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Case No: HQ10X03508 & HQ12X00388

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/02/2014

Before :

MR JUSTICE GREEN

- -

Between :

1) DSD; 2) NBV	**Claimants**
- and -	
The Commissioner of Police for the Metropolis	**Defendant**

- -
- -

Phillippa Kaufmann QC (instructed by **Birnberg Peirce & Partners**) for the **Claimants**

Jeremy Johnson QC and Mark Thomas (instructed by **Metropolitan Police Directorate of Legal Services**) for the **Defendant**

Hearing dates: 25th – 29th November 2013

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE GREEN

INDEX TO JUDGMENT Paragraph(s)

(vi) *Szula v United Kingdom* (2007) 44 EHRR SE19 170-176

(vii) *Secic v Croatia* (2009) 49 EHRR 408 (31st May 2007) 177-180

(viii) *Ali and Ayse Duran v Turkey* Application No 42942/08 (8th April 2008) 181

(ix) *Beganovic v Croatia* Application No 46423/06 (25th September 2009) 182-185

(x) *Denis Vasilyev v Russia* App No 32704/04 (17th December 2009) 186-190

(xi) *Milanovic v Serbia* App No 44614/07 (14th December 2010) 191-194

(xii) *CAS & CS v Romania* App No 26692/05

Mr Justice Green :

A. INTRODUCTION

(1) The Claims

1. This case concerns a claim for declarations and damages brought by two victims of the now convicted "black cab rapist" – John Worboys – who over the course of 2002 – 2008 committed well in excess of 100 rapes and sexual assaults on women whom he was carrying in his cab.

2. Pursuant to Section 1 of the Sexual Offences (Amendment) Act 1992, victims of sexual offences are entitled to anonymity during their lifetimes. In this judgment, I refer to the two Claimants as "DSD", and, "NBV". They seek a remedy for an alleged failure on the part of the Metropolitan Police Service ("MPS") to conduct an effective investigation into their respective allegations of serious sexual assault. The respective facts of the cases of DSD and NBV sit at opposite ends of the spectrum. DSD was one of Worboys' earlier victims in 2002; NBV one of his last in 2007. They represent test cases for other women whose facts sit elsewhere on the spectrum.

3. The claims are brought under Section 7 and 8 of the Human Rights Act 1998 ("HRA"). Under section 6 HRA it is unlawful for a public authority to "act in a way which is incompatible with a Convention right". It is common ground that the Defendant in this case is a public authority. According to the HRA "Convention rights" includes the rights and fundamental freedoms set out in, *inter alia*, Articles 2-12 and 14 of the European Convention on Human Rights. It follows that it is unlawful for the Defendant to act in a way that is incompatible with Articles 3 and 8, the Articles in issue in the present case. Section 7 HRA empowers victims of violations to bring proceedings before the Courts and section 8 confers upon the Courts the power to grant appropriate relief, including damages. The real substance of this case concerns Article 3 of the Convention which provides:

> "No-one shall be subjected to torture or to inhuman or degrading treatment or punishment".

Article 8(1) of the Convention is very much of secondary importance and for reasons I give elsewhere does not go any further than Article 3 in a case such as the present. It concerns the right to respect for private and family life and provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There should be no interference by a public authority with the exercise of this right except such as is in accordance with the law and 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 or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

4. Under the common law the police do not owe a duty of care in negligence in relation to the investigation of crime: See *Hill v Chief Constable of West Yorkshire* [1989] AC 53 per Lord Keith at pp. 63A-64A and per Lord Templeman at p. 65C-E; *Brooks v Commissioner of Police of the Metropolis* [2005] 1 WLR 1495; and *Smith v Chief Constable of Sussex* [2009] 1 AC 225.

5. The question in this particular case is whether the HRA imposes a duty and, if so, whether it is breached on the evidence before the Court. The Defendant argues that the HRA does not provide a remedy to victims of crimes committed by private parties where the core of the allegation is that the police failed properly to investigate. The Defendant accepts that a limited right does arise where in some way the police or the State bear some indirect responsibility for violence inflicted upon a victim, such as where a prisoner attacks another prisoner whilst both are in custody or where violence is perpetrated by a private person in a secure mental health unit run by the state. But the Defendant does not accept that in the absence of any direct or indirect police responsibility or complicity there can be any liability. The Claimant contends to the contrary that according to a line of clear authority from both the Strasbourg and English courts in some situations at least where the police bear no culpability for the actual violence perpetrated the police can nonetheless still be liable for a failure to investigate.

(2) The sexual assaults

6. Between 2002 and 2008, Worboys committed in excess of 105 rapes and sexual assaults upon women whom he was carrying late at night in the back of his black cab. Over these years he developed an ever more refined methodology for administering drugs and alcohol to these women with a view to incapacitating them so that he could then assault them. He was clinical and conniving. The effect upon these vulnerable women was profound. In the cases of DSD and NBV I received evidence about the

trauma they experienced at the time and subsequently and have read the psychiatric reports upon them. I have learned that the effects of the assaults have stayed with them in a variety of ways over the ensuing years manifesting themselves in depression, feelings of guilt, anxiety, and an inability to sustain relationships, including sexual relationships. That trauma has to be multiplied one hundred fold, and more, to begin to have a sense of the pain and suffering that Worboys' serial predatory behaviour exerted upon his many victims. But their feelings are not the end of this circle of misery because as was evident from the psychiatric and other evidence, the effects rippled throughout the victim's families and their respective circles of friends.

7. The administering of drugs of sedation and alcohol as an integral part of Worboys' technique substantially reduced the likelihood of his apprehension and arrest. One troubling aspect of these cases is that so few of Worboys' victims complained to police. This was partly for the reason that Worboys' chosen *modus operandi* left his victims confused and disorientated and, frequently, with only a partial memory of their ordeal. The case of DSD is on point. Immediately following her attack, she was disorientated, incapacitated and vomiting. When she first came into contact with police very shortly after the assault, she appeared to be a drunk or a drug addict or both; and the police assumed as much. In an extraordinary twist of fate, she was in fact transported to the police station by Worboys himself, who had been persuaded to take DSD to the police station by a Good Samaritan third party, who also accompanied both Worboys and DSD to the station. But because she was mischaracterised as a drunk, she was not treated as a victim of crime, no-one took the name or address of Worboys or his vehicle registration. He was treated as a model citizen. And no-one took the name or address of the third party who accompanied them.

(3) The recognition by the MPS of the particular problems relating to the investigation of drug facilitated sexual assault ("DFSA")

8. It is precisely because the police recognise that a woman presenting in an incapacitated state or with a wholly imperfect recollection of her attack may, in actual fact, be a victim of serious crime that the MPS has issued detailed guidelines on rape and sexual assault which includes an important section on drug facilitated sexual assault or "DFSA". The first guidance was issued in 2002, before the assault on DSD, and it comprehended the critical importance of an early and correct identification of a woman as a victim of sexual assault. It urges a precautionary approach which focuses upon the earliest possible collection of evidence. It is exactly because it is so easy to mistake a victim for a drunk or an addict that it is imperative that those who come into early contact with potential victims and those who are responsible for early investigation need to be thoroughly trained and sensitised to the issue of DFSA.

9. As a document, the 2002 guidance is a model of good practice. Regrettably, deeds did not match words. The evidence that I was given by relevant police officers in the case about the guidance was that they had never received training in its contents, that it was simply one of a number of guides that were available on the internet and that they

were largely ignored. One witness, a police inspector, said that in his opinion the guides were adopted to protect the MPS from litigation. In direct consequence of this, officers on the ground, including those especially allocated to work on sexual assaults, did not follow the procedures in the guidance which were capable of identifying, apprehending, arresting and ultimately prosecuting Worboys and in the conduct of their investigations made errors which substantially reduced the chances of early arrest and prosecution. The procedures set out in the guide were based upon past experience and learning from within the MPS. They recognised that drug rape, and indeed other sexual assaults, were not always isolated incidents and by their nature were prone to repetition. The guidance thus required careful reporting of the progress of investigations, including an identification of the strategic investigative steps to be adopted, and for that information to be placed upon the databases of the MPS. This meant that by carefully constructed searches using key words and phrases, links and associations could be made between complaints about sexual assaults from across the Metropolitan area. Indeed, it was by virtue of a routine search for key words in February 2008 that the MPS identified a series of allegations of sexual assault all of which were similar in their *modus operandi*. It is a striking feature of this case that within 8 days of this routine search being conducted Worboys had been arrested and remanded in custody.

(4) Conduct of the trial by the legal teams

10. In this case, the Defendant, the Commissioner of Police for the Metropolis, was represented by Mr Jeremy Johnson QC and by Mr Mark Thomas. I should record at the outset that the conduct of the case by the Defendant has been exemplary. Mr Johnson emphasised throughout this trial that the Commissioner and the MPS recognised the courage and bravery of the women who had come forward to pursue their allegations against Worboys (including DSD and NBV) and he expressed their sympathy for all of the victims of these crimes. They tailored their approach during the trial to ensure that their defence was conducted in a sensitive manner. For example, they elected not to require the victims to attend to give oral evidence and to be cross-examined. Instead, they accepted that the witness statements of DSD and NBV could be treated as their evidence. They made efforts to agree the evidence of other witnesses for the Claimant and, in the event, only one witness for the Claimant gave oral evidence. Further, they tendered the relevant officers in the respective cases so that they could be cross-examined and they were indeed subjected to rigorous cross-examination by Ms Phillippa Kaufmann QC for the Claimant. I should also add that the officers who gave evidence, whilst bridling on occasion at some of the questions put to them, nonetheless gave evidence in a frank and candid manner. All in all, the Defendant's case was conducted with considerable dignity.

11. The Claimants, DSD and NBV, were represented by Ms Phillippa Kaufmann QC. Their cases were put vigorously and cogently both in oral submissions and in cross-examination. Nonetheless, the Claimants' case was also put with sensitivity and restraint and where appropriate relevant concessions were made. I am grateful to both sides for the manner in which this difficult trial has been conducted.

(5) The outcome of the trial: The Defendant is liable to the Claimants

12. The judgment that I have arrived at is that the Defendant is liable to both DSD and NBV for breach of the HRA. This breach arises in relation to the period between 2003 (which coincides with the first complaint to police) and 2009 (when Worboys was tried). I make no findings about the period post 2009. It was agreed between the parties that any issues as to quantum would be hived off from this particular trial and would be dealt with later. It follows that I have not dealt with quantum issues in this judgment. However, I will proceed in the light of this ruling to consider questions of quantum with the parties.

13. In this case I have identified a series of systemic failings which went to the heart of the failure of the police to apprehend Worboys and cut short his 5-6 year spree of violent attacks. These failures include: (i) a substantial failure on the part of the MPS to train relevant officers in the intricacies of sexual assaults and in particular drug facilitated sexual assaults; (ii) serious failures on the ground by senior officers properly to supervise investigations by more junior officers and to ensure that they were conducting investigations in accordance with the standard procedure mandated for DFSA and as set out in MPS operating procedures; (iii) serious failures in the collection and use of intelligence sources to cross-check complaints to see if there were linkages between them; (iv) a failure to maintain the confidence of victims in the integrity of the investigative process and thereby to a consequential failure to create an environment where victims were incentivised to the maximum degree to bring their complaints to the police; (v) failures to allocate proper resources to sexual assaults including pressure from Borough management to focus resources on other allegations (of a non-sexual nature) that were easier to clear up and a resultant pressure on officers to reject complaints of sexual assault. In addition to these systemic failures there were numerous individual omissions in the specific cases of DSD and NBV which reflect the wider systemic failings but which, when viewed in isolation, can also be said to be of sufficient seriousness such that had they not occurred the MPS would have been capable of capturing Worboys at a much earlier point in time. These failings included such matters as: failures to interview vital witnesses, failures to collect key evidence, failures to follow up on CCTV, failures to prepare properly for interviews with the suspect, etc. It is important that I should record that the MPS has, itself, recognised these same systemic and operational failings in its numerous reviews into the Worboys case. It has indicated that it has now introduced remedial measures. No part of this trial has concerned these remedial steps. As I have stated the end point of my analysis is 2009.

(6) The qualified nature of the duty on the police

14. I have concluded that there is, according to well established case law, a duty imposed upon the police to conduct investigations into particularly severe violent acts perpetrated by private parties in a timely and efficient manner. I should emphasise, however, that the conditions laid down in law pursuant to which the police may be liable are relatively stringent. It is not the case that every act or omission by the police which may be categorised as a failing will give rise to damages nor is it the case that

every failure to adhere to the police's own operating standards and procedures triggers liability. A series of exacting hurdles must be overcome before liability may be imposed. I am however wholly satisfied that the failings in the present case were of sufficient seriousness to pass by some considerable margin the test that is to be applied to the determination of liability.

B. FACTS

(1) The modus operandi of a serial rapist

15. An important facet of this case arises out of the consistency of the approach of Worboys to his criminality. I have set out below at some length the description of Worboys' *modus operandi* taken from the opening submissions of Prosecution Counsel to the jury during his trial in 2009. These illustrate the similarity between the method adopted to assault the women, and they highlight precisely why DFSA represents a particular problem for police and why ordinary investigative procedures need to be modified in such cases:

> "In the time period with which we in this trial are concerned — that is the approximately 18 month period from October 2006 to February 2008 — this defendant worked as the driver of a black taxi cab. He was a "London Cabbie" and had been since 1996. He drove his own cab. He worked largely at night. No doubt those who do so earn more than those who work during the day.
>
> But Mr Worboys' nightly driving afforded him an additional opportunity. It afforded him the chance to meet and carry young women — women who had been socialising with friends in the West End, who were often under the influence of alcohol and who were more than willing to place themselves in a position where they were alone with him. He did not have to cruise nightclubs in the hope that he would meet a girl whom he might be able to persuade to spend some time alone with him. He drove a black cab and as such he was trusted by those who, having had a good time, wanted to travel home safely and who got into his cab without question."
>
> "Each of the [14] complainants…got into the defendant's cab late at night or in the early hours of the morning. Their intent in doing so? Well it is obvious - each one of them wanted to get home. Mr Worboys' intent in picking them up in his cab was, we say, wholly different. His primary intent had nothing to do with taking them home. His intent we say was wholly sexual in nature. His intent was to ensure that they were completely at his mercy and then to sexually molest them. Having each girl alone in his cab was a start but this defendant we say wanted to ensure that there would be no struggle, no

difficulty in achieving his aim. How did he do that? He did it by drugging them.

I expect you have all heard of what are commonly referred to as "date rape" drugs, that is drugs given by one to another with the intention of stupefying that other so as to enable sexual activity without demur.

Mr Worboys we say made regular use of such drugs, administering them to female passengers in his cab in the hope that they would render them unconscious and thereby unable to resist his sexual advances. The additional benefit to him of such drugs is that they cause what is called anterograde amnesia. That is memory loss and the forgetting of events and experiences that occurred after the drug took effect. If a girl is administered such a drug she is not only powerless to resist her assailant, she also remembers little if anything of what happened after she took the drug, thus making it unlikely that he will be reported or caught.

There was nothing opportunistic in the defendant's behaviour. We say that he would go out with the intention of locating a victim.

If no obvious candidate hailed his cab he often approached her, pulling up beside her at the side of the road and offering his taxi services. Often the lady in question did not have enough money for a cab. As money was not his primary objective in offering the lift, this did not deter Mr Worboys. Finding out where she lived, he would tell her that he lived just a little beyond that location and he would take her for less money as it was his last job of the night.

Of course the defendant was unlikely to be able to administer a drug by simply handing it over and inviting his passenger to take it. No matter how drunk a girl, she would be, you may think, unlikely to accept such a drug. And so Mr Worboys thought up a way to try to get the drug into the girl and he adopted the same approach in virtually every case, adapting a little as the situation demanded.

He would begin by engaging the girl in conversation, asking her about her night and the like. Once they were talking he told her that he was glad that he had met her as he had experienced some good fortune that night in that he had won a quantity of cash. In most cases he said that this had been at a casino, sometimes he said it was by way of the lottery. Sometimes he specified the sum that he had won. It was generally a substantial sum. He had catered for the fact that his passenger may be sceptical at such a story. He had a bundle of cash, of notes, in a carrier bag in the front of his cab. In order to

further build trust and to prove his false story he would show the cash to her.

Why create such an elaborate lie? Well…if Mr Worboys had won this money he would have cause for celebration. If he had cause for celebration he would have reason to have a drink and an excuse for giving a drink to his passenger so that she could celebrate with him.

And the defendant made sure he had alcohol and glasses with him in the front of the cab. The complainants remember hearing bottles clink as he would pour champagne into a glass or a cup which would be handed back to them. The drink was rarely poured in front of them. As the defendant often had a drink at the same time as the complainant it seems likely that he added the drug at the point at which he poured the drink. In every case where the drink was consumed in any quantity it had a powerful effect.

You will know from your own experience that drugs of any description take some time to take effect. If you take a paracetamol your pain is unlikely to be alleviated immediately. Just so with date rape drugs although the time in each case will depend upon which drug is used, whether it is in combination with alcohol and upon the individual concerned.

As you might expect the reaction of the passengers to whom the defendant gave the drinks differed. Some were enthusiastic and happy to have the drink, others would have preferred not to but felt it would have been rude to refuse. Some were wary and did all they could to avoid drinking it whilst pretending they were. Some did not drink it at all. The defendant would watch each girl. In many cases he asked if they would mind if he stopped the cab and got into the back with them so that he too could have a drink. Once there he could engage them in conversation (often sexual in nature), wait and watch.

In each case he was able to see when his passenger became affected by the drug. Many of the complainants remember falling asleep or losing consciousness. Most have no recollection of what happened thereafter until they got home, or in some cases until the next day. Many are not able to say whether they were sexually assaulted or not.

But the defendant's intent in drugging them we say was clear. Some of the complainants did come round a little in the cab.

Those that did remember the defendant touching them sexually in some way. One of them…remembers him having sexual intercourse with her.

> So those that remember his behaviour after they had the drink are able to say it was sexual in nature."

16. When Worboys' home and car were searched by police, they discovered an extensive "rape kit" in the boot of his Fiat Punto. This kit contained everything he needed to stupefy and sexually assault a passenger. This included small bottles of champagne: "…ideal if you want to offer a glass or two of that drink with the benefit of the champagne not going flat as it would in a large bottle if the contents were not all drunk at once". They also found gloves, a beret, maps, a torch, a quantity of plastic cups, a vibrator in a box, a box of condoms, and strips of Nytol tablets. Prosecuting Counsel told the jury:

> "To the bottom left of the photograph are a box and a strip of Nytol tablets. I don't know whether any of you are aware of this medication. It can be bought over the counter in pharmacists and is used to assist those with insomnia. It contains an antihistamine called Diphenhydramine. (It's a long name I know but you will be hearing about this drug in the course of the trial and will become familiar with it). Diphenhydramine has sedative properties and may be used as a hypnotic in the short term management of insomnia. As you would expect its effects include drowsiness as well as sometimes causing dizziness, fatigue, loss of coordination, blurred vision and dryness of mouth. Any sedation associated with the use of the drug is likely to be enhanced by the consumption of alcohol at the same time. Indeed the tablets carry a warning to avoid alcohol".

17. The police also found Temazapam which Mr Worboys had been prescribed by his GP to assist with a complaint of insomnia. This drug also has side effects including sleepiness, detachment from the physical world, inability to coordinate movements and anterograde amnesia, i.e. a loss of memory of events and experiences that occur after the drug has taken effect. Temazapam and alcohol magnify the effects of each other and the combination have been known in the past to have been used as stupifants in drug assisted sexual assault. In addition, the police also found in the boot of the Fiat Punto wine boxes, some of which contained wine and other forms of alcohol, including whisky, gin and vodka. These were significant in that in every case Worboys began by offering complainants champagne or homemade wine but he had, lest they preferred it, other types of alcohol available.

18. The opening speech highlighted another serious problem. Victims frequently did not report the assault to police:

> "As you will see from the time span on the indictment the Defendant was able to cruise the nightclub areas of London identifying and picking up girls upon which to carry out his assaults for some time. Each girl felt concerned at the very least when she awoke the next morning, feeling that something was

> wrong but many did not make a complaint to the police at the time. It is perhaps easy to see why. Each of them could remember getting into the Defendant's cab. Many could describe the cab driver. Each could remember the conversation in the cab and the offer of alcohol. But many who had consumed that alcohol could remember very little of what had happened thereafter. They could remember little about which to complain. Many spoke to friends and family about the matter but left it there".

19. It is apparent from evidence given at trial that although 105 victims came forward, and are accepted by the police as having been subjected to assault by Worboys, these may represent only a portion of those actually assaulted.

(2) The assault on DSD and the police investigation

20. At about 3am on 7th May 2003, DSD entered a black cab hailed by two of her friends. She had been out the previous night to celebrate a friend's birthday. The friends paid the driver on her behalf to take her home. She was intending to go to the home of her boyfriend. However she gave the driver an address which was close to her boyfriend's home as she could not remember his precise address. DSD recalls that the cab driver was talkative. He explained that he had won a substantial sum of money and wished to celebrate. He offered her a drink. She initially refused. However the driver was insistent so, eventually, she accepted the offer. She recalled that the drink had a strong orange liquor flavour. She also recalls that the driver pulled the vehicle over and entered the rear to have a cigarette with her. He put his arm around her and complimented her. She remembered nothing thereafter about the assault.

21. Mr Kevin D ("Kevin") was awoken by a taxi driver knocking on his door and shouting that there was a girl in his taxi that lived at the address. Kevin saw DSD slumped on the floor of the taxi covered in vomit but he did not know her. She was mumbling and slurring her words. He suggested that the driver take DSD to the nearest police station (Holloway) because he was concerned about her and he intimated that he would go with the driver to show him where it was.

22. They arrived at the police station at 4.33am and Kevin informed the front desk reception officers that DSD was in the back of the cab. Two officers left the front desk in order to help DSD out of the taxi. The driver left shortly after that. Kevin also left the station. There is no suggestion that at that time it was indicated to the police that an offence had been committed. DSD was treated as drunk or an addict. The police called an ambulance which arrived at 4.47am and DSD was taken to the Whittington Hospital. DSD woke up in hospital a few hours later whereupon she went to the toilet. She recalls that her tampon had fallen out. She used her hand to feel that her vagina was covered in lubricant and was open and stretched. She felt disorientated and she was convinced that she had been drugged. DSD telephoned her boyfriend at about 8.30am and asked him to collect her from the hospital. Upon his arrival he

found her standing outside whereupon she explained that she believed that she had been raped. Her boyfriend advised her to report the incident to the police. In fact the boyfriend telephoned the police himself at 8.59am. He reported that his girlfriend had been raped by a cab driver and that her money and possessions had been stolen.

23. At 9.38am two police officers attended the Whittington Hospital. They spoke to both the boyfriend and to DSD. One officer contemporaneously recorded her account. It was in the following terms:

> "The victim stated that she had been out with friends for a meal at the Mediterranean Café in Soho. They went to the Shadow Lounge after. The victim said that she felt tipsy when she left the location. Her friends got her a black hackney cab. She remembers the taxi pulling off into a side street after about 10 minutes. The taxi driver said from the front "Do you want a drink?" The victim said she did not want to be rude so did not refuse. The driver poured a drink and she drank it, possibly a sip or two. She says it was alcohol, possibly Malibu. The driver then got out of the front of the cab and then got into the back. The victim then remembers waking up at the Whittington Hospital [DSD] said "I don't know what's happened to me but I just feel sore in my vagina area"".

24. The other officer later recorded on the CRIS that the victim had given a description of the taxi driver as best as she was able but she was unable to say what the taxi driver had done to her as she believed that she had been drugged. The officer recorded:

> "It was established that the taxi driver had picked the victim up in Waldorf Street and was asked to take her to [address] to a house above a chemist. The cab driver took her to the address but the male there said she didn't live there and the cab driver took her to Holloway Police Station along with the male from [address]. It is believed that the fare had been paid for when she first got in".

25. In due course, DSD agreed to provide a urine sample and a mouth swab. An Early Evidence Kit ("EEK") was used to collect a swab and the sample and the tampon was also collected. The clothing that she was wearing was taken for forensic examination. DSD described the cab driver as male, white, approximately 40 years old, of stocky build with either blonde or ginger hair. DSD also agreed to a medical examination which was booked to take place later that day. She was taken to Ilford Police Station for the examination which started at 2.51pm and lasted for over 1 hour. 20 separate exhibits including clothing, the tampon and bodily samples were itemised and stored (in the property store, a fridge and a freezer) and thereafter submitted for scientific examination. DSD was asked if she would like the officer to arrange an appointment with the sexually transmitted diseases clinic and she agreed. The services offered by Victim Support were explained and DSD indicated that she would like to speak to them.

26. It was also explained to DSD that the police wished to arrange an ABE interview.

27. I have already noted that Kevin accompanied the black cab driver to the police station. The incident at Holloway Police Station was not recorded. Accordingly, the details of the cab driver and of those accompanying him were not recorded. The Evidence and Actions Book ("EAB") was not completed and an "Occurrence" book entry was not made. The police did not, at any subsequent stage, conduct any interview with Kevin even though he was, as was subsequently acknowledged, a "vital" witness. Further, although this could have been done, no attempt was ever made to create a time line of the journey from, in particular, Kevin's home to the police station to see if CCTV along the route recorded the cab's registration details.

28. DSD had complained, at the police station, about eye glasses and money that should have been in her handbag but which were missing. It was explained to DSD that both of these items had been seized so that they could be subjected to forensic examination. However, it is also relevant to note at this stage that the handbag itself was not forensically examined to see whether, for example, there was DNA or other identifying marks upon the bag which would have linked those items to Worboys.

29. A number of enquiries were made by police including visiting the venue where DSD had spent the evening prior to the assault. They spoke to the venue manager who provided the name of the person who had booked the table. The police established that the area outside was covered by CCTV and this was reviewed but it was not possible to identify the cab pickup. The police contacted DSD's friends who provided details of the movements of DSD and her friends the previous evening. One such friend explained that they had hailed a cab from outside the Duke of Wellington Pub on Waldorf Street and that the black cab that DSD entered had come from Shaftesbury Avenue. He explained that he had put DSD in the cab and that her other friends had been present. The officers were able to contact another friend who provided a rough description of the taxi driver and he identified the time of the pickup as between 3.05-3.10am.

30. On 9th May 2003 the police spoke again to DSD who explained that she had spoken to Kevin and that he had gone with the taxi driver, accompanying DSD, to Holloway Police Station. DSD told the police that Kevin had informed her that she had been in an unconscious state and that he had heard the taxi driver say to the police officers at Holloway that he (i.e. the driver) believed that DSD looked as if she was under the influence of more than just alcohol. DSD also stated that Kevin had told her that he had seen the relevant police officers looking at the missing mobile phone. As I have recorded the police did not follow this up with Kevin.

31. An ABE interview was conducted on 12th May 2003. The police contacted the Public Carriage Office on the same day to see if there was any method by which they could notify all licensed cab drivers to appeal for evidence. However this turned out not to be possible. Nonetheless, enquiries were made in respect of trade magazines to see if they were suitable for such an appeal.

32. On 16th May 2003 DSD telephoned the police and complained that the police were not taking her seriously. On 21st May forensic exhibits were submitted for forensic analysis.

33. On 29th May 2003 – about 3 weeks after the assault - a statement was taken from the officer who had been on duty at the time when DSD had been taken to Holloway Police Station and that officer gave a description of the cab driver.

34. On 3rd June 2003 laboratory reports established a high degree of alcoholic consumption by DSD but nothing incriminating of Worboys.

35. On 18th June 2003 DSD, once again, expressed her view to police that she thought she was not being taken seriously.

36. On 4th July 2003, the forensic scientist examining the evidence in the case, wrote to the Investigating Officer ("IO") responsible for the investigation setting out the results of the examination. No semen was found. There was blood staining on the vaginal and other swabs and upon the tampon but this appeared to be attributable to menstruation.

37. On 7th July 2003 DSD once again expressed concern to police as to the location of her glasses and the phone. The police undertook to seek to locate the items in the handbag which was held as an exhibit.

38. On 30th July 2003 DSD, yet again, complained that the police were not doing all that they could to trace the taxi driver. She stated that she was upset because statements had not been taken from the people who put her in the taxi and that she felt she was receiving conflicting stories about what had happened from witnesses and from the police.

39. On 25th October 2003 the police had arrived at the point when they considered that the suspect investigation aspect of the enquiry was complete. On 12th November 2003 the IO noted that the investigation required a closing report which he could complete after the 2nd December 2003. On 5th January 2004 the closing report was in fact completed and then placed before the supervising DCI for authority to close the investigation on 29th January 2004. Authority was granted to close the investigation on 13th February 2004. It was only in early 2008 that DSD, having learned of the arrest of Worboys, re-contacted the police and was properly interviewed. This time she was recognised as having been the victim of a particularly nasty sexual predator. However, Worboys' assault upon DSD did not form the basis of charges brought against Worboys. This does not affect the fact that the Defendant now accepts that DSD was a victim of Worboys.

(3) The period between 2003-2008

40. In the period between 2003 and 2008 Worboys perpetrated in excess of 100 assaults and rapes. Only a small minority of these however were reported to police. We now know that (at least) 5 other complaints were made to the MPS of assaults by Worboys, all bearing his familiar hallmarks, in: July 2004; on 16th June 2005; on 28th April 2006; on 11th August 2006; and, on 14th October 2006. We also know, again with the benefit of hindsight, that following the complaint by NBV in July 2007 3 further complaints of sexual assault were made to the MPS on: 23rd December 2007; 3rd January 2008; and, 6th February 2008. It is (now) further known that in 2006 an allegation of curb crawling was made to the MPS which was linked to Worboys.

(4) The position of NBV

41. I turn now to consider the position of NBV. On 25th July 2007 NBV spent the evening in the West End of London with two friends from university. NBV drank two glasses of red wine at a bar and then had two single vodkas mixed with a soft drink at the "TV End", a nightclub near Holborn. She believed that she was not drunk when she left to go home at about 2.00am. She left the nightclub alone and walked around the corner to hail a black cab from a nearby rank. She recalls that the driver agreed to take her home to Eltham for a set fare of £30.00 which she paid in advance. Upon entering the taxi the driver began to compliment her and was talkative. He explained that he had won £3,000 and showed her a bag containing a large sum of money. He then offered her a drink which she at first refused but then accepted only after he became insistent. He passed a drink to NBV through the glass window from the front to the rear and NBV recalls that it was a bubbly, champagne like, drink. She took a couple of sips but as she did so the driver braked hard and she dropped the glass which smashed upon the floor. The driver then gave NBV a plastic cup with a clear liquid in it which he insisted NBV should drink. She reluctantly took a few sips. NBV recalls that the driver stopped the cab and entered the rear sitting next to her. He offered her some pills and told her to take one. Upon her refusing to do so he became aggressive, put his hand over her mouth, and forced her to take a pill.

