Neutral Citation Number: [2022] EWHC 1847 (Admin)

Case No: CO/4057/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 July 2022

Before :

Mr Justice Johnson

- -

Between :

The Queen
on the application of
MG **Claimant**

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT **Defendant**

-and-

MEARS GROUP PLC **Interested Party**

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Nick Armstrong and Camila Zapata Besso (instructed by Duncan Lewis) for the Claimant
Lisa Giovannetti QC and Jack Holborn (instructed by Government Legal Department) for the Defendant
Benjamin Tankel (instructed by Plexus Law) for the Interested Party

Hearing dates: 29 – 30 June 2022

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Approved Judgment

Mr Justice Johnson:

1. The claimant seeks asylum in the United Kingdom. He was provided with accommodation by the defendant at the Park Inn Hotel in Glasgow ("the Park Inn"). Others seeking asylum, including Badreddin Adam, were also residing at the Park Inn. On 26 June 2020, Mr Adam stabbed six people, including the claimant. Mr Adam was shot dead by police. The claimant sustained a serious injury which resulted in the removal of his spleen and on-going psychological consequences.

2. The claimant says that the obligations that arise under article 3 of the European Convention on Human Rights ("ECHR") (the prohibition of inhuman and degrading treatment) require the defendant to commission an independent investigation into the events which culminated in the attack. The defendant disagrees, saying that article 3 does not impose a duty to investigate these events, and, anyway, the events have been investigated by the police, are being investigated by the Scottish Fatalities Investigation Unit ("SFIU"), and the claimant could bring a civil action for damages. The claimant seeks judicial review of the defendant's refusal to initiate an investigation.

Legal framework

Asylum support

3. Section 95(1)(a) Immigration and Asylum Act 1999 empowers the defendant to provide support for asylum seekers who are destitute. By section 96(1)(a) such support may include the provision of adequate accommodation for the needs of the supported person. Where support is provided to a vulnerable person, the defendant must take account of that person's special needs: regulation 4(1) of the Asylum Seekers (Reception Conditions) Regulations 2005. A vulnerable person is defined in regulation 4(3). The definition encompasses "a person who has been subjected to torture… or other serious forms of psychological [or] physical… violence… [and] who has had an individual evaluation that confirms he has special needs."

Human Rights Act 1998

4. Section 6(1) of the Human Rights Act 1998 requires public authorities to act in a way that is compatible with "Convention rights". By section 1(1)(a) of the 1998 Act, the Convention rights include articles 2 and 3 ECHR. Article 2 protects the right to life. Article 3 prohibits torture and provides that no one shall be subjected to torture or to inhuman or degrading treatment ("IDT") or punishment.

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." The parties agree that so far as the present case is concerned, there is no practical difference between the positive obligations that arise under article 2 on the one hand, and article 3 on the other hand.

6. Systems obligation: The authorities establish that:

(1) The state must put in place a system that protects life and safeguards against IDT: *Van Colle v Chief Constable of the Hertfordshire Police* [2008] UKHL 50 [2009] 1 AC 225 *per* Lord Bingham at [28], and *MC v Bulgaria* (2005) 40 EHRR 20 at [149].

(2) This systems obligation operates at different levels: *Smith v Ministry of Defence* [2013] UKSC 41 [2014] AC 52 *per* Lord Hope at [68].

(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: *Osman v United Kingdom* (1998) 29 EHRR 245 at [115].

(4) In certain situations, public authorities fall under a "lower level" duty to adopt administrative measures to safeguard life: *Smith* at [68].

(5) Such additional administrative measures are required in the context of any activity in which the right to life may be at stake: *Öneryildiz* at [71].

(6) In particular, the lower level duty arises whenever a public body undertakes, organises or authorises dangerous activities: *Öneryildiz* at [71]. It also arises in the context of public health and social care: *Calvelli and Ciglio v Italy* (2002) (Application No 32967/96), *Dodov v Bulgaria* (2008) (Application no. 59548/00). It also arises in cases where a public body is responsible for the welfare of individuals within its care and under its exclusive control – particularly young children who are especially vulnerable: *Ilbeyi Kemaloğlu and Meriye Kemaloğlu v Turkey* (2012) (Application no 19986/06) at [35].

(7) The contexts in which such additional measures are required therefore include hospitals (*Calvelli*), prisons (*R (Scarfe) v Governor of Woodhill Prison* [2017] EWHC 1194 (Admin)), the detention of mentally ill persons (*Renolde v France* (2009) 48 EHRR 42 at [84]), immigration removal centres (*R (CSM) v Secretary of State for the Home Department* [2021] EWHC 2175 (Admin) [2021] 4 WLR 110), military operations (*R (Smith) v Secretary of State for Defence* [2010] UKSC 29 [2011] 1 AC 1), dangerous industrial activities, such as the operation of waste collection sites (*Öneryildiz* at [71]) or building sites (*Pereira Henriques and others v Luxembourg* (2003) (Application No 60255/00)), safety on board a ship (*Leray and others v France* (2008) (Application No 44617/98)), packs of stray dogs which were known to be a public health and safety issue (*Georgel and Georgeta Stoicescu v Romania* (2011) (Application No 9718/03)), derelict buildings (*Banel v Lithuania* (2013) (Application No 14326/11)), road safety (*Rajkowska v Poland* (2007) (Application No 37393/02)) and flooding reservoirs giving rise to a risk of drowning (*Kolyadenko v Russia* (2013) 56 EHRR 2).

(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: *Banel* at [65].

(9) Where the lower level system obligation arises, the public authority must implement measures to reduce the risk to a reasonable minimum: *Stoyanovi v Bulgaria* (2010) (Application No 42980/04) at [61]. The content of this duty depends on the particular context and what is required adequately to protect life. It may involve ensuring that competent staff are recruited, that they are appropriately trained, that

suitable systems of working are in place, that sufficient resources are available and that high professional standards are maintained. It may also involve regulatory measures to govern the licensing, setting up, operation, security and supervision of the activity in question, together with procedures (depending on the technical aspects of the activity) for identifying shortcomings in the processes concerned and any human error: *Öneryildiz* at [89] - [90].

(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 choices made by public authorities in terms of priorities and resources: *Osman* at [116].

