Neutral Citation Number: [2018] EWHC 2538 (QB)

Case No: HQ12X00549

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/10/2018

Before :

MR JUSTICE OUSELEY

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Between :

JESSICA GRIFFITHS
HANNAH GRIFFITHS
SOPHIE GRIFFITHS
(A minor by her father and Litigation Friend
Jeremy Griffiths)

Claimants

- and -

THE CHIEF CONSTABLE OF THE SUFFOLK POLICE — **First Defendant**

- and -

NORFOLK AND SUFFOLK NHS FOUNDATION TRUST — **Second Defendant**

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MR NICHOLAS BOWEN QC AND MR DAVID LEMER
(instructed by **IMRAN KHAN SOLICITORS**) for the **Claimants**
MR JEREMY JOHNSON QC
(instructed by **WEIGHTMANS SOLICITORS**) for the **First Defendant**
MR ANGUS MOON QC AND MR LIAM DUFFY
(instructed by **KENNEDYS**) for the **Second Defendant**

Hearing dates: 8, 9, 10, 13, 14, 15,16, 17 and 20 November 2017

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Approved Judgment

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MR JUSTICE OUSELEY :

1. This case arises out of the murder of Mary Griffiths by John McFarlane on 6 May 2009 in Bury St Edmunds, Suffolk. The Claimants are her three daughters, suing by their father and litigation friend. They seek damages from the Chief Constable of the Suffolk Police, the "Suffolk Police", and North and Suffolk NHS Foundation Trust, the "NHS Trust", the first and second Defendants.

2. John McFarlane and Mary Griffiths were friends; she had very recently made it clear to him that she did not wish their friendship to develop into the romantic relationship he had hoped for. He had left his wife on 23 April 2009. Mary Griffiths, who was 38, was getting back together with a former boyfriend, which Mr McFarlane angrily resented when she told him on 2 May 2009. He attempted suicide late that night. He left the house of friends where he was staying and went to the farm where he worked as a slaughter man and stockman. He tried to hang himself from a beam in a barn there. His friends discovered his plan, went to the barn and persuaded him not to go through with it. They took him home and early in the morning of 3 May took him to hospital.

3. On 3 May 2009, a Mental Health Act Assessment Panel was convened for the purposes of deciding whether he should be compulsorily admitted to hospital for assessment under s2 Mental Health Act 1983. It concluded that he did not meet the criteria for compulsory admission. He was offered but did not accept voluntary admission. He was discharged from the hospital to go to accommodation on the farm where he worked, with arrangements for his care there by the NHS Trust's Crisis Team.

4. On 5 May 2009, Ms Griffiths made what was treated as a 999 call to Suffolk Police at 17.56**.** She said that Mr McFarlane was harassing her, and she was "really frightened." The call-taker did not grade the call as requiring a response within 1 hour, but as one requiring a response within 4 hours. The call-taker said that an officer would be round that evening. At about 21.45 that evening, the control room telephoned Ms Griffiths, asking if it would be possible, in view of the resources available, for the police not to come round that night as previously arranged but the next day instead; Ms Griffiths had replied that that would be fine.

5. At about 02.40 on 6 May 2009, Mr McFarlane broke into her house with an axe and a captive bolt gun taken from the farm. He dragged her into the street, where he shot her a number of times in the presence of her children. He then made off to the garden of a friend's house where he made some attempt to commit suicide. He was arrested later that morning, and after an initial plea of not guilty, pleaded guilty to murder, and was later sentenced to life imprisonment with a minimum of 30 years to serve.

6. The claim is brought under the Fatal Accidents Act 1976 on the basis that Mary Griffiths' death was caused by the "wrongful act, neglect or default" of the Suffolk Police and the NHS Trust, and that had Mary Griffiths not died, she would have been entitled to bring a claim against those bodies. Her daughters, aged 8, 10 and 13 at the time of the murder, also claim damages under s8 of the Human Rights Act 1998, as victims of their mother's murder, and damages for negligence against the NHS Trust. No negligence claim is pursued against the Suffolk Police. As a result of the order of Master Fontaine, I am concerned with whether any common law duties were breached by the Second Defendant, whether any obligations owed as a result of the Human Rights Act were breached by either Defendant and, if so, as to whether they caused any loss to

the Claimants. I am not concerned with their condition, prognosis or quantum. The pleadings also raise the question of liability for nervous shock to the Claimants, but that issue was not raised at all before me, and I do not deal with it.

7. The claim, put very shortly, is that the NHS Trust assessment under the Mental Health Act, MHA, was flawed in a number of respects, and that Mr McFarlane ought to have been admitted to hospital, voluntarily or compulsorily, on 3 May 2009, which would have prevented him being in a position to murder Ms Griffiths on 6 May. In any event, the NHS Trust should have warned her that Mr McFarlane was a danger to her, and they ought also to have communicated with the Suffolk Police. This would have affected the way in which they, in turn, addressed Ms Griffiths' concerns when she telephoned them on 5 May 2009. The Suffolk Police, in any event, ought to have graded Ms Griffiths' call as more serious than they did, and ought to have sent someone round that night. That person would have realised that the situation was more threatening than had the call-taker, and steps would have been taken to protect Ms Griffiths, who faced a real and immediate risk from Mr McFarlane, to remove her from danger, or to warn or detain Mr McFarlane.

8. The Particulars of Claim referred to the reports of five investigations which these events had led to, in addition to the murder inquiry itself: (1) the Independent Police Complaints Commission, IPCC, report of March 2011 into the actions of the Suffolk Police in relation to the calls of 5 May 2009, (2) East of England Strategic Health Authority's independent investigation by Niche, into the care and treatment of Mr McFarlane, the Niche report, and three other reports, two specific to Mr McFarlane and one a more general review into a cluster of homicides involving people associated with services offered by the NHS Trust. Most witnesses who provided statements for the purposes of this case had also made statements to the police in about May-July 2009, which they exhibited, for the criminal investigation into Mr McFarlane. They also exhibited records of their interviews for the Niche report and their statements for the IPCC report. The evidence of the Claimants' witnesses who were not called, the IPCC statements and interviews, and Niche interviews, whether the individual had provided a witness statement for these proceedings or not, were admitted as hearsay evidence.

9. Mr Johnson QC, for the Suffolk Police, rightly submitted, and it was not really contested, though occasionally overlooked, that the reports themselves were inadmissible as evidence, or as findings of fact or opinion; see *Three Rivers District Council v Bank of England (No.3)* [2003] 2 AC 1.

The Mental Health Act 1983

10. Its provisions set the framework within which the decisions of the medical professionals were made. Section 2 is the most important; it deals with compulsory admission to hospital for assessment:

> "(1) A patient may be admitted to a hospital and detained there for the period allowed by subsection (4) below in pursuance of an application (in this Act referred to as "an application for admission for assessment") made in accordance with subsections (2) and (3) below.
>
> (2) An application for admission for assessment may be made in respect of a patient on the grounds that –

> (a) he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and
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> (b) he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.
>
> (3) An application for admission for assessment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with."

11. The maximum period of compulsory admission for assessment, subject to immaterial provisos, is 28 days; s2(4). S1 defines mental disorder, very broadly; for these purposes, it is "any disorder…of the mind."

12. S4 deals with emergency admission for assessment, in cases where admission and detention under s2 are of "urgent necessity" for the patient, and compliance with s2 would involve "undesirable delay." That application can be made by an approved mental health professional, and the recommendation of one rather than two registered medical practitioners suffices. It is s3 which covers compulsory admission for treatment. The duly completed application for admission operates as the authority for taking a patient and conveying him to hospital; s6.

13. There is also provision in s5 for compulsory admission to hospital where the patient is already in hospital, as could arise where a patient who had been admitted voluntarily now wished to leave, but the medical practitioners were of the view that he should be detained. S5(2) permits detention for 72 hours on the basis of a report by the registered medical practitioner. S5(4) deals with the in-patient who is receiving treatment for mental disorder, and an appropriate nurse considers that it is of such a degree that, for the patient's safety or the safety of others, it is necessary for him to be "immediately restrained from leaving the hospital."

14. Relevant police powers are found in ss135-6. S135 enables the police or an authorised medical practitioner to obtain a warrant authorising a constable, who has reasonable cause to suspect that a person, believed to be suffering from mental disorder, and being "kept otherwise than under proper control" or "being unable to care for himself, is living alone", to enter premises and to take the individual to a place of safety with a view to an application under one of the earlier provisions I have set out. S136 empowers a constable to remove to a place of safety from a place to which the public has access, a person who appears to him to be be suffering from mental disorder "and to be in immediate need of care or control."

The facts

15. Mr Bowen took me through the psychiatric history of Mr McFarlane. But as no issue arises now in relation to his treatment by the NHS Trust until May 2009, I can take it

fairly shortly up to April 2009. Much of it was taken from a letter dated 4 January 2009 written by Dr Marlies Jansen, a consultant psychiatrist employed by the NHS Trust. It contained her assessment and recommendations, following referral by his GP to her as a consultant psychiatrist with the NHS Trust, for the Bury area. Most of the rest I take from the two psychiatric experts' reports.

16. Mr McFarlane had been put in care by his mother when he was young, but not his siblings. He first saw a psychiatrist in 1983, aged 13. He attempted suicide by hanging in 1993, aged 23, at the farm where he worked; he rang his GP and left a message saying what he was doing; the GP found him and called 999; there were multiple triggers. He had also stabbed himself. He was admitted to a psychiatric hospital, but was discharged from hospital 25 days later with no clear diagnosis, "suicidal attempt with an underlying possible psychosis," and with anti-psychotic medication. (Dr Courtney, psychiatric expert for the Claimants, and Mr Moon QC for the NHS Trust, but not Mr Bowen for the Claimants, refer to a diagnosis of a severe depressive illness but their references do not support that, nor a s2 MHA admission. Nor does Mr Bowen's chronology support Dr Courtney's evidence that Mr McFarlane was in hospital for two months. Individuals made such comments years later, without personal knowledge or identified source.) He was reviewed twice in the community by a consultant psychiatrist and discharged from psychiatric care at the end of April 1993, as there was no present evidence of psychosis. He moved to the Suffolk area in about 1993. A year or so later, he had bouts of depression for which he was prescribed medication. He lost his job in 1994 after an altercation with his employer**,** involving a threat by him of an unspecified nature. He returned to farming; there is some evidence that this is when he started at Denham Estates, though other evidence suggests that that did not happen until later. In 2000, he started work as a driving instructor. In October 2000, his GP referred him urgently to the Newmarket Mental Health Team because he had symptoms of depression and was finding the job stressful, saying he did not care if his pupils crashed, almost hoping it would happen and so release him from the stress. He was treated with anti-depressants but did not want his wife or her family to learn of his history. He was later sacked for not disclosing his mental health problems, which had shocked his employer because he had seemed perfectly stable.

17. Mr McFarlane's return to farming shortly afterwards took him to, or back to, the Denham Estates farm where he worked, as a stockman and slaughterman. This is where he tried to commit suicide on 2 May 2009. Mr Bowe was the farm manager at Denham Estates. Mrs Gliksten was its owner following the death in February 2009 of her husband, to whom Mr McFarlane had been very close.

18. Mr Bowe made witness statements to the police on 7 and 8 May, and a third on 22 May 2009. He also gave a Niche interview on 8 November 2010. Mr Bowe and Mr McFarlane had worked together since 2004. Mr Bowe, who gave oral evidence, did not regard Mr McFarlane as a close friend; they were friends "in the sense that we lived in each other's pockets because of the job we were doing, spending long hours together". They occasionally talked about their personal lives; they were a good team but they never socialised together. In the summer of 2008 or thereabouts, Mr Bowe noticed a change in Mr McFarlane's behaviour in a way which he found hard to define, but it was at the time that Mr McFarlane started going to the gym and bulking up physically. He had become a body combat trainer. He knew that Mr McFarlane's marriage was going through a tough time and that he was seeing a psychiatrist, but they were not the sort of

men to discuss their emotional states. He said that Mr McFarlane "was not an angry type of person". He showed no tendency to violence or aggression. He never showed any sign of cruelty to the animals; he was always professional and caring towards them. Mr McFarlane was very different in intellect and vigour from his wife, towards whom he could be quite condescending. He was an outgoing and sociable person who made friends easily, but every so often there were days when he was low, when he would be quiet, withdrawn and unenthusiastic. Mr McFarlane had spoken of Ruth-Ann, described by Mr Bowe as a psychiatrist, whom he had met at the gym, and was recently speaking about someone called Mary. In the last couple of months before May 2009, he told Mr Bowe that he was seeing a psychologist; this was not Ruth-Ann. After the suicide attempt, Mr Bowe thought that Mr McFarlane might try it again, but, according to his Niche interview, it never occurred to him that he would do anything to anyone else.

19. Mrs Gliksten made a statement on 29 June 2017, which exhibited the statement she had made to the police on 6 May 2009 and the record of her Niche interview of 8 November 2010. She gave oral evidence. Mr McFarlane had worked on the farm for 15 years, (i.e. since 1994), and she had never felt uncomfortable with or scared of him; there was never a trace of violence and he seemed very stable. He was a hard worker at physically hard work, very enthusiastic, and would give anything new 110 percent, but he lacked intellectual stimulus in his home life. He was a quick thinker and very intelligent. He could be a very convincing liar, and display one emotion while feeling a very different one. He confided in her husband, whose death would have hit Mr McFarlane hard. He had talked to her husband a lot about Mary Griffiths and her three daughters from autumn 2008, but she had not heard him talk much of her in the months before he killed her. Her husband had asked Mr McFarlane whether the two were having an affair and Mr McFarlane had replied that he would like to, but she had said that she would never have an affair with a married man.

20. Lizzie Dodman is the wife of Paul Dodman who worked part-time on Denham Estates and had known Mr McFarlane for 20 years, although they were not friends. He was never invited around to their house. She gave oral evidence. She described him as very brainy but as someone who did odd, childish or sly things against you. He changed when he started at the gym; it was "like he came alive". He did not show "big emotions," although he seemed shocked and upset that, when he went to collect his belongings from their home on 2 May 2009 after his separation, his wife and her parents had packed them up already and put them outside the house. Mr Dodman who did not give oral evidence described Mr McFarlane, in his statement, as an excitable person who brought up Mary Griffiths a lot in his conversations, including that he was training with her as she was his combat teacher. He had only seen her as a work colleague of Mr McFarlane's, but they appeared quite close. Mr McFarlane was not, he thought, the sort of person to display mood swings. He was a very chatty person and so it was noticeable if he were quiet, which did not happen very often. He had not struck Mr Dodman as the sort of person to have suicidal tendencies. In recent months he had told Mr Dodman that he was seeing a psychiatrist to whom he paid a fee; he did not say why. Mr Dodman did not think his behaviour very different from what it normally was at that time. Before 3 May 2009 there had been nothing about Mr McFarlane to make him feel that he had wanted to end his life.

21. Mr McFarlane's GP, in August 2008, referred him to the NHS Trust. This was because of his low mood, racing thoughts and feelings of recklessness, with an image of himself hanging in a farm barn. This was not long after Mr McFarlane first met Ms Griffiths through fitness classes at a leisure club in Bury St Edmunds. Mr McFarlane had been working very long hours on the farm driving a tractor, which he realised was putting him under stress, which had worried him. The referral led to Mr McFarlane being assessed, on 11 September 2008, by a social worker and community psychiatric nurse. They were part of the Community Health Team, CHT. But by the time the CHT actually saw him, he was feeling much better, with a change in medication. The CHT assessed him as suffering mild to moderate depression and mild anxiety. His mood was picking up, as his previously long hours had reduced, routines were more regular and his thought processes were normal. They discharged Mr McFarlane, taking the view that no on-going intervention was required, beyond advice to continue with anti-depressants and to discuss anxiety management with his GP. Mr McFarlane and his GP thought this inadequate, and his GP referred him again to the NHS Trust, this time for assessment by a psychiatrist. This led to him being assessed on 13 January 2009 by Dr Jansen.

22. Dr Jansen, a consultant psychiatrist employed by the NHS Trust, gave evidence through her witness statement about her involvement in the care and treatment of Mr McFarlane from November 2008 to January 2009. Her statement to the police explained a little more of the background. Mr McFarlane was referred to her by his GP for a psychiatric review of his mental state: his feeling of losing rationality, lower mood and of slipping into a severe depression he had experienced 20 years before. This followed a period where Mr McFarlane's mood was no longer improving and he had stopped taking his medication because of its side-effects.

23. Dr Jansen could understand the GP's concerns, particularly about Mr McFarlane's risk to himself. She thought he had "attachment issues", with excessive work affecting relationships, itself causing some distress. He was not severely clinically depressed, nor at significant risk of taking his own life. He was resisting his suicidal thoughts, and was not actively suicidal. He had no symptoms of depression other than his recurrent thoughts of killing himself, but he had agreed that this was not so much wanting to die as wanting things to be clearer and easier. His mood was not pervasively low, with no evidence of psychosis and he did not meet the criteria for clinical depression.

24. She thought a past diagnosis of schizophrenia was wrong. (I note that it was never more than a differential diagnosis.) She did not obtain his past psychiatric records; this was not normally done unless a patient was severely ill or there were potentially high risks. He had had nearly 20 years of apparent normal functioning. The attempt to harm himself 20 years ago seemed an event of low risk, as he had left the door open and his flatmate was there.

25. Mr McFarlane had mentioned no instances when he had harmed anyone else. He referred, but not by name, to Ms Griffiths, (whom he had met in the summer of 2008), as a work colleague and friend; he was upset they would not be taking classes together, but did not imply any actual relationship or that he wanted one or had been rejected. In her statement for the Niche interview of 18 October 2010, she said that McFarlane had told her that he was saddened in January because he would no longer be doing classes with this instructor friend, following negative feedback, which he had accepted. They were still in touch but it had affected their friendship. He had expressed no anger towards her or that he was going to try to get her to change her mind. It would have

been "totally inappropriate" for her to approach Ms Griffiths. This friendship seemed the same as others he said his wife was aware of and tolerated; these struck her as slightly unusual. He expressed reluctance to talk to his wife about things.

26. She believed him when he said he had moved on. She got no sense that Mr McFarlane was trying to conceal anything or was trying to mask his feelings, nor could she recollect Mr McFarlane telling her that he was not always as calm as he seemed. She knew of the guns and knives to which his farm work gave him access, and assessed the risk in detail because the GP had said this concerned him.

27. She thought he needed Cognitive Behaviour Therapy, CBT, with some medication and Crisis Team backup, because there was the potential for him to get into a crisis, and so he should be able to access the Crisis Team. Her recommendation for treatment meant she thought he had a psychological issue of some sort, and not a psychiatric illness. Mood issues were not the main presentation, and the real issues were confidence, self-image, problems which stemmed from childhood and were commonplace among those accessing psychological treatments.

28. Dr Jansen said, in her long letter to the GP of 14 January 2009 that Mr McFarlane had described an "extremely neglected childhood"; she thought he had low self-esteem, high sensitivity to negative remarks, and was "very vulnerable indeed" if a relationship he formed was disrupted. He had had a relapse of low mood over the last 6 months, and periods when he felt so low that he considered suicide; he had felt uncomfortable near a barn on the farm as he had mental images of hanging himself, which made him feel unsafe. The letter refers to Mr McFarlane's "easy access" to guns and knives. He had satisfaction from working as a gym instructor, where he had formed a close friendship with a fellow instructor, but Mr McFarlane denied that he fancied her. His wife tolerated the hours he spent on the phone to her, talking about gym related matters. He came across as pleasant and polite, intelligent and quite eloquent, as well as psychologically minded. He had had an episode of "fairly intrusive suicidal thoughts", but there were a number of protective factors including employment, being married and good friends at the end of a phone. He was reluctant to take anti-depressants and was more interested in talking treatments like CBT, for which he was eminently suitable. IAPT, (Improving Access to Psychological Therapies), could however only be accessed if he were not in secondary care, which later in her October 2010 Niche interview, she said was a "most bizarre set up." She thought that he was not "severely clinically depressed and at such a high risk of completed suicide that treating him in primary care would be unsafe." He could access the Crisis Team, as backup, at any time through the duty GP, if he felt dangerously low. The letter of 14 January 2009 ended her involvement.

29. In February 2009 he was seen by IAPT but stated that none of the anti-depressant medications suited him; his boss who had been a very big support to him had died suddenly; he declined the offer of low intensity input from IAPT as he had been recommended CBT by the psychiatrist. His friend Ms Ruth-Ann Harpur-Lewis, a trainee clinical psychologist, recommended a therapist and he paid privately for CBT. He had had a number of sessions in March and April 2009. Ms Harpur-Lewis had got to know Ms Griffiths mainly through him.

30. On 23 April 2009, Mr McFarlane rang Ms Harpur-Lewis, saying that he felt suicidal, and was thinking of taking a knife, Zopiclone, and hanging himself in the barn. She took him to see his new GP, who rang the Crisis Resolution and Home Treatment Team,

CRHTT, or the Crisis Team, which was part of the NHS Trust's service as acute or secondary carer, stating he was concerned that Mr McFarlane's mental health was deteriorating. A Community Psychiatric Nurse, Ms Russell, arranged for him to be seen that day. Her EPEX note of the GP's comment was that Mr McFarlane was "presenting with deterioration in mood and active suicidal thoughts with planning, which he is not alarmed by". 23 April 2009 was the very day Mr McFarlane had left his wife, though he never said that this was to be with Ms Griffiths.

31. Ms Harpur-Lewis provided statements to the police and to the IPCC on 7 May 2009 and to the Niche Inquiry, all admitted as part of the Claimants' hearsay evidence. She described him as a placid person.

32. Nurse McCarthy of CRHTT rang Mr McFarlane at 12.30, before he went in. Her EPEX entry notes that he was feeling "not very good at all" at the moment, thinking of hanging himself and had worked on his own most of the day at the farm. His first thought that morning had been to try to find somewhere to commit suicide; he also had thoughts of taking an overdose of his Zopiclone. He was no longer taking anti-depressant medication. Not recorded by Dr Courtney, though Mr Bowen was to refer to it more than once, was Mr McFarlane's recorded comment that he had been told by an unnamed friend who was a clinical psychologist, in fact Ms Harpur-Lewis, that "he presents in a calm and matter of fact [manner] when underneath he doesn't feel like this. Wants to get help but does not want to be seen at home."

33. Ms Harpur-Lewis went with him to the appointment where he was assessed by Nurses Smith and Harris over the course of an hour. The Home Treatment Short Assessment form, completed by Nurse Harris, recorded that Mr McFarlane had had about 5 sessions of CBT. He had spoken to his wife the previous night about the problems they were having, and said that he felt he needed to leave her; he could not sleep as he felt guilty about possibly upsetting her. When he ruminated over things, his thoughts became very negative. "He began to think that he would be better off killing himself as this would not be so painful for his wife." Ms Harpur-Lewis, to whom he had explained this, had encouraged him to seek help. He was not on anti-depressants as they tended to make him drowsy and affect his work. His motivation was good with the gym work as the main focus. His confidence and self-esteem were pretty low because of his past life and particularly being in care as a child. His suicidal thoughts were worse in the morning if he had been awake all night ruminating. Ms Harpur-Lewis felt that the CBT was helping, but that its benefit was outweighed by his home situation, with which Mr McFarlane agreed.

34. The assessment was that Mr McFarlane was not appropriate for admission or home treatment; leaving the home was an option if the situation there worsened. The Crisis Team would write to his GP discussing a prescription for the anti-depressant previously recommended by Dr Jansen, to which Mr McFarlane was open. His GP could refer him again to the CRHTT. He was to continue with his CBT on 14 May.

35. A Risk Screen was completed, noting the 1993 admission, saying that it was under the MHA with psychotic symptoms, that he had never misused alcohol or drugs, and had no history of aggression or violence. He had had suicidal thoughts following an argument with his wife, but he called a friend and had gone to his GP for help and hoped that his future would improve. But he was aware that the CBT sessions "are raising issues which are forcing him to make radical changes in his life and marriage. He is

insightful and able to manage his current circumstances and will seek help if the situation does not improve". It referred to his marital difficulties which had led to him avoiding being at home where he lived with his wife and in-laws. He should see his GP by 27 April 2009, and continue with his CBT. The letter to the GP said that he was contemplating ending his marriage "and became overwhelmed yesterday [23 April 2009] following an argument the previous night with his wife."

36. As Mr McFarlane left the marital home on 23 April, Ms Harpur-Lewis, on 24 April, offered him accommodation for up to two weeks with her and her husband, Ken, which he accepted. On 25 April, Ms Harpur-Lewis and Ms Griffiths organised a 40th birthday party for him. Ms Harpur-Lewis described Ms Griffiths as very friendly and tactile in a way which could lead to misunderstandings, as Ms Griffiths herself realised, about the way she really felt. She had also been openly disparaging about her ex-boyfriend at times in his absence. Mr McFarlane spent the nights of 29 and 30 April on the sofa at Ms Griffiths' house, as Ms Harpur-Lewis had friends staying, before returning to their house to continue his stay there.

37. The text messages from Mr McFarlane to Ms Griffiths over the period starting on 28 April to 3 May show him pressing for a relationship beyond the limits of friendship, and her refusing, saying that she was feeling "really unsure…about us…this is too soon for both of us"; they should speak face to face but she would be totally straight with him and hoped that he could understand that. It was couched in affectionate terms. He texted Ms Harpur-Lewis saying that Ms Griffiths was "having serious thoughts about the timing of us together" and he wanted her opinion on how Ms Griffiths really felt. If he could not convince her that the timing was right, and she wanted "to leave it for now," he would have to leave: he could not stay knowing how they both felt, yet seeing each other.

38. On 29 April, around 09.00, the following exchange took place. Mr McFarlane repeated his intention of persuading her to a closer relationship, to which she replied that he was welcome to join them that night but "Just methinks we should stay friends. Pls tell me we can still be friends or already im gonna regret letting it get as far as it did xx." His persistent reply that, in the last 3 days, he had been happier than in 19 years, that she should admit her real feelings, "after our recent hugs etc" he could not let her go and carry on regardless, lead to a firm reply that he was not hearing her; she had never been more serious. "I am sorry but its not going to go any further. I only want you as a friend…I want to be on my own." It was going to stay as a friendship; he was like a brother; kissing him had not felt right. That was how it had to be or they would risk their friendship. The exchange then petered out. He spent the night at her house. She said he could also stay the next night, as he did. She told her ex-boyfriend that Mr McFarlane had made two passes at her, the first when he had stayed the night on the sofa. He had come into her bedroom but, as he had left when asked politely to do so, she had allowed him to stay the second night.

39. It was on Thursday 30 April that Ms Griffiths injured her knee at her gym class and was taken to A& E by Mr McFarlane. Ms Griffiths told Mrs Fitch, a friend who went round to her house in the late afternoon of 5 May, that at the hospital, Mr McFarlane had "come on" to her, he had started to embrace her, tried to become closer to her but she pushed him away. Back at her home on the settee, his advances had been even stronger, he put his arms round her, and was almost on top of her, while she was pushing him away. Ms Griffiths told Mrs Fitch on 5 May that she felt he was "invading her space",

that she felt quite threatened by him and that he was taking advantage of her vulnerability. She said much the same to Mr Fitch, who went to her house to collect his wife in the afternoon of 5 May. This evidence is in the hearsay statements they made to the IPCC on 6 May and a further statement by Mrs Fitch on 16 July 2009. Mr McFarlane nonetheless spent the night of 30 April in Ms Griffiths' home, on the sofa.

40. Ms Griffiths' ex-boyfriend also made a statement to the IPCC on 7 May and 8 August 2009, and a statement for these proceedings in June 2017. She had told him, around 1 and 2 May, that she was starting to have concerns about Mr McFarlane. He wanted a relationship with her, whereas she wanted no more than friendship, and had told him that if he could not accept just being friends, then they would not see each other at all.

41. On 1 May, Mr McFarlane was looking for somewhere to stay. The emails adopt a more even and relaxed tone, with Mr McFarlane seemingly reconciled to Ms Griffiths' position, until about 20.00 on 2 May. At some point, on 1 or 2 May, he arranged bedsit accommodation to start from Tuesday 5 May.

42. But on 2 May, the evidence of Mr and Mrs Fitch, based on what Ms Griffiths told them on 5 May, was that Mr McFarlane had started to become more involved with her family, had taken one of the daughters shopping and had tried to get close to her again but she had pushed him away. Her ex-boyfriend described what Ms Griffiths had told him: she and Mr McFarlane had been sitting on the sofa, and he had tried to kiss her. She had said no and asked him to leave, at which point Mr McFarlane "blew up". She told Mr McFarlane that the ex-boyfriend was visiting, to which he responded by asking why him, when she could have Mr McFarlane. Ms Griffiths said that he was being quite nasty, and had frightened the children. The ex-boyfriend said that he thought Mr McFarlane was quite angry that he would be back after a short period, when he thought that Mr McFarlane had been hoping that he had left the scene. Ms Griffiths also told another friend, Mr Harvey, a police officer, when she asked him for advice on 5 May, that Mr McFarlane had made a pass at her on Saturday, and she had kissed him back "out of sympathy." (Two events may have been run together).

43. It was also on 2 May, after those events, on my assessment of the email timings, that Mr McFarlane went to the former marital home to collect his belongings. Mr McFarlane drove there in a van with Mr Harpur-Lewis to assist him. Mr McFarlane was to describe in his MHA assessment how his wife had been indifferent or unemotional in response to his collecting his bags, which had upset him. She had also been more concerned about her laptop than with his 40th birthday. Mr Harpur-Lewis described him, on the way back to the Harpur-Lewis' house, as acting totally out of his quite gentle and placid character, shouting and swearing and driving in a somewhat reckless way, which troubled Mr Harpur-Lewis. His Niche interview described Mr McFarlane as "raging".

44. Around 20.00, there was an exchange of messages, in which Mr McFarlane had texted Ms Griffiths saying "I am sorry but this is tootoo hard for me. I want to help you and you resist somewhat but then Clifford puts pressure on. Please give the girls a big big hug and they can give you one from me. Goodbye my dear friend." She replied that she was not a silly little girl; the girls would always come first; they were just good friends as she and Clifford were; she hoped to see him soon, which met the response at 20.07 "No, you have made your choice now live with it." Then she texted to say that she had asked the ex-boyfriend to go home. She had hoped that saying so would mollify Mr McFarlane. She did in fact text him not to come over.

45. Ms Griffiths then texted Ms Harpur-Lewis to say that Mr McFarlane's behaviour was scaring her, but she could not go into details as the girls were with her. At 20.40, she texted Ms Harpur-Lewis to say that when the ex-boyfriend had been on his way to her house to help her, Mr McFarlane had freaked out and left. His 20.07 text had made her scared that he was going to kill himself. She followed this up by texting that Mr McFarlane "despite the façade is not so stable." She was feeling uncomfortable with him. And a few minutes later, she texted that she did not know where he was; he had "frightened my girls tonight in how he challenged me in front of them tonight so I really hope that he does not come here." Mr McFarlane texted Ms Griffiths at 21.00, to the effect that things would never have worked out between them, "your too independent and I'm too sensitive"; he had had a bad day. Ms Griffiths texted her ex-boyfriend to explain that she had "had a bit of an ordeal" with Mr McFarlane, and her eldest daughter was worried.

46. Mr Harpur-Lewis, in his IPCC statement, said that at about 21.00 his wife had spoken to Ms Griffiths over the telephone and had been told that she and Mr McFarlane had argued about her ex-boyfriend coming to help her. His wife also showed him, at about 21.30, a Facebook message posted by Mr McFarlane which, like the 20.07 text, said that Ms Griffiths had made her decision and he had made his. This made Ms Harpur-Lewis concerned that Mr McFarlane would kill himself and she prevailed upon her husband to ring him; Mr McFarlane said that he was fine. She also spoke to him; he did not say what he was doing but she thought that it was related to a suicide attempt. She asked if he was going to kill himself, which he said he was, that he was at the farm, and identified which barn he was in.

47. They drove out there in about 15 minutes, keeping him on the phone. He said the rope was round his neck, and she asked him to remove it. The light was on in the barn; he was in a "cherry picker" cage lifted up to the rafters. There was a rope hanging down from the rafters; he was standing on the beam beside it. Although she told him to stay where he was, he slid down the arm holding up the cage on to the ground. "He appeared to be out of it." He told them he had taken 2 Zopiclone tablets. They took him straight home to bed and then, thinking about what had happened, phoned the on-call doctor who advised them to take him to A&E. This they did, and she went with him to the hospital, where she told staff of her concerns, before returning home at about 03.00. The medical records for 3 May 2009 at 03.00 note the suicide attempt and that the friends who brought him in said that his speech was unusually fast and pressured. But the nurse noted that he did not seem obviously depressed and that his speech was normal; his insight was intact and he denied suicidal ideas.

48. Later in Ms Harpur-Lewis' Niche interview of 8 November 2010, she described the situation as changing on this Saturday, with darker messages on Facebook for both her and Ms Griffiths. Ms Griffiths was no longer being just irritated by Mr McFarlane but scared by him. Ms Harpur-Lewis said she now "felt quite uncomfortable around him." Ms Harpur-Lewis said in her IPCC statement of 14 August 2009 that that Saturday and indeed, even on 5 May 2009, she did not feel that Ms Griffiths was scared for her own safety or that of her children, but for what Mr McFarlane might do to himself.

49. Ms Catherine Russell is a registered mental health nurse employed by the NHS Trust, working in psychiatric care since 1987 with the CRHTT. A&E referred Mr McFarlane by telephone to her and she telephoned Nurse Harris and they arranged to meet in A&E at around 04.00. But when they arrived, Mr McFarlane had already left and A&E were

asked to tell the police. He was rung on his mobile at 05.06; he was at a local garage where he was told to stay; the police went and brought him back. There were no problems. The Suffolk Police created an event log.

50. While he was out, he telephoned Ms Harpur-Lewis saying that he had left because he felt hot and claustrophobic. The Police Polaris event log at 04.29 referred to him having called a friend, saying that he was on his way back to the farm where he intended to try to kill himself again, as set out in the Home Treatment Short Assessment Form, HTSAF. He also sent a text to Ms Griffiths at 04.39 on 3 May during this period: "Hi after a great deal of thought you do resent me helping you even despite my best efforts. So I am never going to be allowed to help properly as you were going to allow Clifford so if you feel the same then lets depart forever as last night it felt [like] you stood on my heart. Let me know what you want to do."

51. After he had been brought back to A&E, the medical records noted at 05.24, that he was willing to stay and be seen by the Crisis Team. At 06.30, the Crisis Team assessment by Nurse Russell and Nurse Harris began and lasted an hour. She and Nurse Harris checked Mr McFarlane's records on the EPEX, the mental health computer system; Nurse Harris remembered dealing with Mr McFarlane previously.

52. The latter signed the HTSAF but did not give oral evidence; Nurse Russell, who did give oral evidence, stood by its contents. It describes the referral as being from A&E, stating that Mr McFarlane had been brought in by his friend Ruth-Ann when she became concerned about his safety and had gone to the barn where he worked, only to find him on a rafter "with a rope tied to the rafter with the intention of hanging himself."

53. The content of the form is important and I now set it out:

> "John was seen in A&E by Cathy Russell and Brid Harris. John had attended A&E earlier in the night but had left before being assessed. He was picked up by the police at a petrol station after they managed to contact him on his mobile phone. When he left A&E at that time he phoned his friend Ruth Anne and had raised her concerns again about his intention to kill himself and told her he was on his way back to the farm.
>
> On assessment John presented as quite pressured in speech. He had good eye contact. His found it difficult to recount events of this evening and presented as being unable to focus, going off on tangents.
>
> He said that in the past 2 weeks he has left his wife and is living with his friend Ruth Anne on a temporary basis. He talked about another friend Mary who he has been staying with in the past few days. She is a single mother who recently split with a partner. John said that he has been helping Mary a lot recently as she injured her arm. He was very upset when he returned from the supermarket yesterday and found that this ex-partner was in the house with Mary. This was the trigger to him attempting to hang himself.
>
> John said that he has not slept for 4 nights. He works long hours on the farm and continues to teach as a fitness instructor.

> He said that this evening's suicidal attempt was an impulsive act which he had not planned. He had Zopiclone in his pocket which he handed over to staff. He said that prior to trying to hang himself he had taken 2 of these hoping that he would become drowsy and if he lost courage would be unsteady because of the effect of these and increase the chance of him carrying out the hanging.
>
> Staff offered John admission to hospital in the light of his current risk. He said he did not want this as he has the animals on the farm to feed this morning. He is also worried about losing the classes he teaches to other instructors if he is in hospital. Due to his current high risk of impulsive suicide attempts staff took the decision to call a Mental Health Act Assessment.
>
> Spoke to John's friend Ruth Anne who he is staying with. She described him as euphoric and manic at times in recent days. She said she has concerns as she has known him for some time and she has heard him talk in the past about suicide but is concerned about recent behaviour. She said she would not be comfortable with John coming back there. Her version of events is different to Johns. She said that on Wednesday she had a friend coming from America which was pre-arranged and she had asked John to take other arrangements for that time. As far as she is aware John has not stayed anywhere in particular but he has been staying with Mary a lot. Mary told her that John had been hoping to strike up a relationship with her which she declined. When her x partner came to the house he "flew" at him in rage. This is out of character for him according to Ruth Anne and Mary was afraid of him. She also said that he was quite agitated and aggressive when her partner took him to pick up his belongings at his wife's house. John himself said he was taken aback at his wife's calm reaction to him taking his belongings."

At the end of the form it says under the heading Outcome/Recommendations:

> "John would not go into hospital informally. Referred for Mental Health Act Assessment. Staff has spoken to his friend Ruth-Anne to get her opinion."

(The reference to Mr McFarlane flying at the ex-partner in a rage is a mistake: the ex-partner was not there; his anger was with Ms Griffiths at the anticipated return of the ex-partner. The ex-partner's hearsay evidence was that Mr McFarlane had been amiable towards him on the three occasions when they had met. The mistake appears to be the nurses' as to what they had been told, rather than Ms Harpur-Lewis' as to what she had been told. Two of the three references by Dr Stagias in his notes to what Mr McFarlane said of this suggest that the assessors were told the correct position. Whether the difference was picked up is unknown. This was not explored at trial.)

54. The Risk Screen bears Nurse Harris' name. The behaviours that caused concern are noted as a previous attempt at hanging in 1993:

> "Tonight's suicide attempt was impulsive however the plan was in place already. Got up on rafter of a barn. Took Zopiclone so he would not feel anything. Texted a friend who found him."

He had never misused drugs.

> "Recent out of character outbursts however no history of aggression or violence."

55. There were references to psychotic symptoms in 1993 and that he had not been eating recently or slept for four nights. Under the heading "Cognition/Physical health", it said:

> "Not expressing suicidal ideation however considered to be high risk currently due to impulsive nature of behaviour and suicidal plans already in place."

His level of insight was of concern. He had not slept for four nights and was currently very receptive to social stresses. He was pressured in speech and unable to focus, going off on a tangent. Under the heading Risks to Children, it said "N/A". His social/home situation described him as staying with a friend on a temporary basis and as having made plans to move into lodgings.

56. It mentioned his work on the farm but not that he was a slaughter man. He had a good circle of friends and enjoyed his hobby as a fitness instructor. The action plan said that it was felt he needed admission but refused to go in informally, and was therefore referred for a MHA assessment. Staff had spoken to his friend, Ruth-Ann, with his permission, and had got her views. Nurse Harris made notes which included saying that she was awaiting a social worker to call for the assessment, and "see EPEX assessment for further information" which she signed on behalf of the CRHTT.

57. At 07.40, he was noted as being very agitated and pacing the department, but he does not appear to have been under any obvious custodial arrangements pending the MHA assessment.

58. Nurse Russell described Mr McFarlane, in her witness statement, as "quite agitated but not abusive or hostile", unable to see why they were concerned about his safety. He talked about a female friend and that he was upset that her previous partner had returned, and mentioned some animosity between himself and the ex-partner, but made no mention of any intention or desire to harm anyone at all. Mr McFarlane did not seem focussed and kept going off at a tangent when asked specific questions. Her notes of the assessment had referred to a marked pressure of speech, talking very fast; he was again talking actively about suicide and planning it. This, she agreed, was different from his presentation in A&E. He looked a bit scruffy as though he had not slept for a couple of days. Although he articulated himself well and had no difficulties understanding her, she felt that he was not happy with the questions; it was quite difficult questioning him, as he did not want to answer questions. This made them feel uncomfortable but not threatened. Mr McFarlane kept changing, which did not fit with why he had been brought in. He might have been manipulating things, but she trusted him, although he was not making sense of their concerns.

59. Nurse Russell had said in her police statement dated 29 June 2009: "I also felt uncomfortable questioning him, I cannot say exactly why but something unnerved me, and not many people make me feel that way. It may have been the way he was talking obsessively about women, his answers were out of context and what he was saying just did not fit. I just cannot put my finger on it exactly." But she did not feel fearful of him and "certainly did not feel he was a danger to me or anyone else, other than potentially himself." The women he was talking about were Ms Griffiths and his estranged wife, and her lack of concern about his moving his belongings out. She was not comfortable with his presentation, however, as he appeared to have very little insight yet seemed to be rationalising his situation; but she did not fear that he would harm her.

60. She referred in her witness statement to that comment that something about Mr McFarlane unnerved her. She said it was more his presentation and lack of insight rather than anything else, and but for the tragic events that followed, she did not think she would have mentioned this. No-one had told her that Mr McFarlane had begun to stalk or harass anyone, nor was there mention of sexual assault, or of his being angry with Ms Griffiths. He did say that he wanted her children to see what a nasty man the ex-partner was, but mentioned no intention of harming him.

61. Her overall assessment had been that there was no evidence of anything psychotic but he presented as having impulsive behaviour, being unpredictable and agitated and being obviously at risk from suicidal tendencies; there was at least a moderate risk of a further attempt. His presentation had changed over his time in hospital and that concerned them. He was offered hospital admission for 2 – 3 days for further assessment. When she tried to explain the benefits this would have for him, he declined the offer without giving what she regarded as a rational explanation. So they decided that he needed an MHA assessment. She did not remember Mr McFarlane being or telling her that he was a slaughterman, although he said he had work to do and combat classes to take for Mary, which were his reasons why he said he could not come into hospital. He could not make sense of their concerns, and did not want to be locked up but rather to work. He went into denial and off at a tangent and would not focus.

62. Arrangements were then made for the MHA assessment to be carried out. Inquiries were made about the availability of a bed for in-patient treatment.

63. At about 08.50, Paul Dodman received a phone call from Mr McFarlane, asking him to bring his phone, charger and keys from the farm to the hospital, where he would explain things. Mr McFarlane said there had been "a bit of an incident" at Denham the previous night and he was now in the hospital, but he sounded fine. Mr Dodman went to the deer pen, he could see the boom of the teleporter extended towards the roof, a rope around the metal beam twice, and a five foot length of single rope hanging down above the cage at the end of the boom.

64. Mr Dodman now realised what Mr McFarlane had been up to when he had seen him in the truck the previous night. He told his wife to telephone the hospital to tell them not to let Mr McFarlane out as he intended to take his own life. It is clear that he did not then appreciate that the hospital already knew that, as Mr McFarlane did not tell Mr Dodman why he was in. Mr Dodman removed the forklift and took everything down. He arrived at the hospital at about 10.00, and told the receptionist that under no circumstances should Mr McFarlane be allowed out because he had tried to kill himself.

She had replied to the effect that she did not think that he would be allowed to leave and mentioned he was going to be assessed under the MHA.

65. Mr Dodman also telephoned Mr Bowe who had gone to Norfolk, and told him that Mr McFarlane had rung him from hospital, and that he had tried to hang himself. Mr Bowe was told by Mr Dodman that it had happened in the deer pen area, with the use of the teleporter, cage and rope hanging from the beam. He said that he was not told the details of the set up by Mr Dodman until later that day. Mr Dodman said that Mr Bowe should return to the farm. Mr Bowe then phoned Mrs Gliksten, who was in Scotland and due to return to the farm that evening, and let her know what had happened.

66. The panel assembled for the MHA assessment comprised Dr Konstantinos Stagias, Dr Nicola Mann and Mr John Mallett. Dr Stagias has been a consultant psychiatrist since 2010, and had been working in psychiatric care since February 2004. In 2009, he was in his fifth year of specialist training in general adult psychiatry. He was approved under s12 MHA 1983; he had done 30 MHA assessments, more than half of which related to attempted suicides. He became a Member of the Royal College of Physicians in 2006. Dr Mann, a GP from 1993 till retirement in 2015, was the other s12 MHA approved doctor on the panel; she had done 12-15 MHA assessments since 2002. Mr Mallett was a social worker approved under the MHA, and employed by Suffolk County Council; he had been an AMHP since 1986. This was their first involvement with Mr McFarlane.

67. Dr Stagias, the second on-call doctor, arrived at the Wedgwood Unit of the hospital at around 09.45 and spoke to Ms Russell, whom Dr Stagias described as an experienced psychiatric nurse, and asked the opinion of the Crisis Team. He received a brief overview of Mr McFarlane's previous dealings with the Suffolk Mental Health Services and the CRHTT. Nurse Russell said she passed on to him their concerns and assessment and what Ms Harpur-Lewis had said to Nurse Harris. She was not aware of missing out anything.

68. He could not remember her saying she felt "unnerved" or "uncomfortable" interviewing Mr McFarlane; nor could he say what effect, if any, it would have had, had she done so, beyond that it would have been considered. He enquired if a bed was available. Before the assessment, he had the 23 April 2009 risk assessment; he went on the system and identified Dr Jansen's notes of 14 January 2009, which he printed off. That is I believe a reference to her letter. He at least skimmed the EPEX record and read the important documents to which it referred. He printed it and took into the assessment all the relevant earlier assessments. He focussed on the critical points in preparation. He was aware of the September 2008 CMH assessment, though he may not have printed it off. He had the 2 sets of A&E notes for Mr McFarlane, and the HTSAF and Risk Screen from earlier that morning.

69. Dr Stagias said that the A&E notes of Mr McFarlane's presentation were not all that worrying. He knew that Mr McFarlane had left A&E, when he had no one observing him and that he had phoned Ms Harpur-Lewis, saying that he would go back to the farm to kill himself. He had seen that Mr McFarlane was agitated on his return to A&E. He took on board that there had been a rapid change in presentation, which he considered was explicable by the two Zopiclone tablets, but the changeability in his presentation was an escalation from 2 May and related to his marital problems. They saw no marks around his neck but he could not recall now what Mr McFarlane was wearing around his neck.

70. Mr Mallett thought it likely, he said in his statement of 25 October 2016, that he would have reviewed all the Trust's relevant records before the assessment but he could not now remember exactly which documents he had accessed. He was not sure, in chief, that he had read the EPEX notes beforehand. He had read and knew what was in Nurse Harris' HTSAF. He had spoken on the telephone to Nurse Russell before the assessment began, and knew that Mr McFarlane had been assessed by the CRHTT team, was refusing admission for the further assessment that Team had advised, and that they therefore felt an assessment for compulsory admission was indicated. Mr McFarlane was adamant that he did not want admission.

71. When Mr McFarlane was referred to them for assessment, Mr Mallett certainly thought that the level of risk might meet the threshold for admission. He had liaised with Suffolk Police, at 09.33, to inform them that an assessment would take place and that their back up was possibly needed should Mr McFarlane be detained and resist admission. The Polaris log notes A&E saying of Mr McFarlane, a large male with experience of combat techniques, that he was still saying that he wanted to kill himself, and that it "sounds like we are going to have to section him and we believe he is not going to be very happy about this."

72. Dr Mann, in her statement to the police on 9 July 2009, said that when she arrived at A&E on 3 May 2009 at around 10.00 she saw Mr McFarlane, dressed in normal casual clothes, standing in A&E, "walking around and [he] appeared a bit agitated." He was telling A&E he needed to get back to work to feed the baby lambs.

73. The three panel members then had a short conversation with A&E staff about how Mr McFarlane had presented, and discussed the case before meeting Mr McFarlane. Dr Stagias thought the discussion lasted about half an hour. Dr Stagias had brought the papers in with him which included the A&E notes, said Dr Mann.

74. At around 10.20, Dr Stagias received a telephone call from Mrs Dodman; he made a hand-written note of it. Mrs Dodman agreed, when she gave evidence, that Dr Stagias' note of the telephone call was correct. She added that the person to whom she spoke, whose name she did not know and who had no Greek accent that she could remember, said that Mr McFarlane would not be let out. I do not accept her evidence of that part of the conversation which she said she had with a receptionist; it seems wholly improbable that Dr Stagias, and she made only the one call, would have said anything of the sort, let alone in that unqualified way before an assessment. There may be confusion with what her husband Paul told her about his visit to the hospital.

75. It was not at issue, however, that she told Dr Stagias that her husband had been contacted by Mr McFarlane in some distress, saying that "the past is all catching up;" he had separated recently from his wife; the boss of the farm had died two months before; Paul had visited the farm and found the machinery, the noose and the battery flattened so that the machinery could not be brought down. She said that Mr McFarlane's wife might not understand what went on; he had a lot of new friends and mixed emotions about the marriage. She said that she was quite worried about his well-being. This information was discussed among the Panel before the assessment began at 10.30, as Dr Stagias' note at the time confirms. His note makes no reference to saying to Mrs Dodman that Mr McFarlane would not be let out. She added in evidence that she would never have let Mr McFarlane stay at their house. She had made the phone call because she was worried that Mr McFarlane would hurt himself.

76. Dr Stagias' handwritten notes cover several pages: five pages of contemporaneous notes, the fifth being of the discussion in the absence of Mr McFarlane which took place after he was interviewed, and four pages recording the assessment, made after Mr McFarlane had left. He summarised the account Mr McFarlane gave of what had happened over the 12 hours before he was taken to A&E. Dr Stagias said that three main triggers were identified by Mr McFarlane to explain his distress. First, there had been an argument on Saturday evening with his friend Mary whose ex-boyfriend was moving in to look after her; Mary was a single mother with three children; Mr McFarlane had told her that he would take her classes as she had hurt her knee. Dr Stagias agreed that such an argument was "out of character", but said there was no evidence of violent behaviour. He did not appear, as I read his evidence, to see this as an argument with the ex-boyfriend, but as one about his anticipated return. However, Dr Stagias did not contest the way Mr Bowen questioned him about it based on Nurse Harris' note, but his questions were not always clear and to the point. Second, earlier on Saturday, he had gone to collect his belongings from his home address after he had separated from his wife on his 40th birthday, having found somewhere else to live. His wife helped him pack his stuff but had not shed any tears, when he was expecting her to be more emotional. He found her reaction painful which put him in a bad mood. Third, his mother had also called him that morning after she had found out that he had separated from his wife. This call had upset him as well: he blamed his mother for his bad childhood because he was the one put in a home while his brother and sister were well looked after. Mr McFarlane had also mentioned two other reasons: an incident where his wife had cared more about her laptop than focussing on his birthday, and his boss from the farm had died two months ago.

77. Dr Stagias elaborated in his evidence on what Mr McFarlane said in relation to Ms Griffiths. Mr McFarlane had visited her on the Saturday evening and found the daughters sitting frozen round the kitchen table. He was told that her ex-partner had found out about the accident that had happened on Thursday, and had said he would return to support her and her daughters. Mr McFarlane made out that this man had been violent in the past and that Ms Griffiths' daughters were afraid of him. Mr McFarlane spoke about standing in for her keep fit classes until she was fit enough to continue, so as to prevent another instructor poaching her classes, and he was keen to support her. Mr McFarlane did not describe her as a girlfriend, but as a friend and single mother he was really keen to support. After leaving her house he felt angry and thought about "an easy way out" and so thought about hanging himself. They were aware of rejection of his hoped for romantic relationship with Ms Griffiths.