42. CCTV footage, which was played in Court, shows the following: The Taxi arrived at the university residence where NBV resided at 4.25am. It remained stationary for 45 seconds then drove off to return at 4.31am. NBV exits the cab in an unsteady state. She has something which looks like a rag attached to her shoes. The driver is seen rummaging around for a short while on the floor of the passenger compartment of the cab. He then embraces NBV and quickly re-enters the cab. NBV walks unsteadily out of camera shot. Thereafter she remembered nothing until she woke up in her university room at approximately midday on 26th July 2007. Immediately upon awaking she experienced flashbacks. There was blood upon her bed sheets and a tampon which she had been wearing was missing. A button from her shorts was also missing.

43. She discussed her concerns with her flatmate and visited the campus security office to ask if CCTV footage could be checked. The security manager advised her to contact the police which she did by telephoning 999 and reporting that she had been the victim of a sexual assault by a taxi driver. During that call there was a discussion of

CCTV and it was established that footage might show the registration number of the cab. When police visited NBV some hours later she gave them an account of what had happened and she showed the police grazes on her knees and elbow which she considered might have been linked to the assault. She could not otherwise explain them. Her initial comments were recorded in an evidence and action book by the attending police officer who informed CID of the complaint and who ensured that a SOIT officer was called to attend. The police made arrangements to take mouth swabs and urine samples. Some relevant clothing was seized but NBV's bra and bed clothing were not. The police reviewed the campus CCTV and photographs were taken of NBV's injuries. The police reviewed the CCTV footage and identified the registration number of the taxi which was then passed to CID for further investigation.

44. NBV attended a Haven Centre for a medical examination. A total of about 26 samples were taken and her injuries were documented.

45. The police, through contact with the Public Carriage Office, identified the taxi as belonging to Worboys. Police attended Worboys' home address to carry out arrest inquiries but he was not present and the search was abandoned. Critically no further attempts to conduct a search occurred. Police then made a request through the Public Carriage Office for Mr Worboys to attend Plumstead Police Station but no steps were taken to prevent Worboys returning to his home to clean it up and remove incriminating evidence or to prevent him from cleaning his cab to remove or expunge evidence.

46. At 2.55pm on 27th July 2007 Worboys attended Plumstead Police Station. He was arrested on suspicion of sexual assault. Police obtained intimate samples from him comprising penile swabs, controlled swabs, pubic hair trimmings and nail scrapings from both hands. The possibility of conducting a section 18 PACE 1984 search was now considered. However, it was decided not to conduct such a search upon the basis that any forensic evidence from the taxi would have been contaminated by fares taken subsequent to the offence and that Worboys' clothing would in any event only have been useful for identification purposes and that, as the suspect himself had now given an account which placed him at the scene of the alleged assault, it was considered that a section 18 search would have been redundant. Nonetheless, the possibility of a future search was mooted following any interview with Worboys.

47. Worboys was interviewed in the presence of his solicitor at 8.31pm on 27th July 2007. He explained in the course of his interview that he had picked up NBV at 3.50am and that she had dropped the contents of her handbag on the floor and then slept through the rest of the journey. He said that upon arrival NBV could not pay him but that he had let her off the fare. He then said that she had kissed him and said that he was a "lovely man". He denied sexual assault or having given her any drugs or alcohol. The police considered that the account that had been given by Mr Worboys was consistent with the CCTV and that it was credible. At this stage police had therefore (a) neither conducted a search of Worboys' home or vehicles nor (b) obtained a detailed statement from NBV.

48. There then followed a yet further re-consideration of the need for a section 18 PACE 1984 search. It was decided, however, that it would now be best to await the results of blood toxicology tests before re-considering the possibility of such a search of Worboys' address and vehicle. In the event, the toxicology reports were not available for over one month, until 24th September 2007. In fact, the toxicology report was not actually examined by the police until 28th September 2007, over two months after the alleged assault. No search was conducted of either Worboys' home or vehicle or of any articles connected to the offence or to any other similar or linked offences. In addition, and in consequence, the suspect's clothing was not seized and an opportunity for forensic analysis was missed.

49. On 31st July 2007 police reviewed the CCTV from the campus. In the course of the trial I reviewed, with Counsel and police officers, the CCTV footage. It is summarised above at paragraph [42].

50. On 1st August 2007 the interview tape of the suspect was listened to once again and it was now recognised that there were apparently inconsistencies between Mr Worboys' account and the evidence shown on the CCTV footage. Police noted later on the CRIS that there was an inconsistency in the timeline as described by Worboys in interview and by NBV. In his interview Worboys explained that he picked NBV up at 3.50am but NBV had said that she left the club at about 2am. The campus CCTV recorded them arriving at 4.25am. The police questioned why the journey appeared to take about 2 hours and 30 minutes to get to Eltham if NBV was correct. Ordinarily such a journey might be expected to take only between 30-40 minutes. The police recognised that the CCTV at the club needed to be viewed in order to identify precisely the time that NBV had left. If it transpired that NBV took the taxi at or about the time she claimed, this provided an unaccounted for period of approximately 2 hours plus during which sexual activity could have occurred.

51. Various other queries were noted by police at that time and which were recorded on the CRIS. First, that based upon the hug between NBV and the driver recorded on the CCTV NBV appeared to part on friendly terms. The police noted the need to establish the level of intoxication of NBV at the time. Secondly, that NBV had stated that she had immediately lost consciousness when she had been forced to swallow the tablet but that the relevant police officer considered that even drugs such as ecstasy or ketamine would take between 20-30 minutes to have any effect. Thirdly, that the missing button from NBV's shorts was outstanding. Fourthly, that NBV could not remember enough about the offence to know what might have happened to her tampon. Fifthly, there was evidence that NBV withdrew money from a cashpoint before entering the cab whereas Worboys said that she did not have funds to pay him. Sixthly, there was also the matter of the rag which appeared to be stuck on NBV's shoe when she got out of the taxi which was also evident on the CCTV.

52. It was plainly important to establish urgently the precise time that NBV departed from the nightclub. However, it was only upon 6th September 2007 that footage from the nightclub was collected and it was only on 11th September that police part-viewed the CCTV. In fact the nightclub provided the CCTV for the incorrect night (26th-27th

July) as opposed to the night of 25th-26th which had been sought. The police did not realise this mistake. Accordingly, the relevant CCTV footage was never reviewed. The moment of departure was therefore not determined. The discrepancy in accounts was never fully explored. And none of these points were ever put to Worboys. Worboys was not re-interviewed. No search was ever conducted of his home or vehicles. When Worboys was arrested police found numerous notes in Worboys handwriting at his home. These formed part of the evidence in this case. They included commentaries upon some of his exploits with delusional comments about the sexual contact he had with his victims but they also contain an analysis of how he would respond if re-interviewed by police. The notes contain for instance an appraisal of what he should say to the police about DNA which might be upon NBV's person. DNA swabs were taken from NBV's breasts but the bra she had been wearing was never tested.

53. The CCTV footage recovered from the campus, as already noted, showed something stuck to NBV's foot which could have been the missing tampon. This was never retrieved. A police officer did attend the location to search for the rag but this was some days after the assault and nothing was found.

54. Toxicology results were received on 28th September 2007 which showed the presence of anti-histamines and anti-inflammatory drugs present in NBV's system. There was no evidence of the presence of any date-rape type drugs though it was noted that it would have been unlikely that any of those would have been present at the time that the blood samples were retrieved. Other forensic findings were negative. The police considered, at this stage, that the case could not be progressed in the absence of future positive forensic evidence.

55. A forensic report of 11th October 2007 stated that no semen had been found on the swabs that had been examined and there was no blood staining under the finger nails of Worboys. Further, on the same day, the expert in forensic toxicology reported that there was no analytical evidence to suggest that NBV had been intoxicated through having been administered any of the drugs for which she was tested. However, because of the time interval between the incident and the provision of the specimen she was unable to exclude the possibility that drugs might have been used. The scientist did however note that Diphenhydramine had been found in NBV's blood and urine and that this can cause sedative effects which are magnified by alcohol. It was also noted that Diphenhydramine was found in Nytol. The scientist observed that this would not cause an immediate effect but the scientist also explained that she was unable to say what effect a combination of the drug and alcohol would exert. This was beyond her experience.

56. In a report dated 23rd October 2007 an officer summarised the state of play: The evidence indicated that the vaginal swabs and finger nail scrapings were negative. Toxicology showed trace elements of morphine and diphenhydramine. The latter drug was normally found in sea sickness tablets and other mild sedatives. Toxicology stated that NBV would have been in a therapeutic state at about the time of the offence but the level of those drugs, even at regular dose levels, would require time to

take effect. The officer observed that the evidence of NBV had been that she had only taken a contraceptive pill and nothing else and he therefore questioned how those drugs could have entered her system. Ultimately, and notwithstanding this uncertainty, the officer concluded that there was insufficient evidence to proceed further. He did not consider that it was worth putting the file before the CPS. There was no direct evidence of sexual activity. He noted that Worboys had given evidence that he only assisted NBV out of the taxi and had picked up items from the floor which was shown on the CCTV. He recognised that it was a mystery as to how the drugs substances entered the system of NBV. In relation to the CCTV footage from the nightclub he considered that regardless of the time that she departed the nightclub this would not be sufficient to place before the CPS.

57. On 29th October 2007 the relevant supervising DI gave authority for no further action to be taken in respect of the investigation. The case was never treated as a serious sexual assault for record keeping purposes so no "closing report" on the case was ever prepared.

58. On 15th February 2008 an article appeared in the Sun newspaper about a suspected black cab rapist. By 8.13am the MPS were contacted by The Haven (sexual assault referral centre) informing them that they had dealt with a victim in July 2007 – NBV. In consequence NBV's case was re-opened. The facts of her case subsequently became one of the cases that Worboys was charged with.

(5) Psychiatric evidence: DSD

59. The psychiatric evidence is relevant primarily at the later quantum stage. But it is also relevant to liability because it casts light on the post-assault experiences of the woman in the course of a police investigation. DSD's case is that the failures in the investigation of her case occurred from 2003 until 2008 when, in the light of publicity, she re-contacted police and, this time, was recognised as a victim of serious crime. It may also be seen as an indication of the trauma that Worboys' numerous other victims will have suffered across the years. And as such it highlights the critical importance of the police having in place procedures to help protect women from DFSA. There can be little doubt that there can be a strong causal link between a victim's post assault mental state and the conduct of a police investigation. As can be seen from the evidence cited below victims need closure and an acknowledgement of the wrong perpetrated upon them. The manner in which the police conduct an investigation can be significant in providing victims with the comfort that in this respect they desire and need.

60. For the purpose of this trial a psychiatric report was prepared on behalf of DSD by Dr Charlotte Harrison who is a Consultant Psychiatrist, South West London and St George's Mental Health NHS Trust. She is recognised under section 12(2) of the Mental Health Act 1983 as having experience and expertise in the assessment and management of mental disorder. She was instructed to prepare a psychiatric report on DSD and to consider the following points: (1) whether DSD had suffered from and

continued to suffer from any psychiatric or psychological disorders which may in part be attributable to the impact of police failures dating back to 2003; (2) to provide a diagnosis, including degree of severity, prognosis (if still ongoing) and any appropriate treatment; and (3) to explore whether and if so to what extent any mental conditions she may have suffered as a consequence of the rape and/or police failures were capable of explaining her delay in commencing proceedings against the police.

61. In order to prepare her report, she interviewed DSD on 21st December 2010 in an assessment lasting approximately 2 hours. She also reviewed various witness statements, other evidence prepared for the purpose of this trial, reports into the police investigation, DSD's GP records and a chronology of employment prepared by her previous employer.

62. The opinion of Dr Harrison was set out at some length in her report. She described the unstable and troubled childhood of DSD which she concluded was relevant context to the psychiatric state of DSD following the incidents which form the subject of this claim. I set out below certain excerpts from Dr Harrison's opinion. In order to put these excerpts into context it is necessary to explain that Dr Harrison was making an assessment against, inter alia, the benchmark DSM IV classification. This is a classification of a "major depressive episode" in which 5 or more of a list of symptoms will be found to have been present during the same two week period and which represent a change from a previous state of functioning and where at least one of the symptoms is either a depressed mood or a loss of interest or pleasure. It is not necessary for the purpose of this judgment to set out DSM IV in any detail. However, the list of symptoms include such matters as: durable depressive moods; marked diminution in interest or pleasure in almost all activities most of the day; significant weight loss when not dieting or weight gain or decrease or increase in appetite nearly every day; insomnia or hypersomnia nearly every day; fatigue or loss of energy nearly every day; feelings of worthlessness or excessive or inappropriate guilt nearly every day; diminished ability to think or concentrate or indecisiveness nearly every day; recurrent thoughts of death; recurrent suicidal ideation without a specific plan or suicide attempts, etc. In her opinion Dr Harrison made the following observations:

> "In my opinion [DSD] found the initial police investigation in 2003 distressing and difficult to cope with. This seems to be due to her view that the police did not believe her and felt that she was lying. She described having core beliefs about the importance of being truthful which seemed to have developed due to her disgust about her mother's behaviour during her childhood. She describes feeling that the police were suggesting that she was lying and was promiscuous, which would have made her similar to her mother. That was something that she had spent her entire life trying to prove that she was not and that she had different values. In my opinion, she started to develop a further depressive episode during the investigation which was worsened by her beliefs that her partner, employers and the counsellor also felt that she was lying about the incident. From her report of the symptoms she was experiencing and the impact on her level of functioning, in

my opinion this was moderate in degree of severity. [DSD] describes that she questioned her own sanity during this period and spent between 2003 and 2008 questioning herself about what had happened and believing that she might be mentally unwell. I consider that she developed negative cognitions about herself, which further reinforced to her that she was not being believed.

From her description of her feelings and beliefs, in my opinion, on the balance of probabilities, [DSD] developed a depressive episode as classified by DSM IV classification (see Appendix 1) which was precipitated and maintained by the approach taken by the police in their initial investigation rather than by the actual rape she experienced.

[DSD] describes feeling less depressed prior to her second marriage and I consider that she showed partial remission in her depressive disorder. However, she continued to feel that she was not believed and had ongoing concerns about her sanity. She describes in detail her feelings and reactions when she heard that a Black Taxi driver had been arrested in 2008 for raping a number of women and she showed a clear elevation in her arousal levels when discussing this. She describes gaining some relief as she felt she finally had confirmation that she had not "made the rape up" and that she was therefore "not mad". However, she also identified that her emotions changed to overt anger towards the police because they had not "believed her" which had led to her feeling so confused for 5 years.

[DSD] describes feeling marked guilt when she attended the identity parade and saw that there had been many victims subsequent to her own experience in 2003. She described feeling that she should have tried to make the police believe her and to act on the incident she had reported in 2003. She described feeling responsibility for what had happened to all of the other women and that she should have been able to stop Worboys. [DSD] was able during my interview, with the appropriate support and guidance, to reflect on this and challenge these beliefs using a cognitive behavioural approach. From her report and her behaviour during my assessment as well as the entry in her medical reports, I consider that on the balance of probabilities that she suffered from an adjustment disorder according to DSM IV classification (see Appendix 2) as a response to the situation, but I do not feel that she suffered a relapse in her depressive disorder.

At my assessment, [DSD] did not show evidence of a depressive disorder or Post-Traumatic Stress Disorder according to DSM IV classification. However, it is clear that she is still finding it difficult to cope with the reaction of the police following the incident in 2003 and this seems to have

> been exacerbated by the information contained in the investigation report from the IPCC and the police. She describes having found it distressing to live with the idea between 2003 and 2008. People felt she had been lying about the incident as this conflicted with her core beliefs. She describes her partner and employers also doubted her because the initial police investigation did not have a positive conclusion. She describes this leading her to question her sanity and in my opinion, this all contributed to the precipitation and maintenance of a depressive episode. I also consider that this prevented her from following up the complaint she made during the initial investigation. In my opinion [DSD] also suffered from an adjustment disorder after Worboys was arrested as outlined above."

63. An "Adjustment disorder" is also defined in DSM IV. It is: "a psychological response to an identifiable stressor that caused significant emotional and behavioural symptoms that do not reach the criteria for anxiety disorder, PTSD, and acute stress disorder. Adjustment disorders can be acute or chronic depending on whether they last less or more than 6 months".

64. A psychiatric report was prepared by Dr Tony Davies on behalf of the Defendant. Dr Davies had the opportunity to interview DSD for approximately 1½ hours. Dr Davies' report does not differ substantially from that of Dr Harrison. It was his opinion that DSD had been significantly emotionally affected by her experience and that it was likely that for significant periods during the time that followed on from the attack that she had fulfilled some of the criteria for a diagnosis of depressive disorder or an episode of Post-Traumatic Stress Disorder. He accepted that DSD's difficulties with her mental health subsequent to the assault appeared to be related to emotional impact of the incident including psychological trauma. He was of the view that there was no reliably objective manner of separating the contribution of the sexual assault itself, and its subsequent investigation, to her mental difficulties. He observed that DSD had not been referred to specialist mental health services nor had she received access to specialist psychological treatment for trauma and he expressed the view that this could, in part, reflect DSD's reluctance to consider such treatment on account of the negative thoughts and feelings of guilt and self blame that were so often a constituent part of psychological trauma. He suggested that DSD would benefit from specialist trauma based psychological treatment probably in the form of cognitive behavioural therapy. He indicated that in his view the treatment would need to be extended over a period of some months.

65. In preparation for trial Dr Davies and Dr Harrison prepared a joint statement. I summarise its contents below:

    i) When assessed DSD did not describe or exhibit any symptoms to justify a diagnosis of <u>current</u> mental disorder though she reported persistent emotional

problems in coming to terms with her experience of sexual assault in 2003 and in the events that followed.

ii) DSD had experienced difficulties with mental health since her experience in 2003 and its subsequent investigation and the severity of her symptoms have fluctuated over time reaching the threshold for formal diagnosis of mental disorder during some periods.

iii) For some periods of time since the assault DSD had suffered with a Depressive Disorder. There was disagreement as to whether DSD also suffered from Post-Traumatic Stress Disorder: Dr Davies was of the view that DSD had suffered from this condition whereas Dr Harrison was of the view that although DSD had described some traumatic symptoms she had not satisfied the criteria for this diagnosis. Both experts agreed that the gap of circa 30 months between their respective assessments could account for the difference in view. Both experts also noted the absence of corroborative information such as medical records.

iv) With regard to causation Dr Harrison was of the opinion that the depressive disorder suffered by DSD after the assault was attributable to the subsequent police investigation but not to her experience of assault; Dr Davies was of the view that her experience of sexual assault and the subsequent investigation contributed equally to her mental health difficulties. However, both experts agreed that there was no reliable or objective way of attributing causation and they also agreed that the long period of time between their assessments and absence of corroborative evidence could account for their differing views.

v) Both experts agreed that DSD had not received significant treatment for mental disorder since the assault in 2003;

vi) Both experts agreed that DSD had not experienced any significant absence from work on account of mental health difficulties following the assault in 2003;

vii) Both experts agreed that DSD continued to experience problems in coming to terms with her experience notwithstanding that such difficulties did not justify a current diagnosis of mental disorder. They were agreed that DSD warranted specialist treatment to assist her in this area in the form of psychological treatment/cognitive behavioural therapy delivered by a therapist with expertise in trauma. The experts agreed that any treatment would probably be extended and estimated treatment over a 6/12 month period consisting of 20/40 therapy sessions;

viii) Both experts agreed that in the absence of treatment DSD's difficulties were unlikely to be resolved spontaneously and that given the length of time since

> the assault it was possible that some of her difficulties may persist after any treatment.

(6) Psychiatric evidence: NBV

66. A psychiatric report was prepared on behalf of NBV by Professor Anthony Maden, Professor of Forensic Psychiatry at Imperial College, London. He produced two reports. The first was on 13th June 2011. Paragraph 3 of that report described the scope of the assessment:

> "3. I have been asked to examine the Claimant, to consider the documentation and to prepare a report dealing with the psychological and psychiatric impact of the assault; psychiatric diagnosis and psychological damage; the impact of any psychological damage on the Claimant's family life, ability to have relationships, education and ability to work; prognosis; and future therapy requirements".

67. On 21st September 2011 Professor Maden produced a supplementary report which addressed the following two questions:

> "3. Can I determine the extent which any psychological damage/psychiatric illness [NBV] may have suffered (and may still be suffering from) can be attributable to the manner in which the police approached the initial investigation into her allegations in 2007 as set out in the letter before claim?
>
> 4. [NBV], did not approach a solicitor about a possible claim against the police until 1 year after events giving rise to a claim under the Human Rights Act arose. Is there any psychological explanation for her delay in commencing proceedings up until recently in relation to a claim against the police?"

68. Professor Maden met with NBV on 27th May 2011. His conclusion was that the Claimant had developed difficulties with her emotional health. He concluded that she was suffering from a form of Post-Traumatic Stress Disorder and, furthermore, that she was suffering from a diagnosis of Sexual Aversion and lack of sexual enjoyment which reflected the difficulties that NBV was experiencing in her sexual relationships.

69. Professor Maden described NBV as a woman of "good character" and he stated that he had no reason to doubt her credibility and he observed that her account was generally consistent with her medical records. His psychiatric diagnosis was that there was no pre-existing psychiatric disorder but that following the assault she developed symptoms of Post-Traumatic Stress Disorder which including nightmares, intrusive imagery or flashbacks, avoidance, general anxiety and depression, poor concentration and some social withdrawal. He observed that: "for a considerable period of time they affected most areas of her life". There had been considerable improvement in her

condition with the passage of time and with pharmacological treatment but she still suffered from moderate to severe residual symptoms and was frequently tearful and experienced mood swings. She suffered from continuing sexual aversion and lack of sexual enjoyment and had been unable to enjoy a sexual relationship.

70. In terms of impact the report states as follows:

> "120. Her symptoms damaged her performance at university and she would probably have obtained a higher degree had it not been for the assault.
>
> 121. She missed time at work and her performance suffered when her symptoms were more severe but she is now able to work normally.
>
> 122. The main impact has been on her personal and social life. Her enjoyment of her time at university was seriously impaired. She remains less sociable and outgoing. She is a less carefree and more troubled person. She is phobic of taxis and could not travel alone in one. Her ability to stay in intimate relationships is impaired and she has no sex life".

71. In terms of causation Professor Maden observed that the causation of most psychiatric and psychological problems was "multi factorial" with genetic and environmental factors contributing. He stated as follows:

> "123. The causation of most psychiatric and psychological problems is multi factorial with genetic and environmental factors playing a part. The family history of mental illness in her mother increased her vulnerability as did her mother's death but not to a great extent. There were no other vulnerability factors.
>
> 124. She was a normal and confident young woman before the assaults and she would not have developed mental health problems had it not been for the assaults. The assaults exacerbated by the failure to properly investigate them were the main cause of her mental health problems.
>
> 125. Her problems were also made worse by an abusive boyfriend and the diagnosis of serious illness in her sister. The problems with her boyfriend were due in part to symptoms she developed after the assaults. In any event these are the sort of life events that would have caused transient stress but not mental illness had it not been for the assault by Worboys".

72. In relation to prognosis and treatment Professor Maden concluded that NBV continued to suffer from significant mental health problems and that the prognosis

was "guarded". He concluded, ultimately, that it was necessary to allow for more prolonged treatment than was usual in such cases.

73. In his supplementary report of 21st September 2011 in relation to causation he expressed the view that it was always difficult to determine precisely the extent to which any psychological damage/psychiatric illness could be attributable to a particular cause but he concluded that he was: "…clear that the manner in which the police approached the initial investigation into her allegations made a substantial contribution to her distress and to the psychological problems she developed later". In paragraph 13 of his report he stated:

> "At interview she remained distressed about the fact that her allegations had not been believed and she was pre-occupied by some aspects of the police response. Her problems were exacerbated by the months of uncertainty in which she doubted her own mind. She still has guilt feelings about what happened to later victims and would not have had those feelings if the police response had been appropriate.
>
> There is no scientific basis on which to attribute causation in percentage terms but if pressed to give a figure I would attribute causation equally between the assault itself and the initial failures in the police response.
>
> Psychological factors probably made a contribution to the delay in commencing proceedings as [NBV] was for a long time pre-occupied by the need to manage her life as best she could whilst coping with her psychiatric and psychological problems. The task of coping with her life at that time probably absorbed so much of her own energy that it was unreasonable to expect her to have been able to turn her mind to the prospect of making a claim".

74. A psychiatric report was prepared on NBV by Dr Tony Davies on behalf of the Defendant. He met with NBV on 4th June 2013 for approximately 1 hour and 15 minutes. His report does not differ substantially from that of Professor Maden. He concluded that at the point in time when he assessed NBV she did not reach the threshold for a current diagnosis of a Depressive Disorder/Episode or Post-Traumatic Stress Disorder. He did, however, conclude that NBV: "has been significantly emotionally affected by her experiences, and that it is likely that for significant periods during the time that followed on from her attack, she has fulfilled criteria for both conditions. She continues to be emotionally troubled by her experience". He observed that NBV did not report any significant emotional health issues prior to the assault (which was supported by medical records) and that her: "subsequent difficulties appear to be related to the emotional impact of the incident, including psychological trauma". In relation to causation he stated:

> "[NBV's] claim relates to the initial police investigation of her case, and its subsequent impact on her emotional health. There

> is no reliable objective way of separating the contributions of the sexual assault and of its subsequent investigation. At interview I formed the impression that they are closely linked in the Claimant's mind, and emotionally she is unable to separate one from the other. Should the court find in her favour with regard to her allegation regarding the initial police investigation, I would suggest that the attack and its subsequent investigation might reasonably be said to have contributed equally to [NBV's] difficulties with her emotional health since."

In relation to future treatment Dr Davies concluded that her condition merited referral for specialist trauma based psychological treatment, probably in the form of cognitive behavioural therapy. He observed that the extended nature of her difficulties might impact upon her response to treatment but should not be considered a barrier to referral. He concluded that it was difficult to estimate accurately the length of any required treatment but that it would likely extend "over some months".

75. In preparation for this trial Dr Davies and Professor Maden prepared a joint statement. I summarise its contents below:

i) When assessed by Professor Maden in May 2011 NBV reported residual symptoms consistent with the diagnosis of Post-Traumatic Stress Disorder and a second diagnosis of a sexual disorder; however, when examined by Dr Davies in June 2013 the Claimant did not describe or exhibit symptoms of sufficient severity to justify a diagnosis of current mental disorder but she reported persistent emotional problems in coming to terms with her experience of sexual assault in 2007.

ii) Both experts agreed that NBV had experienced difficulties with mental health since her experience and its subsequent investigation and there was agreement that the severity of symptoms fluctuated over time reaching the threshold for formal diagnosis of mental disorder during some periods but not at others.

iii) Both experts agreed that for periods of time since the assault NBV had suffered with Post-Traumatic Stress Disorder. Dr Davies was of the view that NBV had also suffered with Depressive Disorder although Professor Maden did not feel that she satisfied the criteria for this second diagnosis at the time of his assessment. When he met with NBV in May 2011 he made a further diagnosis of a sexual disorder (sexual aversion and lack of sexual enjoyment) though Dr Davies did not consider that NBV warranted such a diagnosis when he assessed her in June 2013.

iv) To the extent that there were differences in view between Professor Maden and Dr Davies they were of the view that these were accounted for by: the gap of 25 months between their respective assessments with the potential for

fluctuation and improvement in symptoms over time; and the fact that their assessments were based upon her reported account and the absence of substantial corroborative information in available medical records.

v) In relation to causation both experts were agreed that there was no reliable/objective method of attributing her post-assault condition to any particular prior event and particularly the assault or the subsequent investigation and, accordingly, they were agreed that the assault and its subsequent investigation should be treated as having "contributed equally to the difficulties that she has experienced with her mental health since then".

vi) Both experts agreed that NBV had not received any significant specialist treatment for mental disorder since the assault in 2007.

vii) Both experts agreed that NBV had not experienced any significant absence from work on account of mental health difficulties following the assault but that certain aspects of her life, including her time at university and her subsequent experience of relationships, were affected adversely by her experiences.

viii) Both experts agreed that NBV continued to experience difficulties in coming to terms with her experience albeit that the difficulties did not justify a current diagnosis of mental disorder. They were agreed that NBV warranted specialist treatment to assist her in the form of psychological treatment/cognitive behavioural therapy delivered by a therapist with expertise in trauma. They were also agreed that given the length of time since the assault that any treatment would probably need to be extended and they estimated treatment over a period of 6-12 months consisting of 20-30 sessions.

ix) Both experts agreed that without treatment NBV's difficulties were unlikely to resolve spontaneously and that given the length of time since the assault it was possible that some of her difficulties may persist notwithstanding treatment albeit not to such a degree as to interfere with her ability to work.

(7) The identification, arrest and prosecution of Worboys

76. At the start of February 2008 specialist sexual assault officers in a project called "Operation Sapphire" (a cold case review team) concluded a routine computer check of allegations of rape and sexual assault. The officers initially identified 4 similar allegations. Alarm bells rang. Within 24 hours an inquiry was assigned to Team 10 of the Specialist Crime Directorate. The inquiry was allocated the name "Operation Danzey". Within 8 days Worboys had been arrested and a search conducted of his home during which a "rape kit" was found and the incriminating notes referred to at paragraph [52] above. Other evidence linked Worboys to victims. The speed with which Worboys was identified and arrested and a search conducted of his premises

which generated damning inculpatory evidence is a clear indication that had similar focus been applied to the investigation during the previous years, Mr Worboys might have been prevented from committing at the very least a significant number of the assaults that he did in fact commit.

77. DS David Reid, the investigation officer for Operation Danzey, gave evidence in the course of this trial about how the MPS came finally to apprehend Worboys. His oral evidence and his witness statement largely reflected the contents of the Major Investigation Reference Document (Form 5007) which is a document prepared at the conclusion or suspension of an inquiry. There are two sections of this Form which are of interest. The first is entitled "objective and method"; and the second is entitled "How solved". In relation to the latter the form also includes the exhortation to the person completing the form that "objectivity and frankness are essential". It is worth setting out, in full, the entry under the two headings that I have referred to.