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: *Osman* at [116], *Z v United Kingdom* (2002) 34 EHRR 3.

(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: *Van Colle per* Lord Phillips CJ at [86]. It might also extend to risks that the public authority would have appreciated if it had carried out reasonable enquiries: *Van Colle per* Lord Bingham at [32].

(3) Serious physical assaults causing significant harm amount to IDT for these purposes: *Šečić v Croatia* (2009) 49 EHRR 408 at [50] - [51], *DSD v Commissioner of Police of the Metropolis* [2018] UKSC 11 [2019] AC 196 *per* Lord Neuberger at [128].

(4) A risk may be "real" if it is substantial or significant, but not if it is remote or fanciful: *Rabone v Pennine Care NHS Trust* [2012] UKSC 2 [2012] 2 AC 72 *per* Lord Dyson at [38].

(5) A risk that is "present and continuing" may amount to an immediate risk: *In re Officer L* [2007] UKHL 36 [2007] 1 WLR 2135 *per* Lord Carswell at [20].

(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 at [15], *G4S Care and Justice Services Ltd v Kent County Council* [2019] EWHC 1648 (QB) at [74] – [75], *R (Kent County Council) v HM Coroner for the county of Kent* 2012] EWHC 2768 (Admin) at [44] - [47], and compare the facts of *Osman* and *Van Colle.*

(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: *Mitchell v Glasgow City Council* [2009] UKHL 11 [2009] 1 AC 874 *per* Lord Hope at [33].

(8) It is not necessary that the identity of the target of the risk is identifiable in advance of the risk materialising: *Sarjantson v Chief Constable of Humberside Police* [2013] EWCA Civ 1252 [2014] QB 411 *per* Lord Dyson MR at [25].

(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: *Osman* at [115].

(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: *Kurt v Austria* (2022) 74 EHRR 6 at [159].

8. Investigation 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 and punishment of those responsible – *DSD per* Lord Kerr at [24].

(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: *R (AP) v HM Coroner for Worcestershire* [2011] EWHC 1453 (Admin) *per* Hickinbottom J at [60].

(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: *Jordan v United Kingdom* (2003) 37 EHRR 2 at [105].

(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: *R (Amin) v Secretary of State for the Home Department* [2003] UKHL 51 [2004] 1 AC 653 *per* Lord Bingham at [31]. 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 of non-State agents: *DSD v Commissioner of Police of the Metropolis* [2015] EWCA Civ 646 [2016] QB 161 *per* Laws LJ at [45].

(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 decisions. They must take all reasonable steps available to them to secure the evidence: *R (AM) v Secretary of State for the Home Department* [2009] EWCA Civ 219 *per* Sedley LJ at [32].

(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: *Jordan* at [107].

(7) An investigation must be conducted by a person or body that is institutionally, hierarchically, and practically independent from those involved in the events: *Al-Skeini v United Kingdom* (2011) 53 EHRR 18 at [167].

(8) A victim (or the 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: *Al Skeini* at [167].

(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: *VO v France* (2005) 40 EHRR 12 at [90], *Mastromatteo v Italy* (2002) (Application no 37703/92) at [90], [94] - [95].

(10) An investigation must take place within a reasonable time: *Al Skeini* at [167].

Factual background

Arrangements for provision of accommodation

9. In order to discharge its statutory obligations under section 95 of the 1999 Act, the Government entered into "Asylum Accommodation and Support Services Contracts" with service providers. The service provider for Scotland is the interested party ("Mears"). The Government also entered into an "Advice, Issue Reporting and Eligibility contract" ("AIRE") with Migrant Help, to ensure that "service users" (ie those accommodated by service providers) are provided with impartial and independent information, advice guidance and assistance. A "Safeguarding Hub" forms a link between the defendant and the statutory agencies responsible for safeguarding adults and children: local authorities, health and police. Any safeguarding issue should be reported to the hub which is then responsible for engaging with the relevant statutory agency to ensure that the service user has access to longer term support.

10. The contract with service providers includes a statement of requirements. These include provisions requiring the service provider: to be proactive in monitoring and identifying service users with specific needs or who are at risk, to respond appropriately to the needs of service users, to report serious incidents to the defendant within 4 hours, to take appropriate and necessary action to assure the safety and wellbeing of service users to the extent that is put at risk by anti-social or violent behaviour, and to ensure that all staff are trained in (amongst other matters) safeguarding.

11. In August 2020, there were around 60,000 service users in the United Kingdom, including around 5,000 in Scotland. Glasgow was the only local authority in Scotland that had agreed to accommodate asylum seekers, so all service users in Scotland had to be accommodated in Glasgow. There is a shortage of suitable accommodation for service users in Glasgow.

12. In March 2020 restrictions were imposed on freedom of movement because of the covid-19 pandemic. In order to reduce movements, and the impact on local authorities, those who had their asylum claims decided, and would not ordinarily continue to be eligible for accommodation, remained accommodated by service providers. This was part of a broader "Everyone In" campaign which aimed to ensure that emergency

housing was available for those who would otherwise be rough sleepers. This resulted in a substantial increase in the accommodated asylum population, with a commensurate drain on the available accommodation. As a result, the defendant sought to use hotels to ensure there was sufficient capacity. By 2 July 2020, 50 hotel sites, with approximately 5,000 beds, had been procured. In addition, service users were moved from temporary serviced apartments and into hotel accommodation. This was to ensure that they had access to food, onsite advice and wellbeing support, translation services, and accommodation that allowed for self-isolation. It also minimised the need for service users and Mears staff to travel and facilitated the maintenance of social distancing measures.

13. The move to hotels took place quickly and it appears that there was little by way of engagement with the individual service users in advance of them being moved to hotels. In a subsequent report it was acknowledged that "the move from self-contained accommodation to hotels could have been handled more sensitively."

14. Not all service users were moved. An assessment identified 102 service users who were vulnerable (see paragraph 3 above). They were moved to "dispersed accommodation" rather than hotels.

15. Those who were accommodated at the Park Inn signed an occupancy agreement with Mears. This made it clear that Mears was providing the accommodation, on a temporary basis, on behalf of the defendant. Mears agreed to ensure that the accommodation was in a reasonable state of repair, and to provide a day-to-day housing management service to deal with and resolve any issues relating to the accommodation.