78. He had gone back to the farm, but meantime had spoken to another friend who was a clinical psychologist. Later Ms Harpur-Lewis' husband called him and they had found him at the farm sitting on the rafters and had convinced him to come down. He said he had taken two Zoplicone tablets and therefore could not remember coming down from the rafters and everything was a blur. He stated he could not remember leaving A&E but did remember the police ringing his mobile, whereupon he had told them where he was, and they collected him and brought him back to A&E. He had said that he had co-operated with the police and told them where he had come from.

79. Dr Stagias then summarised his assessment. Mr McFarlane presented good eye contact, good rapport, was calm and co-operative. The assessment had lasted over two hours, during which time Mr McFarlane had remained calm with spontaneous speech,

coherent, relevant and not pressured. Mr McFarlane described his mood as having been angry last night, but actually very good over the last two weeks. "His mood was objectively reactive, well modulated with no evidence of elated mood." He had said that he had not slept for four days when he spoke to CRHTT but told the panel that was mainly due to understandable reasons. He had been sorting out new accommodation on Friday, but on Thursday and Friday had had good sleep. His appetite, concentration and energy levels and enjoyment were described by Mr McFarlane as good and Dr Stagias judged that he concentrated well during the two hour assessment. He was not feeling hopeless or worthless and talked about being popular as an instructor in his fitness classes. Mr McFarlane said that he had done what he did the previous night as a result of the triggers mentioned, but was now calmer and willing to co-operate with whatever follow-up they offered; he was not keen to be admitted to hospital. He denied having further violent thoughts about suicide stating there would be no further active plans to do so: he was not sure if he had actually wanted to kill himself the previous night or whether he just "wanted to get back at them" to use Mr McFarlane's own expression, to take his revenge and make those around him feel guilty. Dr Stagias noted that Mr McFarlane had made very careful preparations for suicide but that he informed friends who found him, and replied to phone calls. He had made no further attempts to run away after the police brought him back to A&E though he had had opportunities to do so.

80. Dr Stagias found no exceptional abnormalities, hearing voices or delusional beliefs. He said that the opinion of the panel was that there was no evidence of psychotic illness or mania and that Mr McFarlane was orientated. He said he used no illicit drugs except for the zoplicone and he only drank very little. Overall they saw him as having had a history of neglectful childhood and poor self-esteem with one reported previous episode requiring hospital admission 20 years ago when he had been sectioned under the MHA. They referred to the notes of Dr Jansen which showed a deterioration of his sleep and thinking patterns over the past six months, his starting to receive CBT, and that he was not keen to try anti-depressant medication. He said in cross-examination Mr McFarlane did not have a mental illness or ongoing suicidal ideation, and had no significant psychiatric history, including the 1993 suicide attempt. What happened was not foreseeable.

81. The panel needed to discuss their assessment in the absence of Mr McFarlane. He was taken from the assessment room back to A&E, where Mr Dodman came across him. He spent about 20-25 minutes with Mr McFarlane, noticing graze marks but not bruising around his neck. Mr McFarlane seemed almost oblivious to what he had tried to do. Mr Dodman later explained to his wife what had happened and drove home. His 1 August 2017 witness statement says that Mr McFarlane told him that he needed an address to get out. Mr Dodman did not offer him a place to stay because they did not have the room and he seemed unstable as well.

82. This was the stage at which the panel agreed that Mr McFarlane was not suffering from any mental illness or disorder, and did not satisfy the requirements for compulsory admission. They knew, from the CRHTT notes and the request for assessment, that Mr McFarlane had refused voluntary admission. The Crisis Team could have admitted him as a voluntary patient, without a s2 MHA assessment. The panel also considered admission, compulsory or voluntary. It concluded "that there were no currently no sufficient grounds to detain under the Mental Health Act". They then also discussed the

outlines of the care plan, were he to be discharged. He would require a steady address for a sufficient time so things would settle down. The stipulation about accommodation related to the oversight it would allow. Dr Stagias envisaged continuity of care and environment for at least a couple of days.

83. Strategies and options were discussed. Mr McFarlane did not want to be admitted. If discharged from hospital, the question of where he would stay then arose for the purposes of the CRHTT care plan. Dr Stagias said in his statement of 25 June 2009 to the police:

> "We overall formed the opinion that MR MCFARLANE was quite distressed by the previous day's events, but not clinically depressed. We agreed to offer follow-up from CRHTT over the following days to facilitate risk management and also monitor his mental state. We stipulated that there would be certain conditions attached which include having a steady address and somebody living with him who could raise the alarm if things were not going as planned. MR MCFARLANE stated that he could organise that, but we insisted that this was arranged before we concluded the assessment."

The purpose of the accommodation was not so that others could be designated as his carers, but so that Mr McFarlane could be safe, and have somewhere where home treatment could be provided, and there was someone who could contact CRHTT if there were concerns. It was not "24/7" care and oversight.

84. They had made the stipulations in the care plan because of the changes in his social circumstances, including his divorce and they were aware of his childhood and its effects, and his chronic low self-esteem. He had been through a personal crisis and they wanted to provide as much support as they could. Dr Stagias thought Mr McFarlane had been offered the most comprehensive package of psychiatric care he had had for 20 years. There had been many contacts with him in 2008 and 2009. The Mental Health Act was not a "stay in" section; he could simply have been discharged.

85. Mr McFarlane was brought back to the assessment room. This plan was discussed with him including accommodation. Mr McFarlane thought he could stay with Ruth-Ann Harpur-Lewis, and was allowed to call her, but she told him she was very sorry but would not let him stay at her house. Dr Stagias then spoke to her at around 12.05 pm; she told him that she was worried about his mental health and that "it was a big risk to have him at her home" using the term "manic" and asking what the outcome was going to be of the assessment, but he told her he was not at liberty to tell her. Her IPCC statement of 7 May 2009 said that she asked to speak to the doctor, and told him that Mr McFarlane was capable of committing suicide, but of all the people she spoke to, this doctor was dismissive of her concerns. She described him in her Niche interview as very rushed, not really wanting to listen to what she had to say, saying that he had the information she had provided to the nurses, which she asked if he had, and saying that all he needed to know was whether she was prepared to have him in her house. She replied that she did not want to wake up and find him hanging in her spare room, "so absolutely not", and said she could not believe they were even thinking of discharging him. She could not believe it when Mr McFarlane rang her two hours later to say that he had been released.

86. Dr Stagias explained in cross-examination that Ms Harpur-Lewis had been emphatic, in refusing to have Mr McFarlane back, though he could not remember her saying that she did not want to find him hanging in her spare room. She had thought there was a big risk of a further suicide attempt. He knew her professionally and respected her views, which they considered. He had not dismissed what she had told him because he had been looking for accommodation only. He was very aware that she had gone with him to the assessment on 23 April and of what she told the Crisis Team; in her interview, she said he needed to know what she had told the Crisis Team in order to know her views.

87. Dr Stagias was aware that Mr McFarlane did not know that Ms Harpur-Lewis would not want him back, although Dr Stagias expected her to give a negative response because she was recorded on the HTSAF prepared by Nurse Harris, as saying that she would be "uncomfortable" with him coming back. Dr Stagias said that he was quite aware of Mr McFarlane's feelings of being rejected. He made the call short because he did not want Mr McFarlane to feel that he was ending up in hospital because he had been rejected by her; and so they were not going into a long discussion, which could lead to Mr McFarlane, who was present during the conversation, blaming her. Mr McFarlane had been expecting her to have him back and they needed to see how he perceived this. They thought that a professional making the call would create more pressure for the individual.

88. After this, Dr Stagias rang Southgate Ward in the Wedgwood Unit, to confirm there was a bed available; there was.

89. Mr McFarlane then called Mr Bowe, the Denham Estates farm manager who agreed that Mr McFarlane could stay with him. Dr Stagias then spoke to Mr Bowe on Mr McFarlane's phone "to ensure he was happy with this arrangement. He came across as a person who could be trusted looking after his welfare." I deal with this call more fully later, including who spoke first to Mr Bowe. The panel knew that Mr McFarlane had a flat or bedsit arranged. Dr Stagias' notes include its address. Dr Stagias' notes refer to it being available from Monday, though elsewhere a Tuesday move is mentioned.

90. Dr Stagias' notes of the assessment conclude under the heading:

> "Plan: discussed different options/strategies to manage current crisis. Given his presentation, we formed the opinion that there were currently no sufficient grounds to detain under the Mental Health Act. 1. Discharge in the community. Arrange to stay with friend in farm who is aware of plans and agreed. 2. Follow-up by Crisis Team – to make contact this afternoon. 3. Given 2 x Zoplicone tablets to use for insomnia. 4. Friend/John given number to access Crisis Team in case of deterioration. Another friend (Paul to collect). 5. Crisis Team to liaise with community services (GP) psychiatry (from Tues 5/09.)."

He said in evidence that despite their efforts and with their information, they could not find any mental illness. There were indications of depression, but not symptoms of mental illness or mental disorder. He tried to set up a care package for support and continued care. He judged that on that day Mr McFarlane had moved out of his personal crisis.

91. Dr Mann's evidence as to what Mr McFarlane said in the assessment and of their appraisal added little to what Dr Stagias said. She had made her handwritten notes after lunch. Mr McFarlane had been alert, appropriate, talkative and making good eye contact, generally with no problems sleeping; his energy levels were good and he felt fine about doing his work and gym classes. He said he had a lot to look forward to. His mood had never been better since he had left his wife. He told them that he had rented a room which he had arranged with the landlady. He drank very little. He had a close relationship and friendship with Ms Griffiths, but Dr Mann did not know that he had romantic ambitions towards her. He described himself as "very angry" over Ms Griffiths' former boyfriend coming over; he had not felt suicidal but felt that "Mary should have been able to say no." She regarded it as one of two main triggers, along with the call from his mother, although his wife's reaction or lack of it when he collected his belongings was also a factor. They had good reason for not asking his wife's views.

92. Dr Mann said that, after the assessment, the three of them were confident that Mr McFarlane was not actively suicidal. They felt that Mr McFarlane "was a minimal risk to himself and no more than he would have been on a ward. There was no indication that he was a risk to others". She and her colleagues had formed the impression that it had been "an impulsive self-harm attempt" in which he "had allowed himself to be found." She noted Mr McFarlane said that he had been thinking about hanging himself, but had not done so, instead awaiting the arrival of Ruth and Ken, who had rung him and to whom he had spoken. He had made this attempt because of anger; he had not been trying to kill himself but it was a significant event, in which he could have killed himself. Mr McFarlane had suffered at times from a depressed mood, recent agitation, and anxiety, but not inappropriately. He would not meet the criteria for a depressive illness, and was nowhere near the level for admission. He was anxious to get on with his life. He had not taken his anti-depressant medication as he did not like it.

93. The significance of his undulating presentation was discussed; they concluded that his presentation changed with circumstances. In her Niche interview, she was not sure that the change from when he was seen first in A&E came up in the discussion. They had gone through what had happened chronologically and talked through why he had arrived at that crisis point. What Mr McFarlane said about never having been happier made sense to them in the context of his decision to leave his wife.

94. They had discussed the options with Mr McFarlane who was not keen on voluntary admission. Her statement to the police of 9 July 2009 said that Mr McFarlane had agreed to voluntary admission "but was extremely unkeen and it was not deemed appropriate". Mr McFarlane wished to leave hospital and go to work. He explained about the death of his boss, that his boss's wife was away as was the farm manager and so he was the only one available to feed the animals; he was very keen to get back to his farm work. He was also keen to stand in for Ms Griffiths' gym class on the Monday, which was her only source of income. He was going as well to a christening party for his godson with his wife that Sunday. They discussed these reasons, and did not think he was telling them what they wanted to hear in order to stay out of hospital. He was given the most comprehensive care package he had received in 20 years, though he had no mental disorder, because he needed more help as he was going through a divorce.

95. The telephone calls were part of the process of finalising the care plan after they had decided he was not to be detained. Mr McFarlane suggested that he would stay with

his friends Ruth-Ann and Ken Harpur-Lewis, which they thought would be appropriate, as he was not actively suicidal, and a minimal risk to himself and no risk to others. Dr Stagias then spoke to Ms Harpur-Lewis from which Dr Mann understood that she did not want him as she had found him in the barn, which had shocked her. She could hear this being said to Dr Stagias. She was not sure about her evidence that she had said no to Mr McFarlane because of the children. (Rightly so, because Ms Harpur-Lewis had no children.)

96. Mr McFarlane had suggested staying with Paul Dodman, but they did not like that as he was not a close enough contact. Mr McFarlane then suggested staying with the farm manager, Mr Bowe and his wife. Mr Bowe was rung, and told Dr Stagias that he was aware of what had happened and was "fine to oversee" Mr McFarlane. He and his wife "would keep him and were advised the Crisis Team was available 24/7 if needed." The room in which they were sitting was a small one and she could hear the tone of the conversations and the odd word and Dr Stagias was quite explicit as to what had happened. Mr McFarlane was told to go and stay with Mr Bowe until Tuesday, rather than in the accommodation he had arranged. The Crisis Team would be involved, a psychiatrist would see him and he was given two Zoplicone tablets for sleeping. It was no part of the plan that Mr McFarlane have someone with him all the time; there was no imminent active risk of suicide.

97. Contacting Ms Griffiths would have been a breach of confidence. She did not think that the risk to him was at the level requiring the panel to seek information from her. Dr Mann said that they did not think that he was a risk to Ms Griffiths.

98. Dr Mann agreed that "mental disorder" in s2 MHA did not necessarily refer to a diagnosable medical condition, and that depression and neurotic anxiety could be disorders. A lot of mental disorder had a risk attached, particularly if someone were seriously ill. She knew that Nurses Harris and Russell had recommended detention, but paragraph 1.2 of the 2008 Government Code of Practice referred to the obligation on those taking action without a patient's consent, to keep to a minimum the restrictions imposed on the person's liberty, having regard to the purposes for which the restrictions were imposed. Neither limb of s2 was satisfied.

99. Mr Mallett said that Mr McFarlane remained calm and rational throughout the assessment, planning for the future and speaking about moving into a flat. He made good eye contact and was articulate. Mr McFarlane's presentation related very much to what had been going on in his personal life in the immediate preceding days. There had been something unusual and theatrical about the setting up of the forklift truck in the barn which seeded doubt in Mr Mallett's mind as to Mr McFarlane's true intent. The suicide attempt appeared reactive to several relationship difficulties, including leaving his wife. The focus of the assessment was on harm to him, which was the basis of the referral. On the initial information available, Mr Mallett had felt there was a considerable gravity in the risk to Mr McFarlane. His perception of the risk reduced as the assessment got underway, and at the end they came up with the community plan, keeping an eye on him rather than supervision for 24 hours a day. It involved trusting Mr McFarlane to a certain extent, but there was no reason to doubt Mr McFarlane's expressions of willingness to keep himself safe and engage with further support. Mr Mallett got no impression that Mr McFarlane was being manipulative.

100. There had been nothing in the request for an assessment suggesting that he posed a risk to others and nothing in his demeanour or history or which arose in the assessment itself to indicate that he might be a potential risk to others. He had not known that Mr McFarlane was a slaughter man, but it would not have altered the outcome as he did not meet the first criteria for detention, that is, suffering from a mental disorder, and the risk of self-harm had been reduced.

101. Mr McFarlane was not suffering from any mental illness and showed no form of aggression during assessment, nor any sign of thought disorder or psychosis nor did he appear to have symptoms of depression. The assessment concluded that he did not meet the criteria for detention as there was no evidence of mental disorder. The doctors might have spoken of him as possibly having traits of personality disorder in some way, but not a functional mental illness. Had it been concluded that he needed to be admitted, his objections to voluntary admission meant that he would have to be detained.

102. Mr Mallett said that a crisis management plan would be produced by the CRHTT for the next few days. Mr McFarlane would be given access to its 24 hour telephone number, and treated by his GP with his prescribed medication. In his Niche interview on 16 November 2010, Mr Mallett agreed that he thought that Mr McFarlane had been told he would need to be assessed further and to engage constructively with the assessment process, in order not to be detained. Mr McFarlane, he said, "was able to give us reassurances that the moment had passed and he was now not in that frame of mind anymore and his colleague was a supportive friend." Mr Bowe had been made fully aware of what had been going on and was happy to let Mr McFarlane stay with him that night. Although he was returning to where he had attempted to commit suicide, Mr Mallett said Mr McFarlane had declined admission and no other option had come up.

103. Mr Mallett, commenting on paragraph 4.66 of the Code, which refers to the value in involving other people, particularly the patient's carers and family, in the decision-making process, said that confidentiality prevented consultation with Ms Griffiths, and Mr McFarlane had been explicit that his wife was not to be contacted. There was no application to admit him and so no obligation to consult with any other relatives.

104. Mr Mallett had had no information about Ms Griffiths before the assessment, and could not recall her being mentioned by name. He would not have accepted she was a valuable source of information nor had he seen her as the object of romantic ambitions, although he had read the HTSAF prepared by Nurse Harris. Although the social circumstance form, to which I come, deals with the risk to Mr McFarlane in the box marked "specified degree of risk to self and others", the panel had debated the risk to others in the assessment. It was a document for handing information over rather than recording the discussion, and the absence of a note of risk to others meant that there was not thought to be a risk to others. They had appraised the risk in total.

105. The assessment, as recorded on the social circumstance form for Suffolk County Council Social Care Services, signed by Mr Mallett at the conclusion of the whole assessment included matters dealt with after their initial view that Mr McFarlane was not to be detained: "No evidence of mental illness. Suicidality appears reactive to several relationship difficulties, including leaving his wife. At assessment was calm, rational and is forward planning. CRHTT will offer follow up over next few days to support as necessary and provide 24 hour access. Mr McFarlane agrees to use

appropriately." The outcome of the assessment was "No application [for admission]. No mental illness. Risk of self harm reduced. CRHTT will provide crisis management plan for a few days." No matters needed follow-up.

106. The form stated that Mr McFarlane's wife was his nearest relative but she had not been consulted because of "Relationship breakdown and not detained." Later it noted: "Not consulted given present animosity between them." Mr McFarlane's GP had not been consulted but was informed of the outcome. CRHTT, through Ms Russell, were informed of the assessment.

107. The background noted that he had attempted to hang himself on the farm where he worked, and that CRHTT had assessed him and felt he needed admission which he was declining. There had been "Several traumatic recent life events in relationships." Under "Specify Degree of Risk to Self or Others", the form noted that he now said that he was able and willing to keep himself safe, and would co-operate with any support and supervision. He did not want to be admitted because he had "several jobs on the farm and other commitments." Mr McFarlane's stated wishes were not to be admitted; he intended to move into new accommodation tomorrow, and "Has to take a fitness class on behalf of a friend tomorrow which he says he cannot miss." An observation was made on the assessment process: "Police didn't detain on 136 but left Mr McFarlane at A&E. If mentally disordered presumably they would have used their powers under Mental Health Act."

(I note the contrast with the form to be filled in where there is a medical recommendation for admission for assessment, which requires the details of the approved medical practitioner who recites his recommendation that the patient be admitted to hospital for assessment "in accordance with Part 2 of the Mental Health Act 1983." The form then sets out the criteria for compulsory admission under the MHA, requiring reasons to be given for the opinion that the relevant criteria are satisfied, both the presence of a form of mental disorder which warrants detention for assessment and the need for detention in the interests of the patient or the protection of others:

> "My reasons for these opinions are:
>
> (Your reasons should cover both (a) and (b) above. As part of them: describe the patient's symptoms and behaviour and explain how those symptoms and behaviour lead you to your opinion; explain why the patient ought to be admitted to hospital and why informal admission is not appropriate.)")

108. Immediately after the assessment, Mr Mallet spoke to the Crisis Team. This was not any panel member's particular responsibility. He went to the Crisis Team in Wedgwood and spoke to the person on duty and handed over the notes to them. It was important to communicate the community care plan to CRHTT as happened, and Dr Stagias took his notes over as well. He could not remember who he spoke to or there being any breakdown in communication. He produced the social circumstances report between 1.30 and 2pm that day.

109. The assessment finished around 12.30 pm, and Mr McFarlane was discharged from the hospital into the care of the CRHTT, so he still remained in the NHS Trust's secondary

or acute care. At 12.41, Mr McFarlane sent a text to Ms Harpur-Lewis apologising for what he had put them through. She did not respond, so as to keep her distance for a bit.

110. By the time that Mr Dodman had got back to the farm, shortly before 1pm, Mr McFarlane, who had been trying to contact him on his mobile phone, rang and said that he was being released, and Mr Bowe had agreed he could stay at his house. Mr Dodman was shocked that Mr McFarlane was being released because the failed attempt made him think that a further attempt was likely. This prompted Mr Dodman to speak to Mr Bowe because he thought that Mr Bowe, who had already spoken to the Crisis Team and had agreed to take MacFarlane in, had done so without knowing the full story. Mr Dodman said that he then explained the full circumstances to Mr Bowe, who was surprised and unhappy at what Mr Dodman said. Mr Dodman advised him not to take Mr McFarlane.

111. Dr Stagias was still in A & E writing up the notes when Mr Bowe called A & E to say he was worried about having Mr McFarlane at his home. He was put through to Dr Stagias. Dr Stagias said there would be active follow-up from the CRHTT so that sole responsibility would not rest with Mr Bowe; he advised Mr Bowe how to access the CRHTT, saying this was an interim plan that would be reviewed on 5 May 2009. His statement says Mr Bowe was happy with this. There was no information that there was any historical risk to others and Mr McFarlane expressed no delusional thoughts of harming others. Dr Stagias' note of the telephone call received not long before 1pm, made at the bottom of his page of notes on which the care plan is set out, states that Mr Bowe was:

> "worried about having home (having earlier agreed). Rationale, support from Crisis Team, availability explained/ways to access it/plans from Tuesday. Agrees with plan".

112. At 1.15 he gave the Crisis Team photocopies of his handwritten notes and discussed the case and agreed that the Team would make a telephone call later that afternoon to Mr McFarlane. One copy of his notes also went to the ward, in case things changed and Mr McFarlane was later admitted.

113. At 13.51, Ms Harpur-Lewis sent a text to Ms Griffiths saying that "unbelievably" they had "let him" go. She expected that he would take her classes as if nothing had happened, but it was not the responsibility of either Ms Griffiths or her. Ms Griffiths replied that she was stunned.

114. There are significant differences between Dr Stagias' and Mr Bowe's accounts of their two telephone conversations, particularly of the second call, which is the more important. In the second call, Mr Bowe said that he told Dr Stagias that he was unwilling to have Mr McFarlane to stay with him. I shall deal with that after concluding the accounts of the assessment, and what happened at the farm.

115. Mr Bowe, in his first police statement of 7 May 2009, the only one which deals with this sequence of events, does not refer to a second telephone call. But he does say that he told the hospital that he could not collect Mr McFarlane, but arranged for Mr McTaggart, the former farm manager, to do so. This was after the first telephone call. The timing of that arrangement is not known, nor when Mr McTaggart actually set off from the hospital for the farm with Mr McFarlane, although he had left by 1pm,

probably by about 12.45 on other evidence. Dr Stagias' suggestion of 12.30 seems unlikely in view of when the assessment concluded. There is no evidence that Mr Bowe spoke to Mr McFarlane after the second call to Dr Stagias, or to Mr McTaggart. But the arrangements Mr Bowe had made for Mr McTaggart to bring Mr McFarlane from the hospital to the farm were still in place, and, according to Mr Dodman, they arrived at the farm between 2 and 3 pm that Sunday. Mr Bowe said in his Niche interview that Mr McFarlane had arrived not long after his second call finished (therefore not long after 1.15): "He was almost back in the yard by then." Mr McFarlane seemed confused, oblivious to what had happened. When Mr Dodman said to Mr McFarlane that he must have been really depressed, Mr McFarlane replied "it's not depression it's anger." He said, according to another statement, that he had some "serious issues." But he explained no further what he meant.

116. Mr Bowe described Mr McFarlane as quiet, down and not his usual lively self. The three went to Mr Bowe's accommodation, where Mr McFarlane "settled in", according to Mr Bowe's first police statement. Mr McFarlane started to go through the belongings he had collected from the marital home. Mr Bowe said that he felt this was not a good idea. His belongings were then taken from the van and put into the farm's storage room. Mr McFarlane told him that his wife had been a bit harsh with him in telling him to get lost; and after he had returned to Ms Griffiths' house after taking one of her children shopping, the children were upset that her boyfriend was coming round. Mr McFarlane felt that he could look after Mary and the children, and that the boyfriend did not treat her very well. Mr McFarlane had become very angry at the boyfriend's return, and had left to go back to the farm. Mr McFarlane had then given a very calm and detailed description of the suicide attempt. He also said that either he had rung Ruth-Ann and Ken Harpur-Lewis or they had rung him, which had led them to come to the farm; when they found him, they had shouted at him to get the rope off his neck, and he had slid down the teleporter. They had taken him home, and later to hospital. Mr Bowe told Mr McFarlane that he had told the Crisis Team that he was not there to stop Mr McFarlane killing himself, if that is what he wanted to do.

117. Mr Bowe again spoke with Mrs Gliksten; Mr Bowe's first police statement does not say whether this was a further phone call or in person, but this particular conversation appears to have been in person, when she returned from Scotland. She said she would let Mr McFarlane stay with her which she did, according to Mr Bowe's first police statement. I think that they had an intervening telephone conversation when they agreed that Mr McFarlane would go to Mr Bowe's house for the situation to be considered upon her return.

118. Mr Bowe said in his Niche interview that, "at the time", by which he must mean after he knew all that Mr Dodman told him about the suicide attempt, he thought that it was just a cry for help and a bit of attention seeking, which he also felt was a bit harsh. He never thought that anyone other than Mr McFarlane was at risk; the only risk was that he would make a further attempt at suicide.

119. Mrs Gliksten, in her evidence, said she arrived back at the farm at about 19.30. (I think it must have been earlier because of the timing of the call to Mr Warden of the Crisis Team at 19.00). She had previously spoken to Mr Bowe and agreed that Mr McFarlane would go to Mr Bowe's place to await her return. They agreed on her return that Mr McFarlane would in fact stay with her, as otherwise he would have no roof over his head, although she thought that too was wrong. It is not clear at what point Mr Bowe

told her what had happened between him and Dr Stagias. She had promised him, when her husband died, that if he were ever in difficulty, he "would have a roof over his head." She thought it wrong for him to stay at Mr Bowe's small house, shared with his partner. She explained that Mr Bowe was a very decent man but Mr McFarlane did not like him because of Mr Bowe's knowledge of his past. Mr McFarlane was desperate to get out of hospital, but could not return to his wife, nor move in with Ms Griffiths as he thought he would, nor would the hospital take him in. She was never given the option of speaking to a doctor to say that Mr McFarlane should be taken into hospital, and thought it outrageous to release him to colleagues and an employer on a busy working farm. No one from the Crisis Team or hospital asked her what Mr McFarlane was like. Mr Dodman said that she told him that it was ridiculous that the psychiatrists had thought that there was nothing wrong with Mr McFarlane when he was so clearly unstable. It is not clear, and the issue was not pursued, as to what Mr Bowe said to Mrs Gliksten about Mr McFarlane staying – whether a refusal, or a reluctance which she acted on.

120. Mr Warden, an AMHCA, a nurse in the Crisis Team, had a telephone conversation with Mr McFarlane as part of the care plan, on 3 May at 18.00 hours and with Mrs Gliksten at 19.00 hours. Mr McFarlane had given permission for him to speak to Mrs Gliksten. In his Niche interview, Mr Warden said that they had identified, at the handover at about 13.00-14.00 on 3 May, that there was quite a rapidly changing presentation, but they could not be clear as to why, and it was something they felt they needed to keep on top of. In the telephone conversation, according to the EPEX note, Mr McFarlane was calm, and coherent, but tired. Mr McFarlane felt events had been triggered by his having to clear his things out of his wife's house and by the phone call from his mother. He had agreed with the boss at the farm that he would stay with her that night for additional support, though he lived in the adjoining house. It was clear that he would keep himself safe in the short-term, was insightful and knew that he had to avoid stress. There appears to have been no mention by Mr McFarlane that Mr Bowe had refused to have him. He had financial issues to resolve with his wife which Mr McFarlane thought it would be too stressful to deal with at present. He was planning to work on the farm the next day. They would ring him tomorrow and arrange to see him in the afternoon.

121. At 19.00, Mr Warden phoned Mrs Gliksten who had paged him: she was "concerned" that Mr McFarlane had not been detained, at the burden placed on her and her farm manager, and was "unhappy" at his return to the scene of his suicide attempt. They spoke for sometime: he told her of tomorrow's appointment, of the pager system and number, of the MHA assessment, and "reassurance given that he is being offered appropriate support + risks being assessed on ongoing basis."

122. Mrs Gliksten's version was different, in emphasis at least. She described an angry conversation with Mr Warden, insisting they record the conversation, because she realised that the situation was serious and "could come back to haunt them". She told him that it was wrong that Mr McFarlane had been let out of hospital and crazy that he had been allowed to return to where he had tried to commit suicide. She told him that the shotguns were locked up but that on a farm there were plenty of implements with which someone could kill himself. But he had told her that as Mr McFarlane had been discharged, there was nothing he could do, and that Mr McFarlane would be alright so long as he was "with someone else," all the time. This, Mrs Gliksten had replied, was impossible, as Mr McFarlane was not under "house arrest," and could walk out any

time he wanted. Mr Warden had agreed with that, but he had not told her what was expected of her, by way of observation or support, or as a designated carer, a role she would not have accepted. No one could care for him or keep an eye on him. She, to her mind, was merely providing a roof for a colleague. She did not say that Mr Bowe had refused to do what the doctors had thought he had agreed to do, or that everything had therefore changed, nor was she asked about the detail of how the conversations between her and Mr Bowe evolved from that point of view.

123. Mr Warden said that he would discuss her call and ring back, and that she could ring the Crisis Team, at any time if things went "pear-shaped", giving her its 24-hour manned number. She thought that she was told that someone would be coming out on 4 May to meet Mr McFarlane and to assess the situation. I see nothing in Mr Warden's notes to suggest that the care plan had been that Mr McFarlane be looked out for 24/7 or that Mr Warden had ever said that. Mr Mallett had not told Mrs Gliksten that Mr McFarlane needed to have someone with him the whole time: he could not remember a conversation with Mrs Gliksten on 3 May.

124. Dr Holden said that a suggestion of "need for care 24/7" would be "a bit ridiculous", which I accept. As such a level of care was far beyond what the plan envisaged, I do not accept Mrs Gliksten's evidence that that is in fact what she was told. Her evidence was honest, but she was, I found under some misapprehension in that respect, especially as Mr Warden accepted without debate that such care was not a practical possibility, nor over the next two days was it even suggested. There was nothing in Dr Stagias' notes either nor in his evidence to suggest such care was envisaged from the person with whom Mr McFarlane would be staying.

125. Far from being not "entirely happy" as Mr Warden described her in his Niche interview, she was "mega unhappy", "livid, furious, upset", and had made that entirely clear to him. She and her workforce were completely out of their depth. She thought that they were only too happy to let Mr McFarlane go because it was a Bank Holiday weekend. She remembered nothing, even at the time of her statement to the police of 6 May 2009, about a care plan being discussed, contrary to what Mr Warden said. No one suggested that they could keep Mr McFarlane in hospital. I do not accept that the care plan was not raised by Mr Warden and outlined; that seems to me to be wholly improbable, and I accept that the note would have been made shortly though not necessarily immediately afterwards, with no reason for dishonesty. I accept that Mrs Gliksten felt as angry as she described, though how it all came across in a telephone call is less easy to know. There may also be a tendency to use language which moderates a person's reaction in a note for wider consumption.

126. In her Niche interview, she said that her concerns that Sunday, and the whole way through, were about Mr McFarlane's own personal safety: "Never in my wildest dreams did I feel that he would be a threat to anybody else including myself." She would not have thought of the events that unfolded even in her worst nightmare. He had not a trace of violence nor bad temper; she hardly ever saw him angry; in that respect he was very "stable", which she said was not the best word for what she was trying to say.

127. That night, of 3 May 2009, over dinner with her, Mr McFarlane seemed very calm and collected, which she found very strange. She thought he was seriously disturbed, not just because of the suicide attempt but because of what she had been seeing over the past year; he seemed hyperactive and unbalanced; she thought he had been on steroids.

128. She told him that he would only be able to stay for the night of 3 and 4 May, as she was going away on the morning of 6 May. That, she thought, fitted in well with his plans, as he had been looking for somewhere to rent and had found somewhere with a new landlady, though she was not someone he knew. She thought that she had told the Crisis Team that he could not stay longer than that on 3 May; and she would have expected that the Crisis Team would have asked her how long Mr McFarlane could stay, and she would have told them.

129. On 4 May, perhaps around 07.30, she asked Mr McFarlane how he had slept, as poor sleep had been an issue; he said quite well. He then told her that he was driving to Newmarket to meet a friend. This made her feel very uncomfortable, and she realised the responsibility of the position in which she had been placed. Mr Meloy, an AMHCA Nurse with the CRHTT, phoned Mr McFarlane at 09.00, that day; he reported feeling more positive after sufficient sleep, making plans for the rest of the day, talking positively about the future and reflectively about "recent difficult events". Mr McFarlane wanted to arrange a home visit for the afternoon.

130. He promised Mrs Gliksten that he would be back to meet the Crisis Team. She phoned the Crisis Team again, because she was still concerned and told them of Mr McFarlane's plans for that morning. Mrs Gliksten said that she could not prevent Mr McFarlane's coming and going and was told that that was fine. The call which was not recorded on EPEX. Mr McFarlane, however, placated her by remaining in touch all day. He returned by lunch time and they ate together. By now, according to Mr Bowe, Mr McFarlane now seemed fine and his usual self. The two of them were now working again together.

131. Mr Dodman saw Mr McFarlane again, who complained that Mrs Gliksten was going on more than his mother-in-law. He said that he had told her he was having coffee with friends, when in fact he was doing three body combat classes for Mary who had hurt her knee, but that afternoon would be seeing a psychiatrist saying, as he walked back towards his car, words to the effect that he would only tell them what they wanted to hear. This latter part may relate to the next day, with Mr Dodman running two conversations together.

132. This was the day on which in fact Mr McFarlane did a fitness class for Ms Griffiths, and left a 4 page letter at her house. The tone of this letter is very personal, intense, and shows the relationship he had thought he was starting, or hoped for, to be of immense importance to him; it suggests farewell: what he has loved about the family, how much they had meant, the various strengths of the children, memories of their times together, how it "has been the single greatest pleasure in my life to have been [your] friend." He then harked back to the events of Saturday, in tones of sorrow rather than of anger or threat: rejection had been the story of his life "so no one can begin to imagine how I felt when on Sat the worse happened. I genuinely offered to help with whatever. You resisted this somewhat then seemed to accept Clifford to do all this. How could I not feel utterly worthless and rejected when this is said by my best friend in the whole world." He apologised for something he said but that was because he cared so much; he could not handle rejection very well but tried not to be a difficult friend. "Whatever your views I can honestly say I have felt the best thing ever in my life was the past year. I have been privileged to share in the 'Fab Four' ". Ms Griffiths sent a text to Ms Harpur-Lewis at about 16.30 saying that she had received a "most strange" letter from Mr McFarlane, "kind of apologising".

133. The former boyfriend who had been staying over Sunday to Tuesday morning said in his statement that the 4 page letter from Mr McFarlane on the Monday, had left her very disturbed by both its content, which he read, and by the fact that it had been hand delivered. They had not heard him, but Mr McFarlane would have recognised his car in the drive. However, he also said in a statement that on the three occasions he had met Mr McFarlane he found him to be polite and amiable and he had no reason to believe before the murder, that Mr McFarlane had any personal problem with him.

134. At 15.30, Mr Meloy noted on EPEX, after his visit to Mr McFarlane at the farm, that Mr McFarlane had been "calm, open, friendly with good eye contact." Mr McFarlane reflected on previous events "and recognised that he had acted impulsively in context of various social stressors and a sense of being treated insensitively by friends and family. Denied any current plans to harm himself or others. Open to receiving support from home treatment and feeling adequately supported by friends and employer at the moment.". He wanted to return to work, expressed a need for routine and asked Mr Meloy if he would speak to Mrs Gliksten. Mr Meloy did so. She "was happy for John to return to work with her support over the next few days."

135. Mrs Gliksten said she had insisted that Mr Meloy speak to her after speaking to Mr McFarlane. He told her that Mr McFarlane "was in a good place of mind", "very together", and wanted to continue working with friends and colleagues; he needed routine. She could not remember him saying that Mr McFarlane felt well supported or was feeling hopeful for the future. Mr Meloy asked very little about the work or about their relationship. She denied saying to him that she was happy, but she felt obliged to go with what Mr McFarlane wished. She did not tell Mr Meloy that he was going to do slaughtering. Her point to him was that this was not a good place for Mr McFarlane as it was where he had attempted suicide.

136. That evening, Mr McFarlane again seemed very calm over dinner; this was to be his last night with her. He told Mrs Gliksten that his new landlady was going to provide dinner for him on 5 May, when he was going to move in there; so she cancelled the supper she had arranged. He seemed "chirpy" and "quite smart." In her Niche interview, she had said that he was going to eat dinner with her on 5 May, but move that Tuesday night to the new landlady.

137. On 5 May at 05.15, Mr McFarlane contacted the Crisis Team and spoke to Mr Regueira, who held a leadership role in it: Mr McFarlane had not had a very good night's sleep; thoughts racing, and feeling very anxious. He had got up to see if there were any replies to his mobile and text messages, but there were none, which made him more anxious. He was advised that medication needed to be discussed, and that he may have to come in for an appointment after the Team had discussed him.

138. At 08.45, he sent a text to Ms Griffiths, saying that he would like to know "how things are between us? Either way I'd understand…." She replied at 15.27.

139. At 10.20, Mr McFarlane again contacted CRHTT, speaking to Nurse Russell, saying without elaboration that he "has felt better," which has some ambiguity. He was told of the plan for him to see Dr O'Flynn at 2pm.

140. Nurse Russell, who was part of the Crisis Team, had read the EPEX notes reasonably thoroughly. She was aware that he had been put into the care of the Crisis Team and

he was staying with a friend or colleague who would be around. She was not aware of any requirement for him to keep a watchful eye on Mr McFarlane, or that this friend was unhappy at what he had been asked to do. She knew that the people at the farm were being supportive but they were not required to look after him 24/7. In her three years in the Crisis Team, she had had many such patients. She agreed with Mr Bowen that if there were a stipulation that someone would keep a watchful eye, the Crisis Team should know about it, and it should be on the EPEX notes. She could not remember if she had seen Dr Stagias' note.

141. At 10.34, Mr McFarlane sent a text to Ms Harpur-Lewis, saying that he was not very well, so anxious and paranoid it made him feel sick; his head was racing. He had contacted the Crisis Team for medication; "All I know of Sat is I have never been so angry in my life. But that can wait. I only have one problem & that is the Mary issue. I just can't deal with it and the way she rejected me on sat. I'm guessing but I guess she hates me now & she hasn't been in touch so that's really sad but could help make other decisions easier."

142. At about 10.45 am, Mr McFarlane phoned Mr Dodman and said he was not too bad and had been given the day off, and was going to sort out some forms in the post office. He asked how Mr McFarlane felt, who replied that he did not know, but would let him know by the end of the day. That was their last contact.

143. It appears that Mr McFarlane had covered another of Ms Griffiths' classes that day at about 1pm.

144. Dr O'Flynn is a Consultant Psychiatrist in independent practice, approved under s12 MHA; he was appointed as consultant psychiatrist to the NHS Trust in 1989. In 2009, as a consultant, he provided general adult psychiatric services in the Sudbury area, leading the Sudbury CMHT. His tasks included supervising Team members and ensuring the regular assessment and review of patients under the Team's care. He attended the twice daily Team meetings, as other duties permitted. His informal policy was that any Team member could contact him about a patient, whether he was on duty or not.

145. Dr O'Flynn gave oral evidence chiefly about his assessment that afternoon. On 5 May 2009, he had attended the Team meeting at 08.30, where he was told about the Team's involvement with Mr McFarlane on 3 and 4 May, of Mr McFarlane's contact at 05.15 with the Crisis Team and of Mr McFarlane's appointment with him at 14.00 that day.

146. Before seeing Mr McFarlane, Dr O'Flynn spoke "briefly" over the telephone to Dr Stagias and reviewed the paperwork related to that assessment. Dr Stagias had checked the EPEX records on the morning of 5 May to see how things had progressed and saw that a review was planned for that day with Dr O'Flynn. This was not because of any particular worry about Mr McFarlane; he checked the records of every patient. They subsequently spoke. Dr Stagias put the call at 15 minutes in his Niche interview, and said that he informed Dr O'Flynn of the assessment, and that his handwritten notes had been passed to the Crisis Team. Dr O'Flynn could not remember how long the call had lasted but, in his police statement, said they discussed Mr McFarlane's clinical state fully.

147. Dr O'Flynn knew of the assessment, its outcome and that a care plan was generated. He said that Dr Stagias had been an outstanding trainee, was the senior trainee on call, Senior Registrar as they were once known, very experienced and preparing to be a consultant. He emphasised that Mr McFarlane had not been detained because he did not meet the statutory criteria, and therefore stipulations were made as part of a home care treatment plan. He recalled no concerns about where Mr McFarlane was staying nor about the stipulations. He saw the stipulations e.g. for a steady address, to which Dr Stagias had referred in his witness statement, as what was required for service from CRHTT follow-up. While the co-operation of a potential carer was important in deciding whether to detain someone or not, one was still left with the statutory criteria for detention: in all the circumstances, is a person a risk to himself or others?

148. Dr O'Flynn conducted an hour-long interview and psychiatric examination of Mr McFarlane. He dictated a letter immediately afterwards for Mr McFarlane's GP, and wrote up his notes the next day, by which time he knew of the murder by Mr McFarlane.

149. Dr O'Flynn said that Mr McFarlane reported being depressed for much of his adult life, with treatment over the years bringing him little benefit. Mr McFarlane said he was upset by the break-up of his marriage and by his wife's calm, helpful behaviour when he went to collect his belongings, when she should have been distressed. This, playing on his mind, made him feel suicidal on the Saturday night. He reported getting very tense when his emails and texts to a lot of people had not been replied to immediately. Mr McFarlane did not mention a relationship with Ms Griffiths. He said nothing about being angry with her over her ex-boyfriend. He talked of considerable relationship problems with his wife. He felt no need to alert the police about Mr McFarlane being a slaughter man.

150. Dr O'Flynn assessed Mr McFarlane as relaxed, not agitated, anxious or depressed; he had no suicidal thoughts, ideas or plans. He was hopeful with the future with CBT. He asked about medication for when he became stressed, but Dr O'Flynn thought no medication was indicated. Dr O'Flynn also found no evidence of mental illness. He did not identify Mr McFarlane as a danger to anybody else. Mr McFarlane was co-operating with treatment.

151. He was not concerned that Mr McFarlane was staying with Mrs Gliksten, he assumed on the farm. He happened to know Mrs Gliksten. He could not recall how long he thought Mr McFarlane was staying there. He would have enquired carefully where Mr McFarlane was going because the Crisis Team needed to make arrangements. He was asked no questions about what he knew about where Mr McFarlane was to spend Tuesday night.

152. He had assessed Mr McFarlane having read the records of the mental health team; he saw no grounds for voluntary admission, or further Mental Health Act assessment or medication as there was no evidence of mental illness. He was clearly at risk of self-harm but not one "based on a primary mental illness nor, probably, any significant features of a personality disorder". He had access to the Crisis Team, "for a few days longer to complete the assessment and generate a further care plan, if one became necessary".

153. Dr O'Flynn considered that his 31 years' experience in general psychiatric practice had given him expertise in identifying, in so far as it was possible to do so, those who were

exaggerating or concealing psychopathology. This was often achieved by examining consistency of presentation and different accounts. He reached his conclusions about Mr McFarlane with those points in mind.

154. Mr McFarlane's role as a slaughter man came up later on 5 May, when Mr Bowe raised with Mrs Gliksten that Mr McFarlane's colleagues were not happy to do the slaughtering the next day with him, because it was not thought to be a good idea for someone who was mentally unstable to have access to a gun. He would have to slit the animals' throats with a very sharp knife after using the bolt gun. Mr Bowe said that slaughtering animals definitely affected people. But she wanted to continue supporting him, rather than undermining him. She herself was not anxious about his duties, though others were. She never thought that something like what happened would happen.

155. Jo Clarke was a Community Mental Health Nurse in 2009, working in the CRHTT. She had been employed by the NHS Trust in that capacity since 2006. During her time in that position she had had many patients such as Mr McFarlane in Crisis Team care. She had qualified as a Registered Mental Health Nurse in 1998. She gave oral evidence.

156. Mrs Gliksten phoned Nurse Clarke at 17.30, according to the time when the EPEX note was made, about Mr McFarlane's involvement in the next day's slaughtering. She advised that he be involved in the slaughter but not doing the actual slaughtering, advice which Mrs Gliksten thought was reasonable. Ms Gliksten would tell Mr McFarlane that someone else needed training in slaughter. Although Ms Clarke had not advised her to do so, she and Mr Bowe made arrangements for securing the working bolt gun. Mr Bowe said that he could not find it in the barn, and had to ask Mr McFarlane where it was. Mr McFarlane "very calmly fetched it" and gave it to Mr Bowe. Six months earlier Mr McFarlane had told her that the second gun was broken beyond repair, which turned out to be a lie, as it was the murder weapon. Mr McFarlane apparently had charge of it. There was no exploration with Mrs Gliksten about whom she told, if anyone, about Mr McFarlane not staying with her on Tuesday night. There appears to have been a common assumption among the Crisis Team and Mrs Gliksten that Mr McFarlane would be going to his landlady that night.

157. Nurse Clarke's police statement was made on 11 May 2009. She had been briefed on 4 May about the assessment of Mr McFarlane the previous day, and his discharge, agreeing to engage with the CRHTT. She was also aware that on 4 May, Mr Meloy had seen Mr McFarlane, in a positive contact, and of the contact with Mr Regueira on 5 May. These would have been discussed on handover which occurred twice daily.

158. She had not been aware of any requirement on Mr Bowe to keep a watchful eye on Mr McFarlane and report. She was aware that they were being supportive of Mr McFarlane without being obliged to look after him the whole time. It would be normal for EPEX records to hold the documents and to record what was expected. The CRHTT should know who would provide a watchful eye. She knew that Mr McFarlane would be staying with a friend or colleague who would be around. She was not aware of Mr Bowe being unhappy nor could she remember Mrs Gliksten being unhappy.

159. She made a note of the conversation with Mrs Gliksten on 5 May 2009 on the EPEX records immediately afterwards, and said it was an accurate summary. Mrs Gliksten said that she was happy to support Mr McFarlane in his work, which the CRHTT staff had told her on a recent visit was good for Mr McFarlane as it provided a structure to

his life, but she was concerned about his role in the slaughterhouse the next day which would be to shoot animals. He was very experienced in that and competent, and Mrs Gliksten did not want to undermine him. But the nature of that duty made her anxious. Nurse Clarke advised her that she could discuss this with Dr O'Flynn but Mrs Gliksten did not feel that was warranted. Mrs Gliksten could not remember that part of the conversation, but I am satisfied that it occurred. She also advised Mrs Gliksten to discuss her concerns with Mr McFarlane, reassuring him that she had confidence in him but that the shooting would be taking place only 4 days after the attempted suicide. Mrs Gliksten agreed this was probably the best course and would speak to Mr McFarlane the following morning.

160. Nurse Clarke knew, when she had her conversation with Mrs Gliksten, that Mr McFarlane had been seen by Dr O'Flynn that afternoon, who had documented no concerns about Mr McFarlane returning to work, which was seen by her as beneficial for him. She did not report this later conversation to Dr O'Flynn because Mrs Gliksten was not going to let Mr McFarlane use the bolt gun and would find other duties for him to do. None of this had given rise to a need for an urgent review. The issue over whether the phone call was in the morning, as Mrs Gliksten said, is irrelevant. EPEX notes are not necessarily completed immediately after the events to which they relate or at an elastic interpretation of the earliest possible subsequent moment. But Nurse Clarke's recollection that it happened after Mr O'Flynn had seen Mr McFarlane is likely to be correct, as a specific event to which to relate the conversation.

161. Nurse Clarke elaborated briefly in her witness statement dated 31 January 2017. Mrs Gliksten had referred to the use of a bolt gun to slaughter the animals. Mrs Gliksten's worry was about Mr McFarlane's attempt on his life and his chaotic behaviour, and though she was not specific about that, she never made any suggestion that she was worried about anyone else.

162. Nurse Clarke said she had been in error to say, in her police statement, that Mrs Gliksten had told her that she could not speak to Mr McFarlane that night as he was having a meal with his new landlady. However, her statement, in a part which she did not say was wrong, stated that he was going to move in with a woman as her lodger, with an address she stated in the statement. This also fits with what Dr Stagias said about the Tuesday. There were no questions about her or Mrs Gliksten's understanding of Mr McFarlane's probable whereabouts that night.

163. Mr Bowen submitted that things started to escalate between Mr McFarlane and Ms Griffiths from about 15.30 on 5 May. She replied to his text of 08.54, saying "From here on in I want us just to be work colleagues. I will be civil with you but that's it John." A few minutes later he texted her: "Please suit yourself after everything I have done for you, but when times are hard down you bail out thanks but if that's how you feel, I will do your classes till fri and post the money to you. You will need to sort out cover from then." Her response at 15.40 was firm:

> "After all you have done for me! Works both ways John. I allowed you into mine and my girls lives. I let you sleep over. I cooked for you. I took you out for your birthday. I planned a surprise party for you. I have been a friend to you this past yr. I did all those things expecting nothing in return and the first thing you do is throw what you have done for me in my face. You try hang yourself and blame me and you think that's ok.

> That not what friendship is about. Keep the money from the classes I never would have taken it anyhow. You don't need to cover for me at all. I will call Martin and Jo now. Goodbye. "

164. His final message was a few minutes later "OK fine but you rejecting me on Sat was exactly what my mother did and you know what that did to me."

165. At 15.57, Mr McFarlane sent a text to Ms Harpur-Lewis saying that it looked "like I am very good at turning friends (Mary) into enemies after all I have been thro its been very much wasted. I need to check my options but I'll never forget the last year of fun. The meeting at Crisis was a total waste of time no medication just said if Nicola can see me sooner." (Nicola was his private CBT therapist.)

166. A friend, Ms Stanway, called Ms Griffiths that afternoon before 15.45; Ms Griffiths sounded troubled to her, which made her press for an explanation. This was that she was frightened by a person, clearly Mr McFarlane, who had made a pass at her, had sent text messages, and had tried to get involved with her life. She agreed to think about contacting the police. Ms Stanway phoned again at 15.45, when Ms Griffiths said that she was going to contact the police.

