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MOJUK: Newsletter 'Inside Out' 1020 (25/09/2024) - Cost £1

State Must Provide Prioners With Drug Problems - Same Care as General Population
Application by Robert Clarke and Paul Pollins for Leave to Apply for Judicial Review

[1] The first applicant, Mr Robert Clarke, born on 17 September 1994, is presently a sentenced prisoner in HMP Magilligan. The respondent is the South Eastern Health and Social Care Trust, the public body with responsibility for the provision of healthcare to the prison population in Northern Ireland in all prison estates. It is alleged that there has been a long-standing commitment to ensuring that those in prison receive the same standard of healthcare as those in the community (the principle of equivalence).

Due to his drug addiction issues, the first applicant has been flagged as someone whose suitability for opiate substitution therapy should be assessed. Despite this, the first applicant has not undergone such an assessment in prison and has been waiting for such an assessment for over two years.

The first applicant challenges the failure of the respondent to provide him with appropriate healthcare treatment for his addiction issues. The first applicant seeks a declaration that there is an ongoing, unjustified distinction in healthcare between prisoners on the one hand and individuals in the community on the other with regard to the availability of staff and facilities for the assessment of suitability for and/or the commencement of opiate substitution therapy ("OST").

He seeks a declaration that the failure of the respondent to provide prisoners with healthcare consistent with and equivalent to the healthcare provided to those at liberty in the community is contrary to articles 8 and 14 of the European Convention on Human Rights ("ECHR") and contrary to section 6 of the Human Rights Act 1998 ("HRA") and that the failure to do so in his case entitles him to claim damages.

In his Order 53 Statement, he argued that the failure to provide him with an assessment of suitability for opiate substitution therapy constitutes a breach of rules 2 (b), 2 (j) and 80 of the Prison and Young Offender Centre Rules (Northern Ireland) 1995 (as amended) ("the 1995 Rules") in circumstances where the relevant rules provide a duty in respect of staffing and equipment for the treatment of sick prisoners. This argument was not pursued with any vigour at the oral hearing. It is alleged that the respondent has failed to take into consideration the relevant prison rules on healthcare when considering its responsibilities under section 2(2) of the Health and Social Care (Reform) Act (Northern Ireland) 2008 and has failed in its duty to have a proper understanding of the extent of the legal powers available to it in that the respondent has asserted that the 1995 Rules do not apply to the first applicant. Again, this was not pursued at the oral hearing.

[2] In support of his claims, the first applicant avers that drugs have been a significant issue for him throughout most of his adult life. He has abused cocaine, illegally obtained benzodiazepines and "a range of other drugs." The first applicant avers that his drug problems are at the root of his offending. His affidavit is dated 26 January 2024 and at that time the first applicant was awaiting assessment of his suitability for commencement on OST. He states that he continues to take illicitly obtained drugs in prison on a daily basis. He specifically refers to Subutex or Espranor and if he cannot get his hands on these drugs, he will abuse Tramadol instead.

He has a diagnosis of epilepsy and has been advised by a prison doctor that he should not take Tramadol as this drug can bring on seizures. Despite this advice, the first applicant continues to take Tramadol if he cannot access a supply of Subutex or Espranor. The first applicant avers that he has failed a recent drugs test in prison and has refused to be tested on four occasions.

As of January 2024, the first applicant had a number of prison disciplinary adjudications arising out of his illicit drug taking in prison and he had a pending adjudication due to prison staff finding Subutex in his cell. The first applicant specifically relies upon the fact that during his time in custody, he made an application to the Parole Commissioners for re-release on licence and the Panel who dealt with his application for re-release on licence specifically referred to the applicant's unaddressed drug addiction problem as being a matter which had to be taken into account when assessing relevant risk. The Panel decision specifically recommended that the applicant should engage fully with any assessment of his suitability for the commencement of OST in the prison environment.

[3] The Second Applicant, Paul Pollins, born on 28 July 1990, was, until recently, a sentenced prisoner in HMP Magilligan. From 5 February 2021, up to the time of his release in April 2024, he too was waiting to be assessed for suitability for OST. This applicant specifically alleges that the failure to carry out such an assessment and, thereafter, to commence treatment, constituted a breach of article 3 and/or article 8 ECHR and section 6 of the HRA in that this applicant specifically informed the respondent that he was self-medicating with illicitly obtained Subutex within the prison, in the absence of being provided with OST. The applicant informed the respondent that he was concerned that he would overdose on this illicit drug, with fatal consequences. He also alleges that his general prison records and his prison medical records contain numerous references to intense mental suffering, distress and anxiety being experienced and exhibited by this applicant arising directly from his unaddressed drug dependency. This suffering, distress and anxiety crossed the threshold of severity so as constitute a breach of article 3 ECHR.