16. Staff at Mears, and staff at the hotels, were not medically trained and, in particular, had no mental health training. There is reference in the evidence to "safeguarding training" but no detail as to what that involved. Service users were provided with access to medical help via the NHS. Glasgow City Health and Social Care Partnership is responsible for the Asylum Health Bridging Team ("AHBT") which provides all asylum seekers with screening health assessments, access to GP services, dental registration, access to specialist mental health services and, where appropriate, onward referral to specialist health services. The screening health assessments include identifying potential victims of trafficking, torture and other forms of trauma. If the initial screening assessment identifies a need for mental health services input, then a referral to a nurse is made.

17. The hotels used by the defendant for these purposes included the Park Inn. Reception staff, employed by the hotel, were on site 24-hours a day. Housing managers, employed by Mears, were present at the hotel during weekday office hours.

18. Mr Adam and the claimant did not have their own source of funds. They were therefore reliant on the hotel, Mears, the AHBT and Migrant Help for food, hygiene products and any necessary medication. The Park Inn provided full-board accommodation to service users. There were complaints about the quality of the food, and that, during Ramadan, the hotel kitchen was shut by the time of sunset, and only cold food was available. There were also complaints about the waiting time to get through to Migrant Help on the phone (albeit there is evidence that in June 2020 around three quarters of calls were answered within 180 seconds). There is evidence that the main hotel door was locked between 11pm and 6am. SL, who was also a service user at the Park Inn, and who

provided evidence for the claimant, says he complained about this and that he was permitted to go outside after 11pm, but only if he stayed near the door and kept it open. He made use of that facility, sometimes remaining outside with a group of others chatting until 1am or 2am.

19. Welfare teams were in each hotel and met each service user each day to check that they were well, eating and had access to any necessary hygiene products. SL says that he made many complaints, and that staff always did their best. For example, he complained that the shampoo bottle in his room seemed to be out of date; it was explained to him that the bottle was replenished with shampoo from bottles that were in date. He was unhappy that he was told that he could take drinking water from the tap (which he thought was undignified), rather than being provided with bottles of water.

20. By 24 June 2020 it was being reported that tensions were beginning to emerge, mainly due to the length of time that service users had remained in a hotel, but these were being addressed. This is consistent with the evidence of SL that individuals were becoming increasingly agitated and sometimes aggressive with each other, and that they "felt like prisoners who were not being listened to."

Mr Adam's arrival in UK

21. Mr Adam was a national of Sudan. On his account, he left Sudan in January 2017 and travelled to Libya, and then Italy. He travelled to Germany in August 2017 and claimed asylum. He says he left Germany in May 2019 and travelled to France, and then to the Republic of Ireland, and then to Belfast. On 7 December 2019 he attempted to leave Belfast on a ferry to Scotland but was arrested on suspicion of being liable for removal from the United Kingdom. He claimed asylum. He was detained under immigration powers. On 9 December 2019 he underwent an asylum screening interview (and his representatives provided supplementary information). He said he had been arrested in Sudan, and hit on the head, and that he was sometimes forgetful. He said that when he was in Libya he was forced to work for no money. He also said that he had previously broken his pelvis, and this caused him pelvic pain.

22. On 11 December 2019 Mr Adam was released from detention and provided with accommodation in Belfast. He was granted support under section 95 of the 1999 Act. In his application for support, he said he had difficulties with his pelvis, but did not identify any other mental or physical health concerns. He complained that another resident was slamming the doors at night. He travelled to England where, on 13 February 2020, he sought to claim asylum in Croydon using an alias. His true identity was revealed from biometric checks. He said he did not want to return to the accommodation that had been provided in Belfast because people were banging on his door at all hours of the night. He also said he had a stomach ulcer.

23. Mr Adam was moved to the Park Inn on 10 April 2020. An occupancy agreement was made between Mr Adam and Mears. Mr Adam had not been assessed as vulnerable within the meaning of regulation 4(3) of the 2005 Regulations (see paragraph 3 above). There is no clear evidence that individualised vulnerability assessments were being carried out at the point at which service users were moved to hotels (Mears' chief operating officer at one point said that a blanket decision had been made to move people to hotels without assessments, but this statement was later retracted). It appears that pregnant women and family groups were not moved to hotels. There is nothing to

suggest that the defendant knew, or ought to have known, that Mr Adam had any particular special needs such that hotel accommodation was unsafe for him.

24. In April 2020 Mr Adam contacted the Home Office, Mears and Migrant Help on many (on one count, 72) occasions, including to complain about physical symptoms (fever, sore throat, sore tummy, shortness of breath, swollen neck). He was given advice (to self-isolate in his room, take paracetamol and rest, and to call 111 for advice). Arrangements were made for food to be taken and left outside his room. On 26 April 2020 a housing manager recorded that Mr Adam had been complaining of possible covid symptoms and indicated that she thought that his "issues may have a psychological element to them."

25. By the end of April 2020 Mr Adam had been self-isolating for 3 weeks but was not apparently improving, although he no longer had symptoms of covid-19. He was seen by a community psychiatric nurse who confirmed that he did not have a fever or covid symptoms and just had a sore throat. He was advised that he did not need to self-isolate any longer. On 7 May 2020 he applied to return voluntarily to Sudan. This was approved, although there were, at that time, significant restrictions on international travel. On 11 May 2020 he said that he was being mistreated in the accommodation.

26. On 17 June 2020 Mr Adam complained that he could not afford a train ticket to travel to London to obtain identification documents from the Sudanese Embassy. On 24 June 2020 he contacted Migrant Help and asked to be returned to Sudan, but the call was disconnected.

The claimant's arrival in the United Kingdom

27. The claimant is a national of the Ivory Coast. He says that he came to the United Kingdom on 1 December 2019. He was subject to an asylum screening interview on 1 June 2020. He said that he felt safe in his accommodation, that he did not have any medical needs and that he had never been exploited or had reason to believe that he was going to be exploited. He said that before he came to the United Kingdom his father had sent some men to beat him up and that they then ran away. On about 3 June 2020 the claimant was moved to the Park Inn.

