IN THE SUPREME COURT OF ST HELENA **SHSC 522/2021**

BETWEEN:

Hearing: 1-5 July 2024

Judgment: 10 October 2024

CRUYFF GERARD BUCKLEY

Plaintiff

-and-

THE ATTORNEY GENERAL OF ST HELENA

ON BEHALF OF THE CROWN (HOME AFFAIRS DIRECTORATE)

Defendant

JUDGMENT ON LIABILITY

Mr Joshua Hitchens of counsel, instructed by the Public Solicitor of St Helena, appeared for the Plaintiff

Mr Gareth Rhys of counsel, instructed by the Attorney General of St Helena, appeared for the Defendant

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A. Introduction

1. Cruyff Buckley ("Mr Buckley" or "The Plaintiff") has brought a plaint, a claim, for alleged breaches of protections and rights afforded to him under sections 6, 7, 11 and 13 of Part 2 of the St Helena, Ascension and Tristan da Cunha Constitution Order 2009 (SI 2009 No 1751) ("the Constitution").

2. The alleged breaches concern the period of Mr Buckley's detention on remand as an unconvicted prisoner at His Majesty's Prison Jamestown ("the Prison") for four months between 20 May 2018 and 19 September 2018 ("the relevant time").

3. The plaint is brought against the Safety, Security and Home Affairs Directorate of the St Helena Government ("SHG") which is responsible for the administration of the Prison. In this judgment, the government is referred to corporately as SHG or as the Defendant. The Attorney General is formally the Defendant in these proceedings, pursuant to section 10 of the Crown Proceedings Ordinance 1993.

4. This is my judgment following the trial on liability which took place on island in the Supreme Court of St Helena ("the Court") on 1-5 July 2024.

5. I note at the outset that a great deal has been written about the Prison and the conditions therein. There have been official and formal reports which have included a number of historic recommendations regarding the Prison, changes in its conditions and its use. There has also been public comment and debate over the years. The future of the Prison remains the subject of current proposals for action by SHG. None of this is relevant to my decision.

6. In determining the liability of SHG in respect of the treatment of Mr Buckley, I am only focussed on the specific evidence I heard during the trial and the facts which I am required to find in this case. Once I find those facts, I must make evaluative judgments and apply the law, as I interpret it, to those facts and judgments in order to determine if the Plaintiff's constitutional rights have been breached.

7. Furthermore, I emphasise that this judgment is limited to addressing only the conditions at the Prison as they were in the relevant period in 2018 and only in respect of this particular Plaintiff. This judgment is not about the current or more historic Prison conditions or the treatment of prisoners generally, although I recognise that some of my findings may be

relevant to the outstanding plaints before the Court brought by other Plaintiffs in respect of other time periods.

8. I should also record that prior to and throughout the trial I was very ably assisted by the parties in this case, particularly counsel for the Plaintiff, Mr Joshua Hitchens, and counsel for the Defendant, Mr Gareth Rhys. I am very grateful to them both for the quality of their written and oral submissions and their preparation and presentation of the case. They filed supplementary closing submissions after the hearing on 22 and 26 July 2024 respectively.

B. The outcome

9. The key issue raised in the plaint that the Court was asked to resolve was whether there was a breach or breaches of Mr Buckley's protections or rights under all or any of sections 6, 7, 11 and 13 of the Constitution.

10. For the reasons I set out below, I have come to the conclusion that the Plaintiff has established his case in large part. I find that there has been a breach of his rights under sections 6, 7 and 11(1) & (2) of the Constitution in respect of his detention in the Prison at the relevant time.

C. The issues in the case

The alleged breaches of the Constitution

11. The provisions of the Constitution alleged by Mr Buckley to have been breached by the Defendant are as follows (and dealt with in greater detail below):

    a. Section 6 protection of the right to life (equivalent to Article 2 of the European Convention on Human Rights, 'ECHR');

    b. Section 7 protection from torture, and inhuman or degrading treatment or punishment (equivalent to Article 3 ECHR);

    c. Section 11 protection of prisoners' right to humane treatment (equivalent to Article 10 of the International Covenant on Civil and Political Rights, which is not a Convention right but also broadly related to Article 3 ECHR); and

    d. Section 13 protection for private and family life and for privacy of home and other property (equivalent to Article 8 ECHR).

12. The Court was invited to make findings that the Defendant was liable for the each of the alleged breaches of the Constitution. The alleged breaches fall into two categories:

    a. Alleged breach of section 6 of the Constitution due to the risk of fire at the Prison and the risk to Mr Buckley's life that it was said to pose (pleaded at Particulars of Claim ('POC') POC/6-11);

    and

b. Alleged breach of sections 7, 11 and 13 arising out of the conditions of Mr Buckley's detention as a whole.

13. Breaking down b. - the conditions of detention - further, the specific allegations, in respect of which the Court is asked to make findings relate to the following alleged features of the conditions of Mr Buckley's detention:

    a. Personal cell space [POC/12-14];

    b. Outdoor space and exercise [POC/20-21];

    c. Purposeful activities [POC/30-31];

    d. Sanitation and healthcare [POC/22-26];

    e. Ventilation and excessive heat [POC/17-19];

    f. Natural light [POC/15-16];

    g. Bedding [POC/27-29]; and

    h. Segregation from convicted prisoners [POC/32-33].

14. SHG conceded during the course of the trial, based upon the oral evidence elicited during cross examination of its witness, that there was a breach of the Plaintiff's right under section 6 of the Constitution due to the fire risk he was exposed to during the relevant period.

15. SHG's position is that there were no other breaches as alleged, or at all. Mr Rhys invited the Court to dismiss the remainder of the plaint.

Need for a further hearing on quantum and remedies

16. In respect of the alleged breaches, Mr Buckley seeks a number of remedies:

    a. A declaration that the acts and omissions of SHG breaches his rights under the Constitution;

    b. A declaration of systemic unlawfulness in respect of the management, operations and conditions in the Prison at the relevant time;

    c. Damages, including aggravated and/or exemplary damages;

    d. General damages for personal injury (for pain, suffering and loss of amenity, "PSLA");

    e. Interest; and

f. Costs.

17. In light of the Defendant's concession and other findings of breaches that I have made, there will need to be a further determination as to the extent of damages (quantum) and any other remedies to be awarded to the Plaintiff. The evidence and argument concerning remedies and quantum will be heard and separately determined following the handing down of this judgment.

D. Extant disputed issues addressed in this judgment

18. Following the Defendant's concession that it had breached the Plaintiff's rights under section 6 of the Constitution, and the Plaintiff's concession that it does not need to rely on section 13 of the Constitution[1], the following three matters fall to be resolved by the Court:

    (a) Whether the Defendant subjected the Plaintiff to inhuman or degrading treatment in breach of s.7 of the Constitution.

    (b) Whether the Defendant breached the Plaintiff's right to be treated with humanity and respect for his inherent dignity under s.11(1) of the Constitution.

    (c) Whether the Defendant breached the Plaintiff's rights as a remand (unconvicted) prisoner under s.11(2) and (4) of the Constitution[2].

E. Overview of Human Rights law in St Helena

19. The United Kingdom has extended the application of the European Convention on Human Rights to St Helena. However, the Human Rights Act 1998 does not apply to St Helena by virtue of the Human Rights Act (Disapplication) Order 2010. Instead, in St Helena,

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[1] *Private and family life and for privacy of home and other property: s13 of the Constitution and Article 8 ECHR) – no longer pursued*

Notwithstanding the Plaintiff originally alleging a breach of section 13 of the Constitution, Mr Hitchens no longer pursues this is as a ground of claim because it adds nothing to the grounds under sections 7 and 11.

The Constitution provides as follows at s13(1): *"Every person shall have the right to respect for his or her private and family life, his or her home and his or her correspondence or other means of communication, and, except with his or her own free consent, no person shall be subjected to the search of his or her person or property or the entry by others on his or her premises"* subject to lawful exceptions at s13(2). There has been no judicial treatment of this provision in St Helena in relation to prison conditions, so the case law of the ECtHR on the similarly worded Article 8 ECHR provides the closest analogy.

There is some overlap between Article 3 and Article 8 ECHR in respect of screening off toilet facilities. In the context of in-cell sanitary facilities, the ECtHR has frequently found a violation of Article 3 of the Convention on account of poor conditions of detention where the lack of a sufficient divide between the sanitary facilities and the rest of the cell was one element of those conditions. In those circumstances the ECtHR has, on occasion, found a breach of Article 8. In the ECtHR caselaw (and CPT guidance) in respect of in-cell sanitation, domestic authorities have a positive obligation to provide access to sanitary facilities which are separated from the rest of the prison cell in a way that ensures a "*minimum of privacy*" for the prisoners, see *Szafrański v. Poland*, (App 17249/12) (2012) §§37-41.

[2] The Particulars of Claim at 4(c) relies on s.11 in its entirety. Section 11(2) was also expressly addressed by Ms Murray in her evidence at §44 of her statement [173].

fundamental rights and freedoms are protected by the relevant provisions contained within Part 2 of the Constitution. The Constitution is a UK Order in Council setting out a regime for substantive, enforceable rights and freedoms. It is independent from but intended to implement the rights contained within the European Convention on Human Rights ("ECHR" or "Convention") and, in the case of some articles, the International Covenant on Civil and Political Rights ("the Covenant").[3]

20. In summary, the purpose of Part 2 of the Constitution is to give domestic effect to rights created under the European Convention on Human Rights which are enforceable in the St Helena courts.

Principles governing the construction of the Constitution

21. The Constitution is made through UK secondary legislation but is to be interpreted in the St Helena courts. Accordingly, the ordinary canons of statutory interpretation guide the correct construction of the text of the Constitution. In addition to these normal rules of statutory interpretation, the following additional principles fall to be applied.

22. First, a generous and purposive interpretation is to be given to constitutional provisions protecting human rights. The Court has no licence to read its own predilections or moral values into the constitution, but it is required to consider the substance of the fundamental right at issue and ensure contemporary protection of that right in the light of evolving standards of decency that mark the progress of a maturing society - see *Reyes v The Queen* [2002] 2 AC 235 at [26].

23. Second, the Court ought to construe the Constitution consistently with the "partnership values" under sections 2 and 4 of the Constitution. Section 2 of the Constitution states that the partnership between the UK and St Helena shall be based upon compliance with applicable international obligations of the United Kingdom and of St Helena. The Court, as a creature of the Constitution, ought to strive to achieve compliance with, and give effect to, the UK and St Helena's international obligations.

[3] "*The drafting was the result of a process of negotiation, and the wording of each provision was accepted so long as it was deemed to give proper effect in domestic law to the corresponding Convention or Covenant provision*", British Overseas Territories Law, Ian Hendry and Susan Dickson, 2nd ed (2018). The ECHR has been extended by declaration to St Helena since 23 October 1953 and the Covenant since 20 May 1976.

24. The UK has extended the application of the ECHR to St Helena pursuant to Article 56 of the Convention[4]. It follows that a failure to give effect to clear and established jurisprudence from the European Court of Human Rights ("ECtHR" or "Strasbourg") would be inconsistent with the UK and St Helena's treaty obligations under the Convention.

25. It is accepted that by reason of the English Law (Human Rights Act) Order 2010, the English Human Rights Act 1998 does not apply to St Helena. It must follow that on a technical reading, UK and Strasbourg case law is highly persuasive, but not binding. However, in addition to the constitutional duty to comply with international obligations, the following authorities militate against any departure from the UK or ECtHR position on interpretation of rights.

26. In *Attorney General of St Helena v AB* [2020] UKPC 1, the Chief Justice in the Supreme Court, Court of Appeal of St Helena and ultimately, the Judicial Committee of the Privy Council accepted that St Helenians, as British citizens have a justifiable expectation to be treated in the same way as Britons residing in England or Wales. There is no justification for affording persons detained in St Helena lesser human rights protections than any other citizen of the United Kingdom. Further, UK Supreme Court authority requires that the Court must interpret the Constitution in a manner which is consistent with the UK and St Helena's wider obligations under international law - see *ZH v Tanzania* [2011] UKSC 4.

27. The international law obligations also include compliance with the applicable international law obligations of the United Kingdom and St Helena. These include the UN Rules on the treatment of prisoners, the UN Charter, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. Further to this, the Court has an obligation under the UN Charter to treat the interests of St Helenians, as the occupants of a non-self-governing territory, as paramount, to promote their well-being, to ensure their just treatment and to protect them from abuses.

28. In summary, in the absence of St Helena's own caselaw, past judgments of the ECtHR provide useful guidance in the determination of breach of the constitutional protections in St Helena. Where Constitutional provisions are materially identical to the equivalent rights under the ECHR, those rights should be interpreted using UK and Strasbourg authorities relating to the equivalent ECHR provisions. The Court should of course consider the specific context and circumstances of this jurisdiction in the application of UK and ECtHR caselaw. ECHR provisions should be construed in a manner that is consistent with the UK's

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[4] Declaration contained in a letter from the Permanent Representative of the United Kingdom, dated 19 November 2010, registered at the Secretariat General on 22 November 2010 – Or. Engl.

other international law obligations, and the same principle applies to construction of the Constitution. Such international law obligations include the UN Minimum Rules for the Treatment of Prisoners.

29. Third, it is common ground that the Plaintiff bears the burden of proof in establishing any breach of the Constitution. Nonetheless, if a prima facie breach of section 7 is established, the burden then shifts to the Defendant to disprove it. This is explained below.

30. Fourth, sections 6, 7 and 11(1) & (2) of the Constitution provide absolute as opposed to qualified rights. There is no need for the Court to consider and balance issues such as competing public interests or proportionality – except for when considering section 11(4) - if the Defendant has breached the minimum standard, then the interference with the right is unlawful.

F. Undisputed factual background

31. The following facts are undisputed and established on the balance of probabilities. References in square brackets [ ] are references to the trial bundle (‘TB’).

32. The Prison was built in the early 19th Century.

33. In March 2009, following a visit to St Helena, the Southern Oceans Prisons Advisor (becoming the Overseas Territories Prisons Adviser (“OTPA”) from 2015) to the UK Foreign and Commonwealth Office (“FCO”) published a report with findings and recommendations [240]. The OTPA was Keith Munns, a former very senior prison officer in the UK who has held roles such as Governor of HMP Wormwood Scrubs and Area Manager for London with responsibility for 7 prisons in the capital of the UK.

34. His overarching recommendation was for the Prison to be immediately decommissioned and an alternative location found. He made forthright criticisms of the Prison fabric at that time.

35. In July 2010, the OTPA published his second report [281].

36. In September 2012, the OTPA published his third report [320].

37. In September 2013, the OTPA published his fourth report [354].

38. On 21 November 2014, an arrested person started a fire in the Prison. Staff attended and responded appropriately and effectively [666].

39. On 2 February 2015, a fire alarm triggered due to maintenance work. A prompt and well organised evacuation of staff and prisoners took place [668]. In consequence, the Fire and Rescue Service issue guidance in relation to the Prison [669].

40. In May 2015, the OTPA published his fifth report [420].

41. From June 2018, Governor Heidi Murray was employed as Prison Manager (with the equivalent responsibilities of a prison Governor) at the Prison [164/1]. Ms Murray has also been a UK prison Governor since 2009 across a number of roles.

42. Mr Buckley was a remand (unconvicted) prisoner detained at the Prison for a period of nearly 4 months between 20 May 2018 and 19 September 2018. During Mr Buckley's period of detention [168/13]:

    a. Between 20 May 2018 and 24 May 2018, Mr Buckley was held in cells known as the "Security Cell", or "Remand Cell" in the East Wing of the Prison (there is a dispute as to whether he spent time in each cell or only the Remand Cell and how much time);

    b. Between 24 May 2018 and 22 August 2018, Mr Buckley was held in a cell in the East Wing of the Prison building ("Cell 1") sharing with at least two other prisoners until 14 August 2018 and one other prisoner thereafter. Cell 1 housed two bunk beds (a maximum occupancy of four beds). The total floor area of Cell 1 is disputed but agreed to be between 0.05-0.3m^2 less than 12m^2 [171/30]. There is also a dispute as to whether Mr Buckley shared Cell 1 with three other prisoners (total occupancy of four prisoners) for a short period of time within this timeframe;

    c. On 7-8 June 2018, Mr Buckley was released on bail; and

    d. Between 23 August 2018 and his release on 19 September 2018, Mr Buckley was held in the shared cell in the West Wing of the Prison (the West Wing consists of the shared cell in the basement, its outside yard, the Workshop and the female cells). At the relevant time, the capacity of the West Wing cell was 8 prisoners but only it held 5-6 total prisoners when Mr Buckley was resident therein. There is no dispute that Mr Buckley was afforded at least 4m2 personal space while in this cell.

43. Mr Buckley was on risk of self-harm ('ROSH') observations from 20 May until 22 August 2018 [168/15]. He was on 15 minute observations which continued until 21 May 2018 when he was placed on 30 minutes observations until admitted to cell 1 on 24 May 2018. Thereafter he remained on hourly ROSH observations until 22 August 2018 when it was deemed safe to stop all observations and he was moved to the West Wing.

44. Mr Buckley shared Cell 1 in the East Wing with at least two other prisoners from 24 May 2018 until 14 August 2018 (there is a dispute as to whether there were ever three other

prisoners). Thereafter until his move to the West Wing on 23 August 2018, Mr Buckley shared Cell 1 with only one other person. Mr Buckley was placed with cell mates who were suitable, based on outlook and temperament, and was able to express his own preferences [168/16].

45. None of the cells in which Mr Buckley was accommodated had in-cell sanitary facilities but there was largely unrestricted access to toilets and showers between 06:30 and 22:00 and access with a guard escort during the night [176-177/64-65].

46. During Mr Buckley's time in the Prison, a number of mitigations were in place, including [165-166/5]: being unlocked from 06:30 to 22:00 every day (with night-time access to sanitary facilities outside those hours with a guard); largely unrestricted daytime access to the large, reasonably-lit and reasonably-ventilated common area known as the Dayroom outside which adjoined and was connected to East Wing Cells 1-3; the Dayroom was approximately 10 metres long by 3.4 metres wide (approximately 34 metres squared) and was furnished with soft chairs, and a sofa; there was electric lighting for reading in the Dayroom and cells; library access; large wall fans which were designed to provide ventilation in cells (there is an issue as to how much ventilation they provided); a regime of paid work which was available to some prisoners; gym access; and access to video games, board games, darts, television, DVDs, a musical instrument, and computers.

47. During Mr Buckley's four months in the Prison, he raised 13 complaints or requests, all of which were recorded [195] [198-217]. The Prison provided all items requested by Mr Buckley on that same or next day [195] [169/23]. The subject matter of the complaints has almost no overlap with the concerns raised by Mr Buckley in this plaint.

48. As reflected in the Prison's regime monitoring records, Mr Buckley did not regularly avail himself of all the activities, gym exercise or paid work to the extent it was offered by the Prison [220-238]. However, he did watch television and watch DVDs and on at least one occasion he played a guitar [169/19]. There is an issue whether he had access to reasonable purposeful activity, such as education and work in or outside the prison during the time in the Prison.

