IN THE HIGH COURT OF JUSTICE **AC-2025-LON-002415**
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

B E T W E E N

THE KING
(on the application of HOWARD LEAGUE FOR PENAL REFORM)

Claimant

-and-

THE SECRETARY OF STATE FOR JUSTICE

Defendant

CLAIMANT'S SKELETON

References to [C/Pg],[S1/Pg], and [S2/Pg] are the Core and Supplementary Bundles.

1. This claim challenges the Defendant's decision announced on 24 April 2025 to authorise the use of PAVA spray in three Young Offender Institutions ("YOIs") in England. The Claimant submits that the decision was unlawful for the reasons set out below. Ground 3 is taken first, for convenience.

    a. **Ground 3:** The decision was unreasonable or irrational. In this particular context, the court ought to apply anxious scrutiny and a stricter standard of review, because of the nature of the interests engaged and gravity of adverse effects on those interests. The central and only justification the Defendant gave for deciding the roll-out was necessary was that PAVA would reduce violence and harm. But there was no evidence that rolling-out PAVA for use on children in custody would reduce harm and violence. In fact, there was substantial evidence that, having regard to the particular characteristics of children in custody, it may, instead, increase harm and violence. The Defendant failed to take that into account.

b. **Ground 1:** The Defendant breached the public sector equality duty ("PSED") in section 149 Equality Act 2010. The duty is more onerous in the present context, and was breached for three reasons. Firstly, the Defendant failed to give due regard to, and assess, whether PAVA would reduce harm and violence, for the reasons in ground 3.

c. Secondly, the Defendant failed to have due regard to the risk and extent of the adverse impact PAVA would have on disabled children in custody and failed to give due regard to the need to make reasonable adjustments to eliminate the substantial disadvantage to disabled children. This is because the Defendant has not systematically or reliably recorded the proportion of children in custody with a relevant disability or impairment who will be impacted by PAVA. There is clear and unchallenged evidence that (i) PAVA may cause serious physical and psychological harm to these children, (ii) the health effects on children in custody of PAVA are not understood and further inquiries are required, and (iii) a range of inquiries which could address these issues pre-roll out have been identified and should have been made. The Defendant's failure to give due regard to these critical issues is a breach of the PSED.

d. Thirdly, the Defendant failed to assess the risk and extent of racial and religious discrimination in the use of PAVA on children in custody, or how it could be eliminated, and/or failed to make reasonable inquiries into those matters. There is unchallenged evidence that PAVA is likely to be used in a disproportionate way against Black and Muslim children in custody, it having been so in the adult context and in respect of other pain-inducing techniques of force in YOIs. There are a number of inquiries which the Defendant could and should have carried out pre-roll out but did not, in order to understand the extent of the discrimination and what may be done to eliminate it.

e. The Claimant's complaint under the PSED is one of quality, not quantity. It does not complain that the Defendant did not spend enough time thinking about PAVA. It is that the Defendant failed to give due regard to the critical issues at the heart of the decision.

f. **Ground 2:** The Defendant breached the *Tameside* duty to make reasonable inquiries; and the duty to have regard to the best-interests of welfare of children in custody. That is for similar reasons as those set out above in respect of the PSED.

The decision under challenge

2. The reasons the Defendant gave for the 24 April 2025 decision [C/139-141] were primarily focused on the high level of violence in YOIs committed both against detained children and against staff, and the serious harm caused by that violence. The justification for the necessity of rolling out PAVA was that it would reduce harm and violence [C/141]:

> "this vital measure is needed to urgently prioritise safety in these three YOIs at this present time. I believe that failing to act will place young people in custody and staff at risk of serious harm. This decision will bring greater stability that is essential to improving YOIs in the short to medium term, notably reducing the highest level of risk and severity of violence".

The conditions

3. The SFG §25 outline the conditions that will be imposed for PAVA [C/32-3]. As noted at SFG §§26-28, similar conditions have been in place for some time in respect of pain inducing techniques ("PITs", of which PAVA is one), but have not been effective safeguards[1] [C/33-5]. Both the Youth Justice Board ("YJB") and His Majesty's Chief Inspector of Prisons ("HMCIP") do not consider them to be effective safeguards. Indeed, the Defendant recognised that PITs already require a child protection referral and scrutiny by the Independent Restraint Review Panel ("IRRP"), yet this has not prevented widespread misuse and persistent disproportionality [S1/737].

4. A full review will be carried out after 12 months, but it is anticipated that the report of the review will not be finalised until 2 years after roll-out [S1/901]. There is the potential for PAVA to continue in use in YOIs in the meantime: see 'readout' from the Lord Chancellor of

[1] Three supplementary points are that relevant staff have for some time been given training on the awareness of bias, under the Minimising and Managing Physical Restraint (MMPR) 5-day initial training programme with a 1-day refresher every 6 months: [S1/741] §11. The EHRC submissions at §67 explain that a recent inspection found oversight had deteriorated [S2/555]. And a YCS note of 22 June 2023 stated "we have had two incidents at least of staff punching children as acts of personal protection" [SC/441] §5.8.

10 April 2025 which states "Any further use of PAVA beyond the formal review point is [redacted], informed by the best available evidence from the live evaluation." [S1/927]. The fact of a prospective review, thus, does not militate against the pressing nature of consideration of the legality of the decision already made.

Engagement

5. In 2023 the Defendant engaged with a number of bodies about the proposed roll-out of PAVA in YOIs. All of the respondents, bar the Prison Officers' Association, strongly opposed the proposal. Those respondents who opposed it are statutory bodies and institutions with expertise in child protection and welfare in the criminal justice context:
   a. The YJB [C/551-4]. Its statutory functions encompass giving advice to the Defendant in respect of the deployment of PAVA in YOIs;
   b. The Children's Commissioner [C/557-8]. The 'CC's' statutory functions encompass providing advice to the Defendant regarding the deployment of PAVA in YOIs;
   c. HMCIP, Charlie Taylor [C/555-6]. His statutory functions encompass reporting to the Defendant about the decision to deploy PAVA in YOIs;
   d. NHS England [S1/563] §22;
   e. The Association of Directors of Children's Services ("ADCS") [C/545-7]. Directors of Children's Services have statutory functions in respect of children within YOIs;
   f. The British Association of Social Workers ("BASW"), with over 22,000 members [C/559-61]; and
   g. The Alliance for Youth Justice ("AYJ"), an alliance of more than 75 respected organisations who work in this area, such as the Association of Youth Offending Team Managers and the Claimant [C/548-50].