Events of 25-26 June 2020

28. At 5pm on 25 June 2020 Mr Adam told SL that his mood was low and said (but "without any particular feeling") that he "wanted to stab people." SL did not know how seriously to take the threat. He struggled to think of who to call. He decided to speak to Mr Adam's interpreter. He was not able to make contact immediately and he went to the park to meet friends. He returned at around 8.30-9pm. Mr Adam's interpreter returned SL's call about 2 hours later and said that even if it was a joke, it was still important to report it. SL then informed a member of hotel reception staff who said he would report it. At 11.27pm (so, on SL's timings, shortly after SL had reported this) that member of hotel reception staff spoke to a Mears operator on the telephone and said that they had had a complaint "from a couple of residents" that "one of the… residents was threatening to stab or attack the rooms around him…. He's gonna stab whoever's making a noise…" and asked to speak to an out of hours representative or to "anyone who could come in and kinda deescalate the situation". They were told that they would be called back. At 11.33pm the Mears operator left a voicemail with the Mears housing

manager to say that one of the residents at the Park Inn was making threats to stab other residents, and that the hotel wanted to speak to the housing manager about that.

29. At 11.43pm the Mears operator called Michelle Jabar, Mears' housing manger and explained what had happened. Ms Jabar responded "I should be able to speak him down, calm him down for tomorrow because I'll just tell him I'll call the police. Yea I'm not having that." Ms Jabar then spoke to Mr Adam. He was "very arrogant" and said he wanted an interpreter. She contacted a Sudanese interpreter and tried to call Mr Adam again, but he did not answer the call. She then called the hotel. The receptionist said that they were happy that it could be dealt with in the morning. Ms Jabar made a written report setting out the details of what had happened. On a tick box form she indicated that this was a "dispute between service users." She did not tick the boxes for "safeguarding issue" or "violent or aggressive behaviour involving a service user." She did not call the police or the defendant.

30. Malcolm Brown is a Dispersed Accommodation Team Manager for Mears. He worked at the Park Inn each weekday morning, usually arriving at around 8.30am. When he arrived on the morning of 26 June, he read Ms Jabar's report. Mr Brown spoke to one of the receptionists who said that he was not worried because Mr Adam was in his room and had been very quiet. Mr Brown then went to speak to the two men who had made the complaints about Mr Adam. They said that Mr Adam had told them that he was going to attack the occupants of the rooms next door, and above, if they continued to make a noise. Mr Brown then went to speak to Mr Adam through an interpreter. He "seemed completely calm and normal." The conversation was interrupted by a telephone call to Mr Adam from his lawyer. Mr Brown told him to speak to his lawyer and then come down to speak to him.

31. At 10.51am Mr Adam's solicitors sent an email to the Safeguarding Hub (presumably as a result of the telephone conversation that they had just had with Mr Adam). They said that Mr Adam was demonstrating signs of paranoia, that this had been raised with reception staff, but he had not been able to meet with a doctor. At 12.16pm the Safeguarding Hub emailed Mears and set out the concerns that had been expressed and asked that a member of the team conduct a welfare check on Mr Adam to assist him to register with a GP. A reply was also sent to Mr Adam's solicitor seeking further details on Mr Adam's difficulties.

32. In the meantime, about half an hour after Mr Brown had spoken to Mr Adam, he came down to the reception area. He was "confused and appeared not to really understand what was being said." He said that he would walk to London to get tickets for his voluntary return to London and that he had a "sore head" and a "sore brain." He denied making threats but made complaints about the noise. Mr Brown said that if he had any complaints or matters that needed addressing, he should speak to Mears, if necessary, via the hotel staff. Mr Brown indicated that he would make arrangements for him to be seen by a medic. Mr Brown then completed an incident report, at 11.19am. The incident report records that Mr Brown had made a referral to welfare (in line with what he had said to Mr Adam). In fact, he had not made the referral at the time of writing the incident report – he intended to do so later that day. Mr Brown flagged the incident as a "safeguarding" issue but not as "violent or aggressive behaviour."

33. At around noon, Mr Adam had an "ordinary conversation" with Mr Brown about his laundry. Mr Brown agreed to find out where Mr Adam's laundry was. Mr Adam

returned 20 minutes later, Mr Brown said he had not had a chance to deal with it but would get back to him later that day. Mr Adam left the reception area again and seemed "completely normal." According to the notes of the 'Glasgow Gold Command', at this point Mears staff were swapping from the morning to the afternoon shift. If so, there were three housing managers on site, the two from the afternoon shift, and one from the morning shift who had not yet left. A mental health nurse from the AHBT was also on site. There were also four hotel staff on site: a maintenance manager, two porters and a server (who was also a first aider).

34. About 20-30 minutes later (so at around 12.40-12.50pm), Mr Adam attacked the claimant outside the hotel. Mr Adam was seen to pick up a knife from the ground. It looked like a steak knife. Mr Brown told a colleague to call 999 and left the hotel to approach the scene of the attack. A call to the police was made at 12.50pm.

35. As Mr Brown was leaving the hotel, Mr Adam came into the hotel entrance. He was completely calm. Mr Brown could not see any knife or any blood anywhere on him. Mr Brown told him to sit down and not to move until he got back and went to check on the claimant. Mr Adam just stood still. Mr Brown spoke to an emergency operator and said that the police and an ambulance were needed immediately. A colleague was assisting the claimant. Mr Brown returned to the hotel where he saw that one of the receptionists had been stabbed. Two police officers arrived, followed by more police and paramedics.

36. Mr Adam stabbed a total of six people, including the claimant and a police officer. He was shot dead by police. The precise sequence is not clear from the evidence that has been filed in these proceedings. One of the other victims of the attack has made a statement in which he says that he was stabbed on an upstairs floor of the hotel: it is not clear whether this was before, or after, Mr Adam attacked the claimant.

Investigations

37. Police Scotland investigation: Police Scotland carried out an investigation into the events of 26 June 2020. Within a day, 72 witness statements had been taken, including from 17 key witnesses, CCTV had been seized and was being investigated, and a warrant had been sought to search Mr Adam's room, and that of another person. There is no evidence as to the subsequent course of the police investigation save that ultimately no person other than Mr Adam was suspected of being criminally involved in the events.