49. Subsequent to the relevant period, in October 2018, the OTPA published his sixth and final report [460]. Within his executive summary and recommendations, he stated at paragraphs 1.2 & 1.3: "Moreover, as many OT [Overseas Territories] would fail to reach acceptable standards in the UK, St Helena can accurately be described as having the poorest physical environment of any prison within the UK's responsibilities. In addition, for St Helena, there is now gathering what could be described as a 'perfect storm' requiring more immediate action."

50. Shortly thereafter, the Equalities and Human Rights Commission of St Helena ("EHRC") published a report entitled 'Conditions of Detention at HMP Jamestown 2018' which was 122 pages and made 47 negative findings and recommendations concerning the Prison [508-630]. It followed an inquiry conducted by the EHRC into the Prison which began on

19 March a 2018 and was completed in May 2018 [503-507]. The report related to Conditions in the prison during the period February – July 2018. [para 3.1.7 at 516]

G. The admitted breach of section 6 of the Constitution

Law: Right to life protection under section 6 of the Constitution and Article 2 ECHR

51. The Constitution provides as follows at s.6(1): *"No person shall be deprived intentionally of his or her life"* subject to lawful exceptions at s6.(2). There has been no judicial treatment of this provision in St Helena, so the case law of the ECtHR on the similarly worded Article 2 ECHR provides the closest analogy.

52. Section 6 of the Constitution of St Helena provides protection for the right to life. The language of the section is materially identical to Article 2 ECHR. Article 2 of the Convention imposes both positive and negative obligations on the state. The Strasbourg Court has emphasised that prisoners are in a vulnerable position and the State's authorities are under a duty to protect them[5].

53. Even when there has been no loss of life or harm to any plaintiff, the ECtHR has been prepared to examine the merits of allegations of breaches of Article 2 ECHR by persons claiming that their life was at risk, despite that risk not having materialised.

54. Article 2 ECHR has been held by the ECtHR to place the following obligations on the state, *LCB v United Kingdom* [1998] 6 WLUK 110:

> *…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 […] The Court's task is, therefore, to determine whether, given the circumstances of the case, the State did all that could have been required of it to prevent the applicant's life from being avoidably put at risk*

55. The ECtHR has acknowledged the vulnerable position of persons in custody and have stated the extent of the positive obligation in this context, *Daraibou v Croatia* App 84523/17 (17 April 2023) § 83-84:

> *83. The Court further emphasises that persons in custody are in a particularly vulnerable position and the authorities are under an obligation to account for their treatment […] Such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, 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. Accordingly, not every claimed risk*

[5] §53, *Mustafayev v. Azerbaijan*, App no 25054/17 (2017)

> *to life can entail a Convention requirement for the authorities to take operational measures to prevent that risk from materialising.*
>
> *84. A positive obligation will arise, the Court has held, where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual by a third party or himself and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk […] However, even where it is not established that the authorities knew or ought to have known about any such risk, there are certain basic precautions which police officers and prison officers should be expected to take in all cases in order to minimise any potential risk to protect the health and well-being of the arrested person […]*
>
> [Emphasis Added]

56. The substantive duty requires states to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life. The state also has an operational duty to take preventative operational measures to protect an individual or group whose life is at risk. This requires authorities to do all that could be reasonably expected of them to avoid a real and immediate risk to life but must not impose an impossible or disproportionate burden on the authorities *Osman v United Kingdom* (2000) 29 EHRR 245, §§115-116.

57. In the similar context of a fire risk at a police station that materialised causing death and injury, the Court in *Daraibou v Croatia* App 84523/17 (17 April 2023) found a breach of Article 2. On the procedural limb, the Court found a breach on the basis of the following identified factors: likely negligence by police officers in searching and monitoring detainees (§89); and police officers who were meant to guard the detainees but had abandoned their post (§90). In that case, the applicant made serious allegations that the police station had no fire escape plan and was not authorised for use, but the ECtHR had insufficient information on those allegations.

58. In summary, for Section 6 of the Constitution to be engaged, it is accepted that there must be a real and immediate risk of death arising from fire within the Prison coupled with a failure by the State authorities to take reasonable measures to avoid that risk.

The extent of the breach of section 6 of the Constitution caused by the risk of fire within the Prison

59. At the beginning of the trial the Defendant disputed that there was any breach of section 6 of the Constitution. It was submitted that during the time relevant to this plaint, there were procedures and equipment in place at the Prison: 3 emergency exits from the Prison and an additional exit into the yard behind the Prison; fire notices were placed around the prison; the fire detectors were regularly tested; fire extinguishers were placed around the Prison [178/72]; and fire drills were carried out to the satisfaction of the fire service [178/73]. It

was submitted that fire safety became a pressing concern only after October 2018, subsequent to the Plaintiff's release from prison [178/75].

60. The Defendant's position changed when it was undermined during the course of oral evidence, particularly from Ms Heidi Murray. Ms Murray conceded under cross-examination that there was a real and immediate risk to the lives of prisoners from fire in the Prison during the relevant time.

61. Towards the end of the trial, on 4 July 2024, Mr Rhys made the concession on behalf of the Defendant that there was a breach of section 6.

62. In light of the evidence heard during the trial, I am of the view that the Defendant acted fairly and rightly in making this admission:

    (1) SHG knew, or ought to have known, of a real and immediate risk to the lives of prisoners by fire during the relevant time in 2018; and

    (2) failed to take measures within the scope of their powers which, judged reasonably might have been expected to avoid that risk.

63. Therefore, it is no longer in dispute that the fire risk and avoidance measures in place at the prison during the relevant time breached Mr Buckley's right to protection under section 6 of the Constitution. Nevertheless, I will briefly record the nature and extent of the breach as it will be relevant to determining the remedy and any quantum of damages.

The Prison authorities / SHG knew or ought to have known of a real and immediate risk to life

64. It is now accepted that there was a real and immediate risk to Mr Buckley's life from fire during the relevant time that the Prison authorities and SHG knew of coupled with the absence of reasonable and effective fire safety measures.

65. It is not in dispute that the degree of risk of fire was identified before the relevant time, although the fire risk was not so real and immediate as to have actually manifested and caused loss of life or physical harm.

66. There was a real and immediate risk to life arising from the lack of fire safety in the prison. Mr Yon, Mr Buckley and Mr Crowie all gave consistent evidence, which I accept, that those in the prison were concerned about fire safety and what would happen to them in the event of a fire[6]. The Defendant now concedes that these concerns were well founded.

67. Both the independent and Government's own reports find as much. Every public body and individual responsible for inspecting the prison prior to the relevant time and shortly

[6] I accept the evidence that these concerns were shared by prison officers and other prison staff at the time – see for example, §18, [87]

thereafter (including the OTPA and EHRC) had repeatedly raised the risk of fire and the lack of fire safety measures in place in reports[7].

68. For example, in respect of the level of risk known to SHG at the time, the OTPA identified fire risks in his reports:

   a. In 2009, he notes that the stairs to the female area are wooden and makes a low priority recommendation that a no smoking rule should be strictly enforced [246] [262/4.50] (the OTPA does not update on the progress of this recommendation in 2010, although there is evidence that there was a no smoking policy in place by 2018). He also notes that the Prison Visiting Committee ('PVC') was concerned about the fire escape arrangements but makes no recommendation in this connection [277/6.35] ;

   b. In 2010, he mentions that the Prison is "*a serious fire risk*" [290/4.6], noting a report of the St Helena Fire and Rescue Service from May 2009 and the observations therein that there were fire risks due to the wooden construction and of "*great concern*" to the Fire Service, however, makes no recommendation in that connection [291/4.7];

   c. In 2012, he notes that prisoners were concerned about the fire risk of the wooden building [333/5.2] but does not make a corresponding recommendation;

   d. In 2013, he identifies that an area of concern among prisoners was fire risk because of the amount of wooden construction and finds "*one of the reasons for the unsuitability of the existing building is the risk of fire*" [397/4.2] although finds that "*there is little further that can be done to reduce the risk in the present building without considerable expenditure*" and makes a recommendation to arrange fire evacuation exercises to reassure prisoners about their safety (rather than emphasising the need for SHG to implement it to save lives) [397/4.3];

   e. In 2015, the last report before the relevant time, the OTPA identifies "*the whole building is a serious fire risk*" in his reports, although provides little detail as to the extent or specifics of that risk and makes no further recommendations in that connection [429/4.6]; and

   f. Between 9-13 October 2018, shortly after the time relevant to this plaint, the OTPA made a further visit and reported. At paragraphs 1.2-1.3 thereof he stated "St Helena can accurately be described as having the poorest physical environment of any prison within the UK's responsibilities. In addition, for St Helena, there is now gathering what could be descried as a 'perfect storm' requiring more immediate action." His report identifies "*heightened*" risks of fire due to changing demographics and makes recommendations in respect of

[7] See EHRC, OT Prison Visitor reports, Ms Turner's statement.

ensuring availability of fire escape routes in order to reduce loss of life [462/1.5-1.6].

69. The EHRC reported in late 2018, shortly after the OTPA's visit in October 2018, following its inquiry into the Prison. The report related to the period February to July 2018 (during the relevant period). The report made 47 findings regarding the Prison [517 et seq]. The first 8 findings concerned the fire risk. Finding 1 stated "St Helena Government and its Senior Officials have demonstrably known since 2009 that the prison is a serious risk to life due to the realistic danger of fire." It offered the opinion or judgment that: "SHG is failing in its positive obligation to protect the right to life. Under Clause 6 of the Constitution, ECHR Article 2 and ICCPR Article 6." The EHRC findings were supported by evidence summarised in 10 pages of the report [559-568].

70. I accept the EHRC's 8 findings of fact regarding the fire risk. However evaluative judgments as to whether they give rises to breaches of the Constitution are matters for the Court alone to decide upon.

71. As importantly, Ms Murray prepared her own report into fire safety in the Prison shortly after arriving as Prison Governor in June 2018 due to her own concerns. It is dated 9 November 2018 and titled – 'Prison Fire Protection Project' [749]. It is very much to her credit that she saw the urgency of the need to make recommendations and implement these shortly after taking office. Some of the contents of her report are set out below.

72. While dated shortly after the Plaintiff left detention, this report supports the earlier OTPA reports and EHRC conclusion in demonstrating not only SHG's knowledge of the risk during the relevant time but also the key failings in the Prison in respect of the fire safety risk.

73. Therefore, the evidence supports the admission and my finding that both SHG and Prison authorities were aware of a real and immediate risk to life arising from fire.

74. Ms Murray states at paragraphs 2.4-2.15 of her report dated 9 November 2018 [753-754]:

> '2.4 The prison population has become more violent in nature, and unpredictable due to mental health issues, with a recent example of an arrested person setting fire to bedding within his cell, and causing other prisoners to suffer smoke inhalation. The quick action of staff prevented this from escalating any further.
>
> 2.5 The building has not been maintained or updated to keep up with the changes that have been forced into it.
>
> 2.6 The building structure is made of stone, but the internal walls, floors, ceiling etc are all made of wood.
>
> 2.7 Over the years entrances and exits into the prison have been removed, and the use of the areas within the building have been changed, without consideration of fire safety and regulations.

> 2.8 The building has become unfit for purpose, but more worryingly, it has not been updated to keep up with modern day fire standards, nor for modern day living. This has resulted in a building that has become a severe fire hazard, with areas inside it that could become death traps, as there are no means of escape from them, depending on the seat of the fire.
>
> 2.9 The risk of fire and the devastation it would cause has been highlighted on both the recent prison advisors visit and the EHRC inspection.
>
> 2.10 The building has been inspected by the Fire Service and ENRD, and some recommendations have been made which whilst they will not prevent a fire, they should help to reduce the risk to life should a fire occur. The budget required to make these changes has been estimated to be £100K.
>
> 2.11 It is almost impossible to put a price on the cost of a human life, but this it has been estimated that it would be in excess of £1 million pounds. If a fire were to break out in the prison as it currently stands, there could be a significant loss of life. It is estimated that if this were in the male section of the prison alone, it could result in the loss of 12 prisoner's lives, and potentially the staff looking after them, as inevitably they would attempt to save them. This is without the risk of losing any of the fire fighters lives, as any rescue attempt would be extremely difficult and dangerous.
>
> 2.12 Whilst the loss of life would be emotionally devastating for the community, the Government would also end up facing a significant financial loss of in excess of £12 to £14 million pounds in compensation alone without the financial costs incurred by lengthy and difficult court cases.
>
> 2.13 Also the reputation of the Government would be significantly damaged.
>
> 2.14 Reputational and financial damage to the British Government as the government in charge over the overseas territories.'

75. In summary, Ms Murray concluded that the prison had in fact suffered from a fire and that with the increase in mental health difficulties in the prison population and increased levels of violence a further fire was a distinct possibility[8]. She recognised that the prison in 2018 was "*a building that has become a severe fire hazard, with areas inside it that could become death traps, as there are no means of escape from them, depending on the seat of the fire[9].*" She concluded that the prison was constructed significantly from dried timber ie. at the relevant time, significant parts of the main building, such as the internal floors, ceiling, staircase and front desk / reception area, which also provided the entrance and exit to the prison were made out of wood. There were no marked fire escape routes, only one means of escape from certain areas of the prison, no fire doors, no use of fire retardant paint or materials and no fire suppression system.

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[8] [753]

[9] [753], the document goes on the consider the reputation cost of a fire in which many prisoners and staff die as well as the potential compensation bill.

76. Therefore, the evidence supports the Defendant's admission and establishes my finding that both SHG and Prison authorities were aware of a real and immediate risk to life arising from fire.

SHG failed to take measures within the scope of their powers which, judged reasonably might have been expected to avoid that risk - summary of the key failings which exposed the Plaintiff to risk during the relevant time

77. There is now no dispute that SHG failed to take measures within the scope of their powers which, judged reasonably might have been expected to avoid that risk. There is also no dispute about the key fire risks and reasonable measures which might have effectively protected the Plaintiff from the risk of fire in the Prison during the relevant time.

78. The deficiencies in fire safety and effective measures to mitigate risks identified by Ms Murray all applied in the relevant time between May and September 2018. In terms of the reasonable measures which should have been taken to effectively protect against the fire risk, Ms Murray identified these.

79. Governor Murray's report was passed to Government and it understood the significance – thereafter it took on the remedial works recommended but these occurred after the relevant time.

80. In her report Ms Murray recommended a list of reparatory works and 'must haves' essential requirements to be made to the Prison to avoid, protect against or mitigate the risk of fire and the safety danger to the Prisoners. The essential requirements included:

> '4.1 Install a stair case from the basement of the building underneath the reception area, leading to the male section next to Reception. There is currently only one exit entrance to the area, and there would be no means of escape if the fire should break out by the current stairs, or in Reception. The stairs should be protected with fire retardant materials and possibly be fitted with a fire door.
>
> 4.2 The escape route from the [East Wing] yard area [corridor/courtyard] would be via a fire exit that would be created by breaking/punching through an internal wall from the yard area to the female section. A fire retardant door would need to be installed. This would allow access through to one of three proposed escape routes to outside the prison. This door should be accessible from both sides but be opened using a key system and not via an emergency release bar, and be protected via a secured gate.
>
> 4.3 The two current staircases (either end of the building) are both made of wood. Neither have been treated for with fire retardant materials. Whilst they could not be fully protected due to the materials they are made of, protection with fire retardant paint would give valuable time to aid escape.
>
> 4.4 All ceilings and floors within the building are also made of wood and would require similar treatment. This includes the Reception Area, which is made up of all heavy wood, which would require treating.

> 4.5 All walls in the building are again made of wood. Currently they are painted with ordinary gloss paint. The proposal is to replace this with fire retardant paint or 12ml gypsum boarding – again this will help to by valuable time to aid escape.
>
> 4.6 Emergency lighting within the prison is very poor, with all areas not being covered and those that are do not have working lights. These will need to be overhauled and new ones added.
>
> 4.7 There are no fire doors in the building and all doors are made of wood. This does not provide heat or smoke protection in the event of a fire. The Kitchen would require two fire doors, and the stairs to West Wing would also require two fire doors.
>
> 4.8 There are 4 grating/window areas within the Basement which are fully open and connect the Basement to the Male Section on the next floor. There are currently no means of closing these. However, these 4 sections are also used to source some natural lighting and ventilation for the Basement. It is proposed that basement light shaft covers are installed with built in ventilation sources secured in the covers.
>
> 4.9 There is a temporary corrugated metal wall on the stairwell between the Basement and the Male Section. This does not provide any fire/smoke separation for either area. Take out the corrugated metal wall and replace it with a stud wall and cover the wall with either retardant paint of 15 ml gypsum panels.
>
> 4.10 There are two windows in the Day room on the first floor. Neither have glass or shutters on them, and as such they are open to any toxic fumes that may emanate outside the Prison, i.e if Ogborn House were to catch fire, the roof is made of asbestos, and is located directly in front of the day room windows. All toxic fumes would enter the building, plus there would be nothing to stop the fire from spreading to the prison. Fit glass into the window frames.
>
> 4.11 RPE (Respiratory Protective Equipment) should be provided for staff to use when entering areas that are filled with smoke. These are standalone units that provide the officer with up to 15 minutes respiratory protection from smoke and toxic fumes (10 minutes working duration with 5 minute safety duration). Staff will need to be trained to use the equipment and will need to attend a re-fresher course once a year. An identified person will need to be responsible for the maintenance and upkeep of these items. The RPE kits need to be refurbished after each use.'

81. These measures were reasonably necessary to avoid the fire risk and available to the Defendant including the Prison Authorities to have implemented during the relevant time.

82. Ms Murray also recommended a whole suite of further measures that the Prison 'Should have' and 'Could or Would have' which were lower priority but also deemed desirable to protect against or mitigate the risk:

> 'These are the items that are the 'Should Haves' under the MoSCoW process, and are listed here to be completed should the funding from this project be sufficient enough to complete the work.

4.12 Fit compliant extinguishers to the walls in the Reception Area – the recommended extinguisher would be CO2 – due to the level of electrical equipment located in the area.

4.13 There is a Lip on the step leading out of the gym area in the Basement could be a trip hazard, causing a possible fall onto the gym equipment. This lip should be levelled out to prevent any potential accidents.

4.14 All locks throughout the prison should be rationalised, and changed from padlocks to a fixed lock. The prison should have no more than 4 keys to be able to access all areas. Currently some keys are kept in key cupboards, and staff have to go to the key safe to obtain a set of keys, before being able to unlock the area. This will be changed to all staff carrying key on their person to remove this delay in unlocking areas.

4.15 The wiring needs checking and sorting out by the electrician. Any dead/redundant wiring needs to be removed. All live wiring should be protected by the correct covering. If the light is no longer live it needs to be removed, or a bulb fitted.

4.16 Smoke seals need to be fitted to the doors.

4.17 Detection and protection systems should be located in the ceiling area, plus a rewiring of the whole system should be completed.

4.18 The Window on the ladies toilet in the female section has no protection against toxic fumes from Church Lane. The Window needs to be protected against the influx of potential toxic fumes

These are the items that are the 'Could and Would Haves' under the MoSCoW process, if the budget was unlimited.

4.19 The stairs from Reception to the first floor is the only means of access to the rest of the prison from the East Wing, and is the main exit path from the Central and West part of the prison. The minimum head height must be 2 meters, but midway up the stairs the landing above cuts across the stairs, causing people to have to duck to avoid the cross beam. This is much lower than the required 2 meters. Redesign and build a new staircase from reception to the first floor to ensure all standards are met.