[4] It is alleged that article 3 ECHR imposes a positive obligation on the state to ensure that this applicant as a detained prisoner was detained under conditions that were compatible with respect for human dignity; that the manner and method of his detention did not subject him to distress and hardship exceeding the unavoidable level of suffering inherent in detention; and that, given the practical demands of imprisonment, his health and well-being were adequately secured by, among other things, the provision of the requisite medical assistance and treatment.

[5] It is alleged that medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the state has committed itself to provide to the population as a whole. It is alleged that if the applicant had been in the community, during the relevant time, he would have been assessed for his suitability for OST within a relatively short timescale. In addition to alleging a substantive breach of article 3 ECHR, the applicant also calls in aid the provisions of article 14 ECHR. The applicant alleges that he is in an analogous situation to drug addicts in the community seeking OST. He alleges that he has been treated differently based on his status as a prisoner. He alleges that there is no objective or reasonable justification for this difference in treatment. It is alleged that this difference in treatment does not pursue a legitimate aim and there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.

[6] The second applicant alleges that article 8 ECHR protects his right to respect for his private and family life, his home and his correspondence. It is alleged that these concepts are broad and, inter alia, encompass a person's physical and psychological integrity. He alleges that the provision of OST and the assessment of suitability for such treatment are measures implemented by the state which have a direct impact on the physical and psychological integrity of drug addicts both in the community and in prison. The second applicant alleges that his physical and psychological integrity has been interfered with and, indeed, harmed, by reason of the state's failure to provide him with an assessment of suitability for OST whilst he was in custody. It is alleged that this interference was entirely unjustified and, in the alternative, it is

alleged that, given the stark difference is the availability of assessment opportunities provided to drug addicts in the community on the one hand and drug addicts in prison in the other, this applicant's rights under article 14 ECHR have been breached.

[7] In support of his claims, this applicant specifically relies upon the fact that during his time in custody, he made numerous applications to the Parole Commissioners for release on licence and on a number of occasions, the panels who dealt with his application for release on licence specifically referred to the applicant's unaddressed drug addiction problem as being a matter which had to be taken into account when assessing relevant risk. These panel decisions specifically comment upon the delay in providing an assessment of suitability for OST and in one decision, there is specific criticism of such delay.

[8] Following the second applicant's release from prison in April 2024, he underwent assessment of his suitability for the commencement of OST in the community and was in fact commenced on OST. Therefore, this applicant can no longer seek the quashing of any decision not to provide him with an assessment of his suitability for treatment or, indeed, treatment. The remedies the second-named applicant seeks are declarations that the failure to provide an assessment of suitability for treatment and/or OST treatment itself was in breach of this applicant's rights and the state's obligations under articles 3, 8 and 14 ECHR.

"General Principles" - 135. The court reiterates that Article 3 of the Convention enshrines one of the fundamental values of democratic society, prohibiting in absolute terms torture or inhuman or degrading treatment or punishment (see, among other authorities, Stanev v Bulgaria [GC], no. 36760/06, § 201, ECHR 2012). However, to come within the scope of the prohibition contained in Article 3, the treatment inflicted on or endured by the victim must reach a minimum level of severity. The assessment of this minimum level of severity is a relative one, depending on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see M.S. v the United Kingdom, no. 24527/08, § 38, 3 May 2012, and Price v the United Kingdom, no. 33394/96, § 24, ECHR 2001-VII).

136. Article 3 further imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical care (see Kudła v Poland [GC], no. 30210/96, § 94, ECHR 2000-XI; Mouisel v France, no. 67263/01, § 40, ECHR 2002-IX; and Khudobin v Russia, no. 59696/00, § 93, 26 October 2006). Thus, the court has held on many occasions that lack of appropriate medical care may amount to treatment contrary to Article 3 (see, for example, M.S. v the United Kingdom, cited above, §§ 44-46; Wenerski v Poland, no. 44369/02, §§ 56-65, 20 January 2009; and Popov v Russia, no. 26853/04, §§ 210-13 and 231-37, 13 July 2006).