38. Chief Inspector inspection: In 2018 (so well before the events that give rise to this claim) the Independent Chief Inspector of Borders and Immigration undertook an inspection of the defendant's management of asylum accommodation. He recommended that contracts with service providers should cover how to carry out welfare checks on service users, and how to deal with any safeguarding issues, and that the defendant should review providers' safeguarding policies so as to ensure that they reflected best practice. He emphasised the importance of information sharing and the need to ensure that all staff are fully trained for their roles. He recommended that steps be taken to capture and analyse data in relation to "particularly vulnerable groups, such as LGBTQ+ individuals, victims of torture or domestic violence, trafficking victims, and pregnant and post-partum women" to test the appropriateness of the accommodation that is provided in such cases (in particular, bedroom sharing) and to test the results of requests for specialist accommodation.

39. Heather Laing review: Following the events of 26 June 2020, Heather Laing, the Head of Asylum Operations for UK Visas and Immigration, conducted an evaluation of "accommodation and support services experienced by asylum seekers in Glasgow during COVID-19." The investigation included interviews with six service users. A document setting out Ms Laing's key findings and recommendations was disclosed in the course of these proceedings. Ms Laing drew attention to the recommendations of the ICIBI (see above) and indicated that it was not clear if they had been implemented. She identified that there was an impact on the mental wellbeing of service users as a result of the combination of previous trauma, being accommodated long term in hotels, and the covid-19 restrictions, although it was difficult to say whether this was more significant than the impact on the general population. Hotel staff had become part of the system supporting asylum seekers, but without experience or training that would enable them to identify if a service user's mental health was deteriorating. Ms Laing noted the number of times that Mr Adam had been in contact with the defendant, Mears, and Migrant Help and considered that this "should have acted as a warning." Ms Laing made a number of detailed recommendations. These included increasing the areas in Scotland in which asylum seekers can be accommodated and reviewing the training that is provided to the staff of service providers. She also made these recommendations in respect of hotel staff:

> "Where hotels are in use, it is apparent that staff in hotels become a significant part of the team that look after service users. The ability of hotel staff to understand and recognise any issues that may… is wholly dependent on any training and previous experience the individual member of staff has. As things stand, training for hotel staff is not built into the requirements when a hotel is stood up for use.
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> …
>
> Ensure an appropriate level of mental health awareness and de-escalation training is provided to hotel staff as part of the process of onboarding hotels."

40. Ms Laing considered that each of Mr Adam's enquiries was dealt with appropriately, but that there was no system in place to respond to the nature and frequency of Mr Adam's contact. She suggested that consideration might be given to the development of a system "that allows for a person centric view of interactions across the system and identifies patterns of conduct that may be indicative of behaviours that may be cause for concern." The overall conclusion to her report says:

> "Whilst the context for this was the experience of asylum seekers in Glasgow during COVID-19, it is clear that there are systemic issues to be addressed. Due consideration should be given to publishing the recommendations. It would be prudent to revisit the recommendations from the ICIBI's report and any relevant recommendations from the other lessons learned that are underway and bring them together to form a single programme of work that is managed through the Partnership Board."

41. Scottish Fatalities Investigation Unit ("SFIU"): The SFIU is a public body that is bound by the 1998 Act. It is carrying out an investigation, which it says is "underpinned by the obligations under Article 2 ECHR" to "consider the facts and circumstances of the

death of [Mr Adam] with a view to determining if [a Fatal Accident Inquiry] is required in the public interest and whether there were any systemic failures which led to his death or reasonable precautions which might have been taken to prevent it." In a letter to the claimant's solicitor dated 17 September 2021 from the Crown Office & Procurator Fiscal Service it is said that the investigation is being overseen by Crown Counsel. Once the investigation has concluded, a report will be made to Crown Counsel who will then decide whether a Fatal Accidents Inquiry is required, taking account of the obligations owed under article 2 ECHR. It said that steps are being taken to ensure that the investigation is prompt and proceeds with reasonable expedition, as required by article 2 ECHR.

Submissions

Claimant's case

42. Mr Armstrong submits that the facts of this case engage both the systems and the operational duties that are imposed by article 3 ECHR.

43. Residents of the hotel were, he says, vulnerable asylum seekers whose vulnerabilities were exacerbated by the conditions of their accommodation. The defendant had assumed responsibility for their welfare and exercised a high degree of control over them. They were dependent on the defendant for their daily needs and wellbeing. Ms Laing's conclusion that "it is clear that there are systemic issues to be addressed" demonstrates, says Mr Armstrong, that there is an arguable breach of the systems duty under article 3 ECHR. In particular, it appears that staff at the Park Inn were not trained in mental health, de-escalation or incident management. There was therefore an arguable breach of the systems duty.

44. The defendant knew or ought to have known that Mr Adam posed a real and immediate risk of harm to others. He had come from Libya (which is a known human trafficking route) and he had demonstrated symptoms of paranoia. The night before the attack there were reports that he had made threats to stab other service users. There had been arguable failings, including those identified by Ms Laing. There was therefore an arguable breach of the operational duty.

45. Mr Armstrong submits that the investigative duty therefore applies, and the necessary investigation must comply with the requirements set out at paragraph 8 above. No such investigation has been carried out or is in reasonable prospect. Ms Laing's report "is a start, but it leaves a number of gaps" and, anyway, is not independent of the defendant. The police investigation starts and ends with Mr Adam's responsibility for the stabbings. It is not examining the operational and systemic issues with which this claim is concerned. No civil claims have yet been advanced, and there might never be any civil claims. Two years on from the attacks, the SFIU investigation is ongoing, and neither the claimant nor the defendant know much about its scope.

46. The claimant therefore seeks an order to bring about an article 3 compliant investigation. Mr Armstrong stresses that this does not necessarily mean a statutory public inquiry under the Inquiries Act 2005. He accepts that there may be different ways of discharging the investigative obligation, and that it is for the defendant to determine the appropriate nature and terms of reference of any investigation.