4.20 There is no Fire separation within the Reception Area. Create a separation within the Reception Area.

4.21 The narrowest part of the stair well leading to the West Wing measures 65cm. The minimum width must be 110mm. The stairwell is not of an adequate size. The stairwell should be replaced completely.

4.22 There is no separation between West Wing cell block and Ogborn House Kitchen. The kitchen area is directly above the entrance/exit to the West Wing cell area. If it were to catch fire, it could potentially collapse over the area directly in front of the West Wing accommodation block, trapping those inside of the building. The kitchen area does not appear to have any fire protection in place. This is not an area that is in the control of the prison but this will need to be addressed. As a kitchen area it is of

> high risk of fire, and should be treated accordingly or removed. An alternative route could be created using one of the windows in the cell area of West Wing, removing the bars (West Wing is never secured, and so the bars are not necessary) to create an area that could be used to exit the building.'

83. I am of the view that these lower priority measures were also reasonably necessary and available to the Defendant and Prison Authorities to have implemented during the relevant time.

84. It is fair to record that Governor Murray acted reasonably promptly in highlighting her concerns following her arrival in post and remedial works were then commenced to remedy the perceived deficiencies shortly after this report. Therefore, the fire safety risks may have changed significantly in 2019 and thereafter. It would not be appropriate to say anymore about this, given the outstanding plaints which are yet to be tried.

Conclusions

85. Based on the various EHRC & OTPA reports, oral evidence of Heidi Murray, and her own written report, I am satisfied that SHG knew that there was a real and immediate risk of fire and hence loss of life at the Prison during the relevant time and that there were not reasonable measures in place to effectively avoid the risk.

86. Focusing on this plaint in particular and the relevant time of the Plaintiff's detention, I am of the view that the two greatest risks to life during the relevant time were created by the fact that: a) fire was a distinct possibility as the Prison was significantly constructed from wood; and b) that there was a lack of accessible fire exits from the Prison.

87. The two greatest risks applied to all 3 sub-time periods during the relevant time.

88. In respect of the period of time from 20 May to 22 August 2018 – when the Plaintiff was in the remand cell or in Cell 1 on the East wing - there was only the one exit from his cell areas through the Dayroom / common parts and the main building and the reception / entrance to the Prison. Much of this only escape route was through the main building of the Prison which was substantially made out of wood. There was no other exit or fire exit available to the Plaintiff during his time in the East Wing (although a fire exit was later created through the West Wing as recommended in Ms Murray's report).

89. In addition, there were no fire extinguishers or other measures available in the police cell, remand cell or Cell 1, the Plaintiff's cells – such as smoke alarm, fire alarm or fire blanket or highlighted exit signs. The only fire mitigation measure close to the Plaintiff when in the East Wing was a smoke alarm in the dayroom outside his cell, Cell 1. Even in the dayroom there was no fire extinguisher, fire alarm, fire blanket or highlighted exit sign.

90. In respect of the Plaintiff's detention in the shared cell in the West Wing – between 23 August and 19 September 2018 – there were three fire exits in addition to the main entrance/exit from the Prison main building. The additional three fire exits were: (1) from the yard in the part of the prison used when there were female prisoners; (2) from the

workshop [TB/783, 787]; and (3) from the yard by the West Wing. However, the keys to these additional exits were not readily available or accessible but stored in the reception booth of the main building which was substantially made out of wood so that an officer may not have been able to gain access to the keys in the event of fire.

91. Further there were some fire measures in place in the West Wing but not in cells or immediately outside – again, there were no fire extinguishers or other measures available in his cell or in the yard outside the cell – such as smoke alarm, fire alarm or fire blanket or highlighted exit signs.

92. As above, the fire measures in place at the relevant time are different to those in place after November 2018 – when Ms Murray's recommendations from her report were implemented. In particular: a new fire exit was created from the East Wing to the West wing; the keys for the fire exits from the West Wing were made available to all officers and placed on their key rings; and many of the wooden areas of the Prison were replaced or treated.

93. In addition, but not as significant there were other failings in the fire measures during the relevant time which increased the risk to life from fire that the Plaintiff experienced:

i. There were no marked fire exit routes[10];
ii. The prison did not benefit from fire doors or smoke seals[11];
iii. The fire alarm system was not regularly tested[12];
iv. There were few smoke alarms, blankets or extinguishers near the cells;
v. There was no sprinkler or fire suppression system in place[13].

94. It was accepted by the Defendant on the basis of Ms Murray's oral evidence that there were measures that could reasonably have been put in place to mitigate the risk to life posed by the risk of fire in the Prison – for example the measures set out in her November 2018 report set out above.

95. Having said all of the above, and notwithstanding the breach of section 6, there is some mitigation available to the Defendant which reduces the extent of the breach.

<u>Mitigating factors in relation to fire risk due to some measures during the relevant time</u>

96. There is some mitigation which the Defendant may avail itself of in relation to the breach. There was evidence as to there being some fire measures that were in place in the Prison at the relevant time which reduced, even if they did not reasonably avoid, the risk to life:

a) The existence of the three fire exits in addition to the main entrance/exit: (1) from the yard in the part of the prison used when there were female prisoners;

[10] §21, [87]
[11] §26, [88]
[12] §23, [88]
[13] §25, [88]

(2) from the workshop [TB/783, 787]; and (3) from the yard by the West Wing (albeit that the keys to these exits were not readily available and stored in the main building which was partly made out of wood so that an officer may not have been able to gain access to the keys in the event of fire). The presence of these fire escapes meant that prisoners might have been evacuated without needing to be taken up the wooden stairs and through the main building, although the keys for these exits were said to be housed in an office in the main building and a guard would have to walk around the exterior of the Prison in order to unlock the prisoners;

b) Fire extinguishers were placed around the Prison, for example there was one located by the door to the Dayroom at the top of the stairs to the Gym [TB/828], in the kitchen [TB/848], in the corridor on the 1st floor of the main Prison building [TB/848], by the telephone in the main building [TB/899];

c) Fire notices were placed around the Prison, for example one in the Gym [TB/844] and one in the Multi-purpose Room [TB/901];

d) There was a fire blanket in the kitchen [TB/851];

e) There were some fire / smoke detectors, for example one in the Dayroom [TB/823];

f) Hand operated fire alarms were placed around the Prison, for example on the 1st floor [TB/857], in the Gym by the computers [TB/847], in the reception [TB/889], in the Multi-purpose Room [TB/900];

g) Mr Munns conceded in his oral evidence that a sprinkler system was not a minimum requirement for the protection of human rights; and

h) There had been occasional fire drills conducted by the Fire Service with the Prison.

<u>Aggravating factors</u>

97. The Plaintiff claims that he was living in the constant knowledge that his life was at risk from fire. It submitted that this would seriously aggravate the suffering experienced by the Plaintiff as a result of the above breaches of his constitutional rights. It is submitted that the fear and anxiety experienced by the Plaintiff makes a significant contribution to the general conditions which amounted to a breach of s.6 of the Constitution. It is also submitted that the fact that SHG knew of the fire risks for a long period and did nothing about them such that this aggravates the breach.

98. These are matters that I will consider and determine in more detail as part of the hearing and judgment on remedy / quantum. In short, I find that I accept the Plaintiff's evidence that the risk of immediate fire caused him some anxiety but I will assess the extent of this – together will all the evidence of the impact on him of the other prison conditions - as part of my judgment on quantum / remedies. I also find that while SHG was aware of the fire risk and some measures which might have been put in place prior to the relevant time, for example as identified in the OTPA reports, some, but insufficient, steps had been taken to address them and recorded in progress reports.

H. Breaches of sections 7 and 11 of the Constitution

99. The extant issues in dispute between the parties are:

(i) Whether the Defendant subjected the Plaintiff to inhuman or degrading treatment in breach of s.7 of the Constitution.

(ii) Whether the Defendant breached the Plaintiff's right to be treated with humanity and respect for his inherent dignity under s.11(1) of the Constitution.

(iii) Whether the Defendant breached the Plaintiff's rights as a remand prisoner under s.11(2) of the Constitution.

100. Each of these issues must be determined in relation to the three periods spanning the relevant time in which the Plaintiff was detained in the Prison:

a. Between 20 May 2018 and 24 May 2018, when Mr Buckley was held in cells known as the "Police Cell", "Security Cell", or "Remand Cell" in the East Wing of the Prison;

b. Between 24 May 2018 and 22 August 2018, when Mr Buckley was held in a cell in the East Wing of the Prison building in Cell 1 sharing with at least two other prisoners until 14 August 2018 and one other prisoner thereafter; and

c. Between 23 August 2018 and his release on 19 September 2018, when Mr Buckley was held in the shared cell in the West Wing of the Prison.

The Evidence

101. I received witness statements and heard oral evidence from the following witnesses during the trial:

For the Plaintiff

Mr Cruyff Buckley – the Plaintiff;

Mr Phillip Yon – a fellow prisoner during the relevant time;

Mr Ian Rummery – the Prison and community psychiatric nurse during the relevant time;

Mr Ian Walter Crowie – a Prison officer during some of the relevant time;

Ms Catherine Turner – a member and chair of the Prison Visiting Committee until 2015 and thereafter CEO of the EHRC during the relevant time;

Mr Keith Munns – the OTPA and former UK Prison Governor

For the Defendant

Governor Heidi Murray – the Prison Manager from June 2018 onwards

102. I am grateful to all witnesses for their time and energies in preparing statements and giving evidence either in Court or via the videolink (Mr Munns, Ms Murray and Mr Crowie). This has assisted the Court in its fact finding role. I set out some pen portraits of the witnesses below.

The Plaintiff's evidence

103. I have found the Plaintiff to be a largely reliable and credible witness, much of whose written and oral evidence I have accepted. I indicate below that there are some parts of his evidence that I have not been able to accept or where I consider that he has exaggerated. I explain my reasons for these conclusions and assessments within the body of my findings of fact below.

Mr Yon's evidence

104. Mr Yon was detained in Cell 1 with the Plaintiff for much of the relevant time. He provided a detailed statement and provided oral evidence in support of the Plaintiff's case. The Court agrees with the Defendant that Mr Yon's evidence must be treated with appropriate caution, given that he has a plaint (claim) in respect of his detention stayed behind the Plaintiff's. It is not in dispute that his witness statement will have been written when aware of those future proceedings. In light of his pending proceedings, I have not sought to address his written or oral evidence in any real detail. Where Mr Yon's evidence has been corroborated by other written or oral evidence in the case, I have indicated that I have accepted it. I make no adverse findings as to his reliability or credibility.

Mr Rummery and Ms Turner

105. I found Mr Rummery and Ms Turner to be impressive witnesses who wished to assist the Court and accept their evidence of primary fact in its entirety. In respect of Mr

Rummery, I set out below specific parts of his evidence that bear on material disputed issues. As I make clear below, there are evaluative judgments that have been made by the EHRC as to the quality, adequacy and sufficiency of the Prison conditions and regime and whether these gave rise to breaches of the Constitution. While giving due respect to the EHRC, I am compelled to put its opinions or evaluative judgments out of my mind and place them to one side. I make the judgments as to the Prison conditions afresh as the Court is the ultimate arbiter of whether breaches of the Constitution have occurred.

Mr Crowie's evidence

106. Mr Crowie gave evidence over the video enabled internet link. Unfortunately, the technology let him down and there were breaks in the internet connection. He was unable to complete his oral evidence (the cross examination) in part because of the technology and in part because he had insufficient time (he chose to prioritise his work commitment). In light of this I gave a ruling during the trial that I would be unable to accept his evidence where it was in dispute because it had not been fairly or fully tested. Nonetheless where his evidence is not in dispute or is corroborated by other evidence, I have referred to it briefly.

Mr Munns' evidence

107. Mr Munns is a vastly experienced UK prison governor and having been the OTPA and produced reports over a number of years between 2009 and 2018. Nonetheless, he was not a statutory authority, nor a member of the UK's HM Inspectorate of Prisons. He did have significant experience of the jurisdiction and the Prison having visited St Helena over a number of years in a professional capacity. I pay tribute to his diligence, experience and expertise and have accepted much of what he stated in written or oral evidence. He was a reliable witness doing his very best to assist the court. I accept all his evidence of primary fact.

108. Mr Munns agreed in oral evidence that his reports did not identify, and he did not remember problems concerning infestations of vermin, loose wires, smell of sewage, issues with damp, specific issues with the programme or regime for remanded prisoners, or issues with vomit in sinks from police detainees.

109. Mr Munns understandably had disquiet about the prison conditions and fabric for some of the reasons now admitted by the Defendant. Equally understandably, his reports as OTPA were directed at prompting action by the Executive. At times although attempting to be balanced, Mr Munns had a slight tendency towards hyperbole when expressing opinions as part of his oral evidence. He stated some conditions in the Prison to be appalling such as the state of Cell 1. In my view, that evaluative judgment is not borne out

by the photographs even though I have accepted some of the conditions to be basic (such as that in Cell 1) and others to have been inadequate.

Ms (Governor) Murray

110. I have indicated throughout this judgment that I was impressed by Ms Murray not simply as a witness but as a Prison Manager (Governor). It was clear that she acted humanely and sought to act in the prisoners' best interests notwithstanding the constraints and restrictions of the Prison fabric and regime. I have accepted most of her evidence as reliable indicating only where I reject it as mistaken because there is countervailing and contradictory or contemporaneous evidence. She made reasonable concessions when challenged during cross examination and accepted that there were gaps in her memory or the Prison's record keeping. Mr Hitchens makes some criticism, mainly of the Defendant corporately, in respect of the parts of her witness statement that were conceded to be inaccurate or the gaps in the disclosure process. I address these submissions below.

The EHRC photographs from 2018

111. The Court is in the fortunate position of being assisted in its assessment of the conditions of detention by the photographs that were taken as part of the inquiry undertaken by the St Helena Equalities and Human Rights Commission ("EHRC") [TB/780-950].

112. It is agreed between the parties that these photographs were taken at or around the time of the Plaintiff's detention in the Prison in 2018. Consequently, the Court was able to place reliance on those photographs and draw appropriate conclusions from them.

113. Much time was spent carefully going through these photographs with witnesses during the trial and they provide probative evidence of the conditions at the relevant time. They have assisted the Court to make findings, for example, about the facilities in the Dayroom and the general sanitary conditions in the Prison.

The floorplans carried out by the third-party surveyor in 2019

114. Subject to the modification pointed out to the Court in respect of the absence of fire escape from the East Wing to the West Wing, the floorplans are also helpful to understand and make findings in respect of features such as room dimensions and location of sanitary facilities [TB/747-748].

Approach to the evidence, fact finding and evaluative judgments

115. I have found it largely unnecessary to address, rehearse or analyse the majority of the witness statements and oral evidence given by the witnesses in this case. I received four days of oral evidence from the witnesses in addition to reading the trial bundle of over

1,000 pages. I have found it unnecessary to refer to most of it but have taken it all into consideration.

116. While the evidence provides the foundation for my findings, the findings of fact are largely agreed: few primary facts are in dispute but where there is a conflict of evidence, I have given reasons for my findings.

117. Where there are issues of primary fact in dispute between the parties I make findings of fact on the balance of probabilities. The burden of proof is on the Plaintiff to establish breaches of the Constitution, except when a prima facie breach of section 7 is established and the burden shifts to the Defendant. In the sections below I address each aspect of the challenged prison conditions.

118. The greater dispute is as to the inferences from primary fact that I should draw and the evaluative judgments I should make. I go on to make evaluative judgments in each specific subsection as to whether the alleged breaches are established based on the primary facts, assessing each condition in isolation individually and then cumulatively as part of the overall assessment.

119. I have paid no attention to the opinions or judgments of individuals (Mr Munns or Ms Murray) or organisations (such as the OTPA and EHRC) as to whether any facts give rise to breaches of the Constitution - although the Defendant has not sought to exclude these opinions from the evidence as inadmissible or inexpert legal opinion. While I pay tribute to the diligence and responsibility with which they executed the offices they held, and the opinions were given in good faith and were relevant to the policy or political objectives pursued, the opinions or evaluative judgments as to whether conditions breached any constitutional right carry no weight before me.

120. The Court has to independently assess and evaluate whether there have been breaches of rights provided under the Constitution. These assessments and evaluations are for the Court alone to make based upon the evidence heard and facts found. I do however pay some regard to views expressed by Mr Munns and Ms Murray as to how the prison conditions in the Prison in St Helena at the relevant time compared to that in the UK. They both have significant experience of the prison systems in both jurisdictions which is worthy of respectful consideration.

<u>Legal overview</u>

Torture, inhuman or degrading treatment or punishment and prisoners' right to humane treatment – sections 7 and 11 of the Constitution

Section 7 of the Constitution and Article 3 ECHR

121. In respect of protection from inhuman treatment, section 7 of the Constitution provides as follows: "*No person shall be subjected to torture or to inhuman or degrading treatment or punishment*". Article 3 ECHR provides that "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*".

Burden of Proof

122. If the Court is satisfied that the Plaintiff has established a *prima facie* case that the conditions in the prison contravene section 7 of Part 2 of the Constitution, the burden of proof shifts to the Defendant to show that conditions in the prison were not degrading. As set out by the Grand Chamber in *Mursic v Croatia* 7334/13 at §127 – 128:

> *128. Once a credible and reasonably detailed description of the allegedly degrading conditions of detention, constituting a prima facie case of ill-treatment, has been made, the burden of proof is shifted to the respondent Government who alone have access to information capable of corroborating or refuting these allegations. They are required, in particular, to collect and produce relevant documents and provide a detailed account of an applicant's conditions of detention. Relevant information from other international bodies, such as the CPT, on the conditions of detention, as well as the competent national authorities and institutions, should also inform the Court's decision on the matter (see further Ananyev and Others, cited above, §§ 122-125; and Neshkov and Others, cited above, §§ 71-91).*

123. If, on review of all relevant circumstances, the Plaintiff has surpassed the low threshold of establishing a *prima facie* case of degrading prison conditions, then the burden of proof shifts to the Defendant to show that the conditions in the prison were not unlawful.

The Proper Approach to assessing prison conditions for the purposes of Section 7 / Article 3

124. The Court ought to assess the conditions in the prison as a whole rather than considering each complaint in isolation. For example, at §149 of *Ananyev and Others v. Russia (2012) 55 E.H.R.R. 18*, the Court emphasised the need to take into account all relevant physical conditions, including access to outdoor exercise, natural light or air, availability of ventilation, adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements.

Section 11 of the Constitution

125. In respect of the right of prisoners to humane treatment, s11(1) of the Constitution provides as follows: "*All persons deprived of their liberty (in this section referred to as "prisoners") shall have the right to be treated with humanity and with respect for the inherent dignity of the human person*." This wording is nearly identical to Article 10 of the Covenant.

126. The right to dignity is a foundational principle of International Human rights law for example:

a) At § 36 of *SSWP v AT* [2023] EWCA Civ 1307, the Court of Appeal stated that whilst the ECHR does not expressly contain a right to human dignity, the true position is that human dignity pervades all ECHR rights.

b) It is contained in the preamble to the 1948 Universal Declaration of Human Rights and the Charter of the United Nations itself.

c) Article 1 of the Charter of Fundamental Freedoms of the European Union contains a right to dignity.