167. A very good friend, Ms Watson and a special constable at the time, described Ms Griffiths on 5 May as being really upset when she dropped Ms Griffiths' daughters off after school, sobbing on her doorstep. Ms Griffiths was really upset that Mr McFarlane was really angry when she said that she just wanted them to be friends and was getting back with Clifford; he had blamed her for his attempted suicide. He had delivered a letter and sent horrible texts and Facebook messages. Ms Griffiths was genuinely very frightened, upset, really sobbing, and seemed really vulnerable, and said that she was really scared that he was going to come round. Ms Watson had never seen her like that. She advised Ms Griffiths to call the police, as he was harassing her.

168. At some point before that, and by 17.00, Mr McFarlane had posted a Facebook message stating that he and Ms Griffiths had had a short affair, to which she had replied "In your dreams, I wouldn't touch you with a barge pole stop stalking me or I'm phoning the police."

169. Mr Harvey was a police officer, who, with his wife, had known Ms Griffiths and Mr McFarlane socially through the leisure club. He thought that they were just colleagues and friends. They attended his 40th birthday party at the club. On 5 May she called him at 17.40 to ask for his advice about "something serious": McFarlane had made a pass at her on Saturday, and she had kissed him back "out of sympathy", Mr McFarlane had then tried to hang himself and was leaving messages on her Facebook account about her having an affair with him and sending text messages. He advised her to call a non-emergency police number he gave her "because I felt that John could be dealt with for harassment of Mary." She was concerned that he might turn up at her house, and he advised her to call 999 if she needed to. He described her as seeming pleased with that advice; she was not upset or hysterical, but did not sound her usual self. It was a quick call and he was not "overly concerned about Mary."

170. Mrs Fitch, another friend, made statements to the IPCC on 6 May 2009, and later on 16 July, in which she described receiving a phone call at 17.45 on 5 May from Ms Griffiths who was very distraught, agitated, sobbing and kept repeating "I'm so frightened." Mrs Fitch was stunned when she said that Mr McFarlane was stalking her, that she had phoned the police and was frightened that he was going to hurt her.

171. Ms Stanway rang shortly afterwards and noted that Ms Griffiths "felt somehow relieved that the police did not think that it was important enough to come round straightaway."

172. The actual phone call to the Police was made at 17.56. The transcript of the first call made by Ms Griffiths to the police on 5 May 2009 starts after she was asked how the controller could help:

> "Hi there I need to speak to somebody about reporting somebody who's harassing me please."

The problem was:

> "It's a guy who was a friend of mine and up until last week he made a, he came on to me and I rejected his, his advances and ever since then he's calling me, texting me and…I'm really frightened."

She gave her details and the man's name as John McFarlane. Ms Griffiths said that he had just left his wife so he had no fixed abode and she did not know what his home address was. Ms Samantha Moffatt, who was taking the call, asked whether the text messages were abusive or were they just being harassing. Ms Griffiths replied that basically he had come on to her and she:

> "Told him I didn't want to be with him and I was getting back with my boyfriend. Then on Saturday evening he stormed off and I got a message from him implying that he was going to do something suicidal."

She described contacting the person who is known to be Ms Harpur-Lewis and described how they had found him at the farm, talked him down, taken him to hospital, were hoping that he was going to be sectioned, but he was let out on Sunday. She continued:

> "And I am just really frightened because he's really irrational and knows where I live and knows where my children live and has just been sending text messages."

She was asked what the messages contained and said:

> "He's angry because I said to him now that I just think we should be professional work colleagues and perhaps not be the friends, that you know the friendship that we had before, because I realised he's a, you know he's got a hidden agenda so to speak. And he's flipping out and his text messages are just…really angry."

Ms Moffatt then went through repeating some of the details adding that she thought that McFarlane had now been left to his own devices. She then said:

> "And I'm just worried that he is lingering all around really the area. He put a letter through my door yesterday, a four page letter through my door."

173. Ms Griffiths then repeated some of the details; the controller gave her an event number and asked when she would be available to see an officer. Ms Griffiths said that she would be available any time and that tonight all evening would be fine anytime. She did not go to bed until about eleven. She was asked what about tomorrow, just in case they could not attend tonight. Ms Griffiths said "Yeah, I've actually got an injury…so I'm going to be at home all day tomorrow again." The controller said the information would be passed across and "We'll get someone out to you. Okay." Ms Griffiths said "I appreciate that. Thank you so much." The controller advised her that if he came anywhere near the premises she was to dial 999 immediately, and if she had concerns she could quote the reference, state what was going on, where he was, keep the phone on and they would keep her on the phone. The controller then asked for the ages of her children which were given, and she ascertained that Ms Griffiths lived on her own. The controller told her to make sure the doors were locked and the children were safe upstairs and call them if there were any problems. The controller thanked her and that was the end of the call.

174. Ms Moffatt entered the call on the Polaris log in these terms;

> "17:56:30 05/05/2009
>
> Locus is 46 Bull Rush Crescent.
>
> Inft is reporting she is suffering harassment in the form of texts and phone calls.
>
> Male is John McFarlane of no fixed abode
>
> He made a pass at inft and she declined last week.
>
> He is angry because she said no.
>
> On Saturday he sent a text implying he may end his own life.
>
> Infts friend a trained psychologist went to his work place as also a friend and found him on forklift with a noose around a rafter.
>
> They took him to hospital.
>
> But they have not detained him.
>
> He left his wife last week.
>
> Inft is very concerned as he knows where inft lives and her children.
>
> He put a letter through her door yesterday.
>
> Inft wants to talk to an officer……

Event comment = Inft available tonight 23.00

Event comment = Or tomorrow all day."

She graded the call as 3, which required a response within 4 hours.

175. Shortly afterwards, a further text was sent, to Ms Harpur-Lewis and Ms Griffiths, among others, from an unrecognised number, but which they thought was from Mr McFarlane because he was the only one who knew the information in it, that Ms Griffiths had had a termination.

176. Mrs Fitch went round to see her about 18.30, and found her shaking and obviously upset: Mr McFarlane would not leave her alone, he was harassing and stalking her; she repeatedly used the phrase "he's invading my space." Ms Griffiths showed her the messages, but Mrs Fitch did not read them; and she also mentioned the 4 page letter from Mr McFarlane but Mrs Fitch did not see it. She explained that at the hospital, Mr McFarlane had "come on" to her, and back home on the settee, his advances had been even stronger. Mr McFarlane put his arms round her, he was almost on top of her, and she was pushing him away and she felt he was "invading her space". Ms Griffiths felt quite threatened by him and that he was taking advantage of her vulnerability. Mrs Fitch's impression was that Ms Griffiths was frightened that Mr McFarlane would attack her sexually, and not that he would kill her, but that Ms Griffiths thought the danger to be "very real and imminent", and was reassured that the police would be visiting that evening.

177. Mr Fitch, in his statement to the IPCC of 6 May 2009, said that he had gone to Ms Griffiths' house on 5 May 2009, at around 19.30 to collect his wife and he found Ken and Ruth Ann Harpur-Lewis just leaving. Ms Griffiths told Mr Fitch that she had become frightened of Mr McFarlane who had started to stalk her the previous Thursday, when at A&E, he had started to embrace her and tried to become closer to her but she pushed him away. He had started to become more involved with her family, and again last Saturday had tried to get close to her and she had pushed him away. This was after he had taken one of the daughters shopping. She showed him the Facebook message sent to her by Mr McFarlane, and her reply. She told him of the 4 page letter but he did not read it. They left at around 20.00, telling her to lock her windows and doors, believing that the Police would be coming that evening to sort things out. She had calmed down by the time they left. But they were concerned that no one knew Mr McFarlane's whereabouts, beyond that he was renting a room for a few nights from a woman at Horringer Court.

178. Ken and Ruth Ann Harpur-Lewis had arrived while Mrs Fitch was there. At 15.47, Ms Griffiths had sent a text to Ms Harpur-Lewis, asking her to call. She had rung at about 18.00. Ms Griffiths referred to the letter and to the fact that Mr McFarlane had put "n/a" against his address, and against where he had written "NOK". They discussed the texts, and so upset was Ms Griffiths, that they had gone over to her house. She had "never thought for one minute that John would harm anyone other than himself" and had told Ms Griffiths that he was likely to hurt himself rather than her. She did not think that Ms Griffiths was scared of Mr McFarlane, rather than harassed by his behaviour, nor that she felt that she needed a police presence that evening. She had never suggested that

she felt that Mr McFarlane would harm her. Mr Harpur-Lewis, said in his police and IPCC statements of 7 May, that they, with the Fitches and Ms Griffiths, discussed how scared Ms Griffiths was of Mr McFarlane: she stated "she was terrified of John and we spoke about when the police were going to arrive as she had reported the matter." They thought that the police were coming that evening.

179. Ms Harpur-Lewis made a phone call to the West Suffolk Hospital on 5 May at 18.26, from Ms Griffiths' bedroom, and left a voice mail message saying, according to the EPEX note, that she was a friend of Mr McFarlane's who was "really concerned as his behaviour was becoming really erratic – including harassing messages on facebook and sending harassing text messages to another friend, it's really out of character for him." She would be happy to talk to someone about his behaviour and left two numbers where she could be contacted. Ms Harpur-Lewis spoke about this call in her Niche interview on 8 November 2010, saying that she was probably "quite foolish in retrospect. I didn't think that there was anything that urgent, I thought this is just typical JMcF." She said that she had the Crisis Team number on her phone and thought that he was their responsibility; so she left a message thinking that they would pick it up next morning, if not that evening.

180. The message was left on the "Patient Main" line. This led to an "Admin staff" note on EPEX at 09.28 on 6 May 2009 that the voicemail had been listened to at 09.10 that day; Mr Regueira of the CRHTT was told of this by secretarial staff at 09.50 that morning. There was an issue about the message which callers would hear when leaving voicemails.

181. Ms Stanway rang at 18.30, on 5 May 2009. She found Ms Griffiths seemingly brighter in herself. Ms Griffiths said not to come round as she was expecting the police, and the children needed to do their homework. Ms Griffiths spoke to a friend, Ms Mayhew, shortly after 20.00, saying that she was scared of Mr McFarlane, and covering the same ground about the relationship he had hoped to have, the suicide attempt, the texts; she was fearful that he was becoming obsessed with her, making her frightened for herself and her daughters. The police were coming that night. Ms Watson had spoken again to Ms Griffiths at about 21.00 on the phone when she seemed still upset but calmer. This may have been because she thought the police were coming round, but she had not told her that later the police had put it off.

182. At 21.19, Ms Griffiths was rung back by the Manager of the Leisure Centre where she did her gym classes, whom she had asked to ring her. Ms Griffiths said that Mr McFarlane was a problem with him covering her classes as she wanted to make charges of "sexual advances" by him; he had really started to worry her.

183. At 21.23, Ms Harpur-Lewis sent a text to Ms Griffiths saying that she was shocked at everything that was going on. If the police wanted "those awful text messages", she was to let her know. Mr McFarlane was unstable, and none of it was Ms Griffiths' fault.

184. I will turn later to what happened in relation to the handling by the Suffolk Police of Ms Griffiths' earlier call. But they decided that they would not go round that night for resource-related reasons, unless it were neessary, and decided to ask Ms Griffiths if it would be alright if they came on 6 May. Mr Ian Franklin of the Suffolk Police rang Ms Griffiths at 21.43. He said:

> "The problems you are having with this male. Can we come and see you tomorrow? We haven't got many staff on tonight, that can come and see you for this. Is it possible to come and see you tomorrow?"

Ms Griffiths said "Yeah of course that will be fine." There was no particular time to avoid because she could not work and was therefore homebound. She gave him her mobile number and then said "Lovely. Thank-you." Mr Franklin said "Okay, we'll give you a ring tomorrow and arrange to come and see you sometime tomorrow", to which Ms Griffiths said "I appreciate that thank-you" and the call ended.

185. Ms Mayhew sent a text to Ms Griffiths at 22.40, asking if the police had been; she replied that the police were on their way and that she was OK. By then Ms Griffiths knew that they would not be coming until the next day, and Ms Mayhew attributed this answer to Ms Griffiths' desire not to worry her.

186. Ms Griffiths' daughters made statements, testifying to their mother's growing anxiety after the angry argument on the Saturday, and the attempted suicide, scared that he was stalking her and them. On 5 May, she was panicked and anxious, and pretty distressed when her friends came round. One of the younger daughters, who usually slept downstairs, slept upstairs, because her mother was afraid that Mr McFarlane might break in. The oldest was still up after the police had called to say that they were not coming round that night, but her mother had seemed calmer through the evening. Jessica Griffiths' statement described her mother's growing concern as arising at least during the previous week and being affected by the scratch on the car; she was avoiding Mr McFarlane, not wanting to talk to him and becoming afraid of him; her mother thought him manipulative, clingy, and that he had damaged the car to make her more dependant on him. She feared he would kill himself when Ms Harpur-Lewis visited him. After the argument on 2 May, Jessica said her mother had invited the former boyfriend around in the hope that Mr McFarlane would stay away. Her account of the events of 5 May is consistent with the other evidence; her mother was "pretty distressed" when the children got back from school but "got calmer during the evening". She was not the sort to insist on the police coming out, she would try to make things easier for those close to her, and to sound calm. Jessica was within earshot, in her bedroom, of the phone call to the police, and her mother would not have wanted to scare her.

187. At 00.43, Ms Griffiths sent a text to Ms Harpur-Lewis saying that she "fell apart yesterday… when john was being so horrible and esp the facebook thing….And as for John he to me just needs to grow up and act his age."

188. The ex-boyfriend in his statement said that Ms Griffiths rang him at about midnight on Tuesday evening, which he said was quite normal for them. She told him she had received a number of abusive texts from Mr McFarlane who would continue to try to call her, but that she had ignored him. He said she expressed no fears for her safety nor did she say to him that she was physically frightened of Mr McFarlane. There was also a fond email from her at 01.30 on 6 May 2009.

189. He said that Ms Griffiths was not emotional or hysterical, and would not ask for help unless she had to; it would take a lot for her to call the police about something, and she would speak to them in a controlled and measured way; she would just have accepted the police telling her that they could not come round that day.

190. He also gave evidence in statements to the IPCC of two incidents of deliberate damage to Ms Griffiths' car which could have been caused by Mr McFarlane; one in February 2009 when a tyre was slashed, which they both thought could have been Mr McFarlane who had taken "a back seat" in her life as the ex-boyfriend had become part of it; later he took more of a back seat for a short while around Mr McFarlane's 40th birthday. The second was in early April when she found a large scratch along the side of her car, which he thought she had reported to the police.

191. Mr McFarlane sent a text to Mr Bowe shortly before the murder, which Mr Bowe did not read until afterwards, in which he said that he was going to kill the daughters. Mr Bowe phoned Nurse Clarke on the Crisis Team number he had.

192. At about 2.40 am on 6 May 2009, armed with an axe and a bolt gun of the type used in slaughtering animals, Mr McFarlane smashed his way into Ms Griffiths' house. Shortly before doing so, he had made a call to Bury St Edmunds police station from its near vicinity, reporting a burglary at a place where rifles were stored, so as to distract the police, as he could see their response. On entry, Mr McFarlane disabled the electricity supply. He ran upstairs, tried to strangle Ms Griffiths in her bedroom, and shot her in the shoulder, wounding her seriously. With the help of her terrified children who intervened to try to help her escape, she got outside into the street. But Mr McFarlane followed her, striking her repeatedly. When she was helpless on the ground, Mr McFarlane reloaded the gun and shot her, reloaded it again and shot her again. One eye witness described the killing as like an execution, quite clinical and deliberate. A police officer, warned by Mr McFarlane not to approach closer on pain of being shot, described him as quite calm and cool, not really aggressive.

193. After the murder, Mr McFarlane sent a text to Ms Harpur-Lewis, saying: "Well no one saw this outcome did they…you said it was good to get angry I am so angry and hurt & Mary needs teaching a lesson that if she rips my heart out & stamps on it then I will…that what rejection does it fucks you up…all I ever needed was a cuddle and to be loved, that's all…."

194. Ms Griffiths died shortly afterwards in hospital. Two of the children were injured and required medical treatment. Mr McFarlane was found and arrested, at about 3.15 am, where he had tried to commit suicide by cutting his wrists in the back garden of the Harpur-Lewis' house.

195. Mr McFarlane was assessed on the day after the murder by Professor Peckett, a consultant forensic psychiatrist, at West Suffolk Hospital, and Mr Walsh, a senior forensic practitioner. He was sectioned. For this purpose, Mr McFarlane's wife was contacted but wished to have nothing to do with him. Professor Peckett reported that Mr McFarlane had said of the 3 May MHA assessment that he had told them what they wanted to hear so that he could stay out. He concluded that Mr McFarlane suffered from a severe depressive illness with a "cognitive triad of hopelessness, helplessness and bleakness about the future". He had a previous history of depressive illness with psychotic features and suicide attempt in the context of relationship difficulties, with "an accelerating pattern of depressive cognitions, increasing suicidal ideation and organic symptoms of depression over the preceding months", "masked by his cheerful affect." The psychiatrist noted an accelerating pattern of depressive cognitions, increased suicidal thoughts and organic symptoms of depression. Another doctor assessed him as suffering from severe depression and unfit for interview. In July 2009,

he was transferred from hospital to prison. In September 2009, Professor Peckett thought that he "exhibited some signs of continuing depressive disorder of an atypical nature".

196. Of course, these diagnoses were made, not just in the knowledge of the murder, but of a person who had murdered someone for whom he had strong feelings.

197. Mr McFarlane initially pleaded not guilty to murder, I infer on the basis of diminished responsibility. He pleaded guilty to murder however in November 2009. I have taken the details of the murder from the judgment of the Court of Appeal Criminal Division [2010] EWCA Crim 577, given by Lord Judge, Chief Justice, upon an Attorney General's reference. This led to his minimum term being raised to 30 years.

The claim against the NHS Trust

198. The claim in respect of Ms Griffiths proceeded both in negligence, and under the Human Rights Act in relation to Articles 2, 3 and 8 ECHR, pursuant to an operational duty and a general duty.

199. The negligence claim alleged that the NHS Trust owed a duty of care to assess and treat Mr McFarlane's psychiatric needs with the reasonable care and skill to be expected of mental health professionals; the allegation of negligence, by amendment, in fact went back only to 3 May 2009, instead of August 2008. The NHS Trust owed Ms Griffiths and her children the same duty to assess and care for him that it owed to Mr McFarlane himself, and a duty to admit Mr McFarlane voluntarily or in detention, if they judged it appropriate. It also owed her a duty to warn her and the police and his employer that Mr McFarlane was "psychiatrically unstable" and that his access to weaponry needed to be reviewed urgently.

200. The particularised failings in respect of the 3 May assessment, in the final amended version of the Particulars of Claim, made several very similar allegations in different places. I endeavour to summarise them:

i) Dr Stagias and Dr Mann had failed to take a proper history of what led to the suicide attempt on 2 May or to carry out a proper assessment; they failed to carry out collateral checks by not speaking to his wife, Ms Harpur-Lewis and Ms Griffiths; they failed to take account of information from Ms Harpur-Lewis about Mr McFarlane's apparent change in presentation and of the information garnered by Nurses Russell and Harris on 3 May; they failed critically to explore his reasons for not accepting voluntary admission;

ii) they negligently concluded that Mr McFarlane did not suffer from a mental disorder which, subject to the requirements of s2(2) MHA, provided a lawful basis for his detention;

iii) they failed competently to assess the risk he posed to himself including the risk arising from his returning to where he had attempted suicide, failed to take account of his rejection by or obsession with Ms Griffiths and the risk he posed specifically to Ms Griffiths;

iv) they failed to appreciate that the Crisis Team knew that Mr McFarlane's job gave him access to weapons, failed to ask Mr McFarlane about it, and to take it into account as a risk factor;

v) Dr Stagias failed in the first telephone conversation with Mr Bowe to give an accurate and complete account of the risk posed by Mr McFarlane, and "to inform him that John McFarlane would be detained in the absence of voluntary admission, if suitable accommodation could not be found, and to recognise that Mr Bowe was reluctant to offer his support;" he failed, in the second telephone call, to have any proper regard to Mr Bowe's concerns, and ought to have reconvened the assessment or commenced a further assessment;

vi) they "failed to comply with their own conditions when deciding not to exercise the power to detain under s2 MHA, by ensuring that Mr Bowe would be able and willing to sufficiently accommodate and supervise John McFarlane;"

vii) they decided not to admit him without informing the Suffolk Police or Ms Griffiths that he had been released.

201. It was alleged that the duty was further breached on 5 May, after Mrs Gliksten had spoken to Ms Clarke about the next day's slaughter, because Ms Clarke did not refer the concerns to a manager or psychiatrist, inform the police or arrange a further review "given the level of concern" after the review by Dr O'Flynn. Moreover, the system for dealing with voicemail messages on the 5 May 2009 from Ms Harpur-Lewis ought to have ensured that they were collected by a phone manned 24 hours a day, or that all Crisis Team numbers were transferred automatically to such a number, or there ought to have been an alert that the number was not the emergency number, with the emergency number given.

202. The Particulars of Claim further alleged that, against the background of the duty of care to Mr McFarlane, the NHS Trust assumed a responsibility to Ms Griffiths and her children. The claim based on an assumption of responsibility arose because:

i) it knew that Mr McFarlane had access to weapons, including knives and a captive bolt gun, through his work involving slaughter of livestock, and should have known about and considered the risk "of an unstable man with a history of psychosis and serious mental health disorder having unfettered access" to them;

ii) it had been told on many occasions by different people including Mr McFarlane that his behaviour was "florid/manic", that his mental health had rapidly deteriorated, and that he was "very angry with Mary and her ex boyfriend… both of whom were described by him as triggers for his suicide attempt";

iii) the information provided by Ms Harpur-Lewis, and others, ought to have alerted the Crisis Team to what they knew or ought to have known, which was that from 2 May-6 May, Mr McFarlane "was an unstable psychiatrically ill man with access to weaponry who posed a significant threat to Mary's personal safety/ life and who should have been detained before the murder."

iv) It was "very significant that McFarlane had a diagnosis of schizophrenia" and there was a link between psychosis and schizophrenia to homicidal behaviour. (This allegation

is factually incorrect; he never had a diagnosis of schizophrenia; it was one of the differential diagnoses in 1993.)

v) Ms Griffiths was therefore not just a member of "a wide class of potential victims/ member of the public at large but identified/ identifiable victim in a small and close-knit group of friends…"

203. A duty of care arose towards Ms Griffiths and her children because there was a relationship of proximity, foreseeability and it was in all the circumstances, fair, just and reasonable for a duty of care to exist. This duty required the NHS Trust to treat Mr McFarlane with the reasonable care and skill expected of competent medical practitioners, and to warn Mr McFarlane's employer, the police and Ms Griffiths herself that Mr McFarlane was "psychiatrically unstable", and that any risk posed by his access to weaponry needed to be reviewed urgently given his deteriorating mental state.

204. This duty was breached by the failure to warn the police, Mr McFarlane's employer or Ms Griffiths or to admit him voluntarily or compulsorily. (The supposedly final version of the Particulars of Claim, submitted on the day the hearing finished, after a series of amendments still contains a claim, no longer pursued, that the licensing authority for slaughter men, ought to have been warned.) The particulars of this breach repeated the failings in the assessment of 3 May and in its actions on 5 May, and alleged that the NHS Trust failed to ensure an adequate coordination and communication system between the Crisis Team, and the Suffolk Police, (not further particularised).

205. The human rights operational duty claim, as originally pleaded against the NHS Trust, arose in so far as the NHS Trust knew or ought to have known that there was a real and immediate risk to Ms Griffiths' life from the criminal acts of Mr McFarlane. There is no pleading that it knew or ought to have known of that risk, or particularisation of the basis for so saying, beyond what can be inferred from the particulars of negligence in relation to the 3 May assessment. The claim, in its original version, in paragraph 153 of the Particulars of Claim, referred to steps being required to protect her and avoid the risk to her life. The final amendment, submitted on the last day of the trial, as a variation to one submitted during the trial, removed the reference to "life" in only one of the two references as to what was to be protected, and to "criminal" acts, and added a reference to a duty to Ms Griffiths to prevent risk to Mr McFarlane's life. So the duty was said to be to take steps to protect each of them, and thereby avoid risk to the lives of either of them. Articles 2, 3 and 8 were referred to as containing relevant protective duties. The steps required were reasonable assessments and treatment of Mr McFarlane, and his detention or voluntary admission for treatment. There was no opposition to those amendments. They amount to a repeat in a different legal framework of the negligence claim. Any human rights obligation pleaded in relation to the NHS Trust warning the Suffolk Police or Ms Griffiths herself has to be found in the particulars of negligence, or in the basis pleaded for the common law assumption of responsibility.

206. Paragraph 154 referred to the general or systemic duty in relation to the protection of life and the prevention of a breach of Articles 2 and 3. Article 8 was not referred to, unintentionally I assume. This general duty, to take reasonable steps to protect Ms Griffiths life and to protect her from inhuman and degrading treatment, was said to require the operation of efficient services guided by reasonable policy to be implemented "within the framework of a functioning and adequate system" and ensuring that staff were trained, competent, with high professional standards and

suitable systems of working and supervision. However, save in respect of the voicemail message which Ms Harpur-Lewis would have heard on 5 May, and perhaps on inter-service communication, no allegation of a breach of the general duty was maintained at trial and on the evidence.

The expert evidence

207. The consultant psychiatrists were Dr Courtney for the Claimants and Dr Holden for the NHS Trust. Dr Courtney had been a consultant NHS psychiatrist since 1991, working in general adult psychiatry. He had done many MHA assessments, had worked in a CRHTT, and had been Director of Mental Health Services in Winchester. Dr Holden is a Consultant General and liaison psychiatrist working for the Nottinghamshire Health Care NHS Trust and has been since 1997. He has been employed part-time since 2010. He is the founder member of a team of clinicians in the Department of Psychological Medicine who provide liaison and emergency services for two teaching hospitals in Nottingham. He described it as a busy clinical unit dealing with approximately 300 new referrals per month, including for deliberate self-harm. He has also been as well as a consultant, a senior lecturer in psychiatry at Nottingham University and a general psychiatrist for the General Community Mental Health Team. He is a fellow of the Royal College of Psychiatrists and of the Royal College of Physicians. He has held various other academic posts. There was nothing to choose between them in terms of expertise or experience.

208. They produced a joint statement of their agreement and disagreement, after a discussion in September 2017. Dr Courtney's report did not address the Particulars of Claim directly. Dr Holden had not seen Dr Courtney's opinion when he prepared his own report which addressed the allegations in the Particulars. This meant that the reports had a rather different focus. Neither had examined Mr McFarlane or had any first hand knowledge of his symptoms. I regard that as a significant drawback to the making of justified criticisms of Dr Stagias and the other members of the panel. Many of the issues raised in their reports played no part in the case whether at the start or at the end, nor did all of those raised in the joint statement.

209. They agreed that the assessments and plans of 11 September 2008, January 2009, 23 April 2009 and Nurses Harris and Russell of 3 May 2009 were adequate. They disagreed about the adequacy of the Mental Health Act Assessment and treatment plan on 3 May 2009. They summarised their differences in this way.

210. Dr Courtney had "significant difficulties" and, accepting that the Panel acted in good faith took the appropriate time and kept appropriate notes, he criticised:

i) the absence of contact with Mr McFarlane's wife as the nearest relative by Mr Mallett. Although there was no statutory duty to contact her, she would have been a further source of information "which may have made a difference to the outcome;"

ii) the three assessors gave, he thought, little weight to the signs of mental illness that Mr McFarlane had presented earlier. The discrepancy between his account of his feelings at the time and his behaviour were at odds. He did not consider the attempted suicide was impulsive;

iii) the assessors ignored the concerns of Ms Harpur-Lewis;

iv) he disagreed with the finding that Mr McFarlane had no mental illness; he had at the very least, an adjustment disorder and, as a matter of law, he could therefore have been sectioned for assessment;

v) it was wrong for Mr McFarlane to be returned to the farm where he had attempted to commit suicide;

vi) the reason for Mr McFarlane not accepting hospital admission had not been explored critically;

vii) it was unacceptable for Mr McFarlane to go to stay with Mr Bowe if Mr Bowe had been given "a misleading account";

211. By contrast Dr Holden, agreeing that the Panel were acting in good faith, took time and kept appropriate notes, disagreed with those criticisms:

i) he understood Mr Mallett's decision not to contact Mr McFarlane's wife as they were estranged; he wondered what significance any information could have had on the assessment or subsequent events, though that was for the Court;

ii) the assessment was made as required by the Act and Code of Practice; they knew what Mr McFarlane had done and what he had told the nurses in the earlier assessment which fed into it, but was "overruled by the information obtained directly from him." This was linked to Mr McFarlane's deceptive nature. The suicide attempt, whilst planned, was impulsive, as in the context of Russian roulette: "take a hypnotic to see whether he would or would not fall off the rafter and hang." If he had planned to die, Mr McFarlane would surely have jumped;

iii) he considered that any warnings by Ms Harpur-Lewis that he was manic were entirely incorrect as there was no evidence he had developed that at any time and to heed such warnings would have been misleading and perceiving him incorrectly could not have helped matters;

iv) someone can be brought into hospital for assessment when diagnosis is uncertain but only where the individual cannot be assessed elsewhere and they are a danger to themselves or others. He did not go on to commit suicide but to commit murder. "That night he may have been seen at a debatable risk of suicide but he gave no indication of his real risk" which was of violence to others. He **could** (emphasis in original) have been sectioned for assessment but Dr Holden considered it entirely plausible that Mr McFarlane had a personality disorder rather than a mental illness and there was to be assessment by the CRHTT;

v) there were both advantages and disadvantages in Mr McFarlane going to the farm. Although it was where the suicide attempt had occurred, it was also a very familiar place with familiar people around him. He could have found ways of committing suicide anyway including in hospital.

212. The overall conclusions in Dr Holden's report were:

> "In my opinion, there can be no suggestion that the mental health staff behaved in anything other than a reasonable manner. In short, I do not consider that they were *Bolam* negligent. I consider that their actions would have been supported (and repeated by) psychiatrists and psychiatric staff up and down the country. I consider that the staff did carry out appropriate mental health and risk assessments culminating in him being seen by a Consultant Psychiatrist (Dr O'Flynn) only hours prior to the index offence."

213. Dr Courtney did not deal with the Particulars of Claim relating to the alleged breach of the general or systemic duty to take steps to protect Ms Griffiths under Articles 2 or 3 ECHR, pleaded in paragraph 154(i) –(xi). Dr Holden did. He rejected them all. There was no challenge, and they do not arise for further consideration, save for two issues.

214. Dr Courtney did not support in his report the many and varied allegations made, in paragraphs 164 (ii)–(xiii) of the Particulars of Claim about the care received by Mr McFarlane in the period 2008-9 up to the 3 May assessment. These were not proceeded with.

215. I now turn to the way in which the issues raised on the pleadings in relation to the 3 May assessment and the events of 5 May were dealt with. Mr Moon is right that many of the allegations in respect of the 3 May assessment were not sustained by the evidence, and in particular after Dr Courtney had been cross-examined. Dr Courtney maintained his criticisms for the most part but, with expressions of uncertainty, accepted that a responsible body of opinion would have acted as the panel did, on the information which it had. However, for two reasons I feel I have to cover those criticisms. First, Dr Stagias was challenged upon them, Dr Holden gave evidence about them; the nature of the claim means that each side should know what I made of them. Second, the case pleaded is quite different in emphasis and detail from the case eventually presented in closing, and Mr Bowen's submissions were not structured by reference to his pleadings. The varying focus of the Claimants' allegations, the loose relationship of their submissions to the pleaded claim, and the potential for them to affect their developing arguments particularly on warnings and other protective steps, made me concerned that I needed to deal with each of them, lest I omit a point which later turns out to be more significant than I appreciated.

216. Mr Bowen said that the only criticisms now raised by Dr Courtney related to the two telephone calls between Dr Stagias and Mr Bowe, the call by Ms Harpur-Lewis at 18.26 on 5 May, and the failure of communication between the MHA assessors and the Crisis Team. However, his analysis of what ought to have occurred if Mr Bowe's version of the conversations were accepted, or even if Dr Stagias' version of the second were accepted, (on the assumption that Dr Courtney had properly understood the evidence), was that Mr McFarlane should or would have been admitted voluntarily or compulsorily. This requires some analysis of the way the assessment was carried out and its conclusions were reached.

217. The important issue about the risk to Ms Griffiths was raised by Dr Courtney in a rather unsatisfactory manner; its pleading is meagre. The asserted duty of care owed to Ms Griffiths, to take such steps to protect her from the risk of physical injury as would be taken by a reasonable team of MHA assessors or s12 doctors, and its asserted breach, also requires some analysis of various aspects of the assessment. I shall deal with the risk to Ms Griffiths separately later.

218. I first deal with those allegations which are particularised, taking the letters from paragraph 164 (xiv) of the Particulars of Claim in their final form submitted on the last day of the trial. These are the particulars of negligence in the NHS Trust's care of Mr McFarlane on 3 May, and of the breach of the duty of care assumed by the NHS Trust in relation to Ms Griffiths and her daughters, which required it to warn the police, his employer and Ms Griffiths that Mr McFarlane was psychiatrically unstable and that the risk posed by his access to weaponry needed to be reviewed urgently.

219. **Particular A**: **failing to take a proper history of what led to the suicide attempt:** Although it appeared to no longer to be relied on in discussion about the amendments for the penultimate version of the Particulars of Claim, it survived to the final version. There was no evidence to support it, and no submissions about it. It was untenable on the evidence. Such issues as it might raise are covered by other particulars.

220. **Particular B: failing to carry out a proper assessment or to contact Mr McFarlane's wife, Ms Harpur-Lewis or Ms Griffiths.** It was no longer alleged that his CBT therapist should have been contacted. Her deletion from the pleadings left it, grammatically, that Ms Harpur-Lewis and Ms Griffiths would have said his upbeat presentation was a smokescreen for his severe psychiatric difficulties. I am not sure that that was intended.

221. As to the general assertion about failing to carry out a proper assessment, Dr Holden thought that Dr Stagias, Dr Mann and Mr Mallett had been diligent in the time taken, notes made and had been better than normally expected in their care and effort. Their assessment was extremely thorough and a large amount of it documented. I accept that evidence. Dr Courtney had no criticism of the time taken or of the notes of the assessment; his criticism was of the absence of admission under s2. I add that Dr Stagias in particular came across as a careful, honest, straightforward, and able witness, whose evidence stood comparison for its quality with those of the experts, including with Dr Holden whose approach and judgments I found more coherent and considered than those of Dr Courtney. Dr Stagias, after all, had the advantage of knowing what went on in detail in the assessments, as did Dr O'Flynn in his interview and they were also the only two specialist psychiatrists who gave evidence about Mr McFarlane having actually dealt with him. I thought Dr Stagias more alert than either, and particularly more than Dr Courtney, to the need for a s2 assessment to focus on and reach conclusions on the legal basis for compulsory admission. There was no basis for so generalised a pleading.

222. Dr Courtney did not address this general issue about the assessment beyond making one misguided criticism. This, not explicitly pleaded but nonetheless pursued in cross-examination of Mr Mallett, and worth covering here, was that if the panel had treated their task in the cursory fashion apparently suggested by Mr Mallet, it was not surprising they came to the wrong conclusion. This point was capable of falling within one or more of the generalised particulars of paragraph 164(xiv).

223. This unjustified comment would not have been made on a careful and fair reading of the evidence Dr Courtney relied on. Dr Courtney noted in his report that Mr Mallett had stated in his Niche interview:

> "The police had brought him to A&E, they had seen him and had offered him an admission, because they were concerned about the risks to his

> personal safety. He had declined it and then they [Nurses Harris and Russell] had decided just to cross Ts and dot the Is, so we would ask for a Mental Health Act assessment for a further appraisal of the risk, I guess."

He had been asked then in his Niche interview:

> "The manager of the team there said you were brought in to cross the Ts and dot the Is. Was there a sense that it was going through a formality, just needing to check it out? I just thought it was an interesting phrase you used. "

He stated:

> "I had that impression. It was to some extent. The option is always there obviously to call for a Mental Health Act assessment and it leaves the referring person not last touching the ball."

224. This was never a suggestion by Mr Mallett that he regarded his role or that of the assessment as being to rubber stamp the assessment of others or check its details. He clearly meant that there was always a temptation by others to seek an assessment, to resolve uncertainty which they did not want to deal with. The impression he had was that was what he may have been being asked to do. That is a very different point from being how he or the panel approached it. In any event it is clear that there had been no rubber-stamping of the opinion of Nurses Harris and Russell in view of the decision actually reached. Mr Mallett also changed his view during the assessment from how he had anticipated that he would conclude.

225. I do not accept the approach of Dr Courtney, which featured often in Mr Bowen's questions and submissions, that the panel was reversing the recommendation of the nurses, as if this was not something which should be done unless they were clearly wrong. The task of making these decision is the panel's, which requires qualified doctors. The view of the nurses is relevant, to be weighed as part of the picture, but not presumptively correct.

226. I deal with Ms Griffiths separately, and focus here on contact with Mrs McFarlane and Ms Harpur-Lewis. First, Mrs McFarlane. Dr Stagias agreed that the use of lateral checks using multiple sources, was standard practice in an MHA assessment. The patient's wishes, and what others said, had to be assessed and not dismissed.

227. Dr Courtney said in his report that this was an unacceptable mistake because of the importance of the decision, the difficulty of the assessment and reversing the earlier plan of the two nurses. Consulting her would have provided a further source of information to aid the assessment of Mr McFarlane's mental health and the risk he posed to himself and to others. She might, he thought, have given information about Mr McFarlane's deteriorating mental health. There was no statutory duty to consult her as no admission application was being made, but he thought that at the time there was an expectation that the AMHP would do so and such contact "would have been consistent with events on 3 May."

228. He acknowledged that the panel had considered contacting his wife but had not done so because of the animosity Mr McFarlane described between them, and as Mr Mallett recorded. Dr Mann had said that he was very upset with his wife for helping him to move his belongings, without being tearful. The panel was well aware that that was an issue for him. The error arose from the flawed rationale for not doing so, as it was insufficient in the circumstances not to do so just because Mr McFarlane did not want her contacted.

229. This mistake was compounded by the note about animosity, which showed a changing presentation: Mr McFarlane had thought they could be civil at his godson's party. Acquiescing in what Mr McFarlane said, allowed his deception to continue. It should have aroused the interests of an experienced psychiatrist, because this could be an area of deception. Dr Courtney had no great sense that the separation was disquieting but agreed that the end of 12 years of marriage was not innocuous in relation to the attitude it could generate.

230. Dr Courtney could see the argument for not speaking to her, there were arguments either way, and he agreed orally that each view was itself a reasonable view. It was an error not to have contacted her but not a breach of duty not to have done so. In re-examination, Dr Courtney said that he would have expected a reasonable practitioner to have made that enquiry. I see that as something of a change in re-examination of his previous acceptance, as I understood it, that it was reasonable to decide not to contact her.

231. Mrs McFarlane had been contacted in relation to the assessment for Mr McFarlane's sectioning after the murder. Dr Courtney referred to a prison note to the effect that she was "still friendly", to suggest that this showed Mr McFarlane's "deceptive nature". I note that in fact the form used in that assessment says that his mother was the nearest relative and he did not want her contacted; she had been identified as the nearest relative as he was separated from his wife. The AMHP had spoken to the wife and her mother who said that they were permanently separated and she had no wish to be involved. I am not clear why Dr Courtney thought that showed any earlier deception by Mr McFarlane. He simply did not want relatives contacted about his mental state, though they could be civil on meeting, he thought.

232. Dr Holden agreed that [4.66] of the Code showed that, although contact with the nearest relative was a statutory requirement for sectioning, it was still sensible to collect collateral information from at least one other person. It was unusual to ask more than one collateral witness, and reasonable to rely on direct and indirect sources. One always needed to be careful about confidentiality; it was a question of judgment as to who was contacted. A decision to contact Mr McFarlane's wife, when he had said that he did not want that, and he had recently separated from her, raised issues of confidentiality. It also involved issues of estrangement and others besides. The Code pointed out that, in considering whether it was appropriate to consult family members, AMHPs should consider the patient's wishes, the relationship, how it had existed and whether the patient had referred to any hostility between them.

233. I do not accept that there was any negligence by the NHS Trust in not contacting Mrs McFarlane, for the reasons given by Dr Stagias, Mr Mallet and Dr Holden, and not disputed in cross-examination by Dr Courtney. There is no evidence either that she

would have talked to them or have anything of value to say. Mr McFarlane had also kept himself rather detached from her.

234. In my judgment, the expert witnesses needed to be very careful over the use of the word "deceptive," when what is meant is deceitful. There is very little evidence that Mr McFarlane was, deceitfully, trying to pull the wool over the eyes of his doctors, save for what happened on 5 May; rather what their evidence brings out is a man who had some insight into his mental problems, actively sought help, and explained fairly openly his relationship difficulties and reactions. Although he is recorded in prison, very shortly after the murder, as saying that he just told the assessment doctors what they wanted to hear, he did plead guilty without pursuing diminished responsibility. And the evidence does not point to any important instance on 3 May where he covered up what he was thinking. There was no suggestion that evidence showed that by 3 May, he had formed any intention to harm Ms Griffiths. I was referred to nothing in what he told the prison or hospital psychiatrists or said in his Niche interview to that effect: in particular that he was lying about how he felt in order to avoid admission in order that he might harm her. The suggestion that he was deceptive about his reasons for not wanting to accept voluntary admission are more readily explained by his being someone who had a different perception of his role and value from that of others, not in itself an uncommon human trait. He however did tell Mr Bowe on 5 May that he was going to tell the psychologist what he wanted to hear, and the information he gave Dr O'Flynn about the state of his feelings for Ms Griffiths appears deceitful.

235. Second, Ms Harpur-Lewis. The advantage, it was said, of contacting Ms Harpur-Lewis was that this would have revealed that Ms Harpur-Lewis thought that Mr McFarlane's superficial calm concealed an unstable personality, and indeed that she had been told that Ms Griffiths thought so too. "Deceptive" was sometimes used to convey that his appearance did not reveal the way he truly felt: an apparent calmness over a disturbed state underneath of the sort that Mrs Gliksten and Ms Harpur-Lewis described.

236. Dr Stagias did not recollect the reference to Mr McFarlane being calm when he was not, on 23 April 2009 at 12.30, but it had not led to Mr McFarlane staying in psychiatric care. Dr Stagias said that part of psychiatric training was to test whether someone displayed a calm exterior concealing turmoil. They always considered whether the presentation may not reflect how a person feels, but they had different pointers all pointing in one way. They explored this the whole time. It would not alter the s2 conclusion. They had no impression Mr McFarlane was trying to minimise what he had done.

237. Dr Courtney gave no evidence of his own about this in his report or in chief, and I refused to allow him to be re-examined about it since there had been no questions from Mr Moon to him on that point. I see no basis for saying that it was negligent not to contact Ms Harpur-Lewis as a collateral source. Her views had been conveyed to the nurses. The panel was in a position to judge how Mr McFarlane presented and to look for the turmoil beneath the surface. The panel might have learned more of his background, but I see no negligence or evidence supporting that particular. The panel also had the comments from Mrs Dodman. All sorts of things might be pursued with infinite time, but the mere possibility of contact yielding some information, which would be true as a possibility of any contact, cannot turn its absence into negligence.

238. Ms Harpur-Lewis described as "manic" symptoms, agitation, pressured speech, over-active; this was not an illness: Dr Courtney said that mania was not a tenable diagnosis; manic and mania can be confused. The Particulars alleged frequently that Mr McFarlane's behaviour was seen as "florid/manic". Dr Holden said this was not seen when Mr McFarlane was assessed by any of the 13 mental health professionals who the Particulars say were involved at some stage in his assessment. Mr McFarlane was not suffering bipolar/manic illness. There was some evidence of deterioration in his mental health, but it was arguable whether it was rapid. He was not thought to pose a risk to others. His anger with Mary and her ex-boyfriend may have been a trigger for the suicide attempt, but there was no known reason to suspect the violent outcome that followed. She therefore had nothing to add in that respect. The information provided by Ms Harpur-Lewis and others, particularly in the telephone calls made in the days immediately before the killing, had alerted the CRHTT and Mr McFarlane was assessed and re-assessed under the Mental Health Act but was not legally detainable.

239. **Particular E: "failed to appreciate that the Crisis Team knew that Mr McFarlane's job gave him access to deadly weapons and to ascertain the same from Mr McFarlane and to take that into account as a risk factor for Mr McFarlane and others." Particular F: "given the absence of the information about access to weapons", decided not to admit Mr McFarlane voluntarily or to detain him without informing the Suffolk Police or Ms Griffiths that he had been released into the care of Mr Bowe. The Panel ought to have assessed with his employer the "risk inherent in a suicidal person with psychiatric difficulties having access to weapons in the course of his employment."**

240. I take these together as they cover much the same territory. The reference to "the absence of information" seems more than a little odd, in view of the evidence and submissions. Dr Jansen wrote that his job gave him easy access to guns and knives, as it is referred to in her letter to the GP, which Dr Stagias had printed off. Nurse Harris' notes do not refer to this. Dr Stagias was not asked whether he accepted that Mr Bowe had told him of the availability of sharp knives, guns or chemicals, despite the challenge to Mr Bowe's evidence in that respect. Dr Stagias pointed out that suicides were committed at domestic properties, where knives were present. But he had identified no imminent risk of suicide; and Mr McFarlane did not try to commit suicide again until after the murder.

241. Dr Holden pointed out that it was the way knives were used which was the cause of lethality, not their sharpness. Easy access to weapons would only have been relevant had he been perceived as a risk to others, which he was not; suicide in general was not dependent upon access to deadly weapons. Dr Jansen's reference to "easy access" to guns and knives in her letter of 14 January 2009 was in relation to potential suicidal risk and made no suggestion that Mr McFarlane was perceived as a danger to others; it was not clear he could remove the weapons. The NHS Trust would not assume that the nature of Mr McFarlane's work would lead to him carrying a bolt gun outside his work. Many people had access to sharp knives, and a bolt gun was not a typical choice of suicide weapon. Farmers and farm staff have a high risk of suicide, but pose no such high risk of violence towards others. Mr McFarlane was not obviously psychotic; psychosis was not diagnosed, contrary to the suggestion in the Particulars. He was not detainable under the MHA. The only discernible risk was to himself from suicide. It was not appropriate to breach confidentiality to warn the police or Ms Griffiths about a

patient's illness "unless there is a very clear over-riding issue of **public** danger." Dr Holden considered that this threat was "unforeseeable until immediately before (or even shortly after) the homicide." Lizzie Dodman's statement to the assessing team that she was concerned about his well-being, and his comment that the past was all catching up, was a cryptic message which could have many meanings.

242. Ms Clarke of the Crisis Team was well aware, as was Mrs Gliksten and Mr Bowe, of the intended use of a bolt gun in slaughter on 6 May, which would involve the use of a sharp knife after stunning. Both were satisfied on 5 May with the arrangements for the next day's slaughter, as a matter of precaution. But the precaution concerned the effect on Mr McFarlane's mind of involvement in the slaughter, not of some misuse by him of the tools of slaughter when handling them, or of concealment for later misuse.

243. Particular E does not itself advance any claim of negligence in relation to Mr McFarlane's care or in relation to the decision that he could stay at the farm. Access to the means of suicide was taken into account as part of the risk of Mr McFarlane being accommodated on the farm, which I deal with in relation to another particular. This allegation otherwise is relevant to the risk to Ms Griffiths, which I also deal with later. It has no bite as a free-standing allegation of negligence.

244. Particular F first alleges that, as Mr McFarlane was being discharged from hospital, the Suffolk Police and Ms Griffiths should have been told. This assumes a conclusion that there was some significant degree of risk to Ms Griffiths; otherwise there is no reason for such communications, and no one suggested that there was. Ms Griffiths was in fact aware of his discharge because Ms Harpur-Lewis told her. Dr Holden pointed out that the claim in the Particulars, that the police should have been informed of a diagnosis of schizophrenia, was entirely inappropriate because he had no such diagnosis, nor did he meet the relevant criteria for it.

245. The second part alleges that Mrs Gliksten, or perhaps Mr Bowe, should have been included in the assessment process. This was a matter for the panel to judge, but they did not find him in that sense "suicidal", or having some broad notion of "psychiatric difficulties". The concern about slaughter was raised with Ms Clarke, and dealt with to her and Mrs Gliksten's satisfaction. Precisely that issue would have arisen had he been admitted voluntarily, but released on Tuesday or given leave to go to work for the benefit that it brought him. There is nothing in either part of this allegation, save for the risk to Ms Griffiths, which I deal with separately.

246. **Particular H: "failed to competently assess the risk John McFarlane posed to himself, including but not limited to the risk arising from returning him to the location of his attempted suicide." Particular I: "failed to carry out any lateral checks, particularly by failing to speak to Mary to take account of the information provided as to his apparent change in presentation from Ruth Anne, and by failing to critically explore John McFarlane's reason for not accepting hospital admission."** The allegation about lateral checks with Ms Griffiths features in B and J as well. These two particulars also include allegations in relation to Ms Griffiths which I deal with separately. These are that the panel failed competently to assess the risk he posed to Ms Griffiths or to take account of the risks to her.

247. I have already referred to and accepted the general competence of the assessment.

248. **The failure to contact Ms Griffiths, (also in I and J):** I am concerned here only with undertaking collateral checks for the purpose of deciding whether Mr McFarlane met the criteria for detention, and if not, what else should be done. Dr Stagias was only asked about contacting Ms Griffiths in the context, as the question was put, of collateral checks for that purpose. He agreed that they could have contacted her as they knew that there was "something going on". Mr McFarlane had referred to her as a friend with whom he was hoping to strike up a relationship, which had been rejected; they also knew that she had accepted her ex-partner back, and had had an accident which meant she could not do classes. He was still keen that she should not lose her combat classes. He had made no threats of violence or assault against anyone, although Ms Griffiths was now with her ex-partner. He said he wanted to make his friends feel angry. They had explored these events.

249. There was always an issue of patient confidentiality underlying contact with third parties, as Dr Holden made clear. Dr Holden regarded it as paramount that psychiatric services maintain full confidentiality of information unless there was a pressing reason to break that confidentiality such as public safety.

250. Neither expert gave evidence that it was negligent not to undertake some collateral check with Ms Griffiths for her views on Mr McFarlane's mental state. The panel had Ms Harpur-Lewis' views, and her account of the issue between Ms Griffiths and Mr McFarlane, which did not differ significantly from what he told the assessors, beyond conveying her reaction, that she was scared of him, which Ms Harpur-Lewis took to be a fear of his harming himself. The panel did not interpret it differently.

251. There was, in my judgment, no negligence in not making a collateral check with Ms Griffiths in relation to the events of the Saturday, let alone in not doing so to seek her views of Mr McFarlane's mental state. If contacted, she would have explained what had happened much as he had done. Her reactions included postponing the arrival of the ex-boyfriend, to try to mollify Mr McFarlane. She told Ms Harpur-Lewis that his text at 20.07 on 2 May had made her scared that he would kill himself. The tone of the 21.00 text is of the same nature. The panel could have checked the position over Mr McFarlane taking her gym classes; Ms Griffiths would have been in a position to say that she did not need or want him to do so. However, the panel knew of the Saturday argument. I see no negligence in not contacting her to check that position. It was one of a number of rational reasons for his not wanting admission; it was not untrue that that is what he wanted to do and in fact did. She might well have said, as she had told Ms Harpur-Lewis, that he could seem stable when in reality he was not, but Ms Harpur-Lewis, who knew him well, had not said that according to the HTSAF note. and Mr McFarlane who was aware of this, had some insight into his mental state and had sought help, could have said so at the assessment. Dr Stagias said, and I accept, that this was something he considered. Mr McFarlane's changing presentation, when the underlying lack of calmness appeared and disappeared, was also considered.