137. In this connection, the "adequacy" of medical assistance remains the most difficult element to determine. The court reiterates that the mere fact that a detainee is seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (see Hummatov v Azerbaijan, nos. 9852/03 and 13413/04, § 116, 29 November 2007). The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention (see Khudobin, cited above, § 83), that diagnosis and care are prompt and accurate (see Melnik v Ukraine, no. 72286/01, §§ 104-06, 28 March 2006, and Hummatov, cited above, § 115), and that, where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis (see Popov, cited above, § 211; Hummatov, cited above, §§ 109 and

114; and Amirov v Russia, no. 51857/13, § 93, 27 November 2014). The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through (see Holomiov v Moldova, no. 30649/05, § 117, 7 November 2006, and Hummatov, cited above, § 116). Furthermore, medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities (see Cara-Damiani v Italy, no. 2447/05, § 66, 7 February 2012).

138. On the whole, the court reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see Aleksanyan v Russia, no. 46468/06, § 140, 22 December 2008) ...

[116] Application of these principles to the present case

59. The court is called upon to determine whether, in the light of the foregoing principles, the respondent State complied with its positive obligation under Article 3 of the Convention to ensure that the applicant's health was adequately secured during his detention by providing him with the requisite medical treatment, at a level comparable to that which the State authorities have committed themselves to provide to persons in freedom.

60. The court observes that it is contested between the parties whether, in the circumstances of the case, drug substitution therapy was to be regarded as the necessary medical treatment which had to be provided to the applicant in order for the State to comply with its said obligation.

Court's Assessment and Determination of the Issues

[154] The European Convention on Human Rights was created in response to the horrors of World War II and many of the most egregious examples of man's inhumanity to man during that conflict occurred in the context of the detention of individuals and groups by the state. This is why the Convention places considerable emphasis and importance on the protection of those who are detained by the state, recognising their vulnerability and the ease with which they can be mistreated, abused and neglected in the confines of a prison or a mental health institution away from the public gaze.

[155] Articles 3 and 8 of the Convention have been interpreted by the European Court as giving rise to duties on the part of the state when it comes to addressing the healthcare needs of prisoners. It has repeatedly been held that article 3 imposes an obligation on the state to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical care. The European Court has held on many occasions that the lack of appropriate medical care may amount to treatment contrary to article 3. The state must ensure that diagnosis and care are prompt and accurate and that, where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis. The medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the state authorities have committed themselves to provide to the population as a whole.

[156] The European Court has repeatedly declared that article 3 of the Convention imposes on the state a positive obligation to ensure that a person is detained under conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the person's health and well-being are adequately secured by, among other things, the provision of the requisite medical

assistance and treatment. The court has clarified in this context that it is essential for a prisoner suffering from a serious illness to undergo an adequate assessment of his or her current state of health, by a specialist in the disease in question, in order to be provided with appropriate treatment. The prison authorities must offer the prisoner the treatment corresponding to the disease(s) the prisoner was diagnosed with. Having regard to the vulnerability of applicants in detention, it is for the state to provide credible and convincing evidence showing that the applicant concerned had received comprehensive and adequate medical care in detention.

[157] The European Court has emphasised that the Convention does not guarantee the right to health as such or the right to a specific medical treatment desired by the applicant. However, complaints relating to the denial of access to certain types of medical treatment or medicinal products have been brought before the court which have been examined from the point of view of article 8 of the Convention, the concept of "private life" of which is underpinned by the concept of personal autonomy.

[158] Having regard to the above, it is quite clear that article 3 and article 8 may be engaged in the context of the provision or lack of provision of adequate and appropriate healthcare in the prison environment. The first applicant, Mr Robert Clarke, does not allege a substantive breach of either article. His is an article 14 discrimination case on the basis that the discriminatory treatment complained of impacts upon his physical and psychological integrity (personal autonomy) and as such in the context of a detained prisoner article 8 is engaged. The second applicant, Paul Pollins, in addition to the article 14 case that is common to both applicants, alleges that he has been detained in conditions which constitute substantive breaches of article 3 and article 8. The respondent Trust denies that there have been any substantive breaches of either article 3 or article 8 and further denies that either article is engaged in either case. If either article 3 or article 8 is engaged, the respondent Trust denies that any claim under article 14 can succeed because the chosen comparators are not in an analogous position and, in any event, it cannot be said that the decisions giving rise to any difference in treatment are manifestly without reasonable foundation.

[159] This court has carefully and comprehensively rehearsed the evidence produced by the parties in these two applications and has carefully considered the written and oral submissions ably made by counsel on behalf of the parties, and in light of this careful scrutiny and consideration, the court has reached the following conclusions.

[160] Article 3 and article 8 are clearly engaged in these cases in that these cases relate to the provision of appropriate medical healthcare by the state to those detained by the state. In relation to the second applicant's article 3 claim, it is abundantly clear that the state has failed to provide appropriate medical healthcare. He did not undergo an adequate assessment of his state of health in that his suitability for OST treatment was not assessed and the failure to do so for over three years clearly constitutes inappropriate healthcare and clearly represents a level of healthcare which is not comparable to that which the state has committed itself to provide to the population as a whole. Equivalence in terms of prison healthcare provision is a Convention requirement and it is a Convention requirement that has clearly been breached in the second applicant's case.