Defendant's case

47. Ms Giovannetti QC says that article 3 ECHR is not engaged at all. She submits that it is important to leave hindsight out of account, and that there is no evidence that the defendant knew or ought to have known that hotel accommodation was unsuitable for either Mr Adam or the claimant. The defendant did not have any information prior to the attack that Mr Adam posed a risk of serious harm to others, and the factors relied on by the claimant amount to a "wholly inadequate basis for finding that there was a foreseeable real and immediate risk of the type of harm in question." The criteria for the imposition of a lower-level systems duty are not met, she says, because the claimant was not being held in detention or in circumstances akin to detention (see *Cheshire West and Chester Council v P* [2014] UKSC 19 [2014] AC 896 *per* Lady Hale at [37]).

48. If an investigation is required, then Ms Giovannetti says it is discharged by a combination of the police investigation, the availability of a civil claim for damages, and the SFIU (and the potential for a Fatal Accident Inquiry).

Is the defendant arguably in breach of the systems duty?

49. The fact that Ms Laing identified "systemic" issues does not mean that the defendant is arguably in breach of the systems duty. There is nothing to suggest that Ms Laing was using the word "systemic" in a way that was intended to convey that the lower level systems duty was engaged, or that there was a breach of that duty by the defendant. That was clearly not Ms Laing's intention. She was conducting an investigation as to the facts of what had happened and what lessons should be learned, rather than undertaking a legalistic analysis. The question of whether a systems duty arose depends on the application of the principles set out in the authorities (see paragraph 6 above) to the facts of this case, rather than Ms Laing's choice of language.

50. Mr Armstrong does not rely on the high level duty (see paragraph 6(3) above). That duty has been discharged by the laws in place in Scotland to deter and penalise offences against the person, by Police Scotland which is in a position to investigate breaches of those laws, and by the courts and judicial system in Scotland which enforces those laws. The issue is whether the lower level systems duty arises.

51. I was not shown any previous case in which a court has considered whether the lower level systems duty should apply to the housing of asylum seekers in private accommodation. It is therefore necessary to determine whether the facts of the present case give rise to such a duty. In particular (and having regard to the categories of case where a lower level systems duty has been held to apply – see paragraph 6(6) above), it is necessary to determine (1) whether the activity in question was inherently dangerous, (2) whether Mr Adam and/or the claimant were under the defendant's exclusive control, (3) whether the defendant was otherwise responsible for the health and welfare of Mr Adam and/or the claimant, and (4) whether the categories in which the lower level systems duty is owed should be expanded to accommodate the present case.

(1) Dangerous activity

52. The system that was here being operated was the housing of people who were not assessed to be vulnerable within the meaning of the 2005 Regulations. Housing people

in the same hotel is not an activity that is necessarily inherently dangerous. The position may be different if it is known that one or more of the individuals so housed is a risk to themselves or others, but that is not this case. Neither Mr Adam nor the claimant fell within that category. The fact that Mr Adam had travelled through Libya does not mean that the defendant knew or should have known that he posed any risk to himself or others. The fact that he had repeatedly complained over a long period of time of covid-like symptoms (to the point that it was suggested that there might be a psychological component) does not mean that it was dangerous to keep him in the Park Inn. He had access to medical care and saw a nurse who did not raise any concern. The case does not therefore come within the scope of the lower level systems duty on account of it being an instance of dangerous activities being undertaken by the state.

(2) Exclusive control

53. The claimant and Mr Adam were not under the defendant's exclusive control. They were not in detention. They were provided with accommodation, but they were not under a legal obligation to make use of that accommodation. The documentation is not entirely clear, but it does not appear that they were under any bail condition as to residence at the hotel (certainly, the bail forms do not clearly indicate that residence conditions were in place). Even if there was a residence condition, that does not amount to detention, and such a condition could, anyway, have been altered if they had chosen to reside elsewhere. If they did not stay at the hotel then they could be treated as having abandoned the accommodation, but that simply meant that the defendant would be entitled to suspend or discontinue the provision of accommodation: regulation 20(1)(d) of the Asylum Support Regulations 2000. They were subject to the rules of the hotel (just as the licence of any person to reside at a hotel may be subject to conditions). If the main hotel door was locked between 11pm and 6am (as SL suggests) that does not mean that Mr Adam or the claimant were thereby in state detention. There were legal restrictions on freedom of movement, but they applied to the entire population, and it is not suggested that they meant that Mr Adam or the claimant were detainees. They were (subject to any rules of the hotel, and the lockdown rules that applied to the entire population) free to come and go, to associate with others, to eat what and where they wished, and to seek or decline medical assistance as they wished. The provision of accommodation was a benefit that was designed to ensure that they did not fall into destitution. The provision of accommodation did not therefore amount to the exercise of control over service users so as to give rise to a lower level systems duty.

(3) Responsibility for health and welfare

54. At common law, and under the Occupiers' Liability Act 1957, the defendant arguably owed Mr Adam, and the claimant, a duty to take reasonable care to see that they were each reasonably safe in using the premises. The defendant was also under an obligation to ensure that they were not left destitute: *R (Limbuela) v Secretary of State for the Home Department* [2005] UKHL 66 [2006] 1 AC 396 *per* Lord Bingham at [8]. It is also clear from the documentation that in formulating arrangements for service users to access advice and healthcare, "safeguarding of the individual [was] at their heart."

55. None of that means that the defendant was under a more general legal obligation to safeguard the health and welfare of Mr Adam or the claimant. They each had autonomy and capacity to be responsible for their own well-being. The defendant provided means by which they could exercise that autonomy and capacity (by providing access to advice

and healthcare services), but the defendant was not herself responsible for their wellbeing, beyond the narrow and well-defined duties outlined above. The case is not akin to a prisoner in a prison, or a person without capacity in a care home, or a very young child in a state facility. In those cases, the state assumes a more general welfare obligation because the individual is not in a position fully to take care for their own well-being. Here, Mr Adam, the claimant and other users had the autonomy and capacity to be responsible for their own well-being so long as the defendant provided the basics of food, shelter and access to medical assistance.

56. The claimant says that the residents at the hotel were "vulnerable asylum seekers whose vulnerabilities were exacerbated by the conditions of their accommodation." Some care needs to be taken with the word "vulnerable." Mr Adam and the claimant (and many other asylum seekers) were vulnerable in the broad sense that they were outside their country of nationality and were dependent on the defendant to provide food and shelter so as to avoid destitution. But neither Mr Adam nor the claimant had been assessed as having any special needs so as to render them vulnerable within the meaning of regulation 4(3) of the 2005 Regulations. Nor is there any evidence that they in fact had such special needs such that it was unsafe to provide hotel accommodation. In any event, a lower level systems duty is not owed generally to every member of society that is vulnerable, but only to those in respect of whom a public authority has a general welfare obligation.