No evidence that PAVA will be effective in reducing violence or harm

The 'immediate impact'

6. One question is what is the 'immediate impact' of PAVA: that is, its impact during the course of a specific incident. There was no evidence to support critical steps in the reasoning for a conclusion that, for children in custody, its immediate impact is to reduce violence and harm.

7. ***First***, there was some evidence that PAVA could reduce immediate violence in adult prisons, in certain circumstances. The Operational Response and Resilience Unit ("ORRU") at HMPPS review of adult prisons dated 29 Jan 2025 reviewed a limited sample of 120 'events' in which PAVA was used in adult prisons [C/533-42]. It concluded that, "PAVA may have contributed to stopping violence" in 99 of the 120 events reviewed – namely 82.5% of them.

8. The review is heavily qualified. For example, it noted [C/533] (emphasis added):

> "In any robust study of impact there is a comparison state against which to compare the intervention – this was not possible for us to conduct in this post-hoc observational review, and this means we must remain cautious on asserting impact or efficacy when the alternative to deployment can only ever be a best guess, however well-informed."

9. This was only a limited sample of 120 out of over 1,000 uses of PAVA [S2/452-4]. There was other evidence that the immediate impact of PAVA in adult prisons, overall, was to increase injury. A review on the use of force in adult prisons, including PAVA, commissioned by the Defendant, and conducted by Dr Grant Bosworth (2025), concluded "injury rates for prisoners following baton and PAVA use are between **4-6 times the injury rates** when these techniques are not used." [S1/861, cf. 848]. He set out a range of further inquiries and analysis that could be conducted to better understand the impact of PAVA on violence and harm in adult prisons [S1/868-9]. There is no evidence they have been conducted, despite their relevance to the application of PAVA in YOIs.

10. Dr Bosworth had earlier been commissioned by the Defendant to produce a report in September 2023 on "international literature on PAVA (and pepper sprays), the pilot of PAVA [in adult prisons], and more recent findings from the national roll-out" in adult prisons [C/524]. That report explained that "The data shows that PAVA use is associated with higher reported injuries than other force." [C/531].

11. Dr Bosworth postulated some possible reasons why injury rates and hospitalisation for prisoners are at elevated rates when PAVA is used. This "may sometimes be a result of the preceding events" [S1/848]. However, official guidance states that use of force forms "should only record injuries sustained due to force [i.e. the force initiated by staff] and not due to the incident preceding force, but it is not always clear if this advice is followed"

[S1/847]. He recognised that the higher level of injury may be due to PAVA itself [S1/861]. He noted injuries may be "from C&R following a PAVA use" [C/531].

12. This may be linked to the impact of PAVA on children. In response to questions posed by the Defendant to him, Dr Maconachie, a consultant in paediatric emergency medicine at Imperial College and an HMPPS medical advisor, advised that the effects of being sprayed with PAVA may cause a child to flail about and thereby suffer injury, through control and restraint or otherwise [C/504].

13. Dr Bosworth considered that, while PAVA can be an effective tool to cease serious incidents and life-changing injury in certain circumstances, in adult prisons: "it is unlikely to reduce overall violence [or] noticeably improve safety" [C/525]. He explained that the beliefs of some prison officers that PAVA "greatly reduced assaults and improved their safety… was not backed up by formal reports of assaults which showed little difference between trial and control sites in the frequency of these incidents" [C/526]. Dr Bosworth noted that after PAVA had been embedded in an establishment "views were mixed as to whether the introduction had any real impact on overall staff confidence and safety at an establishment level" [C/529]. Dr Bosworth considered that further research is required to better understand why PAVA use is associated with a greater level of hospitalisation and injury: e.g. [S1/848, 861 and 869 §6]. That research was not done prior to YOI rollout.

14. **Second,** those results are from adult prisons. Children in custody have particular characteristics, including high rates of neurodiversity, mental health needs, communication needs and trauma, which mean that the impact of PAVA on adults does not translate to children [C/505]. For children with those particular characteristics, there is considerable, and unchallenged, evidence that PAVA can *exacerbate* violence and increase harm during the course of a specific incident.

15. In a literature review, commissioned by the Defendant, for the purpose of the contemplated PAVA roll-out, the Lead Psychologist for the Youth Custody Service ("YCS"), which is part of the Defendant) explained that children in custody have exceptionally complex needs, and "using sprays with complex needs can increase and exacerbate difficulties deescalating

situations… The use of incapacitant sprays therefore has the potential to escalate, rather than de-escalate, incidents… research regarding the use of incapacitant spray on an 11 year old child highlighted psychological impacts with the child presented as agitated, restless and disorientated for up to 10 minutes after the spray being used which may have escalated, rather than de-escalated, the situation" [C/515].

16. Although there is very limited evidence of the immediate impact of PAVA use on children, the YCS Lead Psychologist reported on the experience of 5 boys in custody who were subject to PAVA in the community and noted "Debilitating effects"; but also an "anger response: all reported an apparent innate response of anger during the event" and "vengeful thinking: intense dislike and desire for revenge towards the administrator" [C/522].

17. Further, a note to the Minister on 17 January 2025 about an incident in Vinney Green Secure Children's Home, indicates the immediate impact of the use of PAVA on one child was to cause two other children to become violent. PAVA was used on 'Child A' because he was threatening to stab staff with a sharpened toothbrush: "§6. Following that, Child B… presented with the same behaviour of making a weapon and threatening staff. He was subsequently managed in the same way, with police deploying PAVA spray on him… §8 Child C… was also threatening and abusive to the police on site after witnessing the previous incidents involving Child A and Child B" [C/582] .

18. At the behest of the Defendant (see [C/492]), NHS England produced a paper dated 1 June 2023 about the use of PAVA on children in custody. This noted [PB/493-5] §§5, 7, 9:

> "… there is a high rate of mental health problems in the CYPSE, therefore there is reason to believe PAVA may be less effective in the CYPSE population… children with an autistic spectrum condition could be one group that might not response to PAVA as expected… increased agitation following administration of PAVA in this 'non-standard' cohort is also reported… There is a risk that [these] children … might experience increased agitation, as autistic meltdowns are triggered by sensory and emotional overstimulation. Irritant sprays are designed to cause unpleasant sensory sensations… Sensory sensitivities are not unique to autism and can occur across neurodiverse populations… From the limited evidence available on the use of PAVA spray in neurodiverse populations it is reasonable to conclude that autistic individuals may be differently affected by the effects of PAVA... This may also be true of other neurodiverse individuals. It is an area where more research should be done."