127. The UN Rules require that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings. There is no requirement for an intention to humiliate or debase a prisoner in order for a breach of the right to human dignity to be established. Although, it may be a factor to take into account. There is a positive duty on the part of state authorities to organise the prison system to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties.

128. The protection under section 11 of the Constitution also contains the following specific provisions at s11(2) and s11(4), also derived from Article 10 of the Covenant:

> *11…(2) Every unconvicted prisoner shall be entitled to be treated in a manner appropriate to his or her status as such.*
>
> *(4) Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, or the facilities available for the detention of prisoners do not permit, or segregation would be detrimental to the well-being of a prisoner, unconvicted prisoners shall be segregated from convicted prisoners, and juvenile prisoners shall be segregated from adult prisoners.*

Interpretation or construction of sections 7 and 11 of the Constitution – overlap with Article 3 ECHR

129. The protection of prisoners' rights under sections 7 and 11 of the Constitution has received no judicial consideration in St Helena. Although there is no freestanding obligation under the ECHR relating to prisoners, the case law of the ECtHR on the inhuman or degrading treatment or punishment within Article 3 ECHR provides the closest analogy.

130. Of the many different formulations of the right to human dignity in international human rights law and adopted by Commonwealth countries, I endorse the parties' agreement that the Article 3 formulation is the one which is most apt for application to section 11(1) of the Constitution.

131. As set out below within an Article 3 context, treatment which humiliates or debases an individual may breach the right to human dignity where it: i) shows a lack of respect for, or diminishes a person's human dignity; and ii) arouses feelings of fear, anguish or inferiority capable of breaking their moral or physical resistance.

132. I therefore accept the Defendant's submission that there are overlapping concepts in sections 7 and 11 of the Constitution and this means that the substantive analysis of the ECtHR in respect of prisoners under Article 3 ECHR is relevant to both sections. While arguments may be made as to whether and to what extent there is any difference in standards between sections 7 and 11(1) in the specific context of any given factual circumstances relating to a prisoner, it is unnecessary to resolve them in this case. In effect, the standards under sections 7 and 11(1) are similar when applied to a prisoner and the allegations of breach are likely to stand or fall together on the facts of this case.

Minimum level of severity

133. Lawfully detained prisoners are entitled to their rights under the ECHR, save for the right to liberty (Article 5 ECHR). The relevant general Article 3 ECHR principles in respect of prisoners were restated by the ECtHR in *Muršić v Croatia* (App 7334/13) [GC] (2017) 65 EHRR 1 ("*Muršić*"):

> *97. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim […].*
>
> *98. <u>Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3</u> […] Indeed, the prohibition of torture and inhuman or degrading treatment or punishment is a value of civilisation closely bound up with respect for human dignity […]*
>
> *99. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent*

in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured […]

100. Even the absence of an intention to humiliate or debase a detainee by placing him or her in poor conditions, while being a factor to be taken into account, does not conclusively rule out a finding of a violation of Article 3 of the Convention […] Indeed, it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties […]

101. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant. The length of the period during which a person is detained in the particular conditions has also to be considered […]

[Emphasis Added]

The United Nations Standard Minimum Rules for the Treatment of Prisoners ("the UN Rules" or "The Mandela Rules")

134. The UN Rules / Mandela Rules can be taken into account when assessing whether there is a breach of sections 7/11 in respect of prison conditions. They should be read in accordance with the preliminary observations contained within the document, in particular preliminary observations 1 and 2(1). In short, the Mandela Rules represent good principles and practice but are not capable of application in all places and all times due to differences of legal, social, economic and geographical conditions.

The Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT")

135. The CPT standards may also be taken into account. The CPT standards are a rule of thumb for conditions of detention rather than rules of rigid application. The role of the CPT as a preventative monitoring body is different from the Court's in that its role is not to pronounce on what amounts to breach of human rights. The CPT and its standards should be understood in that context.

The parties' cases in outline

The Plaintiff

136. The Prison conditions that the Plaintiff alleges cumulatively breach his human rights under sections 7 and 11(1), (2) & (4) are i) cell size; ii) lack of outdoor space / exercise; iii) lack of purposeful activities; iv) unsanitary conditions; v) light, temperature and ventilation; and vi) lack of segregation between convicted and unconvicted prisoners. Useful ECtHR caselaw on those factors is set out below when addressing each condition.

137. Mr Hitchens, for the Plaintiff, submitted that it was common ground that the Defendant bears the burden of proof because the Plaintiff had established a prima facie case, so the burden had shifted to the Defendant to establish there was no breach.

138. He contended that, unusually, there are very few areas of factual or legal dispute between the parties.

139. He characterised the Defendant's case by way of the following concessions it had made:

(a) The Defendant accepted that at least one hour of outdoor exercise is a requirement of the UN Rules and the CPT Standards. It is accepted that the Strasbourg Court has held that outdoor exercise is a "basic safeguard" of prisoners' well-being and demands special attention - see *Ananyev v Russia* (2012) 55 E.H.R.R. 18. It is accepted that a lack of outdoor exercise opportunities is in and of itself sufficient to establish a breach of section 7. It is also accepted that the Plaintiff was denied any outdoor exercise whatsoever for four months. Yet, for reasons which remain entirely unclear, a breach of s.7 arising out of the total lack of outdoor exercise available to the Plaintiff is denied.

(b) The Defendant accepted that whilst a remand prisoner, the Plaintiff spent four days locked in a windowless cell in solitary confinement with no access to any activities, outdoor space, other facilities or social contact. During this time, he had only a grate for ventilation and slept on a concrete plinth. It is accepted that the Plaintiff was subjected to this treatment at a time where he had been placed on regular observations due to concerns about his mental health. Yet, it is denied that this treatment amounted to a breach of ss.7 or 11 of the Constitution.

(c) The Defendant accepted that the Plaintiff had a right to be treated in a manner which was appropriate to his status as an unconvicted prisoner. It is also accepted that he was treated in a significantly less favourable way than convicted prisoners. Yet a breach of s.11(2) of the Constitution is denied.

(d) The Defendant accepted that a cell with less than 4m2 of space per prisoner does not conform to CPT standards. It is also accepted that the Strasbourg Court has held where a prisoner is held in a space of less than 4m2 per prisoner and there are other deficiencies in the prison regime or facilities, such as a lack of purposeful activities, outdoor exercise,

ventilation or natural light, a breach of Article 3 ECHR shall be established. It is accepted that this Plaintiff had less than 4m2 of floor space for three months of his imprisonment, had little by way of purposeful activities, no outdoor exercise, and no entry of fresh air into his cell. Yet, a breach of s.7 of the Constitution is again denied.

(e) It is accepted by the Defendant that its only witness could not say definitively how many prisoners were in Cell 1 during Mr Buckley's incarceration there. It is accepted that two witnesses gave clear evidence that there was at least one period where there were four prisoners were housed in Cell 1. It is also accepted that the Defendant's witness stated there were records which would definitively answer this question, but the Defendant has failed, in breach of his disclosure obligations, to disclose these records. Yet, it is denied that there were four prisoners in Cell 1.

140. Mr Hitchens contended that the Defendant's case borders on being unarguable and that the Court should reject it. He submitted that the Defendant only called one witness, Ms Murray, who was not even employed in the prison for the whole of the relevant period. That witness confirmed that highly material documents were in the possession of the Defendant, had been linked to this case and provided to her, but not disclosed to the Plaintiff. The witness also confirmed that she had informed the Defendant that parts of her witness statement were inaccurate. These inaccuracies were never communicated to the Plaintiff or the Court.

The Defendant

141. Mr Rhys submitted on behalf of the Defendant that the cumulative effect of the positive aspects of the Plaintiff's detention was sufficient to overcome the negative aspects. Considering the positive aspects, there had been no breach of the Plaintiff's sections 7 and 11 constitutional rights because there was insufficient ill-treatment which did not amount to humiliation, debasement, degradation or a lack of respect for his human dignity.

142. He pointed out that the Defendant had fairly accepted that in some respects the physical condition of the Prison was not at a desirable standard. These concessions were made in the written and oral evidence of Ms Murray [TB/165 § 5-6]. The Defendant did not dispute that the Prison needs to be replaced. As is well known on the island, the Defendant had made a number of very serious and ongoing efforts to scope and procure a new Prison but progress has been slow.

143. The Defendant did not seek to argue that the Prison was entirely apt for use as a prison. To that extent it was not fit for purpose. It was built in a time when there were different standards for incarceration.

144. Nonetheless, despite the criticisms in Mr Munns' reports and opinions as OTPA as to the overall physical condition of the Prison and, subsequent to the relevant time, the EHRC in theirs, the Mr Rhys argued that the fabric of the Prison and the accompanying regime mean there was no breach of Mr Buckley's constitutional rights. The physical conditions of Cell 1 and the Dayroom can be seen in the EHRC photographs, which show the state being acceptable for habitation without breaching the Plaintiff's constitutional rights [TB/816, 818, 821, 861, 865].

145. Further, he argued that the evidence shows, large parts of the Prison had already long been taken out of use as prisoner accommodation – for example the basement cells were used to house medical offices and a bench press machine for the gym. Other buildings, not previously part of the prison estate had been converted into extra accommodation, such as the West Wing. Redundant rooms and improvised wings are clearly hallmarks of a building that is not fit for its original intended purpose.

146. However, insofar as the actual conditions for Mr Buckley at the time, the Prison put in place measures to ensure that any shortfalls caused by the building not being fit for purpose were minimised. Even taking into consideration the physical deficiencies at the Prison, the Defendant's case is that in respect of sections 7 and 11 of the Constitution, the overall conditions of detention and unique prison regime were positive.

<u>Discussion and Analysis</u>

Personal space and cell conditions – the Law

147. The ECtHR has stressed that it cannot determine a specific number of square metres that should be allocated to a detainee in order for accommodation to be compliant with Article 3. Nevertheless, the provision of $4m^2$ is a "*desirable standard of multi-occupancy accommodation*" and in cases where prisoners have had less than $3m^2$ there is a strong presumption of a violation of Article 3 ECHR, see *Muršić* §125 and *Ananyev v Russia* [2012] 1 WLUK 85 ("*Ananyev*") §145.

148. In circumstances where there is between $3\text{-}4m^2$ per prisoner, other physical conditions of detention are relevant for the assessment of compliance with Article 3: duration of detention, the physical and mental condition of the detainee, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements, see *Muršić* §§103-104 and *Ananyev*, §149.

149. The Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("**CPT**") is an influential body that publishes reports and guidance. The CPT has published guidance for minimum standards for personal living space in prison establishments [186], to which the ECtHR is "*attentive*" in its assessment of breaches of Article 3, see *Muršić* §§91, 113, 136-141. The document provides helpful guidelines and a useful Appendix of factors [192] to take into consideration when assessing detention conditions in prison.

150. The key points relevant to multiple-occupancy cells are as follows:

a. Minimum standards differ according to the type of establishment;

b. The basic rule of thumb is 4m² of living space per prisoner in a multiple-occupancy cell plus fully partitioned sanitary facility, with at least 2m between the walls of the cell and at least 2.5m between the floor and the ceiling of the cell, see §§9-11;

c. The cell size standards are not absolute and a minor deviation from the minimum standards would not in itself amount to inhuman and degrading treatment as long as other alleviating factors can be found, such as being able to spend a considerable amount of time outside their cells, see §21; and

d. For conditions to amount to inhuman and degrading treatment, the cells either have to be extremely overcrowded or combine a number of negative elements, such as an insufficient number of beds for all inmates, poor hygiene, infestation with vermin, insufficient ventilation, heating or light, lack of in-cell sanitation and in consequence the use of buckets or bottles as toilet, see §22.

151. The ECtHR methodology for the calculation of the minimum personal space allocated to a prisoner in a multi-occupancy call is that: in-cell sanitary facilities do not count towards the total surface area of the floor, but areas covered by furniture do. The key aspect is whether prisoners are able to move around the cell normally, see *Muršić* §114. Outdoor yards are not counted in the calculation of personal living space, however: "*the availability of unrestricted access to an outdoor yard during daylight hours is a weighty factor which should be assessed when considering overall material conditions of detention"*, see *Ilerde and others v Turkey* App 35614/19 (8 April 2024) §175.

152. In summary, so far as cell space is concerned, there are three primary requirements under Article 3[14]:

(a) Each detainee must have an individual sleeping place in the cell.
(b) Each detainee must have at his or her disposal at least three-square metres of floor space.
(c) The overall surface of the cell must be such as to allow the detainees to move freely between the furniture items.

153. A breach of any of these requirements shall give rise to a strong presumption of a breach of the Convention. A breach of the CPT Standards shall also generally give rise to a presumption of degrading treatment.

154. Even where an inmate has more than 3m2 of personal space, the Court shall need to take into account the other physical features of the prison, including access to outdoor

[14] §148, *Ananyev and Others v. Russia* (2012) 55 E.H.R.R. 18

exercise, natural light or air, availability of ventilation, adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements. Having considered all these factors in the round, a Court may conclude the space available coupled with other factors leads to a violation of the Convention.[15]

Findings of fact on personal cell space

155. I make the following findings in relation to whether the Plaintiff was subjected to overcrowding and insufficient personal cell space. In the following section I consider whether this condition isolation or cumulatively breached sections 7 or 11.

156. In respect of the Plaintiff's time in the Remand / police cell there was no allegation or available evidence that he had insufficient personal cell space.

157. In respect of the Plaintiff's time in Cell 1 in the East Wing (from 24 May to 22 August) I make the following findings:

a. The Plaintiff's pleaded case was that he shared Cell 1 with 2 other prisoners [TB/5 § 12(c)]. The Defendant's case was that the Plaintiff shared with 1-2 prisoners at all time (two up to 14 August and one from 14-22 August);

b. Taking the Plaintiff's case at face value (sharing with 2 other prisoners), using the floorplan for the dimensions, Cell 1 had around 11.86sqm of cell space, giving around 3.95sqm during times when the cell was occupied by 2 other prisoners, i.e., fractionally short of the CPT standards and insufficient to found breach of Article 3 on its own;

c. Although Ms Murray was not present during the Plaintiff's first 10 days of detention, it was her recollection that there were about 8 people in the East Wing when she arrived in June 2018. In any event, Governor Murray's evidence was that the cells in the East Wing (Cells 1-3) were limited to 3 men per cell [TB /171 § 30].

d. Under cross examination, Ms Murray accepted she could not be sure that only three prisoners ever occupied cell 1. She also accepted she did not have personal knowledge of the entire period that Mr Buckley was in cell 1 and that there are records which could have definitely answered this question and which have not been disclosed.

[15] §84, Vlasov v. Russia, no. 78146/01, 12 June 2008; and Trepashkin v. Russia, no. 36898/03, § 94, 19 July 2007), §150 *Ananyev and Others v. Russia*, (2012) 55 E.H.R.R. 18

e. Mr Yon's oral evidence was that he could remember a period when the third inmate was taken away to hospital for treatment;

f. The ceilings of the cells in the East Wing are high, so the volume of the cells is large. It was the oral evidence of the Plaintiff that he could not touch the ceiling when standing on the top bunk in Cell 1.

g. The Plaintiff had largely unrestricted use and access to the Dayroom which adjoined Cell 1 during his detention there between the hours of 06.30 and 22.00. This was of a reasonable area, around 34 square metres, and provided leisure and sanitary amenities – see for example, paragraph 45 above – but it was shared by up to seven others.

158. The major dispute of fact was whether there was any period of time when the Plaintiff shared Cell 1 with three others (ie. there were four in the cell) because this would mean that each prisoner received less than 3m2 personal space. This would give rise to a very strong presumption of a breach of s.7 of the Constitution, although by no means required in order to establish a breach of s.7. For the vast majority of the time in Cell 1 it is agreed that the Plaintiff only shared with one (14-22 August) or two others (24 May – 14 August).

159. Nonetheless, I am satisfied that there was such a period when four prisoners including the Plaintiff occupied Cell 1, albeit that this was for no more than a few days.

160. I accept that the Plaintiff had not pleaded there being four prisoners in Cell 1 in the Particulars of Claim and his written evidence in his statement was ambiguous as to whether he shared it with only two or three other prisoners at any point:

> 28. I was placed on remand in Cell 1 from 23 May 2018 to 22 August 2018 with two convicted prisoners, which meant there were three of us in the cell. At one point another convicted prisoner was placed there for a short period of time.
>
> 29. The cell was a really small and cramp space that was oppressive to be in. I understand the size of cell 1 was 3.05m x 3.35m = 10.20 m2 . Squeezed in were four bunk beds that left very little personal space at all despite it being designed to have four inmates sharing at any one time.
>
> 30. When I was there, I occupied it with two convicted prisoners. This meant that I had around 3.89m2 of personal space.

31. <u>During this time of three-person occupancy, there was insufficient space and the cell felt overcrowded</u>. It was really cramped and stuffy.

[Emphasis Added]

161. Nevertheless, my first reason for making the finding is that Mr Yon and Mr Buckley both gave consistent and clear oral evidence on this point. The two prisoners in cell 1 during the relevant period gave consistent oral evidence that there was a short period, a handful of days, where Cell 1 was shared by four prisoners, thus affording around 2.9m2 of personal space per prisoner. I accept they were reliable on this point and they were not vigorously challenged in cross examination.

162. My second reason is that while the Defendant had disputed there being more than three prisoners in Cell 1 during the relevant period in its pleading and written evidence, Ms Murray did concede under cross examination that she was not able to positively assert that Cell 1 was not shared by four prisoners. She had also stated in oral evidence that she believed there were only ever three in the cell and there would be no need for four based on the total maximum of the prison population during the relevant time not requiring it.

163. Third, it was also conceded by her that the Defendant may have been in possession of records which would positively determine whether the cell was occupied by more than three prisoners, but there had been no disclosure of these documents (it was unclear whether the records still existed but Ms Murray suggested she had seen and reviewed them).

164. It would be surprising if at some stage there had been no documentary evidence or record held by the Prison to prove how many prisoners were in each cell on any given date during the relevant time. Even if no total movement or location tally or record was held for the Prison as a whole, it was conceded or confirmed by Ms Murray in cross examination that Prisoner records for each individual prisoner would have existed at the time. Ms Murray was not re-examined on the point and her unchallenged evidence was that such records did exist and were available to the Defendant. I reasonably infer that such records would have revealed the prisoners' cell location on any given date.

165. As I noted above, the Plaintiff had not pleaded that there were four prisoners in Cell 1 in the Particulars of Claim, and this has given me pause for thought before making this finding. However, I am satisfied that it is available to me to make this finding. A pleading

point cannot reasonably be used to shield the Defendant from a conclusion that the cell was shared by more than three prisoners for a period where:

(a) What was clearly pleaded is that the cells were overcrowded, and this overcrowding gave rise to a breach of s.7 of the Constitution. It is tolerably clear that Mr Buckley stated in his witness statement that there were four prisoners in the cell for a period. It is therefore difficult to see what prejudice could be said to have been caused to the Defendant by the Court determining whether this clear factual assertion is correct – the Defendant conducted an evidential access of reviewing all the relevant documents it held, making disclosure and serving evidence on the issue of cell space so has not been deprived of an opportunity to answer the evidence. It had denied that there were four prisoners in Cell 1.