[161] In relation to the second applicant's article 3 claim, the court is clearly satisfied that there has been an actual breach of article 3 in that the court is satisfied on the cogent and compelling evidence adduced that if the second applicant had received a timely assessment of his suitability for OST in prison, he would have been assessed as suitable for the commencement of OST and he would or should have been commenced on OST shortly after his assessment. If he had been inducted onto the OST programme, the likelihood is that he would not have suffered regular opiate withdrawal symptoms including significant pain due to the interruption in the supply of illicit drugs in the prison (and

the court finds that he did so suffer such regular symptoms) and he would not have suffered the level of anxiety and distress which he evidently experienced while on the waiting list for assessment (a prolonged period of three years). In the opinion of the court, the nature, extent and duration of these symptoms do cross the level of severity necessary to give rise to a breach of article 3 and they clearly and manifestly mean that the second applicant was detained in conditions which were not compatible with human dignity. These symptoms did give rise to levels of prolonged hardship and distress clearly in excess of the unavoidable level of suffering inherent in detention. In coming to this conclusion, the court recognises and accepts that the respondent Trust did not intend to cause the second applicant the severe level of hardship and distress that he experienced but although the motivation or intention of the state actor is relevant it is, as is clear from para [100] of Muršić, not determinative of whether there has been a beach of article 3. In any event, in this case that severe level of hardship and distress flowed from the deliberate and intentional implementation of a decision in respect of the provision of healthcare rather than flowing from negligent medical treatment.

[162] The court has carefully considered whether the other aspects of prison healthcare which were available to the second applicant while he was on the waiting list and his engagement with those services mean that the symptoms complained of were kept at a level below the article 3 threshold of severity and the court concludes that the evidence clearly indicates that these other services did not have this effect. They were of some limited benefit in relation to the management of symptoms but were of absolutely no benefit in relation to addressing the underlying problem. In respect of article 3, the absolute nature of the duty means that resourcing issues are strictly irrelevant.

[163] The second applicant is entitled to a declaration that by reason of the failure of the state to provide him with adequate healthcare in prison, his conditions of detention breached article 3 of the Convention and in addition to such a declaration, the second applicant's entitlement to Convention based damages in the form of just satisfaction is made out. The court will allow the parties some time to attempt to formulate the appropriate declaration for approval by the court and the court also encourages the parties to discuss the issue of the appropriate level of damages and, if possible, to agree same. In the absence of such agreement, the court will convene another hearing to allow the issue of the level of damages to be the subject of submissions, followed by a further determination by the court on that issue, if necessary.

[164] In relation to the second applicant's article 8 claim, it follows from the above finding that there has been interference with the second applicant's physical and psychological integrity (personal autonomy) sufficient to fall foul of the protections set out in article 8(1). However, the rights and protections set out in article 8(1) are qualified rights in that the state can curtail or circumscribe those rights if it acts in accordance with the law and only to the extent that is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder and crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

[165] The assessment by the court as to whether the state can rely on the provisions of article 8(2) involves conducting a proportionality assessment as described in para [109] above. In the context of the second applicant's case, the court (adopting the approach of affording the state a wide margin of appreciation) can readily accept that the respondent Trust sought to pursue a broadly legitimate aim in that it's focus was on doing the best it could in terms of the provision of healthcare in prison in the context of having to operate under a seriously inadequate budget. However, I am strongly of the view that the measure complained of in this instance was not rationally connected to the objective. Firstly, the measure flew in the face of any notion of equivalence. Secondly, it cannot be said that a measure is

rationally connected to the aim of protecting the provision of prison healthcare when it effectively blocks fresh access to a key part of the prison healthcare system for a significant number of prisoners. Thirdly, it would be entirely repugnant to Convention values if a court were to conclude that a measure which resulted in conditions in prison which gave rise to a finding of a substantive breach of the provisions of article 3 could be said to be rationally connected to a legitimate aim.