> "Motive and method (describe fully):
>
> Operation Danzey relates to a linked series of sexual assaults committed by the licenced driver of a black London cab. The inquiry was assigned to SCD 1 on 8th February 2008, as a result of 4 offences being linked by VCD Central Sapphire through methodology. SCD 1 researched the method and identified further offences that appeared to be linked. Dates ranged between 2002 up to when WORBOYS was arrested in February 2008. John Derek WORBOYS would either approach females or be flanked down for a lift in the Central London area. Worboys generally chose victims who had been out for the evening, clearly socialising, some clearly under the influence of alcohol. He would engage them in conversation on route, appearing friendly and chatty. He would falsely claim that he had won a large amount of money gambling and invite the passengers to help him celebrate. On many occasions he showed the victims a bag containing a large amount of cash, claiming it to be his winnings. He would offer them an alcoholic drink, often champagne. On occasions he also offered passengers cigarettes. Worboys would carry a selection of alcoholic drinks in the front of his cab together with plastic cups and glasses. Several of the victims were drugged, using Temazepam (prescribed to Worboys) or Diphenhydramene (found in sleeping aids such as Nytol), rendering them either unconscious or unable to resist sexual assault. Several victims were subjected to sexual assaults. Many victims were unable to account for a period of time, ranging from several minutes up to several hours. Worboys would often not charge his passengers for the fare. Many journeys would be his last fare of the evening and he would often tell the victims that he would take them home as they lived on his route home. When arrested, alcohol and cups together with the drugs were found. Worboys was charged with 23 offences, relating to 14 different victims. Two of the charges were alternative charges. He was

> convicted of 19 counts (1 x rape, 1 x sexual penetration, 4 x sexual assaults, 12 x administering a substance with intent). He received an indeterminate sentence to serve a minimum of 8 years imprisonment.
>
> How solved (objectivity and frankness are essential):
>
> As at 07.00 hrs on Friday 15th February 2008, SCD were investigating 5 allegations. An article appeared in "The Sun" on 15/2/08, entitled "Lotto Lie Cabbie Drugs and Rapes 5 – Hunt For Spiked Bubbly Brute". By 08.13 hrs, the IO was contacted by "The Haven" at Camberwell Green, South London, stating that they had dealt with a victim in July 2007. They provided details of the following allegation: - CRIS 3619870/07 – allegation made by [NBV] (Op DANZEY offence 6), committed on 26/07/07 between about 02.00 hrs and 04.33 hrs, reported on 26/07/07.
>
> In relation to that enquiry, on Friday 27th July 2007, the registered keeper, John Derek WORBOYS attended Plumstead Police Station and was arrested on suspicion of sexual assault. WORBOYS was interviewed and although he admitted being the driver, he denied any assault or drugging the victim. The case was not proceeded with.
>
> Officers from SCD 1 arrested WORBOYS on 15th February 2008. Found at his home address was his own "rape kit" consisting of several bottles of alcohol (various types, including Champagne), cups, a vibrator and notebooks. The notebooks were found to contain several of the victim's names and addresses. WORBOYS wrote down the details so that he would know where to drop the victims off after he had administered the sedative drugs. Temazepam and Nytol tablets were found in the kit. A bag containing £3680 cash was found. Traces of the drugs were found in cups. On one cup was also found DNA of one victim. DNA from Worboys and one victim was found on the vibrator, supporting the charge of penetration, identification parades were held for all victims who believed they may recognise the driver. All but one of the charged cases involved positive identifications. At the time of the trial 83 allegations had been linked. CPS chose 23 charges that fully reflected the nature of the allegations, but also keeping the trial manageable. Following publicity after the trial the total number of allegations linked rose to 105.

78. In his statement DS Reid stated that following the conclusion of the trial he wrote to all of the victims whose allegations had not resulted in charges being brought against Worboys. DSD was one such victim. In his statement he stated: "I was satisfied that Worboys was the assailant in their matters too".

79. The reason why on 7th February 2008 officers from Operation Sapphire linked the various allegations of rape and sexual assault by method was because they conducted computer searches using the search terms "black cab", "won money" and "alcohol". These terms were found in a number of other CRIS reports.

80. Worboys was arrested on 15th February 2008 at his home address in Rotherhithe. Worboys was present when the police attended his address. They found at that address what they believed to be his "rape kit" consisting of bottles of alcohol, cups, a vibrator and notebooks. The notebooks which contained (*inter alia*) several of the victims' names and addresses. The police also located Temazepam and Nytol tablets. These corresponded to drugs found within the bodies of victims. Traces of these drugs were found in the cups. The DNA of one of the victims was found also on one of the cups. The DNA of Worboys and one of his victims were also found on the vibrator. A bag containing £3680 was also found. Mr Worboys was interviewed at the police station but made a no comment interview. He was charged and remanded in custody.

81. The police then instituted a media strategy in order to provide information to women in London, Surrey and Dorset, these being the areas Worboys regularly visited. A significant number of women were ultimately identified as having been subjected to attack and each such woman was allocated a SOIT officer from Operation Sapphire. Over 60 identification parades were held for victims who believed that they might recognise the driver. A significant number of positive identifications were made.

82. On 18th February 2008 Worboys was formally charged with 11 offences relating to 6 of the allegations that came to light. He appeared at the Sutton Magistrates' Court on 19th February 2008 when he was remanded in custody and committed for trial at Croydon Crown Court. Research into alleged offences continued thereafter and by 18th February 2008 in excess of 40 victims had been identified. A number of these additional leads had come to light as a result of an article appearing in "The Sun" on 15th February 2008 entitled "Lotto Lie Cabbie Drugs and Rapes 5 – Hunt for Spiked Bubbly Brute". Further information had also come to light as a result of the police being contacted by "The Haven" at Camberwell Green, South London who had dealt with a victim – NBV - in July 2007 who gave evidence of an alleged offence.

83. Between 8th April 2008 and 14th July 2008 Worboys was charged with a series of additional offences.

84. On 17th October 2008 Worboys entered not guilty pleas at a PCMH and the trial was set for 20th January 2009. The trial continued until Friday 13th March 2009 when he was convicted of 19 counts of rape, attempted sexual assault, 4 sexual assaults, 12 offences of administering a substance with intent and rape.

85. On Tuesday 21st April 2009 Worboys received an indeterminate sentence for all counts with a minimum term of 8 years imprisonment.

86. In a Closing Report dated 5th April 2011 prepared by the police there is a useful summary of the strategy adopted by the CPS in relation to the charging of offences. It is worth setting it out in full:

> "Crown Prosecution Service
>
> At the time of the trial (20th January 2009), police were investigating 83 linked offences. CPS Lawyer, TONY CONNELL (CPS at Ludgate Hill) authorised the charges. He crafted the indictment to account for the evidence of any other victims. Mr CONNELL was intent on ensuring that the indictment was not overloaded and that the case was as simple as it could be to present to a jury. At the same time, allegations which were particularly serious or which added a great deal to the evidence against Worboys were included upon the indictment. The indictment Worboys faced properly reflected his criminality and enabled a Trial Judge to impose a sentence which adequately protected the public from him".

87. In the course of the trial an additional four allegations emerged which were linked to Worboys. Furthermore, in the wake of media observations following the conviction an additional 45 incidents were reported of which 18 were linked to Worboys. The total number of allegations linked to Worboys upon the closure of the investigation was 105. The view of the CPS was that it was not in the public interest to charge Worboys with any further offences as these would not result in any increase in his sentence.

(8) MPS Policy for the investigation of rape and serious sexual assaults: Special Notice 11/02

88. One important component of the Claimants' case is the failure on the part of the MPS to follow their own guidelines. I do not conclude that the mere failure to adhere to internal standards and operating procedures engages liability: See paragraph [221] below. But they are nonetheless very relevant in a number of different ways. I turn therefore to consider the procedures adopted by the MPS for the investigation of DFSA. The MPS issue guidance on the investigation of a variety of different types of offence. The relevant guidance applicable at the time of the sexual assault on DSD was Special Notice 11/02 (9th August 2002) entitled "A policy for the investigation of rape and serious sexual assaults" (the "SN"). I have set out below detailed excerpts from the guidance and in particular I have sought to identify key aspects of MPS policy on DFSA which are relevant to this case. These are:

i) The importance of all police staff following the guidance.

ii) The importance of treating allegations of sexual assault as *prima facie* valid.

iii) The importance of maintaining victim confidence and a proper understanding of the inferences and implications to be drawn from different types of victim behaviour and responses.

iv) The fact that DFSA may be hard to identify precisely because the victim may present as drunk or as an addict.

v) The fact that victims may have a highly imperfect recollection of events.

vi) The likelihood that there will be no independent witnesses to the assault.

vii) The real possibility that forensic and toxicology analyses might not always generate inculpatory evidence and accordingly the need to focus intensively and expeditiously on other forms of evidence collection. This includes the importance, *inter alia*, of conducting section 18 PACE searches.

viii) The critical importance and need for proper and comprehensive reporting of investigations as they unfold and the entry of data and reports on to databases to facilitate secondary searches of linked complaints.

ix) The need for front-line officers to be subject to close supervision by more senior officers (the SIO).

89. The foreword acknowledges that an allegation of rape "is the most serious major crime investigated on a borough" and "the trauma which victims experience presents the police service with unique challenges". In addition:

> "The Metropolitan Police Service has made continuous efforts to improve victim care and rape investigation and this policy brings together this knowledge in a single document. It is now incumbent on all staff to see that the standard set in this policy is complied with so that we can be confident that we are delivering the highest possible service to victims of rape and other serious sexual assault".

90. The SN starts with three "over-riding principles" which should guide the investigation of any case:

> "Principle 1
>
> It is the policy of the MPS to accept allegations made by any victim in the first instance as being truthful. An allegation will only be considered as falling short of a substantial allegation after a full and thorough investigation.

> Principle 2
>
> A SOIT trained officer should be within a victim of a serious sexual assault **within an hour** of an allegation being received by police.
>
> Principle 3
>
> The victim's wishes on whether a case should proceed may only be overridden in exceptional circumstances (for example, where it is in the public interest to proceed with the case regardless of the wishes of the victim, as is sometimes the case with a linked rape series)".

91. Annex C identifies the characteristics of a victim who might have been subjected to a drug assisted rape. An important point is that a DFSA victim might not recall any aspect of the offence:

> "If a victim has been given a "drug rape" drug they will probably be in a state of confusion. Depending on the dose and the time elapsed since the administering of the drug, the victim may have a good recollection of what has happened to him/her or they may have no recollection at all. *It may be purely on physical evidence that they think they have been attacked*. It should also be remembered that if the victim is still suffering the effects of the drug, when they report the offence, it might be affecting their behaviour.
>
> The victim will often reflect upon what has happened and question whether it was their fault and whether they may have been giving the impression of consent. It is of the utmost importance that the victim be treated as a victim of rape, irrespective of how confused their account may be and irrespective of any possible evidence of consent".
>
> (Italics added)

92. The Annex identifies (non-exhaustively) typical drugs that might be used in a drug-assisted rape: Gamma Hydrox Butyrate, Zopiclone, Ketamine. It notes that the effect of any particular drug can be enhanced when taken with alcohol. The effects of the drug include complete or partial memory loss, unconsciousness, confusion, sickness/nausea, dizziness, flashbacks of memory:

> "Officers must be aware that victims can experience a loss of memory of events after a drug has been taken and ingested (this may take up to 20 minutes). Furthermore, where a victim has memory loss of the events, which took place before taking the drug, this may indicate that the victim is mistaken about when they took the drug. It may be that they were given the drug

> earlier than they thought and by a different suspect (in the case of a spiked drink, an earlier drink than the one being consumed). A person given a drug may also be rendered unconscious, may remain conscious but with little or no recollection of events or may slip in and out of consciousness".

93. It was also understood that an ostensibly isolated incident could be part of a series of linked attacks and that early apprehension of a suspect can prevent future attacks:

> "Even if the offence is described as having occurred several weeks or months previously an immediate response is necessary. If the rape is part of a linked series of attacks, early and immediate action could preserve vital evidence and prevent further attacks".

94. The Notice records that station reception officers need to be "particularly vigilant"; about 25% of rape allegations are made at police station front counters.

95. The Notice identifies three phases that should be proceeded with in any case. Phase 1 covered the required response of police when first coming into contact with the victim. Phase 2 concerns assessment and evidence gathering. Phase 3 concerns long term liaison and preparation for court.

96. As to Phase 1 this encompasses, inter alia, the following tasks: the creation of a SOIT log and the making of a record of all first encounters with the victim; the making of an assessment of the victim's immediate health, cultural, language, special needs etc; the making of a note of the victim's condition and symptoms which may have evidential consequences at a later time; the provision of explanations to the victim of police procedures for dealing with allegations of rape; the consideration of the use of EEK or the use of a full medical kit if available to preserve immediate forensic evidence of urine samples and mouth swabs; the obtaining of the maximum amount of information about the scene of the possible offence; consulting with the BFM and scene examiner at the earliest opportunity to ensure the retrieval of best evidence and the seeking of advice upon the obtaining of photographic evidence of the victim; making contact with and briefing of the IO at the first available opportunity ("…this should take place as soon as possible"); ensuring that a SOE attends if medical or other examinations are to take place at a police examination suite; the transportation of the victim to and from the examination suite and to the scene where the incident occurred; ensuring that following medical examination exhibits are retained; ensuring that if a victim is examined at The Haven the doctor is supported by a crisis worker; the making of arrangements for priority appointment at a genital-urinary clinic if the victim so wishes and the making of an offer to accompany the victim; and the provision to the victim of a copy of the MPS booklet "Advice for the victims of sexual assault" and the leaflet "The role of the SOIT officer".

97. As to Phase 2, the SOIT officer should, inter alia: take measures to protect the victim from being attacked again; and make arrangements for a full evidential statement or ABE to be taken at a time appropriate to the victim, taking steps to ensure that the best quality evidence can be collected, for example by video recording the interview with the victim.

98. The Notice provides detailed guidance as to the conduct of the investigation by IOs who must be substantive detective sergeants or substantive detective constables. These individuals must be supervised:

> "All allegations of rape must be overseen by a SIO of at least substantive detective inspector rank. An exception can occur on dedicated sexual offence investigating units where, owing to the number of cases, a detective sergeant (DS) may act as SIO on behalf of the detective inspector (DI)".

99. In cases of stranger 1 rape "an SIO must be contacted immediately and advice sought". I mention this because it is accepted in the present cases that the victims, DSD and NBV, were subjected to "stranger 1 rape". This is defined as an assault: "where the offender has had no prior contact with the victim or where the knowledge of the offender is gained by close observation (for example, stalking).

100. The Notice provided detailed guidance as to the roles of the IO and SIO in both Phases 1 and 2. The basic structure of the process involved three reviews:

> "A first review of a rape investigation must be carried out within 10 hours of receipt of the allegation by a supervisory officer of at least DS rank, the second review within 7 days of the allegation by the SIO and the third review by the SIO within 28 days (if unsolved)".

101. The first review after 10 hours entailed the following:

> "An entry should be made in the DTS screen that the case is being reviewed. It should include a brief outline of the following 8 points:
>
> i) Victim care;
>
> ii) Suspect;
>
> iii) Forensic;
>
> iv) Witnesses;

v) CCTV;

vi) Property;

vii) Crime prevention;

viii) Quality assurance".

An outline of the future strategic direction of the investigation must be given with detail of actions (fast track or otherwise) to be pursued".

102. The IO must prepare an "outline of the future strategic direction of the investigation" which must be accompanied by the details of the actions to be pursued together with an indication of their priority.

103. The second review should be conducted by the SIO and should take place within 7 days. It should include detail about outstanding lines of inquiry and a brief update on each of the 8 points above. This review should include:

> "An outline of the future strategic direction of the investigation, including the prioritisation of fast track forensic options/submissions should be included".

The SIO *must* ensure that the CRIS report complies with data standards. This is vital for the analysis of rape and sexual assault "…and in order to detect linked rape series". It is the responsibility of the SIO to ensure that CRIS codes have been correctly completed and provide the fullest description possible of the suspect, the relationship code between the offender and the suspect and whether the suspect has previous convictions in particular for sexual assault.

104. The third review, which is to occur if the allegation remains unsolved after 28 days, must be performed again by the SIO in consultation with the Borough DCI. Upon this review an outline of the future strategic direction of the investigation must be given with details of actions to be pursued. This particular review is required to include references to resources required to proceed with the investigation and to any liaison required with the borough operations superintendant.

105. The role of the SIO is crucial. In particular because of the discipline involved in the creation of a detailed closing report since unresolved cases may be reopened and the information contained in closing reports will assist in the investigation of linked allegations:

> "The SIO of an investigation of rape or serious sexual assault must:

- oversee the investigation by the IO
- review the investigation at 7 and 28 days as detailed
- ensure that the investigation is filed on a General Registry docket number 207 (created when a SPECRIM is sent). (All General Registry dockets containing investigations of sexual offences of any kind are now retained in storage for 100 years).
- oversee the completion of the closing of the reports.
    - A closing report must be completed in every case. This ensures that all relevant aspects of an investigation and documentary evidence are retained for future reference. Closing reports for rape investigations are especially important when the rape remains "undetected", as there is always the possibility that the case will be reopened.
    - Included at Annex B is a proforma for a closing report for a rape investigation that must be followed in every case to ensure a consistent approach across the Service.
    - The closing report should be typed into CRIMINT and printed out for the General Registry file. It is the responsibility of the SIO to ensure that closing reports are completed to the required standard, entered onto CRIMINT and a copy of the CRIMINT entry placed on top of the General Registry docket.
    - Submit the closing report to the borough DCI for filing at General Registry through SO11 and Project Sapphire".

106. In Phase 1 (the first few hours and days of an investigation), the actions taken by the IO are "crucial to a successful outcome". The IO must: ensure that the victim is safe and that a SIO officer is with the victim; take all necessary steps to identify and arrest the suspect; secure and preserve all forensic evidence minimising the risk of contamination; undertake an assessment of each scene of crime including ensuring that searches for witnesses and evidence have been comprehensive; ensuring that all relevant CCTV has been viewed and/or tapes seized; ensuring that if a stranger rape 1 attack has occurred that the community concern assessment (CCA) has been completed as soon as possible; ensuring that sections 18/32 PACE 1984 have been considered for all places where the suspect lives or frequents.

107. The SN also addresses the importance of PACE searches:

> "Searches under the Police and Criminal Evidence Act (PACE) (Sections 18/32) must be considered for all places where the suspect lives or frequents. This can assist in several ways:
>
> - by providing a potential source of corroborating evidence for the current offence (pornography, "cuttings" relating to interest in sexual offences, video recordings indicating fantasies and so on).
>
> - By providing intelligence material on the offence, in particular, anything which indicates geographical anchor points (work places, club membership and so on).
>
> - By locating stolen items taken as trophies or souvenirs from other victims".

108. Critically, the IO must conduct all necessary immediate intelligence checks and ensure that the outcomes are properly recorded on the CRIS DETS page. The SN sets out a table which stipulates the intelligence checks that are required to be conducted. This has particular relevance in the present case and I set out below the table in full:

CRIS	i) Search both suspect and victim details. ii) Search for other similar offences at the same time and or same location. (Always consider doing a pan London search of the CRIS database)
CRIMINT	i) Search both suspect and victim details. (For known suspects, an MCRAC search should be carried out).
Service Intelligence Unit 24 hour Bureau	Appropriate for I) MPS wide searching of the CRIMINT database using MCRAC and 2) INFOS pool searches for traces and information on the operations and flagging database. Contact extn 62257.
PNC	Search both suspect and victim details. (Note warning signs and antecedents – **Always consider officer**

	safety).
PNC – QUEST	A QUEST search is a more advanced search of the nominal records contained on the PNC database. A number of parameters can be searched. QUEST searches can identify those who have previous criminal records for sexual offences within a defined geographical area.
Method index	Only search if modus operandi (MO) is distinctive or unusual. (Method index is a national index of known offenders convicted of crimes involving distinctive or unusual MO or personal description). Contact extn 62031 or public telephone number 020 7230 2031.
CAD	Check for precursor activity, that is, suspicious incidents which may be linked but which will not necessarily amount to a criminal offence such as prowlers and peepers. (Always consider doing a pan London search of the CAD database).
General Registry	Search on both suspect and victim details. Contact extn 67170.

109. An important point is the clear and unequivocal recognition of the particular need to adopt special procedures for stranger rape and DFSA. The SN demonstrates that DFSA demands more sophisticated investigative approaches than the norm. I have set out the relevant section in full:

> "**General guidance on investigations involving unknown offenders (rapes or serious sexual assault by 'strangers')**
>
> Rape by 'strangers' is relatively rare. When it does occur the investigative process is different and requires additional action that is set out below:
>
> - All decisions by the SIO must be recorded in a decision log. Decisions should be made in accordance with the strategies listed in the log, that is, media strategy, search strategy, and so on.
>
> - A Community Concern Assessment must be completed. This can be found at the back of the decision log (Book 194).

- As assessment of resources should be undertaken.

- The borough Sex Offender Registration officer (SORO) must be consulted. SOROs have personal knowledge of registered sex offenders and have access to General Registry files that may contain detailed assessments of offender's background and previous history that could assist greatly in any investigation. IOs should be aware that a suspect might be (or have been) the subject of a referral to the borough Multi Agency Public Protection Panel (MAPPP) that oversees the monitoring and targeting of high-risk sex offenders.

- The setting up of a 'Gold' Strategy Group must be considered for cases where there is (or is likely to be) high community/media interest or serious public concern/fear as a result of the allegation/investigation. This should consist of, as a minimum, the borough commander or superintendant operations, borough DCI responsible for crime and the borough partnership/community liaison officer. It is also strongly recommended that early contact is also made with the local Police Community and Consultation Group (PCCG) and Lay Advisory panel as well as the MPS Independent Advisory Group (IAG) on sexual offences.

A policy for the investigation of rape and serious sexual assaults – continued

- The potential use of Covert Human Intelligence Sources (CHIS) should be considered either through tasking at a local borough level or through SO11 central CHIS database.

- The potential use of QUEST searching on PNC should be considered to identify suspects linked to the locality by using the known factors to limit the response.

- A borough analyst must be used for **all** cases of stranger 1 rape. The following standard analytical products can be asked for: victim association charts, sequence of events chart, time lines on suspects, comparative case analysis, mapping of scene and routes and scene assessment, statement analysis, house to house focus analysis, significant evidential links, lines of enquiry charts, database searching, briefing products, and telephone call analysis.

- SO11 Service Intelligence Unit (SIU) Sexual Offences Section can be consulted about providing comparative case analysis with the aim of identifying other cases within the Metropolitan Police District that may be linked to an

investigation. (SO11 also work with the National Crime and Operations Facility (NCOF) in providing analysis of nation-wide cases. IOs should always contact SO11 first before contacting the NCF for analytical support (for example, SCAS searches).

- The potential use of the NCOF should be considered:

  - The NCOF SCAS collate and analyse data for all stranger rapes, entering it onto a national database. The database is used for link behavioural analysis, the provision of case statistics and probabilities and possible suspect identification (geographical and behavioural profiling).

  - The NCOF Help Desk offers support for IOs and has access to independent experts, forensic scientists and behavioural advisors. The 24 hour contact number for the NCOF Help Desk is 01256 602480.

  - The NCOF has also assigned support officers to the MPS. They can be contacted through SO11 or the NCOF to provide advice and assistance in the investigation of SCAS type cases.

  - Any DNA profile obtained must be submitted to the national database.

  - Where samples are taken and a DNA profile of a suspect is obtained, it is essential that this be submitted to the national DNA database, even in cases where the victim withdraws an allegation. (from 11 May 2001, Section 82 of the Criminal Justice and Police Act 2001 amended Section 64 of Police and Criminal Evidence Act in respect of destruction of samples. This allows fingerprints and samples taken during cases from arrested suspects to be retained and used where suspects are cleared or not prosecuted, cautioned or reprimanded).

  - Consideration must be given to linking identified suspects to other offences.

When a suspect is identified or charged, IOs and SIOs should consider:

- A circulation in Police Gazette.

- Forwarding details to SO11 for comparison with outstanding offences.

- Requesting SO3 to search his fingerprints against outstanding scene marks.

- Ensuring that full details are submitted to method index.

- Ensuring that the fullest possible intelligence is submitted on the PNCB phoenix forms".

110. A profound failing in the present cases is the failure to join the dots of the various complaints made over time to the MPS which had a common MO. The SN makes the following observation about investigation of potentially linked rape series:

> "**Guidance on the investigation of linked rape series**
>
> Where there is suspicion that the allegation may be part of a linked series of crimes, the SCG duty SIO must be contacted by the BOCU DI or by the duty officer having consulted the BOCU DI.
>
> A decision to commit SCG resources to an inquiry will only be made after consultation between the borough superintendant/OCU commander and the SCG detective superintendant".

111. An issue in the present case is the intensely held feeling by a number of victims that they were not believed by the police. In the Report prepared by the MPS in October 2008 in the wake of the investigation (but pre-trial) (see paragraphs [116-124] below) the MPS recognised that the mere fact that a victim expresses a lack of confidence in police may, <u>of itself</u>, be credible evidence that a serious incident has in fact occurred. The Notice addresses issues relating to false investigations. Once again it is of significance to the assessment in this case and I set it out in full:

> "**Guidance on the investigation of false allegations**
>
> All staff dealing with allegations of rape should be extremely cautious about making an early assessment of the credibility of a victim making an allegation. There are a number of factors which may influence a victim's judgment or state of mind: trauma, the influence of drink/drugs (*see* Annex C for factors relating to "drug rape"), physical injury, cultural background, sexual orientation and so on. Furthermore, it is known that some victims withhold the "whole truth" if they think that they are less likely to be believed (for example, if they have voluntarily taken controlled drugs such as cannabis or cocaine).
>
> Basing investigative decisions on early perceptions, therefore, is both dangerous and unprofessional. Principle 1 of this policy states that officers will accept allegations made by any victim in the first instance as being truthful. An allegation will only be

> considered as falling short of a substantiated allegation after a full and thorough investigation.
>
> Research on false allegations have shown that they account for as few as 2% of all crimes of rape, the same percentage as for many other crimes.
>
> However, where officers detect false allegations, consideration should be given to obtaining medical assistance for the victim and/or charging them with perverting the course of justice".

112. In the cases of both DSD and NBV issues as to their credibility arose. In relation to this issue the SN addresses situations when an allegation can be classified as "no crime". It states that an allegation can only be thus classified if there are substantial reasons to believe that the allegation is actually false. It gives as examples where "no crime" can be recorded: where the victim admits the allegation is false and makes a statement to that effect; where medical or forensic evidence or the account of an independent witness substantially contradicts, rather than supports, the allegations; or, when there is substantial evidence that the victim is suffering from delusions or making allegations for an inappropriate purpose. Neither DSD nor NBV fell within these categories.

(9) The 2005 Standard Operating Procedure ("SOP")

113. On 12th January 2005 various modifications and updates were made to the SN in a document now termed the Standard Operating Procedure ("SOP"). In almost all respects the 2005 SOP is the same as the 2002 SN. However, one significant change is found in Annex D concerning DFSA which now provides that in addition to toxicology reports: "Evidence from a clinical psychologist will also be necessary as they can provide detailed evidence of the exact effects of the drug suspected, relating to the symptoms described by the victim. In this way they are able to provide evidence which progresses evidence by a toxicologist. They can also provide an essential account for lapses in memory or uncharacteristic behaviour on the part of the victim". This is a reflection of the fact that toxicology reports may not infrequently prove inconclusive in cases where rape has in fact occurred. Caution is needed in placing decisive weight upon inconclusive reports of this type.

(10) The 2010 SOP update

114. A further update to the SOP was prepared in June 2010. Once again there are substantial similarities between this document and the original 2002 SN. One modification is to the section entitled Drug Facilitated Sexual Assault (DFSA). The 2010 SOP states as follows:

> "If a victim presents to police and cannot remember what has happened, and the circumstances indicate that an offence may have been committed, the allegation should be treated as a

> crime until there is evidence to the contrary, **even if the victim is unsure what has happened**".

115. This language reflects text in the 2002 SN but is more explicit. In giving evidence during the trial one senior officer accepted that this statement, albeit not expressly included in the 2002 SN, was nonetheless MPS policy at that time.

(11) MPS Operation Danzey Final Report: 2nd October 2008

116. Following the arrest of Worboys but prior to trial, the MPS instructed the Critical Incident Advisory Team (CIAT or "the Team") to conduct a review of the investigation and to identify recommendations for improvement. On 2nd October 2008, the Team produced a 62 page report. The terms of reference were: to review the police response to allegations of sexual assault concerning Worboys; to review the police response to historical allegations of sexual assault following the committal; to review the effectiveness of the police investigation; to identify good practice; and, to identify areas of concern or organisational learning.

117. The Team reviewed all relevant historical CRIS/CRIMINT case papers since 2002, and reviewed the relevant SOP in dealing with allegations of sexual assault to ascertain the level of overall compliance. An important caveat to the review which is relevant in my assessment of the relevance of the Report in the context of this case, was expressed in the following manner:

> "The review process is not a discipline or complaints investigation and is based solely on identifying organisational learning, it is a matter for the Sponsor to decide if any issues raised need to be forwarded to other MPS leads during any stage of this review".

118. The review examined the investigations into a number of cases including both DSD and NBV. I set out below a summary of the conclusions arrived at in relation to the specific alleged operational failings and also in relation to wider systemic failings.

119. In relation to DSD:

i) Failure to record evidence at police reception/front counter: In relation to the first presentation of DSD at a police reception counter, the Team recorded:

> "This incident at Holloway Police Station was not recorded nor was the details of the cab driver or any witnesses, including police".