(4) Extension of categories

57. This case does not fall within any of the existing categories where a lower level systems duty has been found to exist. It is clear from the authorities that the categories are not closed. It is open to the courts to recognise new categories. The domestic courts are not precluded from doing so just because Strasbourg has not yet been confronted with a case that raises the issue. It is therefore necessary to seek to identify the essential features of the cases where Strasbourg has so far recognised the existence of a systems duty, to see whether the cases give some clue as to why the lower level systems duty has been found to exist in certain circumstances, and to assess whether those circumstances are present on the facts of this case: cf *Rabone per* Lord Dyson at [21] – [22].

58. At a very general level, it is clear that the duty is imposed where that is necessary to give effect to the obligation under article 2 to ensure that the lives of everyone within the jurisdiction are protected by law. It is not imposed where that would give rise to an impossible or disproportionate burden on public authorities or would unduly fetter the operational choices made by public authorities in terms of priorities and resources. But, as Lady Hale observed in the related context of identifying the circumstances where the operational duty applies, "[s]uch broad statements of principle are hard to interpret and even harder to apply": *Rabone* at [94]. More granular assistance is available from Lady Hale's analysis, in *Rabone*, as to the circumstances in which the operational duty applies. That emphasises the importance of individual autonomy (which ordinarily weighs against the imposition of such a duty) (see at [95]). The removal of liberty means that the individual is not able fully to exercise that autonomy, justifying the imposition of additional duties on the state in that context (see *R (NB) v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin) *per* Linden J at [252]). Those in state care who are very young, and those without capacity, are likewise unable fully to be responsible for their own well-being. Where someone embarks on a dangerous activity,

they are reliant on those responsible for the activity to ensure that it is conducted safely, and on the state to ensure that there is a sufficient regulatory framework in place. The removal or curtailment of individual autonomy, considered in a broad sense, seems to me to be the underlying theme that explains the imposition of a lower level systems duty.

59. Here, there was no relevant removal of the claimant's autonomy or that of Mr Adam. Neither of them was reliant on the defendant for their own well-being, save to the extent of avoiding destitution and providing access to medical care. Everybody is at residual risk from the violent and criminal actions of others. The risk that materialised in this case was no different in principle from the risk that might impact on anybody. The risk engages the high level systems duty to maintain laws that deter and penalise offences against the person. Where the risk materialises, the state provides a general system of compensation: section 1 of the Criminal Injuries Compensation Act 1995. The risk does not, however, engage the lower level systems duties in respect of matters such as regulation and training.

60. Accordingly, the claimant has not shown that there is an arguable breach of the systems duty.

Is the defendant arguably in breach of the operational duty?

61. Up until the evening of 25 June 2020 there was no indication that Mr Adam posed a real and immediate risk of harm to the claimant or to anyone else. Nor was there any indication that the claimant was at a real and immediate risk of harm from anyone else. The threshold condition to trigger the operational duty (see paragraph 7 above) was not therefore met at any point prior to the evening of 25 June 2020.

62. That evening, reports were made that Mr Adam had threatened to stab other service users, and Mears were made aware of these reports. I am content to assume (but without deciding the point) that Mears and Park Inn staff were discharging public functions of a public nature, and were therefore public authorities within the meaning of section 6(3)(b) of the Human Rights Act 1998, and/or that the defendant is to be treated as knowing information that was provided to Mears and Park Inn staff (see *R (DMA) v Secretary of State for the Home Department* [2020] EWHC 3416 (Admin) *per* Knowles J at [99] – [100], *Ali v Serco* [2019] CSIH 54 *per* Lady Dorian at [55]).

63. The question that then arises is whether, at some point from the evening of 25 June 2020, it was known that Mr Adam posed a real and immediate risk to the lives of other service users and whether there was a failure to take reasonable steps in response.

64. A threat to commit an assault does not necessarily give rise to a real and immediate risk to life in the *Osman* sense. The facts of *Osman* themselves demonstrate that (see at [105] and [120]): Paget-Lewis, the assailant, had threatened on three occasions that he intended to commit a murder, and to do "a sort of Hungerford" and "that he was on the verge of committing some terrible deed" and that he "was in danger of doing something criminally insane" and yet the operational duty was not triggered.

65. Everything, however, depends on the precise facts, and there are gaps in the evidence (hence the claimant's demand for a further investigation). Moreover, there is scope for the application of the living Convention to develop, such that facts such as those in

Osman should now be regarded as capable of triggering the operational obligation – "more can be expected from the authorities today than in 1998": *Van Colle v United Kingdom* (2013) 56 EHRR 23 at OI-5 (Concurring opinion of Judge Garlicki). Further, whatever the position might have been in the evening of 25 June 2020, the following morning there was the concern expressed by Mr Adam's solicitor, and Mr Adam clearly did pose a real and immediate risk to life once he embarked on his extended rampage from around 12.50pm on 26 June 2020.

66. At whatever stage it can be said that it should have been appreciated that Mr Adam posed a real and immediate risk to life, it will also need to be shown that there was an arguable failure to take reasonable steps in response. I do not consider that the claimant has discharged this low threshold. At the time the threats were made they were appropriately and timeously reported, an assessment was made that there was no immediate need for any positive action that night and appropriate steps were taken (recording the incident and determining to speak to Mr Adam in the morning). That decision turned out to be correct: there was no incident that evening or overnight. There is no evidence that anything turned on the way in which the reports were categorised. It is a matter of judgement whether they should have been labelled as "safeguarding" or "violent or aggressive behaviour" or "dispute between service users." More important is that the incident was accurately recorded and communicated to Mears.

67. The following morning, Mr Adam was not initially acting in any way that could reasonably be thought to give rise to any particular level of risk. The information provided by his solicitors did not in terms identify any risk of violence and there was an appropriate response with a view to providing assistance to Mr Adam. The nature of the information, without the benefit of hindsight, did not call for an absolutely immediate response.