[166] In relation to the question of whether a less intrusive measure could have been implemented without unacceptably compromising the achievement of the objective, it is not the court's function to tell the respondent Trust how to run the prison healthcare system by constructing or devising alternative policies or approaches designed or intended to further the state's legitimate aim but the court can sketch out other options solely for the purpose of demonstrating that such alternatives exist and might be considered. In this case, the court is adamant in its view that a less intrusive measure (one which did not result in a substantive breach of article 3) could and should have been devised and implemented. The underlying problem in this case and in the related Clarke case is that the prison healthcare budget is based on a historic figure which is subject to some form of inflation linked increase, with this historic figure bearing little relationship to the healthcare needs of the prison population and certainly being well out of step with the per capita spend on prison healthcare in other parts of the United Kingdom. This was apparent to the respondent Trust, the Health and Social Care Board, the Department of Health and the Department of Justice. What was required was a principled revision of the methodology in place to determine the prison healthcare budget. What was needed was firm and definitive advice that in the absence of such a revision, the state ran the clear risk of falling foul of its Convention duties in respect of the treatment of prisoners detained by the state. What appears to have been missing from the business cases presented to the SPPG was a clear, authoritative and unambiguous warning about the legal consequences of failing to properly fund prison healthcare.

[167] In relation to the question of whether the measure strikes a fair balance between the rights of the individual and the interest of the community, there is really only one possible answer in light of the finding of a substantive breach of article 3 and that is a resounding no. Firstly, a measure which directly results in the creation of conditions of detention that give rise to a breach of article 3 can never be said to strike a fair balance between the rights of the individual and the interests of the community. Secondly, bearing in mind the finding that there is no rational connection between the measure and the objective, there can be no question of a fair balance having been struck between the rights of the individual and the interest of the community. Thirdly, bearing in mind the individual and societal benefits to be reaped from the successful induction and maintenance of a patient on OST, the individual's rights and the community's interests coincide and both are, in effect, harmed by this measure. In summary, the measure fails the proportionality test and therefore is not saved by the provisions of article 8(2).

[168] The second applicant is entitled to a declaration that by reason of the failure of the state to provide him with adequate healthcare in prison, his conditions of detention breached article 8 of the Convention and in addition to such a declaration, the second applicant's entitlement to Convention based damages in the form of just satisfaction will have to be determined. It may well be that an appropriately worded declaration will also constitute just satisfaction of the second applicant's claim. The court will allow the parties some time to attempt to formulate the appropriate declaration for approval by the court and the court also encourages the parties to discuss the issue of the entitlement to damages in addition to a declaration, and if there is agreement as to the entitlement to damages, the court encourages the parties to give consideration to the appropriate level of damages and, if possible, to agree same. In the absence

of such agreement, the court will convene another hearing to allow the issue of what is required to constitute just satisfaction in the circumstances of this case to be addressed, and to make a further determination of this issue in light of any submissions received.

[169] In relation to the second applicant's article 14 discrimination claim, I reiterate my conclusion that both articles 3 and 8 are clearly engaged and, therefore, in the language of the Stott test, the circumstances of the case fall within the ambit of rights protected by substantive convention provisions. In relation to the second limb of the Stott test, it is patently obvious on the facts of this case that the difference in treatment is on the ground of the second applicant's status as a prisoner who seeks to be assessed in relation to his suitability for commencement on OST as a treatment for opiate addiction. As I have already stated in paras [136] to [138] above, the patient in the community who is seeking such an assessment of suitability is in an analogous position to the patient in prison and the difference in treatment is that the patient in the community will be assessed within single digit weeks whereas the patient in prison may well have to wait years to be assessed or may not be assessed at all. The second applicant and the patient in the community who has been treated differently are clearly in analogous situations. Finally, in order to establish a breach of article 14 it is necessary to establish that objective justification for the different treatment is lacking. This involves a proportionality assessment which is the same as that performed in respect of the article 8 issue and it is clear from that assessment that the second applicant's article 14 case must succeed. One additional issue is relevant to the proportionality assessment in relation to article 14 and that arises out of para [42] of Lord Kerr's judgment in Steinfeld and para [40] of Lady Hale's judgment in Coll in that it has been held that budgetary considerations cannot justify discrimination.

[170] The second applicant is entitled to a declaration that by reason of the difference in treatment provided to the second applicant as a prisoner who seeks to be assessed in relation to his suitability for commencement on OST as a treatment for opiate addiction compared to the treatment provided to a patient in the community in an analogous situation and the failure of the state to provide the second applicant with adequate healthcare in prison, the respondent Trust has unlawfully discriminated against the second applicant in breach of article 14 of the Convention when read together with article 3 and article 8 the Convention and in addition to such a declaration, the second applicant's entitlement to Convention based damages in the form of just satisfaction will have to be determined. It may well be that an appropriately worded declaration will also constitute just satisfaction of the second applicant's claim. The court will allow the parties some time to attempt to formulate the appropriate declaration for approval by the court and the court also encourages the parties to discuss the issue of the entitlement to damages in addition to a declaration, and if there is agreement as to the entitlement to damages, the court encourages the parties to give consideration to the appropriate level of damages and, if possible, to agree same. In the absence of such agreement, the court will convene another hearing to allow the issue of what is required to constitute just satisfaction in the circumstances of this case to be addressed, and to make a further determination of this issue in light of any submissions received.