19. The conclusion that children with autism or other neurodiversity may have *increased* agitation in response to the use of PAVA is important because of the high rates of those conditions among children in custody. Statistics for the YJB identified that children who are sentenced to custody, 81% had a mental health concern [S2/91]. Other evidence indicates 80% of children in the criminal justice system have special educational need or neurodivergence; 15% of children in custody have autism; and children frequently have undiagnosed needs [C/434] §4.11.

20. Another reason why PAVA is less likely to have an immediate reduction in violence was given in a YCS decision paper on PAVA of 22 June 2023: "ineffective use with neurodivergent… Children have less consequential thinking thus deterrent effect less likely in CYSPE than adult estate" [S1/448-9].

21. **Thirdly**, there is no evidence to show that, for children in custody, the proportion of incidents during which PAVA will reduce violence (if any) will outweigh the proportion in which PAVA will increase violence. That is, there was no evidence PAVA will have even an immediate benefit in reducing violence or harm in respect of children in custody. To the contrary, as the YJB explained: "Our advice to the government, based on robust evidence, is that PAVA spray is not effective in reducing violence… In fact, its use could be harmful… The risks with introducing PAVA are multiple and significant." [C/585].

The 'secondary impact': violent repercussions

22. As to the secondary impact, there is considerable and unchallenged evidence that introducing PAVA will increase violence in general in YOIs. That evidence includes the following:

    a. The YJB [C/586]:

> "The YJB has concluded that it does not support the deployment of PAVA as it would have an overall detrimental effect on children in custody and the aim of reducing reoffending… PAVA is not going to offer a solution to the fundamental problems of youth custody, and indeed is likely to exacerbate them… The Independent Inquiry into Child Sexual Abuse [concluded that] "use of pain compliance techniques… [are] likely to contribute to a culture of violence" [PB/231] "We are concerned that the introduction will erode trust and relationships, undermining safety and rehabilitation efforts."

b. The Children's Commissioner [C/558]:

> "I also want a children's estate that is safe both for the children who live in it and the adults who work in it. However, I consider the introduction of PAVA counter-productive to this purpose, as it is likely to increase tension…"

c. HMCIP, Charlie Taylor [C/555-6]:

> "The principles of improving children's behaviour are well-established… I am concerned that introducing PAVA into already frail institutions without effective behaviour management systems will be counterproductive… it risks adversely affecting relationships between children and staff, and it is unlikely to lead to improvements in safety … in the YOI Estate"

d. That was a significant intervention, not only because of Mr Taylor's statutory functions, but also because of his considerable expertise: he was the author of an authoritative review on the use of pain inducing techniques ("PITs") in YOIs, in 2019.

e. The ADCS (reflecting a consensus of members) explained that the use of PAVA in the adult estate "has not served to significantly decrease overall levels of violence… We… are concerned that use, however sparing, is more likely to create fear and distrust resulting in an increase tensions and violent incidents…" [C/545].

f. The literature review by the YCS Lead Psychologist also indicated reasons why the roll-out of PAVA may increase violence in general. For example: "Children might then start to behave in such a way that encourages staff to deploy PAVA" [C/516]. She explained that assaults against staff do not currently tend to involve weapons. But she explained why, if staff begin carrying PAVA, that has the potential to fracture relationships and increase the use by children of weapons. She, and others, place great emphasis on the importance of good relationships in reducing violence: [C/516-7].

g. Dr Bosworth [S1/863] explained that "a wealth of evidence demonstrates the importance of good relationships between officers and prisoners" on the health of an institution, and that perceptions of unjust treatment are both a consequence of, and a contributor to, higher rates of prison violence" [S1/863-4 and 867].

h. That concern was mirrored by BASW, which emphasised the crucial nature of the staff-child relationship [S2/481]. They also referred to the high levels of trauma suffered by children in custody and said "Inevitably such trauma results in behaviours which are maladaptive responses and which can include aggression. What 'should' work to manage 'rational' adults will not work with traumatised children." [C/559].

i. The study by HMPPS' ORRU of PAVA use in adult custody concluded [C/538]:

> "We intend that appraisals of suitability and perceived consequences will be informed by ongoing evaluation. Not least we understand that the potential effects of PAVA deployment (and other UoF techniques) may persist beyond the incident (perceptions of unfairness or perceived lack of trust can seriously impact the culture and relationships within the custodial setting and beyond and will in turn influence the likelihood of future violence) and we would want to incorporate those considerations into future work."

j. That further evaluation was not completed before the PAVA roll-out in YOIs. The YCS stated "The priority will always be to prevent and avoid any acts of violence" [S1/446]. Yet, apparently contrary to that priority, the YCS accepted: "Evidence shows that PAVA does not reduce incidents of violence and may increase them" [S1/452].

k. The Defendant's Child Rights Impact Assessment accepted that it "may be the case" that "roll out of PAVA may lead to a breakdown in relationships such that there was an increase in the overall number of violent incidents" [C/297].

The physical or psychological harm PAVA will cause children in custody

23. The evidence makes clear that: (a) There are reasons to think that PAVA may cause serious harm to children in custody, having regard to their specific characteristics. (b) The physical and psychological harm PAVA will cause to children in custody is not yet understood. There is very little research into the medical implications of using PAVA inside closed custodial buildings, on children. None of the reports listed below came to concrete conclusions about the harm it will cause. (c) Further analysis was essential in order to understand the impact. That analysis was not done.

24. While there is data on the effects of chemical sprays on adults in the community, it cannot be translated to children in custody because: firstly, PAVA is likely to have more intense effects when used in enclosed spaces [C/517]. A third of PAVA use in adult prisons is used in confined spaces such as cells [C/528]. Secondly, children are likely to be more sensitive to PAVA than adults. Thirdly, children in custody have high rates of trauma and other mental health needs which are likely to intensify the adverse impact of PAVA.

25. The evidence to support the points set out above includes the following. Dr Bosworth explained PAVA causes the subject to experience "an intensely painful burning sensation to the skin and eyes… There is also usually nose discomfort and difficulty breathing. Many people experience disorientation and feelings of panic… It is unusual, but not unheard of, for symptoms to last between four hours and several days – in one study, this was the case for 17% of those who had been sprayed" [C/526].