252. **Exploring the reasons for not wanting voluntary admission**: Dr Stagias explained that they had explored why Mr McFarlane had not wanted admission, what he had to do that day and why he had to do it on the farm and the number of jobs: the manager and owner were on holiday and so he was left in charge. Ms Griffiths had hurt her knee and he was very keen to do some classes on her behalf so no-one would go without the classes. He also had a social arrangement with his godson, a family function he wanted

to attend. Dr Stagias said that the panel thought those reasons were rational. There was also a limit to how many people involved in a series of events could be contacted.

253. Dr Courtney reported that they had simply accepted what Mr McFarlane had said, without exploring it, for example with Mr Bowe, or seeing if others could have taken the class, or fixing up another time to see his godson. This was before he heard the evidence, and was not borne out by it. He agreed that the assessors had set out the reasons given by Mr McFarlane for not wanting admission: feeding the animals and only he could feed the sheep, taking Ms Griffiths' gym class, and the godson's party. These were, he thought "pretty limp" reasons and not equivalent to preventing a suicide risk by admission. There appeared to be no attempt to determine whether his work could have been done by Mr Bowe or someone else or what other arrangements could have been made in relation to the gym classes or delaying admission to hospital. But he accepted that a reasonable body of psychiatric opinion would have acted as the assessors had done; a reasonably competent psychiatrist would not always check a patient's reasons for not accepting voluntary admission though not everyone was as tricky as Mr McFarlane. Nor would it be necessary to ring up everyone to check a perfectly sensible reason.

254. Dr Holden thought that Dr Courtney's view was "all indicative of the wide range of opinions and conclusions which inevitably arise with a deceptive man like Mr McFarlane." He thought that those reasons would have been explored a number of times during the assessment of two hours even if not documented more than it was. The stated concerns were recorded as Mr McFarlane's reasons.

255. I accept the evidence of Dr Stagias, supported as it was by Dr Holden, and though criticised by Dr Courtney, not so far as to show the pleaded negligence. But I go a little further. First, the reasons for not accepting voluntary admission are perfectly rational, on which I accept the evidence of Dr Stagias, and they do not call for further exploration, as Dr Courtney accepted was the case with perfectly sensible reasons. Second, there was no basis for supposing that they were untrue; the fact that Mr Bowe, if asked might well have said that someone else could do it, would not have shown that Mr McFarlane was untruthful. As I have already said, individuals may honestly hold different views of their value in a particular role or time. Nor would it have been necessarily deceptive on his part to say that he needed to do Ms Griffiths' classes for her, even had she said, if asked, that she did not want him standing in for her. I am rather wary, as I have explained, about the use of the word "deceptive" in this context. There was farm work to be done, at which Mr McFarlane was a conscientious and hard worker. There was a gym class to be done, which he in fact did, when Ms Griffiths could not do it. The panel had nothing to suggest that Mr McFarlane was a deceitful man. Third, I accept Dr Stagias' point that there was a limit to the number of people who could be contacted. Fourth, they were only "pretty limp", using Dr Courtney's language, when set against an admission required, as he saw it, to prevent suicide. But that was never the assessors' view of the risk, nor was that a negligent view on Dr Courtney's own evidence.

256. **Mr McFarlane's changing presentation and the opinion of the nurses**: Dr Stagias said that the panel were aware of the conflicting presentations; A&E said he was calm. Then he had been brought back, and the Crisis Team had seen him as irritable and going off at tangents. They knew that Mr McFarlane was said to have been euphoric and "manic" in the last few days, had not provided them with the full background to his

suicide attempt, had pressured speech and went off at a tangent. It had been difficult to take a history because of his poor sleep. A few hours later, they had addressed those issues one by one and found no evidence of mental illness or mental disorder. A change in presentation was common. There was no evidence of any substance use, which could cause a change in presentation; zopiclone's effect was time limited because it was taken to help sleep. Dr Stagias was aware of the need to test what those being assessed said and to challenge their description of events. He considered the possibility that Mr McFarlane had tried to summons support and sympathy from these incidents. They were satisfied that a number of changes had affected his ability to cope. They took seriously how he had presented to the nurses earlier but concluded after seeing him for two hours that his presentation had changed.

257. Dr Courtney's view was that the assessors seemed to have given little weight to the signs and symptoms of mental illness presented by Mr McFarlane just a few hours earlier. These included pressured speech, suicidal ideation and actions including leaving the A&E, an inability to focus, going off on tangents, agitated presentation and scruffy appearance, and irrational behaviour, particularly a genuine attempt to take his own life several hours earlier. He was also noted to have poor sleep, intermittent suicidal ideation and feelings of rejection from comparatively innocuous events. His marked change in presentation should have given them real cause for concern, and saying that he had "never been happier" a few hours after attempting to harm himself, should have been considered to see whether that was normal: to say that he had just calmed down was not acceptable.

258. The fact that a very experienced nurse felt unnerved by him was also significant, according to Dr Courtney. (I note that this comment by Nurse Russell was not made in any recorded form till after Ms Griffiths was dead, and there was no evidence that it had been made orally to anyone. And her evidence explained it in a way which reduced the significance Dr Courtney appeared to attach to it anyway. It cannot be used to criticise the approach of the assessors on 3 May.)

259. Dr Courtney agreed that Dr Stagias had talked to the nurses, had read the HTSAF and risk assessment from 23 April, Dr Jansen's January 2009 letter, and the earlier HTSAF and Risk Assessment from 3 May. He was not suggesting that the assessors had ignored what was set out in Nurse Harris' notes, but rather that it was a question of the weight they had given to it. They had plainly considered that he had no current suicidal ideation in the light of what he had said about it. Although weight was a matter of judgment, they had plainly given little weight to what had been said in the past because they were focusing on the current presentation, and not contrasting that with what had gone before. He could see no evidence that the assessors had weighed what they now saw against past suicidal ideation. He noted that Dr Stagias had however said that ideation was intermittent and he would not expect it to continue after a decision to detain.

260. They were aware that Mr McFarlane had left A&E, but they gave more weight to the fact of his returning than to his leaving. Dr Mann's notes made no mention of Mr McFarlane's intentions when he left, though that did not mean that she had not considered it. His presentation led one way, but his actions and descriptions of them led to another: detention. In retrospect, he was not detained because they gave undue weight to the presentation when Mr McFarlane did not want to be admitted, and insufficient

weight to the changing presentation. A body of reasonable psychiatric opinion, however, would have taken the same approach, and acted in the same way.

261. Dr Holden agreed that there had been a change in presentation between 06.30 and 10.30 on 3 May 2009, and no one could know whether that would be the last change. Risk assessment however was not based on ups and downs but rather on what he did and how he presented. Some recover quickly. Some medication such as zopiclone will have an effect. A variety of things affected his presentation. There had been barely any change in his actions.

262. I do not agree with Dr Courtney's criticism. The earlier presentations and views were considered. Reasonable views differed as to how much weight should be given to the earlier presentations. There was a pattern of changing presentations. Dr Courtney accepted that the view formed by the panel was not negligent. I deal with so much of Particular K as relates to risk to Ms Griffiths, when I deal with that topic.

263. **Returning to the farm**: It was a constant theme of Mr Bowen's criticisms, that the community plan meant that Mr McFarlane would return to the place where he had attempted to commit suicide. The assessors knew that Mr McFarlane was going back to the farm where he had attempted suicide, but they were not aware that he would be staying opposite the barn where he did it. Dr Stagias did not think that was a concern as the majority of those who had attempted suicide went back to the environment where the attempt had occurred; it was common for those who had taken an overdose to be discharged to go back home, where they had taken it. Dr Stagias said that the panel had raised this with Mr McFarlane who had said the only place he did not feel safe was his home. Mr McFarlane had explained that moving out was the biggest change in his life; it had also followed his argument with his wife and the culmination of events on the Saturday when he went to collect his belongings. He still wanted to go with his wife to the family event because he thought that they could still be civil. They took into account that he would be alone otherwise. But at least for a couple of days, as discussed with Mr Bowe, there would be continuity of environment and support and he would be living with a man who was happy with that arrangement. The place where he had tried to commit suicide was also where he had his job of which he was proud and where his friends had offered support. They were aware of the means of suicide at the farm.

264. This, Dr Courtney said, was "wrong." He thought it would increase the risk of further suicidal thoughts, which would not be the ideal way to deal with Mr McFarlane, though it would keep him occupied. Dr Courtney agreed that Mr McFarlane had said that the only place he felt unsafe was at his home, and that the clinicians would have been aware of his relationship with Mrs Gliksten and Mr Bowe, and of his work. There was an occupational risk and most suicide issues related to the availability of the means of suicide. Farming provides many such means, but the level of risk was but one factor. Dr Courtney could see the advantage of his working there more than of his living there, but going to the farm was a reasonable option for somewhere for him to go to. His evidence was given with knowledge of the knives at the farm and at least of the bolt gun. None of those had been used in the suicide attempt. There was no negligence in that decision.

265. **Particular Q: "Negligently concluded that John McFarlane did not suffer from a mental disorder which subject to the requirements of s2(2) MHA 1983 provided a**

lawful basis for his detention." This appears to allege that any reasonable psychiatric assessor would have detained Mr McFarlane. To say that he would have done so if he could do so lawfully, rather begs the question of whether it would have been lawful. Mr Bowen of course denied that the allegation was that detention ought to have taken place unlawfully; yet his questions at times came perilously close to such a suggestion, and at least suggested that the issues which the criteria require to be resolved could and should be fudged, where other difficulties were present, such as accommodation or risk. Dr Stagias, more, I thought than either of the experts and certainly more than Dr Courtney, was very alive to the legal requirements before detaining an individual, and to the need to reach clear conclusions on each of the two limbs of s2 MHA before sectioning a patient, although recognising that the criteria were broad and necessitated judgment.

266. **Diagnosis**: The experts agreed that diagnosing Mr McFarlane had been difficult both before and after the murder. There were a variety of legitimate diagnoses from the large number of psychiatrists who had seen Mr McFarlane. These ranged from personality disorder through to psychotic depression. They made no criticism of such diagnoses and agreed that it was never tenable that he might be suffering from a manic/hypomanic illness. They also noted that, whatever the diagnosis, he had been convicted of murder rather than manslaughter because of diminished responsibility. They agreed that on the balance of probabilities, Mr McFarlane had an abnormal personality whether or not meeting specific diagnostic criteria, and that at times he had suffered from depressed mood, agitation and anxiety. Matters of diagnosis were compounded by his deceptive nature. The post murder differences of opinion showed that Mr McFarlane's presentation continued to produce different professional opinions.

267. Dr Courtney agreed, in cross-examination, that diagnosing Mr McFarlane had been difficult, with differences of view both before and after the murder, and some more confident or definitive than others, recognising problematic personality traits but not diagnosing a personality disorder. Dr Courtney, who had not examined Mr McFarlane, thought that he had traits of abnormal personality, compounded by his deceptive nature. Dr Holden pointed out that some patients, because they were atypical or obscured their presentation in some way, were extremely difficult to diagnose accurately. There was a continuum between psychiatric conditions so that many atypical cases could fall between two different psychiatric diagnoses. Mr McFarlane was clearly one of those atypical individuals who were difficult to diagnose, both because of atypical and variable presentations of symptoms and a degree of subterfuge and hiding of symptoms. The diagnosis in 2008 was "recurrent depression" although comments in the referral letter hinted at elements of hypomania i.e. raised mood associated with hyperactivity of thought, speech and movement. Mr McFarlane himself was insightful and concerned about relapse.

268. The task of assessment on 3 May however was not to diagnose; and the issue is not whether any diagnosis was negligent. The issue is whether the panel's conclusion that the first limb of s2 MHA was not satisfied was negligent. Dr Stagias agreed that what was required was an illness or disorder which warranted detention for assessment; this did not require diagnosis itself, nor did it need a major illness or disorder. After the panel's decision that it was not so satisfied, no power arose to detain Mr McFarlane, whatever the risk to himself or others. Dr Stagias conceded that, although compulsory admission had to meet the criteria under the Act and they could not act unlawfully, there

could still be room for manoeuvre. Dr Stagias said that the incident on 3 May was spoken about quite openly by Mr McFarlane and he spoke in line with the information they had about that event. The assessors looked at the whole picture, each and every word available, including the previous assessment, and could find no evidence of mental illness or disorder. They had explored this explicitly. They did not ignore the past, hence they set the plan. Dr Mann agreed that a suspected personality disorder could satisfy s2 MHA depending on the conditions.

269. Dr Courtney criticised the absence of admission under s2. Dr Courtney said that, although he had no difficulty in criticising the assessment, he had to ask himself whether his criticisms were of such a nature as to show medical negligence, and what a range of reasonable psychiatrists would do: "There is a range and I wasn't there." So, he had come to the view in his report that there was a body of psychiatrists who would have taken the same view at the assessment that the panel had done, "if the information given to Mr Bowe by Dr Stagias is as Dr Stagias describes it and records it," and notwithstanding the points he had made in his report. He could see the logic of Dr Holden's position on those criticisms, and acknowledged that one principle in the Code of Mental Health Practice was to take the least restrictive course available for treatment for patients who were not consenting.

270. I am clear in the light of all that evidence that the panel were not negligent in concluding that limb one of s2 was not satisfied. S2 could not therefore lawfully be satisfied whatever conclusion they came to in relation to the second limb, to which I now turn. The converse is also true. That is a very important factor for the way in which the various asserted duties could be performed.

271. **The risk of suicide:** Dr Stagias did not use a stratified tool for risk assessment: he looked at the history of violence, destabilising substances, major mental illness, depression and socio-economic circumstances. Mr McFarlane's aim was to make his mother, wife, and Ms Griffiths, because of the ex-partner coming back, all feel guilty through his suicide. It was directed towards them all. Dr Stagias said that patients reported things such as imminent suicide differently and did not agree that there continued to be a real risk of suicide. That risk had substantially abated; he was not actively suicidal. There were no signs of disturbance and the risk could be managed in the community.

272. Dr Stagias agreed that someone who had contemplated suicide was at a higher risk of suicide in the future, but the panel concluded that there was no imminent risk and none that could not be managed with CRHTT support. Eight years after an attempt there was a three per cent risk of suicide, but expressing suicidal views increased the risk. Here they judged Mr McFarlane was asking for help and support: Mr McFarlane had made significant signals to be saved and there was no expression of suicidal ideation. A lot of effort had gone into the set up with flattened batteries and the rope. He was not sure whether it had gone around Mr McFarlane's neck because there were no references to marks on his neck by A&E and the panel saw none. Mr McFarlane had phoned friends who took him to hospital and although he left, he was then alerting people; he then answered a phone call from the police, and told them where he was. When he returned, he was pacing A&E without anyone monitoring him. He had only taken two sleeping tablets from the whole strip he had, when he could have taken an overdose. It was not thought by the nurses that he was at a risk of absconding and they did not think he

would leave A&E, though he could still be offered admission to the hospital. They had considered very carefully what he had done that night.

273. Dr Stagias said that Dr Holden's view of a borderline/moderate risk of suicide, was a responsible professional view, but based quite a lot, he thought, on what was known subsequently. Dr Mann had also however referred to a low/moderate risk.

274. Dr Mann said that there were three main triggers and two secondary ones as they assessed the MHA assessment: the first was collecting his stuff from the wife's house and her lack of emotion, then his mother called him and he felt sick and neglected with his recollections of his neglected childhood and thirdly, Ms Griffiths' decision to take her ex-partner back. Secondarily, Mr Gliksten had died and, on his 40th birthday, his wife was more interested in her laptop.

275. She had been through the triggers, his reduced capacity to deal with adversity, sensitivity to rejection and the suicidal experience. There had only been one previous attempt some 20 years ago. He now had had a wife for 12 years, jobs, friends and a lot of activities, suggesting his social function was not affected. Mr Mallett viewed the risk with "considerable gravity". They did not identify any imminent risk of suicide although they were aware of one attempt 20 years ago and he had expressed suicidal ideation without actually doing it.

276. Nurses Harris and Russell had offered admission in view of the then current suicidal risk, but Mr McFarlane was not expressing suicidal ideation. This was considered very carefully and the panel concluded the risk was diminished and there was no imminent risk of suicide. Mr McFarlane denied any such intent and there was no evidence of mental illness or disorder.

277. Dr Courtney thought that to describe Mr McFarlane's attempt to kill himself as impulsive was "highly debatable." The act of setting up the noose, raising the vehicle to the rafters, taking the sleeping tablets, showed substantial intent and planning over a considerable period of time, though Dr Courtney recognised that after he was phoned by the Harpur-Lewis', not having alerted anyone to his presence at the farm, he still had had time to kill himself but had not done so, thereby allowing himself to be saved.

278. Dr Courtney said that, compared to the general population at large, people who had attempted suicide were at a ten times higher risk of completed suicide (5-12 percent) than those who never attempted it. These were largely self-poisoning. But the risk was much higher, at 50 percent, where a method was used which was more likely to kill, such as hanging. The majority of the risk was in the first week, and then in the first year, after which it then faded. The question they faced was whether it was an attempt which failed or one which he had not decided to proceed with or to take a chance with. This was a reason for a careful assessment. In the light of that Dr Courtney would not have been content with Mr McFarlane being released into the community. The appropriate course would have been to have him in for assessment and for his safety, nor would he have got into a discussion with Mr Bowe. (I note that his approach to the response to risk assumes that the first criterion was satisfied, unless the patient can be persuaded to come in voluntarily, but his answer was not so qualified.) Not every psychiatrist though would have done as he would have. A reasonable body would have concluded as the panel did.

279. To Dr Holden, the crucial issue in an assessment of suicidal risk was whether there would be a completed attempt at suicide. The hardest group to assess was a middle group where there is a significant risk and a large number fell into it. 15 percent of those who attempted will try again. There were well researched methods for assessing the likelihood of an individual completing suicide in the immediate future. First, the patient's mental state and diagnosis had to be assessed: the more severe or psychotic the disturbance, the more likely a suicide will follow as a generality. But here, Mr McFarlane was not thought to be suffering from a formal, let alone a severe, mental illness. Second, the patient's demographics were relevant. Research showed that males above 45, single, unemployed and living alone were at a greater risk than those who did not have those characteristics. Physical illness, alcoholism and other psychiatric illness added to that risk. Mr McFarlane in those respects was borderline: he had just turned 40, he was separated from his wife, but remained employed. Accommodation was in a state of flux, but he had no physical illness or alcohol problems. Third, was the nature of suicidal behaviour. He described Mr McFarlane's behaviour as impulsive; he denied any ongoing suicidal intent or planning. There had been a "Russian roulette" quality to his behaviour in the context of taking zopiclone to make him drowsy. He had made very useful preparations in setting up the machinery and noose, but had not gone through with the hanging and had responded to others by coming down from the rafters. Dr Holden was of the opinion that Mr McFarlane was at borderline/moderate risk of completion of suicide which he would regard as in the middle of the risk range. It was the ones in the borderline/moderate category who would catch one out, not those who made very trivial attempts or who were an obviously severe risk. The factors here, applying the Tuckman and Youngman scale were that Mr McFarlane was male, separated, not living on his own but floating; he was not in poor physical health, but there was a question mark over his having received medical treatment in the last 6 months and over whether he had a psychiatric disorder. He had used a violent method of attempted suicide, but there was a theatrical component to it. There was no suicide note, but he had a history of a previous attempt.

280. Dr Holden was of the view that suicide was rarely single-minded. Here, there was degree of determination but also an ambivalence, seen repeatedly in suicide. Mr McFarlane had answered the phone when he was on the gantry; it could be called staged, determined, planned but not so much symbolic. An overdose of zopiclone would not kill. It was possible that he would go through with it, perhaps ambiguously and added the zopiclone to add an element of chance.

281. Impulsivity versus planned attempts could be a false distinction. The aim was to understand what Mr McFarlane was doing; it was almost like a game of Russian roulette and if it went badly it would lead to death; if others responded and he did not fall off he would survive. It was not known whether, had Ms Harpur-Lewis not called him, he would have succeeded. The subsequent injuries, after the murder, would not have killed him. He agreed that Dr Courtney's position was arguable and logically Mr McFarlane could be sectioned for those reasons. (That could only relate to the second s2 MHA criterion, and makes the assumption that its first criterion was satisfied). But he was planning for the following day which reduced the suicide risk.

282. Dr Holden noted the response of Dr O'Flynn to the deterioration in Mr McFarlane; he had considered that Mr McFarlane's problems were those of a life crisis, not of formal mental illness and that medication was unlikely to help.

283. There had been no suggestion of a serious risk to others from his behaviour, although it had raised issues of potential suicidal risk, both for recent months and during his lifetime. Dr Holden said that suggestions that he might have behaved recklessly or made a threat in the past were known only to his GPs through his GP records. (The evidence of a threat from those records is entirely unspecific, and there was no evidence of actual reckless driving.)

284. I leave the question of risk to Ms Griffiths till later, but there was no basis upon which the second limb of s2 MHA could have been satisfied on the evidence of risk to others than her.

285. I judge that there was no negligence in the panel's conclusion that there was no risk to Mr McFarlane warranting his compulsory admission, even if the first limb had been satisfied, which it was not. The reasons given by the panel members for concluding that he did not require detention because of the risk were carefully considered, and reasonable. Dr Stagias' justification for their conclusions was reasonable. Dr Courtney did not say that this decision was negligent, though it is not the decision he would have reached. Dr Holden thought the risk of suicide warranting detention to be debateable. I accept that the attempt was very recent, and there were the means for a further attempt at the farm. But the attempt itself had many uncertainties about the seriousness with which it was meant; there were no continuing expressions of suicidal intent. I agree that some might have thought that the risk was such that he ought to have been admitted compulsorily, subject to the first limb. But viewed prospectively, there were sound reasons for not detaining him for risk reasons, and for putting the care plan in place. And in fact the risk of suicide did not arise.

286. **The community plan and stipulations:** Dr Stagias said that the panel was aware of the change in a number of Mr McFarlane's circumstances with his suicidal ideas and acts, so they did what they could do to manage the risk and put mechanisms in place for someone who was not exhibiting mental illness or disorder. This was discussed with the other panel members. The stipulations were necessary, though there was no significant risk of suicide, because he was going through a divorce, he had left home and had a neglectful childhood. They would monitor how things were progressing, including risk and psychopathology. They wanted him to have a safe house where he could sleep and find himself.

287. Dr Stagias did not know that care and accommodation turned out differently from what he thought had been arranged. The Crisis Team had requested the Mental Health Act assessment and, if they had concerns, theoretically, a new assessment could be considered but that would depend on what it was that had broken down. In fact, the care and accommodation were at least as good as envisaged, and probably better. I comment on that later.

288. Dr Holden and Dr Courtney had discussed the care plan; neither had any concerns about its application. Dr Stagias' care plan was reasonable and, as noted, it contained enough for the Crisis Team to know what to do; it was for the Team to fill in the details. Mr McFarlane was in the care of the Crisis Team both before and after the assessment. Dr Courtney agreed that there had been no expectation that Mr Bowe would have 24 hour contact daily with Mr McFarlane. "Cared for" did not mean that they were expected to look after him. It was accommodation which was required with the CRHTT high level

professional input given in the home. The experts agreed that the care provided by the CRHTT between 3 and 5 May was adequate.

289. Dr Courtney said that, if not admitting someone voluntarily, the hospital would have to ensure that all that would be done in hospital is done in the community. The CRHTT replaces a degree of monitoring, but most of the care is back on the family, with their agreement and in knowledge of all the risks. What Mr McFarlane required was a home, not a house: environment, nurture. Although a reasonable minority would not have admitted him, they would have required people to replace what he would have received in hospital: nurture, food, bed, feeding into the professionals, raising the alarm and people around. This did not mean people following Mr McFarlane everywhere, but being in the vicinity, sleeping in the same house, taking meals together, just someone being around. He did not agree that a reasonable body of opinion would have discharged Mr McFarlane, if Mr Bowe said that he could not care for Mr McFarlane but that he could provide a roof over his head and the CRHTT would provide care.

290. Dr Holden agreed that the "carer" had to be willing and co-operative. Any hint of unwillingness was very important, but it did not amount to a worry or anxiety; worries about particular points could be resolved. The level of commitment and oversight could be very different from hospital care; indeed they can be over-provided. The primary issue here for the "carer", Mr Bowe, was of Mr McFarlane staying in his property as a friend, a convalescent; it was not to provide one to one observation as "carer"; observation was required only up to a certain level. What was needed was what someone who had a friend staying would be provided with: knowing roughly where he was, but it was not expected that Mr McFarlane would be in or in a certain proximity to the house. Someone was needed to "raise the alarm" when things were not going as planned.

291. Care was provided by the CRHTT, which meant that he had to be accessible so that the Crisis Team would engage with him. These teams had been set up by the Government so that acute patients could avoid hospital treatment; the system was well established in the UK. The team is one team, though some members are more crisis resolution and some are more home treatment. They should not be purely reactive, but inevitably for some that is all that is needed. In this case it was important that Mr McFarlane should receive visits.

292. Subject to the issues raised by the two telephone calls, there was no negligence in the formulation or operation of the care plan or in the decisions made by the panel. I accept the way Dr Holden described how it should operate, very much in line with Dr Stagias' own evidence.

The two telephone conversations between Dr Stagias and Mr Bowe

293. I need to resolve two factual issues at this stage, which relate to the telephone conversations between Dr Stagias and Mr Bowe on 3 May 2009; the second of those calls is the more significant. The relevant allegations were eventually pleaded in sub-paragraphs N, O and P of paragraph 164(xiv) of the Particulars of Claim, by way of amendments which I permitted to be made during the trial, and which were finalised immediately afterwards. These are particulars of the breach of the NHS Trust's duty of care to Mr McFarlane to treat him with reasonable skill and care, and of its duty of care to Ms Griffiths, which included an obligation to her to voluntarily admit and/or

detain him "if judged appropriate", (paragraph 163 of the Particulars) which was breached because the NHS Trust "failed to voluntarily admit and/or detain him; (paragraph164). Sub-paragraph N alleges that in the first conversation, Dr Stagias failed to give Mr Bowe "an accurate and complete account" of the risk posed by Mr McFarlane, (unstated as to whom), to tell Mr Bowe that Mr McFarlane "would be detained in the absence of voluntary admission, if no suitable accommodation could be found, and to recognise that Mr Bowe was reluctant to offer his support."

294. Sub-paragraph O alleged that the NHS Trust "failed to comply with their own conditions" when deciding not to exercise the power to detain Mr McFarlane under s2 MHA "by ensuring that Mr Bowe would be able and willing to sufficiently accommodate and supervise John McFarlane." P relates to the second conversation and contends that the NHS Trust paid insufficient attention to Mr Bowe's concerns. Had the panel given them sufficient attention, they ought to have reconvened the assessment or undertaken a new one, given "the changed circumstances", namely that "the conditions for Mr McFarlane's release were no longer satisfied."

295. The differing versions of these telephone calls were the foundation for these contentions about Mr Bowe's attitude and "compliance" with conditions or stipulations, which in turn led on to arguments about whether, absent such "compliance", Mr McFarlane would have been admitted, whether compulsorily or voluntarily, and so would not have been in a position to murder Ms Griffiths. These were crucial allegations, yet neither telephone call featured in the original particulars of negligence; there was but a passing reference to the second telephone call in paragraph 65, but only referring to Mr Bowe saying he was worried, particularly because of Mr McFarlane's access to weapons, about having him in his home. Mr Bowe's statement in June 2017 still led to no application to amend the Particulars of Claim.

296. Mr Bowen drew from these amended particulars the submission that the common law duty of care required the NHS Trust to admit Mr McFarlane if the community plan were not available. If Mr Bowe had said that he could not provide what the care plan required, there should and would have been a further assessment leading to a voluntary or compulsory admission. This, in his inaccurate and disputed submission, was agreed by all experts and the two assessing doctors. It is to be noted that none of this is in fact relevant to the care which Mr McFarlane in fact received, since there is no difference between the watchful eye and Crisis Team treatment he in fact received at the farm, and what he would have received had he stayed with Mr Bowe. Indeed, I judge that it was rather better, even if Mr Bowe had been a willing and co-operative carer, because of the authority, wisdom, concern and knowledge which Mrs Gliksten brought to bear, however angry she was at the decision and attitude of the NHS Trust.

The first telephone conversation between Dr Stagias and Mr Bowe.

297. The conversations with Ms Harpur-Lewis and Mr Bowe did not take place as if the panel were seeking some alternative to compulsory detention, but after the panel had discussed the assessment and had concluded that Mr McFarlane did not meet at least the first criterion for detention. That is important. They therefore took place as part of the drawing up of the community plan. On Dr Stagias', Dr Mann's and Mr Mallett's evidence, Mr McFarlane was taken back by Dr Mann to A&E, so that they could discuss the position. It was after he returned, was asked what he would like to do, and

said that he did not want to be admitted, as they had already appreciated was his position, that these conversations took place.

298. Dr Stagias stated that they had told Mr McFarlane that they wanted some reassurances as to where he would stay, so he was asked to arrange that now, so that it was done and home support input could be offered. It was Mr McFarlane who identified where he should go and who initiated the call; Mr McFarlane had identified Mr Bowe as somebody who could be co-operative. It was then Mr McFarlane who made the call, and stated its purpose. Mr McFarlane said something along the lines that there needed to be community follow-up for him to leave the hospital, so he needed somewhere to stay.

299. Mr Bowe's evidence was that as he was driving back to the farm, having already spoken to Mr Dodman, Mr McFarlane's mobile phone rang his mobile phone. Mr Bowe explained that, having worked with Mr McFarlane for so long, he did care about him and so pulled up to answer the phone. It was in fact Dr Stagias who had rung, using Mr McFarlane's phone. He gave his name, though Mr Bowe could not remember much of it, saying that he was from the mental health team at the hospital where John was, who needed to talk to him and ask him a question. Mr McFarlane then told Mr Bowe that he was with three psychologists who said he was fine but that they would not let him out until he had a secure address to go to and he asked if he could come to stay with Mr Bowe. Mr Bowe agreed that he could. He did not feel that he could say no to someone, in his hour of need, whom he would then have to face every day because they would continue to work together closely on a daily basis; and he did care about Mr McFarlane because they had worked closely together for many years. He felt he had no alternative.

300. Dr Stagias said that Mr McFarlane told Mr Bowe that he was sitting with the mental health professionals, and he would require accommodation following assessment if he was being discharged. Dr Stagias then spoke to Mr Bowe, after he had agreed that Mr McFarlane could stay, because he wanted him to know the full picture. This would have been in line with how the call to Ms Harpur-Lewis had been conducted. Nothing turns on whether Dr Stagias or Mr McFarlane first spoke to Mr Bowe, since, either way, it was Mr McFarlane who first asked Mr Bowe if he could stay with him, and Mr Bowe then had his conversation of substance with Dr Stagias.

301. Mr Bowe, who said in evidence that he was not happy with the situation he had been put in, spoke to Dr Stagias, for about 5 to 10 minutes. Dr Stagias asked him whether he knew that Mr McFarlane had tried to commit suicide. He told him that Mr McFarlane was out of harm, and denying suicidal intent; he would be fine, and was no risk, that he was all over that now and was not going to do anything like that. That is how Mr Bowe had understood Dr Stagias' words "in a better place". Dr Stagias, he said, gave the impression that it had been a flash in the pan, and he was no longer a risk. If Dr Stagias had said that there was a risk of suicide, Mr Bowe would not have agreed to take Mr McFarlane in. Mr Bowe "agreed to take John in" as he put it, but told the doctor he was not going to take care of Mr McFarlane or be responsible for him.

302. Mr Bowe said he made it clear that he was "not comfortable" with this proposal, that he could not watch Mr McFarlane all the time or care for or "babysit" him; and he was not qualified to deal with mental health problems. He believed he said there was a slaughterhouse on the farm, but not that he was asked what Mr McFarlane's job was. Mr Bowe was definite that he pointed out the risks on the farm, such as guns, axes,

knives, chemicals, ladders and so on, if Mr McFarlane wanted to try to hang himself again; and that Mr McFarlane would be able to see from Mr Bowe's house, quite close by, the building in which he had tried to commit suicide.

303. He denied saying that he was fine to oversee Mr McFarlane or to keep an eye on him; he never agreed to look after Mr McFarlane's welfare nor was he ever asked to. He only understood that Mr McFarlane "had had a bad night and that he did not need looking after, he just needed somewhere to stay," somewhere "safe". He was not told if there was anything he was required or supposed to do, or to look out for. There was no mention of a care plan. He was told someone from the Crisis Team would be in touch, but was given no emergency number at that time or told that someone on the Team was available all the time. He was just told to come back to the Crisis Team, if things were not working properly.

304. He told the doctor that it was very unfair to let Mr McFarlane ask him directly, because he could not say no to someone already in a fragile mental state, with whom he was going to have to work. He agreed in cross-examination that he did not say to Dr Stagias that he felt pressured into agreeing to take Mr McFarlane, although he certainly did feel pressured. Had the doctor phoned him in advance to alert him to what Mr McFarlane was going to ask, he would have told the doctor that there was no chance that he would take him in, as he did not want to take care of him. Mr Bowe described himself as frustrated, as this phone call finished. However, he described Dr Stagias, in this first conversation, as being calm, laid-back, decent and doing his job, although Mr Bowe did not think that Dr Stagias listened properly to him. He had not been as firm with Dr Stagias as he should have been.

305. Contrary to what Dr Mann said in her Niche interview, he was not, nor did he ever say that he was, "happy" to have Mr McFarlane, or to be the person "in charge" of him, or that he would provide a safe place for him or keep an eye on him. He had only agreed to have Mr McFarlane, making it clear that he was unhappy about that and could not look after him. Nor had he said to anyone, contrary to what Mr Warden of the Crisis Team in his Niche interview had said he understood to be his outlook, that he was "very much pro" their Plan. (The two did not actually meet or converse.)

306. Mr Bowe said it was untrue for Dr Stagias to say, as he did in his Niche interview, that he had made Mr Bowe aware of what had happened. He did not think that Dr Stagias had told him that Mr McFarlane had set up everything at the farm to kill himself, had been very angry and had talked about killing himself; he said he had a good memory and thought he would have remembered, had he been told. He certainly had not told Mr Bowe that Mr McFarlane had run away from the hospital, and the police had been sent to find him. (Dr Stagias said he could not remember telling Mr Bowe of this). But Mr Bowe agreed that his first police statement was correct where he said Mr Dodman had told him that it had involved the teleporter and cage, with a rope from the beams.

307. In his police statement, Mr Bowe said that the doctor told him that Mr McFarlane's attempted suicide had been triggered by his in-laws and wife rejecting when he had turned up to collect his belongings on Saturday; he felt they did not care and just wanted him to "bugger/piss off." The doctor said that Mr McFarlane had been to see Mary, who told him that she was going to get back with her boyfriend, which had been another rejection, and enough to make Mr McFarlane attempt suicide. He was over it now and the doctors could do nothing for him until Tuesday morning. Mr Bowe gained the

impression that they simply wanted Mr McFarlane out of hospital, so as to get on with their Bank Holiday weekend.

308. Dr Stagias never asked if someone could cover for Mr McFarlane's work, were he to stay in hospital; cover could easily have been arranged. Nor did Dr Stagias say that Mr McFarlane would be kept in hospital, if Mr Bowe could not take him in. He felt that they had nowhere for Mr McFarlane, and needed Mr Bowe to take him in. There was no discussion about his relationship with Mr McFarlane.

309. Dr Stagias did not say that Ms Harpur-Lewis had refused to accommodate Mr McFarlane; had he known of that he would definitely have refused to have anything to do with Mr McFarlane. Mr Bowe knew her to be a psychologist, who knew him better than did Mr Bowe; he thought Mr McFarlane was seeing her both as a friend and for treatment as a case study for her courses.

310. Turning now to Dr Stagias' evidence, Mr Bowe told Dr Stagias that was aware of the incident. Dr Stagias told him that Mr McFarlane had contemplated suicide, had been found at the top of the truck by friends who had persuaded him down and had taken him to hospital. Dr Stagias told Mr Bowe that there was no evidence of mental health illness or disorder as a result of the assessment, but there were a number of relationship issues which had triggered the episode, including his divorce, his home circumstances, that he had been hurt by the unexpectedly calm reaction from his wife when he went to collect his belongings, and he had an argument with Ms Griffiths. He was very explicit about what had happened. He told Mr Bowe that they could not identify any risk at that time, that Mr McFarlane was in good mental health, that there was no imminent risk, and that Mr McFarlane was now a lot more calm with no suicidal ideation. He did not say that Mr McFarlane was fine and that there was no risk; he would have made a note of saying that as it would have been important.

311. Dr Stagias told Mr Bowe that he wanted to organise some support with Crisis; he told Mr Bowe that they required stable accommodation so Crisis services could be delivered, and someone who could let Crisis know if there were a deterioration. He never suggested Mr McFarlane needed someone with him 24 hours a day; that was not what Dr Stagias expected anyway. Mr Bowe had not said that he was not going to care for or be responsible for Mr McFarlane, as Dr Stagias had understood him. Mr Bowe agreed to this and was given the Crisis phone number. Dr Stagias told him that Crisis would contact Mr McFarlane after he got back to the farm to ensure that all was going according to plan. Mr Bowe was made aware of the plan set out in Dr Stagias' notes. Mr Bowe had asked if Mr McFarlane should go to the flat he had found the next day, but Dr Stagias told him that continuity over the Bank Holiday and Tuesday would be good. Dr Stagias was talking to Mr Bowe about "a couple of days". He could organise any further care if required.

312. Dr Stagias said that he spent quite some time on the phone to Mr Bowe who was happy saying "that was fine" and to go ahead with the plan. He was clear and explicit about the circumstances, and there was no pressure at all. Dr Stagias said that he recalled the discussion very clearly. Mr McFarlane had described his relationship with Mr Bowe as a close working relationship with him at the farm and Mr Bowe appeared to be quite caring. He did not tell Mr Bowe that Ms Harpur-Lewis, though Mr McFarlane's closest supporter, had refused to accommodate him, as Mr Bowe had already accepted that he would do so.

313. Dr Stagias agreed that it would be wrong to mislead someone in Mr Bowe's position, but he was willing, co-operative and was never pressurised against his will. They did not make the phone calls first because that would have been seen as putting the individuals under pressure. He thought that he would pick up on any sense of unwillingness. He did not think that Mr Bowe was expressing concern. If someone said they were unwilling, Dr Stagias said he would try to find out why that was so. It was tough enough for a close family member to look after someone after a para-suicide; the person would need to know the circumstances, and Mr Bowe was told of the circumstances. Dr Stagias could not remember Mr Bowe saying that it was very unfair because Mr Bowe was put in a position where he could not say no. There was no problem and there was no pressure not to admit Mr McFarlane to hospital. He was asking Mr Bowe for support in which he would provide accommodation where the Crisis Team could visit Mr McFarlane and assess him, and to be someone who, if it came to his attention, could forward his concerns to Crisis, including raising the alarm, if it came to it. A roof over his head was the prime consideration and someone who could report back if something came to their attention. It was a responsibility, but not a massive one. There was no stipulation that he had to be on hand pretty much all the time. A consistent care plan was required: if it was not comprehensive as a package, things could go undetected for longer.

314. This issue really turns on the evidence of Dr Stagias and Mr Bowe. Dr Mann, in the small room where the assessments carried out, sitting next to Dr Stagias, was not able to hear words distinctly, and her evidence explained how she could hear Dr Stagias speaking rather than what Mr Bowe said, and how. She only heard the occasional word spoken by Mr Bowe, but she said she got the tone: Mr Bowe, who could not have been expecting the telephone call, was "definitely okay with it", she said in her statement. In oral evidence, however, it was her impression that Mr Bowe agreed. Dr Mann, I accept, could not hear all he said, and her understanding was much more impressionistic than her statement conveys. Her evidence is more valuable, and I accept it, when she says that she did not feel that Dr Stagias had pressured Mr Bowe.

315. I accept the evidence of Dr Stagias about this first call where it conflicts with Mr Bowe's. Dr Stagias knew the points he wished to make to Mr Bowe, and their substance, were Mr Bowe to say that Mr McFarlane could stay with him. These points covered how they had assessed Mr McFarlane, and what they wanted of Mr Bowe. Dr Stagias explained the risk, not saying that there was no risk but that it was not imminent, and explained sufficient of the detail of the attempt for Mr Bowe to understand the position. Dr Stagias also explained to Mr Bowe the triggers, and their assessment of the position. His evidence remained consistent throughout. Mr Bowe, on the other hand, took the call in his car; it was unexpected, as was the request. He already knew that Mr McFarlane had tried to commit suicide by hanging himself at a barn on the farm, which troubled him as the farm manager. He had no time to prepare for Mr McFarlane's request, and having agreed to it, would have understandably been both anxious and annoyed at the position in which his decent nature had put him. But this affected, I consider, his ability to focus on the detail or nuances of what Dr Stagias said over 5-10 minutes or so, and certainly his later recollection of them. He regarded it as all done in a rush.

316. Had there been any difficulties or significant reservations about what Mr Bowe accepted, I consider that Dr Stagias would have shared them with the other panel

members and decided, with them, what to do. Dr Mann would also have heard from Dr Stagias' end of the conversation that he was having to deal with that sort of issue. Mr Bowe's concern that he had been put in an unfair position also suggests that he agreed to accommodate Mr McFarlane, and to act as a "carer" in the limited way required, albeit not in the broader sense which that word can convey.

317. I do not accept that Mr Bowe said that he was not going to care for Mr McFarlane in the sense in which Dr Stagias explained what was wanted. He made clear, though not all of it may have been absorbed by Mr Bowe, what was involved in accommodating Mr McFarlane: it was not close oversight, but accommodation where he would be safe, a roof over his head and a place where the Crisis Team could contact and visit him, and someone who could alert the Crisis Team if necessary. The plan for contact and visits was explained. This was to be reviewed on Tuesday when he was due to go to his new landlady. Mr Bowe did not refuse that. I consider that he was baulking at something more onerous, as he imagined would be the case, and was told that his concerns as to the level of involvement arose over more than was actually required.

318. I accept that Mr Bowe felt under pressure because he felt some obligation towards Mr McFarlane, as a work colleague of many years. He also felt that the fact that the first request came from Mr McFarlane had prevented him from refusing accommodation. I am quite satisfied that Dr Stagias, on the other hand, feared that pressure would arise, were he to make the first request for accommodation, and that there was no pressure applied by him to Mr Bowe.

319. The crucial point is that, at this stage, Mr Bowe had agreed that Mr McFarlane could stay at his home, where the Crisis Team could visit him. Whatever pressure Mr Bowe felt was not the result of any pressure from Dr Stagias, for there was none, although the situation created its own pressure for Mr Bowe. Mr Bowe did not say to Dr Stagias that he felt pressured. Dr Stagias gave him the necessary information about what had happened, why, the degree of risk and their assessment of the situation. He also explained the general nature of the care plan, and what was expected of him. I accept that Mr Bowe may not have taken it all in, stopped by the roadside, and with little time for reflection, but this was not conveyed to Dr Stagias either in what Mr Bowe said or in how he said it. He was also saying that he would not and could not offer a level of care and oversight which was in fact rather beyond what Dr Stagias sought. Dr Stagias, who knew to whom he was speaking in the second conversation, unlike Mr Bowe, would have borne all this in mind at that second stage.

320. Mr Bowen made submissions about the significance of Dr Stagias knowing there were guns at the farm; this in part arose from Dr Jansen's letter. Mr Bowe's evidence that, in the first conversation, he said there were things on the farm with which a person could kill himself, including guns, was challenged, in cross-examination by Mr Moon. It was never suggested to Dr Stagias that he knew there were guns at the farm, though he said that he had read Dr Jansen's letter. It did not feature in the notes of either side, or mine, as to what Dr Stagias said. Nor was what Mr Bowe said about that put to Dr Stagias, nor did he accept it, nor did the parties' notes suggest it. In the absence of direct conflict of evidence, I accept that Mr Bowe did say that there were ways of killing oneself at the farm, as I have set out in the narrative, and that this did include a reference to a gun or guns. It has however no real significance in relation to risk to Mr McFarlane because Dr Stagias knew that suicide had been attempted at the farm and that domestic

properties, to which people returned, contained knives and other means of committing suicide.

321. I turn to the expert evidence. Dr Courtney accepted that if the conversation with Mr Bowe was as recounted by Dr Stagias, the arrangement would have been sufficient, and a reasonable body of opinion would have taken the course which Dr Stagias had done. Mr Bowe had to have sufficient information about Mr McFarlane's circumstances and risks, and accept that he could stay on the farm.

322. I have found that Dr Stagias explained what was required, and that is what Mr Bowe accepted. Dr Courtney accepted that there could be genuine even if reluctant acceptance upon which a doctor could properly act, provided that the doctor had gone through the circumstances, the assessment and outcome, the arrangements for supervision and care in the community, the stipulations, what was required of the "carer", and when and how to call the CRHTT. I consider that that information was provided.

323. Dr Courtney was slightly concerned that Dr Stagias did not say what Mr Bowe was expected to do in the event of an incident. I am satisfied that the evidence made it quite clear that Dr Stagias told him that he should contact the Crisis Team, whose number he gave Mr Bowe. Dr Courtney said that if Dr Stagias had heard Mr Bowe say that he could not care for Mr McFarlane, discharge from hospital would have been unacceptable, but if Dr Stagias thought that Mr Bowe had said that he would be cared for, some would have made that decision. Although the language of "care" may have given rise to some questions and answers at cross-purposes, I find that Mr Bowe agreed to the limited nature of the care which Dr Stagias was talking about and explained.

324. Dr Courtney expressed the view that Dr Stagias should have considered, on the first phone call, that Mr Bowe was likely to have felt an obligation to help Mr McFarlane as a work colleague with little knowledge of what had gone on and had made a quick decision to help put on the spot. By contrast Ms Harpur-Lewis had had much more time to consider her refusal as she was involved in taking Mr McFarlane to A&E. This was not an allegation of negligence, but more a criticism, which remained unpleaded. Dr Holden said that it was perfectly reasonable for a patient to arrange his own accommodation; it was a matter of practicality. The individual patient would normally ring and see what the position was, and then pass the telephone to the panel member. There would not normally be a private conversation between the panel and the proposed "carer", because of patient trust and confidentiality. The panel were in my judgment aware of the circumstances, and it was for Mr Bowe to say he wanted time to consider or felt pressured, which he did not say, though I can understand that he felt it. It was not negligent for Dr Stagias not to ask about pressure.

325. Dr Holden did not agree that it was negligent not to tell Mr Bowe that Ms Harpur-Lewis had refused to take Mr McFarlane because of the suicide risk; it would be very difficult to say that. Dr Stagias disagreed with the basis upon which Ms Harpur-Lewis made her assessment. Dr Holden did not agree that should have been conveyed to Mr Bowe. Instead, the carer should be reassured according to the psychiatrist's own professional assessment of risk. In any event, Ms Harpur-Lewis, a good friend to Mr McFarlane, was giving mixed messages: she did not want to find him hanging in her spare room, yet she had brought him back to her house after they had collected him from the farm. This was another unpleaded allegation raised by Dr Courtney, but not pursued. There was no negligence.

326. Dr Courtney said in his report that it was unacceptable if Mr Bowe were not told that if Mr McFarlane could not be found suitable accommodation, he would then remain in hospital. I accept that Mr Bowe was not told that. But that was rather superseded by Dr Courtney's answers in cross-examination as to how a reasonable body of practitioners would have reacted to the first telephone conversation as recounted by Dr Stagias. He also accepted that the doctor was not necessarily obliged to tell the proposed "carer" of the alternatives, because that could put pressure on him.

327. Dr Courtney's conclusions in his report were that if the Court found that Dr Stagias did give satisfactory information to Mr Bowe during the first telephone conversation and that Mr Bowe did agree to Mr McFarlane staying with him on the farm, the failure to admit Mr McFarlane whether voluntarily or under section 2, "represents barely adequate care". The decision-making by the assessment team was poor, failing to give sufficient weight to the earlier assessment of two experienced psychiatric nurses, the concerns of a friend who was a trainee psychologist, the seriousness of his suicidal actions the night before and the inadequacy of arrangements to keep him safe in the community. They gave undue weight to his swift recovery and calm presentation in interview with them. I have dealt with and rejected those criticisms.

328. Dr Holden characterised Dr Courtney's suggestion that doctors could say that Mr McFarlane was fine but then could detain him, as containing whole levels of ambiguity, which did not make sense. I think that the suggestion fails to respect the statutory criteria, and furnishes no basis for criticism of the panel. The panel did not want to put pressure on Mr Bowe; I accept Dr Holden's view that there would have been pressure if they had said he would be admitted compulsorily if Mr Bowe would not take him in. In my view, on the panel's reasonable conclusions about the first limb of s2, it would also have been untrue and unlawful to say that. If a doctor picked up worries, the answer, said Dr Holden, was not necessarily to say he could go to hospital. If Mr Bowe had raised worries, the doctor needed to find out what they were and look to reassure him, and if unsuccessful, then an alternative would have to be found. I accept Dr Holden's response, though it did not go far enough in certain respects.

The second telephone call between Dr Stagias and Mr Bowe

329. The difference between their accounts is of greater significance than for the first phone call. It came at about 13.00 on 3 May while Dr Stagias was still in A&E. Dr Mann and Mr Mallett left the building on the assumption that it was all sorted and did not know of the second call from Mr Bowe. This second conversation was not referred to in Mr Bowe's first statement to the police on 7 May 2009, or any later ones. The police had not asked him about it. He had made his first statement at a time of huge stress, shortly after the murder, and the terrible text message in the early hours of 6 May. His statement of June 2017, 8 years later, was his first detailed account of the telephone call.

330. Mr Bowe's evidence was that he did not get the details of what had happened on the night of 2 May 2009, including that Mr McFarlane had run away from the hospital and had been returned by the police, until he arrived back at the farm, about half an hour after the first phone call ended, and spoke to Mr Dodman. It was what Mr Dodman told him, particularly about Mr McFarlane running away from hospital, that led to Mr Bowe obtaining the hospital's number and phoning.

331. Mr Bowe did not know at any stage in this second conversation to whom he was speaking, let alone that it was Dr Stagias again. He had thought that it was the receptionist, because it sounded as though the person was reading from a set of notes. Even by the time of his Niche interview, Mr Bowe still did not appreciate that he had in fact spoken to Dr Stagias, having asked to speak to the team of doctors involved. He was still annoyed that the doctors, as he mistakenly thought, had all gone home. Dr Stagias however knew to whom he was speaking, and I accept his evidence that he introduced himself in the usual way, and it would have been a surprise if he had not done so. But Mr Bowe did not take that in, and Dr Stagias did not realise that he had not done so. He does have a noticeable Greek accent. These crossed lines are important for understanding the way in which the conversation developed.