[171] In relation to the first applicant, it has to be remembered that the first applicant's case is that he is the subject of unlawful discrimination contrary to article 14 primarily in relation to article 8 of the Convention. He does not allege a substantive breach of either article 3 or article 8. From what has been said above, article 8 is clearly engaged in the first applicant's case in respect of his physical and psychological integrity (personal autonomy). Again, adopting the language of Stott, the circumstances of the case fall within the ambit of rights protected by a substantive convention provision, namely article 8. In relation to the second limb of the

Stott test, it is patently obvious on the facts of this case that the difference in treatment is on the ground of the first applicant's status as a prisoner who seeks to be assessed in relation to his suitability for commencement on OST as a treatment for opiate addiction. As I have already stated in paras [136] to [138] above, the patient in the community who is seeking such an assessment of suitability is in an analogous position to the patient in prison and the difference in treatment is that the patient in the community will be assessed within single digit weeks whereas the patient in prison may well have to wait years for an assessment or may not be assessed at all. The first applicant and the patient in the community who has been treated differently are clearly in analogous situations. Finally, in order to establish a breach of article 14 it is necessary to establish that objective justification for the different treatment is lacking. This involves a proportionality assessment where the court considers the question of whether the difference in treatment is manifestly without reasonable foundation.

[172] In the context of the first applicant's case, the court (adopting the approach of affording the state a wide margin of appreciation) can readily accept that the respondent Trust sought to pursue a broadly legitimate aim in that it's focus was on doing the best it could in terms of the provision of healthcare in prison in the context of having to operate under a seriously inadequate budget. However, I am strongly of the view that the measure complained of in this instance was not rationally connected to the objective. Firstly, the measure flew in the face of any notion of equivalence. Secondly, it cannot be said that a measure is rationally connected to the aim of protecting the provision of prison healthcare when it effectively blocks fresh access to a key part of the prison healthcare system for a significant number of prisoners.

[173] In relation to the question of whether a less intrusive measure could have been implemented without unacceptably compromising the achievement of the objective, it is not the court's function to tell the respondent Trust how to run the prison healthcare system by constructing or devising alternative policies or approaches designed or intended to further the state's legitimate aim but the court can sketch out other options solely for the purpose of demonstrating that such alternatives exist and might be considered. In this case, the court is adamant in its view that a less discriminatory approach could and should have been devised and implemented. The underlying problem in this case and in the related Pollins case is that the prison healthcare budget is based on a historic figure which is subject to some form of inflation linked increase, with this historic figure bearing little relationship to the healthcare needs of the prison population and certainly being well out of step with the per capita spend on prison healthcare in other parts of the United Kingdom. This was apparent to the respondent Trust, the Health and Social Care Board, the Department of Health and the Department of Justice. What was required was a principled revision of the methodology in place to determine the prison healthcare budget. What was needed was firm and definitive advice that in the absence of such a revision, the state ran the clear risk of falling foul of its convention duties in respect of the treatment of prisoners detained by the state. What appears to have been missing from the business cases presented to the SPPG was a clear, authoritative and unambiguous warning about the legal consequences of failing to properly fund prison healthcare. Another important issue is relevant to the proportionality assessment in relation to article 14 and that arises out of para [42] of Lord Kerr's judgment in Steinfeld and para [40] of Lady Hale's judgment in Coll in that it has been held that budgetary considerations cannot justify discrimination. One possible alternative non-discriminatory approach is to look at the entire budget for OST in Northern Ireland and to perform some form of reallocation involving not just the community services but the prison service too, based on actual need. As Lady Hale stated in para [40] of Coll: ***"If a benefit is to be limited in order to save costs, it must be limited in a non-discriminatory way."***

[174] In relation to the question of whether the measure strikes a fair balance between the rights of the individual and the interest of the community, that question must be answered in the negative. Bearing in mind the finding that there is no rational connection between the measure and the objective, there can be no question of a fair balance having been struck between the rights of the individual and the interest of the community. Further, bearing in mind the individual and societal benefits to be reaped from the successful induction and maintenance of a patient on OST, the individual's rights and the community's interests coincide and both are, in effect, harmed by this measure. In summary, the discriminatory treatment fails the proportionality test, it is manifestly without reasonable foundation and is, therefore, in breach of article 14.