In relation to this, the Team stated:

> "Rationale not recorded or indeed evidence for drunk. Evidence and Actions Book (EAB) should have been completed or Occurrence Book entry made. Station reception officers must be vigilant as 25% of rapes are reported at police station front counters".

ii) Attendance upon DSD whilst in hospital: The Team recorded as good practice: the early allocation of a SOIT officer within the hour; the fact that DSD's first account was recorded in EAB; the early utilisation of an EEK; and, the informing of the relevant Duty Officer.

iii) Failure to conduct intelligence checks/failure to have handbag examined: The Team stated:

> "2.8 Police arranged for an Achieving Best Evidence (ABE) video interview to record her full account, it appeared [DSD's] credit card and glasses had been taken from her handbag at some point. Enquiries were made to trace CCTV from the venues and locations that [DSD] had attended. No CCTV was available showing the cab pick up. One witness was traced, Mr [ ]. He provided a description of the taxi driver.
>
> 2.9 **No intelligence checks or immediate intelligence checks as detailed in SOP for investigation of Rape and Serious Sexual Assault. Handbag was not forensically examined**".

iv) Failure to interview Kevin: The Team recorded that DSD had been informed that on her initial contact with Police at Holloway she had been treated as a drunken female that required hospital care, and that no allegation was made by her. The Team recorded that the cab driver's details had not been recorded, that DSD herself had contacted Kevin and that he had informed her that she had been unconscious in the back of the cab. He informed her that the driver (i.e. Worboys) had informed the police that he thought that DSD's condition was due to more than drink. A review was completed by the IO on 10th May 2003 and a number of actions were listed with "future strategies" identified but these were not pursued. The Team's conclusion was:

> "**First review not carried out within 10 hours as per SOP. Actions that included speaking to Kevin, a potential witness, do not appear to have been completed. This was a vital witness**".

v) Failure to comprehend the significance of the victim's loss of confidence in police: The Team recognised that a victim's lack of confidence can be a discrete element with potentially significant evidential value. The Team recorded that an ABE interview was conducted on 12th May 2003 and that within 4 days thereafter, DSD had contacted police to state that after the

interview, she felt that she had not been believed. She expressed anxiety to obtain results for the items taken for forensic examination. She explained that she was having emotional problems. She was advised to speak to the Samaritans. Thereafter, forensic scientists were instructed to review evidence. However, DSD contacted police on 18th June 2003 and again informed police that she was losing confidence in their investigation. The conclusion of the Team was:

"**Victim's loss of confidence, an element that should flag a potential Critical Incident**".

vi) Failure to treat the complainant's version of events as true and in consequence, a failure to maintain an open mind: The Team recorded an entry on the CRIS to the effect that the actions of the cab driver in taking DSD to the police station were "beyond the call of duty to look after his fare and in a way would be highly unlikely for a man who had indecently assaulted or raped a woman". When DSD was informed on 3rd September 2003 that the police investigations had all proven negative, it is recorded that: "[DSD] said that the cab driver would strike again". However, with that, the investigation was closed and a closing report was completed.

120. The Team identified four recommendations which focused upon curing systemic deficiencies in the core investigative methodology:

i) Training: The need to ensure that DFSA awareness training was provided to all relevant first responders, particularly Station Reception Officers, PCSOs and frontline police officers. The Team particularly emphasised the fact that traces of drugs could be found up to seven days after consumption.

ii) Adherence to guidelines and procedure: The MPS needed to ensure that investigations into allegations of rape and sexual assault were carried out in a timely manner and in accordance with the SOP.

iii) Treatment of victims: BOCUs were required to ensure that investigation of allegations of rape and sexual assault were carried out with sensitivity and that when closing an investigation, personal contact should be made with the victim.

iv) Proper recording of evidence on CRIS: BOCUs must ensure that the parameters for CCTV seizure and viewing were clearly documented on the CRIS to support secondary investigative strategies. This was in accordance with, inter alia, the SOP.

121. I turn now to consider the position of NBV. The Team found two instances of "good practice" (that the SOIT attended within the timescale set out in the SOP; and, that the

vehicle and the suspect were identified early which resulted in an early arrest). However, poor practice substantially outweighed good practice. I summarise the Team's conclusions as follows:

i) Failure to conduct a section 18 PACE search. The Team state as follows:

> "A section 18 PACE search was considered, however, it was decided not to conduct a search. The rationale given was that WORBOYS did not disclose any reasons to have one as a result of his account given during interview; and that any forensics would have been contaminated. His clothes were only needed for identification purposes, which had been negated as he had placed himself at the scene".

And also:

> "Sexual Assault SOP was not complied with. Although considered, no Section 18 PACE search was conducted. The rationale given was that suspect had placed himself with the victim during his account. An opportunity was missed to search both his vehicle and home address for articles connected to the offence or any other similar or linked offences. The suspect's clothing was not seized and again the opportunity for forensication was missed".

ii) Failure to follow up key leads: The Team identified leads that were not followed up. In particular, they noted discrepancies in the accounts of Worboys and the victim in the duration of the taxi journey, i.e. the time elapsed from pick up to put down. They identified the fact that on the CCTV an item could be seen stuck to the victim's foot but that an officer only went to search for this approximately four days after the event in question. They identified possible further uncompleted investigative steps relating to the fact that the victim withdrew money to pay for the fare, the late submission of exhibits for forensic investigation, and the failure to seek CPS consultation. The conclusions of the Team were:

> "A number of investigative leads were not followed up; the lapse in time of one hour and fifty minutes, a discrepancy in Worboys' account, the fact that the victim could be seen on CCTV footage with something stuck to her foot (which could have been the missing tampon) and that the victim withdrew money to pay for the fare.
>
> Although exhibits were retrieved at an early stage in the inquiry, submission to the FSS was not made until much later, this resulted in WORBOYS having to be re-bailed. Although the FSS report indicated that a drug may not have administered within the timeframe to support an allegation of drug assisted

> sexual assault, this information together with the other evidence gathered could have been presented to the CPS for consideration.
>
> CPS consultation must occur when persons are in custody to establish if there was enough evidence to charge and to see what further lines of investigation may be required".

122. In relation to specific recommendations arising out of the NBV case the Team recommended as follows:

i) Adherence to standards: The MPS must ensure that allegations into rape and sexual assault were carried out in a timely manner and in accordance with SOP.

ii) Completion of records for databases: BOCUs must ensure that CRIMINT reports are created at the time of an allegation of rape or serious sexual assault being reported as this was "essential in allowing intelligence searches for similar or linked offences".

123. Paragraphs 14.3-14.12 of the Report highlight the systemic failings which categorised the MPS failure to apprehend Worboys over many years. These failings related to: inadequate training; inadequate supervision; non-adherence to standards; and failure to complete databases. I should state at the outset that I reject the MPS conclusion recorded in paragraph 14.6 cited below that the identified failings would most likely not have led to the earlier apprehension of Worboys. I find that conclusion self-serving but also one which jars with the actual evidence:

> "14.3 What the review has uncovered is issues do exist around the police response in that some of the crimes had been reported to police and not taken forward to prosecution due to lack of evidence. There are 23 charges that are being taken forward out of the 81 allegations after CPS advice and the trial is scheduled for starting in February 2009. (Breakdown at Appendix B).
>
> 14.4 The review identified and made clear at the interim stage the main issues for police were the lack of:
>
> - Compliance by staff with the SOP re the investigation of rape and serious sexual assaults that was in place for the majority of the crimes committed.
>
> - Intelligence methods to initially identify and link the offences.
>
> - Individual direction and investigation in some offences.

- Liaison and consideration for local forensic support.

- Awareness of the timescales for DNA retrieval from samples from victims.

14.5 The review found that a wide range of people were involved in these incidents up until Mr WORBOYS' arrest. The main thread throughout the police response is the issues are based upon the lack of compliance to SOP by frontline and supervisors and the lack of intelligence in a) identifying the suspect and b) linking the increasing number of offences. The SOP compliance is a service delivery issue around specific parts and is covered in Paragraph 14.8

14.6 The issues around the police response although relevant to any review in capturing organisational learning should be placed in context. That despite some clear police investigative failings, it is unlikely the crimes committed by Mr Worboys would have been identified by police officers, any earlier especially as the central intelligence point the Cab office information provided by MIB was stopped at the end of 2007.

14.7 If this information process had continued there was a greater opportunity to identify the trend earlier than it was achieved. In fact it is solely down to a staff member at the Sapphire cold case review team that an original link was identified between *Modus Operandi* and black cab driver. With this information the MIB was able to establish a link, without the initial identification this would not have been possible under the present system. Recommendation 12 has been identified to resolve/improve this situation.

14.8 It is clear from the assessment of all the recommendations re SOP compliance (see Appendix C), that the majority of issues faced by the police surround the lack of compliance around specific areas. It is these issues that should be the focus of any action plan associated with Recommendation 2 of this report. These are:

- Lack of supervision in first 10 hrs,

- No 7 day SIO review,

- No liaison with Borough Forensic Manager

- No establishing of forensic strategies

- The lack of intelligence checks

- Recording and linking of information and offences, particularly in cases of stranger attacks.

> 14.9 A recommendation update in terms of their status is provided at Appendix D although a final report will be completed by the CIAT around these once a formal action plan and time scales have been set by the sponsor of this review.
>
> 14.10 There are no issues or risks associated to the crimes that had not been previously reported until the MIT media appeal. Although not all statements have been taken at this stage and some of these incidents have occurred after "a link" between the crimes could have been identified if the intelligence systems remained in operation.
>
> 14.11 Whilst our focus should now be on the future and on providing an effective police response to allegations of sexual offences, it is necessary to reflect on what has happened historically in order that organisational lessons can be learned. So that similar mistakes are not replicated and to identify good practice. Although the MPS receives numerous allegations on a daily basis that involve a variety of crimes, volume of work should not hinder the investigation of serious offences and the MPS must not become complacent in dealing with them.
>
> 14.12 By commissioning this review it is apparent that the MPS recognises the need to learn from any organisational issues identified. During the assessment of the information it has become apparent that steps are already being taken to resolve some of the organisational and procedural issues identified within this report, these include training issues, and awareness particularly around DFSA, to SRO's and PCSO's. Project Sapphire, are continuing their work in this area".

124. The practical recommendations made by the Team to remedy the systemic failures were:

i) Training: The MPS and BOCUs must provide DFSA awareness training to all relevant first responders to incidents, particularly station reception officers, PCSO and frontline police officers. Training packages would be introduced as mandatory training for all response officers. Sapphire TPHQ was reviewing all training packages to ensure adherence to SOP. An aid memoire that had previously been circulated to first response officers was to be reviewed/updated to include action to take when "administering a substance" is suspected.

ii) Supervision: The investigation supervision and review of allegations of rape and sexual assault were to be carried out in a timely manner in accordance with the SOP.

iii) Treatment of victims: BOCUs were to ensure that the investigation of allegations of rape and sexual assault were carried out with sensitivity.

iv) Recovery of CCTV/compilation of data for databases: BOCUs were required to ensure in accordance with SOP that the parameters for CCTV seizure and viewing were clearly documented on the CRIS to support the secondary investigative strategy.

v) Use of CRIMINT to investigate linkages: BOCUs were to require that CRIMINT reports were created at the time of an allegation of rape or serious sexual assault being reported as this was essential in permitting intelligence searches for similar or linked offences and to ensure that CRIS can be checked daily.

vi) Maintenance of proper records: BOCUs to ensure that when SOCO created details of exhibits seized, job sheet numbers were included to assist the retrieval of intelligence.

vii) Use of EEK in training: BOCUs to ensure that officers were reminded of the potential forensic value of EEK and to include this in training packages.

viii) Liaison with TFL: Liaison to occur with TFL to consider the creation of a system whereby licensed black cab movements could be monitored and recorded and whereby opportunities could be given to the MPS to secure evidence which might assist in the future investigation of crime.

(12) The reports into the complaints of DSD and NBV by the Independent Police Complaints Commission ("IPCC") (August and October 2009)

125. Following the conviction of Worboys, the IPCC conducted two investigations into the enquiries conducted by the MPS into the allegations made by DSD and NBV against John Worboys. In the light of what I have learned in the course of the trial I find neither of these reports to be particularly satisfactory. This is notwithstanding that they make a number of negative findings. The investigations were based on limited evidence, do not take account of the acknowledged systemic wider failings and operate upon an apparent burden of proof strongly favourable to the officers in question. In many instances the report writer says that a complaint is not proven in the absence of supporting evidence but there is no indication that a detailed inquiry into the evidence ever took place. Further, in respect of a number of instances the report recites an alleged failure but then omits to come to any clear, specific, conclusion

provided to NBV. The IPCC does not record a conclusion in relation to this allegation.

iv) In relation to the allegation that the police misinformed NBV that the suspect did not live close to her, the IPCC record the evidence of the officer that in London "8 miles away would not be classed as living locally". The IPCC does not record a conclusion in relation to this allegation.

v) In relation to the allegation that the police misinformed NBV that the CPS had decided not to institute proceedings, the IPCC accepted that NBV was misinformed. The IPCC conclude that these were genuine mistakes.

vi) In relation to the failure to conduct Section 18 searches, the IPCC reviewed the chronology and highlighted the number of occasions upon which the police had considered conducting a Section 18 search. With regard to this, the IPCC did make adverse findings:

> "101. There appears to have been minimal thought in relation to what evidence may be found at Worboys' home or in his cab. It was apparent that the allegation being made was effectively a "date rape" offence; the victim had mentioned a bag of money and tablets being offered. No attempts appeared to have been made to corroborate her account. A Section 18 search could also have been authorised for the taxi owned by Worboys
>
> 102. [Officer] has made an entry on the CRIS report "as suspect gave an account and placed himself at the scene. No S18 search was considered necessary".
>
> 103. Whilst I accept the view that there needs to be a lawful reason to authorise the Section 18 search, and merely not comply with a Borough initiative, I am of the opinion that there were ample grounds to lawfully authorise a Section 18 search.
>
> 104. I am of the view that [officer] missed investigative opportunities in his dealings with Worboys. The very fact that a person surrenders to custody should not be a reason not to pursue investigative options, i.e. a Section 18 search. Forensic opportunities were missed by not having the taxi forensically examined. There appears to have been assumptions made by both [DI Officer] and [DS Officer] which were not made on a sound evidential basis".

vii) In relation to the allegation that the police interviewed Worboys without the benefit of a statement from the complainant, the IPCC concluded that the course of action that should have occurred was that all forensic opportunities

should have been seized before any interview was conducted with Worboys. They found that the conduct of the interview with Worboys was, thereby, premature and the allegation in this regard was substantiated.

viii) In relation to the allegation that the officers had a pre-determined (and negative) "mindset", the IPCC recorded that when a new OIC was appointed on 29th July 2007, various entries were made on the CRIS to the effect that the officer had a "heavy work load, night duty and court appearances and also other investigations". The IPCC stated that whilst it accepted that the officer "…had a very busy schedule," nonetheless "the level of service given to the investigation is somewhat lacking". The IPCC concluded that entries on to the CRIS "may be indicative of a mindset that had already been formed". In particular, the IPCC noted that on the CRIS the new IO had recorded his observation that it was "unlikely that a cab driver would have alcohol in his vehicle let alone drug substances".

ix) In relation to the allegation that there was a failure promptly to collect CCTV footage, the IPCC recorded that footage was eventually collected only on 10th September 2007 (and, in fact, it turned out to be footage of the wrong time). See paragraph [52] above. The IPCC does not record a conclusion in relation to this allegation.

x) In relation to the allegation that the police failed to collect the item which CCTV coverage showed was stuck to the foot of NBV, the IPCC record that this was a matter upon which there was cause to re-interview Worboys. But otherwise no conclusion is arrived at.

xi) In relation to cell site analysis, the IPCC observed that whilst this evidence could have been available to officers, it was at the time "used more by the specialist investigation teams" and was an investigative aid used by officers on Borough enquiries. The IPCC does not record a conclusion in relation to this allegation.

xii) In relation to the allegation that no interviews of the friends of NBV had taken place the IPCC does not record a conclusion.

xiii) In relation to the allegation that the police failed to follow up inconsistencies that they had identified in Worboys' account, the IPCC does not record a conclusion.

xiv) In relation to the allegation that the toxicology report had, in fact, shown unexplained drugs in the body of NBV, the IPCC records that the IO himself had stated that it was a "mystery as to how these drugs got into the complainant's system". The IPCC records that the officer had appeared sceptical because of his view that the drugs would have taken time to exert an

effect, a view shared by the Forensic Scientist. However, the IPCC also recorded that this view was later challenged by the CPS and it was proven at trial that Worboys had pre-mixed a "cocktail" which would have had immediate effect. The IPCC record that this information was not known to the officer who relied upon the professional view of the Forensic Scientist though it also states: "However, there was still evidence of drug substance in the complainant's samples, which she did not know how they got there". In relation to the issue of toxicology, the IPCC conclude:

> "123. I fully accept that the officer was influenced by the statement from the Forensic Scientist in relation to how long the substances would take to have an effect on the complainant. However, there is still evidence of drugs in the samples unknown to the complainant. The officer never explained the fact that the drugs were found in [NBV's] blood or urine. She had stated to the Haven that she had not taken any substances. The officer has during the course of the investigation recorded inconsistencies between the complainant's statement and the account given by Worboys. The most concerning issue in relation to this investigation is that Worboys was never interviewed by Officers from Plumstead when they were in possession of the full facts from the complainant. He was interviewed by [officer] on 27th July before even detailed notes were taken from [NBV] and he was never interviewed again.
>
> 124. [Officer] has recorded his commitments and workload on the CRIS report and during his interview at the IPCC offices, whilst taking this into account, I am of the view that he failed to thoroughly investigate this matter. The CCTV collection and forensic submissions were made weeks after he took over the responsibility for the investigation. No inquiries were made to interview the friends of the complainant, inconsistencies were noted but never followed up and the suspect was never interviewed when the officer had the complainant's full account. I find the allegation against [officer] substantiated".

xv) In relation to the allegation that senior officers took a "no further action" decision, the IPCC noted that the officer in question did not have managerial responsibility for the Sapphire Officers, that she had no prior knowledge of the Worboys investigation until she had been approached by the IO to make the "no further action" decision and that she took her decision purely and simply upon the oral briefing from the officer in question. When interviewed by the IPCC, she confirmed that she had been unaware that no Section 18 PACE search had taken place, nor had she had sight of the forensic reports or the CCTV. She simply stated that she relied upon and trusted the abilities of the IO in question. The IPCC concluded:

> "128. It is apparent that [DI Officer] made the decision to conclude the investigation based purely upon a verbal briefing

> from the officer. No challenges appeared to have been made and no searching questions in respect of lines of inquiry.
>
> 129. Had [DI Officer] carried out a full review of the investigation, she would have realised that the suspect had never been interviewed in relation to the full account given by the complainant, and a review of the CRIS report would have highlighted the inconsistencies raised by [DC Officer] which were never explored. I find this allegation substantiated against [DI Officer]".

129. The IPCC analysis is in a number of respects myopic and fails to examine any of the context in which individual failings occurred. The nearest that the report comes to a wider criticism of the system is in its final three paragraphs:

> "144. I am aware that considerable work has been undertaken by the MPS in respect of recommendations to improve the investigation into sexual offences. A learning report will be produced at the conclusion of the Operation Danzey and Anflora Investigations.
>
> 145. This report contains recommendations in respect of the training of SOIT officers in relation to exhibit recovery. Officers who have the responsibility for filing investigations must satisfy themselves that all lines of inquiry have been identified and pursued, and not merely NFA an investigation on the fact of a briefing from the Investigation Officer.
>
> 146. The issue of the toxicology is being taken forward by the MPS. This should be brought to the attention of all police forces in England and Wales and the Forensic Science Service".

(13) IPCC Commissioner's Report (January 2010)

130. In January 2010, the Deputy Chair of the IPCC produced a Commissioner's report. It is stated that the purpose of such a report was to share with the public the key findings and summary of the IPCC investigation including details concerning the Commissioner's own decision making, the outcome of any legal processes that followed from an investigation, and learning recommendations. This particular report started by summarising the conduct and outcome of the earlier MPS review and the IPCC investigations into the individual cases of DSD and NBV. In relation to the MPS review, the Commissioner stated:

> "The MPS review found that a wide range of people were involved in the incidents prior to Worboys' arrest. The main issues identified were poor compliance with the Standard Operating Procedures for investigation of rape and serious

> sexual assaults by frontline officers and their supervisors, as well as more systemic issues such as the lack of intelligence methods to initially identify and link offences. The review also noted that despite some clear investigative failings, it was unlikely the crimes committed by Worboys would have been identified any earlier".

131. I note the recognition that some failings were "systemic". I however repeat my earlier rejection of the implicit endorsement of the conclusion that but for the "clear police investigative failings" the crimes committed by Worboys would not have been identified any earlier.

132. It is not necessary for me to recite the Commissioner's summary of the previous investigations. These are referred to above. However, it is relevant to record the "Learning Recommendations" made by the Commissioner between pages 15-19 of the Report. It is informative to start with the Commissioner's conclusion:

> "The number of victims in these cases, the outcome of the trials of Worboys and Reid and the public reaction to the MPS responses has undoubtedly acted as a wake-up call to the MPS in its response to the victims of sexual violence. They have since reviewed their own procedures and training, and the changes they have already implemented are significant. The onus is now on the MPS to demonstrate that these changes make a real difference, and our recommendations are designed to help them achieve that".

133. The relevance of this lies in its acknowledgement that the failures identified in the case were largely systemic. Indeed, the Commissioner links individual operational errors to the broader systemic failing:

> "The failings identified in the overall MPS response to Worboys' victims were not only the result of some individual failures to follow the policies and procedures in place at the time, they were also due to the more systemic issues, many of which have since been addressed, as outlined below…".

134. The following summarises the linkages between individualised and systemic failures:

i) The failure on the part of officers to conduct proper investigations such as the failure to secure available CCTV and the failure to check upon the quality of investigation before any decision was taken of "no further action" was linked to inadequate training. That training would in future be given, including to front office staff and call handlers. New quality assurance and performance management procedures had been put in place and dedicated Regional Detective Superintendants would in future conduct "dip sampling" of all "put away" cases.

ii) The failure reflected in the perception of victims who felt that they were not being believed and supported was also linked to the need for better relevant training which was to be provided to all relevant staff to include "sexual violence myths, risks and the importance of being supportive of victims". New measures were to be put in place to ensure greater sensitivity in dealing with potential victims of rape and sexual assault.

iii) The failures of frontline supervision were linked to the need to introduce a new senior management structure which intensified the level of supervision of investigations of serious sexual offences.

iv) The failures in relation to cross-checking of computer systems to connect similar offences were linked to the introduction of a new "Early Warning System" to check all allegations of rape and sexual offences for emerging trends and for better training in the use of intelligence sources and in "linked series investigations".

135. In relation to the perception of victims about MPS failings, the Commissioner stated:

> "While the above actions by the MPS are welcomed and undoubtedly seek to address the organisational issues effecting its responses to the victims of sexual violence, it is inevitable that there will be a degree of scepticism about whether this is enough to deal with what is widely regarded as a long neglected area of policing. Whether or not this is true, there is a widely held perception that women reporting rape and other sexual offences have not been taken seriously, either because of the nature of the offence or because priority has been given to other offences such as burglary".

136. This particular failure was linked to a series of further organisational measures governing such matters as the provision of standard information to victims, the provision of regular case updates and support whilst a case was ongoing, with the provision of additional information to the public, and with a more sophisticated approach on the part of the MPS to working with the voluntary sector.

(14) MPS Report: Learning the lessons: 15th October 2010

137. On 15th October 2010 the MPS published a document which sought to draw together the lessons to be learnt as a result of the Worboys investigation. It largely repeats points made in earlier reports. I therefore mention only a few points from this document. In relation to the failure on the part of the MPS to share intelligence the MPS noted that when the case came to light "…many women came forward with no previously reported attacks as they had feared that the police would not believe them. Patterns of behaviour may well have become apparent sooner if police had shared intelligence and victims had been encouraged to come forward". This is an

acknowledgement of the fact that the efficiency of the MPS in handling sexual assault allegations is causally connected to the willingness of victims to come forward. And the obvious point is made that had victims complained earlier Worboys' pattern of behaviour "…may well have become apparent sooner". The MPS concluded that in high risk cases police should share information with local agencies in order to promote public safety and to prevent and detect offences; and there should be third party reporting through other agencies and every Rape Investigation Unit DI should be required to establish links with the local voluntary sector. Further training given to front-line officers should be quality checked by independent observers from the voluntary sector and consideration should be given to including input from specialist advocates in to such training. Voluntary sector organisations should be given access to police standard operating procedures.

C. THE LAW

(1) Introduction

138. In relation to the law the critical questions are (a) whether under the HRA the police owe any duty to investigate to victims of particularly severe crimes perpetrated by private parties and (b) whether if such a duty exists it was breached on the facts presented in the course of the trial. Both issues are in dispute. Certain issues were common ground. In particular the Defendant accepts that if (*quod non*) a duty under the HRA arises then the assaults upon DSD and NBV do amount to conduct of sufficient severity to equate to degrading or inhuman treatment within the meaning of Article 3. In this section I deal with: the Strasbourg jurisprudence ((2) below); a summary of relevant principles ((3) below); an analysis of the meaning of "capability" ((4) below); and, an analysis of the Defendant's legal submissions ((5) below).

(2) Analysis of authorities: The duty on police to investigate torture and degrading and inhuman treatment committed by third parties where the police are not complicit in the perpetration of the treatment

139. The first question is whether a duty exists at all bearing in mind that the police are immune from claims for negligence as a matter of the common law. Mr Johnson QC for the Defendant submitted that there was no proper basis upon which I could conclude that a free-standing duty to investigate arose out of the Strasbourg case law. He submitted that judgments of the Strasbourg Court which indicated to the contrary were aberrations, were not reflected in the jurisprudence of the Grand Chamber or the Court as a whole, and, in any event, were inconsistent with the relevant case law of the Court of Appeal, which bound me.

140. I start by assessing the extent to which the Strasbourg case law may be said to be settled and cohesive since this is very relevant to the way in which I then construe the HRA which requires that I "take account" of that case law. Clearly, if the cases which create a duty may be said to be forensically weak or insubstantial I would pay far less account to them than if the case law is coherent, evolved and well established. I have

been unable to locate in either case law or literature any systematic synthesis of Article 3 case law on the duty of the police to investigate in circumstances such as the present. I propose, therefore, to start my assessment of the law with an analysis, chronologically, of the main decided jurisprudence of the Strasbourg Court in relation to the duty under Article 3 as it applies to the duties of public authorities, and in particular the police, in relation to the unlawful acts of third (private) parties. In particular, I have examined the evolution of case law as it applies to situations where the police could not be said, either directly or indirectly, to have any degree of complicity in the harmful acts which constitute the torture or inhuman or degrading treatment which is the *sine qua non* to the operation of the Article. I have also focused upon cases of rape or sexual assault or other cases which may bear analogy (for instance of vulnerable categories of victim). In the text below, I have reviewed numerous authorities but this is not an exhaustive analysis; other authorities exist which are to the same legal effect. I have endeavoured in relation to each case to summarise: (a) key points of principle arising; (b) the salient facts; (c) the material parts of the judgment; and (d) how the Strasbourg Court applied the law to the facts. In some cases however I have conducted only a more limited analysis.

141. I set out my conclusions as to the legal principles to be applied at paragraphs [211]-[225] below. I have also set out additional analysis on the capability test at paragraph [226] and further analysis of legal arguments advanced by the Defendant at paragraphs [227]-[241].

(i) *Osman v United Kingdom* 29 EHRR 245 (28th October 1998)

142. Main points of principle: The logical starting point is *Osman* in which the Court, in the context of Article 2 (right to life) and not Article 3, held that the State had a responsibility to protect citizens from the threat posed by private parties. It accordingly focused upon situations where the State was not complicit in any way in the underlying threat to life. The importance of the case is that the principle laid down in *Osman* was, subsequently, applied in the context of Article 3. It is further relevant that the Court was concerned with the scope of the preventive duty which Article 2 imposed. Nothing in this judgment addresses the question of the duty to investigate.

143. Facts: The Applicants were British citizens resident in London. The First Applicant, Mrs Osman, was the widow of Mr Osman, who had been murdered by Mr Paget-Lewis in 1998. The Second Applicant was her son. He was a former pupil of Mr Paget-Lewis and had been wounded in a shooting incident which led to the death of his father. Their complaints were directed at the failure of the authorities to appreciate and act upon what they claimed was a series of clear warnings that Paget-Lewis represented a serious threat to their physical safety. In this context, they alleged a breach of Article 2 of the Convention which provides that "Everyone's right to life shall be protected by law. No-one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law".

144. Analysis by Court: In paragraph [115] of the judgment, the Court stated as follows:

> "*2. As to the alleged failure of the authorities to protect the rights to life of Ali and Ahmet Osman*
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> 115. The Court notes that the first sentence of Article 2(1) enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. It is common ground that the State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such a provision. It is thus accepted by those appearing before the Court that Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. The scope of this obligation is a matter of dispute between the parties.
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> 116. For the Court, and bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention.
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> In the opinion of the Court, where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known that the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. The Court does not accept the Government's view that the failure to perceive the risk to life in the circumstances known at the time or to take preventive measures to avoid that risk must

> be tantamount to gross negligence or wilful disregard of the duty to protect life. Such a rigid standard must be considered to be incompatible with the requirements of Article 1 of the Convention and the obligations of Contracting States under that Article to secure the practical and effective protection of the rights and freedoms laid down therein, including Article 2. For the Court, and having regard to the nature of the right, protected by Article 2, a right fundamental in the scheme of the Convention, it is sufficient for an Applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge. This is a question which can only be answered in the light of all the circumstances of any particular case.
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> On the above understanding the Court will examine the particular circumstances of this case".

145. Elsewhere in the judgment (ibid paragraphs [117] and [121]), the Court emphasised that the relevant vantage point was that which had regard to the state of the knowledge of the police at the relevant time. In the context of the right to life under Article 2, an applicant had to identify a decisive stage in the sequence of events leading up to the shooting "when it could be said that the police knew or ought to have known" that the lives of the victims "were at real and immediate risk".

(ii) *Z & Others v United Kingdom* 34 EHRR 3 (10th May 2001)

146. Main points of principle: The Court, citing *Osman* paragraph [116] (supra), extended the duty of effective protection under Article 2 to situations arising under Article 3. The Court emphasised the fundamental importance of Article 3 in a democratic society.

147. Facts: The Applicants were siblings who had sustained abuse and neglect at the hands of their parents. They complained of the failure by the local authority to take adequate protective measures in respect of the severe treatment which they had suffered at the hands of their parents. They further complained that their claim in the domestic courts against the local authority had been struck out as disclosing no course of action upon the basis that domestic law did not impose an actionable duty of care. They accordingly submitted that they had no access to court or to an effective remedy in respect of this. The relevant analysis is contained in paragraphs [69-75]. In paragraphs [70-72], the Court records that there was no dispute as between the parties that the treatment suffered by the Applicants had reached the "level of severity" prohibited by Article 3 or that the State had failed in its positive obligation to provide the Applicants with adequate protection against inhuman and degrading treatment.