26. The YJB stated "the health effects on children are not understood[2]. A paediatric assessment must be conducted, considering not only physical risks but also emotional and psychological risks". In particular "A paediatric assessment should include a consideration of how the routine deployment and use of PAVA may impact on trauma" [C/553]. None of the other reports identified the physical or psychological risks of PAVA on children in custody, or the extent of its impact on trauma.

27. It was very important to conduct this assessment to understand how PAVA use would impact on a child who has suffered trauma, because of the high rate of trauma among children in custody. The YCS Lead Psychologist explained: "The current population of children in custody present with exceptionally complex needs including developmental difficulties associated with complex trauma… all children in custody are assumed to have experienced trauma… With the impact of trauma being accumulative, any additional actions taken must therefore consider the potential impact… the implementation of PAVA therefore potentially contributes to the accumulation of trauma in this population" [C/514]. This analysis was mirrored by the Children's Commissioner [C/558]; and the BASW: "Deploying chemical

[2] This is uncontroversial. See also [S1/624], and [S2/456-60]

incapacitant risks exacerbating trauma" [S2/481]. Similarly, the YCS acknowledged PAVA as "Potentially traumatising and impactful on cognitive development" [S1/449].

28. The YCS Lead Psychologist pointed to other potential harms to children in custody of PAVA. For example: "children are particularly vulnerable to pain inducing techniques due to the physical stage of development. Whilst not PAVA specifically, research conducted on the use of incapacitant sprays with this cohort have raised significant concerns." [C/515].

29. NHS England (commissioned by the Defendant) explained: "There is a paucity of research on the use of irritant sprays in neurodiverse populations… there is a high rate of mental health problems in the CYPSE… PTSD from use of irritant spray occurred in 25% of those exposed to CS spray and more likely in those with mental health problems… it seems like the higher rates of mental health problems could put them at increased risk of PTSD" [C/494-5]. NHS England concluded that further research should be done into the potential adverse effect of PAVA on neurodiverse individuals. It identified further inquiries. For example, it noted that there had been a prospective British study on the use of irritant sprays which included 14-18 year olds, and that NHS England had written to the lead author asking if he can share the findings [C/493]. The further research or inquiries were not carried out.

30. Dr Maconachie explained: "There is a paucity of information specifically about its use in children and young people, and medical implications" [C/500]. He supported and identified further work that should be done to help understand the adverse impact: (i) an assessment of the medical effects of PAVA use in the adult establishment [C/504] (although he said caution must be applied when translating the impact of such data to children); (ii) collection of further information about the direct medical effects, and "secondary injury" of PAVA, whereby the clinical effects (such as the burning sensation) may cause the child to flail about, and in consequence injure themselves or be have to be restrained, leading to further injury. He considered that this "would add value"; and (iii) consideration by clinical psychology about the developmental stage of children in custody [PB/497 and 505]. The Defendant did not bring about any of this research.

31. The Equality Analysis ("EQA") (April 2025) referred to the NHS England recommendation that the impact of PAVA on neurodiverse individuals "is an area where more research should be done", and noted that Dr Maconochie had explained that "there is no specific literature on the use or medical effects of PAVA on CYP and supports the need for further research". The EQA accepted: "The retraumatising impact of using PAVA (as it induces pain) must be considered. There is limited research into the impacts of PAVA on CYP" [C/232]. Yet the Defendant brought about no further research into the impact of using PAVA on neurodiverse children in custody.

GROUNDS FOR JUDICIAL REVIEW

Ground 3: The decision to roll-out PAVA was unreasonable or irrational

Anxious scrutiny required

32. The standard of review, and the test of unreasonableness, varies, depending on the context: *R (KP) v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] EWHC 370 (Admin) §58-63. Factors which influence the standard of review include "the nature of any interests engaged and the gravity of any adverse effects on those interests": *R (Bourgass) v. Secretary of State for Justice* [2015] 3 WLR 457 (SC), §129; *Kennedy v. Information Commissioner* [2015] AC 455, §48-54; and, *KP* §58-63 summarising other judgments.

33. Here, highly sensitive interests are engaged, and the potential adverse effects of the decision are grave. This means that the court ought to apply anxious scrutiny and a stricter standard of review. For example:

    a. PAVA is a dangerous 'pain-inducing technique': a weapon classed as a firearm: SFG §12 [C/29]. It could have very serious adverse effects. Those include (i) by increasing violence and harm in custody: §22 above; (ii) serious psychological or physical harm to the children on whom it is used: §23-31 above; and (iii) there is evidence that PAVA will be used in a racially discriminatory way: §69-77 below.

b. The facts that PAVA is due to be used on children, and those children are detained by the state behind closed doors, are relevant. In *R (C) v Secretary of State for Justice* [2009] QB 657, the Court of Appeal explained at §58: "Two circumstances that have been identified as imposing special obligations on the state are that the subject is dependent on the state because he has been deprived of his liberty; and that he is young or vulnerable." While that was said partly in the context of Article 3 ECHR, equivalent interests are protected in the common law (see, e.g. *Kennedy* §46; and *R (Osborn) v Parole Board* [2014] AC 1115, §57 and 62).

c. The children PAVA will be used on are extremely vulnerable. Most or all have a significant history of trauma, which is likely to make them more vulnerable to the effects of PAVA. There is a high rate of mental health needs and neurodiversity, which risks exacerbating the adverse impact: §14-20 above.

Why the decision was unreasonable

34. The key reason given by the Defendant to justify the decision, was that PAVA would reduce violence and harm [C/141]. But there was no evidence to support critical steps in the reasoning leading to that purported justification. In particular:

a. As to the **immediate impact**, there is evidence that PAVA can reduce violence (and therefore serious harm) during the course of specific incidents in certain limited circumstances in adult prisons. But it is unclear that there is even an immediate benefit, overall, in adult prisons. Other evidence indicates immediate harm or violence, overall, may increase. For example, there are 4-6 times the injury rates when PAVA (or a baton) is used than otherwise: §§6-22 above.

b. There is no evidence of the extent to which the findings in adult prisons can be translated to children in custody. To the contrary, there is unchallenged evidence to show that, because of the particular characteristics and needs of children in custody, including high rates of neurodiversity, PAVA is more likely to escalate situations, increasing the level of immediate violence (and therefore serious harm) during the course of a specific incident: §§9-20 above.

c. There is no attempt to weigh up any immediate decrease in violence in some incidents, against the immediate increase in harm and violence in others: no evidence that the former outweighs the latter. That means there was no evidence PAVA will have even an immediate benefit in reducing violence or harm in respect of children in custody.

d. As to the **secondary impact** there is considerable and unchallenged evidence that introducing PAVA will increase violence in the longer-term in YOIs. There is no evidence that this secondary increase in violence would be offset by any immediate reduction (if there is one) in violence during the course of individual incidents: §22 above.