[175] The first applicant is, therefore, entitled to a declaration that by reason of the difference in treatment provided to the first applicant as a prisoner who seeks to be assessed in relation to his suitability for commencement of OST as a treatment for opiate addiction compared to the treatment provided to a patient in the community in an analogous situation and the failure of the state to provide the first applicant with an assessment of his suitability for OST in prison, the respondent Trust has unlawfully discriminated against the first applicant in breach of article 14 of the Convention when read together with article 8 the Convention and in addition to such a declaration, the first applicant's entitlement to Convention based damages in the form of just satisfaction will have to be determined. It may well be that an appropriately worded declaration will also constitute just satisfaction of the first applicant's claim. The court will allow the parties some time to attempt to formulate the appropriate declaration for approval by the court and the court also encourages the parties to discuss the issue of the entitlement to damages in addition to a declaration, and if there is agreement as to the entitlement to damages, the court encourages the parties to give consideration to the appropriate level of damages and, if possible, to agree same. In the absence of such agreement, the court will convene another hearing to allow the issue of what is required to constitute just satisfaction in the circumstances of this case to be addressed, and to make a further determination of this issue in light of any submissions received.

[176] If I am wrong in my assessment of the second applicant's entitlement to a declaration that there has been a breach of the substantive provisions of article 3 or article 8 of the Convention then the approach adopted by the court in respect of the first applicant's article 14 claim applies equally to the second applicant and that means that he would succeed in his article 14 in conjunction with article 8 discrimination case in any event.

[177] The issue of costs will be addressed when I have finalised the declarations which will issue in these cases and have determined the issues of the entitlement to and quantum of damages or recorded the parties' agreement in respect of these issues.

Ghost Platform: Dozens Arrested as Crime Message Network Dismantled

More than 50 people have been arrested as part of a major international investigation which dismantled an encrypted communication platform. The platform, known as Ghost, was used to facilitate a wide range of criminal activities, including large-scale drug trafficking, money laundering, instances of extreme violence and other forms of serious and organised crime.

Europol and Eurojust, together with international law enforcement, worked together to carry out the operation. Over the course of the investigation, 51 suspects were arrested, including 38 in Australia, 11 in Ireland, one in Canada and one in Italy belonging to the Italian Sacra Corona Unita mafia group. Europol also said a number of threats to life were prevented and a drug laboratory in Australia was dismantled. Weapons, drugs and over €1m (£842,270) in cash were also seized globally so far, the body added.

Expulsion from Switzerland of National of Bosnia/Herzegovina Breached ECHR

In Chamber judgment1 in the case of P.J. and R.J. v. Switzerland (application no. 52232/20) the European Court of Human Rights held, by 5 votes to 2, that there had been: a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights. The case concerned a national of Bosnia and Herzegovina's expulsion from Switzerland following his conviction for drug trafficking. The Court found in particular that the national courts had failed to carry out a careful balancing of the individual and public interests in the case. They had focused their assessment on the nature and gravity of the offence, without weighing in the balance other aspects to the case such as the fact that the applicant had no criminal record and had only been given a suspended sentence, the fact that he had secured stable employment after his conviction and had shown good behaviour from then on and the adverse impact of the expulsion on his family.

Principal Facts: The applicants are a married couple: Mr P.J. who was born in 1983 and is a national of Bosnia and Herzegovina; and, Ms R.J. who is Serbian and was born in 1986. Mr P.J. currently lives in Bijeljina (Bosnia and Herzegovina), while Ms R.J. lives in Langnau am Albis (Switzerland) with their two daughters, born in 2014 and 2016. Ms R.J. has lived in Switzerland all her life. She and her daughters were granted Swiss nationality in 2021. The applicant couple married in 2013 and Mr P.J. moved to Switzerland. He was arrested in 2018 while transporting cocaine for a third party. The District Court of Zurich subsequently found him guilty of drug trafficking. The court gave him a suspended prison sentence, taking into account that he had a clean criminal record, had been cooperative in the proceedings and was unlikely to reoffend. The court also ordered his compulsory expulsion from Switzerland for five years under the relevant domestic law (Article 66a of the Swiss Criminal Code).

All Mr P.J.'s subsequent appeals were unsuccessful. The courts found that although he had probably not been involved in large-scale drug trafficking, his offence was serious because he had transported a large quantity, 194 grammes, of cocaine, thus endangering others and public safety. Moreover, his resettlement in Bosnia and Herzegovina would not amount to any particular personal hardship given that he was not well integrated into Swiss society: he had arrived in Switzerland at the age of 30, spoke little German and up until his conviction had only had temporary jobs. His main interest in remaining in Switzerland was his family, but his children were young and could adapt to a new environment, while his wife, who was a qualified nurse, could easily integrate professionally in Bosnia and Herzegovina. Mr P.J. was expelled from Switzerland in July 2021.