148. Analysis by Court: I should point out (because it formed the substance of a submission by Ms Kaufmann QC on behalf of the Claimant) that in paragraph [69] the Court recorded the Applicants' allegation as being limited to Article 3 in isolation whereas in paragraph [73] (which I set out below), the Court examined Article 3 in the context of Article 1. Ms Kaufmann submitted that the Court used Article 1 simply as an aide to the construction of Article 3 and that no part of the Court's reasoning in relation to Article 3 was dependent or conditional upon the fact that it was conjoined with Article 1. It is appropriate to set out the entirety of paragraphs 73 and 74 of the judgment:

> "73. The Court re-iterates that Article 3 enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment. The obligation on High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms to find in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals. These measures should provide effective protection, in particular, of children and other vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge.
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> 74. There is no dispute in the present case that the neglect and abuse suffered by the four child Applicants reached the threshold of inhuman and degrading treatment. This treatment was brought to the local authority's attention, at the earliest in October 1987. It was under a statutory duty to protect the children and had a range of powers available to them, including removal from their home. The children were however only taken into emergency care, at the insistence of the mother, on 30 April 1992. Over the intervening period of 4 and a half years, they had been subject in their home to what the Child Consultant Psychiatrist who examined them referred to as horrific experiences. The Criminal Injuries Compensation Board had also found that the children had been subject to appalling neglect over an extended period and suffered physical and psychological injury directly attributable to a crime of violence. The Court acknowledges the difficult and sensitive decision facing social services and the important countervailing principle of respecting and preserving family life. The present case however leaves no doubt as [to] the failure of the system to protect these child Applicants from serious, long term neglect and abuse".

149. Accordingly, the Court found a violation of Article 3 of the Convention.

(iii) *Edwards v United Kingdom* 35 EHRR 19 (14th March 2002)

150. Main points of principle: The case concerns extension of the duty to investigate under Article 2 to cases where a person was killed by a private party whilst in the custody of the State. It addresses the scope of the duty (means not results). It identifies the policy reason underlying the duty to investigate (to secure accountability in practice as well as in theory). It explains that civil proceedings which might lie at the initiative of a victim's relatives do not satisfy the State's obligation under Article 2.

151. Facts: The applicant's son died after being attacked by a fellow prisoner whilst in custody. The applicant complained that the authorities had failed to protect their son's life and were responsible for his death and that the investigation into his death was not adequate or effective.

152. Analysis by Court: The Court held that Articles 1 and 2 in conjunction required by implication that there should be some form of effective official investigation when individuals had been killed as a result of the use of force. The essential purpose of such an investigation was to secure the effective implementation of domestic law which protects the right to life and in those cases involving State agents or bodies: "…to ensure their accountability for deaths occurring under their responsibility". (see paragraph [69]). The form of an investigation that achieves that objective will vary according to the circumstances. The investigation must be effective in the sense that it is "capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances and to the identification and punishment of those responsible" (see paragraph [71]). This was not an obligation of result but of means. In particular to satisfy the duty the authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency which undermined its ability to establish the cause of death or the person or persons responsible would "risk" falling foul of this standard (ibid [71]). The law implied a requirement of "promptness and reasonable expedition" (see paragraph [72]). A prompt response in investigating may be regarded as essential to maintaining public confidence in adherence to the rule of law and in preventing an appearance of collusion in or tolerance of unlawful acts by the State.

153. Application to facts: The Court recorded that the perpetrator of the killing had been convicted after a guilty plea to manslaughter. He was subjected to a hospital order. A post-conviction enquiry was described as "meticulous". However, the Court identified that the lack of a power to compel witnesses and the private character of the enquiry proceedings from which the applicants were excluded save when giving evidence as failing to comply with the requirements of Article 2 to conduct an effective investigation into the death.

(iv) *Menson v United Kingdom* [2003] EHRR CD220 - 6th May 2003

154. Main points of principle: The Defendant contends that this case shows that where conviction ultimately occurs there can be no duty and/or breach arising from earlier operational failings. In fact, in my view, it shows that a conviction can be a relevant consideration on breach, but it is not decisive.

155. Facts: Michael Menson was killed as a result of being set on fire by assailants in a racist attack during the night of January 27-28, 1997. At the time of his death, Michael Menson was a single, 33 year old, black man. He had suffered a mental breakdown in 1991 and was subsequently diagnosed and treated in hospital for schizophrenia. When not in hospital, he lived in his own accommodation in New Southgate, London. However, two months prior to his death, he moved into accommodation for persons with mental health problems at Holden Lodge, North London. On the night of 27th January 1997, Michael Menson was contacted by his sister who had received a message from Chase Farm Hospital indicating that he should return there as soon as possible for treatment. Michael Menson set off but got lost. He was attacked by four white youths who set his back on fire. He was found on fire, lying face down on the ground, by an off-duty fireman who happened to have been passing by in a car. When found, he was in a state of shock with severe burns. He was taken by ambulance to hospital. On 3rd February 1997, he suffered a cardiac arrest and died. Proceedings were brought by his siblings, who complained that the police failed to treat the circumstances of their brother's death as suspicious and wrongly assumed that this was a case of self-immolation. This complaint was subsequently accepted by the police. Three suspects were arrested in March 1999 and a fourth suspect was arrested in northern Cyprus in May 1999. In November 1999, a criminal court in northern Cyprus found one defendant guilty of manslaughter and sentenced him to 14 years imprisonment; in December 1999, the Central Criminal Court in London found the other defendants guilty of murder, manslaughter and perverting the course of justice respectively.

156. Analysis by Court: The Court recorded (pages 228, 229) that the applicants had not laid any blame on the State for the death of Michael Menson nor was it suggested that the authorities knew, or ought to have known, that he was at risk of physical violence at the hands of third parties nor failed to take appropriate measures to safeguard him. The Court observed that the present case was therefore distinguishable from two other categories of case: (a) cases involving the alleged use of lethal force either by agents of the State or by private parties with their collusion, and, (b) cases in which the factual circumstances imposed an obligation on the authorities to protect an individual's life, for example, where they had assumed responsibility for the individual's welfare or where they knew, or ought to have known, that his life was at risk. Into this latter category the Court placed *Edwards v United Kingdom* (2000) 29 EHRR 245.

157. The court continued to state (at p.229):

> "However, the absence of any direct State responsibility for the death of Michael Menson does not exclude the applicability of Art 2. It recalls that by requiring the State to take appropriate steps to safeguard the lives of those within its jurisdiction (see

> LCB v United Kingdom: (1999) 27 EHRR 212 Para [36]), Art 2(1) imposes a duty on that State to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against a person backed up by law enforcement machinery for the prevention of suppression and punishment of breaches of such provisions (see Osman, cited above, Para [115].
>
> With reference to the facts of the instant case, the Court considers that this obligation requires by implication that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances. The investigation must be capable of establishing the cause of the injuries and the identification of those responsible with a view to their punishment. Where death results, as in Michael Menson's case, the investigation assumes even greater importance having regard to the fact that the essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life…".

158. The Court then extended the duty to cases where death did <u>not</u> ensue (p.230):

> "Although there was no State involvement in the death of Michael Menson, the court considers that the above-mentioned basic procedural requirements apply with equal force to the conduct of an investigation into a life-threatening attack on an individual regardless of whether or not death results. The court would add that, where that attack is racially motivated, it is particularly important that the investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and to maintain confidence of minorities and the ability of the authorities to protect them from the threat of racist violence".

159. The "above-mentioned basic procedural requirements" referred to an investigative obligation to take reasonable steps to secure evidence concerning the incident including, inter alia, eye witness testimony, forensic evidence and, where appropriate, an autopsy which provided a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (p.229). The form the investigation would need to take would vary according to the circumstances but in cases of lethal force, a prompt response was regarded as essential in maintaining public confidence in the adherence of the police to the rule of law and in preventing any appearance of collusion in or the tolerance of unlawful acts.

160. Application to facts: The police investigation ultimately led to the identification and arrest of the culprits between March 1999 and May 1999 and their conviction and punishment. A public inquest into the cause of Michael Menson's death was held

shortly after he died and a coroner's jury returned a verdict of unlawful killing in September 1998. The Court concluded:

> "…the legal system of the respondent State ably demonstrated, in the final analysis and with reasonable expedition, its capacity to enforce the criminal law against those who unlawfully took the life of another, irrespective of the victim's racial origin. For the court, this must be considered decisive when considering whether the authorities complied with their positive and procedural obligations under Art 2".

This conclusion is important. Evidence was adduced before the coroner's jury and at the trial of the accused showing that there were "very serious defects in the handling" by the police of the investigation which were "entirely at odds" with the requirements of an effective investigation. This demonstrates that not every investigative failure or omission will trigger liability. The Court adopts an overall assessment to determine whether, examined in the round, the investigation of the offence was adequate. If a defendant is charged and convicted, and if an inquest is convened, and if a coroner's jury arrives at a verdict, within a relatively short period of time, then the Court is likely to conclude that there was no Convention violation notwithstanding the existence of individual operational failings.

(v) *MC v Bulgaria* (2005) 40 EHRR 20 (4th December 2003)

161. Main points of principle: This judgment draws together the jurisprudence on Article 3 as it was evolving. It identifies and describes the duty on the police to investigate and explains the substantive content of that duty. It concerns rape. It concerns errors which are both systemic, and, operational. It has been cited with approval by the Strasbourg and English Courts on a number of occasions. The Court also considers the extent to which Article 8 (private life) is engaged.

162. Facts: On two days in the summer of 1995, when she was aged 14, the applicant was raped by two men, who subsequently claimed that she had consented to sexual intercourse. The gist of the applicant's position was that she had not had the strength to resist violently but had begged the men to stop. The District Prosecutor opened criminal proceedings and referred the case to an investigator. No charges were brought and no further action was taken for 12 months. At the end of 1996, the investigator questioned the applicant, her mother and other witnesses, including the suspects. But in December 1996, the investigator reported that there was no evidence that the defendants had used threats or violence and he proposed that the proceedings be terminated. The District Prosecutor ordered an additional investigation but in March 1997 he issued a decree terminating the proceedings, concluding that the use of force or threats had not been established beyond reasonable doubt and, in particular, the applicant's failure to resist was an impediment to prosecution. Relying upon Articles 3, 8, 13 and 14, the applicant complained that both Bulgarian law and practice did not provide effective protection against rape and sexual abuse as the only

cases where prosecutions were brought were where the victim had actively resisted. She further alleged a failure properly to investigate the offences.

163. Analysis by Court: There were two relevant aspects. First, whether the state of Bulgarian law on rape was so flawed as to amount to a breach of the State's positive obligation under Articles 3 and 8 (the systemic failings). Secondly, to consider whether the alleged shortcomings in the investigation were, also, so flawed as also to amount to a breach of the State's obligations under the same Articles (the operational failings). Under the heading "general approach" the court explained that the duty to create a corpus of law and the duty to "apply them in practice" through investigation and punishment were separate (see in particular paragraph [153] cited below):

> "150. Positive obligations on the State are inherent, in the right to effective respect for private life under Article 8; these obligations may involve the adoption of measures even in the sphere of the relations of individuals between themselves. While the choice of the means to secure compliance with Art 8 in the sphere of protection against acts of individuals is in principle within the State's margin of appreciation, effective deterrents against grave acts such as rape, their fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions. Children and other vulnerable individuals, in particular, are entitled to effective protection.
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> 151. In a number of cases Article 3 of the Convention gives rise to a positive obligation to conduct an official investigation. Such positive obligations cannot be considered in principle to be limited solely to cases of ill-treatment by State agents.
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> 152. Further, the court has not excluded the possibility that the State's positive obligation under Art 8 to safeguard the individual's physical integrity may extend to questions relating to the effectiveness of the criminal investigation.
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> 153. On that basis the Court considers that States have a positive obligation inherent in Arts 3 and 8 of the Convention to enact criminal law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution".

164. Later, the court distinguished between isolated errors and omissions and other "such significant flaws" which sufficed to engage Articles 3 and 8. This reinforces the point that allegations of failure must meet a threshold of culpability which goes beyond a simple or mere erroneous act or omission:

> "167. In the light of the above, the Court's task is to examine whether or not the impugned legislation and practice and its application in the case at hand, combine with the alleged shortcomings in the investigation, had such significant flaws as

> to amount to a breach of respondent State's positive obligations under Arts 3 and 8 of the Convention.
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> 168. The issue before the Court is limited to the above. The Court is not concerned with allegations of errors or isolated omissions in investigation; it cannot replace the domestic authorities in the assessment of the facts of the case; nor can it decide on the alleged perpetrators'' criminal responsibility".

165. Application to facts: The Court then considered whether the Bulgarian State was liable (a) because its criminal law was defective and/or (b) because of actual operational failings in the investigation. As to the first, the Court held that the Bulgarian State had adopted an excessively rigid approach to the prosecution of sexual offences, in particular by demanding proof of physical resistance in all circumstances. The Court concluded that this risked leaving certain types of rape unpunished and it thereby jeopardised the effective protection of the individual's sexual autonomy. The Court concluded that the obligation of the State under Articles 3 and 8 required the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim. The Court held (paragraph [174]) that it was sufficient to observe that the applicant's allegations of a restrictive practice were based upon reasonable arguments and evidence and had not been disproved by the Bulgarian State.

166. The Court turned then to consider alleged operational investigative failings. The Court examined, albeit in relatively brief terms, the course of the investigation: many witnesses had been heard; expert reports from psychologists and psychiatrists had been ordered; the case was investigated; prosecutors gave reasoned decisions and explained their position in detail. Nonetheless, the Court found that the investigation was seriously defective:

> "177. It notes, nonetheless, that the presence of two irreconcilable versions of the facts obviously called for a context-sensitive assessment of the credibility of the statements made and for verification of all the surrounding circumstances. Little was done, however, to test the credibility of the version of the events proposed by P and A and the witnesses called by them. In particular, the witnesses whose statements contradicted each other, such as Ms T and Mr M were not confronted. No attempts were made to establish with more precision the timing of the events. The applicant and her representative were not given the opportunity to put questions to the witnesses whom she accused of perjury. In their decisions, the prosecutors did not devote any attention to the question whether the story proposed by P and A was credible when some of their statements called for caution, such as the assertion that the applicant, 14 years old at the time, had started caressing A minutes after having had sex for the first time in her life with another man".

167. A significant feature is the Court's linkage of the systemic failings (to prosecute cases where the victim did not resist) to the operational failings. The Court described this as "highly significant" (paragraph [179]). The Court identified a causal connection therefore between the systemic failing and the operational flaws: See paragraph [182]. The failure sufficiently to investigate the surrounding circumstances was as a result of the authorities placing undue emphasis on "direct" proof of rape.

168. Two other factors were identified as exacerbating the breach of Article 3. First, the failure to attach proper weight to the particular vulnerability of young persons and the special psychological factors involved in cases concerning the rape of minors; and secondly, the significant delays in the investigation: see ibid paragraphs [183, 184].

169. Finally, the Court rejected an argument by the State that its national legal system provided for the possibility of a civil action for damages against the perpetrators and this amounted to a defence. The Court noted that the assertion had not been "substantiated" ([186]). The Court added that, in any event, effective protection against rape and sexual abuse requires measures of a criminal law nature.

(vi) *Szula v United Kingdom* (2007) 44 EHRR SE19

170. Main points of principle: The Court, whilst rejecting the allegations on the facts, nonetheless held that cases such as *Osman*, and, *MC v Bulgaria* established the existence of a duty on police to investigate certain types of violence perpetrated by private parties. The case concerned rape. It also concerns Article 8. The Court analysed the case under Article 3 and Article 1. The Court also considered the position under Article 8.

171. Facts: This case concerns an allegation of historical rape. In September 1964, the applicant was sent to a residential approved school for having committed the offence of stealing a tricycle. He remained there until 1966. The applicant was physically and sexually abused by a teacher. In 1966, police inquiries into events at the school commenced. In June 2003, three men were convicted of various charges. However, the principal protagonist was not prosecuted. Between 2003 and 2005, the applicant adduced evidence substantiating his claims against DS, one such protagonist. Nonetheless, the Crown maintained its position. A complaint was made under Article 3 that there had been a failure in the State's positive obligation to ensure the enforcement of the criminal law and to provide protection against the sexual and physical assaults perpetrated on the applicant.

172. Analysis by Court: The Court stated that under Articles 1 and 3 of the Convention, States were required to take measures designed to ensure that individuals within their jurisdiction were: "not subjected to ill-treatment, including ill-treatment administered by private individuals".

173. The Court, relying upon (inter alia) *Osman* and *MC v Bulgaria*, stated:

> "In a number of cases, Art 3 of the Convention has also been held to give rise to a positive obligation to conduct an official investigation (see *Assenov & Others v Bulgaria* (1999) 28 EHRR 653 at [102]). Such a positive obligation cannot be considered in principle to be limited solely to cases of ill-treatment by State agents (see, *Mutatis Mutandis, Calvelli and Ciglio v Italy*).
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> Further, the Court has not excluded the possibility that the State's positive obligation under Art 8 to safeguard the individual's physical integrity may extend to questions relating to the effectiveness of a criminal investigation (see *Osman v United Kingdom* (2000) 29 EHRR 24 at [128]).
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> On that basis, the Court found in *MC v Bulgaria*…that States had a positive obligation inherent in Arts 3 and 8 of the Convention to enact criminal-law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution. These considerations apply equally to serious sexual offences inflicted on children. That said, however, there is no absolute right to obtain the prosecution or conviction of any particular person".

174. Application to facts: The investigations ultimately resulted in three convictions. Consideration had been given to the prosecution of the other protagonist and the decision not to prosecute was reviewed upon a number of occasions. The Court stated:

> "The Court finds no indication that the authorities showed any lack of diligence or expedition such that they effectively prevented any possibility of a prosecution".

175. Later, the Court, referring to the belated acknowledgement by the Procurator Fiscal of relevant evidence brought to his attention by the applicant, stated:

> "Whilst that sequence of events was somewhat unfortunate, the Court does not consider that it discloses any culpable disregard, discernible bad faith or lack of will on the part of the police or prosecuting authorities as regards properly holding perpetrators of serious criminal offences accountable pursuant to domestic law".

176. The Court, on the basis of the facts, found the applicant's claim "manifestly ill-founded" under Articles 3 and 8. The judgment assists (a) as to the identification of the duty and (b) as to circumstances giving rise to breach. It makes clear that individual failings must be viewed in an overall context.

(vii) *Secic v Croatia* (2009) 49 EHRR 408 (31st May 2007)

177. Main points of principle: This case relies exclusively upon Article 3. It concerns physical assaults of vulnerable ethnic groups. It confirms earlier authorities establishing the existence of a free standing duty upon police to investigate conduct perpetrated by private parties.

178. Facts: In April 1999, the applicant – a Roma – was collecting scrap metal in Zagreb when he was attacked by two men. The police arrived, interviewed the applicant and made an initial search of the area for the attackers. Medical examination revealed that the applicant had suffered multiple rib-fractures and he was later diagnosed with Post-Traumatic Stress Disorder. He lodged a criminal complaint in July 1999. In September 1999, the police interviewed the applicant, and one of his companions from the night of the attack and two eye witnesses. They were not able to provide a detailed description of the attackers. In March 2000, the applicant's lawyer informed the authorities that the perpetrators had been engaged in numerous acts against Roma persons during the same period and details of the victims of these attacks were provided. One such victim had, himself, personally witnessed the attack on the applicant. Indeed, the police had already identified and apprehended the attackers of this person. Between 2000 and 2002, the applicant's lawyer provided further information to the authorities to assist them with their inquiries. An application to the Constitutional Court failed because the Court concluded that it had no competence to rule upon cases involving prosecutorial inaction during the pre-trial stage of proceedings. The applicant then brought proceedings under Articles 3, 8 and 13 complaining that the investigation conducted by the authorities had been unreasonably delayed and ineffective.

179. Analysis by Court: The Court concluded that the case should be "examined primarily under Art. 3 of the Convention" paragraph [49]. The Court first considered whether the ill-treatment suffered at the hands of the third parties attained the minimum level of severity to fall within Article 3. The assessment of this minimum was relative and depended upon the circumstances of the case. The Court concluded that the injuries were sufficiently serious to amount to ill-treatment within the meaning of Article 3. The Court then proceeded to analyse the position of the responsibility of the State for conduct of third parties citing (*inter alia*) *Z v United Kingdom* (ibid); *MC v Bulgaria* (ibid); and, *Menson*:

> "52. The Court reiterates that the obligation of the high contracting parties under Art 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms to find in the Convention, taken together with Art 3 requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals.
>
> 53. Article 3 of the Convention may also give rise to a positive obligation to conduct an official investigation. Such a positive obligation cannot be considered in principle to be limited solely to cases of ill-treatment by State agents.

> 54. Lastly, the Court reiterates that the scope of the above obligation by the State is one of means, not a result; the authorities must have taken all reasonable steps available to them to secure the evidence concerning the incident. A requirement of promptness and reasonable expedition of the investigation is implicit in this context".

180. Application to facts: The Court observed that the police had not brought charges against any person and that criminal proceedings had been pending in a pre-trial phase for almost seven years. The Court concluded that there was a breach of Article 3. The violation was for operational not systemic failings.

(viii) *Ali and Ayse Duran v Turkey* Application No 42942/08 (8th April 2008)

181. In this case the Court clarified that the duty in Article 3 is not confined to the official investigation but extends to "the proceedings as a whole, including the trial stage". The Court did, however, recognise that there would not necessarily be a violation of Article 3 if a prosecution did not result in a conviction or in a particular sentence:

> "While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow life-endangering offences and grave attacks upon physical and moral integrity to go unpunished".

In my view this confirms the common-sense prosecution that an investigation will not violate Article 3 simply because, in the common law context, a jury fails to convict in the face of a perfectly reasonably conducted investigation and prosecution. As the Court has repeatedly emphasised: "…it is not the Court's task to verify whether the domestic courts correctly applied domestic criminal law; what is in issue…is not individual criminal-law liability, but the State's responsibility under the Convention". (ibid paragraph [78]).

(ix) *Beganovic v Croatia* Application No. 46423/06 (25th September 2009)

182. Main points of principle: This case, whilst confirming prior case law focused upon the adequacy of ultimate criminal proceedings in the light of Article 3.

183. Facts: The applicant had been the victim of various assaults perpetrated by minors. The complaint was made to police by the applicant in June 2000. However by 2006 proceedings against the minors had been discontinued.

184. Analysis by Court: The Court focused upon the adequacy of the post-investigative stage and in particular the Court proceedings. The Court affirmed the principle laid

down in *Ali and Ayse Duran v Turkey* (*supra*) to the effect that Article 3 covered the proceedings as a whole including the trial stage (see paragraph [77]). The Court identified a number of features of the trial procedure which were inadequate. First, that the State authorities had indicted only one of the multiplicity of assailants (see paragraph [80]). Secondly, the Court identified the lengthy delays caused in the proceedings including for unacceptable reasons such as the failure of Counsel for the defendant to appear (see paragraphs [80-83]). Thirdly, the failure of the State to prosecute the cases in a timely manner such that they ultimately became time barred (see paragraph [85]). The Court recognised that it should grant "substantial deference to the national courts in the choice of appropriate measures" to prosecute cases (see paragraph [79]). However, it also held that it maintained:

> "…a certain power of review and the power to intervene in cases of manifest disproportion between the gravity of the act and the results obtained at domestic level".

The Court noted that the obligation on the State to bring to justice perpetrators contrary to Article 3 served: "…mainly to ensure that acts of ill-treatment do not remain ignored by the relevant authorities and to provide effective protection against acts of ill-treatment" (see paragraph [79]).

185. Application to facts: On the facts of the case the Court held that there was a violation of Article 3 because the outcome of the proceedings could not be said to have had a sufficient deterrent effect on the individuals concerned and were not capable of ensuring the effective prevention of unlawful acts such as those complained of by the applicant (see paragraph [86]). Mr Johnson QC for the Defendant cited paragraph [71] which is in the following terms:

> "71. Furthermore, Article 3 requires States to put in place effective criminal-law provisions to deter the commission of offences against personal integrity, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions [ ] and this requirement also extends to ill-treatment administered by private individuals (see *Secic*…paragraph 53). On the other hand, it goes without saying that the obligation on the State under Article 1 of the Convention cannot be interpreted as requiring the State to guarantee through its legal system that inhuman or degrading treatment is never inflicted by one individual on another or that, if it is, criminal proceedings should necessarily lead to a particular sanction. In order that a State may be held responsible it must in the view of the Court be shown that the domestic legal system, and in particular the criminal law applicable in the circumstances of the case, fails to provide practical and effective protection of the rights guaranteed by Article 3 [ ]".

Mr Johnson QC submitted that the State could only violate Article 3 if the "legal system" was defective but not if the allegation only concerned defective operational decisions. It is clear, however, that the Court viewed the "legal system" as referring to the relevant legal framework, and, operational decisions adopted pursuant to that framework in the context of an individual case.

(x) *Denis Vasilyev v Russia* App No 32704/04 (17th December 2009)

186. Main points of principle: It is possible to conclude that by 2009 the law was being treated as settled. The court identified a clear duty on police to investigate. This is a duty of means not result. The duty is the same regardless of whether police were complicit or not. The investigation must be effective and prompt and reasonable.

187. Facts: In June 2001, the applicant and a school friend were assaulted by persons unknown in Moscow and money and other items were stolen from them. The applicant's school friend was a diabetic and in need of insulin. Police were called but upon arrival they assessed the two young men to be drunk and observed that one of them lay still on the ground in the presence of vomit. They dragged the unconscious applicant and his friend away from the road and deposited them close to rubbish bins. The following morning janitors discovered both individuals unconscious though one of them was mumbling incoherently. They summonsed an ambulance. At hospital, it was discovered that the applicant was suffering from severe injuries, including to his skull. Reports of the bodily injuries sustained by the applicant and his friend were provided to police. Their initial investigation revealed that no measures had been taken to inspect the crime scene, to identify or interview victims or witnesses. In due course, the relevant police officers were disciplined and a criminal investigation opened. Between July 2001 and July 2006 (the date for which the Strasbourg Court had the most up to date information about the investigation), various steps were taken to apprehend the perpetrators but with no success. In the course of that investigation, in February 2004, the Investigations Committee of the Ministry of the Interior acknowledged that the investigation had been improper "carried out at a low professional level and in breach of the rules of criminal procedure". The Committee observed that on many occasions the proceedings had been prematurely suspended upon the grounds that the person responsible could not be identified.

188. Analysis by Court: In paragraph 97 the Court recorded that the applicant did not lay blame at the door of the authorities for the attack nor was it suggested that the authorities knew or ought to have known that the applicant had been at risk of physical violence at the hands of third parties and had failed to take appropriate measures to safeguard the Applicant against that risk. There was hence no actual or constructive complicity by police in the assaults.

189. However, this did not absolve the State from all obligations under Article 3. Under Article 1 of the Convention, the duty on the contracting parties was to secure to everyone within their jurisdiction the rights and freedoms to find in the Convention and this, taken together with Article 3, required States to take measures designed to

ensure that individuals within their jurisdiction were not subjected to torture or inhuman or degrading treatment or punishment including ill-treatment "…administered by private individuals". The Court referred to a number of authorities including, but not limited to, *MC v Bulgaria* (ibid). In paragraph 99, the Court stated:

> "99. Admittedly, it goes without saying that the obligation on the State under Article 1 of the Convention cannot be interpreted as requiring the State to guarantee through its legal system that inhuman or degrading treatment is never inflicted by one individual on another or, if it has been, that criminal proceedings should necessarily lead to a particular sanction. What Article 3 does require is that the authorities conduct an effective official investigation into the alleged ill-treatment even if such treatment has been inflicted by private individuals".

190. The Court addressed (paragraph [100]) whether the extent and nature of the duty of investigation varied according to whether the State was complicit in the infliction of the violence or whether the violence had been inflicted by third parties. The Court held that the requirements for an effective investigation were the same regardless of the trigger for Article 3 and that the differences in the "scope" of the duty in the 2 situations did not justify a distinction in the substantive requirements:

> "100. Even though the scope of the State's positive obligations might differ between cases where treatment contrary to Article 3 has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals (see *Beganovic*, cited above, paragraph 69), the requirements as to an official investigation are similar. For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eye witness testimony, forensic evidence and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of person responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context [citation of authorities]. In cases under Articles 2 and 3 of the Convention where the effectiveness of the official investigation has been at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time [reference to authorities]. Consideration has been given to the opening of investigations, delays in taking statements [reference to authorities] and to the length of time taken for the initial investigation [reference to authorities]".

(xi) *Milanovic v Serbia* App No 44614/07 (14th December 2010)

191. Main points of principle: The Court emphasised the fundamental importance of Article 3. Its application to the police had to be proportionate and not unreasonable, i.e. not such as to impose impossible burdens on the police force. The Court treated the duty to investigate as settled law, including in respect of violence committed by private parties. The Court justified these conclusions by reference to 2 considerations well established in case law: (a) the need to maintain confidence in the rule of law and (b) the need to prevent any appearance of tolerance or collusion in unlawful acts.

192. Facts: The Applicant was a leading member of the Hare Krishna religious community in Serbia. In 2000 and 2001, he began receiving anonymous telephone threats, one of which threatened that he would be "burned for spreading his gypsy faith". In 2001, the Applicant complained to the police, informing them that he believed the threats came from a far-right organisation called Srpski Vitezovi. In September 2001, the applicant was attacked from behind and was hit over the head with a wooden bat by an unknown man. Later in the same month, he was assaulted again by one of three unidentified men. The applicant reported the incident to the police who conducted an investigation but discovered "no useful information". In July 2005, the applicant suffered yet another attack and upon this occasion was stabbed in the abdomen. The incident was reported to police. Between that date and June 2006, the police made yet further attempts to investigate the case. In June 2006, the applicant was, once again, attacked by a lone, unknown, assailant. He was stabbed in the abdomen and a crucifix was scratched upon his head. Between June 2006 and August 2006, the police attempted to conduct investigations but, yet again, without success. In June 2007, the applicant was assaulted once again. Upon this occasion, he was stabbed in his chest, hands and legs. And yet again, the police failed to find relevant inculpatory evidence. Between that date and April 2010, further unsuccessful investigations occurred. The applicant complained under Article 3 about the State's failure to prevent the repeated attacks upon him as well as its unwillingness to conduct a proper investigation into the incidents (paragraph 75). The State submitted that the abuse to which the applicant had been exposed had not attained the minimum level of severity required for the application of Article 3 but that, in any event, Serbian prosecuting and law-enforcement agencies had done everything within their power fully to investigate the attacks and to identify the perpetrators. Numerous potential witnesses had been heard, expert medical assistance had been obtained, all available leads had been explored, and one police officer had even been disciplined. The applicant's own position, to the police, appeared ambivalent and his demeanour less than cooperative. He had been difficult to contact and had not reported all of the attacks in a timely manner. The applicant had failed to request that his telephone line be monitored following the threat received in 2001 which could have been useful for identification purposes and which could have led to a conviction. Further, the applicant's descriptions of his attackers had been vague, there had been no eye witnesses and the applicant had never remained in the vicinity of the crimes following the event, thus precluding a timely on-site investigation in his presence. Further, no material traces of the attacks, apart from the injuries sustained by the applicant, had ever been located.