35. There was therefore an unexplained evidential gap or leap in the reasoning: there was no evidence to support essential steps in the analysis of what impact introducing PAVA would have on harm and violence.

36. This was a critical error:

a. ***Firstly*** the assumption that PAVA would reduce harm or violence was the key and only justification given by the Defendant as to why it was deemed necessary. The Defendant's reasons placed great weight on the level of violence in YOIs and the assumption that PAVA would reduce it.

b. ***Secondly***, the overall level of harm and violence is obviously a very important matter: it could cause very serious harm to children in custody and staff. The importance of it was acknowledged. For example, the YCS stated that: "The priority will be to prevent and avoid any acts of violence" (22 June 2023) [S1/446]. In a meeting on 11 January 2024 with the Lord Chancellor and Minister, the potential importance of issue (b) was recognised: "The concern that in addressing the immediate violence issues is that you create a long term escalation and rising tenor of violent behaviour" [S1/621].

c. ***Thirdly***, the concern that PAVA would increase harm and violence were important reasons given to the Defendant by the respondents who opposed the roll-out, as to why

they opposed it: §§5, 7-22, 25-31 above. It was particularly important for the Defendant to take account of the views, in this respect, of the respondents who had statutory responsibilities and expertise for advising the Defendant about these issues and/or for providing services to children in custody.

37. Turning to the law, the decision was unreasonable because there was "no evidence to support an important step in the reasoning, or … the reasoning involved a serious logical or methodological error": as in *R (Law Society) v Lord Chancellor* [2019] 1 WLR 1649 at §98, Leggatt LJ and Carr J. There was no evidence to support critical steps in the reasoning leading to the conclusion that PAVA would reduce violence or harm for children in custody: §§6-22 above.

38. Similarly, the decision was unreasonable because there was "an unexplained evidential gap or leap in reasoning which fails to justify the conclusion" … "particularly in a context where anxious scrutiny needs to be applied": *R (Wells) v Parole Board* [2019] EWHC 2710 (Admin), §32 and 33; and *KP* §56.

39. Further, or alternatively, since anxious scrutiny is required, the court should ensure that "every factor which might tell in favour of an applicant has been properly taken into account": *KP* §60. The Defendant failed to do so, since he failed to properly take into account the factors and expert views summarised in §§5, 7-22, 25-31 above, which told in favour of not rolling-out PAVA. It follows from the three points above that these were obviously material considerations. She also failed to take into account the evidence and views that the purported safeguards for the use of PAVA will not be effective: §§3, 7-13 above.

40. There was also "mischaracterisation and/or ignoring of important material evidence" by the Defendant: as in *R (MKA) v SSD* [2023] EWHC 1164 (Admin), §78(b). For example, the EQA indicates that the rationale for the decision was that PAVA would reduce violence, relying on the response of Charlie Taylor [C/218]. However, Mr Taylor's response was to the contrary: PAVA "will be counterproductive… it risks adversely affecting relationships between children and staff, and it is unlikely to lead to improvements in safety … in the YOI Estate" [C/555-6].

41. Further, there was uncontradicted evidence that introducing PAVA would undermine the rehabilitation of children in custody: YJB [C/585]; YCS Lead Psychologist [C/517]; and the BASW [S2/481]. It was important for the Defendant to take this into account. That is because the prevention of further offending is the principal aim of the youth justice system: s.37 Crime and Disorder Act 1998; and *R (Smith) v SSHD* [2006] 1 AC 159, at §23-25. But the Defendant did not take into account the evidence of the adverse impact PAVA would have on rehabilitation and the prevention of future offending.

42. In consequence, there were a series of serious and unexplained flaws in the analysis that was at the heart of the justification for introducing PAVA. For all of those reasons, taken together, the decision to roll-out PAVA was unreasonable or irrational. This is a complaint of 'process' unreasonableness, rather than 'outcome' unreasonableness (as discussed in *KP* at §55).

Weight

43. The DGR argue that a "wide margin is appropriate". The Claimant submits that it is appropriate to give particular weight to the views of the experts set out in §22 above that PAVA will increase violence. That is because the YJB, Children's Commissioner and HMCIP have statutory functions which extend to advising the Defendant about these issues. Those three bodies, together with the ADCS, BASW, YCS Lead Psychologist and Dr Bosworth, have particular expertise in the matters at issue, which makes them best placed to reach a view. This means that significant weight ought to be given to their views: *R (AAA (Syria)) v Secretary of State for the Home Department* [2023] 1 WLR 4433 (SC) §65-66 and 68.

44. There is no-one to whom the court should give a margin of appreciation who has expressed an informed contrary view to those experts. Neither the Defendant, nor a civil servant, has properly addressed his mind to the question of whether PAVA will reduce violence. This means no substantial weight should be accorded to their view about this issue: *R (SD) v Chief Constable of North Yorkshire* [2017] EWCA Civ 1838, §51. The views of those in the paragraph above are essentially uncontradicted by any cogent evidence to the contrary (as in *AAA* §70.) In any event, "weighing competing bodies of evidence, and assessing whether there are grounds for apprehending a risk, are familiar judicial functions": *AAA* §55.

Ground 1: the PSED in s.149 of the Equality Act 2010 ("EA 2010")

45. The importance of the PSED has been repeatedly emphasised: *R (Bridges) v Chief Constable of South Wales* [2020] 1 WLR 5037, §§175-180; *R (Bracking) v Secretary of State for Work and Pensions* [2014] Eq LR 60, §§26 and 59[3]. The PSED is a duty of 'process not outcome' but that does "not diminish its importance": *Marouf* §15. The complaint in this case is one of process.

46. The requirements of the PSED depend on the context and circumstances of the case (*Bridges* §181). Those circumstances include the importance of the adverse impact on the disadvantaged group (e.g. *R (Baker) v Secretary of State for Communities and Local Government* [2009] PTSR 809, §31). This is similar to the wider principle in public law that the standard of review depends on the context, including "the nature of any interests engaged and the gravity of any adverse effects on those interests": see §33 above.

47. For example, in *R (C)*, the Court of Appeal upheld a finding of breach of the precursor to s.149, the race equality duty, prior to the Defendant introducing the use of physical restraint for children in custody in Secure Training Centres for the purpose of ensuring good order and discipline. The Court of Appeal held the failure to comply with the duty in this context was "a serious matter": §48 and "of very great substantial, and not merely technical, importance": §§54 and 49. The same applies to the present case.