332. Mr Bowe's evidence was that he told this individual, whom he took to be a receptionist but was in fact Dr Stagias, that he had changed his mind; he was absolutely clear that he did not want Mr McFarlane to stay with him, and it was not right to send Mr McFarlane to him; he told Dr Stagias that he could not be responsible for Mr McFarlane. But he was told by Dr Stagias that Mr McFarlane would be fine, and that it had all been arranged now anyway, Mr McFarlane was on his way and there was nothing he, Mr Bowe, could do to stop it. In effect, he could not change his mind. He felt he was just fobbed off, his concerns were just brushed off, and that he was "pretty much dismissed by" the person he was speaking to. He assumed that the doctor he had spoken to before had gone home because he would not have expected such a response from the person he had previously spoken to. Dr Stagias did say that the Crisis Team would be in touch, but Mr Bowe did not know whether he had been given any telephone number for the Crisis Team, and was adamant that he was not made aware of any care plan, or of any distinction between discharge from hospital and discharge from psychiatric care.

333. Contrary to how Dr Stagias described the conversation in his Niche interview, Mr Bowe said that he had been clear that he did not want to have Mr McFarlane back, and made it clear that he was unhappy. He did not say that he was happy or that he agreed any longer with taking Mr McFarlane back.

334. Dr Stagias' evidence was that he made his note of the second conversation, almost straight away as he was finishing his assessment notes. They were accurate. The call had come through as a generic request from Mental Health Services. He recognised Mr Bowe's voice and had introduced himself, as he always did. He had no reason to believe that Mr Bowe had not recognised him, as I accept. Mr Bowe had said that he was not quite sure if the arrangement was a good idea or not. Dr Stagias asked why, to which Mr Bowe had replied that he was concerned that Mr McFarlane was being discharged which meant that he would not be under any care. So Dr Stagias explained and reiterated that there had been quite a lengthy assessment and no evidence had been identified of mental illness or imminent risk; Mr McFarlane was not being discharged from psychiatric care and he would still be under the CRHTT and Dr Stagias made sure that he had the 24/7 number for that team. He was told to raise any concerns with the CRHTT directly. Mr Bowe asked what was happening on Tuesday, and was told that progress would be reviewed over the two days and from Tuesday there would be liaison with the Community Psychiatric Team for a more permanent plan if one were required. Dr Stagias anticipated that Mr McFarlane would be seen on the Tuesday. When Dr Stagias explained this, Mr Bowe was reassured and Dr Stagias felt there was no reason to doubt it. Mr Bowe had not even requested details of the professionals engaged. The

call ended. Dr Stagias then left a copy of the notes with A&E and a copy for the CRHTT.

335. Twenty two days later, in his police statement, Dr Stagias had said that Mr Bowe was happy. He denied, in cross-examination, being defensive; he was trying to be and was being accurate. His 2010 Niche interview was not an ex-post facto rationalisation. Mr Bowe did not say in the second call that he had changed his mind, nor did he express great concern. He conveyed no level of unhappiness suggesting that he would not have Mr McFarlane to stay. To Dr Stagias, he was clearly toning down his enthusiasm, but not more than that. He denied being untruthful because of the appalling consequences which were to follow. Dr Stagias could not remember if he told him that Mr McFarlane had absconded from hospital. He denied that Mr Bowe had said that he did not want to have Mr McFarlane to stay with him, making that absolutely clear. Dr Stagias denied a tendency to brush people off or to rail road them: he had discussed Mr Bowe's worries with him. There was no need to discuss this with the others because Dr Stagias had addressed his concerns. There was no disagreement or refusal to take Mr McFarlane, nor a breakdown in any stipulation.

336. First, I regard both witnesses as having given honest evidence, evidence which they believed to be true. It was not suggested to Mr Bowe that he might be lying. Mr Bowen did put to Dr Stagias that he was lying, but Dr Stagias plainly was not lying either: he struck me as a thoroughly honest and competent professional. A lie would have meant that his note of the conversation had to be a lie, made at a stage when he had no reason to lie; the murder, the suggested motive for a lie, had not yet occurred. Or else it had to be a forgery inserted later. Those are both hugely improbable. I see no reason why, if Dr Stagias had genuinely thought that there was to be no accommodation for Mr McFarlane with Mr Bowe on the farm, (and he knew of no other potential offer), he would not have sought in some way to grapple with it. He would not just have left a patient in that state, to fend for himself. Mr Bowe's belief that the response from the person he was speaking to showed that all the doctors had just wanted to get away for the Bank Holiday, would require a high degree of casual indifference to Mr McFarlane and others, which I do not think remotely likely from Dr Stagias.

337. Second, I attribute great weight to the note he made: this is a near contemporaneous note made by a party to the conversation, who had an interest in making sure that the essence of it and its outcome was noted. Mr Bowe's agreement was maintained. This was not a short brush off call, as the note shows, contrary to what Mr Bowe recounts. Once the note is accepted as honest, it is very difficult to say that the near-contemporaneous note was significantly inaccurate.

338. By contrast, Mr Bowe gave no account of this conversation in his first police statement, and his Niche interview does not go into detail; his first detailed account of it was in June 2017. There is some reason not to attribute much weight to its omission from his first police statement, especially as there is no doubt that the call was made and this statement was made shortly after the murder. But the level of detail about the first conversation is in marked contrast to the lack of even a mention of the second conversation; and although the police would have been asking the questions, Mr Bowe must have been volunteering the sequence of events which mattered to his account. The fact that the police asked the questions, is much more persuasive as an explanation for the second call not being mentioned in Mr Bowe's two later police statements which

were directed at specific points which the police raised. I do not think that the second phone call was significant to Mr Bowe, at that stage. Indeed, his Niche statement, made when there was no pressure of events upon him, contains very little about it: it was after speaking to Mr Dodman at the farm, that he decided that he did not want to have Mr McFarlane to stay, and rang the hospital to get hold of them again but "it was too late". It is not an account of a conversation in which he clearly withdrew his agreement, let alone maintaining that withdrawal despite what Dr Stagias said to him. I accept that Dr Stagias' note is accurate. It shows Mr Bowe's evidence of the content of the conversation to be clearly unreliable. His evidence is of a quite different conversation, with very significant omissions on the content.

339. Third, there is no doubt that Mr Bowe was worried about what he had agreed to, and I accept that he rang the hospital for the purpose of withdrawing his agreement to accommodate Mr McFarlane, rather than to seek reassurance. However, quite apart from the note made by Dr Stagias, I am reluctant to accept his detailed account of what he actually said, in view of the fact that he did not know to whom he was talking, and thought that it could be just a receptionist. This has significance for his recollection of what he is likely actually to have conveyed and for what was said to him. If talking to a receptionist, angrily believing the doctors to have gone home for the weekend, and having been told that Mr McFarlane had left hospital, and so was on his way, it is difficult to accept that he would have been explicit that he now wanted to stop it, yet very easy to see that he felt he had no choice and reluctantly agreed to maintain the position he had agreed.

340. Fourth, Mr Bowe does not have a reliable recollection of the details of the conversation. I accept that Dr Stagias did introduce himself, as would be a common practice, and I am surprised, in view of his fairly distinctive accent, that Mr Bowe did not even ask if it was Dr Stagias to whom he was speaking, or indeed ask at all to whom he was speaking, if he was going to go back on the agreement he had reached with Dr Stagias. Besides, that sort of forceful and assertive language did not fit readily with my impression of Mr Bowe in his evidence; he may have felt that he wanted to go back on what he had agreed, but his language and tone were steady, stoic, moderate and co-operative, and especially in view of the previous conversation, would have been expressed very much along the lines that he was worried that the arrangement was no longer a good idea. But, however expressed, I have no doubt that the conversation would then have proceeded along the lines Dr Stagias described: what were the worries, and what discharge from hospital meant in terms of continuing psychiatric support for Mr McFarlane and when a further review would take place. To me it is inconceivable that such a conversation did not actually take place. It is my conclusion that the upshot was as Dr Stagias described.

341. Fifth, I formed the impression from his evidence, as a whole, that Mr Bowe was a decent man, with some concern for Mr McFarlane as a colleague, which had led him to agree to provide accommodation in the first place, however reluctant he may have felt. Mr Bowe could, understandably, be influenced by what others were saying, notably Mr Dodman; it was not just further details of the suicide attempt, but the advice or line which Mr Dodman was taking, which prompted Mr Bowe to ring. I judge that he was a person who, whether raising worries, or even if saying at the outset that he would not accommodate Mr McFarlane, would have been open to reassurance by Dr Stagias and to deciding in the light of what Dr Stagias said, and the Tuesday review, to maintain

what he had agreed, both for Mr McFarlane's sake and because he had agreed it, and Mr McFarlane was on his way following arrangements which Mr Bowe had himself made. In my judgment, Dr Stagias has accurately recorded the conversation, and his evidence was accurate that with greater reluctance, Mr Bowe maintained his agreement. There are connotations of the word "happy" to do something which are inapplicable to how Mr Bowe felt; but the word is really being used to convey "prepared to" do something. Indeed, Mr Bowe did not say, by the end of the telephone call, and once he knew that Mr McFarlane was on his way, that that was all very well but as he still would not allow Mr McFarlane to stay with him, and so the responsibility was back in the NHS Trust's hands: what were they going to do about Mr McFarlane, unwanted at the farm? On his evidence, he rather accepted what he saw as a fait accompli.

342. Sixth, I do not accept Mr Bowen's argument that as a lay person, Mr Bowe is more likely to remember the conversation accurately than Dr Stagias. This is not an issue about lay or medical recollections. I appreciate that Dr Stagias may have had more conversations with would be "carers" than Mr Bowe had had with psychiatrists, and that may be a reason for more to have stuck in his mind. But that is no answer to the contemporaneous note. And witnesses of any background do not necessarily remember conversations well, let alone years later; and they can be affected by what they wished to say or to have said, a reflection which then leads them to believe that that is what they have said.

343. Seventh, the subsequent events do not help a great deal, but on balance support Dr Stagias. I have no doubt but that if there had been a refusal now to accept Mr McFarlane, and had Mr Bowe said that he would not be accommodated at the farm, Dr Stagias would have reacted differently. He would have done something, whether with his assessors or through the Crisis Team. His actions are consistent with what he said. Mr Bowe's evidence was, that, however much he resented being left in that position, he had no choice but to take Mr McFarlane; it was too late to do anything else. Mr Bowe did not ring Mr McFarlane or Ken McTaggart to say that he could not come to the farm. Mr McFarlane was not barred from the farm. He went to Mr Bowe's accommodation and was let in; they conversed. His stuff was unloaded into storage on the farm. They waited for Mrs Gliksten, though I am not clear whether there was a phone call before she arrived back in which she decided that Mr McFarlane should stay with her or whether that happened after her arrival back. Clearly, Mr Bowe and Mrs Gliksten would have discussed this question, whether or not Mr Bowe had been reluctant to accommodate Mr McFarlane. Mrs Gliksten was clearly of the view that Mr McFarlane should not stay with Mr Bowe for a variety of reasons, not least her own sense of obligation to Mr McFarlane, quite independently of what Mr Bowe said. Either way, she was presented with what she saw as a problem and resolved it. Mr Bowe did not say that this was because he refused to accommodate Mr McFarlane; she said that she thought that he should not do so.

344. Accordingly, I conclude that Dr Stagias' evidence as to the content and outcome of the second conversation is the more accurate and reliable.

345. Dr Courtney said that even on Dr Stagias' version of the second call, his reaction had been inappropriate. Mr Bowe had reflected on the decision; it was quite unusual for someone to call back like that. Where someone was worried about an agreement, it was not acceptable to leave it, without exploring what the worry was about, and taking

particular note. In effect, Mr Bowe was asking whether they could reconsider. However, if the question Mr Bowe had asked was about what was to happen on Tuesday and was told that Mr McFarlane would still be under psychiatric care, and the Crisis Team would be available 24/7, and that he could raise his concerns about anything untoward with a review on Tuesday, and something more permanent could be arranged if required, then a reasonable body of opinion would have discharged Mr McFarlane. Dr Holden said that Dr Stagias' reaction to the second call was reasonable on his account of it.

346. I judge Dr Courtney's concerns on Dr Stagias' version of the second conversation to be groundless. This is because of what I find was the substance and outcome of the conversation, rather than interpreting what Mr Bowe was saying in the way Dr Courtney did. However, what Dr Stagias said, though not in Dr Courtney's language, covered the gist of the points he raised. Mr Bowe rang expressing worries, but not positively saying he wanted go back on what was agreed. But, in any event, after discussion, he did not in fact do so. He was evidently more reluctant, but was persuaded to continue to accept Mr McFarlane after reassurance about the nature of what he had to do and the treatment which Mr McFarlane would receive from the Crisis Team over the next two days, with a review on Tuesday. After all, just as much as I accept that Mr Bowe had reflected, and had discussed matter with Mr Dodman, so too do I accept that he may not have taken in all that was said about the care arrangements on the first telephone call, but was able, no longer in his car stopped in a layby, to consider more fully what Dr Stagias was telling him during the second call.

347. The question of whether Dr Stagias ought to have contacted the on-call consultant after the second call from Mr Bowe does not arise on the facts as I have found them to be, but in any event, it was not pursued. I thought little of it anyway, as it would have created no additional options, and the ones open were quite limited and dependant in my view on the practicalities of the situation as it developed. I could see no options of which Dr Stagias would have been unaware; he was close to consultancy, very competent, and in my judgment readily held his own for competence and judgment with the psychiatric experts. Mr Bowen only sought to raise this issue with Dr Courtney in re-examination. It had not been the subject of his cross-examination, so I refused to allow further questions. It was not pleaded originally, it first appeared in proposed amendments and should not have appeared in the finalised amendment.

348. Lest it arise later, I set out Dr Stagias' explanation of the position had Mr Bowe refused to accommodate Mr McFarlane. Mr McFarlane had already left. The panel would not need to reconvene, but would need to have a discussion led by Mr Mallett on the telephone. Reconvening the assessment was more complicated if Mr McFarlane was not there, but it was not impossible because they could travel to see him, or just meet. The problem was Mr Mallett's availability for revisiting the issue; they could have had to agree without an AMHP to make a recommendation. An alternative address might have been possible. Even if a new s2 assessment had been completed, they would have to recover Mr McFarlane via the police.

349. Dr Holden said that by the time of the second call, it was not clear to him what Dr Stagias could do as the assessing team had dispersed. They would have to see if there was an alternative address, or track him down and have a discussion about voluntary admission. If new information were received after a decision had been made in a MHA assessment, there could only be a new assessment in a different venue with different

assessors, if the original ones were not available. If there were a new assessment, and the panel were available for discussions, they would start talking, without Mr McFarlane there. It would not be necessary to call him back to hospital at that stage. They would have had to reconvene if digs in Bury-St-Edmunds were a real possibility. "It is difficult to appreciate circumstances which would lead to a second assessment that night."

350. In my judgment, the likeliest first step would have been an attempt to contact the other panel members to relay whatever it was that Mr Bowe had said he would not do. He never in fact said that he would not have Mr McFarlane back once he knew that he was on the way. Second, someone from the Crisis Team would have tried to find out where Mr McFarlane was and what was happening to him. If he were at the farm, someone from the Crisis Team would have visited him there, and spoken to him, the farm staff, notably Mr Bowe, and a further conversation, depending on timing, could have taken place with Mrs Gliksten. The upshot facing everyone, if she were in contact, would have been some form of accommodation at the farm notwithstanding Mr Bowe's supposed refusal, or voluntary admission. Mrs Gliksten's stance, faced with the problem that Mr McFarlane could not be admitted compulsorily, would have been to persuade him that it was in his best interest to stay in hospital for a few days. The evidence of his previous attitude makes it probable that that would have been pressed on him by the CRHTT and that he would have accepted it, if Mr Bowe maintained his refusal and Mrs Gliksten also said no. I think that that is the more probable outcome than that he, with the Crisis Team, would have persuaded someone as determined as Mrs Gliksten, who knew her own mind, to accommodate him. Faced with the refusal of accommodation by Mrs Gliksten as well, the issue of voluntary admission would have been raised starkly for Mr McFarlane. If he still refused, depending on his reaction, a further assessment and compulsory admission might have followed, but that would have depended considerably on how the refusal of voluntary admission was treated in relation to the first s2 criterion.

351. However, I am not prepared to find that by Tuesday, and after review and assessment, that he would have been prevented from leaving as a voluntary admission, going to work on the farm, and taking up his new accommodation, as he had planned, unless the effect of voluntary admission had been to wind him up, as Dr Holden put it, and make his mental state more unstable. I deal with this next. There are too many factors unknown and too much speculation involved, for the Claimants to have discharged their burden of proof.

352. **Failure to detain him or to admit him voluntarily:** most of this evidence related to the consequences were I to accept that Mr Bowe had refused to have Mr McFarlane to stay in the second conversation or on the basis of Dr Courtney's criticisms of the panel's handling of the first phone call to Mr Bowe. I have accepted the evidence of Dr Stagias on those phone calls. However, there is some evidence which can usefully be noted. Part relates to the reality of voluntary admission, if Dr Courtney were right that that is what the panel ought to have pressed on Mr McFarlane anyway. Part relates to the way in which Dr Courtney, and certainly Mr Bowen's approach, at times seemed not to recognise the limits imposed by a conclusion that limb one of s2 MHA was not met.

353. Dr Holden said that it was a reasonable judgment not to bring in Mr McFarlane under s2 because there was a strong likelihood at the time that he could be managed very adequately in the community in respect of both his risk and mental health. S2

compulsory admission had risks and benefits. The benefit was the hope that a patient could be assessed in hospital under a microscope safe from self-harm; the risk was going against his will and dislocating him from his lifestyle and work. It went on one's records and could be known to employers. But if discharged into the community with a plan, the benefit was that the patient did not lose his liberty, and could keep going with his life and work without interruption; the disruption was minor and it helped the resolution of the problem and rehabilitation. It should allow for assessment by the Crisis Team with a heavy input. The risk was that his safety would not be assured in the same way as if admitted, but hospitals were not necessarily safe, because a person was not necessarily put under 24/7 watch.

354. If Mr McFarlane were voluntarily admitted on 3 May, the risk would be that he would come in grudgingly; when accommodation was available he would leave. This could lead to sectioning under section 5(4) or (2), or to discharge, whether or not to the Crisis Team. If he had been admitted voluntarily on 3 May and there had been a similar assessment to that undertaken by Dr O'Flynn on 5 May, that would have led to his discharge at the first consultant ward round that week.

355. Voluntary acute admission would provide no opportunity for counselling or psychotherapy. Nursing levels in psychiatric wards were often not good. It was a mistake to suppose that in hospital someone would be calming down and talking to nurses; they were not like that, they were busy and Mr McFarlane could have been thoroughly wound up by the experience. The staff were inevitably preoccupied by the more obviously disturbed. 20 patients would be on observation but 5 would be on one to one observation taking up most of the time. For the first 24 hours, staff would try to keep some level of observation but if the patient were seemingly completely calm, observation would be reduced to "general", which is roughly the level where he was on the farm. He would have seen the same sort of staff for his needs.

356. If he had been admitted on 3 May under s2, doctors would become slightly more cautious and require greater certainty; so there would be a degree of concern about his discharge. He would have been kept on section for a few days longer than if voluntarily admitted, but that does not mean that he would have remained on the ward. Individuals, sectioned or not, can be held at various levels of observations and can be given leave, e.g. to a local coffee shop or out of the grounds to visit shops or grandchildren. He would only be kept in if it was necessary and he needed one-to-one observation. There was a possibility, even a probability, that he would not have been on one-to-one observation. Dr Holden thought that Mr McFarlane would have been on general observation and so could have left the ward, with its leave or not. But, if sectioned, it would have been somewhat early for him to have had leave in that first week. If he had not come back, there would have been a search and the police would have been rung with his description. On voluntary admission but without discharge, the steps taken, if he left, would depend on the degree of concern, but it would not go so far as contacting the police unless he had been sectioned.

357. In my judgment, these limitations on the benefits of voluntary admission, and indeed the risks of making things worse through winding Mr McFarlane up, would have been known to the panel, as part of the background to its sense in finding a community solution with care from the Crisis Team.

358. Dr Courtney said that if the panel had judged that it was in his best interests to be admitted, and they offered voluntary admission, the question was for what purpose, given that the purpose of admission was the assessment and treatment of individuals with mental disorders. Admission was clearly being contemplated because Dr Stagias rang the ward, after Ms Harpur-Lewis declined to have Mr McFarlane to stay, to check on bed status. The stipulations as to address and somebody living with him indicated also that Dr Stagias contemplated admission if the conditions were not met, demonstrating his view that the requisite symptomology was present. It was not necessary for an individual to have a mental illness or any formal psychiatric diagnosis to be admitted, under the statutory criteria. There were more than sufficient symptoms to justify admission.

359. That is not, in my judgment, a proper reflection of the evidence which I accept as to the decision-making process. The panel was satisfied that the first criterion of limb one of s2 was not met. Risk could be coped with by a care plan, but such a plan was necessary. Dr Stagias checked on the availability of a bed after Ms Harpur-Lewis declined to have Mr McFarlane to stay, but at that stage, Dr Stagias did not know what the reaction of others might be. Absent any alternatives where he could stay and a care plan be delivered, the panel might have to persuade, and succeed in, persuading Mr McFarlane to come in. The risk to himself could, absent a care plan, have justified voluntary admission for a few days, even though the first limb of s2 had not been satisfied.

360. Dr Mann agreed that if there were no care plan or being in the community was not felt to be safe, voluntary admission or possible detention would have to be considered. To the police, she had said: Mr McFarlane "had agreed to voluntary admission but was extremely unkeen and it was not deemed appropriate". This was very common. Dr Mann said that she would hope most people would not want to be admitted, but a lot come to that in the end. She had agreed in the Niche interview that there was quite heavy pressure from the NHS Trust not to have "inappropriate admissions" but there was a bed available and they could have admitted him if they wanted to. If he had been homeless and there had been no-one else to help, there would have been an increased risk of suicide. Mr Mallett explained in cross-examination that he would not have been happy simply to watch Mr McFarlane walk out of the door, if there were no option for him to stay with his colleague, because there had been a significant suicide gesture or attempt. But it was not an option because he did not meet the criteria for detention.

361. One issue, not explored by Mr Bowen with Dr Stagias, but briefly explored by him with Dr Mann and Dr Holden, was whether, if Mr McFarlane had had "nowhere to go", yet had continued to refuse to accept voluntary admission, that could have been evidence that he was indeed suffering from a mental disorder warranting detention for assessment, thus satisfying s2, first limb.

362. Dr Mann said that if Mr McFarlane had had nowhere else to go, he would have been more amenable to voluntary admission, and a refusal of admission by him would have been worrying. She did not know what would have happened in those circumstances but it would have been relevant to the judgment of whether the statutory criteria was satisfied. There would have had to have been a very hard discussion about whether he was sectioned, but he would still have to meet both statutory criteria. The risk would have increased, but the first criterion had not been met on her clinical judgment.

363. Dr Holden said that detention would have been justified at the time of either call from Mr Bowe, only if the criteria were satisfied, but if the assessors had suspicions for example that someone was lying about their symptoms when appearing normal, a person might still be brought in. That was a grey area requiring judgment. The effect of a refusal of admission, when there was no satisfactory alternative, would also be a grey area for sectioning; more weight might be given to factors previously not weighty. It was much more likely that he would be sectioned because the choice would be stark; there would be no other tangible assistance available. It would probably be negligent not to seek to treat him further. But if he did not meet the criteria for compulsory admission, he would have to be let go.

The risk to Ms Griffiths

The assessors' knowledge on 3 May of any risk to Ms Griffiths

364. There is a factual issue which I need to resolve before turning to the experts' evidence, which concerns what the NHS Trust knew of any risk to Ms Griffiths from Mr McFarlane on 3 May 2009. This leads on to the further issue as to what, if anything, the NHS Trust ought to have known, and what it ought to have done about any risk to Ms Griffiths on 3 May 2009.

365. The particulars in sub-paragraphs G, H and K of paragraph 164(xiv) are the primary ones which relate to it. G alleges that the NHS Trust failed to take account of his rejection by and obsession with Ms Griffiths. H alleges that it failed competently to assess the risk Mr McFarlane posed to himself and others, specifically Ms Griffiths, including the risk of suicide from returning to the location of his earlier attempt. This runs together two quite separate issues. I deal here with the risk to Ms Griffiths. I have dealt with the other aspects already.

366. Particular K alleges that the NHS Trust failed to take account of the information provided by Nurses Russell and Harris in a variety of respects: the information provided by Ms Harpur-Lewis in the telephone call to Nurse Harris, the information obtained by Mr Mallett from Nurse Russell before the assessment, and the knowledge that the assessment team had from Nurses Russell and Harris that Mr McFarlane had been rejected in his pursuit of Ms Griffiths, and had already embarked upon "a campaign of harassment or would with reasonable diligence have discovered the same." No steps were specified on that occasion, nor what these steps would have uncovered. These omissions matter in view of the way events progressed after 2 May.

367. The primary issue raised by the pleadings and submissions is whether the NHS Trust knew or ought to have realised that Mr McFarlane posed a risk to her life, of which it should have warned her or the Suffolk Police. A reading of the pleadings as a whole would have lead to the conclusion that the risk alleged was a risk to Ms Griffiths' life or, by amendment, of inhuman or degrading treatment for the purposes of the HRA claim. However, on Mr Bowen's analysis, they and the claim related to the risk of any form of assault, which breached Article 8 to which she or the Suffolk Police should have been alerted, sufficiently to enable her or them to take preventative steps, which it was said would also have prevented her murder, even if neither the latter nor a serious assault breaching Article 3 was itself reasonably foreseeable. The pleadings do not really convey the developed case on these issues. His closing submission asserted that there was "significant evidence of risk from 3 May of which [the NHS Trust] was or

should have been aware." The panel "should additionally have factored in the "heightened risk" caused by "knowledge of sexual assault". The NHS Trust were in a relationship of control over Mr McFarlane, and in a proximate relationship with Ms Griffiths, knowing that she was at risk of distinct and special harm. The NHS Trust had a duty to warn her that her fears that Mr McFarlane was unstable were serious and justified, which would have made her more insistent that the police attended on 5 May.

368. This was not seemingly a case about a general public risk, which could cover Ms Griffiths as a member of the general public; but Mr Bowen developed a submission based on an interpretation of Strasbourg jurisprudence to the effect that both Mr McFarlane and Ms Griffiths were members of the general public to whom the NHS Trust owed protective duties as a result of its knowledge of the risk to Mr McFarlane of violence in the form of his committing suicide.

369. These issues of knowledge, what ought to have been known, the nature of the risk, and warning to Ms Griffiths or the Suffolk Police however were not canvassed in any depth by Mr Bowen with Dr Stagias, and little further with the later witnesses, Dr Mann and Mr Mallett. The principle focus of his cross-examination on these issues was Dr Holden. Dr Stagias gave evidence about how the panel approached the question of risk to others than Mr McFarlane. Mr McFarlane's threat to his boss in 1994, of an unknown nature was never communicated to Dr Stagias. He agreed that suicide was a violent act, the balance of mind could be disturbed, and that there could be a common denominator in the form of substance abuse, alcohol or mental illness. However, here they could not identify any evidence of risk requiring steps to be taken. They considered risk to others as they went along but there was no discussion about risk to others because there was nothing to comment on and so no note was made of it. There were repeated references to his having no history of violence or of criminal behaviour towards others. He was irritable when he went to pick up his belongings. Ms Griffiths was a significant figure in Mr McFarlane's life. He flew into a rage at her over her ex-partner and the decision to have him back, but there was no reference to any assault. He made no threats to anyone. This was the only incident of aggressiveness; it was out of character, and the only indication of behaviour which could be thought to require consideration but there was no specific focus on it. They looked at risk but this verbal exchange did not show a risk to her.

370. Ms Harpur-Lewis, as Dr Stagias saw it, said nothing to suggest that either she or Ms Griffiths were scared of Mr McFarlane. There could be threats which must lead to an alert to a specific individual at risk at which point confidentiality stops, but an MHA assessment was a confidential practice. A decision to warn somebody is a balance between risk and confidentiality. There was no room for a warning in respect of Ms Griffiths or her ex-partner or McFarlane's wife or mother or for warning the police.

371. Dr Mann said Ms Griffiths was a significant figure in Mr McFarlane's life. The reference in the HTSAF, that "Mary was afraid of him", was specifically put to her by Mr Bowen; she replied that they did not think Ms Griffiths was at risk from Mr McFarlane. Mr Mallett was not sure that they did specifically debate any risk to Ms Griffiths, but he was not aware of her being at risk more than anyone else. He knew there had been some form of dispute between them, and that the argument over her ex-partner was in the equation; he had read the HTSAF, and had known what it said.

372. Dr Courtney did not suggest in his report that there was a risk to Ms Griffiths which the NHS Trust knew or ought to have known about, or responded to. Mr McFarlane had no history of violence nor had Dr Courtney read any account of violence. Dr Courtney had been concerned about the risk which Mr McFarlane posed to himself. There was nothing suggesting that he might be a risk to others and that had not been the basis of his criticisms of the MHA assessment. His report contained nothing about risk to others in its conclusions. He had not suggested that Ms Griffiths should have been warned or the police. The only references to that in the report are in [90] dealing with the message left at 18.26 on 5 May, and in [89] where Dr Courtney said that if Mr McFarlane had been admitted to hospital on 3 May, voluntarily or compulsorily, he would not have murdered Ms Griffiths on 6 May 2009.

373. Dr Holden had expressed the opinion in his report that the risk of violence from Mr McFarlane to others, in general, or to Ms Griffiths or her children in particular was unknown at all relevant times until immediately before the murder, by which time it was too late. Dr Holden concluded in his report on the pleaded risk to Ms Griffiths:

> "I do not consider that there was sufficient evidence available to the health professionals, from the messages of friends, to know that Mary Griffiths was a high-risk victim. His described behaviour in being attracted to her and annoyed by her ex-partner's return, is nothing but normal on the information available until around the time of her death. Assertions in the Particulars of Claim that she was being harassed by Mr McFarlane are not really supported by the brief nature of any harassing behaviour towards her, escalating acutely prior to her death (although factual issues are a matter for the Court)."

374. Dr Courtney expressed the view in the Joint Statement for the first time that "the risk to Mary Griffiths was known or should have been known to the Trust staff at the time of the MHA assessment on 3 May 2009". His reasons were that Dr Stagias was aware Mr McFarlane had had an argument with Ms Griffiths on 2 May 2009; Dr Stagias noted that Mr McFarlane had been angry and felt rejected when leaving her home; Dr Stagias was aware that this anger had led Mr McFarlane to make preparations to hang himself to take revenge and make those around him feel guilty; Nurse Russell described Mr McFarlane as talking obsessively about women; and that Ms Harpur-Lewis had stated that Mr McFarlane had hoped to strike up a relationship with Ms Griffiths which she had declined; in the assessment completed by Nurses Russell and Harris, it stated "Mary was afraid of him". All this, he said, was simply to rebut what Dr Holden had said. It had not been raised as a point of challenge to the competence of the NHS Trust in the first place. He had had no further information between writing his report and the Joint Statement with Dr Holden.

375. This became a significant issue in the expert psychiatric evidence, well beyond the indications in the pleadings. Dr Holden, but not Dr Stagias, whose decisions were at issue, was cross-examined quite extensively, on various hypothesis as to what was or ought to have been known, or what it should be inferred could have been known. The allegations were not put to those best placed to explain what was known and why what it was said should have been known was not known. I approach the evidence of the experts with some caution, because they could not give evidence about what was

known, and were not necessarily best placed to comment on what should have been known inferentially from other documents.

376. Mr Bowen contended that I should infer from the note made by Nurse Harris alone that there was a risk of assault on Ms Griffiths, which the panel knew of or should have realised. This was not of a murderous assault, or even of an assault breaching of Article 3. His point was that a risk of assault was enough to require a warning to her or to the police which could have enabled steps to be taken, which, in counteracting the threat of an assault, could or would have prevented the murder.

377. I am not concerned at the moment about the legal basis for that contention. It is simply unrealistic on the facts. I have already dealt with the absence of negligence in not making contact with Ms Griffiths for the purposes of collateral checks, whether about the Saturday row, her view of his mental health or taking her gym classes. I have also explained her reactions to Mr McFarlane's text messages. Nurse Harris' HTSAF does not refer to or imply that there were any incidents before the Saturday row, nor was that what Ms Harpur-Lewis was referring to; nor did Ms Harpur-Lewis or the HTSAF say or imply that the Saturday row involved any assault, which it did not involve anyway. There was nothing at all to suggest that there was some risk of future assault on her by Mr McFarlane, which required investigation by the panel, or warning to her. Mr McFarlane had wanted a closer relationship than did Ms Griffiths, which relationship had now been rejected. Some form of unwanted advances of unknown extent must have been a possibility in the past; but there was no evidence of a future risk.

378. In any event, nothing emerged at the assessment by way of threats of sexual assault, non-sexual assault or indications that he would pursue a relationship she had rejected, let alone any which she would not have known about. Ms Griffiths would obviously herself have known about all unwanted advances, and would have been the obvious person to decide whether or not to contact the police. She also knew of the suicide attempt and the outcome of the assessment; she had been in contact with Mr McFarlane that evening. Nor was there anything in his mental state as they reasonably found it to be to suggest that a level or nature of risk existed beyond that which Ms Griffiths would have been aware of, if any at that stage. So, even if Dr Stagias had misinterpreted what Ms Harpur-Lewis was saying about Ms Griffiths being frightened of Mr McFarlane, I can see no basis upon which his response about the stage at which a warning might be appropriate had been reached would have been different, or ought to have been, whether to her or to the police.

379. Mr Bowen referred to parts of Ms Harpur-Lewis' Niche interview, which I have included in the narrative. But I see nothing in them which is not captured in Nurse Harris' note of their conversation. Ms Harpur-Lewis made no suggestion in her Niche interview that Nurse Harris had omitted anything of significance in what she recorded of their conversation. The reference to a darker tone to the emails to her on Saturday relates to the risk of suicide. The reference to Ms Griffiths being scared or really scared of Mr McFarlane beginning on 2 May, is captured in the reference in Nurse Harris' note to Ms Griffiths being afraid of him. She said that she felt uncomfortable in his presence in the Niche interview; the notes refer to her being uncomfortable about Mr McFarlane returning to her house. But the Niche interview comment relates to the effect his increasing comments about committing suicide were having on her that Saturday. There is nothing of other significance in what Ms Harpur-Lewis is speaking about; it all relates to suicide, and nothing else. She also made it clear in her Niche interview that she saw

what Ms Griffiths was saying as related to the same concern: afraid of what Mr McFarlane would do to himself, rather than to her. If she had said all that to Nurse Harris, I cannot see that anything of significance had been omitted in the HTSAF.

380. Mr Bowen then turned to what he called knowledge of the "heightened risk" , that is of sexual assault. He submitted that I should infer that Mr McFarlane's past behaviour towards Ms Griffiths was passed on by Ms Harpur-Lewis to Nurse Harris, by her to Nurse Russell, and also directly by Ms Harpur-Lewis to Dr Stagias. He expressly submitted that I should infer that Ms Harpur-Lewis did in fact tell Nurse Harris of "the overall circumstances surrounding Mr McFarlane's behaviour, particularly his behaviour towards Mary and the fact that she was afraid of a further sexual assault and that he had tried to force himself upon her", although not recorded in the note of the 3 May CRHTT assessment, by Nurses Russell and Harris. Mr Bowen referred to evidence of stalking, harassment and sexual assault by Mr McFarlane on Ms Griffiths, in the days before 3 May.

381. He submitted that I should infer the NHS Trust's knowledge of this "heightened risk", not just from the documentary evidence, but also from the NHS Trust's refusal to tender Nurse Harris for cross-examination. I should find that this refusal arose from a fear that her evidence would damage its case, and I should draw an inference adverse to it on this issue. Nurse Harris' Niche statements were before the Court, as was her witness statement, to the extent that Mr Bowen wished to rely on it. Ms Harpur-Lewis's various statements were before the Court as hearsay evidence. Nurse Russell gave evidence and was cross-examined.

382. First, I am not prepared to draw any such inference from the fact that Nurse Harris was not called or, rather, not tendered for cross-examination. As Mr Moon pointed out, the statement prepared by Ms Harris, and before the Court, had been prepared to deal with allegations of negligence made against her, but no longer pursued. I am satisfied that Mr Moon's explanation for not calling her, now that she was not the subject of an allegation of negligence, for the speculative and potentially duplicatory cross-examination was both correct and justified. I remain unclear as to how much useful material Mr Bowen's cross-examination would have yielded anyway.

383. Mr Moon told Mr Bowen, well before the trial, who were the witnesses to be called, and Ms Harris was not among them. It met no protest or request for her. When the issue of her being called arose, I declined to issue a witness summons. It was far too late and disruptive to the trial process. Her statement was available at the trial for Mr Bowen to rely on should he so choose. But it was not helpful to him, and if he had called her, he could not have cross-examined her. He had been able to cross-examine Nurse Russell. She gave evidence which contradicted Mr Bowen's claims. The Claimants did not call Ms Harpur-Lewis who could have given evidence as to what she had told various people.

384. Mr Bowen submitted that once the issue of Ms Harris' evidence had emerged at trial, the NHS Trust could reasonably have been expected to assist the court by calling her to say that she knew nothing about this "alleged sexual misconduct" by Mr McFarlane. He referred me to how Popplewell J had approached what Mr Bowen saw as a similar issue in *Imam-Sadeque v Bluebay Asset Management (Services) Ltd* [2012] EWHC 3511 (QB). I do not see these as parallel cases at all. There, a party to important disputed conversations, of which no record existed, was not called; a contemporaneous record

had been made by another party who gave evidence. Here, Nurse Harris had been prepared to give evidence when faced with an allegation of negligence, not pursued following Dr Courtney's report. I have ignored the further, unsigned statement she made, in response to the Court's urgings. The Claimants had Nurse Harris' Niche interview for hearsay use. The other party to the conversation, Ms Harpur-Lewis, was not called by the Claimants. Nurse Russell was called. The issue arose very late in the trial, but there was no reason for the issue of the risk to Ms Griffiths, and the knowledge of the NHS Trust to have come so late in its detail. The late emergence was not because of other evidence, so much as because of a change in the way it was appraised by the Claimants.

385. I have read the whole of [44] of *Prest v Prest* [2013] UKSC 34, [2013] 2 AC 415, as Mr Bowen invited me to in rebuttal of the use made of it by Mr Moon. Drawing an adverse inference is not a substitute for evidence; before such an inference can become a basis for finding a fact, there has to be some reasonable basis for the hypothesis in evidence or inherent probabilities, to which the answer is in the hands of the silent party, and whose silence cannot be credibly explained.

386. There was a credible explanation for Nurse Harris not being called in the first place, and not being called when Mr Bowen realised that his allegations required better evidence. Nurse Harris' statement, and Niche interview were before the Court for Mr Bowen to rely on. There was a lengthy note of the conversation. Moreover, it is inherent in Mr Bowen's claim that Nurse Harris heard allegations of sexual assault, stalking and harassment, and did not discuss them with Nurse Russell or Mr Mallett and made no note about them. In my judgment, in those circumstances the Court would need to be very careful about drawing such an improbable but adverse inference from the fact that witness was not brought forward, not to give evidence, but for cross-examination by the opposing party. An earlier application for a witness summons might have been granted, since at least one objection would have gone, but that was not really what Mr Bowen wanted, since he could not have cross-examined her. True, the NHS Trust could have taken that step, but it was under no obligation to be more helpful, and no adverse inference can be drawn from its decision. I have however not considered Nurse Harris' three witness statements in reaching my conclusions on the evidence.

387. There simply is no evidence, moreover, let alone a strong prima facie case, that Ms Harpur-Lewis gave information of sexual assault by Mr McFarlane, in whatever language it might have been couched, or of stalking or harassment, either to Dr Stagias directly or that she even tried to, or to Nurse Harris, but which was neither recorded in the note she made, or discussed by her with Nurse Russell, or mentioned to the assessors. There is no rational explanation for so obvious an omission in view of the length, scope and purpose of the note. There is no evidence in the references which Mr Bowen provided in his closing submissions which supports the contentions he makes about what Ms Harpur-Lewis must have told Nurse Harris. Ms Harpur-Lewis' hearsay evidence was before the Court, and could have provided the direct source for such allegations. Nurse Harris' note records that Ms Griffiths felt scared of Mr McFarlane. Ms Harpur-Lewis notes the text message at 20.40 on 2 May from Ms Griffiths, saying that Mr McFarlane's behaviour was scaring her, and later that he had frightened her daughters in how he had challenged her in front of them that night, so she really hoped he would not come to her house. Ms Harpur-Lewis said that she was concerned about what Mr McFarlane would do to himself. I am not prepared, quite independently of the

debate about Nurse Harris, to draw any inference from this evidence that some more extensive conversation of significance took place.

388. I am not persuaded either that the way in which Ms Griffiths spoke on 5 May about the events of 2 May and earlier is how she viewed them at the time or on 3 May or spoke about them. The evidence of Ms Harpur-Lewis, as well as the actions of Ms Griffiths herself make that plain. It seems to me plain that she viewed them differently in the light of the letter of 4 May delivered to her home, and the continuing text exchanges.

389. Mr Bowen's characterisation in questions of Dr Holden and submissions of how Mr McFarlane behaved towards Ms Griffiths in the short period up to 3 May 2009, of stalking, harassment and sexual assault was a rather tendentious description of the events in the context of the relationship, as hoped for, and of how they were seen or expressed up to 3 May by Ms Griffiths. His advances were unwanted, and rejected on three occasions, after a first one had met with a seemingly positive response which Ms Griffiths regretted. There appears to have been no violence, and no persistence on any of the occasions. On the last occasion, he reacted angrily but in the context of the anticipated return of the ex-boyfriend, whom he did not think was good for her or the children. I have set these out in the narrative. Ms Griffiths did not start raising acts with other friends until 5 May, by which time she was becoming afraid of Mr McFarlane as a result of the 4 May letter and his further emails especially of 5 May. She had had no thoughts, so far as the evidence goes, about needing the police until 5 May. The chronology Mr Bowen provided, and his questions, had something of a tendency to overstate the purport of the documents he relied on. Although some of what Ms Griffiths told the Fitches, and others, on 5 May had happened on 2 May, or earlier, the concerns she was expressing were not about events with nothing further happening in between; it was what had happened in between 3 and 5 May, notably on 4 and 5 May, which gave rise to her fears.

390. Mr Bowen also submitted that the evidence of Ms Russell that Mr McFarlane had "unnerved" her helped support this argument, but there was no evidence that she had ever said that to anyone else before the police interview or placed it on any record. Dr Courtney commented in the Joint Statement that Mr McFarlane was talking obsessively about women including Ms Griffiths while in A&E or at the Nurses' assessment. But there is no evidence that any such view was recorded by Nurse Russell or expressed before her police interview.

391. Mr Bowen also pointed to a series of other factors which he claimed supported his submission about what the panel knew or ought to have realised from the material it had. First, Dr Potter, a consultant psychiatrist, commented in a long question to Dr Stagias in his Niche interview, that Mr McFarlane was "quite potentially violent". What Dr Potter actually asked, continued: "he is thinking about harming himself, he's set up a gallows". He asked it with a view to testing why Dr Stagias, in view of the risks inherent in the community plan, no matter how robust it was, had not taken "the absolutely safe option of bringing Mr McFarlane in under s2." He continued in his questioning with the comment that he was not criticising Dr Stagias who, he said, had come to an obviously defensible decision, but Dr Potter just wanted his view. The answer commented that in an hour, no one could be sure about anybody's mental state for absolute risk or safety. They had found a lack of concrete evidence to make them think that Mr McFarlane was suffering from a major depressive disorder at that time.

392. I fill this out, because it shows a number of flaws: first the quote and answer need to be set in the context of testing the risk to Mr McFarlane. There was no suggestion that the potential for violence he raised related to anything other than the suicide risk to Mr McFarlane. Second it is in a question posed to test a hypothesis, and that cannot be regarded as positive evidence of an expert view. Nor should it be taken separately from any other views Dr Potter expressed. The Court, in any event, had the benefit of experts, as well as Dr Stagias, who were cross-examined, and so such a comment, if comment it be, cannot have any weight.

393. Mr Mallett explained the box on the social circumstances form on the risk to self and others, was not "empty" as Mr Bowen put it, but was expressly only referring to Mr McFarlane's risk to self. Dr Holden said that the absence of reference, on the home circumstance form filled in by Mr Mallett to any conclusion about anybody else being risk than Mr McFarlane himself, is common practice, where that is all that is known. I accept that explanation.

394. Mr Meloy's comment in his Niche interview that something they asked an individual in their care was whether he had any thoughts of harming himself or others, and if the answer was no, that was usually accepted, related to his visit to Denham Farm on 4 May. It does not relate to the 3 May assessment. No separate allegation of negligence was made about that. Dr Holden, to whom this answer was put in cross-examination, agreed with Mr Meloy's response.

395. Mr Bowen also prayed in aid parts of Dr Holden's report. He picked over, in submission, the significance of the words: "although his behaviour had raised issues of potential suicide risk there had been no suggestion of serious risk of harm to others" in order to submit that Dr Holden accepted, by inference, a risk to others. Dr Holden did not consider "that there was sufficient evidence available to the health professionals, from the messages of friends, to know that Mary Griffiths was a high-risk victim". This implied, submitted Mr Bowen, that Dr Holden accepted she was at some risk. But Dr Holden said Mr McFarlane's behaviour, in being attracted to Ms Griffiths and being annoyed at her ex-partner's return, was nothing but normal on the information available until around the time of her death. Assertions in the Particulars that she was being harassed by Mr McFarlane were not really supported by the brief nature of any harassing behaviour towards her, escalating acutely prior to her death. Dr Holden also said in his report that it seemed unlikely that there were any significant concerns about Mr McFarlane posing a risk to others, as the MHA assessment confirmed.

396. The comments in the report are being taken out of context and rather over-construed in those submissions, in my judgment. They were not acceptances that the material before the panel on 3 May showed or ought to have shown them that a risk to Ms Griffiths existed, contrary to the conclusions of the panel.

397. I conclude that the only material relating to any risk to Ms Griffiths before the assessors was (1) Nurse Harris' notes of the assessment on the HTSAF, and Risk Screen; (2) whatever they passed on orally to Dr Stagias or Mr Mallet did not go further than those documents; (3) what Mr McFarlane told them, and (4) what Ms Harpur-Lewis said, which was essentially that they should know what she told Nurse Harris. The panel, in my judgment, from that material did not know of any risk of violence posed to Ms Griffiths by Mr McFarlane, if in fact he actually posed one at that stage. There was

simply no evidence of assault in the past or of threats for the future, let alone of anything more serious.

398. I turn to the expert evidence as to what the panel ought to have known and done in relation to any risk to Ms Griffiths. I have already rejected the contention that the panel ought to have sought Ms Griffiths' views on a variety of issues by way of collateral check.

399. Dr Courtney was cross examined about the Joint Statement. He referred to Dr Stagias' notes where Mr McFarlane's motives for the suicide attempt were discussed: he said that the context was revenge, harm and hurt, though he gave no indication that he wanted to cause physical harm to others in wanting to make them feel guilty, and so to hurt them. He had no history of aggression or violence. Ms Harpur-Lewis did not believe he was a risk to others. The reference to his "flying at" Ms Griffiths' ex-boyfriend contained no suggestion that Mr McFarlane had struck him; indeed, Dr Courtney accepted that Mr McFarlane was being protective towards Ms Griffiths. (In fact, as the ex-boyfriend was not there, it is equally noteworthy in my judgment, that Mr McFarlane did not strike Ms Griffiths, angry though he was; part of his anger arose because he felt that a person who was less suitable for Ms Griffiths was being preferred, which was the basis for the protectiveness Dr Courtney described.) Nor did Nurse Russell's reference to him talking obsessively about women contain any suggestion of violence. Specific women, his wife, mother and Ms Griffiths were mentioned; they were on his mind. I reject the bases upon which Dr Courtney considered that the panel should have been aware of such a risk.

400. He agreed that, on the basis of what the NHS Trust knew on 3 May 2009, there was no duty on it to warn Ms Griffiths or the Suffolk Police. If the evidence had comprised only Dr Courtney's report, comment in the Joint Statement, and his oral evidence, there could have been no basis upon which I could conclude that the NHS Trust, in the 3 May assessment, had acted negligently in any way in respect of a risk to Ms Griffiths. Dr Courtney did not suggest otherwise. The situation changed for him with the voicemail of 5 May from Ms Harpur-Lewis but that is a different issue.

401. I observe that Dr Courtney's way of raising the issue suggests to me that he saw no basis for criticising the panel's handling of the risk to Ms Griffiths initially in the evidence he had, especially in the context of his report which took many points of criticism which he agreed did not amount to an issue of negligence, and presumably was written when he was at least aware of the points in the Particulars of Claim. He was prepared to make criticisms where he thought that necessary and justified, whether pleaded or not. His report covered a very considerable range of material. Nor did he identify any point of evidence which emerged later to justify his raising the point for the first time in this fashion. There were obvious limits to the extent to which the timing and manner of his raising of this issue could be explored. It was nonetheless an issue upon which much of Mr Bowen's cross-examination of Dr Holden, though not of Dr Stagias, and his submissions came to rest. I am sceptical of any submission that this shows that Dr Courtney had an open mind. He did not say that it was oversight. I do not suppose that it was. I infer that it was a judgment, later revised, with no additional material, about what should have been done. I approach his judgment here with some caution.

402. Mr Bowen however undertook an extensive exploration of this issue with Dr Holden, very much more than he did with the assessors themselves. Dr Holden's opinion on the risk of violence to others was that it was acknowledged to be very much more difficult to assess. Mr McFarlane could be unpredictable and impulsive. Dr Holden thought that this was a very unusual homicide, very different from a domestic homicide which most are. Assessments of risks are informed by a past history of violence, of which none were obvious with Mr McFarlane, and recent violent acts of which there were none towards others. He could not be perceived as a so-called rootless mentally ill individual. Nor were any threats made against a particular group or an individual in relation to which they could potentially pose a risk. Assessors ask whether a patient has any thoughts of harm to anyone else and if the answer were no, they usually accepted that. Mr McFarlane had no discernible delusional ideas in relation to any risk group or individuals.

403. Dr Holden had seen no convincing reason as to why Mr McFarlane did what he did when he did. The identified risk was that of impulsive suicide. The focus was rightly on Mr McFarlane himself and he reached no theoretical clinician's threshold for anything to happen.

404. None of those who had been involved with him had felt him to be psychotic. His violence was unforeseeable in the context of his presentation to mental health services over the previous six months. Impulsive or unpredictable behaviour was common without involving murder. A suggestion of recklessness over his suicidal behaviour did not indicate a serious risk to others. Such a presentation on 3 May did not make him a potential murderer. There was some friction between Ms Griffiths and Mr McFarlane, but no one could have imagined that it would escalate. So many MHA assessments had these factors because fallings out of this sort, in relationships and at work, were part of everyday life, and they had no diagnostic or risk significance, unless there is something else besides. It was Dr Holden's opinion that it was impossible for the psychiatric staff involved with Mr McFarlane to have known that he would behave in the way he did; a forensic psychiatrist at the MHA assessment would not have identified the risk to Ms Griffiths. On the basis of what was known to the mental health services, they could not have made any prediction of significant harm coming to Ms Griffiths. It was now possible, though, to look back and see things which did not seem very important at the time of the 3 May assessment.