193. Analysis of Court: The Court highlighted the general importance of Article 3 of the Convention, the extent to which it imposed obligations upon the State to take measures to protect individuals within their jurisdiction from ill-treatment administered by third-parties, and the circumstances in which a duty arose for there to be an effective official investigation capable of leading to the identification and punishment of those responsible. Paragraphs 82-86 of the judgment contained a relatively comprehensive, and settled, statement of the law:

> "Relevant principles
>
> 82. The Court reiterates that Article 3 of the Convention must be regarded as one of the most fundamental provisions of the Convention and as enshrining core values of the democratic societies making up the Council of Europe (see Pretty v. the United Kingdom, no. 2346/02, § 49, ECHR 2002-III). In contrast to the other provisions in the Convention, it is cast in absolute terms, without exception or proviso, or the possibility of derogation under Article 15 of the Convention (see, inter alia, Chahal v. the United Kingdom, judgment of 15 November 1996, § 79, Reports of Judgments and Decisions 1996-V).
>
> 83. In general, actions incompatible with Article 3 of the Convention primarily incur the liability of a Contracting State if they were inflicted by persons holding an official position. However, the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, also requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment administered by other private persons (see A. v. the United Kingdom, judgment of 23 September 1998, § 22, Reports of Judgments and Decisions 1998-VI; Z and Others v. the United Kingdom [GC], no. 29392/95, §§ 73-75, ECHR 2001-V; E. and Others v. the United Kingdom, no. 33218/96, 26 November 2002).
>
> 84. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of this positive obligation must, however, be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk of ill-treatment, thus, can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk of ill-treatment of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

> Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention…
>
> 85. The Court further recalls that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with Article 1 of the Convention, requires by implication that there should also be an effective official investigation capable of leading to the identification and punishment of those responsible (see Assenov and Others v. Bulgaria, 28 October 1998, § 102, Reports of Judgments and Decisions 1998-VIII). A positive obligation of this sort cannot, in principle, be considered to be limited solely to cases of ill-treatment by State agents (see M.C. v. Bulgaria, no. 39272/98, § 151, ECHR 2003-XII; Šečić v. Croatia, no. 40116/02, § 53, ECHR 2007-VI).
>
> 86. Lastly, the scope of the above obligation is one of means, not of result; the authorities must have taken all reasonable steps available to them to secure the evidence concerning the incident (see, mutatis mutandis, Menson v. the United Kingdom (dec.), no. 47916/99, ECHR 2003-V). A requirement of promptness and reasonable expedition of the investigation is implicit in this context (see, mutatis mutandis, Yaşa v. Turkey, judgment of 2 September 1998, Reports 1998-VI, p. 2439, §§ 102-104) since a prompt response by the authorities may generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see Batı and Others v. Turkey, nos. 33097/96 and 57834/00, § 136, ECHR 2004-IV (extracts); Abdülsamet Yaman v. Turkey, no. 32446/96, § 60, 2 November 2004; and, mutatis mutandis, Paul and Audrey Edwards v. the United Kingdom, no. 46477/99, § 72, ECHR 2002-II)."

194. Application to facts: The Court concluded that the injuries sustained (numerous cuts, combined with feelings of fear and helplessness), amounted to ill-treatment within the meaning of Article 3 (paragraph [87]). The Court noted that many years after the attack, the perpetrators had yet to be identified or brought to justice and the applicant had not been properly kept abreast of the course of the investigation or afforded an opportunity personally to see and identify his attackers from amongst a number of witnesses and/or suspects questioned by the police. The Court noted that the police considered that the applicant's injuries may have been "self-inflicted" even though there was no medical or other meaningful evidence to that effect and the conclusion was based upon "pure conjecture". The Court commented that the cooperation between the police and prosecutorial authorities "left a lot to be desired" and was

critical of the operational decision to focus police investigations on a particular locality despite the police knowing that the far-right group suspected of perpetrating the offences operated throughout the country. Finally, the Court concluded that it should have been obvious to police that the applicant was a member of a vulnerable religious minority and was being systematically targeted and that future attacks were very likely to follow. Preventative measures, such as video or other surveillance techniques were not implemented. The conclusion of the Court was as follows:

> "90. In view of the foregoing and while the respondent State's authorities took many steps and encountered significant objective difficulties, including the applicant's somewhat vague descriptions of the attackers as well as the apparent lack of eyewitnesses, the Court considers that they did not take all reasonable measures to conduct an adequate investigation. They have also failed to take any reasonable and effective steps in order to prevent the applicant's repeated ill-treatment, notwithstanding the fact that the continuing risk thereof was real, immediate and predictable.
>
> 91. In such circumstances, the Court cannot but find that there has been a breach of Article 3 of the Convention".

(xii) *CAS & CS v Romania* App No 26692/05 (20th March 2012)

195. Main points of principle: The case illustrates that by 2012 the principles were well established. It addressed also Article 8 but in terms which suggest that there is no material difference with Article 3.

196. The Facts: The applicant, who, at the time of the assault, was 7 years old, was subject to repeated rape and violence. The father of the applicant reported the assault to police and accused 3 specific individuals. Between the date of the complaint in 1998 until 2002 investigations continued but no prosecutions were brought. Ultimately, one of the individuals was prosecuted but two others were not. Throughout complaints were made about the length of the proceedings but these were dismissed. In May 2004, the Bacau District Court acquitted the one individual who had been prosecuted.

197. Analysis of Court: The Court reiterated that Articles 1 and 3 required States to take measures designed to ensure that individuals within their jurisdiction were not subject to ill-treatment including ill-treatment administered by private individuals. The absence of any direct State responsibility for the acts of violence did not absolve the State from obligations under Article 3 which required that the authorities conduct an effective official investigation. The Court cited *MC v Bulgaria* (supra) and *Vasilyev v Russia* (supra). The Court reiterated the point made in *Vasilyev* that the requirements for an official investigation were similar regardless of whether the ill-treatment was perpetrated by State agents or by private individuals (ibid paragraph [70]). The Court proceeded to conclude that for an investigation to be regarded as "effective" it should in principle be capable of leading to the establishment of the facts of the case and to

the identification and punishment of those responsible. This was: "…not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning incident, including, *inter alia*, eye witness testimony, forensic evidence, and so on". The Court reiterated its now familiar conclusion that any deficiency in the investigation which undermines its ability to establish the causes of injuries or the identity of the persons responsible would "risk" falling foul of the standard and that a requirement of promptness and reasonable expedition was implicit.

198. In relation to Article 8, the Court observed that positive obligations upon the State were inherent in the right to effective respect for private life under Article 8 and that these obligations could involve the adoption of measures "…even in the sphere of the relations of individuals between themselves". The Court confirmed that the choice of the means to secure compliance with that Article in the sphere of protection against acts of individuals was "in principle within the State's margin of appreciation". However in paragraph 71 it stated:

> "…effective deterrents against serious acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions. Children and other vulnerable individuals, in particular, are entitled to effective protection".

199. In paragraph 72, the Court stated:

> "72. The Court reiterates that it has not excluded the possibility that the State's positive obligation under Article 8 to safeguard the individual's physical integrity may extend to questions relating to the effectiveness of a criminal investigation (see MC cited above paragraph 152)".

(xiii) *Koky & Others v Slovakia* App. No. 13624/03 (12th June 2012)

200. Main points of principle: This case is significant only in that it shows the Strasbourg Court, in a routine manner, finding violations of the duty to investigate violence by private parties. It highlights how facts involving particularly vulnerable victims may lead more readily to a conclusion of breach.

201. Facts: A dispute arose on the evening of 28th February 2002 in a bar in the village of Ganovce-Filice where a non-Roma waitress refused to serve a person of Roma ethnic origin. An argument developed culminating in the waitress being slapped in the face. Later that evening, a group of at least 12 assailants visited the Roma settlement in the village where the applicants lived. Some were wearing balaclavas and they were armed with baseball bats and iron bars. The attackers physically assaulted the applicant having broken into his home. The police were called and the assailants departed but, as they fled, they took the opportunity physically to assault other Roma occupants of the settlement. There followed a series of police investigations, some of

which were suspended before being reactivated. However, in many respects, the investigation appeared to lack determination and a variety of otherwise available investigative steps were not pursued.

202. Analysis of Court: The analysis of the Court in relation to the existence of an independent duty to investigate is found in paragraphs 211-215. The President of the Court was Sir Nicolas Bratza. The Court reiterated the fundamental importance of Article 3; that the ill-treatment suffered by the victim must attain a minimum level of severity to fall within Article 3; that the assessment of this minimum was relative and depended upon all the circumstances including the nature and context of the treatment, its duration, its physical and mental effects and the sex, age and state of health of the victim. In this regard, the court cited *Price v United Kingdom No. 33394/96 paragraph 24 ECHR 2001 VII.* The Court reiterated that whilst Article 3 was mainly concerned with the liability of a State for harm inflicted by persons holding an official position, the absence of a direct State responsibility did not absolve the State from all obligations under Article 3 and that a combination of Articles 1 and 3 of the Convention required the State to take measures designed to ensure that individuals within their jurisdiction were not subjected to ill-treatment administered by private persons. The Court cited *Milanovic* (Supra) and *Denis Vasilyev v Russia* (Supra). In paragraphs [214] and [215] the Court stated:

> "214. The court further reiterates that where an individual raises an arguable claim that he is being seriously ill-treated in breach of Article 3, that provision, read in conjunction with Article 1 of the Convention, requires by implication that there should also be an effective official investigation capable of leading to the identification and punishment of those responsible (see Assenov & Others v Bulgaria 28 October 1998 paragraph 102, Reports of Judgments and Decisions 1998 – VIII). A positive obligation of this sort cannot, in principle, be considered to be limited solely to cases of ill-treatment by State agents (see MC v Bulgaria [ibid] and Secic v Croatia [ibid])
>
> 215. Even though the scope of the State's procedural obligations might differ between cases where treatment contrary to Article 3 has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals, the requirements as to an official investigation are similar. With investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The investigation must be independent, impartial and subject to public scrutiny and that the competent authorities must act with diligence. Among other things, they must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, a detailed statement concerning the allegations from the alleged victim, eye witness testimony, forensic evidence and, where appropriate, additional medical report. Any deficiency in the

> investigation which undermine its ability to establish the cause of injury or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context (see, for example, *Beganovic v Croatia* [ibid] and *Denis v Vasilyev*, cited above paragraph 100 with further references".

203. Application to facts: The court identified a series of failings which "coupled with the sensitive nature of the situation related to the Roma in Slovakia at the relevant time" were sufficient to find a violation of Article 3. The Court stated (paragraph [239]):

> "In reaching this conclusion, the Court has taken into account the particular importance for an investigation into an attack with racial overtones to be pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence (see, mutatis mutandis, *Menson v. the United Kingdom*…"

(xiv) *Sizarev v Ukraine* App. No. 17116/04 (17th January 2013)

204. Main points of principle: The significance of this case is that it is a recent illustration of what, by 2013, is well entrenched case law.

205. Facts: In October 2003, K complained to the police that the Applicant had beaten him up. On 27th April 2004, the Applicant was arrested and, for various reasons, he was remanded in custody. In October 2004, the local court found the applicant guilty of negligently inflicting bodily harm of a medium degree of severity on K. He was sentenced to a one year term of imprisonment suspended. In December 2004, an appellate court quashed the first instance judgment and remitted the case for re-trial. On 25th November 2005, the Court found the applicant guilty and sentenced him this time to two years imprisonment. In January 2006, the Court of Appeal dismissed his appeals but ordered that the applicant did not have to serve the term of imprisonment and released him upon the basis that he had two children of minor age. On 25th January 2007, the Supreme Court rejected his appeal. During his detention, the applicant was put in Cell Number 10 at a temporary detention facility which housed approximately ten detainees. Within one hour of entering Cell Number 10, he had sustained multiple injuries. In May 2004, the local prosecutor's officer refused to institute an investigation. The applicant's lawyers objected submitting that the administration of the detention facility had wrongly placed the applicant in a communal cell shared by other detainees including criminals with previous convictions. According to legislation, he was required to be held separately because he had previously been a person of good character and because he had previously worked in the court services. Between then and March 2007 the authorities investigated the complaint. They ultimately concluded that one of the co-detainees had beaten the Applicant up but there was no evidence that the police had any active

involvement in the beating. The authorities did, however, find that the Applicant had been put in a communal cell in breach of legislation and the official responsible for the decision was disciplined. When the co-detainee who had beaten the Applicant up was tried, the Court dismissed as unsubstantiated the Applicant's submission that the detention officials had deliberately placed him in a communal cell with convicted criminals in order to "teach him a lesson". The applicant complained under Article 3 that the authorities had been responsible for his having been beaten up by a third party and that the incident had not been duly investigated. Upon the facts of the case, the Applicant's injuries were inflicted by a third party but were materially contributed to by the breach of duty on the part of the State in, wrongly, detaining him in a cell with criminal co-detainees.

206. Analysis of Court: The Court considered the case both in relation to the authority's duty to ensure the Applicant's safety in detention (paragraphs 108-116) but also as to the effectiveness of the domestic investigation (paragraphs 117-129). In relation to the former, the Court reiterated that Article 3 of the Convention imposed an obligation on contracting States not only to refrain from causing ill-treatment:

> "112. …but also to take the necessary preventive measures to preserve the physical safety and well-being of persons deprived of their liberty who find themselves in a vulnerable position by virtue of being under the control of the authorities…".

207. Accordingly, the analysis in this part of the judgment concerns the duty of the State to preserve the physical integrity of persons detained. It is, accordingly, only indirectly concerned with the duty of the State to protect citizens from harm perpetrated by third parties. Nonetheless, when the Court came to consider the effectiveness of the domestic investigation, it stated that the duty in Article 3 imposed upon national authorities to carry out an effective official investigation into alleged mistreatment "at the hands of agents of the State" (paragraph [119]) that such a positive obligation could not be considered "…in principle to be limited solely to cases of ill-treatment by State agents". In this regard, the Court cited *MC v Bulgaria* (Supra) paragraph [151].

208. In relation to content of the duty to investigate, the Court stated (paragraph [121]) that the investigation must be "thorough". The authorities must always make a serious attempt to find out what happened and should not rely upon hasty or ill-founded conclusions to close their investigation. They must take all reasonable steps available to them to secure the evidence concerning the incident, including eye witness testimony and forensic evidence. Any deficiencies in the investigation which undermine its ability to establish the causes of injury or the identity of those responsible will "risk" falling foul of this standard.

209. Application to facts: The Court criticised, *inter alia*: The failure to secure for subsequent forensic evidence, blood spilled in the cell; the failure to make a report about the findings of the inspection of the cell; the failure to question eye witnesses from within the cell without delay; the decision to place the applicant back into the

cell where he had suffered ill-treatment whilst his transfer to hospital was being organised, which exposed him to a repeat of the ill-treatment and to intimidation; the fact that the applicant's complaints to the prosecution and judicial authorities remained "unaddressed"; the sequence of discontinuances and resumptions of the investigation over time which itself could be regarded as an indication of deficiency in the prosecution system. It is relevant that the assailant of the applicant was ultimately convicted and the detention officials were disciplined for having put the applicant in the same cell as other detainees, including convicted criminals. With regard to the latter, the Court stated:

> "The Court doubts that this reprimand issued to staff members who apparently had no practical means to act differently, was, in fact an effective measure. It was already known that the [detention facility] was overcrowded and that it had not been possible to comply with the requirements for the isolation of some detainees under the applicable legislation".

210. The Court thus concluded:

> "129. In the light of all these circumstances, the Court is not convinced that the domestic authorities acted promptly and in good faith or that they took all reasonable efforts to establish what exactly had happened to the applicant within the walls of the detention facility and why, and to bring those responsible to justice".

(3) A summary of principles laid down in case law

211. In my view when construing the HRA and when taking account of Strasbourg case law I am bound to accord significant weight to that case law because it is coherent, well evolved and its core tenets are settled. In the text below I identify thirteen main propositions (paragraphs [212]-[[224]) and then consider five other points about the jurisprudence (paragraph [225]) which relate to the intensity of the test laid down in case law. It is possible to synthesise the principles laid down in the Strasbourg case law. I have cross-referenced some of the principal propositions back to the case analysis. But this is not an exhaustive cross-referencing exercise.

212. First, Article 3 of the Convention imposes a duty upon the police to investigate which covers the entire span of a case from investigation to trial. The purpose behind this duty is to secure confidence in the rule of law in a democratic society, to demonstrate that the State is not colluding with or consenting to criminality, and, to provide learning to the police with a view to increasing future detection levels and preventing future crime. (*Osman* para [115]; *Menson* page 229; *Z v United Kingdom* para [73]; *MC v Bulgaria* paras [150]-[153]; *Milanovic v Serbia* para [86]). The investigation must be independent, impartial and subject to independent scrutiny.

213. Secondly, the duty is not conditional upon the State being guilty, directly or indirectly of misconduct itself (see cases cited at paragraph [179] above). Cases involving the infliction of violence by private parties upon victims in the custody or control of the State are treated as cases where the State bears some responsibility for the violence. It arises also in cases where the police are entirely free of any responsibility for the infliction of the violence which must exist before a *prima facie* violation of Article 3 can arise.

214. Thirdly, the duty is triggered where there is a credible or arguable (*Sizarev v Ukraine* para [214]; *Milanovic v Serbia* para [85]) claim (by the victim or a third party) that a person has been subjected to treatment at the hands of a private party which meets the description of torture or degrading or inhuman treatment in Article 3.

215. Fourthly, allegations of crime that are "grave" or "serious" will amount to torture or degrading or inhuman treatment. Rape and serious sexual assault fall within this category (*MC v Bulgaria* para [150]; *Szula v United Kingdom* at paragraph [173] above). However not every crime perpetrated by a private party against an individual falls within Article 3.

216. Fifthly, where a credible allegation of a grave or serious crime is made, the police must investigate in an efficient and reasonable manner which is capable of leading to the identification and punishment of the perpetrator(s) (*MC v Bulgaria* para [153]; *Vasiliyez v Russia* para [100]). The question of what is meant by "capable" raises some important issues and I have addressed these in more detail at paragraph [226] below.

217. Sixthly, the duty is one of means, not results, i.e. the police will be in breach of Article 3 if the conduct (the means) of the inquiry falls below the requisite standard. The breach can occur in principle regardless of whether the investigation leads in fact to arrest, charge and conviction (the result) (*Edwards* para [71]; *Beganovic v Serbia* para [75]; *Milanovic v Serbia* para [86]).

218. Seventhly, whether a breach has occurred is measured by viewing the conduct of the police over a relevant time frame. Ordinarily, this will be measured by the time span from the assault on the Claimant to the last point in the criminal process (which might be a case closure or a conviction in a criminal court: See e.g. *Ali and Ayse Duran v Turkey* cited at paragraph [181] above. There is, however, no reason why it cannot span the police investigation from the first point in time that evidence comes to police attention of a person's offending until the last point in the process. This will be particularly relevant in the case of a serial offender whose violent criminality might long pre-date the point in time that a particular victim is attacked.

219. Eighthly, the assessment of the efficiency and reasonableness of an investigation takes account of its promptitude ("reasonable expedition" - *Menson v United Kingdom* cited at paragraph [160] above; and also *Szula v United Kingdom* para [129] cited at paragraph [210] above).

220. Ninthly, the assessment of the efficiency, and, reasonableness of an investigation also takes into account whether the offender was adequately prosecuted. In this respect, a successful prosecution within a reasonable period of time will render prior operational failures irrelevant (non-justiciable). However a prosecution that is brought after an unreasonable point of time does not in and of itself expunge the legal effect of prior operational failures (*Menson ibid*).

221. Tenthly, not every failing attracts liability (*MC v Bulgaria* para [168]; *Milanovic* para [84]). An operational failing which, had it not occurred, would not have been "capable" of leading to the apprehension and prosecution of an offender is also not actionable. Police are only liable for failing to meet an operational standard that is capable of leading to the apprehension and prosecution of an offender. For instance the failure to seize a piece of evidence that according to standard procedure should have been seized but which, objectively, is peripheral to the investigation would not be justiciable. It follows that not every failure to adhere to standards or guides to appropriate conduct drafted by the police themselves will lead to liability (and to the extent that HHJ Oliver Jones QC concluded otherwise in *T v Chief Constable of Staffordshire Police, Birmingham County Court*, (18th January 2013) paragraphs 42 and 45, I respectfully disagree).

222. Eleventhly, the mere fact that a civil claim against the offender has succeeded and/or that disciplinary measures have been taken against defaulting officers is not sufficient to expunge liability since Article 3 requires an effective criminal investigation.

223. Twelfthly, investigative failings may be systemic or operational. Systemic failures will include legislative or policy failings (for example, the systemic police of the Bulgarian state in not prosecuting rapes where the victim did not resist – *MC v Bulgaria*). Operational failures include the flawed individual acts or omissions of individual officers in the course of an investigation.

224. Thirteenthly, the process of determining whether an investigation was "reasonable" or "capable" of leading to the apprehension, charge and conviction of a suspect is a fact sensitive exercise. It is also subject to a margin of appreciation and to proportionality. The law must not impose an excessive burden on police: *Osman* para [116]. Factors which may in a particular case be relevant include (but are not limited to): the resources available to the police; the nature of the offence; whether the victim fell into an especially vulnerable category; whether the operational failures were caused by (up-stream) systemic failings in the law or in the practices of the police. For a more detailed analysis of the capability test see paragraph [226] below.

225. Various points have been raised by the Strasbourg case law as reflected in the synthesis of case law above, which in the course of argument were referred to as either leading to an intensification or a weakening of the duty to investigate. There are 5 points in particular which warrant mention:

i) The need to avoid an unacceptable burden being imposed upon the police: This was a point emphasised in *Osman* (para [116]), in relation to the right to life (under Article 2), and there is no reason why it should not apply equally to Article 3 cases. It is a reason for adopting a cautious approach to the law and in not setting the bar for liability at too low a level. It is also a point which underscores the statement made on a number of occasions that not every allegation of error or isolated omission in an investigation triggers liability.

ii) Complainant is dead or alive: The Defendant points out that Strasbourg case law distinguishes between Articles 2 and 3 upon the basis that under Article 2 the victim is no longer alive and therefore cannot complain, give evidence or personally vindicate his or her rights. It is suggested that this indicates that the duty under Article 2 on police to investigate is much higher or at least in some way different and more strenuous that that under Article 3. It is correct that in certain early cases the Court made this point in justification of the existence of a duty to investigate. However, it is not a point which the Court has made in all cases and in particular not in the more recent cases. It is not a point that in my view the Court has relied upon as in any way justifying a different rule for Article 2 compared to Article 3. There is nothing which suggests that because, in relation to Article 3, the victim remains alive and able to participate in the investigation and prosecution that this lessens the duty on the police. The case law makes clear that under Articles 2 and 3 the duty is simply to take reasonable steps capable of apprehending the criminal. This is a test which is fact sensitive and which is subject to a margin of appreciation conferred upon the police. The fact that a victim is alive or dead may be part of the facts which makes an investigation more or less likely to succeed. But in my view the distinction does not materially go beyond this.

iii) "Risk": In a number of cases the Strasbourg Court applied the law and, by way of conclusion, stated that the State in question "risks" being in violation of Article 3. The implication being that satisfaction of the test creates a risk of violation but not necessarily a violation (see e.g. *Sizerev v Ukraine* cited at paragraph 208 above; *Vasilyev* para [100]). However, in my view use of the word "risk" is simply loose language. In the cases where the Court has used that phrase it has still proceeded formally to find a violation by the state concerned and it has not set out any <u>additional</u> criterion to be satisfied before liability can be found.

iv) Vulnerability: In a number of cases the Court has also referred to the vulnerability of the category of person who was subjected to the violence. This has been especially evident in cases where violence was perpetrated against ethnic minorities (see e.g. *Secic* cited at paragraphs [177]-[180] above). The Claimant has argued that victims of sexual assault (predominantly women) are a vulnerable category but even if this was too broad a generalisation, women who late at night enter a taxi cab are an especially vulnerable sub-category and this should be taken to intensify the duty on police to investigate. This is a superficially attractive argument and derives support from *CAS & CS v Romania* para [71] which refers to children and rape

victims as being vulnerable. However, in practice it is hard to see how this fits into the legal framework of analysis and how it would work. There are a number of reasons for this. First, the test for the application of Article 3 is quite exacting; the complainant must have been subjected to torture or degrading or inhuman treatment. By no means all victims of crime will fit into this categorisation and almost by definition those so subject will exhibit some degree of vulnerability. Vulnerability may be therefore seen as part of the rationale for the existence of the duty in Article 3 but it does not therefore need to play any further or incremental part in the substantive test. Secondly, in those cases where vulnerability has been referred to the tenor of the analysis is to emphasise that although each state enjoys a margin of appreciation in the choice of means (of investigation) where the victim is especially vulnerable the Court might take this into account in determining whether an effective investigation was in fact carried out (cf *CAS* para [71]). A categorisation of vulnerability has not been used to alter the test; there is no *sui generis* test for vulnerable victims. It appears to be a contextual factor which a court will take into consideration in assessing the application of the test to the facts of a given case (see for example *MC v Bulgaria* para [183] referred to at paragraph [168] above; *Menson* page 230 cited at paragraph [158] above). In short the Strasbourg Court has taken account of vulnerability as part of the overall assessment of a case and at its highest it may be a factor which makes a court more vigilant to ensure that the police live up to their duty. In the present case it has not been necessary to base my finding upon the conclusion that the victims were in a vulnerable category. Their position as vulnerable does, however, provide added support to my findings that there was a breach on the facts of the individual cases before me.

v) Broad brush or nuts and bolts approach to the evidence: In many of the decided Strasbourg cases the Court has arrived at its ultimate findings upon the basis of relatively cursory conclusions about the efficacy of an investigation. In particular although the Strasbourg Court refers to the capability test when it considers the facts of a given case the Court appears to jump to the conclusions that an investigative step would have been "capable" had it been taken. This led Ms Kaufmann QC for the Claimants to argue by reference to such cases where liability appears to have been established by reference to broad and sweeping findings and conclusions that the forensic exercise to be performed by the domestic Court did not have to be excessively detailed before liability could be found. Equally Mr Johnson QC for the Defendant also argued, but this time by reference to other cases where liability was rejected again in sweeping and general terms that provided the steps that were in fact taken were capable in a very general way of leading to the apprehension of the criminal this sufficed. I do not agree with either view (and see also paragraph [226] below). In cases before the Strasbourg Court that Court necessarily relies upon findings of fact made by the domestic courts (a point recognised by the Strasbourg Court in *MC V Bulgaria* paras [167-168]). That Court is not a primary fact finder. In my view when confronted with a claim under the HRA that the police have not investigated properly up to the requisite standard the domestic court should not take a sweeping and generalised view either for or against, but should examine the case in detail

and with care. A finding of breach is a serious finding and should not be arrived at lightly. Since capability is the gravamen of the test it seems to me that it is consistent with the common law's evidence based approach to the protection of rights that before the police can be said to be liable for an omission it must be possible to identify the causal connections which are innate in capability.

(4) The meaning of steps "capable" of apprehending a criminal: Omissions and commissions

226. In view of my conclusions above I set out below more detailed observations on the concept of capability. In re-examination of the police officers who gave evidence, Mr Johnson QC asked each whether in their view the actual steps that they had in fact taken were "capable" of leading to the apprehension Worboys. Each answered in the affirmative. This raises an important issue about the meaning of steps that are "capable" of leading to the apprehension of a criminal as that concept is understood in the case law (see paragraph [216] above). The fact that the officers considered that the steps they did take (as opposed to the steps they did not take) might have led to a successful outcome is not, in my view, any sort of an answer to the application of the HRA and Article 3. There are in my view three significant points in this regard to make. First, Strasbourg case law amply demonstrates that overwhelmingly Article 3 is concerned with omissions not commissions i.e. the steps that were not taken but should have been. The fact that an officer performs certain actions that theoretically could have led to the criminal's capture (but did not) is not an answer to the criticism that he should have done something else or more which was likely to be more effective and which itself could have led to a successful outcome. Almost by definition in every Article 3 case an investigation of sorts will have taken place which will either have led nowhere or will only have led to a result after an unacceptably long lapse in time. In all cases some investigative steps will accordingly have been taken but the point is that the investigation as a whole has been ineffective and this will invariably be because acts which should and could have been taken were not taken. It is therefore not an answer to a criticism focusing upon omissions simply to point to the commissions and argue that they were theoretically "capable" of leading to a positive outcome. Secondly, in any event, the argument fails to grapple with the meaning of "capable". Many acts performed in the course of an investigation may in a remote and theoretical sense be "capable" of leading to the capture of the criminal. An act which has a 10% chance of being successful is still "capable" in this limited sense of leading to a positive outcome. But the case law uses the concept of capability in a more proximate and immediate sense as indicating an act which in a material and reasonable way is capable of leading to a positive outcome. Accordingly, to point to positive acts performed which were only remotely capable, is not an answer. Thirdly, but as an important caveat to both the above points, if adequate positive steps are in fact taken which are capable of apprehending the criminal then this will be relevant to the assessment of an allegation that the police failed to take a particular step in an investigation which (had it been taken) might have led to the arrest or earlier arrest of the suspect. A failure to perform an individual act that really could have been performed will not trigger liability if: (a) notwithstanding that omission the investigation viewed in the round did in fact lead to the arrest of the suspect within a reasonable time; or (b) the investigation (even absent a prosecution) may still be said to encompass a series of reasonable and efficient steps. This is an important point since the Strasbourg case law repeatedly emphasises that the police

must be accorded a broad margin of appreciation in the choice of means of investigation. The police have a discretion as to how they conduct an investigation so that if (say) they are faced with a choice of 3 reasonable courses of action to adopt but chose only one or two of the courses of action and then perform those well it will generally not be a point of criticism that they omitted to adopt the third course which could, objectively speaking, have been capable of leading to the apprehension of the criminal.