48. *Bracking* at §26 explained that the Minister must assess the risk and extent of any adverse impact before the decision is made:

> "(4) A Minister must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy and not merely as a "rearguard action", following a concluded decision."

49. There are three points to note about this. ***Firstly***, the assessment must occur <u>before</u> the decision is made. *Bridges* similarly stated at §175 that "The PSED must be fulfilled before and at the time when a particular policy is being considered". In *R (C)*, the race equality duty

[3] *Bracking* was approved in *Hotak v Southwark LBC* [2016] AC 811, at §73; and both *Bracking* and *Bridges* were cited with approval in *R (Marouf) v SSHD* [2025] AC 130, §§14-15

was described as "an essential preliminary to any such decision". The Court of Appeal held that carrying out a survey of race impact only after the decision had been taken, was incapable of meeting the statutory duty: §49. The Statutory Instrument which allowed children to be physically restrained to maintain good order and discipline was therefore quashed: §55.

50. ***Secondly***, the Minister must "assess the risk and extent of any adverse impact" of the proposed measure (*Bracking*). In the present context this means assessing the risk and extent of any adverse impact of using PAVA on Black, Muslim and disabled children in custody in particular. Similarly, s.149(3)(a) requires the Defendant to have due regard to the need to remove or minimise the disadvantage that will be suffered by Black, Muslim and disabled children in custody as a result of PAVA. In order to do so, the Defendant must have due regard to the disadvantage that PAVA will cause to those children.

51. ***Thirdly***, the Minister must assess the ways in which the risk of adverse impact on Black, Muslim and disabled children by using PAVA "may be eliminated". This is linked to s.149(1)(a) EA 2010, which requires the Minister to have due regard to the need to eliminate discrimination.

52. For the most part, the question is not whether the regard had was irrational or unreasonable. The court decides for itself whether there has been rigorous consideration of the duty: *Bracking* §§26(8), 60 and 64.

53. The PSED also contains a duty of reasonable inquiry. That is: "If the relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consultation with appropriate groups is required": *Bridges* §175(5) (cited in *Marouf*) and 181. Again, the question of what "reasonable steps to make inquiries" are necessary depends on the context. In *Bridges* the Court of Appeal found a breach of the duty to inquire, because there was evidence that face recognition technology used in a trial by the police may have a bias on grounds of race or sex, and the Defendant had not sought to satisfy themselves by direct or independent verification that it did not: §199.

Analysis

54. The Defendant accepts that the roll-out of PAVA will have an adverse impact on the protected characteristics of race, religion and disability [C/232, 235-6]. In consequence, it is necessary for the Defendant to comply with the PSED in those respects. The requirements of the PSED depend on the context. Those requirements are particularly onerous in the present context, because of the importance of the interests at stake and the potential gravity of the adverse consequences. That is because of the factors in §33 above. There was a breach of the PSED for reasons set out below. These points are set out separately below, for the sake of analysis. But the Claimant submits that they should be taken cumulatively: taken together they demonstrate a breach of the PSED.

(1) *No evidence that PAVA would reduce harm or violence*

55. It was necessary for the Defendant to give due regard to whether PAVA would reduce violence. That is because the assumption that PAVA will reduce violence was the central justification put forward for using it: the rationale for the roll out of PAVA was "Staff and CYP are increasingly exposed to threats including levels of violence" [C/247]. S.149(1) requires due regard to the need to eliminate discrimination. The relevant discrimination here is s.15 (discrimination arising from disability), s.19 (indirect discrimination) and/or s.20/21 (failure to make reasonable adjustments) EA 2010. In all cases, a disadvantage is not discrimination if it is justified. Thus, in order to have due regard to the need to eliminate discrimination, it is necessary to have due regard to whether a disadvantage was justified. That requires due regard to the only justification relied on by the Defendant: that PAVA would reduce harm or violence.

56. The Defendant failed to have due regard to, and to assess, whether PAVA will reduce harm or violence, for the reasons in 'Ground 3' above.

(2) *The adverse psychological and physical impact on disabled children*

57. It was necessary for the Defendant to have due regard to the risk and extent of the adverse impact of PAVA would have on disabled children in custody (*Bracking* §26(4); cf §§61 and 63). He failed to do so.

58. ***Firstly***, that adverse impact included that neurodiverse children in custody, including those with autism[4], may be triggered by PAVA to suffer a 'meltdown' and/or become more agitated: §§14-20 above. It was very important for the Defendant to properly consider that adverse impact, in part because there are a high proportion of neurodivergent children in custody, and in part because this could result in serious harm. The Defendant failed to assess the extent of this adverse impact, and/or failed to conduct reasonable inquiries into the adverse impact. The reports commissioned by the Defendant indicated that more research should be done into this. For example, NHS England recommended: "autistic individuals may be differently affected by the effects of PAVA… This may be true of other neurodiverse individuals. It is an area where more research should be done." Contrary to that recommendation, no further research was done into this question.

59. ***Secondly***, the potential adverse impact also included that PAVA may cause serious physical and psychological harm to children in custody: §§23-31 above. For example, most of them have experienced significant trauma (which may amount to a disability), and using PAVA may exacerbate and contribute to this trauma. There is a high rate of mental health needs among children in custody (81% had a mental health concern [S2/91]), and those with mental health needs are more likely to suffer PTSD from the use of PAVA. Children are particularly vulnerable to PAVA due to their early physical stage of development.

60. There is a paucity of research into this physical and psychological harm PAVA will cause to children in custody. A range of further research or inquiries which should have been done pre-roll out have been identified. That includes a paediatric assessment which the YJB considered "must be conducted" (§26); the prospective British study and the research into the likely adverse effects on autistic or other neurodiverse individuals identified by NHS England (§29); and the assessment of the medical effects of PAVA on adults in prison, analysis of secondary injury caused by PAVA, and the clinical psychology analysis all identified by Dr Maconachie (§30). None of the further research of inquiries have been conducted, and no reason has been given why not.

[4] The focus in this section is the adverse impact in increasing violence. This ground is linked to the next section, §§61-5, where it is argued there was a failure to give due regard to the adverse impact on children's health.

