounted to a recognized psychiatric condition.

90. The incident was of a comparatively short duration.

91. At the time of the treatment the Claimant did not know of Mr Stan's motivation nor did he know that the treatment was unnecessary. He only learnt of those matters when he received the Trust's letter of July 2024 over 4½ years after his treatment. That knowledge understandably caused the Claimant to be angry. However, he says that he also felt "validated" and that his "worries about how Mr Stan had treated [him] had been justified". The Claimant's reaction to learning of those matters cannot affect the characterization of the treatment. If the treatment was not inhuman or degrading treatment at the time (with that assessment being made in light of Mr Stan's motivation and the lack of need for the treatment) it did not become so because the Claimant learnt such a long period afterwards that it was unnecessary and was sexually motivated. Such knowledge would make its recipient angry but could not convert the nature of treatment which was not otherwise humiliating or degrading.

The Factors in Favour of the Claimant's Contention.

92. The following matters support the view that the treatment of the Claimant did amount to inhuman or degrading treatment.

93. The first is that the Claimant was in a vulnerable position. He was injured and in pain and had come to the RCH for treatment. Although Mr Stan did not physically compel the Claimant to submit to the treatment and purported to give him a choice that choice was theoretical rather than real. The Claimant was in pain and he had been told that the other forms of pain relief for which he had asked were unsuitable. In reality he was being told that if he was to receive pain relief (or at least if he was to receive it then) it was to be by way of a suppository. In those circumstances the Claimant's consent to what was done has little relevance.

94. Next, it is significant that the Claimant was visibly distressed at the time Mr Stan was administering the medication. Mr Stan had pressurised the Claimant into agreeing to this form of medication and had persisted in administering it despite the distress which the Claimant was demonstrating at the time. He had done so for the purpose of his own sexual gratification. The force of this factor is increased by the nature of the action. Mr Stan inserted his finger into the Claimant's anus having required the Claimant to remove his trousers. This was an intimate physical intervention and a notable breach of

the Claimant's personal autonomy. This behaviour amounted to Mr Stan engaging in an act of control over the Claimant; doing so for his own sexual gratification; and doing so notwithstanding the visible distress being suffered by the Claimant. The use of the Claimant as an instrument of sexual gratification by Mr Stan showed a lack of respect for and diminished the Claimant's human dignity, to adopt the language of the ECHR in *Bouyid*.

95. In his statement the Claimant does not use the words "humiliation" or "degradation" and instead talks of his feelings of distress. However, the reaction that he describes is one of feeling humiliated and degraded.

Conclusion.

96. I remind myself of the high hurdle which has to be surmounted before ill-treatment will amount to inhuman or degrading treatment for the purposes of article 3 and also that in the absence of physical injury it is normally necessary that an intense degree of distress be suffered. The point is finely balanced but I have concluded that the factors I have just summarized are such that the threshold is passed and that Mr Stan's treatment of the Claimant did amount to inhuman or degrading treatment. At the very least it arguably did so such as to be treatment capable of triggering the investigative duty.

The Proper Defendant.

97. The Defendants said that they should not have been joined as defendants to this claim. Mr Hill and Mr Lawson each submitted that his client was not an appropriate defendant and that to the extent that any claim was warranted it should have been brought against the Trust. Each contended that it was open to the court to dismiss the claim on the footing that his client had no relevant duty and that the only body with obligations under article 3 in these circumstances was the Trust.

98. That is an excessively broad approach. Instead, as a consequence of the reasoning at [67] and following above, it is necessary to have regard to the particular person or body; to consider that person or body's role and function; and next to consider the duty which is said to have been broken (it being remembered that a number of different duties flow from article 3). It is only when that has been done that it is possible to determine whether a duty is owed by the person or body in question; what the duty requires in the particular circumstances; and whether there has been a breach of the duty.

99. That is the approach which I will apply here. I will consider the duties arising from article 3 and consider in respect of each Defendant whether a breach of that duty has been shown having regard to their respective roles and to that of the Trust.

100. Although the Claimant alleges a breach of the investigative duty it will be necessary to consider whether there was any arguable breach by a Defendant of the systems or the operational duties. That is because it is a breach of those duties which triggers the enhanced procedural obligation.

101. However, my treatment of these matters can be comparatively brief. That is because of my rejection of the key propositions underlying the Claimant's case namely (a) that it is sufficient, at least as a starting point, to identify an emanation of the State with some responsibility in the relevant field generally and to say that such emanation of the State

owes a duty under article 3 and (b) that the Trust was incapable of conducting an independent investigation sufficient to satisfy the requirements of article 3.

The Systems Duty.

102. The First and Second Defendants have systems for the inspection and oversight of hospitals and other health service facilities. The Claimant does not contend that they should have had different systems in place for that purpose nor that those systems are not capable of operating effectively.