(b) It is accepted that the Defendant's only witness could not say definitively how many prisoners were in Cell 1 during Mr Buckley's incarceration there. It is accepted that two witnesses gave oral evidence that there was at least one period where there were four prisoners were housed in Cell 1. It is also accepted that the Defendant's witness stated there were records which would definitively answer this question, but the Defendant had not provided or disclosed these. Ms Murray had stated in evidence that she knew of no reason why the records were not or could not be disclosed.

166. The Plaintiff does not plead a breach in respect of the space or overcrowding in the West Wing shared cell [TB/5 § 12-14] and there is little dispute that there were no more than 5 or 6 occupants during the relevant period (22 August to 19 September) in a total area of around 36 metres squared (at least 6 metres squared per person). Even if I accept what the Plaintiff states in his witness statement at paragraph 59 that 'I shared the cell with around 7 prisoners who were as I understand were category D prisoners', there would still be over 4 m2 per prisoner with a total occupancy of eight.

Evaluation of whether the facts found give rise to breaches of sections 7 and 11

167. It is common ground that:

(a) The cell space in Cell 1 when occupied by three prisoners fell below the minimum 4m2 standard required by the CPT for much of the time that the Plaintiff was detained there. (see Rule 23, UN Standard Minimum Rules for the Treatment of Prisoners; para 48, CPT Standards on Prisons; *Ananyev v Russia* (2012) 55 E.H.R.R. 18).

(b) Therefore, the Defendant bears the burden of proof in establishing that the prison conditions were lawful because the Plaintiff had established a prima facie case of a breach.

(c) The cell space available to Mr Buckley during his stay in Cell 1 fell below the minimum standard required by the CPT for the majority of the period Mr Buckley spent therein. The Court ought to anxiously scrutinise any breach of the CPT standard of

4m2 of personal cell space. This is a standard adopted to protect the fundamental rights of a group particularly vulnerable to human rights abuses.

(d) In at least one other regard (fire safety) the conditions in the prison were unlawful.

168. The proper approach for the Court is to consider whether the Defendant has adduced sufficient evidence to satisfy the Court that notwithstanding the breach of the 4m2 condition, the conditions in the cell did not amount to a breach of s.7 of the Constitution.

169. In respect of the first period in the remand cell (20-24 May 2018) and third period in the West Wing (23 August – 19 September 2018), there is no suggestion of a breach of sections 7 and 11 based upon insufficient personal space in the cell. The Plaintiff had more than 4m2 of personal space available to him. There was no breach of either section in either time period based upon the amount of personal cell space.

170. The dispute on personal space centres on the Plaintiff's time in Cell 1 between 24 May and 22 August 2018 – the majority of his detention.

171. The Defendant submits that there was no breach of his constitutional rights under sections 7 and 11(1) on the basis of cell space and overcrowding in Cell 1.

172. I am acutely aware that the assessment of personal space does not take place in a vacuum when considering Article 3 / section 7 of the Constitution. It is accepted that a cell with less than 4m2 of space per prisoner does not conform to CPT standards. It is also accepted that the Strasbourg Court has held where a prisoner is held in a space of less than 4m2 per prisoner and there are other deficiencies in the prison regime or facilities, such as a lack of purposeful activities, outdoor exercise, ventilation or natural light, a breach of Article 3 ECHR would be established.

173. The Court is attentive to the CPT standards, but they are not absolute. Considering the minor deviation from the 4sqm rule of thumb, taken together with the other positive aspects of the Plaintiff's detention such as the access to the Dayroom, I accept the Defendant's submission that there was no breach of sections 7 or 11(1) for all periods of time when the Plaintiff shared with one or two other prisoners in Cell 1 (24 May -22 August).

174. When sharing Cell 1 with only 1 other the Plaintiff had personal space of nearly 6 metres squared and when sharing with two others, he had personal space just short of 4 metres squared. This was amplified by the personal space available in the Dayroom. He had at least 3.89-3.95m2 in personal space in the cell, which he was able to move around even though there was some furniture placed by the walls, plus largely unrestricted waking or daytime access to the Dayroom which provided significant further and additional personal space and freedom of movement outside the cell (around 34 metres squared of floor area albeit that it could be shared by up to seven others). As per the caselaw, the cell size standards are not absolute and a minor reduction from the minimum standards would not in itself amount to inhuman and degrading treatment as long as other alleviating factors can be found, such as being able to spend a considerable amount of time outside their cells.

175. Therefore, I am satisfied that during the majority of the time in Cell 1, when he was sharing with only one or two other prisoners, the Plaintiff was not subject to degrading, debasing or humiliating treatment in respect of personal space or overcrowding. His dignity was respected in respect of personal space. He had largely unrestricted access to the adjoining Dayroom during waking hours.

176. There was no intention on the part of the Defendant that he should experience overcrowding, let alone personal debasement or lack of dignity. I also accept that most of the time the Defendant was attempting to ensure that no more than 3 prisoners were detained in each of Cells 1-3 (there was on average 8 prisoners in the three cells during the relevant times and while the three cells varied in total floor area, they were around 12-14 m2 each).

177. However, I accept that for a handful of days the Plaintiff was detained in Cell 1 when all four beds were occupied. Thus, his personal space was under 3m2. There is a strong presumption that where there is less than 3m2 personal cell space that this will constitute a breach of article 3 ECHR / section 7 of the Constitution. I am satisfied that largely unrestricted access to the Dayroom during daylight or waking hours (06.30 to 22.30), while mitigating the effect, did not alleviate it.

178. The freedom of movement and personal space that the Dayroom provided should not be overstated: a) it was not available at night; b) the Dayroom space was 34 squared metres but shared by up to 7 others during the relevant period; c) the Dayroom did not provide private space reserved for the prisoner alone – unlike the bedspace in the prisoner's cell; and d) freedom of movement was primarily limited to the cell and Dayroom – although the corridor / courtyard in the East Wing (an area of about 11 metres by 2 metres addressed

below) could also be accessed to walk to the additional toilets and showers; freedom of movement around the East Wing although reasonable could not be equated with that which might be available in a large low category or open prison.

179. Therefore, at the time when Cell 1 was occupied by four prisoners, I am satisfied that this restriction in the Plaintiff's personal space was so severe so that it could not be alleviated by access to the Dayroom. It constituted a breach of both sections 7 and 11(1) of the Constitution – causing degrading treatment because this treatment debased the Plaintiff as an individual, showing a lack of respect for or diminishing his human dignity while in prison.

Isolated vs cumulative assessment of conditions

180. I have decided that there was no breach of sections 7 and 11(1) based only upon the time when the Plaintiff had 3.89-3.95 m2 of personal space sharing Cell 1 with 1 or two others. This was primarily because of the largely unrestricted access to and freedom of movement in the Dayroom. Notwithstanding this finding, it is not the end of the matter. I accept that the assessment of a breach based upon lack of personal space should not be considered in a vacuum or isolation.

181. Despite my finding that lack of personal space alone did not give rise to a breach when personal cell space was less than 4 m2 (except when less than 3 metres squared) I must also consider whether other prison conditions when considered cumulatively, gave rise to a breach of sections 7 and 11(1). Prison conditions must be considered as a whole rather than in isolation so that even during the time when personal space alone did not give rise to a breach, other conditions might yet affect the overall assessment of breach.

182. Mr Hitchens submits that: in circumstances where this Plaintiff had less than 4m2 of floor space for three months of his imprisonment; Cell 1 did not benefit from any direct natural light or ventilation from fresh air into the cell; it was accepted by Ms Murray to be very hot in the cell; where the Plaintiff was subject to a regime with no opportunity for outdoor exercise; and had little to nothing in terms of other purposeful activities, the Defendant cannot discharge the burden of proving there was no breach of sections 7 and 11(1). In addition, he contends that the Plaintiff needed the bathroom regularly due to medical reasons and did not have direct access to sanitary facilities during the night. As such, the Court ought to find that the cramped living space was part of a factual matrix that did amount to a breach of ss.7 & 11(1) of the Constitution. Thus, examining the conditions cumulatively a breach of s.7 of the Constitution is established.

183. I consider each of these facets of prison conditions below before coming to a conclusion as to whether individually or cumulatively these other conditions give rise to a breach.

Outdoor space, exercise and purposeful activities – the Law

184. Rule 23 of the UN Rules [16] every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily. The CPT's[17] principles on the treatment of Persons Deprived of their Liberty ("the CPT Standards") require that every prisoner must be afforded at least one hour of outdoor exercise a day. The standards emphasise that outdoor exercise facilities must be reasonably spacious and wherever possible offer shelter from inclement weather.

185. It is therefore a requirement of both the UN rules and the CPT standards that a prisoner must be afforded a minimum of one-hour outdoor exercise per day where possible. It is a requirement of the CPT standards that outdoor exercise facilities should be reasonably spacious and adequate to allow meaningful exercise, such as sports to take place.

186. The Strasbourg Court has said that when assessing the conditions of detention, special attention must be paid to the availability and duration of outdoor exercise and the conditions in which prisoners may take it[18]. Even where an hour a day of outdoor exercise is provided, the activities and exercise regime in a prison may be insufficient to meet the minimum standards required by the ECHR:

(a) Where exercise is limited to one hour a day and does not form part of a broader programme of out of cell activities, this shall be a factor which militates against the prison conditions meeting the minimum standard required by Article 3[19].

(b) An exercise yard which was just two square meters larger than the prisoner's cell and was surrounded by high walls and covered by bars and a net did not offer proper opportunities for recreation[20].

(c) Where prisoners are unable to use a yard in bad weather, this is a feature which suggests non-compliance with the minimum standards required by Article 3 ECHR[21]

[16] Also called the Nelson Mandela Rules

[17] The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment

[18] §150, *Ananyev and Others v. Russia*, (2012) 55 E.H.R.R. 18

[19] §150, *Ananyev and Others v. Russia* (2012) 55 E.H.R.R. 18

[20] §125 Moiseyev v. Russia, App no 62936/00

[21] §78, *Mandić and Jović v. Slovenia*, 2011

187. *Ananyev* §§150-152 sets out the relevant principles as follows:

> *150. Of the other elements relevant for the assessment of the conditions of detention, special attention must be paid to the availability and duration of outdoor exercise and the conditions in which prisoners could take it. The Prison Standards developed by the Committee for the Prevention of Torture make specific mention of outdoor exercise and consider it a basic safeguard of prisoners' well-being that all of them, without exception, be allowed at least one hour of exercise in the open air every day and preferably as part of a broader programme of out-of-cell activities. The Standards emphasise that outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather […]*
>
> *151. The Court has frequently observed that a short duration of outdoor exercise limited to one hour a day was a factor that further exacerbated the situation of the applicant, who was confined to his cell for the rest of the time without any kind of freedom of movement […]*
>
> *152. The physical characteristics of outdoor exercise facilities also featured prominently in the Court's analysis. In Moiseyev v. Russia, the exercise yards in a Moscow prison were just two square metres larger than the cells and hardly afforded any real possibility for exercise. The yards were surrounded by three-metre-high walls with an opening to the sky protected with metal bars and a thick net. The Court considered that the restricted space coupled with the lack of openings undermined the facilities available for recreation and recuperation*

188. The analysis of the outdoor recreation and purposeful activities in *Muršić* §§161-163 is also useful:

> *161. In this connection the Court notes that in the ordinary daily regime in Bjelovar Prison the applicant was allowed the possibility of two hours of outdoor exercise, which is […] above the minimum standards set out by the CPT […]. The photographs available to the Court show the recreation yard, which according to the Government's undisputed submission, has a surface area of 305 sq. m and includes a lawn and asphalted parts as well as protection from inclement weather and is equipped with various recreational facilities, such as a gym, basketball court and ping-pong table.*
>
> *162. Furthermore, it is undisputed by the applicant that he was allowed three hours per day of free movement outside his cell within the prison facility. Taking also into account the period of two hours of outdoor exercise, as well as the periods necessary for serving breakfast, lunch and dinner, it cannot be said that the applicant was left to languish in his cell for a significant proportion of his day without any purposeful activity. This is particularly true given the entertainment facilities available in Bjelovar Prison, such as the possibility of*

watching TV or borrowing books from the local library, as follows from the material available before the Court (compare Valašinas, cited above, § 111).

163. Against the above background, the Court finds that, even taking into account that the applicant was unable to obtain work, which related not only to the objective impossibility (see paragraph 20 above) but also arguably to the applicant's previous behaviour (see paragraph 13 above), the possibility of free out-of-cell movement and the facilities available to the applicant in Bjelovar Prison could be seen as significantly alleviating factors in relation to the scarce allocation of personal space.

189. Counsel for both parties agreed the following summary of the propositions which they extrapolate from the authorities and which I gratefully adopt. Even where a prisoner is deemed to have sufficient personal space, an absence of outdoor exercise in isolation can amount to a violation of Article 3 ECHR (or sections 7 or 11 of the Constitution). A breach of the personal space requirements is not a pre-requisite for a breach of Article 3 ECHR or the Constitution based on a lack of outdoor exercise opportunities or facilities. Even where a prisoner is limited to just one hour per day of outdoor exercise, this is a factor which may exacerbate other deficiencies in the prison regime and support a finding of breach of Article 3 ECHR or of sections 7 or 11 of the Constitution.

Findings of fact outdoor space and exercise

190. I am not satisfied that there was any proper outdoor space or exercise available to the Plaintiff within the Prison during the entirety of his time there – in any of the three periods in question and for a total of four months.

191. In the first two time periods, while he was in the Remand Cell or on in Cell 1 on the East Wing, from 20 May to 22 August 2018, Mr Buckley had access to a corridor, which is sometimes described as a 'courtyard'. That is to misdescribe it. It is a corridor which is approximately 11 metres long by 2 metres wide and provided access from the Dayroom of the East Wing to the three remand / police cells and showers and toilets which opened off it. It is technically exposed to sunlight and air because it has an open roof – albeit the walls of the corridor are at least 2.5 metres high and there was wire netting across its top at the relevant time. Therefore, it could only be descried as 'outdoors' in the most technical of senses – because it was ventilated from the roof rather any window.

192. I accept the Plaintiff's evidence that this was in no way a reasonable or useable exercise space – not only was it insufficient in size for walking back and forth but it was not reasonably spacious to afford for the reasonable opportunity for any sport, physical recreation or vigorous exercise. It would not even be realistically possible to walk back and forth along it uninterruptedly for an hour, let alone run in it or conduct any vigorous sport or exercise. Even if one could walk uninterruptedly with no more than a few paces before turning around, to do so would be a repetitive and not constitute meaningful or

reasonable exercise. Furthermore, even repetitive back and forth walking was not realistically possible - there is no evidence that any inmate attempted to use the space in this manner and there were often items such as chairs and laundry racks placed in the corridor (visible in the photographs) and there would have been a throughput of other inmates coming in and out of the doors or sitting in it.

193. In respect of the third time period, when the Plaintiff was in the West Wing Cell shared cell from 22 August to 19 September 2018, the same applies. The 'yard' outside the West Wing cells was about 3.5 metres by 3.5 metres about 11.5 m2 in total floor area but with steps up to the Workshop reducing even that small space. Again, while exposed to the air through an open roof, it was in not any sense reasonably useable for walking given its size and other items placed there. It was not reasonably spacious – less than the size of the shared cell and extremely limited in area. No sport or exercise could take place there.

194. The simple fact is that the Prison, is small in area and limited in space – this is a function of its location and history. It is accepted by the Defendant that the yards in the East and West wings were lacking in space and that can be seen in the EHRC photographs (although it is denied that there was no shelter, which can be seen in [TB/812]). This is apparent from the floor plans and dimensions described.

195. There was no outdoor exercise or work available to the Plaintiff outside the Prison during the length of the relevant time because he was not entitled to work on the farm and no other outdoor exercise or work was available to him off site. Likewise, there was no outdoor exercise available to him within the confines of the Prison itself given its small size and lack of proper exercise yard or equivalent within its walls.

Evaluation of a breach against international standards

196. Rule 23 of the UN Rules [22] every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily. The CPT's[23] principles on the treatment of Persons Deprived of their Liberty ("the CPT Standards") require that every prisoner must be afforded at least one hour of outdoor exercise a day. The standards emphasise that outdoor exercise facilities must be reasonably spacious and wherever possible offer shelter from inclement weather.

197. It is accepted that at least one hour of outdoor exercise is a requirement of the UN Rules and the CPT Standards. It is accepted that the Strasbourg Court has held that outdoor exercise is a "basic safeguard" of prisoners' well-being and demands special attention. It is also accepted that the Plaintiff was denied any outdoor exercise whatsoever for four months.

[22] Also called the Nelson Mandela Rules

[23] The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment

198. I am satisfied that there was a clear breach of these standards in that the Plaintiff did not receive the opportunity for any outdoor exercise during the entirety of his detention in the Prison. He spent four months without receiving any outdoor exercise either within the confines of the Prison walls or by being given the opportunity to leave the prison to receive outdoor work or exercise outside its walls.

199. It is also accepted that a lack of outdoor exercise opportunities is in and of itself sufficient to establish a breach of section 7.

200. It is the Defendant's case that the near-unrestricted access to the yard spaces did provide opportunities for the Plaintiff to be outside during the day, both in Cell 1, where a guard would come through from reception next door and bring prisoners through upon request and in the West Wing where it was accepted by the Plaintiff that the doors were open for most, if not all of the day unless it was cold. Coupled with the freedom of movement that he already had in the Dayroom, approximately 10 metres by 3.5 metres but with furniture or cell doors around its edges, it submitted there was sufficient provision for his freedom of movement.

201. I reject this submission. The international standards are clear and, while not set in stone or automatically giving rise to a breach of Article 3 ECHR, they were not close to being met in the Plaintiff's case. It is not reasonable to say that because he could walk freely within the very limited open access he had between cells and dayroom / yards, this was in any way affording him an hour's outdoor exercise. The walk in any one direction between Cell 1, Dayroom and corridor in the East Wing might total a maximum of approximately 20 metres, which if not interrupted by people, obstacles or moving through doorways only approximately 11 metres of which would be exposed to an open roof with netting above. The walk in any one direction from shared cell and yard in the West Wing would be at most 10 metres, only 3.5 metres of which would have no roof. The partial freedom of movement between cells and yards simply did not alleviate or mitigate the breach in standards because of the very limited area available and lack of any meaningful outdoor area.

202. As I have found above, even if one could walk uninterruptedly with no more than a few paces before turning around, to do so would be a repetitive and not constitute meaningful or reasonable exercise. Furthermore, even repetitive walking was not realistically possible - there is no evidence that any inmate attempted to use the space in this manner and there were often items such as chairs and laundry racks placed in the corridor and there would have been a throughput of other inmates coming in and out of the doors or sitting in it.

203. The freedom of movement in the East Wing alleviates the lack of personal cell space in Cell 1 but provides no mitigation when it comes to accessing outdoor exercise.

Breach in isolation or cumulatively of sections 7, 11(1) and 11(2)

204. Affording prisoners at least one hour of outdoor exercise a day is an internationally recognised minimum standard for the humane treatment of prisoners. As set out above, the Court holds special obligations under International Law to protect the fundamental rights of St Helenians as the occupants of a non-self-governing territory.

205. As such, I am satisfied that the Court should construe sections 7 and 11(1) of the Constitution as requiring compliance with the international minimum standard of one hour of outdoor exercise a day for prisoners. While the UN Rules and CPT are only guidance, I consider that this condition has considerable significance and breach of the standard will bear a strong correlation with breach of a constitutional right. In the context of the Prison in question, the absence of an opportunity for any, let alone an hour a day, outdoor exercise for any sustained length of time, for example more than a week, will have a significantly degrading effect on a prisoner's wellbeing - diminishing any prisoner's physical and mental health as well as debasing and lacking respect for their human dignity.