68. As soon as Mr Adam started his attack the police were called. The staff who were present at the hotel did not have protective equipment, and there is no evidential basis for suggesting that they should have had such equipment (such as body armour to protect against a knife attack). In the absence of such equipment, it is not reasonable to expect them to have physically intervened or to do more than they did – which is to call the police and seek to persuade Mr Adam to stay put.

69. Accordingly, the claimant has not demonstrated that the defendant is arguably in breach of the operational duty.

Is the defendant required to commission an independent investigation?

70. The claimant suffered serious violence as a result of the criminal acts of a third party. That means that a police investigation was required (see paragraph 8(1) above). That investigation has taken place. There is no suggestion that it was in any way deficient. A police investigation is the appropriate means of identifying responsibility for a criminal offence and (where appropriate) enabling a criminal prosecution to take place. It is not an effective mechanism for identifying non-criminal systemic failing on the part of state authorities that may have led to the criminal attack. That requires a different type of investigation.

71. There may be good reason to carry out an investigation into the events that resulted in the claimant's injuries. There is evidence that the accommodation of asylum seekers by

the defendant has given rise to consequences which were not fully foreseen. There is also evidence that the restrictions on freedom of movement that were introduced as a result of the covid-19 impact may have had unforeseen impacts on asylum seekers. That is demonstrated by the targeted work of Heather Laing. A broader independent investigation might well identify further lessons to be learned so as to enable systemic improvement. The defendant has power to commission such an investigation and has a wide discretion as to its format and terms of reference. In deciding whether to exercise the power to commission an investigation, the defendant must act lawfully. The defendant's discretionary judgement as to whether to initiate an investigation is subject to the supervisory jurisdiction of the court – see Public Inquiries, Jason Beer QC (2011, OUP) at 2.170. The court may intervene where the defendant's decision is unreasonable in the sense explained in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223. Here, the claimant does not seek to pursue a challenge on that basis.

72. The only basis on which it is said that an investigation is required is because the defendant is arguably in breach of the systems obligation and/or the operational obligation. For the reasons given above, it has not been shown that the defendant is arguably in breach of either of those obligations. It follows that this claim will be dismissed.

73. If, contrary to the conclusion I have reached, the defendant is arguably in breach of the systems obligation or the operational obligation then it is necessary for a Convention compliant investigation to take place. The criminal investigation is not sufficient, because it concerned the actions of Mr Adam rather than the question of whether the defendant acted in a way that was incompatible with a Convention right. The possibility of a civil action for damages can sometimes suffice (see paragraph 8(9) above). Here, however, the primary time limit for bringing a claim has expired (see section 7 Human Rights Act 1998). The claimant says, with some justification, that (aside from the disclosure that has been provided as a result of these proceedings) he does not have the information necessary to bring a claim, because he is not aware of the detailed arrangements that were in place between the defendant, Mears, the Park Inn and others, and the detail of the sequence of events. A civil action for damages is designed to secure individual redress. It may (together with the possibility of criminal or disciplinary proceedings) be an effective response to an isolated instance of mistreatment or negligence by the state, but it is less likely to be an apt vehicle for investigating systemic issues – *R (AM) v Secretary of State for the Home Department* [2009] EWCA Civ 219 *per* Sedley LJ at [33] and [61]. In this case, a civil action might therefore be a sufficient mechanism for investigating an alleged breach of the operational duty (see paragraph 8(4) and 8(9) above), but it is less likely to suffice as a response to arguable breaches of the systems obligation.

74. In England and Wales, the ordinary mechanism for discharging the non-criminal aspects of the state's investigative obligation where there has been a fatality is a coroner's inquest – see *R (Middleton) v HM Coroner for Western Somerset* [2004] UKHL 10 [2004] 2 AC 182 *per* Lord Bingham at [20]. The claimant survived the attack, but any underlying failings on the part of the defendant that resulted in the claimant's injuries are also relevant to the circumstances that resulted in Mr Adam's death. Discharging the article 2 investigative obligation which undoubtedly arises in respect of Mr Adam's death (because it resulted from use of force by a police officer) will

necessarily discharge any article 3 investigative obligation which arises in respect of the claimant's injuries. Further, if it is necessary for the survivor of an attack to be recognised as an interested person in inquest proceedings in order to comply with the state's investigative obligation then there is power for that to be done – see section 47(2)(m) Coroners and Justice Act 2009.

75. Here, the relevant events took place in Scotland. There will not be an inquest. But the material that has been put before the court indicates that the SFIU investigation, followed, if appropriate, by a Fatal Accidents Inquiry, will fulfil the same functions that would be fulfilled by an inquest in England. The claimant has not demonstrated that such a process is incapable of discharging the investigative obligation. He suggests that there has been delay and that he has not been given the participation rights that are required to discharge the investigative obligation. The SFIU is not a party to these proceedings, and it is not fair or possible to adjudicate on the claimant's complaints in their absence. In any event, the SFIU is a public authority that is itself bound by section 6 of the 1998 Act. If the claimant is a victim of a failure by the SFIU to comply with its obligations (and I stress that I do not make a finding in that respect) then he will have a remedy under section 7 of the 1998 Act. The theoretical possibility that the SFIU would not comply with its obligations is not a reason for requiring the defendant to initiate a separate, parallel, investigation.

Outcome

76. The claimant suffered serious injuries as a result of the criminal violence of Mr Adam, who was shot dead by police. There has been an adequate criminal investigation into that criminal offence. The claimant has not demonstrated that the defendant was arguably in breach of the obligation under section 6(1) of the Human Rights Act 1998 to act compatibly with Convention rights, and, in particular, to act compatibly with the positive systems and operational obligations that can arise under articles 2 or 3 of the Convention. The claimant has not therefore demonstrated that the defendant is under a legal obligation to commission an independent investigation into the circumstances which resulted in Mr Adam's attack. In any event, the appropriate mechanism of investigation in such a case (where a fatality has resulted) is a coroner's inquest, or, in Scotland, an investigation by the SFIU leading, potentially, to a Fatal Accidents Inquiry. Such an investigation is being undertaken and is (as is required by the Convention) entirely independent of the defendant. There is no legal obligation on the part of the defendant to initiate a public inquiry under the Inquiries Act 2005 or any other form of investigation.

77. The claim is therefore dismissed.