61. ***Thirdly***, the Defendant has not scrutinised the extent to which PAVA have had an adverse impact on disabled adult prisoners, or indeed the extent to which the use of PITs have had an adverse impact on disabled children. That is in part because the Defendant does not systematically or reliably record the proportion of children or adults in custody with a disability, let alone a relevant disability [C/158] §52 and [S1/834]. As the EHRC submissions explain, the Defendant promised in 2020-21 to identify prisoners by disability and impairment type, but has failed to do so [S2/552] §56. He cannot have due regard to the extent of the adverse impact of PAVA on disabled people, when he has failed to adequately assess the proportion of detained people who have a relevant disability which will be impacted by PAVA (such as autism or a trauma disability).

62. In settling a judicial review brought by the EHRC, the Defendant committed to analyse "PAVA use by disability and mental health" [C/158] §52 and [C/578] §3. The importance of post-incident scrutiny has long been recognised. Dr Bosworth reiterated this in his 2025 Use of Force analysis submitted to the Defendant: "Improving routine data collection, in particular to include information on disability and neurodiversity, is also much needed" [S1/824]. He recommended better scrutiny and learning from the use of force [S1/868] §3, and noted how effective this could be [EC1/862].

63. But there is no evidence that the disability or impairment type of each prisoner on whom PAVA was used was recorded, or that post-incident scrutiny or analysis of PAVA use on adults by disability has occurred. There is no evidence that equivalent scrutiny has occurred for PITs used on children. It was plainly practical to do this. That is demonstrated by the fact that the Defendant intends to do it in future: that is, to scrutinise each case of PAVA use "to identify any disproportionate impact on CYP with particular protected characteristics" [C/379]. There is no good reason why this analysis was not done for PAVA on adults or PITs on children, before roll-out of PAVA on children.

64. The above means that the Defendant did not assess "assess the risk and extent of any adverse impact" (*Bracking*) of PAVA on children with relevant disabilities, such as autism, PTSD, or other relevant mental disability/neurodiversity. Further or alternatively, it means that there

was an unreasonable failure to bring about further inquiries. The standard of review, in deciding whether there was an unreasonable failure, is considerably more onerous in this context, due to the factors in §§33, 46-53 above.

65. The omissions identified above were critical. The adverse impact on this cohort was very important because of the high prevalence of neurodiversity and mental health needs among children in custody: §§14-20 above. The potential adverse impact was very serious: the use of a chemical weapon on disabled children, where a number of experts had indicated it could lead to a significant increase in violence and serious psychological harm. There was a glaring vacuum in the available information: as NHS England put it: "There is a paucity of research on the use of irritant sprays in neurodiverse populations". And the Defendant failed to conduct inquiries that were recommended by those with statutory responsibility for advising the Defendant, and by those who the Defendant commissioned to give him advice about these matters.

66. A ***fourth*** reason why there was a breach of the PSED concerns reasonable adjustments for disabled children. S.149(4) requires due regard to the need to take into account disability. S.149(1)(a) requires due regard to the need to eliminate discrimination. Discrimination includes failure to make reasonable adjustments when a policy puts disabled children at a substantial disadvantage (s.20 and 21 EA 2010). It follows that s.149(1)(a) requires due regard to the need to make reasonable adjustments for disabled children, if they are at a substantial disadvantage due to the PAVA roll-out. The need to give due regard to making reasonable adjustments is similar to what *Bracking* described as a requirement to give due regard to "the ways in which such risk may be eliminated".

67. The Defendant failed to give due regard to reasonable adjustments or the ways in which the adverse impact on disabled children may be eliminated. There was significant evidence that PAVA may put disabled children at a substantial disadvantage, summarised above. It included that disabled children may suffer agitation, meltdowns, trauma and PTSD as a result of PAVA. The EQA appeared to recognise the disabled children would be put at a disadvantage [C/232].

68. However, the Defendant did not give due regard to the need to make reasonable adjustments to eliminate the substantial disadvantage to disabled children. For example, he did not consider instructing staff that they should not use PAVA on children with autism or other relevant disabilities. He also did not consider whether he should defer PAVA roll out in order to inquire into the impact on those children. Those are obvious adjustments[5].

(3) The Disproportionate use of PAVA on Black and Muslim prisoners

69. There is clear evidence of a risk that PAVA will be used disproportionately against racial or religious minority children in custody. This was acknowledged in the EQA. It explained that a higher proportion of Black and minority ethnic children in custody were restrained as compared to White children [C/221]. It also noted that in the adult estate, PAVA is used disproportionately in terms of race: [C/235]. The racially disproportionate use of PAVA against adult prisoners is striking: Dr Bosworth's analysis found that PAVA was used around **8 times** more against Black prisoners than White (W1/W2) prisoners. PAVA (alongside batons) in the adult estate was used even more disproportionately against Black prisoners than any other type of force: [EC1/838-40] fig.4 and fig.7. The EQA also noted that PAVA would have a negative impact on religion, and that Muslim children in custody are disproportionately restrained [C/237-8]. Further, 35% of those subjected to PAVA in the adult estate were Muslim, despite Muslim people making up only 17% of the population: [S2/473]; and [C/157] §47.

70. The widespread racial disproportionality in the use of PAVA or other types of force has been identified by the YJB [C/553] and HMCIP [C/556]. It was apparent in the incident involving PAVA in Vinney Green: [C/582] §16. Dr Grant Bosworth summarised the position [C/525][6]:

> "The biggest and most sustained challenge the YCS is likely to face is the disproportionate use of PAVA. The disproportionate use of PAVA on young black men has remained ever present since the introduction of PAVA in four pilot sites in 2017,

[5] In *ZH v Commissioner of Police of the Metropolis* [2013] 1 WLR 3021, the Court of Appeal concluded that reasonable adjustments included not using restraint on an autistic child, and/or consulting the child's carers prior to using restraint: §31 and 50.

[6] His report did not address the disproportionate use of PAVA against Muslim men, despite this disproportionality being known to the Defendant [C/157] and [S2/473]. However, his analysis regarding Black men applies to a similar extent to Muslim men. Further, the argument in this skeleton focuses on Black and Muslim children, but applies to mixed ethnicity children for similar reasons.

and is supported by international research on incapacitant sprays, and more generally inequalities in the criminal justice system."

71. The Defendant failed to assess the extent of the discriminatory impact or how it might be eliminated. There were further steps the Defendant could have taken to assess those matters. For example, he could have monitored and analysed the reasons why force is used disproportionately against Black and Muslim children in custody, and why PAVA is used disproportionately against Black and Muslim adults in custody. There is no evidence he performed this analysis.