206. It is common ground that a lack of outdoor exercise opportunities is sufficient on its own to constitute a breach of the Constitution. It is also not realistically argued by the Defendant that the Plaintiff had any opportunity to exercise outdoors during his incarceration. This is sufficient to dispose of this aspect of the claim. I find the lack of outdoor exercise alone constituted a breach of both sections 7 and 11(1) in that it degraded the Plaintiff and eroded his dignity.

207. Furthermore, I am satisfied that the Defendant also breached section 11(2) – "*every unconvicted prisoner shall be entitled to be treated in a manner appropriate to his or her status"* in this regard. The Plaintiff was treated less favourably as an unconvicted prisoner than convicted prisoners and was not treated in a manner appropriate to his status. Instead of an enhanced regime he had a diminished regime. Convicted prisoners mostly had regular access to outdoor exercise in the form of outdoor work for significant periods of time each week on the Prison farm which was located some distance away. The fact that the convicted prisoners would go to the farm meant that occasionally on the East or West Wings the Plaintiff may have been left alone on the wing but I am satisfied based on the evidence that this was not for such long periods or so frequently that it gave rise to serious social isolation for the Plaintiff or constituted an independent breach of section 7 of the Constitution.

208. What is particularly unfortunate is that the Plaintiff's lack of opportunity for outdoor exercise occurred in the context where convicted prisoners were receiving better treatment than the Plaintiff. They were regularly afforded the opportunity of more than an hour's outdoor exercise or outdoor work when working outside the Prison on the farm. The reason given for the Plaintiff's unfavourable treatment by Ms Murray – that because he was

unconvicted he could not be risk assessed to leave the prison – is not for me to adjudicate upon. The Court is not equipped to comment or decide upon the merits of a specialist assessment of a prisoner's risk within the confines of a Constitutional claim. However, if this approach is to be adopted, the Prison should reasonably have found another work around or opportunity to provide regular (if not an hour a day) work or exercise outside the prison for an unconvicted prisoner whenever reasonably possible.

209. As above, I make this finding of a breach of sections 7, 11(1) and 11(2) on the basis of the one condition in isolation. However, I must also consider the conditions cumulatively as well as individually. Even if I were wrong to base any breach of the Constitution on this condition alone, I find there to be a breach based on this condition as amplified by the other deficiencies and negative features in the other prison conditions set out above and below.

Purposeful and leisure activity - Findings of Fact

210. It is useful to distinguish meaningful and purposeful activity, such as work, rehabilitation courses and education, from recreation or leisure activity, such as playing board games, socialising, watching television or reading books.

211. Ms Murray accepted that working in the kitchen and workshop in the Prison and going outside the Prison to work on the farm were not activities available to Mr Buckley. This was primarily on the basis that, as an unconvicted remand prisoner, a risk assessment could not be carried out upon him to permit him to be authorised to carry out such work.

212. It is therefore accepted by the Defendant that not all aspects of work and recreation at the Prison was available to the Plaintiff, for example working in the workshop (which was unsupervised and not available to high risk and remanded prisoners because of a lack of or unfavourable risk assessment) or in the kitchen (for similar reasons).

213. Again, this put him in a worse position than all the convicted prisoners in the Prison (indeed he was the only prisoner on remand during the relevant time).

214. The Plaintiff agreed that he did little paid work or education while at the Prison. However, the evidence shows that he took little advantage of what was offered to him in terms of work, education or exercise in the form of minimal paid work and going to the gym.

215. The question is whether he was given a reasonable opportunity to do so or if not, whether this deficit was so severe as to render his treatment in detention degrading or lacking in respect for dignity in isolation or cumulatively.

216. Ms Murray also conceded under cross examination that any educational input for prisoners would be limited to an hour or two per week. It was at a fairly basic standard. The Plaintiff did not take up this opportunity but this is understandable given his education.

Likewise rehabilitative courses were not on offer to the Plaintiff because he had not been convicted of any offence.

217. Although there was initially some confusion about the limited paid activities that were available to the Plaintiff, ultimately Governor Murray's oral evidence was that the following paid work was offered to him (and other prisoners) on a daily roster between cells and consisted of:

a. Laundry;

b. Serving and collecting dishes;

c. Washing up; and

d. Wing and Cell Cleaning.

218. The Plaintiff rarely took up any opportunity for paid work within the prison as shown by the activity logs [HM/6 at 220; TB/646-664]. These demonstrate that he did one hour a day work on only four occasions during the entirety of his stay (a total of four hours). Nonetheless, Ms Murray could not say with certainty how often rostered activities were made available to the Plaintiff, but even if offered daily, she accepted that on days they were available they would be limited to 1 – 2 hours a day at most.

219. It follows that the Plaintiff had access to some but little purposeful activity, as opposed to leisure, for the vast majority of the hours of his day.

220. I accept the evidence that leisure and recreational activities were reasonably available. There was a television in the Dayroom or West Wing plus books available in the Library, Computers in the computer room, and board games available in the Dayroom.

221. The Plaintiff and Mr Yon's evidence was that prisoners were able to request items through the requests system. This system included the provision of recreational items and other entertainment such as books and DVDs. The Plaintiff agreed that his requests logs showed that the Prison provided the requested items within 24 hours, most notably a set of darts [TB/645].

222. The availability of leisure activity must be understood in the context of the Prison's requests system because prisoners were able to acquire items on demand either through items being purchased through the Prison or via family members bringing them items.

223. In addition, the Plaintiff's oral evidence was that the Prison occasionally facilitated social mixing between East and West Wing in addition to the mixing was available within the Wings due to the freedom of movement within them. The Plaintiff also gave evidence that he played cards and on one occasion played a guitar at a gathering.

224. Social visits were also available to the Plaintiff on demand and were not limited.

225. Ms Murray said in her witness statement that music groups and yoga sessions were also available. However, she accepted under cross examination that yoga sessions started after Mr Buckley left the prison and that no music group was in fact organised by the prison.

226. The condition of the Gym and its equipment, as well as the library of reading materials, TV and other recreational provision can be seen in the EHRC photographs taken contemporaneously and I am satisfied that it was adequate for purpose [TB/834, 837-841]. The Gym was located in the basement of the West Wing. It was not a large area but consisted of gym equipment in one room which was 3.5metres by 3.5 metres and in the final third (approximately 5 metres by 3 metres) of the long room (totalling nearly 15 metres in length) in the basement of the West Wing which also housed the library and computers. It was not a gym in which one could run about or play sport.

227. There was a dispute over the reasonable availability of the gym to the Plaintiff for his use. I accept the evidence of the Plaintiff that he only used it on a handful of times because it was hot, lacked ventilation and did not smell good due to sweat and body odour. Ms Murray also accepted that the gym became hot and that there was limited ventilation - the OTPA also found that the gym becomes very hot – there were no direct windows from the basement and there were limited air vents leading to ground level. Nonetheless, I am satisfied that the use of the gym was reasonably available to the Plaintiff, so long as he had booked to use it, and while by no means perfect, it was adequate for purpose.

Purposeful and leisure activity - evaluative judgment on breach

228. I accept the Plaintiff's evidence that there was little in the way of meaningful or purposeful activities made available to him by way of education or work – around 1 hour a day of work (even though he did not often take up the opportunity) and 1 hour a week of education (which it was reasonable for him not to take up).

229. I am of the view that there was very limited provision for meaningful and purposeful activity - there were not significant amounts of purposeful activities regularly made available to Mr Buckley. However, there was a reasonable provision for leisure and recreation activities within the Prison for the Plaintiff as well as socialising which mitigated some of the negative effect.

230. Standing back and assessing the availability in the round, I am of the view that the deficiencies in meaningful and purposeful activities on their own were not sufficient to found breaches of sections 7 or 11(1) because there was reasonable opportunity for recreation, leisure and socialising each day. In isolation, the severe limits in availability did not cause the Plaintiff to be degraded or debased or lack dignity. The deficiencies did not meet the minimum severity threshold. Likewise, although there is a good argument that the Plaintiff's unconvicted status entitled to him a more enhanced regime or at least equivalent to the convicted prisoners, I am not satisfied that the limited availability of purposeful activity alone breached section 11(2).

231. Nonetheless, assessing the Prison conditions in the round I am satisfied that the severe limits on meaningful or purposeful activity in the form of work or education did contribute to and exacerbate the breaches of sections 7, 11(1) and 11(2) caused by lack of outdoor

exercise or work. These conditions also need to considered against the background of restricted, albeit mostly sufficient, personal cell space when in Cell 1 on the East Wing.

Sanitary conditions – the law

232. Access to properly equipped and hygienic sanitary facilities is of "*paramount importance*" for prisoners' sense of personal dignity and a truly humane environment is not possible without "*ready access to toilet facilities or the possibility of keeping one's body clean*", see *Ananyev* §156.

233. Many of the cases on sanitary conditions in Prisons are from Russia and involve in-cell toilets in multi-occupancy rooms, either unscreened from the rest of the cell or with 1-1.5m partitions. *Ananyev* §156-159 sets out factors that the ECtHR has weighed in assessments:

a. Proximity and exposure to an unscreened toilet in a corner of a shared cell was objectionable on hygiene and privacy grounds;

b. Limiting time for showers to 15-20 minutes once a week was manifestly insufficient for maintaining proper bodily hygiene;

c. Prisoners taken to shower halls in groups and showered in areas with shower heads too small to accommodate all of them; and

d. Lack of measures against infestations of vermin.

Findings of fact on sanitation

234. The EHRC photos show the state of the sanitation facilities available to prisoners.

235. In respect of Cell 1 I accept the evidence that:

a. The Plaintiff was taken to the EHRC photos of the various sanitary facilities [TB/796, 798, 800] and conceded that there was more than one sink available for use in the East Wing; and

b. The Plaintiff and Mr Yon were taken to the EHRC photos showing the toilet off the Dayroom in the East Wing [TB/821] and agreed that this was where they were taken if they needed to use the toilet at night, unless there was another prisoner using it, in which case they would be escorted by another guard to the toilet in the East Wing yard [TB/799-801].

236. In respect of the West Wing I accept the following evidence:

a. The Plaintiff was taken to EHRC photos of the sanitary facilities for the West Wing [TB/923, 924, 925, 926]. He could not remember the facilities exactly but it was put to him that those photos showed the sanitary facilities as they were at the relevant time. Mr Yon was taken to the same photos and agreed that those were the sanitary facilities available at the time; and

b. Both the Plaintiff and Mr Yon specifically recalled that there was an issue with temperature regulation in those showers, although there was no record of an issue being raised with the Prison in the log of requests and complaints for either prisoner.

237. I make the following further findings about the sanitary conditions at the Prison:

a. The Plaintiff and Mr Yon both agreed that prisoners were provided with their own towels and Mr Yon acknowledged that all prisoners had access to the washing machines;

b. Governor Murray's oral evidence was that doing laundry was part of the paid purposeful activity available to the prisoners;

c. It is understood not to be in dispute that wherever the prisoners were housed, there was 24 hour access to toilet facilities. During the day this would not require the presence of a guard, although at night this would require the Plaintiff being unlocked and escorted. While in the East Wing he would go to the toilet off the Dayroom and only occasionally have to go the other toilet accessible from the corridor/ courtyard if the Dayroom toilet was in use. I accept the Defendant's submission that this is compliant with the CPT standards since, at no point, was it the evidence of any witness that the prisoners were deprived of ready access to toilet facilities. I accept the Plaintiff's evidence that he may have found it inconvenient and embarrassing to call on someone to unlock the cell during the night to go to the bathroom but I do not accept that this was debasing or degrading;

d. Although not part of the pleaded case and evidence, the Plaintiff's evidence is that his kidney stones meant that he had to go to the toilet more frequently. I accept that the Plaintiff suffered from kidney stones. Contemporaneous medical records refer to him having such. Mr Buckley's witness statement refers to the effect his kidney stones on how often he had to go to the toilet. I accept that on occasion he had to relieve himself regularly in the night. However, I do not accept his oral evidence that he had to go "almost hourly" and that guards would often not be available to take him immediately or that here were occasions where he was unable to do so within a reasonable time. I find this to be exaggeration and if there had been any genuine problem with access to the toilet, he would have raised this as a complaint with the Governor, prison officers or healthcare given its importance. There is no record of any complaint of such.

Further, I accept the Defendant's submission that there was no evidence that guards failed to attend or that he was ever deprived of ready access to a toilet or that they invaded his privacy while using the toilet or shower (the guard stood outside).

e. The Plaintiff suggested that was often vomit in the cells in the police cells off the corridor in the East Wing. It was put to the Plaintiff and Mr Yon in cross examination that the in-cell sanitation in the police cells meant that it was unlikely that there was frequently an issue with vomit in the sink in the East Wing yard. In his oral evidence, Mr Yon said that there were only 3 or 4 police detainees who were brought in over the course of his detention (which was longer than the relevant time). Mr Yon agreed that the issues caused by overnight detainees were not persistent but still unhygienic. Mr Munns did not remember vomit in the sink by the Police Cells being an issue. I accept that it was not a significant or persistent issue and reject the Plaintiff's evidence as exaggeration that the sink downstairs near the remand cells would often be foul smelling or that it would often have been vomited in. I accept it may have happened occasionally, but I am not satisfied that it materially diminished the Prison conditions.

238. Mr Buckley also contended that there were infestations of vermin in the Prison. I prefer the evidence on behalf of the Defendant, given by Ms Murray, that occasionally there were vermin in the Prison but not regularly or often and this was quickly addressed. The presence of vermin at the relevant time was said by Governor Murray, both in her written and oral evidence, to have been vigorously tackled whenever it arose such that there was never an infestation [TB/167 § 9]. There was support for this recollection from other evidence:

a. It is significant that vermin or infestations were not problems identified by Mr Munns in his reports and there are no recommendations in connection with this. In his oral evidence he did not recollect there being an issue with vermin;

b. Mr Yon agreed that public health or pest control were called by the Prison staff in response to reports of presence of vermin. Although he could not be certain of the timing, he agreed they would usually come within 24 hours;

c. In his oral evidence, Mr Yon gave an example of a rat he saw when he was using the telephone in the main prison building, which he said he reported. He said that pest control or public health came the next day to deal with it. I therefore reject the Plaintiff's evidence that he did not recall the cells / wings ever being fumigated form pests or rodents although I accept he may have seen rodents around the cells on occasion as well as cockroaches;

d. Mr Yon said he was concerned about the presence of cockroaches in the area by the lockers in the Dayroom. He agreed that he would have been able to

request bug spray but said he did not do so because the Prison should have tackled the problem by itself. He agreed that there was no record in the log of his complaints and requests of him ever raising issues with vermin [TB/71]. Nevertheless, Mr Yon agreed that he could have requested bug spray or something to tackle an infestation and he would probably have been provided with it. He said he never requested such items because it was the responsibility of the Prison; and

e. I accept that the prison management took appropriate steps to manage occasional outbreaks of rodents and the prison was not 'infested' with cockroaches or other pests, including rodents.

239. I therefore reject the Plaintiff's evidence as to sanitary facilities and washing facilities being unacceptable and degrading or debasing and that there was a significant problem with vermin.

240. While I accept the Plaintiff's evidence that he lost interest in his personal hygiene and he neglected his oral hygiene and suffered a tooth infection, this was due either to his choice or to deterioration in his mental state and not due to the lack of amenities or facilities for personal hygiene and for sanitation provided by the Prison.

Evaluation of breach on sanitation

241. While evidently not in pristine or brand-new condition, the availability or condition of sanitary facilities did not amount to degrading treatment or cause a lack of respect for dignity such as to breach or contribute to a breach of sections 7 or 11(1).

242. There is no doubt that the fabric of the building in 2018 was far from ideal, particularly the oldest part of the Prison and original cells 1-3 in the East Wing as conceded by the Defendant. The sanitation facilities were basic and in need of modernisation, particularly in the East Wing, but they were adequate. I am satisfied they provided sufficient sanitation to meet the essential needs of the Plaintiff at the relevant time.

243. I am not satisfied that the sanitary facilities were humiliating degrading or debasing or caused the Defendant to lack respect for the Plaintiff's dignity. Viewed in isolation or cumulatively they did not contribute to or amplify any breach of ss 7 or 11 of the Constitution.

Natural light, heat and ventilation – the law

244. Rule 13 of the UN Rules requires that prisoners' accommodation shall meet all requirements of health, with regard being paid to lighting, heating and ventilation. Rule 14 requires that in all places where prisoners are required to live or work "*The windows shall be large enough to enable the prisoners to read or work by natural light and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation"*. The CPT Standards require that all living accommodation should have access to natural light as well as artificial lighting and that there is sufficient ventilation to ensure a constant renewal of air inside cells.

245. Therefore, it is a requirement of the CPT and the UN Rules that places where prisoners are required to live or work must have sufficient ventilation to allow the entrance of fresh air. It is requirement of the UN Rules that prisoner's windows must be large enough to read or work by natural light. It is a requirement of CPT rules that prisoners must benefit from natural light.

246. At §153 -§155 of *Ananyev v Russia* (2012) 55 E.H.R.R. 18*,* the Strasbourg Court emphasised the importance of prisoners having unobstructed and sufficient access to natural light and fresh air.

Findings of Fact - heat and ventilation

247. In respect of the alleged breach in respect of ventilation, the Plaintiff's pleaded case appears to relate to Cell 1 (based on the facts at [TB/6 § 17(a)-(g)] such as the description of the barred hole in the wall above the door).

248. The Plaintiff's pleaded case is also that the cell was excessively hot in summer and excessively cold in winter [TB/6 § 17(a)]. The relevant period to this claim is late May to early September, i.e. late autumn, all of winter and early spring in St Helena. However, I take judicial note of the fact that St Helena has a tropical, marine and mild climate. I also take judicial notice of the fact that the more people that were occupying any one cell then the greater the temperature insider would be.

249. In her oral evidence, Governor Murray said that when she arrived on island in June 2018 she felt hot by comparison to the UK temperatures she was used to, but that local staff wore fleeces around the Prison. Ms Murray accepted under cross examination that she found the prison to be hot on her arrival in June and this prompted her to purchase fans for the individual prisoners in the East Wing. Even though it was winter in St Helena, it was her evidence that she reinstated electrical wall fans and introduced personal desk-style electrical fans for each prisoner in Cell 1. However, I accept the Plaintiff's evidence that

he did not receive his own personal fan even if one was bought for Cell 1. In any event, there would not have been any personal fans for around the first month of the Plaintiff's incarceration as Ms Murray did not arrive until 3 June 2018 and the fans may have mitigated but did not eliminate discomfort from heat.

250. The OTPA prison advisor refers to hot, dark, airless cells albeit that I accept the cells would have been much hotter in St Helena's summer – November to March. The EHRC report describes the cells as very hot with no ventilation - the Commissioners found the cells "very hot" during their March – June 2018 visits and inquiries. I must decide this case based on the heat during the relevant time and as experienced by Mr Buckley in Cell 1.