405. I am satisfied on this evidence that there was no basis upon which the assessors on 3 May ought to have known that Mr McFarlane was a risk to the life of Ms Griffiths or of causing harm to her which would amount to a breach of article 3, or of a serious assault. There is no evidence that he was such a risk at that date. Nor, as I will come to, was there any basis upon which the NHS Trust ought to have known of such a risk on 5 May, as it did not listen to Ms Harpur-Lewis' message, for what that might have told it, and there was no negligence in it not doing so. Of course, if they did foresee or ought to have foreseen the risk of murder or of a serious assault, it is difficult to see on the evidence that the assessors would not at least have been obliged to alert her and the Suffolk Police, even if they did not or could not admit Mr McFarlane to hospital.

406. I turn to consider whether the NHS Trust ought to have known at the assessment that Mr McFarlane posed a lesser risk to Ms Griffiths, that of harassment, stalking and sexual assault, on the assumption that he did in fact do so. Dr Holden accepted that there had been incidents over a very short time but he was not sure that Ms Griffiths

had identified it to the authorities as harassment by Mr McFarlane. If Ms Harpur-Lewis had told Nurse Harris of the details of his behaviour towards Ms Griffiths, or if Dr Stagias had been told that Ms Griffiths was frightened, Mr McFarlane was angry, his romantic hopes had been dashed, there had been a sexual assault, and events which Ms Griffiths thought were harassment and stalking, that would have increased the risk to her and the assessment should have considered that in the disposal and what to do about it. They could have advised her to take some action, but that was all a bit hypothetical.

407. Mr Bowen put the statements of the Fitches and the ex-boyfriend to Dr Holden in cross examination, but not to Dr Stagias with reference to sexual assault, stalking and harassment.

408. The points arising had not been put to Dr Stagias, which I consider unfortunate because the facts matter, and it is his judgment primarily which was said to have been negligent or deficient. The assumptions behind the question matter on the facts. I have set out my findings about what Ms Harpur-Lewis told Nurse Harris, and how both Ms Harpur-Lewis and Ms Griffiths saw matters as at 2 May. It was not until 5 May, after the 4-page letter and further texts, that Ms Griffiths was expressing her distress and her views about what had been going on to her friends; nor had she contacted the police earlier. Indeed, she had been prepared to ask her ex-boyfriend to postpone his arrival to mollify Mr McFarlane. She did not characterise the events as harassment or stalking at that stage, nor did she treat his unwanted advances as sexual assaults at that time.

409. At the time of the MHA assessment, in my judgment, the material did not suggest that there was such a risk from Mr McFarlane to Ms Griffiths. Importantly, Mr McFarlane said nothing at the assessment by way of threat or indication that he presented a risk to her of any sort. He said nothing of which she was unaware apart, perhaps, from the reference to taking her classes. Yet she had reported nothing to the police or to her friends. I have set out the effect of what Ms Harpur-Lewis told Nurse Harris, and dealt with the arguments that I should infer that more was said. I have also dealt with what would have been said by Ms Harpur-Lewis, and Ms Griffiths. I have also rejected the significance of the points raised by Dr Courtney as providing a basis upon which this level of risk ought to have been known or foreseen. Nothing indicated or ought to have indicated past stalking or harassment, or its future risk, nor a future risk of a repeat of unwanted advances. Her concerns or fears for herself when she knew that Mr McFarlane had been assessed but not admitted to hospital did not lead her to contact the police or to ask friends whether she should do so, and Ms Harpur-Lewis did not suggest that she should. Indeed, it would be something of an exaggeration to describe the actions of Mr McFarlane up to and including 3 May as stalking and harassment.

410. Mr Bowen was keen in his questions of Mr Holden to characterise Mr McFarlane's behaviour as stalking, harassment and sexual assault even as at 2 May. I am cautious about taking Mr Bowen's characterisation as being either the contemporaneous assessment of Ms Griffiths or as fact. That was not how she reacted on 2 or 3 May. Although his advances as at 2 May can be characterised as a sexual assault, his behaviour can hardly be characterised as harassment, let alone as stalking as at 2 May. However, the significance of his unwanted advances can be overstated by describing them in these circumstances in an unqualified way as sexual assaults; indeed how far the unwanted touching, which included hugging, was in circumstances of indecency is unclear; how far his unwanted "coming on" to her actually went is unknown. He may have seen it as genuinely intended affection, blind to her feelings about him. She first

said she wanted to make charges of sexual assault against Mr McFarlane on 5 May. Besides, that is to focus on the wrong point, other than for a causation argument that taking steps in respect of such actions could have prevented the murder. The true focus would have been on the fact of his rejection and his strong reaction to it. But that did not lead, and there is no basis for saying that it reasonably should have led, to contemplation of the risk of murder or serious violence to Ms Griffiths.

411. The steps which ought to have been taken if the assessors had or ought to have known of a risk to Ms Griffiths of stalking, harassment and sexual assault as at 3 May relate to warnings to the Suffolk Police or to Ms Griffiths. If the assessment was not negligent in relation to limb one of s2, as I have found, compulsory admission could not arise. I do not consider that such a risk could have led to greater pressure on Mr McFarlane to accept a voluntary admission, or that he would have acceded to it. The only steps then remaining are warnings, or some contact with Ms Griffiths.

412. I consider this issue despite my finding of fact that the NHS Trust did not know nor ought to have known of such a risk. I do so because of the argument that even if they knew or ought to have known of such a risk, but not of a risk of anything more serious, the steps which they ought to have taken nonetheless would have probably prevented the murder.

413. Dr Holden said that there were different types of victims and they had to be dealt with in different ways. He would not presume to say how any victim would react to being warned; psychiatrists had no expert knowledge of whether it would be calming or reassuring to them or creating anxiety. Whether Ms Griffiths was in a vulnerable position depended on the scenario, judged without hindsight: was she trying to divert a friendship from something more amorous, or was it something more sinister? At the time, they could not see into her mind.

414. If the alleged harassment had only begun on 2 May, Dr Holden, said there was no suggestion that there was good reason to breach confidentiality at that point. Generally, he said it was for the victim to raise issues of harassment with the police unless there were a clear psychotic motive.

415. If the information had identified her as a victim to the nurses, Dr Stagias and the panel, they should have taken note of that. Measures to protect her could have been taken, including the possibility of Mr Mallett contacting her. One purpose of such a contact could have been to warn her, and another to gather information, feeling one's way forward, and if they had had enough information they could have spoken to Ms Griffiths to check it.

416. Dr Holden agreed that the risk to Ms Griffiths would be heightened by an allegation that the CRHTT nurses had been told of a sexual abuse at the level at which the police would consider it to be an assault and would take action. She would have become a more readily identifiable victim. There would have been no confidentiality issue if the risk to her had been sufficient. If this information about a heightened risk of sexual assault was known to the assessors, no reasonable minority would have decided not to contact Ms Griffiths, but it depended on what degree of risk the information indicated, and on the nature of the risk. It all depended on the facts. If the information was that Mr McFarlane had carried out a very specific assault or act of violence on Ms Griffiths, then that should have been considered as part of the agenda. If they had known of her

fear of sexual assault and the attempted assault more would stack up as a risk to Ms Griffiths because of what he had done to her; it would have made contact more imperative as a matter of degree. If Dr Stagias were aware that Ms Harpur-Lewis was saying that there had been a criminal assault and had passed it on, it would have been negligent not to consider it or to take it further in some way. Still no-one would jump to the conclusion to murder as an outcome or even a low possibility. If the information was about a further suicide attempt, the concern for him became paramount; it was not negligent not to approach Ms Griffiths; the concern related to Mr McFarlane's safety; the safety of others was barely on the agenda.

417. I asked Dr Holden about why Ms Griffiths should be told what she already knew about Mr McFarlane, and whether there would be more that the doctors would be saying than repeating to her what she already knew. He said that it would be worthless to tell her what she knew already, but "there could be value in going the extra distance". One needed to be very careful about extending the doctor's role which was primarily to deal with the interest of the patient and a clear idea would be needed of where such contact was going, particularly with patient confidentiality. The doctor could be explaining matters or confirming them or possibly giving advice. It would be a question of whether, without her becoming a patient, she needed to be encouraged to make contact with the police.

418. If a patient identified a victim, it is difficult to know if it would be appropriate to approach the police. Such a victim might lack motive or wit to help themselves, such as might be involved in abandoning a disabled child or being a beaten spouse; one would act to protect them through safeguarding measures. Although inter-service communication was important, whoever rang still had to have something to say; if it was vague, the police would not be particularly interested. Dr Holden was not aware how the police would have graded whatever information might have been provided about Mr McFarlane's behaviour towards Ms Griffiths. But if they had had the picture presented by Mr Bowen for the Tuesday, any reasonable person would have done something, whether it was marking the address or the person so as to give greater priority to a contact. But it depended in fact on what knowledge they had.

419. I consider that on the basis of the information which the assessors had or ought to have had on 3 May, there is no expert evidence to support the contention that there should have been a warning contact to Ms Griffiths or the Suffolk Police. After all, the true point of concern was Mr McFarlane's response to rejection, not that he would persist where he had been rejected. Mr Bowen's point was that responding to the latter could avoid the former, coincidentally. The assessment revealed no indication of past behaviour from him to Ms Griffiths of which she would not have been aware. It revealed no threat from Mr McFarlane. It revealed no risk from him towards her. There would have been no point, on Dr Holden's evidence, and none that I can see, in contacting her to tell her that he had been assessed and what their conclusions were or what the outcome was. She knew anyway shortly after the assessment, and that led to no action on her part then to contact the police or others to express fears for herself. Nor do I see any basis for holding that the NHS Trust ought to have contacted the Suffolk Police. The NHS Trust simply did not have the knowledge on 3 May of what Mr Bowen pressed on Dr Holden

420. If the concerns of Ms Griffiths and the events of 4 and 5 May had been known at the time of the assessment, the assessment may or may not have taken a different course.

The circumstances, on Dr Holden's evidence, may then have meant that either there would have been contact with her, though it is difficult to see that that would have involved telling her more than she already knew, unless something relevant had arisen during the assessment or in the panel's consideration which was of sufficient gravity to warrant a breach of patient confidentiality, or that some other steps would be taken towards Mr McFarlane by the Crisis Team. But the likeliest step is that there would have been some contact with the Suffolk Police to alert them that Mr McFarlane was not being admitted, but was engaged in stalking, and harassment after rejection by Ms Griffiths. That would have marked her address and him; it would have affected how her phone call on 5 May was responded to, whether it affected the grading or not. If what the assessors had concluded had led to contact by the NHS Trust with Ms Griffiths herself, that too would have affected how she would have responded on 5 May had the police still asked if they could come the next day.

The voicemail message

421. This issue of fact is the only one of the four particularised allegations of breach of duty of care in relation to 5 May 2009, to survive an overdue evidence-based cull. It was paragraph 164(xviii), an allegation that the NHS Trust had "failed to have a functioning system to ensure" that Ms Harpur-Lewis' voicemail message at 18.26 "was collected". The NHS Trust ought to have had that line manned 24 hours a day "and/or" ensured that "all Crisis Team numbers / out of hours numbers transferred automatically to a manned number or met a voicemail message with details of a Crisis Team telephone number." It is said that such a system or systems would have led to the NHS Trust responding, and having spoken to Ms Harpur-Lewis, either contacting the Suffolk Police who would have actually seen Ms Griffiths that night, or contacting Ms Griffiths herself.

422. Dr O'Flynn gave evidence about the telephone numbers at the NHS Trust relevant to the voicemail left by Ms Harpur-Lewis on 5 May 2009, which the EPEX system showed was left on one of the NHS Trust mental health team administrative telephone numbers, and not the Crisis Team number. He produced a copy of the leaflet given to patients taken on by the Crisis Team, which showed the pager number which he thought was in use from 2006. The pager enabled a message to be left for any member of the team, which provided 24-hour cover. It was not for those who were discharged to their GP's care. The system had been changed following a coroner's recommendation in the early 2000s. If however one of the NHS Trust's unmanned phones were rung out of hours, the recorded message stated, he was absolutely sure, that any messages left would not be listened to until 09.00 the next working day, making it clear that it was not the number for an immediate response. He did not know if it gave any number to ring for an emergency. Dr O'Flynn seemed more cautious in his evidence in cross-examination than the tone of this supplementary witness statement suggested.

423. Mr Regueira was the Clinical Team Manager of the Single Point of Referral and the CRHTT in May 2009. His supplementary witness statement of 13 November 2017, the only one which Mr Moon relied on, and which I admitted as hearsay, said that he did not know what the administration line voicemail message said when called out of hours in 2009, or whether it had been changed between then and now. It was the line on which any clinician or individual who was involved in the system could use during the daytime.

424. Dr Courtney had not listened to the voicemail message, or heard it as it was in May 2009, but inferred that the message did not make it clear that the phone would not be monitored outside normal working hours. If callers were invited to leave a message for a 24 hour a day team, the messages should be checked regularly. This, he said, was a system failure, and inadequate care. Dr Holden said that it was not necessary for the hospital voice message system to give an emergency number. Before 2009, the Department of Health had tackled the problem of hospitals and misleading messages, by requiring hospitals to have a suitable message saying where the message was being left and when it would be picked up. There was a considerable problem if on-call staff were available to the general public, and so some cut-off between them was required.

425. The Crisis Team pager system provided a number for patients and some others. Dr Courtney agreed that if Ms Harpur-Lewis rang the administration number, on which the voice mail message said that messages would not be picked up until 09.00, the caller would know to telephone the main hospital switchboard. Such a system would be reasonable even if no urgent call number was given, so long as the voice mail made it clear that the message would not be picked up till 09.00.

426. Dr Courtney thought that if the call had been picked up, CRHTT would have called her back; and listened to what she had to say. CRHTT had acted quickly in response to Mr McFarlane earlier, obtaining a consultant appointment in the day on 5 May 2009. The Team would have focused on Mr McFarlane or on Ms Griffiths depending on what was said. They could have phoned him or visited him with or without a call. If they had thought that there was a significant risk to Ms Griffiths, they could have phoned the police. But he agreed that the message made no mention of any need to telephone back, nor did the message provide any basis for telephoning the police or Ms Griffiths. Dr Courtney could not say whether or not Mr McFarlane would have been seen that night; Mr McFarlane was tricky. He agreed that this view involved a change from his report where he said that the "failure" to respond to the 18.26 call was negligent and meant that an opportunity for Mr McFarlane to be reviewed that night had been missed. He still asserted that if Mr McFarlane had been contacted that evening, he probably would not have murdered Ms Griffiths.

427. It is clear, in my judgment, that Ms Harpur-Lewis did not ring the Crisis Team number, and her uncertainty over whether her message would have been picked up that night confirms to me that there was nothing about the number she rang or the voicemail message which stated that it was a 24 hour line or an emergency line. There was no failure in relation to the operation of any emergency line or Crisis Team line. I also accept the evidence of Dr Holden that, for good reasons, the voicemail message would not have given out an emergency number.

428. I conclude that the message expressly stated that no messages would be listened to before 09.00, though I accept that no one had listened to the message in such a way as to enable the position in 2009 to be stated with certainty. Dr O'Flynn was not as firm in cross-examination as his written statement suggested, though still firm that the message would have said that no message would be listened to before 09.00. Dr Holden gave evidence of a change in the system before 2009 so that nature of the number rung and the time when messages would be listened to was given.

429. Ms Harpur-Lewis' reaction needs to be considered: she did not know whether or not her message would be listened to before 09.00. It is impossible to say that the voicemail

message was properly grasped at the start of the phone call. I do not regard her reaction to be sufficient to counteract the evidence which I have accepted. But if the right inference from it is that the voicemail message did not say positively that messages would not be listened to before 09.00, it certainly contained no positive information the other way. I infer from what she did and said, taken with what Dr Holden said about a change before 2009, that at least the nature of the number she had rung, that it was some form of mental health team administrative line, was stated. In any event, anyone expecting to make emergency contact would also expect to be told that an emergency line had been reached, or, if not, to receive a call back within a short time. Ms Harpur-Lewis was not told she had reached an emergency number nor did she receive a call back. The obvious inference for anyone to draw was that the message had not been left on a 24 hour-line, rather than that the Crisis Team was not answering it. The main switchboard at the hospital could then have been rung.

430. Although such a system, if that is how it was, could be improved by a positive statement as to when messages would be listened to, giving the main switchboard number as an alternative, I do not consider that the system was on that account deficient, such as to amount to negligence, or to a systemic deficiency for the purposes of the human rights claims. The caller, if seeking to make emergency contact, would know, as did Ms Harpur-Lewis, that she had not or may well have not made such contact. The absence of response from the NHS Trust would have confirmed the position within a fairly short time. I do not accept that she did or could sensibly have thought that she had rung the Crisis Team number and received the voicemail response or the absence of response she did.

431. She herself did not take things further that evening, after there was no call back from the NHS Trust, nor did she regard the call as urgently necessary according to her Niche interview. I see no reason to accept Mr Bowen's characterisation of that as Ms Harpur-Lewis backtracking on what she thought at the time. I see no reason why she should have done that. She did not ring the police. She was saying nothing which Ms Griffiths, who was herself deciding how to react, had not told her. The message she left made no request for or mention of a need to call her back, nor did it provide a basis for telephoning the police or Ms Griffiths, as Dr Courtney accepted.

432. Even if there had been a failure in the system of manning such a line or providing information as to when the message would be answered, or what other number should be rung, and if Ms Harpur-Lewis had then pursued matters, it is only speculation that Mr McFarlane could or would have been contacted that night. The NHS Trust could readily have thought it need not telephone the police to say what Ms Griffiths could tell them. Mr McFarlane had been seen only a few hours earlier that day by Dr O'Flynn, with no adverse anxieties. It could, on the other hand, have led to concern that Dr O'Flynn had not been told all that was now emerging, and to contact being attempted between the Crisis Team and Mr McFarlane, with or without police assistance, with a speculative degree of success. Contact with the police might have affected how Ms Griffiths' own call was handled, but it was her information and reaction which were the key to that. These are but speculations, and not probable or likely consequences.

Inter-service communications

433. Paragraph 164(i) of the Particulars of Claim raised a contention that there should have been a system of coordination and communication internally in the Crisis Team, and between the Crisis Team and the Suffolk Police. Taking the former, I have referred in the narrative to the material available to and used by Dr Stagias and the panel, and to the communication of the decision to the Crisis Team with his notes. The Crisis Team knew what they had to do, and then did it, contacting Mr McFarlane twice on 3 May; he was telephoned and seen on 4 May; his early call on 5 May led to further contact with the Team, Mr Regueira, and he was seen by Dr O'Flynn later that day. Mrs Gliksten contacted the Team over what Mr McFarlane was due to do on 6 May, and her concerns were met through the advice given. She had also been able to speak to the Team on 3 and 4 May. There was no internal breakdown in communications, and none were identified and pursued. The Crisis Team met twice a day to discuss its cases, on Dr O'Flynn's evidence. Mr Bowen's contention, whether put as negligence, or reconfigured as a systemic failure for Article 2 or 3 purposes, is without evidential foundation, let alone expert support. Dr Courtney gave no evidence about this. Dr Holden tackled it in the course of dealing with the systemic failure allegations. He said that it was at all times possible for an NHS Trust worker to know the current plan; no specific case co-ordinator was required. The case was reviewed. There was no challenge to this evidence.

434. Turning to the latter, Mr Bowen in closing said that this allegation was not about communication between the NHS Trust and the Suffolk Police. Even if it had been, the evidence to be considered is what the NHS Trust knew on 3 May. There was no evidence of a threat or risk, known to it, to anyone other than Mr McFarlane. There is in reality no basis for any suggestion that she was at any risk as at 3 May. The events of 4 and 5 May were yet to occur, and Ms Griffiths was aware of all the communications between her and Mr McFarlane, as they were happening. There were no private communications to the panel or Crisis Team or NHS Trust by Mr McFarlane of things which she would not have known. She knew of the suicide attempt at the farm, of the decision that he would not remain in hospital, and of what Ms Harpur-Lewis thought of that. Ms Harpur-Lewis' message on 5 May was based on what she had understood from Ms Griffiths. There was no basis for the NHS Trust to contact the Suffolk Police.

435. As Dr Holden said, without challenge or contrary evidence from Dr Courtney, the case did not meet the requirement for a statutory inter service meeting, a MAPPA. Such a meeting, usually formal, between the police, a health trust and social services was called to discuss an individual who was likely to behave violently, or to be aggressive to the public, or to deal with victims at risk. There was no point in ringing the police if there was nothing of substance or specific to say, and there was not.

The conversation between Mrs Gliksten and Nurse Clarke

436. The particulars of claim, which went through changes during the trial and after its end, also abandoned the claim that the Crisis Team and Dr O'Flynn had been negligent in two respects, though retaining two other points. One claim which I thought had been abandoned was at (xvii) of paragraph 164 relating to the 5 May 2009 assessment to the effect that the Crisis Team had failed to refer to a psychiatrist or to inform the police that Mrs Gliksten had expressed concerns to Nurse Clarke on 5 May that Mr McFarlane was due to participate in a slaughter on 6 May, or to arrange for his case to be reviewed again. But it reappeared in the final, post-trial version. It was not however referred to

in closing submission by Mr Bowen, or Mr Moon, and did not feature in the evidence of either expert. Dr Courtney accepted that the care provided by the Crisis Team, after Mr McFarlane's discharge from hospital into its care, was adequate. It was any way founded on a misconception of the purpose and effect of the contact about Mr McFarlane's role in the slaughter to take place on 6 May, and what the advice of the Crisis Team was. There is nothing in it.

Conclusions in relation to the NHS Trust: the negligence claim

437. There was no issue that the test for the standard of care required of the medical staff was that set out in *Bolam v Friern Hospital Management Committee* [1957] 1WLR 583 at 587: did the individual act in accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular profession? A doctor is not negligent, if acting in such a way, merely because a body of opinion would take a contrary view. Mr Moon also took me to *Bolitho v City and Hackney Health Authority* [1998] AC 232 for the proposition set out by Lord Browne-Wilkinson at p243, that it would very seldom be right for a judge to conclude that the genuine views of a competent medical expert were unreasonable, for the assessment of risks and benefits as a matter of clinical judgment. It would be wrong for such an assessment "to deteriorate into seeking to persuade the judge to prefer one of two views both of which are capable of being logically supported." This could only arise where that opinion was incapable of withstanding logical analysis.

438. In view of my findings about the two telephone conversations between Dr Stagias and Mr Bowe, there is no expert support for the claim that the NHS Trust breached its duty of care towards Mr McFarlane. I am satisfied that it did not. I have also expressed my view in relation to various other allegations about the assessment, which were not said to warrant a conclusion of negligence, but nonetheless merit a view being expressed. I am satisfied that there was no breach of the duty of care towards Mr McFarlane in any respect.

439. I am also satisfied that there was no negligence in concluding that the first limb of s2 was not satisfied, and so compulsory admission could not arise anyway -unless the refusal of voluntary admission cast that judgment in a different light, as to which the answers were no more than that it could have done; such a proposition was not put to Dr Stagias. That proposition arose from my trying to understand how Mr Bowen put his case that, if the first limb of s2 were not satisfied, and so there could be no compulsory admission, nonetheless a refusal of voluntary admission could lead to a compulsory admission. Nor, in the light of the care plan, and the plan as it was actually put into effect, was there any negligence in concluding that the risk to Mr McFarlane would not have satisfied the second limb of s2.

440. Mr Bowen went so far as to submit that Drs Courtney, Holden and Mann agreed that any competent s12 approved doctor would have had no choice but to admit Mr McFarlane in the absence of a community option. This is not an accurate representation of the evidence in relation to compulsory admission and does not reflect the issues about voluntary admission, nor does it arise in the light of my findings.

441. It follows that no breach of duty to Ms Griffiths could arise from any breach of a duty towards Mr McFarlane because there was no such breach.

442. Even if there had been an error by Dr Stagias in relation to the conversations, Mr McFarlane in fact received care at least as good as the care plan envisaged. The significance of Mr Bowe's version of the second conversation was not that Mr McFarlane was worse placed than envisaged; it related to what happened to Ms Griffiths. The now irrelevant reluctance of Mr Bowe only matters to the extent that Mr McFarlane might have been admitted instead of receiving care in the community as good as that required, albeit at a different address. This seems a curious basis for a claim that duties to her were breached, where in reality none to him were breached.

443. I turn now to the duty to warn Ms Griffiths or the Suffolk Police, the other way in which the negligence claim in respect of Ms Griffiths was put, as I understood it. Mr Bowen submitted that there were two exceptions to the general principle that the law did not impose liability for injury caused by the conduct of a third party; it did not generally impose liability for pure omissions, for failing to prevent harm caused by someone else. These two well recognised types of situation in which the common law might impose liability for a careless omission were summarised by Lord Toulson in *Michael v Chief Constable of South Wales Police* [2015] UKSC 2, [2015] AC 1732 at [99-100]:

> "99 The first is where D was in a position of control over T and should have foreseen the likelihood of T causing damage to somebody in close proximity if D failed to take reasonable care in the exercise of that control. The *Dorset Yacht* case [1970] AC 1004 is the classic example, and in that case Lord Diplock set close limits to the scope of the liability. As Tipping J explained in *Couch v Attorney General* [2008] 2 NZLR 725, this type of case requires careful analysis of two special relationships, the relationship between D and T and the relationship between D and C. I would not wish to comment on Tipping J's formulation of the criteria for establishing the necessary special relationship between D and C without further argument. It is unnecessary to do so in this case, since Ms Michael's murderer was not under the control of the police, and therefore there is no question of liability under this exception.
>
> 100 The second general exception applies where D assumes a positive responsibility to safeguard C under the *Hedley Byrne* principle, as explained by Lord Goff in *Spring v Guardian Assurance plc* [1995] 2 AC 296. It is not a new principle. It embraces the relationships in which a duty to take positive action typically arises: contract, fiduciary relationships, employer and employee, school and pupil, health professional and patient. The list is not exhaustive. This principle is the basis for the claimants' main submission, to which I will come (issue 3). There has sometimes been a tendency for courts to use the expression "assumption of responsibility" when in truth the responsibility has been imposed by the court rather than assumed by D. It should not be expanded artificially."

444. I deal in turn with these two bases: control over the malefactor with proximity to the victim, and the existence of a positive duty to safeguard someone, though the facts of any given situation may mean a considerable overlap between the two, and rigid compartmentalisation is to be avoided. I take the former first. Mr Bowen contended

that it was not always necessary, in order for liability based on control and proximity to arise, that there should have been a pre-existing relationship of physical control over the third party who did the damage. He referred to the decision in *Couch*, cited by Lord Toulson above. A prisoner was released on licence and allowed by the prison service to obtain work experience at a club, which he robbed, injuring the employee claimants. The employer and employees had not known of his background. The Supreme Court of New Zealand refuse to strike out the claim. Mr Bowen sought assistance from Tipping J's formulation in that case: physical control did not represent the limit of the relationship; the question was whether the defendant had "sufficient power and ability to exercise the necessary control over the immediate wrongdoer in a way which would have prevented the harm…." I consider that that is a broad expression of the two aspects of the exceptions taken together.

445. It is not clear from [83] of Tipping J's judgment how what he said about the duty to warn fitted into the power of control, rather than into the relationship between the defendant and the person injured. In [81], he referred to the necessary causative link between the defendant's conduct and the harm suffered as being "said to lie in the failure of the defendant to exercise an available power of control over the immediate wrongdoer *or in a failure to warn of the risk the immediate wrongdoer posed*." (My italics). I do not read that as a finding about a duty to warn in this context but as a statement of what was being argued. After holding in [82], that it would be inappropriate to impose a duty of care on the defendant in favour of the plaintiff in the absence of sufficient power and ability to exercise the necessary control, he said in [83], that the nature of the breach could sometimes be relevant to the scope of the duty; the only people to whom a duty to warn was owed were those connected with the wrongdoer's employment, and at that stage he would "not distinguish, for duty purposes, between the allegations of failure to control and failure to warn." It is not clear whether a duty to warn can operate, on his analysis, in the absence of sufficient power and ability to control, or can be a satisfactory exercise of that power. What he is reflecting is that the power and ability to control may not always be immediately available or sufficient, and a warning becomes a sensible and useful backup.

446. However, a duty to warn does not exist without some relationship between both the person being warned, and the person about whom the warning is given. The special relationship between defendant and wrongdoer was not the only relationship which mattered because there also had to a relationship of proximity between the defendant and the person injured.

447. Lord Toulson declined to comment on Tipping J's formulation of the criteria for establishing the necessary special relationship, in the absence of further argument and because it was unnecessary in the *Michael* case. But he described it in these terms:

> "89 The reasoning of the majority (Blanchard, Tipping and McGrath JJ) was given by Tipping J. He took as his starting point the well known observation of Dixon J in *Smith v Leurs* [1945] 70 CLR 256, 262 that it is exceptional to find a duty in law to control another's actions to prevent harm to strangers, but that special relations may be the source of a duty of this nature. Tipping J noted that the special relationship to which Dixon J referred were between the defendant and the wrongdoer, but there had additionally to be a special relationship between the defendant and the claimant – special in the sense that there was sufficient proximity

> between the parties to make it fair, just and reasonable, subject to matters of policy, to impose the duty of the care in issue: para 85.
>
> 90 Tipping J concluded that the power of the probation board over the wrongdoer's employment was arguably sufficient to establish the necessary relationship between the defendant and the wrongdoer, by analogy with the *Dorset Yacht* case [1970] AC 1004. As to the relationship between the defendant and the claimant, the necessary proximity criterion satisfied if she could show (as was arguable on the facts) that she, as an individual or a member of an identifiable and sufficiently delineated class, was the subject of a distinct and special risk of suffering harm. The necessary risk must be distinct in the sense of being clearly apparent, and it must be special in the sense that the plaintiff's individual circumstances, or membership of the necessary class, rendered her particularly vulnerable: para 112. If the requisite proximity was established, Tipping J said that it would be necessary to address finally the question of policy, but should be done when all the facts had been examined: para 130."

448. In *Home Office v Dorset Yacht Co Ltd* [1970] AC 1004, Lord Reid, p1030, analysed the issue on the basis of established principles, rejecting policy arguments for their disapplication to Borstal officers and their charges. Where human action intervened between the original wrongdoing of the defendant and the loss suffered by the plaintiff but was likely to happen as a consequence of the original wrongdoing, which could often be an intervening criminal act, and it caused damage, what was the justification for holding there was no duty to take care? Lord Diplock, p1070-1, concluded that:

> "To give rise to a duty on the part of the custodian owed a member of the public to take reasonable care to prevent a Borstal trainee from escaping from his custody…, there should be some relationship between the custodian and the person to whom the duty is owed which exposes that person to a particular risk of damaging consequence that escape which is different in its incidence from the general risk of damage from criminal acts which he shares with all members of the public…."
>
> The Borstal officer's duty
>
> "to use reasonable care to prevent a Borstal trainee from escaping from his custody was owed only to persons whom he could reasonably foresee had property situated in the vicinity of the place of detention of the detainee which the detainee was likely to steal or to appropriate and damage in the course of eluding immediate pursuit and recapture."

There are differences of approach in the speeches.

449. There was an issue between Mr Bowen and Mr Moon over the extent to which the facts and submissions of this case required or even permitted a full examination of the tests for liability in *Caparo Industries Plc v Dickman* [1990] 2 AC 605, which recognised limits to the creation of a single general principle as providing a practical test for every situation to determine whether a duty of care was owed, perhaps of the sort foreshadowed by Lord Reid in *Dorset Yacht*. Lord Bridge said:

> "What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of "proximity" or "neighbourhood" and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of given scope upon the one party for the benefit of the other. But it is implicit in the passages referred to that the concepts of proximity and fairness embodied in these additional ingredients are not susceptible of any such precise definition as would be necessary to give them utility as practical tests, but amount in effect to little more than convenient labels to attach to the features of different specific situations which, on a detailed examination of all the circumstances, the law recognises pragmatically as giving rise to a duty of care of a given scope."

450. As Lord Oliver had said as well, the three requirements were merely facets of the same thing. Lord Toulson in *Michael* above, at [106], having set out the same passages, commented that, paradoxically, those passages had sometimes come to be treated as a blueprint for deciding cases, despite the pains which Lord Bridge had taken to make clear that it was not intended to be any such thing.

451. Establishing the requisite proximity required the claimant to be identified or identifiable, as distinct from general members of the public, not least because the most effective way of providing protection would be to give warning to the victim or relatives or social services so that some protective measures could be taken; *Palmer v Tees Health Authority* [2000] PIQR P1. Stuart -Smith LJ, with whom Pill and Thorpe LJJ agreed, added at P13, that in judging proximity it seemed a relevant consideration to ask "what the defendant could have done to avoid the danger if the suggested precautions… are likely to be of doubtful effectiveness, and the most effective precaution cannot be taken because the defendant does not know who to warn." In that case it was crucial that there was no relationship between the defendant and the victim. Moreover, submitted Mr Moon, the fact that a victim was identifiable was a necessary but not necessarily sufficient indicator of proximity.

452. In *Selwood v Durham County Council* [2012] PIQR P440, a case in which a social worker was attacked by a psychiatric patient, Smith LJ, at [53], with whom Rimer and Thorpe LJJ agreed, said that assumption of responsibility was but one aspect of the wider issue of whether it was fair, just and reasonable to impose the duty of care. Factors relating to foreseeability of harm and proximity of relationship often also impinged on those same issues. Having referred to the general position that no duty of care was owed by the police to an individual member of the public to protect him or her from criminal harm, she said that special circumstances could negate the general rule: where claimants stood in such a special relationship with the public authority that it would be fair just and reasonable to impose a duty of care.

453. Mr Bowen and Mr Moon referred to *Attorney General of the British Virgin Islands v Hartwell* [2004] UKPC 12, which concerned the fatal shooting by a policeman of his partner, and the failings of the police in his supervision and control. Lord Nicholls,

[21], pointed out that the degree of likelihood needed to satisfy the test of reasonable foreseeability was not fixed but a scale: it was of a risk which a reasonable person would not ignore. "As the possible adverse consequences of carelessness increase in seriousness, so will a lesser degree of likelihood of occurrence suffice to satisfy the test of reasonable foreseeability." Later at [25], he said that reasonable foreseeability as an ingredient of a duty of care was a broad and flexible objective standard responsive to the infinitely variable circumstances of different cases. "The nature and gravity of the damage foreseeable, the likelihood of its occurrence, and the ease or difficulty of eliminating the risk" were all to be taken into account in deciding whether as a matter of legal policy a duty of care was owed.

454. I now apply the two exceptions to the facts I have found here, although the jurisprudence shows to my mind that they are not always readily applied as distinct and separate tests but rather as expressions or facets of a single broader concept of a protective duty. I am satisfied that during the assessment process, the NHS Trust had sufficient control over Mr McFarlane to satisfy the control test. If he had attempted to leave during the assessment, he would have been prevented from doing so. At that stage, an unresolved position as to compulsory admission, and the potential for voluntary admission or for a refusal of the latter to feed into the judgment on the former, gave a sufficient relationship of control, late though that aspect was raised and poorly evidenced as it was.

455. Once Mr McFarlane had been discharged from the hospital, into the care of the Crisis Team, pursuant to an assessment which was not negligent, the position in relation to control became rather more difficult. I do not propose to express a view on whether it could have survived or not; and I can see arguments either way, policy and otherwise: a resolution of that issue is irrelevant. This is because, even if a relationship of control had existed, the NHS Trust did not become aware of any factors, after the conclusion of the assessment, which could have altered the position or created a further duty of any sort, such as to warn, which had not arisen by the time the assessment was concluded. That is the crucial time. Again, this might have been otherwise if the Crisis Team had received Ms Harpur-Lewis' message at 18.26 on 5 May, but it did not and there was neither negligence or systemic failure in that respect.

456. Mr Moon submitted, applying *Couch*, that, for the Claimants to establish the necessary proximity, the risk to Ms Griffiths' life from Mr McFarlane had to be "distinct in the sense of being clearly apparent". The harm suffered was not in fact reasonably foreseeable; there was no special relationship between the NHS Trust and Ms Griffiths. The creation of a duty of care in those circumstances would require the application of the *Caparo* tests. It would be a novel case where a duty of care to a non-patient arose without some assumption of responsibility, such as might arise from an employment relationship, as in *Selwood*. It would be neither fair, just or reasonable to impose a duty in respect of the sort of friction commonly encountered, according to Dr Holden, in MHA assessments. The duty to the patient would be cut across by duties to other persons. But I observe that duty is already cut across by duties to other persons in the second limb of s2.

457. Mr Bowen submitted that there was sufficient proximity as Ms Griffiths was known to feature significantly in Mr McFarlane's troubled mind and acts, and the panel knew that she was at a risk of harm, to a distinct and special degree from that faced by the general public. But the first point was considered; the second point is not made out on the facts

as I have found them in relation to any degree of risk, whether to her life, or of serious assault, or stalking, harassment and lesser assault.

458. I also accept Mr Moon's point that for a duty to arise towards a non-patient where the risk foreseen is of that lesser form, is much more difficult, because of issues of patient confidentiality, and the burden which that might place in relation to a large number of people. But, if on the evidence of Dr Holden, circumstances arise in which no reasonable assessors would have failed to take steps to alert a known potential victim or those who might protect them, I conclude that the law is not likely to give rise to any novel burden in requiring them to do what any reasonable assessor would have done. Those circumstances did not arise on the facts as I find them to be. The first basis for one exception does not arise.

459. So, turning to the second way in which the exception can arise, the legally imposed or "assumed" responsibility to safeguard another, the principal issue is whether, during the assessment, the panel should have foreseen that there was a risk to Ms Griffiths of McFarlane murdering her, or assaulting her in such a way as would breach Article 3, that is a serious assault. The pleadings against the NHS Trust allege an assumption of responsibility in part because it knew or ought to have known that Mr McFarlane posed a significant risk to Ms Griffiths' life or personal safety; (158(iv)). Certainly, if the panel foresaw or should reasonably have foreseen the risk of Mr McFarlane murdering her or assaulting her in a way which breached Article 3, a serious physical assault, the law would in my judgment impose an obligation to safeguard her by taking steps such as warning her or alerting the police. I consider that that duty would have arisen whether or not he had been sectioned or admitted voluntarily. The gravity of the risk would be sufficient to impose such a duty; a good measure of that point is that it would be at the point at which the duty of confidentiality to the patient was overridden by the public interest in the avoidance of risk to others. I do not need to deal with how that would be affected by prior knowledge on the part of the victim of the risk for a sufficiently special relationship, the proximity issue for a duty towards her to arise; there is no evidence that she was aware of any such risk. The public interest in her protection would outweigh the confidentiality inherent in the assessment process and in the relationship to the patient, absent perhaps some very strong circumstances. What steps, if any, that meant should be taken would depend on the facts; they could vary from compulsory admission if the statutory criteria were satisfied, perhaps to pressing voluntary admission, then to warnings to the police, and to her, and especially if the assessment uncovered anything she might not appreciate.

460. It is plain on the facts that there was no basis upon which the panel, on the material which it actually had, could have foreseen that Mr McFarlane might murder Ms Griffiths or carry out any form of serious assault. No one said anything to suggest that, whether Mr McFarlane himself, who made no such threats or expressed any such intentions or any other. Ms Harpur-Lewis did not suggest so as noted by Nurse Harris. Nor did any one afterwards, including at the farm suggest to the Crisis Team that Mr McFarlane had done so; the position was quite the reverse. Nor indeed, had the panel contacted Ms Harpur-Lewis would she have said that that was what she meant, and Ms Griffiths did not think that there might be any such assault.

461. Mr Bowen submitted that lesser harm, of harassment or stalking, or of sexual assault of the sort she had experienced in the form of unwanted advances, could lead to the imposition of responsibility, and a duty to take protective steps. What duty, if any,

might be owed, and what steps it might entail in relation to stalking, harassment and sexual assault, what I have described as a lesser harm, is more problematical, though again it does not arise on the facts as I have found them. It is here that the question of when patient confidentiality is outweighed by the risk to others comes to the fore, together with the significance of what the potential victim knows already. Not all risks require to be treated in the same way, even if, as a matter of fact, the steps to prevent the lesser harm could also have been effective to prevent an unforeseen and more serious harm.

462. I reject Mr Bowen's submission that Ms Griffiths was known to be at a distinct and special risk of such harm, even though the argument with her, and the rejected relationship were a main trigger for the suicide attempt. She was not at a manifest and obvious risk of the infliction of stalking, harassment or sexual assault by Mr McFarlane. The facts are not such as to impose responsibility for protecting Ms Griffiths on the NHS Trust. When it comes to the legal imposition of responsibility, the fact that the potential victim is aware of all the relevant behaviour tells against it with some force, especially, as here, if the NHS Trust has nothing of significance to add to what she knows. Nor did Ms Griffiths, in my judgment, come into the category of a victim vulnerable through disability or mental capacity or state, in respect of whom a warning should be given to the police, rather than to the potential victim. The mere fact that his aim of undertaking her gym classes pointed to some form of continuing contact and relationship would not have required in my view any contact with Ms Griffiths. This was not explored, in view of the way in which the position in relation to an assault not breaching Article 3 arose.

463. Mr Bowen's submission that there was an obligation to let the Suffolk Police know that Mr McFarlane had been the subject of a formal assessment is also unsound. The Suffolk Police did in fact know that he had been assessed, because it was alerted by Mr Mallett that some back up might be required if Mr McFarlane were to be sectioned. There was no basis for a breach of what would otherwise be strong patient confidentiality. There has to be more than the fact of such an assessment, otherwise there would be a general obligation to let the police know of such assessments whether the patient has or has not been detained. There had to be something to tell the Suffolk Police to which they could respond. There was no risk known to the panel, not also known to Ms Griffiths, and no known risk requiring any police action of which the panel was aware. Indeed, there was no evidence as at 3 May that Mr McFarlane was a risk to Ms Griffiths at all of harassment, stalking or sexual assault.

464. Dr Holden would not have contacted the Suffolk Police, or warned Ms Griffiths of anything on the information before the panel. Nor, as Dr Courtney's evidence ended up would he have done so. For him, events had changed on 5 May with Ms Harpur-Lewis' phone call at 18.26.

465. In any event, even if Dr Courtney did maintain that the panel should have alerted Ms Griffiths in the light of the points he made in the Joint Statement, I reject his view.

466. Contact with Ms Harpur-Lewis or Ms Griffiths, as I read the various texts, the delaying of the ex-boyfriend's arrival, and the absence of contact with the Suffolk Police would not have revealed more than that she was upset by his angry reaction, and challenge to her in front of her children; she did not want him to come round. But her real concern at that stage was still about what Mr McFarlane might do to himself.

467. I conclude that there was no obligation on the NHS Trust to contact Ms Griffiths or the Suffolk Police about anything that was said or about the outcome of the assessment.

468. Nor do I see any evidence that, unless the panel had something specific to say, beyond that which Ms Griffiths already knew, which it did not, that it could or would have altered how either Ms Griffiths or the Suffolk Police reacted. After all, absent any other information, the panel would have told her that Mr McFarlane was not mentally disordered, nor a risk to himself in a way which the care plan could not properly manage, for review on Tuesday. There was no question of any step other than warning Ms Griffiths about something, but there was no basis for doing that. Ms Griffiths did in fact tell the Suffolk Police that Mr McFarlane had been assessed but not sectioned. The Polaris log records that he was taken to hospital but was not detained.

469. I accept that had Ms Griffiths been told by the assessors that they were concerned about what Mr McFarlane might do, she would have reacted differently when ringing the police, or when they said that they could not come on the evening of 5 May and she would have said more to the assessors about Mr McFarlane, but that cannot make the omission negligent or a breach of an operational duty. The fact is that the panel was not concerned that he might do anything untoward towards her and could not have expressed such concern. So the message would have been one of re-assurance. There was no duty to give that message, even if Ms Griffiths could have said things which might, speculatively have cause them to rethink their views.

470. The issue might well have been different if the panel had had the evidence of what happened on 4 and 5 May before it. The question of where the Crisis Team thought that Mr McFarlane was spending the night of 5 May, and whether he could be contacted there was not explored.

471. To describe the incidents up to 2 May as sexual assault can give a rather misleading impression, with exaggerated connotations, in the context in which the advances occurred. Ms Griffiths did say on 5 May that she was thinking of charging him with sexual assaults, but by then she was plainly affected by what had happened on 3, 4 and 5 May.

Conclusions in relation to the NHS Trust: the human rights claim

472. The basis for the state's protective duty towards a potential victim is set out by the ECtHR in *Osman v UK* (1998) 29 EHRR 245 which at [115-6] accepts that Article 2 "may also imply in certain well-defined circumstances a positive obligation from the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual." The Court recognised 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. This positive obligation should not be applied in such a way as to impose impossible or disproportionate burdens on the authorities. Not every claimed risk to life could entail an obligation to take operational measures to prevent it. To prove a violation of that positive obligation to prevent and suppress offences against the person, in the context of Article 2, [116] : "… it must be established…that the authorities knew or ought to have known at the time of the existence of a real and immediate threat to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged

reasonably, might have been expected to avoid that risk....". The police could not be criticised for failing to use powers, which they reasonably thought they could not use on the evidence they had.

473. Mr Bowen contended that the operational duty arose here because there was a real and immediate threat to Mr McFarlane's life through suicide: a borderline/ moderate risk was sufficient, on the basis of *Rabone v Pennine Care NHS Trust* [2012] UKSC 2, [2012] 2 AC 72. In *Rabone*, a voluntary psychiatric patient who was known to be suicidal, was permitted by the authorities to leave for a 2 day home visit, during which she committed suicide. She had been admitted following a suicide attempt and had been assessed by the hospital as a high risk of a further suicide attempt. Her parents claimed damages for breach of Article 2. They succeeded on the basis that, although she was a voluntary patient, the NHS Trust had breached the operational duty which it found applied to her under Article 2. Lord Dyson JSC, with whom the other Justices agreed, concluded, [23-25], that an operational duty under Article 2 was owed to her, even though she was not detained, had not been placed in a position of danger by the state, and there had been no assumption of control or responsibility by the state. Relevant factors, in reaching that conclusion, in any particular set of circumstances, were the vulnerability of the victim and the nature of the risk; the state had power to protect for example a child whom it knew to be at risk of abuse. Strasbourg contrasted the ordinary risks that individuals in the relevant category should reasonably be expected to take, including from military duties, and risks arising exceptionally from dangerous specific situations created by the violent or unlawful acts of others or man-made or natural hazards.

474. At [27-28], Lord Dyson considered the position of detained and voluntary psychiatric patients, between whom, he said, the differences should not be exaggerated. A detained patient might not be in a secure hospital, but in an open hospital with freedom to come and go. An informal patient might be treated in a secure environment, liable to temporary detention under s5 MHA if he tried to leave. These statutory powers were the state powers to protect the psychiatric patient from suicide. Although Strasbourg jurisprudence had not yet concluded that there was an operational duty to protect a person from real and immediate risk of suicide, Lord Dyson had no doubt that the duty was owed here. He said:

> "But if there was a real and immediate risk of suicide at that time, of which the trust was aware or ought to have been aware, then in my view the trust was under a duty to take reasonable steps to protect Melanie from it. She had been admitted to hospital because she was a real suicide risk. By reason of her mental state, she was extremely vulnerable. The trust assumed responsibility for her. She was under its control. Although she was not a detained patient, it is clear that, if she had insisted on leaving the hospital, the authorities could and should have exercised their powers under the MHA to prevent her from doing so. In fact, however, the judge found that, if the trust had refused to allow her to leave, she would not have insisted on leaving. This demonstrates the control that the trust was exercising over Melanie. In reality, the difference between her position and that of a hypothetical detained psychiatric patient, who (apart from the fact of being detained) was in circumstances similar to those of Melanie, would have been one of form,

> not substance. Her position was far closer to that of such a hypothetical patient than to that of a patient undergoing treatment in a public hospital for a physical illness. These factors, taken together, lead me to conclude that the ECtHR would hold that the operational duty existed in this case."

475. The second issue was whether there was a real and immediate risk to the life of the daughter. Lord Dyson dealt first with "real". Mr Bowen, in that case and this, pointed to the finding that the risk of suicide was approximately 5% after the daughter had left the hospital, increasing to 10% and 20% on the 2 succeeding days, which the trial judge, found to be "low to moderate (but nevertheless, significant)". Lord Dyson found in [37-38]:

> "37 I accept that it is more difficult to establish a breach of the operational duty than mere negligence. This is not least because, in order to prove negligence, it is sufficient to show that the risk of damage was reasonably foreseeable; it is not necessary to show that the risk was real and immediate. But to say that the test is a high one or more stringent than the test for negligence does not shed light on the meaning of "real and immediate" or on the question whether there was real and immediate risk on the facts of any particular case.
>
> 38 It seems to me that the courts below were clearly right to say that the risk of Melanie's suicide was "real" in this case. On the evidence of Dr Caplan, it was a substantial or significant risk and not a remote or fanciful one. Dr Caplan and Dr Britto (the claimants' expert psychiatrist) agreed that all ordinarily competent and responsible psychiatrists would have regarded Melanie as being in need of protection against the risk of suicide. The risk was real enough for them to be of that opinion. I do not accept Miss Carss-Frisk's submission that there had to be a "likelihood or fairly high degree of risk". I have seen no support for this test in the Strasbourg jurisprudence."

476. Lord Dyson then turned to "immediate". He concluded, [39], that its essence was captured by the words "present and continuing", rather than a risk that will arise at some time in the future. "Imminent" was not what was meant.

477. Finally, Lord Dyson considered whether there had been a breach of the duty. He said, [43]:

> "The standard demanded for the performance of the operational duty is one of reasonableness. This brings in "consideration of the circumstances of the case, the ease or difficulty of taking precautions and the resources available": per Lord Carswell in *In re Officer L* [2007] 1 WLR 2155, para 21. In this case, it also required a consideration for the personal autonomy of Melanie. But it was common ground that the decision to allow Melanie two days' home leave was one that no reasonable psychiatric practitioner would have made. In these circumstances, it seems to me that recourse to the margin of appreciation is misplaced. The trust failed to do all that could reasonably have been expected to prevent the real and immediate risk of Melanie's suicide."

478. Lady Hale, emphasising the importance of the autonomy of the individual, concluded, [100], that it seemed fairly clear "there is no general obligation on the state to prevent a person committing suicide, even if the authorities know or ought to know of a real and immediate risk that she will do so." The particular circumstances in which Strasbourg might impose such an obligation so far concerned prisoners or conscripts, whilst stressing the special vulnerability of people suffering from mental disorders, especially psychosis. In *Savage,* it had not been a large step to conclude that a mentally ill person detained in hospital for psychiatric treatment was owed the same duty as a mentally ill prisoner. In *E v UK* (2003) 36 EHRR 519, the Strasbourg court had found that social services should have been aware of the risk of sexual abuse to certain children from a particular individual, but had failed to take any steps to discover the extent of the problem and protect the children from further abuse. They had failed in the proper and effective management of their responsibilities which might reasonably have been expected to avoid or minimise the risk of damage suffered, in breach of Article 3. She formulated her essential proposition thus at [104]:

> "The state does have a positive obligation to protect children and vulnerable adults from the real and immediate risk of serious abuse or threats to their lives which the authorities are to be aware in which it is within their power to prevent. When they are in breach of this obligation will depend upon the nature and degree of risk and what, in the light of the many relevant considerations, the authorities might reasonably have been expected to do to prevent it. This is not only a question of not expecting too much of hard-pressed authorities with many other demands upon their resources. It is also a question of proportionality and respecting the rights of others, including the rights of those who require to be protected."