(5) Defendant's submissions: Analysis

227. I turn now to address the Defendant's main legal arguments. Mr Johnson QC, with considerable forensic aplomb, wove together from a variety of decided cases, a series of interrelated submissions as to the scope of Article 3. He submitted that the transformation of the prohibition in Article 3 of the Convention from a prohibition to a proactive duty to investigate is due to the conjunctive effect of Articles 1 and 3 of the Convention. He pointed out that Article 1 was not incorporated into domestic law by the Human Rights Act and that, therefore, there was no requirement to construe Article 3 as introducing into domestic law a proactive duty such as may (arguably) be found in Strasbourg jurisprudence. He further pointed out that the duty on the courts under the Human Rights Act (Section 2) was merely to "take account of" Strasbourg case law but there was no requirement to adopt an approach of slavish subservience. In his submission, no duty to investigate could be fashioned out of Article 3 when properly interpreted through the optic of the Human Rights Act. In support of this submission, he drew my attention to a series of cases decided by Strasbourg and submitted that these, at their highest, demonstrated that insofar as a duty to investigate arose at all it was a limited duty which arose only where the State was in some way itself complicit in a breach of Article 3. For example, he submitted that the duty to investigate would arise where a third party attacked a person who was in the custody or detention of the State and because of that fact the State was complicit to a requisite degree to trigger liability. He also submitted that as to those cases where the Strasbourg Court had recognised a free standing duty upon the State to investigate independent of any fault on the part of the State that these were essentially rogue or maverick cases which should not be followed, not least because they did not amount to a consistent or coherent line of authority and there was no corroborating judgment of a Grand Chamber to support the proposition contained therein.

228. Notwithstanding the attractive way in which the submissions were put, I am unable to accept them for a number of reasons.

(i) Strasbourg case law is consistent and settled

229. First, the authorities from the Strasbourg Court set out *in extenso* above demonstrate that the duty on the State to investigate under Article 3 the conduct of private parties which amount to torture or degrading or inhuman treatment is established in a long line of consistent case law stretching back well over a decade. The principle is not a stray or maverick line of thought which having briefly emerged has been (and should

be) forgotten. On the contrary, it represents clear, consistent and established principle which has evolved and solidified over many years and which has received approval from a very large cohort of Strasbourg Judges, including *qua* President, Sir Nicholas Bratza. I would be disregarding my duty under Section 2 Human Rights Act to "take account" of this case law if I was to attach no weight to it.

(ii) Domestic law has long acknowledged an equivalent duty

230. Secondly, the above conclusion is not heretical to the common law. The duty on the police to investigate effectively is a bare minimum safeguard in any civilised State. In the course of argument I asked Mr Johnson QC whether he accepted, on behalf of the Commissioner, that there was in domestic law a duty to investigate. He accepted that there was and, most helpfully, provided me with authority to support the proposition. He cited by way of authority a number of sources for this wholly unsurprising proposition. In *Rice v Connolly* [1966] 2 QB 414, Lord Parker CJ referred to the duty to "detect crime" and "to bring offenders to justice":

> "It is part of the obligations and duties of a police constable to take all steps which appear to him to be necessary for keeping the peace, for preventing crime or for protecting property from criminal injury. There is no exhaustive definition of the powers and obligations of the police but they are at least these and they would further include the duty to detect crime and to bring offenders to justice".

In *R v Commissioner of Police of the Metropolis ex parte Blackburn* [1968] 2 QB 118 Lord Denning MR referred to the duty of the Commissioner "…to post his men that crimes may be detected":

> "…I hold it to be the duty of the Commissioner of Police of the Metropolis, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought. But in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone".

231. All constables must (by virtue of Section 29 and Schedule 4 Police Act 1996) make the following attestation which could not rationally be said to exclude the duty to investigate crimes:

> "I.....of.....do solemnly and sincerely declare and affirm that I will well and truly serve the Queen in the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people; and that I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against people and property; and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law".

232. The domestic courts should not therefore view the explanations given by the Strasbourg Court for the recognition of a free standing duty upon the police to investigate as unorthodox. In my view, this is a case where the real issue is not as to whether the duty exists but as to the circumstances in which it may be justiciable and breached.

(iii) Article 1 of the Convention is not the explanation for the duty to investigate

233. Thirdly, I can see no reason why Article 1 can be said to create a pro-active duty whereas the same would not be said of Article 3 standing in complete isolation (including from Article 1). Article 3 is a clear and unequivocal prohibition which has been repeatedly described by the Strasbourg Court as "fundamental". In *MC v Bulgaria* the Court stated that there was a "positive obligation inherent" in Article 3 to apply law prohibiting rape through "effective investigation" and punishment. See para [153] cited at paragraph [163] above; see also *Milanovic* para [82] cited at paragraph [193] above. The Article prohibits without caveat or qualification torture and inhuman or degrading treatment. That prohibition exists quite regardless of Article 1; the message in Article 3 is that the State must preserve its citizens from such severe treatment. Section 6 HRA makes it "unlawful" for a public authority to act in a way that is incompatible with, *inter alia*, Article 3. And sections 7 and 8 make such an unlawful failure justiciable. There is no point in having a prohibition if it is not accompanied by the commensurate obligation on the State to enforce the prohibition. That applies to the conduct of the State and its agents and actors but extends also to the preservation of citizens from severe violence perpetrated by private parties. Article 3 does not require turbo-charging from Article 1 to arrive at this conclusion and in any event sections 6-8 HRA plug any gap that might otherwise exist.

234. Mr Johnson QC referred to *Regina (Al-Skeini & Others) v Secretary of State for Defence* [2007] UKHL 26; [2008] 1 AC 153 in support of the proposition that a principle of the Strasbourg Court conditional upon Article 1 was not a principle that should be followed by the English courts. In my view the judgment leads to the opposite conclusion. In that case the Claimants were the relatives of six deceased Iraqi civilians killed by or in the course of action taken by British soldiers in the period following combat operations in Iraq and prior to the assumption of authority by the Iraqi Interim Government. In the first five cases, the deceased had been shot in separate armed incidents involving British troops; in the sixth case, the deceased had

been arrested by British forces and taken into custody at a British military base where he died allegedly as a result of torture carried out by soldiers at the base. An issue arose as to the territorial scope of the Human Rights Act 1998. In this regard, the duty imposed by Article 1 of the Convention was referred to and relied upon as part of the argument in favour of the extra-territorial application of Article 1. It imposes an obligation upon the High Contracting Parties to "secure to everyone within their jurisdiction" the rights and freedoms defined in Convention. It was in this context that the House of Lords made various observations about the scope and effect of Article 1. In my view, none of the opinions expressed in that case serve to undermine the conclusion that I have arrived at in relation to the scope and effect of the HRA and Article 3.

235. Lord Rodger (ibid page 198 paragraph [66]) stated:

> "Under Section 2(1)(a) of the 1998 Act, when determining any question in connection with a "Convention Right", a Court in the country must take into account any judgment or decision of the European Court. While Article 1 is not itself included in the Schedule, it affects the scope of Article 2 in the Schedule, and that Article embodies a "Convention Right" as defined in Section 1(1). It follows that, when interpreting that Article 2 right, courts must take account of any relevant judgment or decision of the European Court on Article 1".

Lord Rodger observed that where the judgments and decisions of the Strasbourg Court did not speak with one voice then national courts were justified in giving pre-eminence to the decisions of a Grand Chamber (ibid paragraph [68]). He observed also that where differences between judgments were merely "in emphasis" then they could "be shrugged off as being of no great significance".

236. Baroness Hale agreed with Lord Rodger and with Lord Brown (see below) and expressed the view (ibid paragraph [90]) that it was the task of the English courts to keep in step with Strasbourg neither lagging behind nor leaping ahead. Lord Brown delivered the most extensive analysis of the issue (see paragraphs [105-110]). He endorsed the observations of Lord Bingham in *R(Ullah) v Special Adjudicator* [2004] 2 AC 323, 350 paragraph [20] to the effect that a national court "should not without strong reason dilute or weaken the effect of the Strasbourg case law". He also observed that national courts should not interpret the Convention to provide for rights more generous than those guaranteed by the Convention. As he put it: "no less, but certainly no more" (paragraph [16]). Indeed, he reiterated the point by saying that there was a greater danger in a national court construing the Convention too generously in favour of an applicant than in construing it too narrowly. In paragraph [107] he stated:

> "Your Lordships accordingly ought not to construe Article 1 as reaching any further than the existing Strasbourg jurisprudence clearly shows it to reach".

He then proceeded to analyse Article 1 not upon the basis that it was, in some way, to be disregarded when other substantive provisions of the HRA and Convention were being considered but, on the contrary, in a manner which made it clear that jurisprudence of the Strasbourg Court which took into account Article 1 as a means of interpreting the scope and effect of other Articles, was indeed relevant.

(iv) Domestic law is consistent with Strasbourg case law

237. Fourthly, I do not interpret the existing case law of the Court of Appeal as inconsistent with Strasbourg case law. Mr Johnson QC took me to a series of cases. In each of these cases however the facts did not concern the responsibility of the State to investigate a crime committed by a private person of such severity that it could be categorised as torture or degrading or inhuman treatment where there was no element at all of State complicity. They covered cases where the State was directly or indirectly complicit in the violence. In the domestic context he referred to: *R (NM) v Secretary of State for Justice* [2012] EWCA Civ 1182 and in particular the dictum of Rix LJ at [29]; and to *R (Humberstone) v Legal Services Commission* [2011] 1 WLR 1460. These were not cases where the facts involved violence by private parties with no State complicity and, moreover, as I explain below *R(NM)* actually recognises the existence of the free standing duty that I have concluded exists in cases with facts such as the present. Mr Johnson QC did recognise there were other dictum of English courts finding breaches of a positive obligation under Article 3 of Convention where the underlying mistreatment was perpetrated exclusively by private individuals. These were *OOO v Commissioner of Police of the Metropolis* [2011] EWHC 1246 (QB); and *T v Chief Constable of Staffordshire* (Birmingham County Court, 18th January 2013). He said in relation to these that there were "flaws in both cases" but in truth they are consistent with the Strasbourg case law set out above.

238. I deal now with 2 particular domestic authorities referred to by the parties. Mr Johnson QC submitted that the reference to "system" in the dictum of Lord Justice Rix in *R (NM)* (ibid) at [29] indicated that if, *ex hypothesi*, the liability of the State could be triggered in relation to the independent violent acts of third parties then it was only so engaged where there was a system failure which flowed out of the surrounding laws and regulations, which he submitted was not the case here. He rejected the notion that individual "operational" culpable acts or omissions by police officers sufficed. He drew a connection between the dictum of Lord Justice Rix and the judgment of the Strasbourg Court in *Beganovic v Croatia* Application No. 46423/06 (25 June 2009) at paragraph [71] where the Court stated:

> "In order that a State may be held responsible it must in the view of the Court be shown that the domestic legal system, and in particular the criminal law applicable in the circumstances of the case, fails to provide practical and effective protection of the rights guaranteed by Article 3…".

The dictum of Lord Justice Rix relied upon by Mr Johnson QC in fact does not support the proposition he contends for. The analysis in *R (NM)* followed on from

analysis by the Judge of situations where the State could be liable due to the complicity of the State in conduct of a third party and, in particular, (where death was involved) where this occurred in a State institution such as a prison or secure hospital. It was said that in such circumstances there was a need for the State to conduct an investigation not only to secure the accountability of State authorities but also to learn lessons from systemic errors. However, having analysed this situation he then addressed the different situation where the State was also liable in the absence of any complicity in the mistreatment perpetrated by a private party:

> "(4) It is only or primarily where there is credible evidence of treatment, sufficiently grave to come within Article 3, inflicted "by or with the connivance of the State" that the investigative obligation arises (see Sedley LJ in *AM* at [4]). In the absence of State complicity, the essential obligation of the State is only to provide a system under which civil wrongs may be remedied in litigation or criminal wrongs investigated and prosecuted: see *MC v Bulgaria* (Application No 39272/98, 4 December 2003), *Secic v Croatia* (Application No 4016/02, 31 May 2007), *Maryin v Russia* (Application No 1719/04, 21 October 2010). (5) Investigative obligation, particularly under Article 3, is highly fact sensitive and subject to resource implications (*L* at [56] and [77], *AM* at [107], and *P* at [58]). "Where the line is to be drawn is a matter of fact and degree" (per Richards LJ in *R(Mousa) v Secretary of State for Defence* [2010] EWHC 3304 (Admin)".

239. There is hence a recognised duty on the State "in the absence of State complicity" to investigate and prosecute criminal wrongs. The judge cited *MC v Bulgaria*, and *Secic v Croatia*, both of which – amongst many other cases - confirm the existence of a free-standing obligation upon the police to investigate quite irrespective of complicity or connivance upon their part in the underlying violent crime. The "system" referred to is clearly the overall legal and operational system deployed by police to investigate. I do not therefore accept that Lord Justice Rix misconstrued *MC v Bulgaria*, or, *Secic v Croatia* in the way contended for by Mr Johnson QC.

240. Further in this regard, in the recent decision of the Court of Appeal in *Allen & Others v The Chief Constable of the Hampshire Constabulary* [2013] EWCA Civ 967 a Court, including the Master of the Rolls (in the context of an application to strike out a claim), recognised that the obligation to investigate was not limited to cases of ill-treatment by State agents relying upon, inter alia, *MC v Bulgaria*: see ibid *per* Gross LJ at paragraph [43]. The Court emphasised that the nature of the investigation required was fact sensitive and would depend upon context and made the point that the scope of the obligation may well differ depending upon whether the violation of Article 3 constituted systematic torture by State agents, at one end of the spectrum, to misconduct by private individuals narrowly surmounting the minimum threshold engagement of Article 3 at the other end of the spectrum. Of significance is the fact that Gross LJ cited with approval the dictum of Rix LJ in *NM*, to which I have already made reference, as supporting the existence of an independent duty. He construed that dictum in the same way that I have. In the circumstances, I reject the Defendant's

submission that the domestic authorities in any way undermine the integrity of the consistent line of case law established by the Court in Strasbourg. On the contrary domestic courts have acknowledged the existence of the duty to investigate in circumstances such as the present.

(v) Conclusion

241. Pulling together and summarising the various strands of argument I interpret the HRA as imposing a duty on the police in circumstances such as the present for the following reasons: (i) Strasbourg case law which I must take account of is consistent settled and mature; (ii) it articulates a test which does not open the Pandora's Box of liability for the police and when applied rigorously by the domestic courts should not be such as to create a disproportionate burden on the police; (iii) the duty which is acknowledged by Strasbourg case law (to investigate efficiently) is not one which jars with common law traditions but, on the contrary, is consistent with domestic law; (iv) the conclusion is one which the domestic courts have not (in their admittedly brief encounters with the principle) objected to. In all these circumstances I conclude that the duty contended for by the Claimants exists.

(6) Article 8

242. I add finally, for the sake of completeness, that in relation to the claim under Article 8 I can not see any circumstances in which Article 8 would provide a broader level of protection than is accorded by Article 3. In none of the Strasbourg authorities has the Court treated Article 8 as having an effect extending beyond Article 3. This is logical. Article 8 is a circumscribed obligation which is subject to competing interests. It has, by its very nature, a more limited ambit than Article 3 which is clear unequivocal and brooks of no exception. I take comfort in this conclusion from the trenchant observations of Lord Justice Gross in *Allen* (ibid) at paragraphs [56] and [57]. He took the view that in the absence of success under Article 3 it would not be possible to succeed under Article 8. He added this more generally (with which I concur):

> "I add only this: it would be necessary to think long and hard before acceding to any claim raising the prospect of some generalised positive obligation on the State to intervene under Art. 8, without the closest scrutiny of the limits of any such postulated obligation. The ramifications otherwise could be most unfortunate – not least, the unhappy prospect of widening the scope of Art. 8 still further".

D. THE APPLICATION OF THE LAW TO THE CASES OF DSD AND NBV

(1) Introduction

243. I turn now to apply the relevant law to the facts in the cases of DSD and NBV. I have set out the facts at considerable length in Section B above and, accordingly, I limit myself to summarising relevant evidence in this section. I conclude that in relation to

both DSD and NBV there were both multiple systemic, and, operational failures which individually and collectively meet the test for liability under Article 3. It is common ground that if Article 3 applies that the assaults on DSD and NBV by Worboys (a) met the threshold of violence (degrading or inhuman treatment) in Article 3 and (b) that credible complaints were made to police which triggered the duty. The question which now arises is whether there were breaches of that duty.

(2) Systemic failures

244. I start with the systemic failings. The IPCC recognised that in the Worboys case what had gone wrong was in large part due to "systemic" failings:

> "The failings identified in the force's responses to the victims were not just the result of individual officers failing to follow the policies and procedures in place at the time. They were also due to more systemic issues, many of which the force took steps to address before the investigations had finished".
>
> (Restricted "Learning The Lessons" Bulletin 11; 15th October 2010)

245. In my view these "systemic" failings can be accounted for in five different areas: (i) failure properly to provide training; (ii) failure properly to supervise and manage; (iii) failure properly to use available intelligence sources; (iv) failure to have in place proper systems to ensure victim confidence; and (v) failure to allocate adequate resources. In my view these systemic failings are sufficient in themselves to trigger liability. Ms Kauffman QC, for the Claimant, accepted that in many respects the individual officers whose operational failings she lambasted should not be made the "fall guys" because the major part of her attack was targeted upon the failures in the "system" operated by the MPS in relation to DFSA. I have also (at (vi) below) benchmarked these five systemic failings against a further IPCC Report into systemic failings identified following an investigation into another serial rapist, Kirk Reid.

246. Each of these systemic failings is recognised by the MPS and the IPCC in their subsequent dissections of what went wrong. Each is at least to some degree interrelated. I deal with each in turn and explain how and to what extent the identified failing is relevant to the cases of DSD and NBV respectively.

(i) Failure to provide training to relevant officers

247. First, the officers who investigated the cases of DSD and NBV were not properly trained and, in consequence, failed to take steps which could have resulted in the early apprehension of Worboys. This applied in 2003 but continued thereafter. It explains in large measure why officers in the case of DSD failed adequately to investigate her case and equally why thereafter her case was not reopened until 2008. It also largely explains why NBV was assaulted at all and why her investigation was mishandled.

248. The failures in this regard are recognised by the MPS and the IPCC in their various reports which identify as a recurring theme the endemic failure of officers to adhere to existing procedures and guidance set out in, *inter alia*, the SN and the SOP: See section B (11)-(14) above. In the witness box, as I have observed before, officers explained that they were unaware save in broad and unspecific terms of the SN and the later 2005 SOP. They had received no training in the particular nuances of investigating this sort of crime. They did not therefore see DFSA as in any way out of the ordinary or requiring special treatment. Some senior officers were cynical about these procedural guides and even sought to explain them away as the MPS seeking to protect itself from litigation.

249. Yet, had they been properly trained in the ways and means of the SN and the SOP and if adherence to these guides had been enforced then it is entirely possible, and indeed probable, that at least a significant number of the serious failings would not have occurred at all and Worboys might very well have been apprehended and prosecuted very much earlier: See paragraph 14.8 of the Operation Danzey Final Report cited at paragraph [123] above which accepts that the "majority of issues" relate to "lack of compliance around specific areas". As I have already explained these guides were sophisticated documents which reflected mature thinking about how to investigate a range of different types of sexual assault. They specifically addressed the complexities of DFSA. Training was the bridge which simply had to be constructed to bring home to individual officers the wisdom and learning which was so well encapsulated in the SN and SOP. That bridge was never properly built. Without prejudice to the generality of that conclusion I give a few examples below.

250. The MPS has long accepted (and it is recorded in the 2002 SN) that circa 25% of all rapes are first reported at the police counter (see paragraph [94] above). It is therefore obvious that such staff need to be especially carefully trained. Indeed, the fact that these staff may not be specialists in sexual assault makes it all the more imperative that they are trained in sexual assaults. If in the case of DSD the counter staff at Holloway police station had – because of proper training - been aware that a person presenting in the incapacitated and incoherent state of DSD might, just possibly, be a victim of DFSA as opposed to being a drunk or an addict then the officer might have focused upon evidence collection as well as DSD's medical welfare. All that was needed was a clear and unequivocal rule: when <u>any</u> woman presents at a police reception in an incapacitated state counter staff must record the names, addresses and vehicle registrations of those attending with her. A lesson learned from the Worboys case was the importance not just of training frontline officers but also of making their life easier by for instance giving to them short, laminated, guides which they could use as an aide memoire. It is in fact clear from the evidence that Worboys waited around in or immediately outside the police station for quite a few minutes, until after the officer had called for an ambulance and it had arrived. In short, had the officer been properly trained there would unquestionably have been a chance to record Worboys' details, and of course those of Kevin who accompanied DSD and Worboys and who had a substantial opportunity to witness Worboys and therefore to identify him.

251. It does not take much imagination to conclude that if the frontline officer had taken Worboys' name and address and/or his vehicle registration number then (i) he might have been arrested earlier or, if not, (ii) the mere fact that his details had been recorded (as he would have well known), might have deterred him from continuing with his assaults; but (iii), in any event his details should then have been recorded on a database and would have been available to be searched by officers seeking evidence of linked attacks by taxi drivers at some point in the future. If on 7th May 2003 the front desk at Holloway had taken 30 seconds to record the cab driver's details and his cab registration then many or even all of the rapes and assaults that ensued might never have occurred.

252. A second example concerns forensic evidence. Forensic evidence might not prove terribly useful in DFSA cases. Semen will rarely be present if the perpetrator uses a condom; some drugs do not stay in the system very long so might not show up or might not be recognised (as here where the toxicologists failed to identify the significance of the presence of Diphenhydramine, the active ingredient in Nytol, in DSD's and NBV's blood and urine); the effect of many drugs will be magnified if combined with alcohol so that the forensic evidence might well indicate that the complainant had consumed excess alcohol and was "drunk". In the case of both DSD and NBV the forensic reports and the toxicology reports were inconclusive.

253. But the SN and SOP recognise the importance of going beyond toxicology and forensic evidence and therefore that additional evidence may be required. What is that evidence? In particular it will be: (i) evidence from witnesses who saw the victim prior to the assault to assist in determining what the victim's state of alcohol and/or drug consumption would have been so that a comparison with her state before and after can be conducted; (ii) identification evidence from anyone who might have seen the perpetrator; (iii) CCTV footage of the victim and of the time and routes where it is known the taxi might have been with a view to identifying his registration; (iv) search evidence; (v) MO evidence i.e. cross checking the reported characteristics of the offence on computer records to see if other offences with a similar MO have been reported.

254. A trained officer thoroughly sensitised through proper training to the particularities of DFSA would not have placed over reliance upon forensic and toxicology reports and would have focused upon super-expedited, and elementary, evidence collection. But, in my view due in material part to lack of training, the officers placed far too great a reliance upon scientific evidence and thereby omitted to conduct the basic, routine, detective work that is critical in cases of DFSA.

255. A third example is the fact that, once again due in my view to an absence of specific training in DFSA, the officers either mischaracterised DSD or failed ultimately to take her complaints seriously. Even after she had awoken in the Whittington and reported to police, there remained the clear view in the minds of officers that she was simply a drunk. The CRIS log for 18th August 2003 includes the following observations which sum up the problem that police officers with insufficient training confront, that of

misidentification and misplaced scepticism. This conclusion could hardly have been further from the truth:

> "The cab driver appears to have acted over and above the call of duty to look after his fare and in a way that would be highly unlikely for a man who had indecently assaulted or raped a woman".

On 3rd September 2003 an officer recorded on the CRIS an exchange that he had with DSD:

> "I explained that I can only work on her recollection of what happened along with CCTV, witness, medical and forensic evidence. This had been done with negative result. All steps had been taken to trace the cab driver with negative result. I explained that the details of her allegation would be forwarded to a central office that collates details of rape allegations and it would be compared with similar offences which may prove fruitful in the future. She seemed a little reassured by this as she states that she believes that the cab driver will strike again".

256. In fact, of course, the suggestion that "all steps" had been taken to identify Worboys was incorrect: the police had from the outset failed to record Worboys' name or vehicle registration number, or take Kevin's details and he was never subsequently interviewed; nor had they checked the CCTV of vehicles coming to and from the police station. In my view the long and short of the investigation was a premature conclusion that DSD was a drunk with a coke habit. There was as such simply no need to take additional investigative steps. And DSD's prediction that Worboys would "strike again" was chillingly prescient.

257. The general level of scepticism entertained by police about DSD is evident in the closing report on DSD under the heading "risk assessment". The officer who authored the report stated:

> "If a licensed black cab driver is involved in sexual attacks on women then this presents a real risk to the community, however the facts of this case do not support this. The victim cannot remember what happened, the forensic evidence suggests that sex had not occurred and no date rape drugs were evident and the actions of the cab driver, witnessed by police, appear to be those of a responsible, law abiding individual. In addition, her loss of consciousness is consistent with the alcohol and cocaine she consumed given her recent abstinence. The risk is therefore low".

258. This closing report which was submitted to the senior supervising officer for his decision to close the file (to "put away") was said, during the trial, to have led that

officer to direct that the file be in fact closed. Yet, had those officers been fully aware of and trained in the guidelines they might very well have - and indeed should have - classified her as exhibiting the classic symptoms of a victim of a DFSA: unable to recall the assault; having some recall of events leading up to the assault (getting into the cab, being offered drink or drugs, Worboys' story about his winnings, etc); having bruises and other physical signs of having had sex.

259. The same applies to NBV. She also presented to police exhibiting classic features of a victim of DFSA. Yet rather than being cognisant that this was what they were facing the complaint was not even recorded as a serious sexual assault. It was, on the contrary, recorded as a "critical incident" and accordingly no closing report had to be prepared because when categorised in this manner the SOP did not apply.

260. The failure to provide training was of course not just in relation to the front-line officers. Supervising officers had also not received specialist training. Had they been given this training then it is much more probable that they would have passed it on or ensured that junior officers adhered to the procedures. Once again had this occurred then it is quite possible that Worboys would have been apprehended and prosecuted earlier.

(ii) Failures in supervision and management: Inappropriate "clear up" pressures / failures to consult the CPS

261. The MPS and IPCC both found in their reports systemic failures to supervise and manage in an effective manner. In my view there are two main reasons for this: First, inadequate training of more senior officers; Secondly, inappropriate pressure from the very highest level of Borough management not to focus upon sexual assaults. I address both separately.

262. In relation to the failure to provide training this was not just in relation to the front-line officers. Supervising officers had also not received specialist training. Had they been given this training then it is much more probable that they would - in accordance with the guidelines - have ensured that junior officers adhered to the procedures. Once again had this occurred then it is quite possible that Worboys would have been apprehended and prosecuted very much earlier than in fact he was. The SN and SOP mandate close cooperation between junior and senior officers with the latter taking an active role in overseeing the investigation as it progresses (see e.g. paragraphs [98] *et seq* above). It is clear that there was a lack of supervision in these cases. One illustration demonstrates the point. In the case of DSD the SIO was cross examined about the failures on the part of the investigating officers (inter alia) to contact Kevin to question him, or, obtain the CCTV of the routes to and from the police station to see if the cab registration could be identified. He described these omissions as "extremely disappointing" and he was "incredibly disappointed". He accepted that the closing report, when it said that all matters had been investigated, was incorrect. When he was questioned as to why in these circumstances, where there were obvious deficiencies and uncompleted steps in the investigation, he had authorised the

investigation to be closed, he said that when he was presented with the file for a decision it was 9 months since the events in question. There was hence nothing that could be done. Yet the SN and the SOP all recognise and demand that the SIO keeps in close contact with the junior team and provides full and effective supervision. It might have been true that 9 months after the event it was too late for him to direct further inquiries. But as a supervising officer his hands should have been on the case very much earlier; and at a time when deficiencies in the investigation could have been remedied. The officer in question was one of those most critical of the lack of training that he and his team were given into sexual assaults. Once again there is a stark divide between words and deeds; the SN and SOP addressed everything that should have been done but which was not done.

263. The second issue relating to failures of supervision and management concerns the inappropriate pressure which appears to have emanated from the very highest levels of Borough management not to focus upon sexual assaults, as opposed to other, less complex, offences. This is in the context of the pressure on the MPS to meet performance targets. The first hint of this arose out of the summary of interview of a DI with the IPCC on 26th June 2009. This concerned alleged failures by officers in relation to the case of NBV. The summary contains the following:

> "[DI] is aware on the afternoon of 26/07/07 that enquiries are being conducted to establish the identity of a possible suspect for a crime related incident. He joined an officer in reviewing the CCTV. His initial thoughts that the victim was actively engaging in a consensual act by kissing the cab driver *at that stage there was a drive from the Borough Management to also disprove allegations*". (italic added)

264. In cross-examination the DI was asked about these, italicised, words. He explained, in giving his oral evidence, that the case of NBV had never been classified as a serious sexual offence and therefore, in his view, the SOP had not applied. He stated that it was treated "merely as a criminal incident". He stated that he thought the case of NBV involved an "odd allegation". He said that it was "odd for an educated girl" to accept a drink or a tablet from a stranger and he was concerned that she had taken drugs in the nightclub before entering the black cab and he was also concerned that she would embrace a stranger. He accepted that if the case was not classified as a sexual assault then details of the investigation would not be entered into CRIMINT. Further, he accepted that many rape enquiries required closing reports but these were not done. He candidly acknowledged:

> "An opportunity not to do one would have been taken gladly".

265. In this connection and in relation to his evidence to the IPCC that there was "…a drive from the Borough Management to also disprove allegations" he said that this had "a bearing on what we did". He acknowledged that the pressure from on high meant that if an allegation could be legally disproved this would "improve detection rates".

266. In the Commissioner's report into the Kirk Reid case (see paragraphs [282] *et seq*) below, the Commissioner noted a similar and wholly unacceptable systemic pressure imposed from Borough senior management. I set out the Commissioner's observations in full:

> "What was clearly apparent throughout this case is the lack of resources that were allocated to the investigation. There was pressure on the Borough in relation to performance targets set by the centre, which at the time were robberies, street crime and burglary. Investigating sexual assaults was never priority on the Borough".