251. In his witness statement Mr Buckley in fact described the conditions in Cell 1 as cold: [para 35;TB 37]: 'The conditions in the cell really impacted on me. I found that I could not sleep at night because of the lack of fresh air and poor air circulation. I recall that it was winter season when I was there. It was very cold during June and the cell felt damp'. In contrast, he described his time in the West Wing from August 2018, differently [para 60; TB 41]. 'Once again there was inadequate ventilation, which meant that we slept with the door open. Often the cells would become really hot and uncomfortable…There were no thermometers in place to monitor the temperature'.

252. I bear in mind, given the establishment of a prima facie breach, that the burden rests with the Defendant to prove that the cells were at a reasonable temperature and Ms Murray accepts the Defendant failed to record cell temperatures during the relevant period. I accept the Defendant's evidence that while in Cell 1 and in the shared cell in the West Wing the temperature during the relevant time was uncomfortable – at times uncomfortably hot or cold - and there were insufficient measures to regulate temperature. The electrical fans in the Prison during the relevant time were inadequate in regulating heat or ventilation.

253. There was a lack of direct ventilation in Cell 1 – there was no window directly to the outside – hence the lack of natural light. In the Defendant's submission this was mitigated by the existence of, and daytime access to, the Dayroom and air that could enter Cell 1 from the Dayroom. The air would enter Cell 1 from the Dayroom through the 2" square barred hole in the wall above the cell door and doorway when the cell door was open and the 18" square barred hole in the cell door when closed.

254. It was accepted by the witnesses that there was also a ventilation system in Cell 1 which was designed to bring in air from the outside through a series of pipes, tubes and electrical fans. However, I accept the evidence that the fans were ineffective at bringing in any fresh air and noisy such that they were not utilised. I accept that Cell 1 was inadequately ventilated through the ventilation system or door grill / opening. Therefore, I accept the

Plaintiff's evidence that the air in Cell 1 would be dank or smelly on occasion although this was not all the time.

255. I also accept that this was not a problem for the Plaintiff when outside Cell 1 during the day and the Dayroom itself had windows and was ventilated with fresh air through windows into the courtyard / corridor which had no roof.

256. The Plaintiff also complained of the smell from the Mantis hotel's septic tank being emptied. I accept the Plaintiff's evidence that this occurred – [para 34 – TB 37]. This was acknowledged by Governor Murray to be unpleasant. Her evidence was that she experienced the smell in the same way as the prisoners because her office was on the same side of the Prison. However, Ms Murray was clear that it never lasted longer than an hour and I accept that it did not persist for long periods.

257. As far as the Plaintiff's time in the West Wing, I have accepted that the shared cell could and did get uncomfortably hot at times and the Plaintiff stated that the prisoners slept with the doors open. There were direct windows from the shared cell onto the West Wing yard, which was exposed to direct sunlight through its open roof although it was covered by wire netting. Due to this, I am satisfied that, while not perfect, the ventilation was better than in the East Wing (for instance there was no suggestion of fans being needed).

Findings of fact – natural light

258. Much like several other breaches, this alleged breach as pleaded appears to relate only to Cell 1 (based on the facts at [TB/6 § 15(a)-(c)] such as reference to the Dayroom and the description of the barred hole in the wall above the door). There is no dispute about light into the West Wing natural light which was adequate because of the windows onto the yard The Plaintiff's pleaded case is that the Defendant failed to provide sufficient natural light in Cell 1.

259. It is accepted that there was no window or direct access to sufficient natural light when in Cell 1 – one would need artificial lighting to read. I accept the Plaintiff's statement [para 32; TB 37], 'There was no natural light in the cell and insufficient even in the day to allow reading. Reading was only possible by torchlight at night… There was a small barred holed above the cell door that did not offer much light or air to circulate.' Daylight could only enter during daylight hours from the barred holed above the door into the Dayroom which in turn had windows into the Courtyard / corridor which had no roof.

260. The Plaintiff, Mr Yon, Ms Turner and Mr Munns all agreed that there was access to the Dayroom for the inhabitants of Cell 1 between 0630 and 2200, i.e. during daylight hours. The Dayroom windows are visible in the EHRC photographs. In oral evidence, the witnesses agreed that the Dayroom had large windows that were capable of letting in

sunlight, depending on the weather. As Governor Murray sets out in her statement, 2200 is lights out, after which time the prisoners are expected to stop reading and sleep.

261. I accept the Defendant's submission that access to the Dayroom during all hours of daylight provided ample mitigation. Throughout daylight hours, the Plaintiff was able to sit in the Dayroom and read with natural light entering through the windows. After returning to their cells at 2200, the prisoners were not supposed to read because that was the time for sleeping.

Evaluation of a breach based on ventilation, smells, heat and natural light

262. I would not have found that the uncomfortable temperatures in cells, inadequate ventilation and smells and lack of natural light in Cell 1 individually or collectively would be sufficient to debase, degrade or humiliate the Plaintiff or demonstrate a lack of respect for the Plaintiff's dignity such as to breach sections 7 and 11 of the Constitution.

263. However, I do find that the negative features of uncomfortable heat and reduced ventilation which were experienced at times should be taken into account when assessing the negative features of the overall prison conditions. They aggravated the breaches of section 7 and 11(1) caused by the lack of outdoor exercise or work and as amplified by a severe limitation in meaningful and purposeful activities available. These conditions also need to considered against the background of restricted, albeit mostly sufficient, personal cell space when in Cell 1 on the East Wing.

Segregation of convicted and remand prisoners – the law

264. Section 11(2) of the Constitution requires that "*every unconvicted prisoner shall be entitled to be treated in a manner appropriate to his or her status*". The Constitution contains a specific provision in respect of the housing of convicted and unconvicted prisoners together at s11(4), permitting mixing of the two categories in certain circumstances:

> *Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, or the facilities available for the detention of prisoners do not permit, or segregation would be detrimental to the well-being of a prisoner, unconvicted prisoners shall be segregated from convicted prisoners, and juvenile prisoners shall be segregated from adult prisoners*

265. Article 10 of the Covenant requires that remand prisoners should be subject to separate treatment appropriate to their status as unconvicted persons. Rules 111 – 122 of the UN Rules require that unconvicted prisoners are presumed to be innocent and shall be treated

as such, and that they shall benefit from a special regime which includes being offered work.

Findings of Fact – segregation - the Remand Cell and Police Cell

266. The Defendant accepts the Plaintiff's assertions in his pleaded case that he was held in Cell 1 between 24 May 2018 and 22 August 2018 [TB/3 § 3(b)] (save for one day when he was on bail) and that he was held in the West Wing between 23 August 2018 and 19 September 2018 [TB/3 § 3(c)].

267. In respect of the period from 20 May to 23 May 2018:

a. The Defendant submits that it cannot be said with certainty on the available evidence in which cell the Plaintiff was held during this period, although the Defendant agrees that for at least one night he was held in either a Police Cell or the Remand Cell.

b. I accept the Plaintiff's evidence that that he was held in the Police Cell for one night before being moved to the Remand Cell for two nights. In Mr Buckley's

oral evidence, he repeatedly asserted that he spent 1-2 nights in the police cell before being moved to the remand cell. Mr Buckley's description of the "holding cell" in his witness statement matches the police cell. Ms Murray accepted she had no primary knowledge of where he was placed. Again, there are no movement records or personal records which establish in which the Plaintiff was detained.

c. I find that the Plaintiff spent the remainder of the 20 – 24 May period in the remand cell following 1-2 nights in the Police cell. This is more likely, and Governor Murray conceded in her oral evidence that the Plaintiff may have been held in the Police Cells by the police while he was being questioned about the offences for which he was arrested, remanded and tried.

d. I accept Mr Rummery's oral evidence that remanded prisoners were usually housed in the Remand Cell off the East Wing yard, which was so that they could be placed under risk of self-harm observations. Mr Rummery said that this was to ensure the Plaintiff's safety and wellbeing. He told the Court that this was due to the large window into the cell being located at the bottom of the stairs to the main building and therefore convenient for guards to conduct their checks. This window and the view from inside the remand cell into the East Wing yard can be seen in the photographs [TB/898];

e. Mr Rummery's medical note says that the Plaintiff was held in the "observation cell" overnight on 20 to 21 May 2018 [TB/83]. Mr Rummery's medical note at 19:20 on 21 May 2018 suggests that from 21 May 2018 the Plaintiff would be moved to general population, i.e. Cell 1 [TB/83]. I do not accept the Defendant's submission that the observation cell was the Remand Cell rather than the Police cell (on the basis of what Mr Rummery said in oral evidence about the observation window in the Remand Cell being used for ROSH observations for remandees). As above, I find that during the period of 20 – 24 May 2018, the Plaintiff spent 1 – 2 nights in the Police cell before moving to the Remand cell;

f. It is not in dispute that from 20 – 24 May 2024, the Plaintiff was restricted to a cell on his own, with the door locked or closed, with no in cell sanitation – he had to use the toilet and shower down the corridor. He also had no window, no access to any facilities or purposeful or leisure activities, no outdoor space or exercise and little social contact. During this time, he was kept under regular observation because of his expressed mental state and the risk of self harm (ROSH);

g. I accept that the Plaintiff was moved from the Police/Remand Cell on 24 May 2018 into the general population in the East Wing in Cell 1 (with convicted prisoners). In Mr Rummery's view, the note shows that the Plaintiff told Mr Rummery that he would prefer to be in the general population. I do not accept that just because Mr Rummery's Police Custody Assessment took place at 16:26 on 20 May 2018, in just over 24 hours after arrest, the Plaintiff was moved to the general population at that time. As noted above, no movement or location records have been disclosed by the Defendant and the Plaintiff was clear that he did not move until 24 May 2018;

Findings of fact – Segregation from convicted prisoners

268. Although, due to the passage of time, Ms Murray could not be precise about the number of prisoners in the Prison at the relevant time, she was clear that the Prison was under capacity during the Plaintiff's detention. The numbers referred to in her oral evidence ranged up to a total of 18-20 prisoners at any time with typically around 8 prisoners in the East Wing and up to 8 prisoners in the West Wing. Although the number of prisoners increased over the relevant period, there was sufficient capacity to keep the Plaintiff segregated from the convicted prisoners, i.e. in the Remand Cell.

269. Mr Buckley was ultimately not segregated from convicted prisoners from 24 May 2018 onwards. I accept the Defendant's case, that as a matter of fact this was because he was asked whether he would prefer to be segregated alone and expressed a desire to be with the other prisoners, which is entirely understandable as being beneficial for his wellbeing:

a. Mr Rummery was asked for his interpretation of the notes that he made in this regard [TB/80-83]. In particular, he was asked about the note at 19:20 on 21 May 2018. This states 'Has been interacting appropriately with other prisoners and officers. Denies suicidal ideation, mood low and convinced that he will be spending a long time in prison (not yet convicted) no sense of hopelessness. Feels that it is worse spending the night in the observation cell, agreed that he move to general population cell. To remain on ½ hourly observations and will review against tomorrow';

b. In his oral evidence, Mr Rummery said that his understanding of what he had written in his note was that the Plaintiff had expressed a desire not to be housed alone and a preference to be with the other prisoners. In Mr Rummery's view, he had appeared to have acceded to the Plaintiff's request by reason of the Plaintiff's wellbeing. I accept this evidence.

270. I do not accept any suggestion by the Plaintiff that he may have been moved to Cell 1 because of insufficient capacity in the Prison rather than at his own request and for his own wellbeing. Mr Rummery consented to the Plaintiff's wishes was for his overall wellbeing.

Evaluation of a Breach

271. I have no doubt that the features of Mr Buckley's detention breached sections 7 and 11(1) for the time between 20 May and 24 May when he was in the remand and police cells. From 20 – 24 May 2024, the Plaintiff was restricted to a cell on his own, with no in cell sanitation – he had to use the toilet and shower down the corridor, no window, no access to any facilities or purposeful or leisure activities, no outdoor space or exercise and little social contact. During this time he was kept under regular observation because of his expressed mental state and the risk of self harm.

272. The overall conditions debased and degraded him and demonstrated a lack of respect for his dignity. I am however satisfied that this was not the intention of the Defendant in any way – the Prison officers and Mr Rummery were attempting to observe his mental state and monitor / prevent a risk of self harm. However, partly because of the lack of available facilities in these two cells and the East Wing of the prison and partly because of the limitation of the regime – the lack of access to work, socialisation and outdoor space for exercise, the conditions for a remand prisoner were inadequate.

273. It also goes without saying that the conditions in the remand and police cell were in breach of Section 11(2) – an unconvicted remand prisoner received worse conditions than a convicted prisoner.

274. In the Defendant's mitigation, as the Plaintiff was moved to general population as pleaded on 24 May 2018, it was still a short amount of time to have spent as an arrested and then remanded prisoner in these conditions and he was given good medical care and attention by Mr Rummery.

275. Furthermore, I am satisfied that there was no breach of section 11(4) of the Constitution as the move for the Plaintiff to mix with the general prison population (convicted prisoners) was justified by the Plaintiff's own request. It would also have been permissible by virtue of the Plaintiff's own welfare, lack of adequate facilities and regime - falling within another exception at s11(4) of the Constitution. In those circumstances, the Plaintiff's lack of segregation from convicted prisoners falls within the exceptions in s11(4) of the Constitution as the facilities available for the detention of prisoners did not permit segregation, or segregation would be detrimental to the well-being of a prisoner,

L. Conclusions on breaches in respect of sections 7 and 11 of the Constitution

276. So far, I have considered each challenged prison condition in isolation. Now I shall draw the strands together and consider all prison conditions collectively or cumulatively. This requires me to consider and balance all the positive and negative features of the conditions of detention.

277. I repeat the guidance from paragraphs 97-101 of *Mursic*:

> 97. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim […].
>
> 98. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 […] Indeed, the prohibition of torture and inhuman or degrading treatment or punishment is a value of civilisation closely bound up with respect for human dignity […]

99. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured […]

100. Even the absence of an intention to humiliate or debase a detainee by placing him or her in poor conditions, while being a factor to be taken into account, does not conclusively rule out a finding of a violation of Article 3 of the Convention […] Indeed, it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties […]

101. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant. The length of the period during which a person is detained in the particular conditions has also to be considered […]

[Emphasis Added]

278. I am required to perform a multifactorial assessment of prison conditions in order to decide if the Plaintiff's rights under sections 7 and 11 have been breached in respect of each of the three time periods. I have considered the conditions in isolation but also cumulatively and the effect they have had upon the Plaintiff.

279. When considering whether there has been any breach I have paid attention to the duration of the conditions of detention – that they occurred for a period of four months at most. This is a significant enough length period of time when it comes to a feature of detention such as a lack of access to the outdoors – whether for exercise or work.

The impact on the Plaintiff

280. I have assessed the conditions not simply on an objective basis - what might be considered adequate or reasonable in the circumstances of an ordinary prisoner in this particular Prison but have taken into account the subjective impact on the Plaintiff. I accept the Plaintiff's evidence that the Defendant's treatment of him diminished his dignity, subjected him to feelings of anxiety and debased him:

i. The Plaintiff required the input of mental health professionals and developed some anxiety and depression and was placed on ROSH on the first few days in detention which continued until mid August – although the frequency of observations decreased.

ii. As set out in his pleaded case and his witness evidence which I accept, the Plaintiff thereafter ceased engaging in self-care in terms of hygiene (see para 58 of his statement TB/41).

iii. The Plaintiff suffered from kidney stones.

iv. I accept the Plaintiff's witness statement and evidence he found the conditions in which he was detained to be unpleasant, demeaning and degrading (best summarised at para 78, TB/44).

281. The precise extent of the suffering caused to the Plaintiff due to the Prison conditions is still a moot point and is a matter for further determination as part of the remedies hearing. I express some caution because while I have largely found the Applicant's evidence to be reliable I have also found his evidence on some non-material points to contain exaggeration.

282. The Plaintiff states in his statement (paras 72-83 TB/43-45): 'I experienced a considerable level of distress and anxiety especially in the early stages of my detention because I could not speak with the people that I needed to for my own sanity and mental wellbeing…I felt my anxiety continued to increase coupled with my health concerns as to having diabetes, which ran in the family. Also I was in pain with my kidney stones and this was affecting me in addition to not having adequate sleep. I was increasingly anxious about the trial and the outcome…Whilst I stopped taking my medication when I came out of prison this was not because I did not want to help myself, rather it was because I could not cope with the side effects of anti-depressants. Looking back now, no alternative tablets were offered to me to help me cope. Had it been then I would have taken an alternative medication as I knew I required the help at that time…I have suffered both unnecessary distress and anxiety as a result of their direct actions / inactions to improve the prison conditions and have suffered humiliating treatment without apology'.

283. To the extent there is any inconsistency with the Plaintiff's evidence, I prefer and accept the evidence of Mr Rummery, the community psychiatric nurse, who gave evidence on the Plaintiff's behalf. He stated that while the Plaintiff suffered some anxiety during the relevant time (whether due to the prison conditions or not), it was no more than mild to moderate at most. Mr Rummery's witness statement, which I accept as reliable because it is based on contemporaneous clinical notes and objective assessment, states as follows from paragraph 9:

> '9. I completed Cruyff's prison intake health assessment on the 19 May 2018 when he was remanded in custody.

10. Upon assessment, Cruyff did not present with any physical or psychiatric problems of concern that required medication or treatment.

11. I had no reason for any concerns, however I decided that I should place him on a ACCT (Assessment Care in Custody and Teamwork) care plan as I was concerned that he may be at risk of suicide. This was not because of anything he told me and he certainly did not disclose any suicidal ideation. However I was aware that he had suffered an immediate loss of status and liberty that is a recognised factor for suicide. He was initially placed on 15 minute observations and this was changed to 30 minute observations on the 21st of May.

12. On 24 May 2018, the ACCT was closed as it was clear that there was no evidence of suicidal risk and therefore he was placed on routine observations which was standard practice for remand prisoners.

13. On 11 June 2018 Cruyff presented and was seen for headache and nausea. There was no significant findings of any illness however and his physical observations presented as normal, but he did admit to feeling stressed.

14. I am aware that he had some dental work done in June 2018 and a course of antibiotics for a tooth infection. He also expressed some concern about diabetes to a community nurse but recent blood results showed he was borderline for diabetes.

15. From mid-June to mid - July 2018, I was off island so no prison assessments took place by me. However this was resumed upon my return.

16. I saw Cruyff in July 2018 at the prison. He presented with some anxiety which was in my experience entirely in keeping with someone who remained on remand and who faced an uncertain future.

17. On 3 August 2018 I again saw him and undertook an assessment. Cruyff scored 7 on the GAD 7 scale which I report in his notes as moderate anxiety. 1 recall that we did discuss medication and self-help advice was given on how he could manage his anxiety. He was given a leaflet on Prisoner Anxiety which is produced by the NHS and covers topics such as managing anxiety and controlling thoughts and behaviours related to anxiety, I specifically told him that benzodiazepines, were not appropriate due to the risk of addiction. He was referred to a doctor and the psychologist for further review.

18. On 13th of August 20 18, he was prescribed an SSRI, Citalopram, for anxiety.

19. Cruyff saw the psychologist who spoke with him and found that he suffered from minimal depression, low anxiety and described him as having hypochondriacal presentation with narcissistic traits. He was offered therapy and medication but chose medication which was prescribed.