479. It was in the light of that that Lady Hale concluded that there could be little doubt that the operational duty under Article 2 was engaged in that case: the daughter was admitted to hospital precisely because of the risk that she would take her own life. And it was the purpose of the admission to prevent that and bring about an improvement in her mental health such that she no longer posed a risk to herself. The experts agreed that one of the most risky periods for further suicide attempts was the week or so of a person beginning to recover. She might well lack capacity to make an autonomous decision to commit suicide. The hospital could at any time have used its powers to prevent her leaving, as the experts agreed it would have been appropriate to do, although the trial judge found that she would not in fact have left without medical approval.

480. Lady Hale agreed with Lord Dyson that the operational duty was breached; [107]. But she also said that although the doctor was obviously wrong that it would be good for the daughter to begin to take responsibility for herself, the question was whether he was "so wrong that the hospital is to be held in breach of her human rights for failing to protect her? It may not always be enough simply to say that the experts were agreed that the decision to give her home leave was one which no reasonable psychiatrist would have taken." Here there was no proper risk assessment or proper planning for her care during the leave.

481. Lord Brown agreed with both Lord Dyson and Lady Hale. Lord Mance agreed with Lord Dyson. He held that the operational duty was to protect the daughter from any real or immediate risk that she would commit suicide, of which state authorities knew or

ought to have known. In that context simple negligence in failing to identify or to guard appropriately against such a risk appeared sufficient to establish breach of the duty; [118].

482. First, submitted Mr Bowen, there was here a real and immediate risk of ill treatment to Ms Griffiths in line with *Osman* principles. Ms Harpur-Lewis had told Nurse Harris or Dr Stagias of Mr McFarlane's previous behaviour towards Ms Griffiths, and Ms Harpur-Lewis' telephone call of 5 May should have been picked up and responded to very quickly. For the reasons already given, I have concluded that Ms Harpur-Lewis did not tell Nurse Harris or Dr Stagias what the claim asserts she did; there is no evidence of that and I decline to draw the inferences upon which such an allegation depends. Nor do I accept that the call of 5 May should have been picked up earlier than it was, also for reasons I have already given. Further, Mr Bowen submitted on the basis of Mr Bowe's version of his second call, that Mr McFarlane should have been detained compulsorily or admitted voluntarily. His liberty on a care plan violated both his and Ms Griffiths' Article 2 rights. I have rejected Mr Bowe's version of that call, and Dr Courtney's contentions on Dr Stagias'evidence.

483. Mr Moon submitted that the NHS Trust owed no operational duty to Ms Griffiths on the facts of this case. Mr McFarlane was not admitted compulsorily or voluntarily, and was therefore not in the same position as the patient in *Rabone*. Nor did its staff know of any real or immediate risk to Ms Griffiths' life, nor did it fail to take any steps which it should reasonably have taken to avoid that risk.

484. I agree that, on the facts of the case, the operational duty did not arise because the NHS Trust did not know, nor ought it to have known of any real or immediate risk to Ms Griffith's life, nor of any risk that her Article 3 rights would be breached. I also agree that there were no steps which it failed to take which it should have done in respect of such risks. I have covered these issues in the negligence claim. I do not agree that the operational duty is incapable of applying where a patient is under the care of the Crisis Team. But that issue need not be pursued.

485. Secondly, Mr Bowen raised an alternative way in which the operational duty was said to have arisen. He submitted that there was a risk to the general public against which the NHS Trust failed to take steps which would have protected Mr McFarlane and Ms Griffiths. Mr Bowen placed particular emphasis on *Bljakaj v Croatia* [2016] 62 EHRR 4 as showing how the risk to the general public should be assessed and dealt with. The significance of the case turns to a considerable extent on how the facts are analysed, about which there was dispute. On 22 March 2002, AN shot his wife, causing her serious injuries, and then shot and killed MBB, the lawyer representing her in her divorce proceedings. The applicants were MBB's family members. AN had a recorded police history over a decade for offences involving domestic violence to his wife and daughter, and unlawful possession of firearms. In 2000, his wife said in court that he had beaten her up severely leading to hospitalisation. In 2001 he was convicted of making serious death threats against this wife, leading to a short suspended sentence. On 21 March 2002, she had gone to the police station with her husband to complain of his harassment, and had referred to his previous violence against her; but she had made no complaints of threats or possible violence. He received a warning about his harassment, but showed no signs of aggression or agitation. The event was noted in the logbook.

486. On 22 March 2002, AN had gone to the bank at 7 am, to withdraw all his money, in tears and telling the cashier, whom he knew, that they would not see each other again. She asked what was troubling him; he said that it would be talked about. The manager followed him out of the bank and asked the same questions, to which AN replied that he was sick of everything, that his wife was having affairs and that he was going to do something about it, and nobody could stop him. The manager told the police, at 7.15 am, that he was afraid that AN could do something to himself or others. Police action within half an hour involved sending a patrol to the bank, checking and finding his violent background from police records and a patrol being sent to AN's home. The patrol found him; he told them he was going to commit suicide today or tomorrow by jumping under a train and there was nothing they could do about it. He had already written a suicide note, and had been at the police station the day before because his wife had been seeing another man. The officers noted that he appeared sober, and showed no signs of aggressiveness, and did not say that he might hurt somebody. They therefore advised him that everything was going to be fine and left. They reported this back at the police station just after 8 am. The station commander informed the local hospital just after 9.40, and the doctor said that he would see if a nearby psychiatric hospital could admit AN for treatment. The station commander was later discovered to have made a false report that the doctor was contacted at 8.15.

487. Meanwhile, AN had returned to the bank sometime after 8 am, shouting at the manager for having called the police. After a drink, AN went to the police station demanding to know why police had been to see him. The station commander explained that they had been told he was having problems, to which AN replied that he was going to solve his problems himself and that he was going to do what he intended, whereupon he left the police station. He went in search of his wife, and waited for her in the street along which he knew she would pass to reach her place of work. He attacked her, shooting her four times, causing serious injuries which she survived. MBB's office was nearby. AN went there and shot and killed her, attempting to shoot the secretary as she called the police, and threatening to kill a client who was present. AN went back to his house, and at 10.35, the police arrived and ordered him to surrender, but he threw two hand grenades at them, started shooting at them, and when they stormed the house in the afternoon, he shot himself, dying in hospital the next day. There was then an investigation and a civil action.

488. The Chamber judgment set out the *Osman* test, saying, [107], that in applying the test for the protective duty in various cases, it had:

> "…defined the scope of these obligations in instances concerning the requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act, as entailing the necessary analysis of whether there was any decisive stage in the sequence of events leading up to the deprivation of life when it could be said that the authorities knew, or ought to have known, of a real and immediate risk to the life of the individual and whether they failed to take the necessary measures to avoid that risk…"

It continued in [108], referring to some of the cases I have already mentioned:

> "108. Moreover, the positive obligations may apply not only to situations concerning the requirement of personal protection of one or

> more individuals identifiable in advance as the potential target of a lethal act, but also in cases raising the obligation to afford general protection to society…In the latter circumstances, the positive obligation covers a wide range of sectors… and, in principle, will arise in the context of any activity, whether public or not, in which the right to life may be at stake…."

489. A breach of Article 2 had been found where there had been a failure to take reasonable measures to ensure the safety of individuals, without having to find that the individual were identifiable in advance. At [111], it said:

> "111. The Court has also distinguished cases in which the issue was determining whether the liability of authorities is engaged in failing to provide personal protection to a previously identified victim, from cases in which the issue was the obligation to afford general protection to society against the potential acts of one or of several individuals serving a prison sentence for a violent crime (see *Mastromatteo,* cited above, § 69; *Maiorano and* Others, cited above, § 107; and *Choreftaki and Choreftaki*, cited above, § § 48 and 50). In the latter category of cases the Court has examined whether the liability of the State under Article 2 of the Convention for the unpredicted killing of a passer-by by a prisoner on prison leave could be engaged through its failure to provide and apply and adequate prison leave system (see, for example, *Mastromatteo,* cited above, § 70).

490. In applying those principles, the Court noted that the station commander had not contacted the hospital, though already under a duty to do so, was aware of AN's violent history, and had done nothing to stop AN leaving the station. The Court was silent about whether AN was searched, or at what stage that day he obtained the gun he used in the shootings. In those circumstances, the Court said, [120-1], that it was**:**

> "…not necessary to go into the issue of the requirement of personal protection of one or more individuals identifiable in advance of the potential target of a lethal act (see paragraph 107 above), or to deal with the question of the scope of the states' positive obligations in cases concerning random violence out of the practical control or possible reasonable knowledge of the domestic authorities…
>
> 121. What is at issue in the present case is the obligation to afford general protection to society against potential violent acts of an apparently mentally disturbed person…The Court notes in particular that A.N. at the time appeared to be mentally disturbed and dangerous to himself and/or others (see paragraphs 116 – 117 above) and that competent authorities considered that his further medical supervision was needed (see paragraphs 17, 19 and 21 above). This means that the risk to life in the present case was real and immediate and that the authorities had or ought to have had knowledge of it. In such situations the States' positive obligations under Article 2 of the Convention require the domestic authorities to do all that could reasonably be expected of them to avoid such risk…..

> 122. When examining whether the domestic authorities complied with those positive obligations, it must be born in mind that they have to be interpreted in such a way as not to impose an excessive burden on the authorities (see paragraph 105 above). In particular, due regard must be paid to the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention…The Court must also be cautious about revisiting the events with the wisdom of hindsight…In the present case the Court also has to take account the relatively short time span in which the events unfolded."

491. The Court noted that the domestic proceedings had identified several shortcomings in the manner in which the police had dealt with the situation: failing to report the interview with AN and his wife on the day before the shootings, and the tampering with the reports of the incident in the morning. There were several other measures which the authorities might reasonably have been expected to take to avoid the risk to life from AN. It could not conclude with certainty that matters would have turned out differently had the authorities acted otherwise, but the "but for" test was not the right test. The question was whether the reasonable measures could have had a real prospect of altering the outcome or mitigating the harm.

492. The Court found that by 21 March 2002, the police already had enough information about AN's violent background to take "reasonable measures and investigate further" the allegations that AN had been making serious death threats, an offence which could have led to his arrest and detention. (In fact the only direct threat was to his wife.) The officers who interviewed AN at his home in the morning of 22 March had failed to take the necessary precautions in the light of what he told them, threatening to do something which would be talked about; there was evidence that he had in fact told them that he would kill somebody or do something bad.

493. It then continued, at [129], which Mr Bowen submitted was a crucial paragraph:

> "129. In such a situation, even if the undisputed threat of suicide is taken alone into account, the Court reiterates that where the State agents become aware of such a threat a sufficient time in advance, a positive obligation arises under Article 2 requiring them to prevent that threat from materialising, by any means reasonable and feasible in the circumstances…
>
> 130. The effective measures for protecting citizens from violence by mentally disturbed persons are also envisaged in the relevant domestic law which provides for the involuntary/compulsory admission of a mentally disturbed individual who poses a danger to himself or others (see paragraph 81 above) and the ability to carry out a preventive search of a potentially dangerous individual (see paragraph 80 above). However, as already indicated above, two police officers returned to the police station without taking any measures, and the on-duty police officer only informed the hospital and social services when it was

> already difficult, or perhaps even impossible, to react or alter the course of events.
>
> 131. Thus the police's belated reaction prevented the doctor from taking the measures necessary for assessing A.N.'s mental state. Doctor I.F. explained that the information he had received required him to examine A.N. and to decide about his further psychiatric treatment. In particular, it had led him to believe that his and the police's intervention had been necessary in the circumstances of the case…
>
> 132. The Court thus considers that the failures of the police were not only a missed opportunity, but could, had they not occurred, have objectively altered the course of events by leading to A.N.'s medical supervision and the taking of further necessary action relevant to his apparently disturbed mental state.
>
> 133. Against the above background, the Court concludes that the identified series of failures of the police to deploy necessary diligence in dealing with the objective indications that A.N. was mentally disturbed, disclose a breach of the State's obligation to safeguard the right to life by putting in place all reasonable measures to ensure the safety of individuals from his violent acts resulting in the death of the applicant's relative."

494. Mr Bowen submitted that "that threat" referred to in [129] was not the threat of suicide by AN, but a conclusion that the duty to the general public can be engaged where a suicidal individual, as a member of the public, wishes to harm himself, but instead kills someone else, another member of the public. I cannot agree; it clearly referred to the threat of suicide by AN. Whether the decision is authority for Mr Bowen's wider submission is another matter; but such a conclusion is not expressed or to be derived from analysis of the grammar of one sentence in one paragraph.

495. *Bljakaj* should be applied, submitted Mr Bowen, on the basis that there was real and immediate risk to AN, the McFarlane equivalent; both were members of the public; both were owed by the authorities a duty under Article 2 or 3 to take reasonable steps to protect their lives by admitting them to hospital; MBB, the lawyer, was an unidentified member of the public against whom no threat had been issued; the Article 2 duty was owed to her "parasitically it must be assumed on the basis" (Mr Bowen's closing submissions), of an Article 2 duty owed to AN. Ms Griffiths was identified as a potential victim, and so in a stronger position in claiming protection, and so a fortiori could recover damages. This relied on what was submitted to be Mr Bowe's version of the second telephone call, which I have rejected. I have agreed that the probable consequence if Mr Bowe's version had been accepted and acted on, would have been voluntary admission. Mr Bowen then argued that Mr McFarlane's presence outside hospital breached both his and Ms Griffiths' Article 2 rights.

496. Mr Moon adopted in advance the more detailed submissions to be made by Mr Johnson on the legal issues arising in both human rights claims. Mr Johnson submitted that *Bljakaj* did not support the essential use made of it by Mr Bowen: i.e. that breach of duty to A led to a breach of duty to B, to whom no direct duty was owed. Mr Johnson submitted that the breach was of a duty owed directly to MBB as a member of the

public; the duty to her and to others unknown, required reasonable steps to be taken in respect of the dangerously disturbed AN. Whether they would have saved his life, or were required as reasonable steps to prevent his at times threatened suicide, was not to the point. His threats towards the end were never directed at MBB, but, importantly, were more general than simply threats to his wife. AN's family were not applicants, and no breach of any duty to him was suggested let alone established, nor was it a necessary precursor to the finding in relation to MBB. The duty was owed to anybody who could have been killed or injured by AN, so the requisite protection measures had to be taken against him and not by action in relation to an identified individual or group of potential victims.

497. *Bljakaj* is not, in my judgment, an entirely straightforward case. It goes beyond the circumstances in which the authorities knew or ought to have known of a real and immediate risk to the life of the individual. It does not simply adopt, however, the approach that there was such a threat from AN to his own life, against which the authorities failed to take reasonable steps, and therefore there was a breach of the protective duty towards his wife and towards MBB, whose family were the successful applicants, each as members of the general public, let alone regardless of whether any risk to them was one of which the authorities knew or ought to have known. It would have been simple enough to say so [108], but the Court did not do so. Nor was this a case where the violence was however random and unforeseeable.

498. The crucial part starts to my mind at [121], with the obligation to afford general protection to society against the potential violent acts of an apparently mentally disturbed person. MBB was in the category of the public generally. It was the duty to the public generally which it found breached in [133], where there had been an identified series of failures to deploy the necessary diligence to deal with the objective indications that AN was mentally disturbed. They had failed to put in place all reasonable measures to ensure the safety of members of the general public from his violent acts.

499. As I read the decision, the Court concluded that he was a potentially and actually violent mentally disturbed individual, who was or ought to have been seen not just a threat to himself but to the public generally. The reasonable steps required to protect the general public would have been to invoke the powers for him to be treated medically in hospital. This could or would have protected him, but the breach of duty in that failing was a breach of a duty to protect the general public.

500. The facts showed the basis upon which the authorities, notably the police, knew of his actual and potential for violence, and his disturbed mental state. This included the visit to the police station on the day before with his wife, who was complaining of harassment, and the reports to the police the next day by the bank manager, the police visit, his threat to commit suicide, his later visit to the police station, and the realisation that AN needed to go into hospital, belatedly contacted and falsely recorded, rather demonstrating the recognition of what ought to have been done.

501. The Court considered that steps ought to have been taken on the day before the shooting, and that the authorities, as I read it, ought to have taken steps no later than the end of the police visit on the morning of the shooting. The reference in [129] to the "undisputed threat of suicide alone" is qualified by "In such a situation". The threat of suicide, in the circumstances, was a sufficient indication, even had there been no threats to his wife

or to the public, that AN was mentally disturbed, and needed to be considered by doctors for hospital treatment, for the protection of the public.

502. The Court did not find that the duty to MBB, as a member of the general public, the duty which the case was about, was breached because of a breach of a duty to AN to prevent his suicide. The duty to the general public arose because, on the facts, it was or ought to have been foreseen that AN was a violent danger to the general public. The fact that he was a suicide risk was not of itself the basis upon which that risk to the general public was said to arise. The fact that the reasonable steps to protect the general public would have involved taking AN into hospital, which would have been lawful because of his mental state, related in part to his suicide risk, does not alter the duty to MBB to one which meant that a breach of the duty to protect AN would of itself prove a duty to her, and its breach.

503. I do not consider that this provides a basis for a claim against the NHS Trust that it breached the protective component of Articles 2 or 3. On the facts as I have found them, the position as at 3 May is all that falls for consideration. The use of compulsory powers in respect of Mr McFarlane was considered and rejected. A care plan was considered, and put in place, and in fact operated much as and perhaps better than envisaged. There is no basis for concluding that the panel ought to have concluded that there was a risk to the general public, because there was a risk that Mr McFarlane would commit suicide. *Bljakaj* does not require so simple an approach. I accept that there was a risk that Mr McFarlane would commit suicide when he was not detained or admitted, but it was reasonably judged not to be imminent. It can be described as low/moderate. However, the lawful relevant protective steps had been taken towards him. I do not consider that that could be regarded as a basis for saying that an operational duty to protect others arose when the risk of suicide was the only risk foreseeable, and proper steps to guard against it were taken. There was no basis for requiring the police to be informed or for steps to protect the general public to be taken. There was simply no such risk.

504. As I explain in relation to the claim against the Suffolk Police, no Article 8 claim can arise if the Article 2 and 3 claims fail. But even if the operational duty in these circumstances could impose an obligation to take reasonable steps to protect Ms Griffiths against stalking, harassment or sexual assault, and could lead to a breach of the duties under Articles 2 and 3, because such steps might have in fact prevented the murder, albeit unintentionally and unforeseeably, there was no breach. That risk was not foreseen nor ought it to have been. There were no steps which the assessors ought to have taken which they failed to take. It is at the very least debatable what nature and degree of the risk would permit patient confidentiality to be breached, and how the knowledge of the potential victim of the relevant facts would affect that duty. In my judgment, nothing short of knowledge of the position as at the time the police were phoned on 5 May, and of how Ms Griffiths then saw matters, could have produced any obligation, and the likeliest would have been to alert the police. But that situation did not arise.

505. I have dealt with the surviving aspects of any systemic or general duty in dealing with the voicemail message and inter-service communication.

506. Accordingly, I dismiss both limbs of the claim against the NHS Trust.

The claim against the Suffolk Police

507. This was solely a human rights claim. The legal framework was not greatly at issue. Article 2 ECHR, which protects the right to life, imposes in certain circumstances a duty on the state to take positive steps to protect life. Article 3 imposes a similar duty in respect of inhuman and degrading treatment. The jurisprudence is essentially drawn from Article 2 cases. The basis for this is set out by the ECtHR in *Osman*, above.

The pleading of the claim

508. There was no clear assertion, see [141] of the Particulars of Claim, that the Suffolk Police did in fact know or ought to have appreciated that there was a real and immediate risk to her life: the duty only arose "Insofar as" the Suffolk Police knew or ought to have known such matters. However, the submissions proceeded on the basis that it was alleged that the Suffolk Police knew or ought to have known that there was a real and immediate threat of treatment breaching Article 3, and thus breaching Article 2.

509. The Particulars of Claim, until post-trial amendment, referred only to positive measures required to protect Ms Griffiths' life and to avoid a risk to it, pursuant to what was called the "operational" duty. I allowed an amendment to cover "the risk of her suffering inhuman and degrading treatment", as it could not involve any further evidence; it made clear a point which had been asserted in a general way, albeit in a confusingly inconsistent manner, and it elicited no post-trial objection. This referred at [141 (i)] to positive measures which would come within the scope of the *Osman* obligations as those "which judged reasonably, might have been expected to protect her and avoid the risk to Mary's life, and/or the risk of her suffering inhuman and degrading treatment; " it was also alleged separately at (ii), that that same operational duty required the Suffolk Police to take positive measures "to investigate and prevent harassment and stalking to deal efficiently and expeditiously with emergency calls by competently risk assessing and grading them in order of priority."

510. This duty was alleged to have been breached "in that there *would have been* an appreciation that Mary's life was at real and immediate risk or (after amendment) that she was at a real and immediate risk of inhuman and degrading treatment *if*…" certain circumstances had arisen; [143]. (My italics).

511. Those circumstances in which the positive operational duty would be breached were if:

(i) the information from Ms Griffiths in her 999 call had not been accurately entered, by which was meant adequately entered, into the Polaris log by the call taker; "as verbatim account as reasonably possible of what Mary said" had been recorded; the key passages omitted from what Ms Griffiths said were: that she was "really frightened" twice, and that this was because Mr McFarlane was "really irrational"; that he had a "hidden agenda", was "flipping out", and that she was "just worried that he is lingering all around really"; and

ii) if the call-taker had "ascertained/appreciated and recorded" certain further information, that she was "extremely distressed and fearful for her own physical safety and that of her children", whether Mr McFarlane "was showing signs of psychiatric illness", whether she felt that she needed urgent assistance; this information should have been transferred to the log;

iii) then the call would then have been graded 1 or 2, requiring attendance within the hour, and an officer would have been dispatched, and all involved would have realised that there was a connection between this event, and the Polaris log event for 3 May, when police fetched Mr McFarlane back to A&E from the petrol station, which would have led them to appreciate that there was "a serious mental health component" to Ms Griffiths' call;

iv) this would have alerted those involved to the suicide attempt on 3 May, and to Mr McFarlane's access to knives and a bolt gun, of the risk of further self-harm and the real and immediate risk to the lives of Ms Griffiths and her children, which, following coordination with the Crisis Team would have led them to appreciate the risk escalating since early on 5 May; thereafter

v) "any reasonable assessment of this grave escalation would have demonstrated that Mary's fears were genuine, that her life and those of her children were in danger and that urgent action needed to be taken to arrest John McFarlane and/or issue him with a harassment warning and coordinate with the [NHS Trust] to further assess John McFarlane with a view to his compulsory detention under the Mental Health Act."

512. The general duty as pleaded in [142] of the Particulars of Claim was to take reasonable steps "to ensure the protection of Mary's life and the avoidance of inhuman and degrading treatment by operating an efficient emergency call system according to a reasonable policy, the terms of which must be implemented within the framework of a functioning and adequate system;" and ensuring that call takers, dispatchers and call makers were trained, competent, with high professional standards, and with suitable systems of working and supervision.

513. This general duty was breached because the Suffolk Police policy for grading emergency calls did not contain a reasonable system to ensure that reasonable steps were taken to protect the individual in peril. Some 12 different breaches were particularised of which some are also relevant to breaches of the operational duty. Most of the points related to the way in which harassment, stalking, distress and danger were recorded, investigated and risk assessed by the call taker or others, including the adequacy of arrangements for finding out what had happened on 3 May. Further breaches were alleged in relation to the adequacy of the training given to call takers for such calls, the information about the policies for dealing with them, the system for monitoring them, and for allocating resources to them.

514. However, the detail of the allegations commenced with the comment that the Claimants would refer at trial to the various Inquiries into this case for their full terms and reflect that the Suffolk Police policy on Grading and Response Strategy was not a reasonable system. The Particulars do not set out specific paragraphs of the policy itself. I was not taken to any passages from the various reports themselves, although Mr Bowen made the occasional reference to a passage. This is not surprising as Mr Johnson's submission about the inadmissibility of the reports was not challenged. But it did mean that the basis upon which the allegations of a breach of the general duty were pursued lacked the foundation asserted in the Particulars and the basis, such as it was, was not really particularised.

The Suffolk Police evidence

515. The Suffolk Police called no evidence. The Claimants relied on the hearsay evidence of Ms Moffatt, Ms Huggett, Mr Franklin and Ms Cox from their statements to the IPCC. The Claimants invited me to draw adverse inferences from the failure of the Suffolk Police to call Mr Roberts, the training co-ordinator and, in particular, Ms Meikleham, who was the control room operator when Mr Franklin made the call to Ms Griffiths at 21.43 on 5 May. The Claimants nonetheless relied on her witness statement and related IPCC statements, and upon Mr Roberts' IPCC statements as hearsay evidence. Mr Johnson, in a post-trial written submission, said that Mr Bowen had relied on Mr Roberts' witness statement, as hearsay. I could find no such reliance, though he had relied on Mr Roberts' IPCC statements; I have ignored the witness statement. (I had no signed version either). There was no expert evidence from either side. I have already set out in the narrative the substance of the calls to and from Ms Griffiths on 5 May, the way in which the call was logged on to the Polaris system, and then responded to.

516. The Suffolk Constabulary "Grading Policy and Response to Calls Strategy" of November 2008 recorded that in the most recent year there had been 96,000 calls on 999. Grade 1 calls, requiring an Immediate Response, covered a threat to life or a serious threat of physical injury to any person, where the offence was in progress at the time of the call, or a suspect was still at the scene or a known location, or a personal attack or police installed alarm had been activated. The aim was to get to the scene within 15 minutes. Grade 2 calls, requiring an Urgent Response, covered the activation registered burglar alarms, "of vulnerable persons or persons in distress", (there is no definition of a vulnerable person), imminent damage to property, "a minor offence where the offender, whilst still at the scene, is well behaved and poses no threat", and a few others. The aim would be to reach the scene within 30 minutes and in no more than 60 minutes; callers were to be told they would definitely be there within 60 minutes. Grade 3 calls, requiring a Non-Urgent Response, were where the caller required "police services as soon as possible but the incident does not fit into the criteria associated with Immediate and Urgent response." The aim would be for an officer to attend "as soon as possible at a location/time as suitable to the caller." The availability of the caller was to be entered in case no officer could attend soon after the call. The Force Operation Room was to allocate an officer within 4 hours. If unable to do so, the caller had to be informed, and the call was to be regraded to Grade 4 for a scheduled response. Grade 5 does not arise.

517. Mr Bowen took me to a document dated 1 July 2009, but entitled "Grading Policy Input for New Call Takers", formulated by the Force Operations Training Department in 2008. The time response aimed for with Grade 2 calls is 30 minutes, and for Grade 3 calls, allocation to an officer within 2 hours and his attendance within 4 hours. The previous policy had been amended in January 2009.

518. Mr Roberts was the training coordinator at Suffolk Police in 2004 for control room staff, including call taking staff. He gave no specific evidence about their training in his IPCC statements, beyond that they were all trained, and that in 2009, after these events, a refresher course for them had begun. Information folders were available and used by most call takers; they contained notes supplied during initial training to assist them in dealing with calls and in assessing the grade. They were trained on the Polaris Command and Control system. They were also notified of policy changes by email, and it was also their responsibility to keep themselves up to date. Mr Roberts produced for the IPCC the Call Takers Training Manual for 2005/6, though a copy was not given to

trainees. Any one in post at that date would have had training on the content of that Manual.

519. Mr Roberts' statement to the IPCC on 29 July 2009 elaborated on the processes for handling telephone calls and allocating resources. Non-urgent calls from the general public first went to the switchboard; 999 calls went to a touch screen used by call-takers, who would "create events" from them, and used by dispatchers to record who was sent and when to the event, and what they found or did. Call-takers covered all calls except between 3am and 7am when the dispatchers handled them.

520. Call takers had three screens: a call taker's touch screen showing a red icon for a call to be dealt with, a map screen and a touch screen which acted as the telecommunications system. Once the details of the location of the event and caller's details had been entered, a system called Polaris searched for previous information about either, and a red icon revealed whether there was something on record, such as previous police visits or previous events there, accessible by touch button. The call taker had to make a decision about the type of call from five general types which include crime, anti-social incident, and public safety/welfare incident. There were then options to be followed for sub-types of call, the upshot of which was generally a grading of the call by Polaris. The system was upgraded in January 2009, and call takers were notified by email of the changes.

521. Dispatchers all underwent call taker training, and had the same information at their disposal as did call takers. They were based centrally in the control room. They used three screens: dispatch screen, map screen, and telecommunications screen. Their responsibility was to allocate resources to calls graded 1 or 2. The dispatcher tried to allocate a Grade 3 call incident within a 4 hour time frame, and if unable to do this, the caller would be phoned and asked if a more convenient appointment could be made. If that were agreed, the Grade 3 call would be downgraded to Grade 4. The dispatcher could listen to a call being made by a call taker, but would not usually do so. Dispatchers could change the grade of a call from that provided by the call taker, but had to note why on screen. Dispatchers would provide or seek help in providing resources for Grade 1 and 2 calls before Grade 3, turning to resource them only once resources had been found for the Grade 1 and 2 calls. The screen would tell the dispatcher of the location of the ten units nearest to the incident, and what sort of unit they were. For a Grade 3 call, it would be unusual for a supervising sergeant to be asked to find resources from another area. Dispatchers could only redirect officers to Grade 1 or 2 incidents. If not dealt with in 4 hours, the Polaris system showed the incident in green on the screen, which the supervisor could see as well. In most cases when that happened, the caller would be asked either by the call taker, the dispatcher or a trainee to inform them that an appointment would be made, and that they should call 999 if anything further happened. Another option would be to leave the call on the screen, where it would be reviewed by the supervising officer, who would ask questions if it had not been resourced by the end of the shift. There was in general no handover at the end of a shift.

522. Ms Moffatt had been a call taker with Suffolk Police since January 2005, and had a recorded interview with the IPCC on 25 August 2009. She had taken the call from Ms Griffiths on 5 May 2009, at 17.56. Her training had been both class room and mentor based. She was supervised when she began to take calls, first listening to her supervisor take calls, and then being trained and guided by this supervisor as she herself took calls. She had not received ongoing training in her 4½ years, and others for longer, though

there had been some emails; she picked up most of her knowledge through experience doing the job. She considered herself an experienced call taker; only two people in the section had more experience than her.

523. Her role was to get the details of the caller, and the basic information as to what had happened - where, when, why, who, how - and to put it on the log. They were also trained to listen out for the tone of voice and attitude of the caller. The system would then grade it, based on what was put in. The call taker could override it, but had to explain why on the log. If the words "antisocial behaviour" and "malicious/nuisance communications" were put in, the call would be graded automatically as Grade 3. Malicious communications were not graded higher unless the offender were at the scene; Grade 3 was the overall grading policy for such calls, though each call was treated individually. That had been a long standing policy because there were a lot of such calls, with mobile phones or text messages being used to send such messages.

524. She regarded a vulnerable person as the elderly, or a young person who had suffered something and may not have known how to handle the situation, someone with a disability or who could not understand what was going on or what she was telling them. There had been no specific definition. A distressed person would be someone who was tearful on the phone, giving an immediate emotional response, shouting and demanding the attendance of the police immediately, or threatening to do something if they did not come.

525. She had placed what she regarded as important on the Polaris screen "Event Chronology". This was the information which went into the system and to the dispatchers, Ms Cox in the early part of the evening and then Ms Meikleham. It provided personal details, recorded that Ms Griffiths reported "suffering harassment in the form of texts and phone calls" from John Macfarlane of no fixed abode. "He had made a pass at [her] and she declined last week. He is angry because she said no. On Saturday he sent a text implying he may end his own life." That incident was then described, including that he had been taken to hospital "but they have not detained him." He had left his wife last week. "[She] is very concerned as he knows where [she] lives and her children. He put a letter through her door yesterday. [she] wants to talk to an officer." Ms Moffatt graded it 3, and as "type" anti-social behaviour, "sub type" malicious or nuisance communications. Ms Griffiths' availability was noted. At 21.00 appears the Event Comment that "it was getting a bit late now, can we advise her we will hold this for action tomorrow."

526. Ms Moffatt had asked about at least one text message, after Ms Griffiths said that Mr McFarlane was suicidal and should have been detained, because she had explained that he was angry, obviously at being rebuked. Ms Moffatt had not asked Ms Griffiths about the content of the 4 page letter, because officers would be able to see it when they attended. Her role was to get the basic information on the screen and to the dispatcher. She was asked in her IPCC interview whether knowing the content of the letter would have been of value in grading the call, and whether she ought not to have asked about information which was clearly available. Her reply was that they "can only go by what we are told by the informant." Some callers said more than others. She had done what her training and police policy required. She did not ask why Ms Griffiths was frightened, but they had to get the information on the log, and it would be the officer who would go into greater detail about why she was frightened, and clarify issues rather than the call taker, who had limited time for each call. The same applied to her not

asking about the content of the text messages more generally. That was not their task in the same way. Her point was that "we have to get down a basic premise of what's going on here to give to the officers. They then clarify and they take the details in the statement." That, she said, is what she had done.

527. Ms Griffiths had sounded concerned but not distressed; she said that she was being harassed; she had not said that she needed to see someone immediately but rather that she wanted to report someone; when asked if she would be available tomorrow, Ms Griffiths had not said that it had to be tonight. She had given her information calmly, and had been fine to be seen that day or the next. Ms Moffatt agreed that it would have made a difference when dealing with the call if Ms Griffiths had been emotional and crying when she said she was really frightened, and the male was "flipping out". But, she said, all they had was the voice; she could not surmise that the caller was "hysterical." "I can only go by how she sounds on the phone as to how she is. You can usually get a kind of feeling from someone how they are and how they are answering questions as to how upset, or disturbed, or tearful or how they are feeling inside. We are not trained in the art of listening to voices, we have to deal with our gut instinct." They were not taught any "buzz words" to listen out for.

528. The IPCC interviewer suggested to Ms Moffatt that she or the log seemed more concerned with the male's safety than with Ms Griffiths', and that she might have missed key words which could have caused her to react differently. She replied that she would still grade such a call as she had taken as Grade 3. She put down the information about Mr McFarlane being suicidal because that was the information which the caller was giving. She thought that "flipping out" and "irrational" simply reflected the fact that Mr McFarlane had attempted suicide. She was asked why she had not clarified whether Ms Griffiths was frightened for Mr McFarlane or by him, to which she replied, as before, that it was for her to get the basic information down and for the officer attending to go into that sort of specific. She did not agree with the suggestion that someone else reading the log would have seen it as a call about fear for Mr McFarlane, following a suicide attempt 3 days before, rather than a call from Ms Griffiths about a current fear for herself; she pointed out that the first piece of information was that the informant was suffering harassment in the form of texts and phone calls. The suicide information was relevant to the mental state of the person making them. She had noted the letter through the door. They were not trained to get text message details because they could not get all of what might be a long stream, or a verbatim letter, down on the log. She had asked about the general content of the messages. Mr McFarlane was not outside the property at the time, and the call would have been graded differently, had he been. What mattered was the complaint, the suicide attempt, the relationship breakdown, the anger, which had been the response of Ms Griffiths to her question about the content of the texts. She said that she had taken and logged the call, in accordance with the policy and with what she had been trained to do.

529. Checks were usually carried out after the call ended; she had checked CIS, but had not noted that on this occasion. Two other checks were carried out automatically by the system and would highlight previous incidents on the same person or address, but none had come up.

530. Mr Roberts listened to a recording of the call made by Ms Griffiths on a non-emergency police number on 3 May 2009, and commented that the call taker had dealt with it "in a calm professional manner", asking the correct questions including the content of the

text message Mr McFarlane had sent, but he noted that she had not asked about the content of letter which Ms Griffiths said that Mr McFarlane had sent her. Grading depended on the type of incident, and account was also taken of the tone and language of the caller. He described Ms Griffiths as "upset by the incident but not distressed enough to warrant this to be a grade 2" call. Training focused the operator more on tone of voice than "key words" used by the caller.

531. Ms Cox was the dispatcher on the 07.00 to 19.00 shift on 5 May 2009. Late in the shift several Grade 2 calls had come in. She had viewed the log for this event and thought the call appropriately graded on the initial information. She could not recall discussing this call specifically on the hand over to Ms Meikleham, or any discussion about resourcing it before the end of her shift. She felt that the action taken at 21.45, ringing Ms Griffiths, was appropriate.

532. Ms Meikleham was the control room operator and dispatcher, employed by Suffolk Police, on duty on the night shift on 5 May 2009 from 19.00 to 07.00 hrs. Her statement was dated 1 July 2017. She had been employed by them since December 1997. Ms Meikleham also exhibited the summary record of her interview with the IPCC on 24 August 2009. She had had no training courses since joining in 1997; she learnt with experience doing the job. She was covering the Bury St Edmunds area. She said that her main role was to "look after the officers on duty", by which she meant to see that the officers dispatched had all the information they needed to keep themselves safe. She would also look at the events on the screen, when she came on duty, to see if any really should be upgraded. I do not read that as a consideration, wholly afresh, of all calls waiting to be resourced, as opposed to acting on what consideration of the screen reasonably clearly showed.

533. She explained her understanding of the difference between Grade 2, 3 and 4 calls. Grade 2 included where a crime had been committed and the criminal might still be in the area, burglar alarms, "vulnerable people", and "somebody in distress, somebody sobbing down the phone who they are not quite sure what they want"; Grade 3 covered burglaries not in Grade 2, an incident like the one that evening where the caller wants to see a police officer "but there are no actual threats made"; anything which was not Grade 1 or 2 could be Grade 3. Grade 4 covered an agreed response such as an appointment. "Vulnerable" to her included someone "clearly in distress" and "distressed" somebody who was "clearly upset" or "sobbing down the phone wanting the police". She could change the grading of an incident which she believed had been incorrectly graded. The handling of a Grade 3 call, correctly graded as 3, depended on the resources available at the time and what the demands on those resources were. There would be a discussion with the sergeant about the allocation of resources to a queue of Grade 3 calls; the sergeant would generally make the allocation. But if it was getting late and the call could not be resourced that evening, a call would be made and if the call maker was happy to see a police officer the next day, that is what would happen. She would not normally then downgrade it to a 4.

534. It was not a particularly busy shift on 5 May. When she came on duty and asked, as a matter of routine whether anything had happened, Ms Cox did not mention the call from Ms Griffiths. The incident was however coloured green on her screen showing that it was waiting to be dealt with, as were four others.

535. She recalled looking at the CIS on about three occasions for the name of John McFarlane. In her IPCC interview, she said that four references to him had come up, none with a warning marker; she had agreed that she ought to have recorded those checks on the log. After 21.30 there was only a sergeant and three officers for the Bury area, as one officer had gone off duty. She asked Ian Franklin, who had spoken to her already, to phone her to see if she still required someone to visit her, as a result of which the call was held for the early shift at 07.00hrs. Ms Meikleham said that she had not been provided with any information which concerned her, nor had she been informed of evidence of stalking or harassment. She had queried what was in the letter which Ms Griffiths received, but she had not been asked specifically about that. Nothing in it would have caused her to change the grading.

536. She saw Ms Griffiths' call as reporting a nuisance, though all such calls differed; they were as prevalent as "domestic calls." Calls reporting harassment via email or social media were very prevalent. They went by the caller's perception of what the threat was, the threat as described by the caller. There were no specific guidelines dealing with that sort of call. She had not seen it as a call from a distressed or vulnerable woman. She would have become aware of the call at some point after 19.30 hrs as she went through the queue. She saw the incident as a report of threatening texts, though the threat had been that he would kill himself, rather than threats to Ms Griffiths or her children. Threats to kill and stalking were taken as potentially serious, and referred to the supervisor, or if it were reported by the caller that that was how they perceived the threat. There was no reported actual direct threat to Ms Griffiths or her children. She knew that Ms Griffiths knew the person who had made the threats, and that he had tried to kill himself and had gone to hospital but had not been detained. She thought that it might be attention-seeking by him, or an attempt by him to make her feel sorry for him, but at no stage had she thought that Ms Griffiths was in danger. She said that she probably had not thought enough about Mr McFarlane's safety; and she had seen Ms Griffiths as concerned for his safety, and not her own. The contents of the letter mentioned by Ms Griffiths had not been noted, which she would have asked about, but it appeared not to have given Ms Griffiths cause for alarm as she had not spoken about its contents. She had not seen anything to suggest that the call had been wrongly graded 3.

537. Her reaction was "ok if I can get someone to that we might be able to do that tonight". She would have looked to see what else there was in the list and at the resources available to her. She had considered the range of possible implications if Mr McFarlane were found, including waking his children, if any, and disturbing his wife, and taking a statement from Ms Griffiths which could take an hour, as it looked as though it would be a harassment warning but otherwise no further action. So she had thought, that it was getting late, not all the information was in, nor had they identified all those they would need to speak to, and it would be better left till the morning when an officer could be allocated who could spend the time necessary with her, then find out where he was and give the harassment warning. But a courtesy call should be made first to Ms Griffiths to see if she still wished to see someone that night, or if for example there had been any further calls or a threat directly to her. Had Ms Griffiths then said that she definitely wanted to see someone that night, that would still have left two hours in which someone could be sent.

538. Ms Meikleham described what she had done to resource the call, and what the officers available to her had been doing. The detail of the resources available does not need to be covered as Mr Johnson accepted that police could have been allocated to visit Ms Griffiths that evening if that had been thought necessary. Her interview with the IPCC described the resources which she had checked.

539. Mr Franklin was a police control room operator, who made a statement to the IPCC on 7 July 2009. He had been on duty on the night of 5-6 May from 19.00 -07.00, working mainly as a call maker, fulfilling requests made by dispatchers. It was not his task to regrade calls or to dispatch units. He became aware that Ms Griffiths needed to be contacted for an appointment the next day, as they were having difficulties resourcing the incident that evening. He rang and spoke to her at 21.45. He told her of the difficulties, and she sounded "totally calm and relaxed. She did not sound anxious nor was there any urgency in her voice. I would describe her as fairly bubbly and she appeared satisfied with the way we were dealing with her. She sounded more than happy that we were getting officers to her the next day…there appeared no urgency about the situation from her." He thought she would even have been happy if the visit had been the day after tomorrow. He did not inquire if there had been any further problems, or offer her the option of having a visit; it would have been for her to insist or show greater distress.

540. He thought that aspects of the first call, from reading the transcript were concerning and would justify grading it 2: the words "he's really irrational", "angry", "hidden agenda." But her response to the making of arrangements, and being available "anytime" did not indicate that grade 2 was required, a view confirmed to him by her manner during the call he made to her.

541. It appears not to be at issue that a more detailed Polaris check would have occurred had the call been graded as 2, which would have revealed that Mr McFarlane had been returned by the police after he had left A&E on the morning of 3 May.

542. Ms Huggett, whose IPCC statement of 24 July 2009 was also admitted as part of the Claimant's hearsay evidence, had been a police dispatcher and control room operator for 19 years. She said that, from the dispatcher's point of view, Grade 3 was the correct grading for the call from Ms Griffiths. Had she been really panicking and frightened, it could have been Grade 2, but she did not seem stressed out from reading the log.

543. There was an issue about whether the Suffolk Police did have the resources to send someone round to Ms Griffiths on the evening of 5 May. Parts of the evidence to the IPCC deal with that. No very clear picture emerges, and there were suggestions from Mr Bowen that some potential resources had not made themselves as available as they could or should have done. Mr Johnson conceded, and invited me to deal with this by accepting his concession, that had Ms Griffiths required to be seen that evening, or if the call had been graded differently, then an officer could have been made available to see her. So the issues are about the information logged about the call, its grading and the way Ms Griffiths' answer to Mr Franklin was handled.

The legal submissions

544. Mr Johnson QC for the Suffolk Police pointed to the stringency of the Osman test in the light of the facts in *Osman* itself. There was considerable evidence of harassment,

stalking and malicious damage reported to the police and identifying the man, who would eventually kill Mr Osman. The Court said that there was no decisive stage when it could be said that the police knew or ought to have known that the lives of the Osman family were at real and immediate risk from Paget-Lewis. There were missed opportunities by the police to neutralise the threat, but it could not be said that measures, such as more active investigation, searching his home, or detention under the Mental Health Act 1983, would in fact have neutralised the threat. The police had to discharge their duties in a manner compatible with the rights and freedoms of individuals, and could not be criticised for failing to use powers, which they reasonably thought they lacked the power to use on the evidence they had, and which they reasonably thought would not produce concrete results.

545. Mr Bowen submitted that the facts of *Osman* were very different, essentially because of the absence of direct evidence of Paget-Lewis being involved in the acts of harassment, stalking and malicious damage. Mr Bowen contrasted that with the direct evidence of Mr McFarlane's sexual assaults on Ms Griffiths, his stalking or harassing behaviour and his recent changes in behaviour including the text messages. Here, a harassment warning for him was likely from the police face-to-face, which might have led him to seek help, or to detention under s 136 MHA.

546. Mr Bowen also submitted that *Osman* did not deal with a breach of Article 3, although the state equally has a positive obligation, in certain circumstances, to protect individuals against the criminal acts of others, where there is a real and imminent risk of serious harm, amounting to inhuman or degrading treatment, of which the state is aware.

547. *R (Al-Saadoon and others) v Secretary of State for Defence* [2016] EWCA Civ 811, [2017] 2 WLR 219, Lloyd Jones LJ, with whom Arden and Tomlinson LJJ agreed, deals with the state's protective duty under Article 3. The form relevant here is the positive obligation to take steps to protect an individual who is exposed to a real and imminent risk of serious harm, including from the criminal acts of individuals, of which the state authorities are aware. I consider that this also covers circumstances, as with *Osman*, of which state authorities ought to have known.

548. In *Kudla v Poland* [2000] XI: 35 EHRR 198 at [91], the ECtHR held that ill-treatment had to attain a minimum level of severity to fall within Article 3. The assessment of that minimum level was "in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim…." Treatment was inhuman when it was premeditated, applied for hours at a stretch, and caused either actual bodily injury intense physical or mental suffering; [92]. Mr Bowen referred me to *V.C. v Slovakia* (18968/07), in which at [102] the ECtHR referred to some of its decisions on what acts of state agents constituted assaults sufficiently severe to breach Article 3: injury to a limb leading to amputation, gunshot wounds to a knee, double fracture of a jaw, significant facial injuries. This was not set in the context of the state's protective duty. This is what I have described as a serious assault in connection with the claim against the NHS Trust.

549. I accept that the risk of such assaults will bring the state's protective duty into play, but the response required to avoid a breach of the protective duty has to be judged in the context of the nature of that threat.

550. An issue arose as to the scope of circumstances of which the state "ought to have been aware." In *Van Colle v Chief Constable of the Hertfordshire Police* [2008] UKHL 50, [2009] 1 AC 225, the claim was brought under Article 2 ECHR: Brougham was facing trial for theft, Giles Van Colle, GVC, was to give evidence against him. For some weeks, there were incidents of fire damage to witnesses' property, and threats, including one in a phone call to GVC. But it was not an explicit death threat. Some of these incidents, and the latter call, were reported to the police who took no steps to protect GVC, who was shot by Brougham shortly afterwards, and before he gave evidence. The Court applied the *Osman* test, from [116], Lord Bingham remarking at [29] that every sentence of the passage cited was important.

551. *Van Colle* went to Strasbourg and its judgment in *Van Colle v UK* (2013) 56 EHRR 23, found no violation of either Article 2 or 8. The judgment of the House of Lords was criticised by the Applicant's advocates as too stringent a reading or application of the *Osman* test. Lord Bingham had also found the warning signs to be very much less clear and obvious than those in *Osman,* which were itself inadequate to meet the test. I note, in view of that issue about the facts on which the ECtHR based its decision in *Osman*, that in [102] of *Van Colle*, it set them out, rather as Lord Bingham had done in [56] of *Van Colle*, pointing out that the risk factors in *Van Colle* could not be said to have been greater than in *Osman*, saying:

> "It recalls the following series of acts which had been the subject of complaints to the police against PL at the relevant time. The background was an established and worrying fixation by PL (a teacher) on a pupil (Ahmet Osman) and PL's consequent resentment of Ahmet's friendship with LG. It was therefore alleged that PL had spread offensive rumours about Ahmet and LG; had followed LG home and stalked him; had written obscene graffiti about Ahmet and LG; had stolen files relating to the two boys from the school; and had changed his name to Osman. A series of acts of vandalism followed in May – November 1987. In particular, the Osman family complained to police that PL had thrown a brick through a window of their home; had twice burst the tyres of Ali Osman's car; had poured engine oil and paraffin outside their home; had smashed the windscreen of Ali Osman's car; had jammed the lock of the Osman's front door with superglue; had smeared dog excrement on their doorstep and car; had stolen more than once the bulb from their porch; and had broken all the windows of the Osman's car. PL had also driven his car into a van in which LG was a passenger: the driver of the van reported PL's cryptic comments about "doing life" in a number of months. A decision had been taken to arrest PL for minor criminal damage, and to protect the Osmans, LG or others, but before it could be effected, PL had killed Ahmet's father, wounded Ahmet and a deputy headmaster and killed the latter's son."

552. At [32], in *Van Colle*, Lord Bingham said that the *Osman* test depended not only on what the authorities knew, but also on what they ought to have known. "Thus stupidity, lack of imagination and inertia do not afford an excuse to a national authority which

reasonably ought, in the light of what it knew or was told, to make further enquiries or investigations: it is to be treated as knowing what such further enquiries or investigations might have elicited."

553. Lord Phillips addressed the issue at [85-6]. He said that the only matter left unclear by the test in [116] of *Osman*, was the test to be applied when judging whether the police "ought to have known" of the risk to an individual's life. There were at least two possibilities. First, it could mean "ought to have appreciated on the information available to them"; or second, it could mean "ought, had they carried out their duties with due diligence, to have acquired information that would have made them aware of the risk". He thought the former was what the ECtHR intended. But it made no difference on the facts of the case. Lord Hope did not express a view on this. Lord Carswell agreed with Lord Bingham, without referring to this issue. Lord Brown was in "full agreement" with Lord Bingham, expressing the view that the obligation to protect someone from a real and immediate risk to his life was "clearly a stringent one which will not be easily satisfied," in the light of the difficulties which the ECtHR identified in [116] of *Osman*. He regarded the facts of *Osman* itself as comparatively extreme, as rehearsed by Lord Bingham at [56]. He did not discuss the point raised by Lord Phillips.

554. The Strasbourg Court noted this difference of view at [57-8]. It did not directly resolve the issue, noting at [99]: "Even if the question of whether the police "ought to have known" would have required DC Ridley to make some further enquiries, particularly after the fires of the end of October, and even if such enquiries would have revealed further relevant information to DC Ridley [including Brougham's link to all the fires and attempted bribery and intimidation of other witnesses] the Court is not convinced that this additional knowledge should have led DC Ridley to perceive [Brougham's activities] as life-threatening for GVC. There remained a substantial difference between such intimidating conduct vis-à-vis witnesses and the shooting dead of a minor witness. Accordingly, while DC Ridley's failure to enquire further than he did was criticised by the Panel as lacking in diligence, it cannot be impugned from the standpoint of art.2."