72. To the contrary, the EQA (referring to the HMIP 2021-22 report) noted [C/221]:

> "At most sites leaders and managers were not systematically monitoring outcomes to identify discrimination, and where this did take place, it rarely led to actions to address or explain the differences in treatment.".

73. There is a range of evidence that the use of PITs on children in custody have not been adequately monitored: SFG §27 [C/33-5] . The EQA and CRIA state that after the roll-out of PAVA, there will be a requirement to collect and analyse data on the use of PAVA which will be scrutinised by the Equalities Lead. This: "will provide Governors with greater insight to inform strategies to address disproportionality" [C/235]. Discrimination incident reporting forms will also be used. So the Defendant accepts that additional monitoring and analysis will help understand the discriminatory impact and to eliminate it. There is no practical reason why that analysis could not have been done before PAVA was rolled-out in YOIs, in respect of PAVA use in adult prisons, and/or the use of other force on children in custody.

74. Dr Bosworth's 2025 Use of Force analysis concluded, by reference to the data showing PAVA is used even more disproportionately against Black prisoners than other types of force, that "Research may be needed to better understand… why the *type* of techniques used appear to differ depending on the ethnicity of the prisoner" [S1/860]. He recognised the importance of post-incident scrutiny of the use of force. He also suggested solutions to tackle the racial disproportionality, such as strategies to improve relationships between officers and Black prisoners. He noted that "Some urgency must be placed on initiatives such as these" [S1/860]. But there is no evidence that that research or initiative have taken place.

75. His assessment of the need for further analysis or initiatives is not new. For example, in a meeting about PAVA on 8 October 2024 the Lord Chancellor was told that "work needs to be done to understand the root cause of violence and what can be done to prevent this at the base level" [C/737][7]. Despite this, no such work was done. The lack of action is contrary to the principle of "explain or reform" disparities by 'ethnic group', arising from the Lammy Review, which the YCS was committed to [C/363].

76. The failure to take those steps was a breach of the PSED. It meant that the Defendant failed to assess the extent of racial and religious discrimination in the use of PAVA, and the steps that could be taken to eliminate it. Further, or alternatively, the Defendant unreasonably failed to conduct further inquiries into these matters.

77. The PSED is more onerous in this context for the reasons as set out above at §64, and the following additional reasons. The disproportionate use of force on Black and Muslim children in custody is a matter of serious public concern. It "plays a role in driving mistrust between communities" [C/553]. This concern is likely to be heightened where the racially disproportionate use of PAVA in adult prisoners is striking (it is used around **8 times more** against Black prisoners than against White prisoners: [S1/839], fig.7). It was not sufficient for the Defendant to collect data and analyse it long after the roll-out has occurred, for the same reasons as in §§78-9 below. The disproportionality has been "ever present" for 8 years [C/525]. In that context, the absence of post-incident scrutiny of the reasons for racial disparity in the use of PAVA on adults is inexplicable.

Rear-guard analysis

78. The Defendant argues that it is sufficient, in order to satisfy the PSED, for there to be a 'read-guard' analysis of the impact of using PAVA on children in custody. That is wrong in law. In order to satisfy the PSED, it is not sufficient for there to be a rear-guard analysis. The PSED has to be performed prior to a decision being made: §49 above. The extent of the adverse impact must be assessed "before the adoption of a proposed policy". It is an "essential

[7] The Lord Chancellor responded that "this is her red line and she would not defend disproportionality in use".

preliminary" in this particular context (see *R (C)*). It would undermine the fundamental purpose of the duty if it could be performed after the relevant harm had been caused.

79. Alternatively, if it is necessary to show the means by which the Defendant purports to satisfy the PSED is unreasonable in this respect, then it was not reasonable to treat these highly vulnerable children as guinea pigs, to subject them to serious risks from PAVA, but to leave the analysis of the extent of those risks until much later. (As noted in §4 above, the results of the proposed analysis may not be complete until 2 years after the roll out). The Defendant had 8 years to assess the impact of PAVA on disabled adults in prison, but failed properly to do so. He had two years between when the engagement with stakeholders about the proposed roll-out of PAVA in YOIs occurred, in 2023, and the decision was made, in 2025. No good reason has been put forward as to why the necessary due regard did not occur in that period, or why a further short delay cannot happen so that the necessary analysis can take place. There are a range of inquiries which unchallenged evidence says can be conducted prior to roll-out. Given the more onerous PSED in this context, the Defendant's approach was not reasonable.

Ground 2: Tameside

80. The general principles regarding the *Tameside* duty were set out in *R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2015] 3 All ER 261, §99–100; and approved by the Court of Appeal in *R (Balajigari) v Secretary of State for the Home Department* [2019] 1 WLR 4647, §70. They include that the obligation on the decision-maker is only to take such steps to inform himself as are reasonable. There will be a breach of the duty only if the manner and intensity of the inquiries were unreasonable in a public law sense.

81. However, it is important to note that the intensity of unreasonableness review depends on the context: §33 above. In the present context, because of the factors in that paragraph (including that the case concerns the use of a weapon classed as a firearm, on highly vulnerable children, who are detained by the Defendant behind closed doors), the intensity of review of whether the *Tameside* duty was breached, is greater.

82. It was necessary for the Defendant to inquire into the impact of PAVA on the best interests of children in custody. The duty in s.7 Children and Young Persons Act 2008 states: "It is the general duty of the Secretary of State to promote the well-being of children in England". That is applicable to the Defendant's decision in this case. The Defendant appears to accept it is necessary for him to inquire into whether the PAVA roll-out has an adverse impact on the best interests of children, so the relevant law which demonstrates that is necessary is not set out in more detail here.

83. The Defendant breached the *Tameside* duty, and breached the duty to inquire into whether the PAVA roll out is in the best interests of children in custody. For the reasons given above, she failed to bring about reasonable inquiries into critical issues, prior to roll out, including: (i) whether it will reduce or increase violence and harm overall, (ii) the physical and mental health damage PAVA will inflict on children in custody, and (iii) the extent to which it will be used in a discriminatory manner in respect of race, religion and disability, and how those risks may be eliminated. These were central questions in deciding whether the roll-out is in the best interests of children in custody. For the reasons in §§54-77 above, there was an unreasonable failure to inquire into them.

Conclusion

84. For those reasons, the court is respectfully invited to hold that the claim for judicial review succeeds in respect of each ground, and to grant the relief specified in the N461.

Adam Straw KC
Shu Shin Luh
Shanthi Sivakumaran
Doughty Street Chambers
17 November 2025