20. I reviewed Cruyff on 28lh of August 2018 and recall he expressed his ambivalence towards medication and on the 10th of September he confirmed he had stopped taking his medication because he did not like the side effects. Unfortunately, given he had only taken the medication for about 14 days, this was not long enough to determine efficacy. It was my understanding that he did not want to take any further medication prescribed for anxiety.

21. Cruyff was subsequently released on the 19th of September 2018.

22. All mental illnesses are diagnosed on a spectrum with a significant overlap in mild to moderate presentations of normal reactions to environmental circumstances.

23. At the time Cruyff was assessed by myself and the psychologist, he was found to have anxiety in the mild to moderate range but not considered "overwhelming or incapacitating".

24. Nevertheless he was offered treatment which he did not take long enough so as to determine effectiveness. Of note is that he stopped it as he said 'he did not need it' which could suggest that his level of mental disturbance was not so disabling.'

284. Further, Mr Rummery told the Court that he did not consider that the Plaintiff showed signs of mental health issues after the period of remand in the remand cells beyond what might be associated with a loss of status and detention.

Overall assessment of prison conditions

285. I have also taken into account that there was no intention on the part of the Defendant to debase, degrade or demean the Plaintiff or demonstrate a lack of respect for his dignity even though this has occurred by virtue of the Prison conditions.

286. I have considered the negative features of the Prison conditions identified above for each of three periods and explain how they meet the minimum severity threshold. I have also taken into account those features of the regime and prison conditions which were adequate or positive which mitigate but do no alleviate the breaches.

Throughout the entire relevant time

287. There is an admitted breach of the Plaintiff's right to life under section 6 of the Constitution throughout all the relevant time based upon the real and immediate risk of fire within the Prison.

288. I have also found that throughout all three periods in the relevant time, a period of four months, there was a complete lack of opportunity for Mr Buckley to undertake any outdoor exercise or work. This constituted a breach of sections 7 and 11(1) of the Constitution. I have found that this lack, despite that privilege being afforded to convicted prisoners, also constitutes a breach of section 11(2) of the Constitution. I have found that this lack was sufficient in isolation to constitute a breach of the rights. However, I find that there were additional negative features of the conditions of detention (in particular the severe limitation on meaningful and purposeful activity) that supplemented or amplified the breach such that the conditions cumulatively or collectively breached the Plaintiff's sections 7 and 11(1). Therefore, even if I were wrong and the absence of outdoor exercise

or work for four months is not sufficient on its own to breach the Plaintiff's rights, I am satisfied that the conditions as a whole did.

The Three periods

289. In respect of the first period, 20 – 24 May 2018, I have already found that:

(a) Mr Buckley was detained, if not locked, in a cell 24 hours a day.

(b) That he had to summon a guard to leave his cell or access the toilet / bathroom.

(c) That he had no access to recreation facilities, meaningful activities or outdoor exercise and little social contact.

(d) That he was on self-harm observations during the entirety of the period.

(e) That Mr Buckley was subjected to this regime solely because he was a remand prisoner, and this regime was substantially more restrictive and limited than the regime convicted prisoners were subject to.

290. In respect of this period, I found that the Defendant breached the Plaintiff's rights under sections.7, and 11(1) of the Constitution in that it debased and degraded him and lacked respect for his dignity. I also found that the treatment breached section 11(2) in that the conditions of detention were significantly worse than for a convicted prisoner. I have found however that there was no breach of section 11(4) when he was transferred to the general population to be detained with convicted prisoners.

291. In respect of the second period from 24 May – 22 August 2018, I have found breaches of the Plaintiff's Constitutional rights under sections 7 and 11(1) because of the complete absence of outdoor work or exercise opportunities during the entire three months. While this was sufficient in isolation to found a breach it was exacerbated by a) the severely limited availability of purposeful activities; b) limited ventilation in Cell 1; c) poor regulation of heat within Cell 1; and d) lack of natural light in Cell 1 – even though these additional conditions in isolation or cumulatively would not have given rise to any breach. I have found that the a) leisure and socialising opportunities; b) sanitation; and c) personal space when Cell 1 was shared by one or two other prisoners, taking account access to the Dayroom, were adequate even if at time restricted. However, they were not sufficient to alleviate any breach when balanced in the round. Furthermore, the breaches of sections 7 and 11(1) were also amplified by the breach of section 6 arising from the fire risk. I have found that the breaches did cause the Plaintiff some anxiety.

292. I have also found there to be a breach of sections 7 and 11(1) based on lack of personal cell space in the handful of days in this second period when the Plaintiff shared Cell 1 with three others (a total of four prisoners) and had personal space of less than 3m2. This was not alleviated by access to the Dayroom.

293. In respect of the third period from 22 August – 19 September 2018, I have found breaches of the Plaintiff's Constitutional rights under sections 7 and 11(1) because of the complete absence of outdoor work or exercise opportunities during the entire month. The complete absence of outdoor work or exercise opportunities was a breach of ss.7 and 11(1) of the Constitution.

294. While this was sufficient in isolation to found a breach, it was exacerbated by the severely limited availability of purposeful activities, sometimes unregulated heat and sometimes restricted ventilation even though these conditions in isolation or cumulatively would not have given rise to any breach. I have found that the a) leisure and socialising opportunities; b) sanitation; and c) personal space in the shared Cell in the West Wing, were adequate but they were not sufficient to alleviate any breach when balanced in the round. Again, the negative features of the conditions were also amplified by the breach of section 6 in relation to fire risk. I have found that the breaches did cause the Plaintiff some anxiety.

295. In conclusion, the Court has decided that the negative features of the conditions at the Prison, in particular the lack of outdoor exercise and severely limited purposeful activity for the Plaintiff and treatment when he was a remand prisoner, were sufficient to amount to debasement, degradation, and a lack of respect for his human dignity, beyond that inevitable element of suffering and humiliation connected with detention, such that his sections 7, 11(1) and 11(2) constitutional rights were breached. The refusal to allow Mr Buckley outdoor exercise and work despite that opportunity being afforded to convicted prisoners also constituted a breach of s11(2) of the Constitution.

J. Positive features of the Prison conditions and regime

296. Below, I have set out and find that there were a number of actively positive features of the Prison conditions and regime which applied throughout the Plaintiff's detention. I have weighed these in the balance and decided they are insufficient to alleviate the negative features and prevent there being breaches of the Plaintiff's constitutional rights. Nonetheless, I consider that they do provide significant mitigation of the breaches and record them at this stage because they will be relevant to remedies and quantum.

297. I accept virtually all the points made by Mr Rhys on behalf of the Defendant in this regard.

Complaints and lack of concerns raised

298. The Plaintiff's own evidence was that he was the sort of person who would not shy away from raising issues with the authorities. He had previously served as a member of the legislative council for St Helena.

299. The Plaintiff's complaints and request logs [TB/645, 636-644], as well as the evidence of Governor Murray support this [TB/169 § 23]. The Plaintiff was the sort of person who complained to the Governor about perceived injustices, yet there is no evidence that he raised complaints about smells, heat, cell ventilation, overcrowding or any of the substantive matters raised in this claim.

300. The lack of evidence that Mr Buckley ever raised a complaint or wrote a letter to anyone in a position of authority about his substantive concerns about the Prison conditions now under challenge undermines his suggestion that he did have concerns about them at the time and undermines his credibility as to his subjective experience of the challenged conditions. However, my findings of fact and assessment as to the negative features in the Prison conditions have primarily been based on an objective assessment rather than the Plaintiff's subjective experience. Therefore, the lack of complaint about the challenged conditions in the Prison does not undermine the substance of the findings of breach.

301. As set out above, Mr Rummery gave oral evidence that the Plaintiff raised several issues with him about his mental health the anxieties he was experiencing. Mr Rummery said he had a good relationship of trust and confidence with the Plaintiff, and he felt the Plaintiff did not refrain from discussing his issues with Mr Rummery. The concerns that the Plaintiff did raise with Mr Rummery are recorded in the medical notes.

302. However, Mr Rummery confirmed that the Plaintiff did not raise any of the issues about the conditions of detention or the state of the prison. This feature might suggest the Plaintiff did not have the extent of the concerns about the challenged conditions at the time and weighs against the allegations of breach. However, I accept that it would be unlikely that the Plaintiff would make complaints about non health related matters to Mr Rummery, whose role was purely medical.

303. I have already set out above that I have treated with some caution the Plaintiff's evidence about the impact of the conditions upon him. Nonetheless, while I accept that this suggests that the concerns that the Plaintiff experienced about the conditions were not as extreme as he suggests, I do accept he did have concerns. I accept the Plaintiff's evidence that he did not complain to the Prison authorities (rather than other prisoners) about fundamental matters such as the fire risk, prison fabric or regime that he accepted could not be changed.

Positive features

304. In terms of the positive features of the Prison regime, the evidence does show that the Prison was willing to provide items, such as a dartboard and clothing, to contribute to improving Mr Buckley's conditions of detention. The Prison authorities, including Ms Murray, answered all his formal complaints and requests in a timely and reasonable manner.

305. As already alluded to above, the mental health provision at the Prison was excellent. Mental health provision at the Prison was better than adequate and prisoners had a good level of mental health. Mr Rummery's evidence provided a clear picture of good healthcare and good level of mental health provision. Mr Rummery told the Court that prisoners can request access to healthcare and mental health nursing as much as they like. When prisoners requested access to Mr Rummery, he was phoned by prison staff and came to the Prison to discuss their concerns. Mr Rummery told the Court that the concerns raised may be serious, but, equally, he may be providing emotional support to prisoners on less significant issues, such as a relationship breakup.

306. Furthermore, I accept the Defendant's submission that the Court has seen and heard evidence of several aspects of the Plaintiff's detention that amounted to a positive experience of detention, albeit that these are not sufficient to outweigh the negative features and do not lead to alleviation of a breach:

a. In respect of Cell 1, it was not disputed (and was the evidence of the Plaintiff, Ms Turner and Mr Munns) that the general daily practice, with some exceptions, was that between 0630 to 2200 the Plaintiff was unlocked. Mr Munns agreed that this many hours of unlocking was unique to HMP Jamestown and Mr Rummery told the Court that this provided a level of freedom in excess of what prisoners would normally expect to receive;

b. In respect of Cell 1, and the time that the Plaintiff was unlocked between 0630 and lights out at 2200 and had largely unrestricted use of the Dayroom, he was also able to walk through the corridor in the East Wing to the additional toilets or to socialise. In effect, the Plaintiff had some freedom of movement and was only confined to Cell 1 when it was already dark, and it was time for bed;

c. The Dayroom was a large (10 x 3.4 metre), reasonably ventilated space containing tea and coffee making facilities, personal lockers for prisoners, a George Foreman grill, large fridge for the prisoners' use, reading materials, television, DVD player, table and soft chairs. The Dayroom had very large windows along its length through which light and air could pass. The conditions in the Dayroom can be seen in the EHRC photographs [TB/815-819]. [TB/794] shows the view into the Dayroom from the East Wing yard. The Plaintiff and Mr Yon were shown these pictures and agreed that they showed the items listed above. The Dayroom sanitary facilities are shown at [TB/822]. The Plaintiff said that sometimes the dayroom would be closed in the afternoon such that he would have to return to his cell, but he did not suggest that this was frequently

the case. The Dayroom provided prisoners in East Wing with a reasonable amount of freedom of movement in addition to their sleeping space;

d. In respect of the West Wing, it was the Plaintiff's evidence that there was unrestricted access to the small yard outside it (3.5 x 3.5 metres) between 0630 and lights out at 2200. He said that the door would only be closed if a female prisoner was being walked through the yard, if the prisoners wished to close the door from the cold, or to shut out their cat. Again, there was some freedom of movement albeit that the areas in question were not large;

e. The Plaintiff's evidence was that there would occasionally be social mixing between the prisoners in the West and East Wings to play card games;

f. During his entire period of detention, the Plaintiff had reasonable access (with advance booking) to the basement gym in the West Wing containing an elliptical trainer, treadmill running machine, dumbbells, kettlebells, bar weights, a bench press, leg press, a combination chest machine, pull-up handles and rowing machine [TB/834, 837-841]. The Plaintiff accepted in oral evidence that he was able to use this Gym, but he only used it once or twice – he disliked the heat and the smell caused by lack of ventilation and sweating – see my findings above – I accept that it was an adequate facility even though the Plaintiff chose not to use it much;

g. Throughout the relevant time, the Plaintiff had access to a set of bookshelves containing reading material [TB/842, 834]. The Plaintiff and Mr Yon agreed with this, although the Plaintiff raised an issue with the condition of the available board games;

h. The Plaintiff benefited from the flexibility of the Prison regime, such as the freedom to hold impromptu events or carry out recreational activities in the Multi-purpose Room on the 1st floor of the prison. It was revealed in evidence the Mr Buckley participated in at one event of this type where he was able to play a guitar, although it was conceded by Governor Murray that this was not an activity organised by the Prison and the prisoners were simply given permission to use the space;

i. The Plaintiff benefited from the Prison's responsive requests system, which allows prisoners to request items to be brought or purchased on their behalf. The Plaintiff is recorded as having requested items such as a dart board [TB/195]. The Plaintiff and Mr Yon both acknowledged that they were able to make requests. Both witnesses agreed that all the requested items that are recorded are shown as having been provided within 24 hours of the request being made (although the Plaintiff alleges that he requested his guitar and was refused). The Plaintiff therefore benefited from the Prison's effective requests and complaints mechanism. Prison staff, including Governor Murray, responded to his complaints with care and attention [TB/198-200]. Requested items were provided within 24 hours;

j. There were unrestricted social visits allowed to the Prison (although the Plaintiff has complained that sometimes his access to telephone calls was reduced);

k. The Plaintiff had access to computers [TB/833];

l. All the witness evidence revealed that there were good relationships between prison staff and prisoners and that staff were doing their best to make life as comfortable as possible for the prisoners. There is no evidence of an intention to humiliate or debase, in fact there is evidence of the opposite (most notably the evidence of Mr Munns), that the staff and guards were doing everything in their power to foster a positive and constructive environment for the prisoners;

m. Mr Rummery and Mr Munns both gave oral evidence that the conditions at the Prison were unusual in relation to the safety of staff and prisoners due to the low levels of threat and violence. Mr Rummery said he reassured a young man that had been convicted that being detained in the Prison would not be the kind of frightening prison experience "that you see in the movies"; and

Some availability of paid work. Although most meaningful and work activities were not available to the Plaintiff (farm, workshop or kitchen) he was able to participate in several paid activities (laundry; serving meals; collecting dishes; washing up; and cleaning) albeit that this was only for around an hour a day.

307. There was evidence from the witnesses such as Mr Munns and Ms Murray, which I accept, of unique and positive features of the Prison during the relevant period, even though it is of a small size, old in structure and restricted in layout. There was no gang violence, disorder, widespread use of drugs or serious risks to physical safety from other prisoners during this time (albeit that the Plaintiff complained of a minor fight and falling out or dispute with another prisoner which led him to move to the West Wing). There was no need for a vulnerable prisons unit or segregation cells as punishment.

308. In summary, there was evidence of a number of positive conditions and elements of the regime that were present during the relevant period in Prison. There was some freedom of movement during daylight hours because of the unlock of the cell doors in East and West Wings as set out above. There was unlimited social visiting available. Healthcare from the nurse on call was widely available. The Manager (Governor), Ms Murray, who had recently arrived, and prison officers who had been employed for some time, were able to develop professional but good working relationships with the small number of prisoners in detention. Often this meant they were able to respond quickly and humanely to the requests of the prisoners.

309. Many of the negative features in prison conditions were not driven by the actions of any individual staff member but the physical constraints of the size and location of the prison. The evidence of Mr Munns and Ms Murray was that in many ways, the level of personal attention from staff, general atmosphere and conditions available compared favourably to prisons in other jurisdictions. A good example is that the majority of prisoners, those who were convicted and not high risk, were able to spend regular and

significant time outside the prison working on the farm. Another example is Ms Murray's desire to purchase electrical fans for prisoners on arriving and to correct the fundamental flaws with the fire risk shortly after arriving.

310. Despite these positive features, I reject the Defendant's fundamental submission that the cumulative effect of the above aspects of the Plaintiff's detention was sufficient to overcome the negative aspects.

311. As is set out above, the most significant negative aspects of the Prison regime during the relevant time, primarily the lack of outdoor exercise or work for the Plaintiff but also including conditions such as: the severe restriction in meaningful or purposeful activity; deficiencies in regulation of heat, ventilation and natural light; together with restricted personal cell space, were not alleviated by the positive aspects of the prison regime. As a whole, the conditions for the Plaintiff at the relevant time satisfied the minimum level of severity. Overall, the conditions gave rise to a breach of the Plaintiff's section 7 and 11(1) constitutional rights: they constituted ill-treatment amounting to debasement, degradation and a lack of respect for his human dignity.

K. Postscript

312. The Plaintiff has made a number of further criticisms of the manner in which the Defendant has conducted the litigation. While making no criticism whatsoever of the Defendant's counsel, Mr Hitchens submits that:

(a) On the evidence of the Defendant's own witness, Ms Murray, SHG withheld documents which were plainly disclosable and may have been determinative of elements of the claim. This would be an exceptionally serious misconduct on the part of any litigant. It is all the more serious when exhibited by a law officer.

(b) On Ms Murray's evidence, she informed the Defendant that aspects of her statement were inaccurate and yet the Defendant did not inform the Court or the Plaintiff that evidence filed was materially misleading. Again, if this evidence was given by any witness in respect of any litigation it would give rise to a very serious concern. Here, it was given by a senior, experienced and credible public servant about the Attorney General.

(c) The Defendant maintained, until just before closing arguments, that SHG had not violated s.6 of the Constitution. It did so in reliance on the evidence of Ms Murray who had herself described areas of the prison as a "death trap" in a 2018 report. Ms Murray readily conceded under cross examination that there was a real and immediate risk of death and

that there were reasonable steps that could have and should have been taken to mitigate this risk.

(d) The Defendant has run a hopeless case to trial at very considerable public expense. Aside from the concession in respect of s.6 it was bound to make, the Defendant has continued to defend all aspects of the claim. Perhaps the most striking example of the unreasonableness of the Defendant's approach is that it continues to maintain that the 20 – 24 May 2018 did not give rise to any breaches of the Plaintiff's Constitutional rights.

313. Mr Hitchens submits that these failings were not caused by the challenges faced by the local conditions, the Prison and SHG's lack of resources or difficulties in historic record keeping. Instead, Ms Murray's evidence was clear that the Defendant's lawyers had relevant documents in their control, recognised their importance to the case and simply failed to disclose them.

314. He argues that the precedents the Court sets now shall inform the development of the rule of law in St Helena in years to come. The standards which the Courts require of the Executive in terms of cooperation with the Court and adherence to its duties as a litigant are of vital importance. If the Court tolerates the Executive withholding crucial documents required for the fair disposal of claims, allows misleading evidence to go uncorrected and tolerates the advancing of unmeritorious, or misleading defences, then the Court's ability to fulfil its Constitutional functions shall be compromised.

Determination

315. I make no findings or determinations upon these arguments as they can be considered as part of my consideration of remedy, quantum and costs. I permit the Defendant to file evidence and submissions in reply to these arguments within 14 days of the hand down of this judgment.

Chief Justice Rupert Jones

Draft judgment released to the parties: 2 October 2024

Final judgment issued: 10 October 2024