103. Instead, the Claimant's criticism is of the systems operated by the Trust at the RCH. It is said that those systems were not adequate. The point is put at a high level of generality and the Claimant does not give details of the ways in which he says there should have been different systems of oversight at the RCH. In reality the contention amounts to saying that Mr Stan's conduct should have been identified earlier and stopped earlier and more effectively. It is not clear that this is, in truth, an assertion of a breach of the systems duty. It is well-established that the adequacy of a system is not to be judged with hindsight. In addition as Lord Sales explained in *Maguire* (see at [49] above) if a proper system is in place then individual lapses in putting it into effect will not amount to a breach of this duty.

104. There is, nonetheless, some force in the contention that the systems at the RCH were not adequate because Mr Stan was able to continue his behaviour for some months after the initial complaint was made in March 2020. However, it is much more questionable whether there was a failure at any time before the Claimant was treated by Mr Stan in November 2019.

105. In favour of the Claimant I will proceed on the basis that there was an arguable breach of the systems duty on the part of the RCH and/or the Trust but not on the part of either Defendant.

The Operational Duty.

106. Similarly, there is no scope for any suggestion that there was a breach of the operational duty on the part of either Defendant. The contention in this regard is of a breach at the RCH. Again it is questionable whether as at November 2019 the RCH or the Trust had the necessary knowledge to bring the operational duty into play. In that regard it is arguable that by the time when the Claimant was being treated Mr Stan's practice of both prescribing and administering medication *per rectum* to men and boys should have been noticed. Here also I will proceed on the basis that there was an arguable breach of the operational duty on the part of the RCH and/or the Trust but not on the part of either Defendant.

The Procedural Obligation.

107. The first question is whether the enhanced procedural obligation comes into play so as to require either the First Defendant or the Second Defendant to cause there to be an investigation. There is no basis for such an obligation in the circumstances of this case. There was no arguable breach of either the systems duty or the operational duty on the part of either of them. The harmful actions were those of a private individual. The question then becomes one of whether the arguable breaches of the systems duty and/or the operational duty on the part of the Trust give rise to the enhanced procedural obligation on the part of either Defendant. I emphasize the point explained above that

what is necessary is not that the obligation arose in abstract but that one or other of the Defendants to this claim had that obligation in the particular circumstances of this case. My conclusion that the Trust is capable of undertaking an adequate investigation is a complete answer to this point. Neither the First nor the Second Defendant have a duty to commission an investigation in circumstances where the body primarily responsible for the operation of the RCH is itself able to undertake such investigation as is necessary.

108. Similarly, neither Defendant is in breach of the redress procedural obligation. There are ample means available by which the Claimant can ventilate his complaint and obtain redress. I have noted at [60] above the investigations which have already been made and the proceedings which are currently underway. In addition, as Mr Lawson for the Second Defendant pointed out, the Claimant could make a complaint to the RCH under the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 or to the Parliamentary and Health Service Ombudsman under the Health Service Commissioners Act 1993. It would, moreover, have been open to the Claimant to bring proceedings challenging the Trust's refusal in September and October 2024 to commission an independent investigation itself. In those circumstances there is no basis for concluding that article 3 required either Defendant to provide a further route for vindicating the Claimant's rights or ventilating his complaint by commissioning an investigation.

The Timing of the Claim.

109. The Second Defendant contended that the claim was out of time saying that the Claimant was in a position to commence these proceedings when the Trust declined to commission an investigation. I do not accept that submission. The Claimant could have proceeded against the Trust at that stage but the current proceedings are against these two Defendants and not the Trust. After they had received the Trust's refusal the Claimant's solicitors wrote to the Defendants inviting each of them to commission an investigation. It was not until 24th January 2025 that the Second Defendant notified the Claimant that it was not willing to do so and it was only then that time began to run for a claim against the Second Defendant.

110. Both Defendants submitted that the claim was premature. The contention was that it would not be possible to know whether the investigations currently underway were sufficient to discharge the duties under article 3 until those investigations had concluded. If the claim had been otherwise meritorious I would not have declined relief on this basis. A conclusion that the claim was meritorious would have involved acceptance of the inadequacy of the current investigations and proceedings and an acceptance that the duties flowing from article 3 required one or other or both Defendants to commission a further investigation. If such a conclusion had been reached there would have been no basis for declining relief to await the outcome of the existing investigations which, on that hypothesis, had been found to be insufficient.

Conclusion.

111. The Claimant has failed to establish that either Defendant is in breach of the procedural obligations flowing from article 3 and so relief is to be refused. I am satisfied that in respect of the First Defendant the claim was sufficiently arguable to merit the grant of permission and so in that case permission is given but the claim is dismissed. I have more reservation as to whether the claim against the Second Defendant was sufficiently

arguable for permission to be granted. By a narrow margin I have concluded that it was also just sufficiently arguable for the grant of permission and so in relation to that claim permission is similarly granted but the claim is dismissed.