555. Mr Bowen pointed out that in *R (Medihani) v HM Coroner for Inner South District of Greater London* [2012] EWHC 1104 (Admin) Silber J had followed Lord Bingham rather than Lord Phillips, which is what he said I also appeared to have done when granting permission in that case; [45]. I do not find that sort of argument as persuasive as advocates might like. Of course, all speeches agreed that a state authority was fixed with the knowledge that it ought to have had, that is what it ought to have appreciated from the material before it. But I do not consider that Strasbourg was setting a limit in all circumstances at that point and the House of Lords was certainly not. The language of Lord Bingham is not simply that of an obligation to make the enquiries which any reasonable person would have done; it seems a more stringent test, and the Strasbourg jurisprudence has not spelt out the limits as a negligent failure to make enquiries test either. That would also not chime well with the Convention duties not being a version of a negligence claim but involving instead a more stringent standard, nor would it fit well with the absence of a common law duty of care on the police in this operational respect. It would rather undermine the rationale for the correct abandonment of the negligence claim.

556. But if it is a negligence test, I do not see that such a negligence claim has been made out on the facts here.

557. In *Van Colle*, at [104], in a passage relied on by Mr Johnson, the Strasbourg Court considered the applicants' contention that had DC Ridley arrested Brougham on witness intimidation charges, the death might have been avoided. But it said that as there was no real and immediate risk to his life, the argument amounted to a "but for" test of state responsibility, which was not the correct test. I accept, following *Sarjantson v Chief Constable of Humberside* [2013] EWCA Civ 1252, [2014] QB 411, that compliance with Article 2 should not be determined with the benefit of hindsight; the fact that it may be proved, after the event, that measures reasonably to be taken in the light of the "real risk of an imminent threat to life", would not have been effective does not mean that no breach of Article 2 in fact arose. Effectiveness or otherwise is relevant to damages. The reference in [28] to *Kilic* explains the thinking: a state cannot excuse itself for a failure to take what, without hindsight, is a reasonable step at the time on the basis that, with hindsight, it would not have been effective. That could permit states to fail to do what they reasonably could have done, and to argue about it afterwards, when it was too late. It is no answer to an alleged breach of Article 2 to say, prospectively, that the step, though reasonable, and one which could have succeeded, would probably have failed; its reasonableness must depend in part on its potential, viewed at the time of the decision and not with hindsight, to prevent or contribute to preventing death or to reducing risk. That is not saying that reasonable measures include what are known at the time to be futile gestures.

558. At [108], in *Van Colle*, the Court dealt with Article 8. It said that the application did not raise issues relevant to the Applicants' dead son's Article 8 rights which were substantively distinct from those arising under Article 2. It agreed with the House of Lords that once it could not be said that DC Ridley knew or ought to have known of the real and immediate risk to the life of GVC from Brougham, that equally supported a finding that there had been no breach of any positive obligation implied by Article 8 to safeguard GVC's physical integrity. Lord Bingham also said that the Article 8 claim could not succeed where the Article 2 claim failed; [40]. The police did not themselves interfere with the right to respect for personal life and personal autonomy. The claim rested on the police failure to prevent the interference by the murderer, and Article 2 was "clearly the article under which this claim is to lie if it is to lie at all."

559. This to my mind is equally applicable to the claim against the NHS Trust, as it is to the claim against the Suffolk Police.

560. Mr Bowen also contended that, in addition to the operational duty, set out in *Osman*, there was a more general or systemic duty under Article 2 "to put in place a legislative and administrative framework to provide effective deterrents against threats to life."

561. Mr Johnson did not dispute that there was a more general duty, which depending on context could include obligations for example relating to training, equipment and policies, where the state engaged in dangerous activities or placed someone in custody. However, he submitted that where the risk arose from the criminal acts of a third party, rather than from the acts of the state, that obligation was confined to having effective provisions in the criminal law to deter offences against the person, and a system of law enforcement for the prevention, suppression and punishment of breaches of those provisions. He relied on *Osman* [115], but in my judgment, that is a reference to the "primary duty" of the state, which is extended in certain well-defined circumstances to the operational duty, as it is called and as applied in *Osman*. These two duties are not wholly separate categories; and the comment was not, as I read it, intended to define

the scope first of the one form of duty, and then of the another. Besides, the language of the primary or general or systemic duty is sufficiently general to allow for more detailed requirements to come under its umbrella. There is nothing in Lord Bingham's citation of that paragraph from *Osman*, in [28] of *Van Colle* to suggest otherwise, or in its citation in *Savage* at [19] or [77].

562. Mr Johnson referred to *R (Humberstone) v Legal Services Commission* [2010] EWCA Civ 1479, [2011] 1 WLR 1460. This case arose out of the treatment of an asthmatic boy by paramedics. His mother was arrested on suspicion of manslaughter by gross negligence in her care of the boy. She was refused legal aid for representation at the inquest. Smith LJ, with whom Maurice Kay and Leveson LJJ agreed, summarised the state of the authorities on when the Article 2 obligation of investigation arose at [52]: there was a general duty to set up an effective judicial system by which any death which might possibly entail an allegation of negligence or misconduct against an agent of the state might be adequately investigated and liability established; there was a duty proactively to conduct an effective investigation in a much narrower range of circumstances where the evidence suggested a possible breach of the state's substantive duty to protect the lives of those in its direct care. I do not consider that that case can properly be regarded as stating the limits of the general duty arising under Article 2; rather it is dealing with the particular aspect of Article 2 which arises in relation to the duty to investigate death and does not arise in this case.

563. Mr Johnson also relied on *R(NM) v Secretary of State for Justice* [2012] EWCA Civ 1182. A prisoner was sexually assaulted: it was alleged that there had been an insufficient investigation for Article 3 purposes. In [29] Sedley LJ, with whom Lewison and Laws LJJ agreed, recognised that in Article 3 cases there were likely to be fewer breaches resulting from systemic wrongdoings requiring full investigation. "In the absence of state complicity, the essential obligation of the state is only to provide a system under which civil wrongs may be remedied in litigation or criminal wrongs investigated and prosecuted…."

564. The final case relied on was the admissibility decision in *Menson v UK* (App No. 47916/99) 2001; there were failings in the police investigation into a racist murder, but the murderers were found and punished with reasonable expedition. Thus, the Court said, the legal system had ably demonstrated its capacity to enforce the criminal law. That had to be "considered decisive when deciding whether the authorities complied with their positive and procedural obligations under Article 2."

565. The general duty, submitted Mr Johnson, had to be limited in that way, otherwise the careful delineation of the *Osman* duty would be negated, since any failure could always be ascribed to a breach of the general obligation. The policies in place should not be tested against the sort of detailed or "granular" analysis undertaken by Mr Bowen, for example, listing requirements for call takers and dispatcher. Mr Johnson submitted however, that if that sort of detailed criticism were part of an allegation for breach under Article 2, the particular duty, and its well-defined circumstances would disappear into the general duty. That, he submitted, if correct was the end of the Claimants' case against the Suffolk Police.

566. Mr Bowen submitted that the general duty was not limited to the system of laws and to the investigation of offences, appropriate systems more generally for the protection of life were required to satisfy the general duty. He instanced *Savage v South Essex*

Partnership NHS Foundation Trust [2008] UKHL 74, [2009] AC 1 681, in which a patient detained in an open acute psychiatric ward under s3 MHA for treatment for paranoid schizophrenia, absconded after several attempts, and committed suicide. However, most of the speeches are concerned with the duty on state authorities while they have custody of prisoners or patients and with the duty to protect the lives of those who are patients suffering from mental illness but who are not detained, but are in hospital. It does not explicitly deal with, nor does it draw a line against, the application of Article 2 to those patients who are mentally ill, but are not being treated in hospital. But the logic of what Lord Rodger said at [47-48] would apply to them: hospital authorities needed to have in place appropriate systems for preventing patients who were known to be suffering from mental illnesses from committing suicide.

567. Mr Bowen also referred to *Rabone*, which I have set out earlier in discussing the case against the NHS Trust.

568. Mr Bowen cited *Oneryildiz v Turkey* (2005) 41 EHRR 20, which concerned the liability of the state for the way in which it regulated a household waste tip, which led to an escape of methane gas which caused an explosion, killing nearby residents. Article 2 contained a positive obligation on states to take appropriate measures to safeguard the lives of those within the jurisdiction generally; this applied, [71], "in the context of an activity, whether public or not, in which the right to life may be at stake, and *a fortiori* in the case of industrial activities, which by their very nature are dangerous, such as the operation of waste collection sites." In the context of dangerous activities special emphasis had to be placed on regulations governing the licensing, setting up, operation, security and supervision of the activity, making compulsive that those involved take practical measures to ensure the effective protection of the lives of citizens; [90]. In addition to the preventive regulations, where lives had been lost, there had to be a judicial system, which enabled an independent and impartial investigation which satisfied certain minimum standards as to effectiveness and which was capable of ensuring that criminal penalties were applied to the extent justified; [94].

569. Mr Bowen also cited *Ciechonska v Poland* (Application 19776/04) 14 September 2011. This lists in [62] the range of circumstances in which Article 2 has been applied. One such was the provision of emergency services where the state knew that someone's life was in danger as a result of an accident. Another was where prisoners with a known history of violence were released. This does not alter the nature of the duties on the state, but simply illustrates the range of circumstances in which those duties apply. A breach of Article 2 was found in *Gorovensky and Bugara v Ukraine* (App. Nos 36146/05 and 42418/05) (unreported) where D, a police officer, murdered two people. His superiors on several occasions had failed appropriately to assess his personality and had continued to allow him to carry a weapon despite separate previous troubling incidents involving him, which had led to the murders.

570. To my mind Mr Bowen's authorities emphasise rather than undermine the existence of the two aspects of the general obligation to which Mr Johnson referred. But Mr Bowen contends that they show that lower level systemic matters, such as training and proper procedures for dealing with emergency calls, are all part of making the more broadly expressed duty practical and effective.

571. I appreciate that there is a logic which leads from the general duty, to having the system to give effect to the operational duty, to holding that there has to be an emergency call

and response system, and that it has to be manned with trained operatives, with guidance as to how to handle calls, to omissions in general or failings in particular which might have prevented a death becoming a breach of Article 2. And I also appreciate that that logic is not how Article 2 jurisprudence has developed, and would undermine the basis upon which the general duty has been described.

572. However, I do not accept that the jurisprudence on the general duty is quite as constrained and distinct as Mr Johnson suggested. There are distinctions, and there are also overlaps; aspects of a state's protective obligations may not fall readily into compartments labelled operational and general. I would not wish, absent clear jurisprudence, however to suppose that Strasbourg had intended to hold that certain steps which a state authority could reasonably take to protect the risk to life from the acts of criminals fell outside the scope of Article 2 entirely, as not being sufficiently systemic or sufficiently operational. Its analysis is not a tool for defeating sense. Its watchwords are making the Convention rights practical and effective, bearing in mind legal constraints, the rights of others, constraints on resources and the balancing of considerations which public authorities have to undertake. It has taken a more fact sensitive approach to what acts ought reasonably have been undertaken, or omissions avoided, for which the label was not the key, but the nature of the failing, in all the circumstances, in relation to the protection of life.

573. There are dangers however in seeking to treat ECHR jurisprudence as if the protective duty were a negligence claim under a different label, even if common law liability for death arose where there was a negligent failure to take those steps necessary to prevent a lesser foreseeable injury. The policy considerations in relation to the imposition of a Convention duty or a finding of breach are different. The test for causation in relation to the protective duty is different. The claimant does not have to prove that the protective step which the authority failed to take would have prevented injury. The step has to be one which it was objectively reasonable, in all the circumstances, and striking a balance between competing considerations faced by the authority, to take to avoid the harm foreseen; a consequence unforeseen and not protected against, because it was neither known, nor ought to have been known, does not lead to a breach of Articles 2 or 3 by such a sidewind nor to a breach of Article 8. Nor does the Article 8 argument sit well with the claim of knowledge of much more serious risks; it rather undermines such force as it has.

574. Mr Johnson submitted that this claim could only be a claim in respect of Article 2, since that was the right that was infringed. However, Article 3 required a minimum level of severity, and there may be little gap between them; if Article 2 was breached, Article 3 did not arise; if Article 3 was breached, it was difficult to see that Article 2 was not also breached where death resulted. Mr Bowen was concerned in the amendment to contend that it was not necessary for an imminent risk to life itself to be foreseen for a protective duty to arise. It would suffice if a risk of a serious assault, which is how I would for these purposes characterise a breach of Article 3, were foreseen. If that were foreseen, no reasonable measures capable of protecting against it were taken, and death resulted, it could not be said that there had been no breach of Article 3.

575. In my judgment, it is not necessary to go into the various possibilities beyond saying that the steps required relate to what is or ought to have been foreseen. In the criminal context, the dividing line between the risk of breaches of the two Articles may be beyond sensible risk analysis or precise calibration of the effectiveness of the available

steps. Here however the claim is not about such a fine calibration. The issue was not whether the response was inadequate for a threat to life but adequate for a threatened breach of Article 3; the issue is whether there was any evidence of a real risk of either. The same applies to the claim against the NHS Trust.

576. Strasbourg jurisprudence is concerned with making the rights set out in the various Articles practical and effective, even where the text does not contain the elaboration of the obligation which the jurisprudence holds is implicit for that purpose. It is not necessarily understood through English common law principles. I do not consider that the approach which Mr Bowen urges in relation to *Bljakaj*, or over the relationship of a breach of Article 8 to a breach of Articles 2 or 3, unqualified as they are, fit with making the obligations practical and effective. For example, if there had or ought to have been knowledge of a risk of stalking, harassment or sexual assault in the form of a repetition of unwanted advances, the protective steps required of the police are significantly less, and the priority to be given to them, balancing competing resources in how such calls were logged and responded to, would be very different. Moreover, if that is the nature of the breach, I see no Strasbourg authority to support the contention that a failure to take those steps, even if it could be proved that they would or could have avoided a loss of life, shows a breach of Article 2. That is not the purport of *Bljakaj*.

Conclusions on the claim against the Suffolk Police

577. Mr Bowen made submissions about the operational and general breaches of duty drawing on many facets of the evidence contained in the IPCC statements and Ms Meikleham's witness statement.

578. He submitted that Mr Roberts' description of the Polaris system meant that had either the NHS Trust called the Suffolk Police on 3 May, or had the NHS Trust called Ms Griffiths who had then called the Suffolk Police, that would have come up as a marker on 5 May, leading to Ms Griffiths' call being upgraded to Grade 2, and to a visit that evening to her and to Mr McFarlane which would have prevented her murder. The two previous logged incidents, when he left A&E and when he was retrieved by police on 3 May would also have come up as a result of the more detailed Polaris check which a grading of 2 elicits. This too would have affected how the call was responded to.

579. The problem with this submission is that there was no basis upon which the NHS Trust should have contacted Ms Griffiths or the Suffolk Police, and unless either of those had been contacted, this outcome cannot arise on the facts. It is no more than conjecture anyway that a grading of 2 would have been the result, in the light of what was said to Ms Moffatt by Ms Griffiths.

580. Mr Bowen made the following criticisms of Ms Moffatt in paragraph 92(i) of the Particulars of Claim to show both operational failures - and general failures if the operational failures resulted from a want of training. She had failed to log in the Polaris

system: (i) that Ms Griffiths was "extremely distressed and fearful for her own safety and that of her children"; (ii) that Mr McFarlane was "irrational", "flipping out" and "had a hidden agenda"; (iii) as verbatim an account as reasonably possible of what Ms Griffiths said. She had also failed to investigate with Ms Griffiths (i) whether Mr McFarlane was showing signs of psychiatric illness and (ii) whether Ms Griffiths felt she needed urgent assistance. It was not sufficient for Ms Moffatt to limit her task to the acquisition of basic information, because the dispatcher would not have the information necessary to determine whether the call should be regraded or prioritised within grade 3.

581. Mr Bowen was quite wrong to suggest in his closing submissions that it had been agreed that these omissions were omissions of key and important information. These were issues developed very much with the benefit of hindsight. I deal next with the manner in which Ms Griffiths spoke to Ms Moffatt, but Ms Griffiths did not say that she was "extremely distressed". What she said was that she was "just really frightened…and he knows where I live and…where my children live." This was followed by her saying that she was "just worried that he is lingering all around." The context for this criticism of course is that the call taker failed to record as verbatim an account as reasonably possible, which makes the colouring in the pleading unpersuasive. But it is correct that the logged account does not refer to her being "really frightened." It does however refer to her being "very concerned that he knows where [she] lives and her children." It is also true that the log does not include that Mr McFarlane is "irrational" or the other descriptions used by Ms Griffiths. But it refers to the suicide attempt and to his leaving his wife, and to the letter. It logs the pass, the rejection, and the anger in response; and Mr McFarlane's absence of fixed abode, as it was understood to be. In my judgment, the call taker has logged the crucial pieces of information relayed by Ms Griffiths. Ms Moffatt is not at fault in saying that the details of precisely why Ms Griffiths was frightened, and of the letter and texts, were matters for the officer who would attend. The obvious reasons were those explained to Ms Moffatt. It is mere speculation that, if asked why she was frightened, she would have said that she feared sexual assault; far more likely is that she would have focused on the letter and texts, and the feeling that he was not letting her alone: thus stalking and harassing her. This is what could have led to the harassment warning, for what that might have achieved in the context of Mr McFarlane's response to rejection shortly afterwards. The purpose of the call was not to take down all the details; Ms Griffiths was not having a statement taken, but enough information for grading, and dispatch and for others to read and understand the essentials. The grading was able to take account, rightly or wrongly at this stage, that Ms Griffiths had said that she was really frightened for herself and her children. "Very concerned" seems a milder version of that, though I do not know to what extent that language would be understood as understatement to a degree.

582. The call taker did not enquire about Mr McFarlane's mental health nor whether Ms Griffiths needed urgent assistance. As to the first, it is difficult to see at this stage why the call taker should have gone further into Mr McFarlane's mental health; she had logged the suicide attempt and that he had not been sectioned, and had approached her house. As to the second, it would have been for Ms Griffiths to express, directly or by reference to circumstances, how urgently she needed help. She said nothing specific until Mr Franklin telephoned her, when she said that it was alright for the officer to visit on 6 May. There would have been no room for complaint if the call, graded as 3, had led to a visit that evening, it did not need to be graded as 2.

583. The submission about the detail of the call is misplaced; the essential features of the call were adequately taken and recorded, though no doubt it could have been done better, especially once, with hindsight, omissions can be pointed to. As Mr Johnson pointed out, ECHR jurisprudence does not seek to resolve the different and competing considerations at the operational level of for example, time spent and how much information was to be obtained on an initial call, and moving on to other calls, in the absence of some really plain and significant failing, which could have protected life. It was the function of taking and logging information to enable the call taker, dispatcher and others to know and see enough of what the incident was about to know how to respond. There is an obvious need for a line to be drawn between that task and the investigation of the incident on attendance by the officers. The line to my mind was drawn in a reasonably sensible place; other call takers might have pursued aspects more, or less. Ms Moffatt's approach is not flawed in the context of an Article 2 or 3 claim that a duty of protection was breached, even if aspects could have been done better, whether described as operational or systemic. The IPCC interviewer asked questions of Ms Moffatt which could be read as implying criticism, or as probing without any implicit criticism; I know not what was intended. But I am not persuaded by the sequence of question and answers that a breach of the duty of protection has been made out.

584. Mr Bowen also makes the point that Ms Moffatt, and indeed Mr Franklin, were considerably influenced by the tone in which Ms Griffiths spoke to them. I have listened to the recordings of the calls. Her tone is quite even and calm. There is no crying or panic and fear in the voice. Ms Moffatt said that she would have graded the call as 2 if she had thought that Ms Griffiths was vulnerable or in distress such as being tearful, emotional, shouting, or demanding an immediate police presence. Mr Bowen's point is not so much that the appraisal of the tone or language was wrong, but that it was treated as being as significant as it was. There is force in that as a point of criticism of the appraisal of the needs of a caller; it might be misleading as to the gravity of the situation, putting the seemingly calmer at a disadvantage compared to those who, perhaps lacking restraint or stoicism, show fear and tearfulness more or even over readily. However, I consider that tone and language used is plainly relevant to judging how immediate a response is required. If the tone had been distressed, Mr Bowen would I feel have urged its relevance.

585. I accept Mr Johnson's submission that there was nothing in the call to suggest objectively a real and immediate threat to life or of serious assault. Mr McFarlane was not present; he had made no threats to harm her. Ms Griffiths agreed that the police could come the next day, and there was nothing in her language or tone in the second call to suggest that she was covering up such a fear. She did not suggest that she would much rather they visited that evening because she was frightened that Mr McFarlane might do her serious harm.

586. The link which, if the call had been graded 1or 2, would have enabled call taker to see the previous links to Mr McFarlane's involvement with the police on 3 May, should have been available for grade 3 calls; and now was. But that change does not indicate to me any breach of the protective duty. That would pitch the bar too low by a very long way. There was no basis for supposing, on either of the two calls, that Ms Griffiths was in immediate and real danger. I accept that not all calls can be graded 1 or 2, and that not all calls raising fears as here, can meet an immediate response. Besides such

suggestions are not for the judgment of a Court on a human rights protective duty claim. They are issues for the operational decision of the police.

587. Mr Bowen submitted that the general or systemic limb of the duty of protection was breached by training deficiencies: (i) "the lack of any proper on-going training," demonstrated by the fact that after the murder, all the call takers received refresher training; (ii) there was no specific training in how to handle harassment calls, which was then put in place requiring call takers to ask specific questions about the nature of the threats, their form and for how long they had been made; whether the informant was in danger; about any past history of violence; the offender's history including mental issues, who should then be searched on the systems; (iii) what was said to be flawed guidance to "solely focus on voice of caller" in order to determine if they were distressed, which was said to downplay the content of the call or "key indicators of distress", but no references to this supposed guidance were given; it was based in my view on what Ms Moffatt had said; (iv) training was directed to getting call takers to elicit basic information with the expectation that the officer attending would obtain the detail; this too was based on Ms Moffatt's evidence.

588. I accept that the specific questions related to harassment had not existed at the time of the call, but came later, perhaps in response to these events. I also accept that the Operation Communications Support Training, OCST, sheets of August 2008 relating to nuisance calls would not have been of any assistance here, as they were not really directed to this sort of problem. However, I am not persuaded that the mere fact of such a change demonstrates an earlier deficiency of such a nature that it shows a breach of the duty of protection. Some of the issues were covered anyway, though not in the depth in which they might now be covered. The mental state of the harassing person was raised; the unwanted advance was raised, and logged; applying the revised system, there might or might not have been a question about past violence, and the rejected advance might or might not have been seen as an indication of future problems; the specific nature of the threats was partially covered, though there were no explicit threats to Ms Griffiths, rather it was Mr McFarlane's messages, letter and the fact that he had come to her house on the Monday which were frightening Ms Griffiths, and causing her to view the events of Saturday in a more anxious way.

589. Mr Bowen also pointed to the August 2008 OCTS sheets on domestic abuse, among the bullet points of which was "Obtain a 'first account' of what the caller says has occurred (recording it verbatim)", and "Record details of demeanour of victim, suspect and others present and background noise (including shouting, words spoken)".

590. I rather doubt that this call would be properly characterised as a "domestic abuse" call. There is no requirement that the call be taken down verbatim. The requirement relates to "what the caller says has occurred", which implies that there is a specific incident or incidents being described. But that was not really the position which Ms Griffiths was recounting. The events were noted adequately as described. What was missing was the reference to her being "really frightened." The suspect was not there, and there was no background noise. The way in which Mr Griffiths spoke and expressed what she needed from the police, which I take to be her "demeanour", was specifically allowed for by Ms Moffatt. The pleaded particulars do not make allegations specifically about this duty or its breach in the way in which Mr Bowen developed them in his closing submissions.

591. Mr Bowen submitted that the training which Ms Moffatt had was deficient, in that she had had no formal re-training in her 4 ½ years in the job, although she received email updates which she read; some had been longer without retraining according to her IPCC interview. One of those, submitted Mr Bowen, was Ms Meikleham, who had been in the post for 10 years: Ms Meikleham said in her IPCC interview that, after training, and a period of being mentored, she had learnt from her experience doing the job. There is an implication that she had had some subsequent courses, but she could not remember them as they were all so long ago. Ms Moffatt had also said that she had had some computer based training which she found less satisfactory than person to person training. It is unclear whether that relates to initial or subsequent training. Mr Bowen complained at the failure of the Suffolk Police to address this point in evidence; but it was not pleaded. And in context, though it is only a summary, and in the light of the training which Mr Roberts and she refer to in their IPCC interviews, it seems to me that she is probably referring to a form of training after the initial period of training. Nor indeed did Mr Bowen plead the points he raised about the absence of continuing training beyond email updates, nor the significance, if any, of person to person training versus computer based training. Ms Moffatt also said, in relation to these IPCC questions, that she had been monitored by supervisors regularly; she had never been monitored and told that her performance was inadequate or that she should undergo retraining, as they can recommend. These points were an assemblage of issues raised in questions in the IPCC interviews. I see here no adequate basis for a finding of a breach of any aspect of the protective duty, whether categorised as operational or systemic, whatever other value they may have had in relation to improvements to the system. They have not been shown to be failings, and are certainly not strong enough failings, to breach the protective duty. Nor am I satisfied that the issues are objectively be reasonably capable of affecting the outcome of the call.

592. Mr Bowen also alleged in his closing submissions that Ms Moffatt had had no training in identifying emotions other than in her basic training. I do not think that she identified the emotion being expressed wrongly; the real point, which he made in other places, and was pleaded in paragraph 147(x) was that there was no training in risk assessment going beyond the basic information, which recognised that a person might be concealing their true emotion, being calmer than they really felt. There is no evidence of such training. The same point would apply to Mr Franklin. Mr Roberts said in his second IPCC that call takers were trained more to listen to the tone of voice, and were not trained to respond to key words used by a caller.

593. The absence of training in whether the expressed emotion, and the words used, may not reflect the real gravity of the concern and fear is not itself, nor does it contribute to, a systemic or operational failure, even though there may be a basis for improvement and perhaps criticism. It seems to me, in the absence of a clear yardstick by which to measure how call takers were trained in 2009 or should have been made aware of this possibility, that this is not a breach of the protective duty either. The call taker can reasonably expect that a sober adult, who calls the police, with no suspect in the near vicinity, would explain what the problem was, as Ms Griffiths did. She did not say that she could not speak freely, as she did on the occasion to Ms Harpur-Lewis. She did say that she was "really frightened", and described Mr McFarlane as "irrational", with other like descriptions as well, neither of which were recorded in those terms. But whether or not questions can sensibly expose a significant contrast between an apparent but not real calmness, the call taker would expect a visit within 4 hours, where greater

information could be obtained face to face, or else that there would be a second opportunity for a person to express how they truly felt, if, as here, a call were made proposing a later appointment. Besides, it is not clear how she actually was feeling by the time she made the call, in view of her text messages of around that time, and her later response to Mr Franklin. Jessica Griffith's evidence was that she had calmed down. There is no doubt but that Ms Griffiths does sound calm in both phone calls. I did not discern any attempt to disguise her feelings in her manner of speaking. There was, if anything, more of a sense of relief that she was speaking to someone in authority who could help her, and not a sense of unhappiness at the absence of a more rapid response in either call.

594. Mr Bowen submitted that Ms Meikleham failed to allocate resources to the call when they were available. I have already dealt with that: resources could have been allocated if the call had been graded differently or seen as more urgent on either occasion. So, the focus is on the way in which the two calls were handled. That is in fact very much in line with how Ms Meikleham described the situation when Mr Franklin made the call at 21.43. She had a unit she could have used if Ms Griffiths had said anything to raise an alarm.

595. Mr Bowen contended, again in his closing submissions, that Ms Meikleham's actions showed a breach by her of the operational aspect of the protective duty, and by Suffolk Police of the general aspect of the duty. No specific allegation is pleaded against her. It is not enough for the narrative in the pleadings to contain criticisms, which are not contained in the particulars of duty or breach.

596. The criticisms made by Mr Bowen in his closing submissions, which are what he relied on to show a breach of the operational and general duties, drawing on Ms Meikleham's IPCC interview, were many, and designed to show failings by Ms Moffatt. Their purpose was principally to show that the dispatcher was dependent on the information provided by the call taker but also had an obligation to check its grading.

597. Ms Meikleham had seen her main role as dispatcher as ensuring that officers had the information needed to protect them; and to get as much information to hand as she could when sending them. Sometimes it would be clear from the log that the call had been incorrectly graded, for example a 3 should be a 2 because someone might still be at the scene. But I disagree with Mr Bowen that there is anything she said which implied let alone stated that she disagreed, then or later, with the grading of the call by Ms Moffatt, or supported his criticism of Ms Moffatt.

598. Mr Bowen submitted that the grading policy, which including a differentiating feature between grades 2 and 3 as the vulnerability and distress of the caller or victim, breached the general duty. Mr Bowen's criticism of the grading system itself, was that it put property crime such as shoplifting above "calls from a distressed woman informing the police that she is really frightened etc". This is a misrepresentation of both the system and the call.

599. The vulnerability or distress of the caller seems a sensible enough factor on which to judge how urgent a call is, if it does not have the other features placing it into grade 2, even if it has imperfections. His submission again misrepresented the policy and the answers. The policy was not that a person should "only be treated as distressed if they are 'sobbing down the phone wanting the police' or 'somebody who is clearly upset.'"

The policy does not define or give illustrations of what constitutes distress or vulnerability. I am not surprised about that in view of the range of circumstances which the call taker has to deal with and assess. Ms Meikleham gave what she described as examples of what she would treat as distressed. Her first example is stronger but "clearly upset" seems to be quite apt. The call would have been graded 2 if the caller had been assessed as vulnerable or distressed, according to the policy.

600. I have dealt with the criticism of the omission from the log of Ms Griffiths saying that she was "really frightened," and the use of the words" very concerned as he knows where [she] lives and her children." The dispatcher did not have that precise language, but she had enough to convey the essence of the point. And I doubt that using the precise words could have made any difference to the assessment of vulnerability or distress, particularly in the light of the manner in which Ms Griffiths spoke, which the call taker obviously heard and judged in accepting the grading, and in the light of the later call by Mr Franklin. Ms Griffiths did not come across as clearly upset to Ms Moffatt, and that is not how the calls sound to me either. Mr Bowen submitted that Ms Griffiths was "clearly in distress"; I disagree.

601. Mr Bowen submitted that Ms Meikleham had relied on the absence of a clear threat as a reason for not treating Ms Griffith's call as urgent, although she had also accepted that it was the caller's perception of the incident which mattered. He asserted that both Ms Meikleham and Ms Moffatt had accepted that there was a need for call takers "to probe a little and asks questions themselves to obtain the necessary information." No references were given, and I did not read their interviews in the way Mr Bowen implies they accepted. Of course, they had to ask questions to elicit information, but the question is only what necessary information did Ms Moffatt fail to elicit, if any, or enter on the log. Ms Meikleham said that she would have asked about the letter, but I see no breach of a protective duty in Ms Moffatt not doing so, or not asking about the content of the texts; Ms Griffiths did not say that they contained a threat against her or her children, and the nature of the letter is not easy to convey, although Mr Bowen's language of "creepy" is not wrong; it is an oddly disturbing letter, especially as hand delivered to her home, even though not actually expressly threatening to Ms Griffiths; it needs to be read in full to gauge how strongly Mr McFarlane was feeling about his perceived rejection.

602. What Ms Meikleham described as the role of that caller's perception was simply that if they described threats or concerns that the suspect was going to do something, the call takers would accept the way in which the caller saw it, including urgency, rather than engage in some analysis of the situation for themselves, as I understand the gist of what Ms Meikleham was saying. The caller's perception was relevant because there were so many calls reporting harassment via email, text and social media, and they dealt with them all individually. The call was not seen by Ms Moffatt as about the risk that Mr McFarlane would commit suicide; that is not really the nature of the call at all. Ms Griffiths was not asking the police to find Mr McFarlane and protect him from suicide; she was concerned about him for herself and the children. Ms Meikleham saw threats in the texts, not "actual direct threats" to Ms Griffiths of her children, but by Mr McFarlane to kill himself. They were not actual direct threats to her; the nature of her concern seems to have been misunderstood by Ms Meikleham to some degree, though not because the position is not clear on the log. Ms Meikleham did not consider that the letter was alarming to Ms Griffiths, as she did not state its content and had felt no

need on its receipt to ring the police. Any direct threat, she felt, would have been mentioned by Ms Griffiths, and if mentioned, it would have been logged.

603. I accept that if a direct threat had been reported by Ms Griffiths, it should have been logged, but I think that the gist of the call was accurate, though, for grading; and conveyed enough for the dispatcher to know how to handle it. It would then have received a higher priority, graded 3 or not, depending on the threat, but that does not mean that it would have been resourced that night. I am not prepared to hold that the second call would not have been made, and Ms Griffiths would obviously have reacted in the same way to the second. Nor would it have affected any view formed by Ms Meikleham of the grading; it is open to a dispatcher to alter grading but it is not their task to review, and check it, which would be more for the supervisor. I do not think that Ms Meikleham's misunderstanding of why Ms Griffiths was very concerned about Mr McFarlane, and his knowing where they lived, not a pleaded point, affected her allocation of resources. Crucial to that was the response of Ms Griffiths to the second call.

604. Mr Bowen put it this way: though there was no reference to a specific threat, "everything that she [Ms Griffiths] was saying was redolent of physical risk TO HIM AND TO HER". (Emphasis in original). This slightly strange submission may seek to further a *Bljakaj* based causation argument, that the police, fearing the risk of his suicide, could have found him and prevented the murder, regardless of the risk to her, by trying to prevent him committing suicide.

605. HER: Ms Griffiths was not ringing, at least not primarily, about a fear that Mr McFarlane would commit suicide. There is an undercurrent of fear about what he might do, but it is not spelt out: it suggests a fear of further contact, including that he might come round, a component of which may have been a fear of his committing suicide. Her real fear was not so much of physical assault either, but of harassment and stalking, which aptly describes the course of conduct he appeared to have embarked upon by then. It does not exclude a repetition of conduct she then had come to describe to her friends as sexual assault, but does not refer to a fear of it in those terms, which would have been the obvious fear to express if that was what she felt. I see no justification for finding breach of the protective duty in the way the call was logged, graded and responded to based on that submission so far as Ms Griffiths is concerned.

606. HIM: Ms Meikleham may have read the log as referring to a risk to Mr McFarlane committing suicide rather than a risk to Ms Griffiths, but if that is the basis for the submission in relation to him, and I can see no other relevance to the claim against the Suffolk Police, I disagree. Ms Griffiths was not expressing concern really about protecting Mr McFarlane from committing suicide at this stage; her concern was that she did not want him to come round for whatever purpose he might have had. Ms Meikleham did not see the call as so concerned for Mr McFarlane either that she took steps to contact him without needing an officer to go to see Ms Griffths, for example by contacting the hospital. I see no breach of a protective duty owed to Mr McFarlane to prevent the risk of his suicide.

607. Mr Bowen also submitted that the second call, from Mr Franklin at 21.43 did not tell Ms Griffiths that there were resources which could come out that night if the situation were urgent enough or if she was fearful and distressed enough or if there had been a further call, threatening her. It is correct that that was not part of the conversation with

her. It was, submitted Mr Bowen, for Ms Meikleham to tell Mr Franklin to let Ms Griffiths know that that was the position. However, Ms Griffiths was not told that there were no resources who could go to see her that night. The implication is that there were but they would rather not do that because of other commitments, and asked if it would be possible for them to come tomorrow, to which she relied that that would be fine. There were no protests, grumbles, statements of fear and anxiety. I see no breach of any aspect of the protective duty in that call. I see no basis for holding that it would be a breach of the protective duty not to conduct the telephone conversation in the language that they could come that night (implied in what Mr Franklin did say), if that were really necessary, or if there had been further threats or contact, urgency or unspoken distress, but that it would be more convenient if they could come the next day. Nor do I see that that would have elicited a different response from Ms Griffiths. I am not clear where this was pleaded.

608. Again, Mr Bowen placed reliance on Ms Meikleham's IPCC interview. She said that the call was a courtesy call to see if Ms Griffiths still wanted to see someone that night, and that would have enabled her to update the police on anything which had happened which would make their attendance more urgent. Mr Franklin did not say that they had no resources available but that they did not have many staff on that night, asking if it was possible for them to come the next day. It was not a fait accompli. She was entitled to expect him to know what questions to ask as he was an experienced call taker; what was asked was down to the individual call taker. If she had asked for someone to go out that evening, the evidence shows that that would have been arranged. On the material Ms Griffiths gave to the Suffolk Police, there was no breach of any protective duty, and I find that there was no failure in relation to the information which Ms Griffiths had but which she did not give over the telephone.

609. Ms Meikleham's suggestion that she would have asked if there had been any further contact or actual threats is not a suggestion that there was a failing in Mr Franklin's not doing so. Mr Bowen submitted, by reference to his chronology that had Mr Franklin asked about it, Ms Griffiths would have referred to the events in his chronology, showing that things were escalating. But Ms Griffiths could have referred to any such events, had they occurred, without any specific inquiry, if she thought that they were significant. In any event, Mr Bowen's chronology was wrong in relation to the call he put at 17.57, when it was accepted to be at 15.57, though his closing submissions did not reflect that. There was one further, anonymous, contact at 17.57, which Ms Griffiths thought was from Mr McFarlane because it contained intimate information which only he and she knew about; the text was sent to other people as well. This was not mentioned by her; it could have been if thought significant. All the other events are of Ms Griffiths being in contact with her friends and expressing her concerns.

610. Mr Bowen submitted that had he been able to question Ms Meikleham, he would have asked whether, if the information which he described as "key" had been logged, she would have thought that the call was correctly graded, or should have been regraded by her. He would have asked Ms Moffatt whether she still thought that the grading was correct, albeit that she knew the information from the call which was not logged. He asked me to infer that had that information been logged, the call would have been graded 2 at 17.56 or regraded by Ms Meikleham between 19.00 when she came on duty or by 21.30.

611. Mr Bowen submitted that I should resolve that factual issue and others in favour of the Claimants in the light of the way in which the Suffolk Police, first, did not call Ms Moffatt and Mr Franklin, who were the call takers or Ms Cox who was the first dispatcher, and then withdrew reliance at the outset of the trial on the witness statements of Mr Roberts and Ms Meikleham, which it had served. He submitted that this prevented him cross-examining the latter two, and the Suffolk Police had taken the deliberate decision not to provide the clarification or corroboration for its case which they could have provided.

612. For this purpose, he relied on *Lewis v Eliades (No.4*) [2005] EWCA Civ 1637 at [32-33]. This case is not remotely akin to that; the first defendant was disbelieved; the defence then depended on the evidence of the defendant trustees, to counter the claim which without their defence would fail. There was no evidence, and none in circumstances where their conduct clearly required explaining.

613. I permitted Mr Johnson to reply in writing to this after Mr Bowen's closing. It had been made clear to the Claimants' solicitors on 11 October 2017 that the Suffolk Police were considering whether they needed to call oral evidence, and asked whether any had made statements which were controversial, so the Suffolk Police could decide whether in fact any should be called; the reply had been that all were required without any detail as to the areas of controversy in their statements. The Suffolk Police skeleton argument made clear that none were to be called; the trial timetable circulated by Mr Moon provided no space for them as Mr Johnson thought that none were necessary. Mr Bowen replied that witness summonses had been issued, and when they had been proofed, time would have to be found for those he wanted. His opening submissions and approach during trial identified no factual issue upon which their evidence would be required.

614. I accept that factual account. I am not prepared to adopt Mr Bowen's approach. There was no application for a witness summons for any of them. The Claimants did nothing about this evidence until they made submissions about drawing adverse inferences. They may have decided that tactically this was the best they could make of the situation. Calling them would have placed the Claimants in the awkward position of having to take in chief evidence from witnesses they wanted to cross-examine, even if they had been co-operative in answering questions for the purpose of a witness statement beyond what was already available. Besides, I cannot see Ms Meikleham, Ms Moffatt or Mr Franklin as likely co-operative witnesses, in view of the issues about what they did, which proofing them was likely to reveal. So that seems all rather pre-trial posturing by the Claimants.

615. But crucially, I see no obligation on the Suffolk Police to call witnesses for cross-examination if they do not rely on their statements, or a basis for drawing adverse inferences if they do not call them. After all, the Claimants had the IPCC interviews of all the police witnesses. Nor had the Claimants identified before the trial, and indeed it was not easy to identify from Mr Bowen's submissions, though I have tried to do so, what issue of fact the Claimants actually wished to raise. If it related to resources available on 5 May in the evening, Mr Johnson made the relevant concession. Although

such a criticism is made en passant in the narrative in the Particulars of Claim, no such allegation is made in the specific Particulars of the breach of Article 2, which is where it ought to appear so that the parties know the case actually pursued against them.

616. As I have said, I do not regard the omitted information as key, including the comment that Ms Griffiths was "really frightened" in the light of what else she said, nor what she had to say about Mr McFarlane being "irrational" and "flipping out". There was no breach of any aspect of the protective duty in the way the call was logged and graded. But it is clear that Ms Moffatt knew what Ms Griffiths had said, albeit not logging all if it; I see no basis upon which she would have regraded the call. I do not think that Ms Meikleham would have regraded it in the light of what she had to say about the importance of the absence of threats to Ms Griffiths or her children. The absence of questions about the letter could not have altered that because she knew that there were no such questions, and took the view that the letter could not contain such threats, and indeed it did not, since Ms Griffiths would otherwise have told Ms Moffatt about them, and that would have been logged. I accept that Ms Meikleham said, and it is clearly right, that the dispatchers trusted the call takers to log the call as completely and accurately as possible. But she could also ask them to call back to ask the caller further questions, although that did not happen here, despite her comment that she, as a call taker, would have asked about the letter. She would not usually ask the call taker for further information, and there is no suggestion that that had happened here either.

617. I am satisfied that there was no basis upon which I can find a breach of any aspect of the Article 2 or 3 protective duty, operational or systemic, by the Suffolk Police. As to the operational aspect, this turns on the way in which the calls were logged, graded and responded to. I have dealt with all the aspects which Mr Bowen raised, in my consideration of the calls, commenting on them. Neither separately nor together can they come close to showing a breach. I accept that the *Osman* test is not readily met. Ms Meikleham did misread, on the basis of her IPCC interview, at least in part, what Ms Griffiths' fear was about, though the point was not expressly pleaded nor clearly raised in Mr Bowen's closing beyond his invitation to me to read the whole of her interview, dense though it was. But that is not itself a breach of an operational duty, and it is clear that it did not affect the original grading of the call or how the call was logged. I am satisfied that it did not affect the response, especially in the light of the second call. Beyond that, Mr Bowen's many criticisms do not begin to show that the Suffolk Police had any knowledge, or ought to have had, of any risk to Ms Griffiths of serious physical harm. There was no failure to take a step which they ought to have done.

618. I am also satisfied that, taking the general duty as extending to the points raised by Mr Bowen, since they are in many ways aspects of the operational duties, there was no breach of that either in relation to Articles 2 or 3. Criticisms can be made of the training, in extent and in the way harassment calls were pursued by the call takers and in which a calmness of tone could have been given overmuch significance. I am not in a position to judge the extent to which those general criticisms were justified; the fact that there have been changes suggests that they have some force. But the matters criticised do not begin to amount to a breach of a human rights protective duty, however characterised as systemic or general or operational, nor does the fact that changes were made.

619. The level of failure in operation or in a system necessary to constitute a breach of the protective duties in either Articles 2 or 3 is far higher than the level of failures here,

such as they might be. I consider that Mr Johnson is right that *Van Colle* and *Osman* are far more persistent and plain a set of failures than here, and yet did not amount to a breach. The failings, such as they might be, do not amount to any breach of Ms Griffiths' human rights.

620. I also conclude that there was clearly a risk of harassment and stalking, and of unwanted presence at Ms Griffiths' home of which the Suffolk Police knew on 5 May. But there was nothing to suggest that it was an imminent risk, against which measures were required that night. So if there were a protective duty in relation to such a risk, which could arise under Article 8, the Suffolk Police did not breach it in their response, by grading the call as 3, and ringing back at 21.43 and acting in reliance upon what Ms Griffiths said. I do not accept that a breach of Article 8 can be raised where Articles 2 and 3 were not breached, nor that Strasbourg jurisprudence permits a breach of Articles 2 or 3 to be based on a failure to take steps which an Article 8 duty would have required, where no breach of Articles 2 or 3 was or should have been foreseen.

What would have happened if the Suffolk Police had attended on 5 May?

621. Although this issue does not arise on the conclusions which I have reached, I shall express my judgment in relation to what would have happened if I am wrong, and on the legal issue which could then arise.

622. Mr Bowen submitted that had the police gone out to Ms Griffiths on 5 May, they would have read the letter and the texts which, with her descriptions of his behaviour, and perhaps showing anxiety and distress would have given them a much clearer picture of her fears and problems. I accept that a more serious picture would have emerged from the attendance of the police. I do not think that Ms Griffiths would have been explaining more than that she was being harassed or stalked and was frightened for herself and her children. But there were no specific threats or actions indicating something more serious or immediate.

623. Mr Johnson accepted that officers, on attending Ms Griffiths, would have been made aware of the failed suicide attempt, but not that McFarlane would have had access to a bolt gun or of a basis of a real threat to Ms Griffiths' life or serious assault in breach of Article 3. The text messages and the letter, which he accepted Ms Griffiths would have shown to officers, did not contain such a threat or evidence such a risk. This is borne out by the fact that the action Mr Bowen said was required could have been a harassment warning. I agree with that. So clearly, even then, no risk to life or of inhuman or degrading treatment was or ought to have been foreseen. This was not a step realistically to be taken to protect against a risk to life or of inhuman or degrading treatment.

624. Mr Johnson submitted the officers might not have thought it necessary or possible to track down Mr McFarlane that night. I disagree. I consider that the material, with the background of the recent suicide attempt, would have led to them seeking Mr McFarlane's whereabouts, and contact would have been made with the Crisis Team. There would have been attempts to contact him on his mobile, by both the Crisis Team and by the police. The attempt to issue a harassment warning would have been made. He might have been arrested under the Protection from Harassment Act. They might or might not have succeeded in contacting him and in giving him a harassment warning,

if they found him. It is possible that the powers in s136 MHA could have been used, but that very much depends on circumstances on which there is no evidence.

625. I do not know what protection possibilities the police would have suggested, if any, at the house or by way of moving Ms Griffiths and her children out. I think it very unlikely that they would have offered any police presence there, or more than perhaps a patrol car drive by. I think it unlikely that at that hour, and with children, and the limited nature of the risk, that they would have been advised to move out to a friend. There might have been a suggestion that friends be asked if they could come and stay for reassurance. After all, the threat of significant physical violence would scarcely have been on their mind; there was the risk of his coming round, and making further advances, or expressing anger, or even trying to commit suicide there; but there was no suggestion at any stage of any threats of violence towards her, beyond the unwanted advances. And it is difficult to see that a night time visit from Mr McFarlane for the purposes of an unwanted advance as had occurred before, would have been foreseen and countered directly. Her description of how those occurred, their frequency, the degree of unwanted contact, their duration, how they ended, and her reaction to them at the time could not have indicated to the police that they foreshadowed any significant violence.

626. The police reaction to what they found out on attendance however would not have been that there was a threat of physical violence amounting to a breach of Articles 2 or 3. The steps I have referred to would not have been in response to such a threat being reasonably foreseeable. There is nothing in the submissions put forward by Mr Bowen based on his analysis of the IPCC interviews that begins to show that the Suffolk Police were or should have been aware of such a threat. They would not have been acting to prevent a breach of those rights but in response to the risk of harassment and stalking.

627. I regard it as speculative as to whether such steps would have prevented the murder. If they had done so, it would have been fortuitous rather than intentional. However, objectively judged, they might have prevented the murder.

628. Where would that leave the human rights claim? The argument is that the Suffolk Police would and should have taken steps in response to a lesser foreseen threat which coincidentally would have averted the larger unforeseen threat. In my judgment, that would not be a basis upon which, whatever might be the position at common law, the Strasbourg jurisprudence would hold that a breach of Articles 2 or 3 had occurred, applying the *Osman* test. The breach of those Articles has to involve a failure of protection against the risks to which those Articles relate.

The alternative basis for the human rights claim

629. This leads on to the alternative basis for the human rights claim: *Bljakaj*. I have discussed this case in the claim against the NHS Trust. Mr Bowen submitted that *Bljakaj* showed that, if a duty were owed by the Suffolk Police to Mr McFarlane at 5 May, as a suicide risk, and they failed to take reasonable steps to prevent it which would have interrupted the sequence of events leading to the murder of Ms Griffiths, they were in breach of a duty to her. This claim is not pleaded, even allowing for the somewhat diffuse pleadings. It was not pleaded that the response to the first or second call ought to have been contact with the Crisis Team as part of a protective duty to Mr McFarlane. The reference to contact with the Crisis Team, at paragraph 143 (v) of the Particulars of Claim, relates to the protection of Ms Griffiths and her children from Mr McFarlane.

The pleadings affect the evidence to be called. I deal with the issue so far as I can without accepting that it is properly before me.

630. First, as explained in relation to the NHS Trust case, I think that this approach is too simplistic a reading of [129] of *Bljakaj,* upon which Mr Bowen's argument depended.

631. Second, the facts which obliged the police in that case to respond to the suicide threat were far stronger in the circumstances there; and here, the police knew that Mr McFarlane been assessed but not sectioned. I do not think that what Ms Griffiths told them about Mr McFarlane should have led them to see him as a focus of risk to himself. This was not the purpose of the call, and was not seen as its purpose by Ms Moffatt, nor was it logged as such. The call itself did not show such a risk, whether or not that was the purpose of the call. I accept that Ms Meikleham in her IPCC interview, asked whether she was focussing more on Mr McFarlane than on Ms Griffiths, said that she had seen him as a suicide risk, but I do not consider that that is remotely enough to show that the Suffolk Police failed in some duty to him in its response to the call. This was not said to be an urgent or imminent risk which required immediate action, on any view. And the response to the second call did not suggest that it was. The response was that matters could be dealt with the next day.

632. I rather doubt whether, had the police attended, they would or should have taken the view that Mr McFarlane was at risk of suicide, from reading the letter and texts. But had they attended, they would and should have contacted the Crisis Team in order to find his whereabouts as part of protecting Ms Griffiths from the risk of stalking and harassment.

633. The risk was not to the general public either. If there was a risk to someone other than Mr McFarlane, the risk was to her; that was what she was raising, although of a risk at a low level of interference. I judge that to hold that a duty arose to Mr McFarlane, was breached and on that basis the duty to Ms Griffiths was breached, would require facts far stronger than here, even on Mr Bowen's submission as to the significance of [129] of *Bljakaj*. *Bljakaj* is about the response to the foreseeable risk to the general public of serious violence from a mentally unstable man. This risk should have been averted, protecting the life of the unidentifiable victim, by measures to deal with him and his instability, which could and should have been taken. Where the risk is to the general public, the victims are unknowable, protective measures have to be directed at the threatening person, rather than erected around the unknowable array of victims. The existence and breach of any duty to Ms Griffiths should be measured against how the police reacted to what they knew or ought to have known in relation to that.

634. Accordingly, the claim against the Suffolk Police is dismissed.