Decision of the Court: The Court reiterated that States had the right and the power to expel a lawfully resident alien who had committed a criminal offence on their territory. The national courts had to give sufficiently detailed reasons for such a decision, striking a fair balance between the individual and public interests. It found, however, that in imposing and upholding the five-year expulsion in the case at hand the national courts had not satisfactorily applied the Court's case-law mandating such a balancing exercise. The courts had failed to give due weight to Mr P.J.'s low level of culpability, the fact that his sentence had been suspended, his lack of a criminal record, his status as a long-term immigrant and the adverse impact of the expulsion on his family. Moreover, the courts had only focused their assessment on the nature and gravity of the offence, without taking into consideration that Mr P.J. no longer posed a threat to public safety. In particular, shortly after his conviction, he had found a full-time job which he had kept until his expulsion. He had had no subsequent administrative or criminal offences, demonstrating his rehabilitation and commitment to lawful conduct.

The Court therefore held that there had been a violation of Article 8. Just satisfaction (Article 41)

The Court held that Switzerland was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 15,000 in respect of costs and expenses.

Knife Crime Campaigner Wins Met Police Payout Over Wrongful Strip-Search

Nadine White, Independent: Faron Paul, 38, was subjected to a cavity search by six white, male officers in 2021. He's been paid but the police haven't apologised. He won damages from the Met after being strip-searched by officers, The Independent can reveal. He was paid £9,000 following his ordeal where he was subjected to a cavity search by 6 white, male officers at Charing Cross police station after being arrested during a traffic stop in October 2021. Referring to the strip-search incident, Mr Paul, who has been independently running a knife amnesty scheme in London called Faz Amnesty, claimed the officers involved "were on apower trip". It upsets me because the officers knew exactly who I was and the work that I do in the community, Yet they chose to take advantage of and racially profile me, then made malicious allegations against me, that I had to fight against to prove that they were the aggressors in the situation that they tried to make me liable for. Fighting back has made me feel as though I've reclaimed some of my power." Mr Paul's partner was also wrongly strip-searched, he said, but the Met Police has failed to apologise to either of them for their ordeal. "I didn't get an apology," he told The Independent. "They'd rather pay money and drag [out] a payout for two years than make a public apology," he said. "I wish I knew then what I know now. I've been wrongly strip-searched several times before and didn't know how to challenge it; strip-searches and racial profiling by the police are normalised. But now I know that what they did was wrong and it'll never happen to me again, or any of my family or friends – and if it does, I'll hold the police accountable again. I think many people have a Black family member or friend who has been illegally strip-searched."

Black adults in London are nearly four more likely than white adults to be strip-searched by police, official data shows, while Black children across England and Wales are up to six times more likely than white children to be strip-searched. When asked if he has mixed feelings about working with the government following the strip-search incident, Mr Paul said "yes" but explained that he's dedicated to helping communities and optimistic about the new Labour government's commitment to tackling knife crime. The summit was positive but it's early days," he said. "I look forward to holding the government to account on what they say they'll do, moving forward. I'll have an eagle eye on it. I'm impressed; we had the last government for 14 years and they never called once during the whole time that I was running Faz Amnesty. In fact, they went against banning zombie knives. This summit was more about all the conversations being brought into action. It's a good start but time will tell how effective the summit is going to be."

On the strip-search payout, a Met Police spokesperson said: "A civil claim was settled without admission of liability. The claim relates to a matter in October 2021 where a 36-year-old man was charged with criminal damage, assault on police and using threatening or abusive words or behaviour likely to cause harassment, alarm or distress (public order offence)The man was later convicted of the public order offence and criminal damage. The charge regarding assault on police was dismissed at court. Part of the claim related to a strip-search in custody. Improving how we carry out strip-searches is a key focus for the Met with new policy and guidance introduced in May 2022."

Ibukun Adebowale Adegboyega - £203,995.24 Damages For

1) His unlawful detention at Brook House IRC(Brook House) for 88 days
2) Trespass to the person on 5 June 2017
3) Violation of his rights under Article 3 ECHR during the period of unlawful detention
4) Psychiatric injury suffered as a result of his unlawful detention
5) Breach of his rights under Directive 2004/38/EC (the Directive) Immigration Regulations
6) Violation of his rights under Article 8 ECHR