267. The observations in question concerned the pressure that emanated from Wandsworth Borough. However, they chime loudly with the evidence in this case suggesting that similar pressures were emanating from the Boroughs responsible for the conduct of the Worboys investigation. In my view, this amounts to credible evidence that from the highest levels of management pressure was imposed which had the effect of incentivising more junior officers not to pursue allegations of sexual assault with the seriousness and intensity that they so manifestly demanded and in encouraging supervising officers to be more willing that they should have been to close files. This will, in my judgment, have contributed materially to the systemic and other operational failings which I have identified. They created an environment in which such failings could thrive (see e.g. in relation to NBV at paragraph [310] below). I would add finally that this appears to have been a factor in the case of NBV but there was no evidence before the Court to indicate that it was a relevant consideration in the case of DSD in 2002/2003. One final point – in neither the DSD nor the NBV cases were case files sent to the CPS for review. This was a point addressed in evidence where it was conceded that had the files been sent to the CPS then, even if the CPS lawyer was doubtful as to whether sufficient evidence existed at that stage to justify a decision to prosecute, the response from the CPS could well have been that these were troubling cases and that outstanding steps in the inquiries, including computer checks, needed to be conducted before a final decision on whether to prosecute could be taken. The failure to involve the CPS was, itself, the consequence of the combination of other pressures and failings which led to the investigation being conducted ineffectively. In this regard, in the NBV case, it will be recalled that NBV was wrongly told that her file had been sent to the CPS when in fact it had not: See paragraph [127(ii)] above. The failure more generally to involve the CPS was itself recorded in the MPS Operation Danzey Final report (see paragraph [121(ii)] above). The general climate surrounding these investigations was such that incomplete investigations were closed without the potentially critical eye of the CPS being cast over the file. Had the CPS been involved in advising upon the adequacy of the evidence in the cases of DSD and NBV then the outcomes might have been different (this is in my view especially the case with NBV).

(iii) Failure to use intelligence resources

268. The third systemic defect concerns the failure to use (or use to any effective ends) available intelligence. This is a much more serious criticism in the case of NBV than

in the case of DSD. This is because by the time Worboys assaulted NBV in 2007 about 100 women had already been subjected to his predatory designs and the computer databases should have been brimming with details of vulnerable women being subjected to drug rapes and assaults by a taxi driver. In the case of DSD, in 2003, it seems that this was near to the start of Worboys' campaign of sexual violence (which is likely to have started in 2002) and there was less time for the evidence to mount up.

269. In the case of NBV the SN and SOP recognise the importance of officers maintaining detailed records of the steps taken in their investigations and then entering those details onto police computers. I have set out the details of this at paragraphs [108] *et seq* above. Sexual assault is an offence that is prone to be repeated. There is accordingly the possibility that links between different complaints might be identifiable. There are available to investigating officers a range of databases in which to search for links and connections between different cases. It is the duty of supervising officers to ensure that the records are kept and details entered onto the databases.

270. The police witnesses that gave evidence were simply not able to account for the fact that the connections and links that existed between the various recorded allegations of rape and sexual assault by Worboys were not uncovered earlier.

271. It is a quite remarkable fact that the search carried out on 7th February 2008 was recorded as being "routine" (see at paragraphs [76-77] above) but this uncovered almost immediately 4 allegations of assault with a strikingly similar MO and this led to the apprehension of Worboys within days.

272. The obvious question to ask is why these links were not identified earlier? The obvious answer is that the systems were not in place which would lead officers to record investigative steps properly and the same officers were not trained to conduct adequate computer cross-checking to seek out links. Support for this conclusion arises from the identification of the sorts of steps that were subsequently recognised as needing to be taken to cure these past systemic failings. For example:

i) The MPS review of 2nd October 2008 (see paragraphs [119] *et seq* above) (prior to the trial of Worboys) emphasised that BOCUs "must ensure" that CRIMINT reports are created at the time of an allegation "…as it is essential allowing intelligence searches for similar or linked offences. CRIS can be checked daily". It also stated that BOCUs "must ensure" that SOCO create details of exhibits seized including the appropriate references "to assist the retrieval of intelligence".

ii) The IPCC January 2010 Independent Report (see paragraphs [130] *et seq* above) stated that in order to improve cross-checking the Metropolitan Intelligence Bureau (MIB) had set up a "new" "Early Warning System" to check all rapes and sexual offences for emerging trends across London on a

routine basis. Further they recorded that a new SCD2 Intelligence Unit was being established to provide support on linked investigations and, finally, they reported on the recognised need for training of DIs and DSs "…on the management of linked series".

iii) In the "Restricted" "Learning the Lessons" Report (15th October 2010) (see paragraph [130] above) the IPCC set out 3 steps that were needed to address "…the lack of a facility to cross-check systems to link similar offences".

273. The particular failings were exacerbated by the fact that individual steps in individual investigations were not taken which, had they been taken and recorded properly, would then have been entered onto computer systems. All of the various failings are interconnected. More efficient conduct of individual allegations means that higher quality information is entered onto databases and this, in turn, means that if intelligence systems are properly used they are, innately, more likely to lead to the earlier apprehensions of and prosecution of criminals.

(iv) Failure to maintain confidence with victims

274. Only a tiny fraction of Worboys' victims reported their assaults to the police prior to February 2008. Of the more than 80 victims who contacted police following the arrest of Worboys, over 60 never reported the incident to police. Originally 12 offences were identified as part of the enquiry into Worboys but following a media appeal in February 2008 about 81 offences were identified of which 72 had occurred in the Metropolitan area.

275. The MPS and IPCC recognise that efficient policing of sexual assault cases depends upon victims feeling able to report their ordeals to the police. A deterrent to this is a perception that their complaints will not be treated seriously or sympathetically. I accept that the police are in this respect in something of a Catch 22. On the one hand they must be encouraging and sensitive to victims; but they must at the same time examine all the evidence with a rigorous objectivity to determine whether it will be sufficient to enable the CPS to decide to commence a prosecution. Even if, at a personal level, an officer believes that a complainant is being truthful and has suffered an awful ordeal that officer might on the basis of the evidence not feel that there will be sufficient evidence to convict. Rarely are sexual assaults witnessed by third parties and forensic analysis can prove inconclusive.

276. The MPS and IPCC both recognised that the question of victim confidence was at the heart of the problems they faced. The IPCC Commissioners' report of January 2010 starts with this acknowledgment:

> "Failure to gain the trust of victims, who do not feel they were being kept updated and felt they were not being believed. It is important that all staff working on sexual violence cases are given training on sexual violence myths, risks and the

> importance of being supportive of victims. In addition to the training for front-line staff set out above, there is a requirement now for boroughs to ensure that the investigation of allegations of rape and sexual assault are carried out with sensitivity. It is now recommended that when closing an investigation personal contact should be made with the victim. A new victim satisfaction survey is being developed".

277. The IPCC identified the following which had not hitherto been done but which needed to be done in the future: provision of standard information for victims in terms of what to expect from the investigation and process (time frames, court proceedings, etc). Provision of regular updates and support whilst the case is ongoing; increased provision of public information to encourage other victims to come forward; the provision of more information to local agencies to "promote public safety, prevent and detect crimes"; increased liaison and cooperation with the voluntary sector; increased quality checking of front-line training with input from the voluntary sector and from "specialist advocates".

278. In the present case there is tangible evidence of both DSD and NBV not feeling supported or believed (see e.g. paragraphs [32], [35], [38], [62] and [73]). There is evidence that victims (for instance NBV) were fed information that was simply inaccurate about whether her case file had been submitted to the CPS. In the case of DSD she was far too quickly categorised as a drunk whose case could not be prosecuted.

279. The SN and the SOP set out procedures which are designed to accord to victims a greater confidence in the system. It is for this reason that "Principle 1" demands that all complaints are treated as being truthful (see paragraph [90] above). If that is the universal starting point which is consistently applied it is a foundation for the growth of trust by the victim in the police.

280. In terms of determining whether, had a proper system been in place which instilled greater confidence in victims, matters would have been different and the hypothetical improved system would have been capable of identifying, arresting and prosecuting Worboys, then it is possible to identify ways in which this could have occurred. For instance more reported rapes should mean more proper investigations and this should mean more intelligence entered onto databases for interrogation by officers across the Metropolitan area seeking links. The law focuses upon means not results. It is quite impossible to say with total certainty that, had a really effective system of securing victim confidence been in place, Worboys would inevitably have been apprehended earlier. But the law does not demand this level of impossible proof. In my judgment the events of 7th February 2008 lend material support to my conclusion on this topic. On this day one officer conducting a "routine" search identified 4 cases of very similar MO. This was sufficient to trigger a cascade of events which led to Worboys' arrest in 7 days and new complaints pouring in. If the basic methodologies of the police had been materially improved then if only (say) 10 out of the 60 plus victims who did not report had in fact come forward then the chances of an earlier detection

could have been significantly increased. In this way one can see a clear nexus between the failing and the capability of a successful investigation.

(v) Failures to allocate appropriate resources

281. It is not said by the Defendant that had there been an appreciation of the severity of the issue that a lack of resources would then have precluded proper investigative steps being taken. Had the MPS known the nature and extent of the problem I am quite certain that they would have allocated substantial resources to the capture of Worboys. The failure to deploy adequate resources is hence one component of the systemic failures which characterise this case. The obstacles placed in the way of the allocation of adequate resources are multiple: (a) the pressure from senior Borough management to allocate resources to meeting targets and hence to crimes that were easier to resolve than sexual offences (see paragraph [263]-[267] above and the conclusions set out in the Kirk Reid review at paragraph [283] below); (b) the collective effects of all of the other failures which prevented the acute nature of Worboys' criminality becoming known because (regardless of any supervening Borough pressure) the MPS would have allocated sufficient man power and other resources if they had in fact known the truth earlier. The reality however is that the system operated by the MPS simply did not enable proper and effective resource decisions to be taken.

(vi) Benchmarking the systemic failures: The case of Kirk Reid

282. Support for the conclusion that failures in the Worboys case were systemic is found in the Commissioners' report (June 2010) into the MPS investigation into allegations against Kirk Reid. Reid was found guilty on 26th March 2009 at Kingston Crown Court of 27 sexual offences and two cases of possession of indecent images of children. He was sentenced to life imprisonment. He committed his offences in what was described as the A24 corridor. He would mainly attack lone women during the hours of darkness and he also committed offences on the 155 bus route and near to Balham and Tooting Underground stations. The number of offences committed by Reid was estimated to be between 80-100. It appears that most of the offences were committed between August 2001-2008. He and Worboys were prowling the streets at the same time. The investigation was initially conducted by officers from Wandsworth Borough Sapphire Unit until January 2008 when a decision was taken to allocate the investigation to the Specialist Crime Directorate ("SCD1") of the MPS. Within the first few days of the investigation of the SCD1 a decision was taken to obtain a DNA sample from Reid to be compared with specimens recovered from linked series. The sample so obtained matched offender profiles held elsewhere in the MPS database and within 3 days Reid was arrested. Following arrest, enquiries revealed that the series of offences had been known to the police since 2001/2002 and that Reid had come to the attention of the police in 2002 and 2004.

283. The Commissioner decided that the same IPCC Senior Investigator should lead enquiries into both the Kirk and Worboys cases so that any similarities or patterns

would be noted and acted upon. From the limited information provided in the IPCC report it appears that a host of operational failings, akin to those occurring in the Worboys case, were perpetrated by officers in relation to Reid. For present purposes it suffices to record that the Commissioner identified the same systemic failings in the Reid case as occurred in the Worboys case. First, the Commissioner acknowledged that the failure to catch a serial sex offender who may have committed 100 offences over a 6 year period was "…a shameful chapter in the history of the MPS". The Commissioner observed that when considered against the failings in the Worboys case: "their overall effect on the confidence of the victims of sexual offences and the police response cannot be over-stated". Secondly, the Commissioner recognised that the Worboys and Reid cases both entailed a series of similar operational failings but also: "…some key areas for organisational learning, developed with the assistance of the voluntary sector". Thirdly, the failure to devote sufficient resources to the investigation which was due in part to: "pressure on the Borough in relation to performance and the targets set by the centre". The Commissioner concluded that: "…investigating sexual assaults was never a priority on the Borough". Fourthly, the Commissioner identified the failings of "senior supervisory officers who were aware of the large number of offences being committed and failed to give the investigation the priority [it] so plainly required".

284. It is, in my view, a significant corroborating factor to my conclusions in the Worboys case that similar systemic and operational failings were identified in the case of Reid and that these were treated by the IPCC as systemic across the entirety of the MPS.

(3) Operational failures in the case of DSD

285. The MPS and IPCC have already identified a series of operational failings in the conduct of the DSD investigation. My view is that these investigations operated upon a relatively limited and conservative basis: See paragraph [125] above. However, this does mean that where failings have been identified these are a relatively safe starting point upon which to base findings of liability. In the text below I have focussed upon the main failings. When considered individually and collectively and with the systemic failings taken into account they suffice to trigger liability. The fact that I do not mention other failings identified by the MPS and/or IPCC is not an indication that I do not consider them to be serious.

286. The relevant timeframe for the assessment is the circa 6 year span from May 2003 when DSD first presented to police until 2009 when Worboys was convicted: See case law cited at paragraph [218] above. During this period there are three phases (a) complaint in May 2003 until initial case closure in 2004; (b) 2004- 2008 when her case was reopened; and (c), 2008-2009 from case reopening to conviction.

287. In the text below I have set out the main failings that I have identified together with an explanation of why, in my judgment, had the failings not occurred the officers in question would have taken steps which would have been capable of identifying and arresting Worboys. In all cases the failings may be categorised as omissions, not

commissions. The test in each case is whether, had the omitted act in fact been performed, that would have met the requisite "capability" test.

288. I start with the period of the investigation 2003-2004. I have set out and analysed against the capability standard the five principal failings that I have identified. Since I have set out the facts in detail above I can set out my conclusions quite briefly.

289. Failure on front desk reception staff to record relevant names, addresses and vehicle registration details: I have addressed this at paragraph [250] above. Had the details been recorded then it is perfectly feasible to believe that Worboys might have been apprehended earlier or might even have been deterred from future offending. There was no resource or other impediments to this. Indeed, the subsequent MPS/IPCC reports and lesson learning exercises have identified the need to ensure proper training for such staff and for simple aide memoires to be produced which assist such staff in adhering to requisite standards.

290. Failure to interview Kevin: Notwithstanding the failure to record Kevin's details at the reception it was possible, subsequently, to contact him and interview him. But this was not done. He was nonetheless recognised as being a "vital" witness (see paragraph [119(iv)] above). He spent a considerable amount of time with Worboys. He could have identified him and given evidence about the events leading up to the first presentation at the police station, and about Worboys' demeanour. This might have led to Worboys' arrest. Worboys might at least have been interviewed. His details and MO might have been entered fully onto the CRIMINT and other data bases and these, might, have led to fuller and more effective searches later on.

291. Failure to collect relevant CCTV evidence. Worboys drove his taxi from Hornsey to Holloway and parked outside the police station. The timing of his arrival and departure at the police station is known. Had the officers checked CCTV it is entirely possible that they might have identified Worboys registration number as he arrived and/or left, or alternatively, along the route, and that would have led to his identification. Had the relevant act occurred it would have been capable of identifying Worboys and could have led to his arrest and prosecution.

292. Failure to believe DSD or take her complaint seriously: The evidence that I heard and read indicates an endemic failure on the part of the MPS to recognise victims of DFSA when they presented to police, notwithstanding the guidance: see paragraphs [255-258] above. The absence of any familiarisation and training is consistent with the view that I formed during the trial of the approach of the officers in question. In the case of DSD they formed the view that DSD was a drunk or an addict or both. They failed to identify her as a victim of serious crime. This in turn led to a far more relaxed and sceptical approach to evidence collection than was proper or justified. Had the relevant officers recognised DSD as a victim of a serious crime they would then have been capable of taking the other steps which might have led to the arrest of Worboys.

293. Failure properly to supervise. I have dealt with the facts above. By the time a SIO became closely involved months had elapsed and the steps that should have been taken at the outset were so stale and long overdue that, the Defendant argued, had they been taken there and then they would most likely have not produced results. I disagree. If the SIO had been involved, closely, from the outset, then he should have demanded that a far more efficient investigation be conducted. And in any event even months later Kevin could still have been interviewed and the handbag could still have been submitted for forensic investigation. There were still steps that could have been taken. A proper level of supervision of the investigation was certainly capable of leading to the identification and arrest of Worboys.

294. I turn to the period from 2004 – 2008.

295. Failure to use intelligence sources: DSD had to await nearly five years for any sense of closure or justice. Between 2004 and 2008 her case was closed. In this period had her details been comprehensively recorded on databases then (assuming that the MPS properly deployed intelligence resources during this period) it is quite possible that links would have been established between the DSD case and other cases that were being reported to the MPS. It is evident from what actually occurred in February 2008 (see paragraph [76] above) that it really does not take many linked complaints at all for a pattern or MO to be established and for a suspect to be identified and arrested. In the case of Worboys the MO was highly unique. It might therefore have taken but one, isolated, additional complaint for that unique pattern or MO to be identified and acted upon. One can compare the case of Kirk Reid in order to highlight the point. Kirk Reid was a rapist who hung around tube stations late at night. His facts (see paragraphs [282-284] above) were nowhere remotely as distinctive as those of Worboys. Had a proper system of investigation been in place during this period then the MPS would certainly have been capable of resurrecting DSD's case and moving to apprehend and arrest Worboys.

296. I turn to the third period from 2008-2009.

297. Prosecution and conviction of Worboys. Once Team 10 were allocated to the task Worboys was arrested, remanded in custody, and convicted in a very short period of time: See section B(7) above. The CPS cannot, in my view, be criticised for selecting only a portion of the complaints for prosecution. I have recorded their rationale at paragraph [86] above. The fact that the case of DSD was not one of the cases pursued is not determinative. What is important is that the Defendant accepts that DSD was a victim of Worboys and this is common ground in this trial. If, by way of hypothetical example, a serial offender commits 40 offences within a 12 month period and is charged with 10 of them upon the basis that this sample adequately reflects the criminality and will not lead to a lower sentence than if all 40 had been prosecuted, then in my view it is not a violation of Article 3 not to pursue each separate investigation to a trial. The case law confers a good deal of discretion upon local police forces. What the law requires is that the process of prosecution be efficient; but it does not impinge upon the exercise of reasonable prosecutorial judgment. I have set out above the case law which shows why a successful end outcome does <u>not</u>

always negate or expunge prior failings. In this case the ultimate outcome was satisfactory (even though it did not embrace the case of DSD) but it occurred after a wholly unacceptable delay caused by the multiple systemic and operational failings identified. The fact of conviction does not in my judgment provide any sort of defence.

298. In conclusion the Defendant is liable to DSD for the failure of the MPS to investigate and for such damage as can properly be attributed to this failing. She is also entitled to a declaration that the Defendant was in breach of duty towards her in respect of the MPS's failure properly to investigate her complaint of sexual assault.

(4) Operational failures in the case of NBV

299. In the case of NBV the MPS and IPCC found a series of allegations of finding against individual officers to be substantiated. As with DSD I rely upon these findings as supportive of my own conclusions.

300. In assessing the position of NBV the legal analysis is somewhat different to that of DSD. In the case of NBV I find that the relevant timeframe is the whole of the investigation into Worboys, which started when his activities first came to police attention (at or around the time of the DSD complaint in 2003) and continued until his conviction in 2009. I break this down into three periods: (a) 2003- July 2007; (b) July 2007 – October 2007 (closure of NBV case); (c) October 2007 – March 2009.

301. As to the first period (2003 – 2007) I arrive at the conclusion that the period prior to the assault upon NBV is relevant for essentially three reasons.

302. First, because it is, in my judgment, probable that but for the myriad failings in the investigative processes which occurred in the years preceding the assault, NBV would not have been raped at all. In my view the selection of the relevant timeframe is a fact sensitive issue. In many cases it will quite logically start with the assault upon the complainant since this will mark the commencement of the criminality. But in the case of a serial offender where the criminality spans a long time period then it can properly start with the commencement of the offending, which of course might long predate the actual assault on the victim who later becomes the Claimant. Nothing in the Strasbourg case law indicates that the timeframe must always start with the assault on the applicant or complainant and common sense indicates that in the case of serial rapists the timeframe for a duty to investigate should be longer and should attach to the conduct of the criminal not the ordeal of the victim.

303. Secondly, the MPS itself recognises the logic of this conclusion. The relevant guides (the SN and the SOP) both highlight as important the need to record the progress of an investigation carefully and to enter details onto databases. This is for the very reason that rapes are prone to repetition and that an important part of policing for rapes is the identification of linked MO to prevent serial rapists. This powerful policy

consideration in my view supports the conclusion that in such cases involving serial, linked, assaults with a similar MO the timeframe must be capable of predating the specific assault in question and must focus upon the conduct of the criminal being investigated not the position of the victim.

304. Thirdly, the policy underlying the duty to investigate (see paragraphs [212] above) supports this conclusion. Important aspects of that underlying policy are the prevention of crime and the learning of lessons. If every Article 3 assessment started only with the assault in question and ignored the background history this would be wholly artificial. It would ignore the fact that Article 3 has a strong preventative element. The police should investigate, inter alia, to prevent future crimes. This did not happen in this case. Equally, in relation to lessons learned, police investigate in order to unearth crimes but also to learn from what has happened, improve performance in the future and prevent further crime. The numerous internal MPS and IPCC reports in this area reflect this reality. They are an integral part of the investigative process which, as case law shows (see paragraphs [218-220] above), does not end with the arrest but continues until the conclusion of the criminal process. If a reasonable and efficient investigative process could and should have been capable of apprehending Worboys and preventing repetition of his crimes then there is a strong causal connection between the prior failures and the later assaults.

305. I therefore rely upon all of the failures which predate the NBV assault in support of the conclusion that the Defendant is liable to NBV for the assault. I do not repeat those failings but one illustration suffices. Between 2003 and 2008 multiple complaints were made to police which should have been (and ultimately were) sufficient to trigger apprehension and arrest (see paragraph [40] above). The MPS and IPCC both recognise that a failure to operate adequate intelligence collecting was a root cause in the Worboys disaster. The details of the individual complaints made to police between 2003 and 2008 were not before the Court. However, the one thing that I do know is that the complaints did not lead to the apprehension and arrest of Worboys. It is in my view reasonable to assume or infer that the reasons for this were similar to the systemic and operational failures reflected in the DSD and NBV cases. Sufficient details were recorded on the computers for the links to be made, once a competent search was conducted some years afterwards. As I have already commented, no one who gave evidence in the trial could provide any form of adequate or sensible explanation for the failure to spot these linkages much earlier, save for the lack of training and a lack of adherence to procedures.

306. In relation to the second period the MPS first came into contact with NBV in July 2007 and they closed their investigation in October 2007, just over 3 months after the assault. During this short period the operational errors were particularly serious. I concentrate upon the 4 errors that I consider to be the most potent.

307. Failure to conduct section 18 searches: These failures were very serious. The officers recognised that a search was important because at the outset they went to arrest Worboys at his home but found him absent, so gave up. They said in evidence that it was unrealistic in terms of time, effort and resources to expect officers to wait around

all day for him to return. Of course it is obvious that had they known that Worboys was a violent serial rapist they would not have taken this view. They thus gave him the perfect opportunity to clean up the traces before he was interviewed and they never went back and tried again. The reason for not doing so are wholly inadequate as the IPCC recognised (see paragraph [128(vi)] above). Had the police conducted a search in the summer of 2007 then there is a very good chance they would have found the "rape kit" that they found, just months later in February 2008, when they did go to his home to arrest him and conduct a search of his home and vehicles. It is obvious that had this occurred all of the rapes and assaults that were subsequently committed would have been prevented.

308. Interview failures: Ms Kaufmann QC in her cross examination of the officers in the NBV case was scathing of their interview techniques. It suffices for me to record that the IPCC found that the interviews were premature in that they should not have been conducted until after proper investigative steps had been taken and that Worboys should have been re-interviewed (see paragraph [128(xiv)] above). In my view the interview with Worboys should have occurred (i) after a section 18 search had been conducted (ii) after a full statement from NBV had been taken and (iii) after the CCTV had been thoroughly reviewed since it threw up a range of possible inconsistencies with the answers that Worboys later gave in interview. At the very least he should have been re-interviewed. Had the officers been fully and comprehensively prepared this would have equipped them with considerable additional ammunition for the interview. An analysis of the interview transcript reveals the conclusions of officers who were ill-prepared to conduct the interview: that Worboys was a good chap; that a black cab driver would not do that sort of thing; and, that NBV's behaviour was inconsistent with her allegations. Had a proper approach to the interview been conducted then: the numerous cracks and flaws in Worboys account of events might well have become very apparent; he might have been arrested; someone might have conducted a proper intelligence check; links might have been identified with past complaints; and, the multiple rapes that he committed in the days and weeks following his interview when he was free once again to cruise the streets of London seeking out victims would in all likelihood not have occurred at all. Indeed if the officers had waited for Worboys to return home thereby enabling him to be arrested and his home and vehicles searched when they did seek to execute a Section 18 warrant then there is a good chance they would have found his rape kit. The interview would have had a different complexion had this been the case.

309. Failure to follow up CCTV evidence: The officers failed to follow up CCTV evidence. For instance the CCTV shows a rag or similar item attached to NBV's shoe as she exits the taxi. It is possible this was the tampon that Worboys must have taken from NBV when he assaulted her and it therefore could have had his DNA upon it. The police noted this item on the CCTV very early on, but it was only some days afterwards that an officer went to the site to search for it. But by then, of course, it was not there. The officers also failed to obtain the correct CCTV footage of the departure of NBV from the nightclub. Had they obtained this they could have confirmed NBV's evidence that she was in the taxi for an excessively long period of time and Worboys' interview evidence could have been refuted.

310. Failure to record the incident as a serious sexual offence: NBV presented bearing the classic hallmarks of a victim of DFSA. She was not treated as such. Why not? One reason was lack of training. Another reason was the fact that the officers – as was accepted in court – were affected by the pressure from on high to dismiss allegations so as to improve their clear up rates. This assault was not therefore recorded as a serious sexual assault. Accordingly, the SOP was not followed. Supervision from more senior officers did not occur. Data was not entered into the data bases. The case was (defectively) cleared up in 3 months. No case closure report was prepared and hence no detailed report about the case was entered on the relevant databases. The Borough's crime "clear up" rate was thereby improved since the case was not left as "unsolved". Had this pressure not existed then it is possible that NBV's assault would have been (and should have been) recognised as such. It would have been responded to as a serious and violent crime. It would have been properly resourced and all investigative steps taken. A telling piece of evidence occurred during the trial. One (at the time) relatively junior officer gave evidence, which I found truthful and convincing, that he personally believed NBV's account and considered that Worboys was indeed a dangerous rapist. However, when cross examined about this and why he had not, if this was indeed the case, reverted to his superior officers to have the case reopened, he explained that regardless of his personal views, there was no prospect of the case being reopened once the forensic and toxicology results had come back with inconclusive results. He accepted that there were at that point in time numerous outstanding and important leads that had yet to be followed up and that had they been pursued then progress might still have been made in the investigation. But the pressure to close the case was great and he saw no reason to complete investigative steps that would lead nowhere.

311. I turn now to the third period, October 2007 – February 2008. This was the period between the case closure and the reopening. It is only 4 months in duration. I have considered whether in the light of *Menson* (see case law at paragraphs [219, 220] above) the fact that a conviction, including of her assault, occurred within a relatively short period of time following the assault (circa 21 months) should mean that the individual operational failings can, in effect, be expunged. I have concluded that they cannot. This is for the following reasons. First, the failings in relation to NBV were particularly serious. It is quite evident that when the police investigated Worboys that he was there ripe to be arrested, remanded and prosecuted. The profound failures in the investigation of the case of NBV allowed Worboys to slip from the hands of the police and enabled him to commit a series of fresh violent but avoidable assaults in the ensuing weeks. Secondly, in the circumstances of this case had the police acted efficiently in July 2007 then Worboys might have been apprehended and prosecuted 6-9 months earlier. In the overall scheme of this case this is a material and significant period of delay.

312. In conclusion the Defendant is liable to NBV upon the basis that its prior systemic and operational failures to investigate caused her to be raped. The Defendant is also liable for the period of time that ensued following the defective investigation into her case when her case was wrongly closed and before the point in time when it was reopened. This might be relatively short, but that is no reason not to find a violation on the very particular and exceptional facts of this case.

313. NBV is also entitled to a declaration that the Defendant was in breach of duty towards her in respect of the MPS's failure properly to investigate generally in the period prior to her assault and also in relation to her complaint of sexual assault.

E. CONCLUSION

314. For all the above reasons the Defendant is liable to the Claimants. I will now hear submissions as to how the quantum stage of this trial will develop.

F. GLOSSARY OF TERMS

315. In order to make reading this judgment easier I set out below a glossary of the acronyms used in the MPS documentation that I have quoted from and more generally in police procedure.

ABE	Achieving Best Evidence
BOCU	Borough Operational Command Units
BFM	Borough Forensic Manager
CAD	Criminal Activities Despatch
CRIMINT	Criminal Intelligence Computer Database
CRIS	Crime Reporting Information System
CHIS	Covert Human Intelligence Sources/a database
CIAT	Crime Incident Advisory Team
CSM	Crime Scene Manager
DCI	Detective Chief Inspector
DI	Detective Inspector
DS	Detective Sergeant
DFSA	Drug Facilitated Sexual Assault
EEK	Early Evidence Kit (used to collect bodily samples)
EAB	Evidence and Actions Book
FSS	Forensic Science Service
Haven Centre	A sexual assault referral centre in Camberwell.

MPS	Metropolitan Police Service
FSCU	Forensic Service Commercial Unit
IO	Investigating Officer
IR	Incident Room
MO	Modus Operandi (the term used to connote distinctive or unusual methodologies used by an offender to commit crime)
NCOF	National Crime and Operations Facility
Operation Danzey	The name given to the investigation into Worboys commenced on 8th February 2008
PNC	Police National Computer
Project Sapphire	Specialist unit within the MPS dealing with sexual assaults
PTSD	Post-Traumatic Stress Disorder
SOIT	Sexual Offences Investigative Team
SCAS	Serious Crime Analysis Section
SIO	Senior Investigating Officer
SIU	Sexual intelligence Unit
SOCO	Scene Of Crime Officer
SOIT	Sexual Offence Investigation Team
SORO	Sex Offenders Registration Officer
SOP	Standard Operating Procedure
SN	Special Notice (SN 11/02 – the 2002 guidance on how to conduct serious sexual assaults investigations issued by the MPS)
SRO	Station Reception Officer
SRO	Senior Responsible Officer
TIB	Telephone Investigation Bureau
NFA	No Further Action

PNC	Police National Computer
GHB	Gamma Hydroxyl Butyrate (a date rape drug)
Rohypnol	A date rape drug
VSS	Victim Support Scheme
Nytol	An over the counter sleep remedy which was used by Worboys, in conjunction with alcohol, to stupefy his victims