

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2026] SCGLA104

GLW-A154-24

JUDGMENT OF SHERIFF S. REID

in the cause

JOSEPH HENDERSON

Pursuer

against

THE SCOTTISH MINISTERS

Defender

**Pursuer: Ms Dewar, Advocate, Mellicks, Glasgow
Defender: Ms Turner, Anderson Strathern, Edinburgh**

Glasgow 9 September 2016

Summary

[1] In this ordinary action, the pursuer, a life prisoner, seeks damages from the Scottish Ministers, representing the Scottish Prison Service (“SPS”), for an alleged data protection breach. The pursuer complains that a Parole Board document intended for him was, instead, erroneously delivered by the SPS to another prisoner, in breach of (i) the pursuer’s right to data confidentiality and security under Regulation (EU) 2016/679 of the European Parliament and of the Council (“the UK GDPR”); (ii) the pursuer’s right to have his data processed lawfully and fairly, in terms of section 2(1) of the Data Protection Act 2018 (“the 2018 Act”); and (iii) the pursuer’s Convention right to respect for his private life in terms of Article 8, ECHR.

[2] The pursuer alleges that the wrongly delivered document was the detailed “minute” of a Parole Board hearing. The minute contained sensitive personal information about, among other things, the pursuer’s criminal history, health, and previous risk assessments. He claims to have suffered psychiatric injury and distress as a consequence of the wrongful disclosure and his resulting fear of reprisal within the prison environment.

[3] There is no dispute that a document intended for the pursuer was indeed wrongly delivered to another prisoner.

[4] However, the defenders insist that the mis-delivered document was, in fact, merely a “decision letter” issued immediately following the pursuer’s Parole Board hearing, not the minute that would commonly follow later, still less the full “dossier” that would have been delivered to the prisoner in advance of the hearing. The defenders contend that the decision letter contained no personal information of any sensitivity.

[5] Two key issues arise for determination. First, what document was wrongly delivered? Was it the Parole Board dossier, or the minute, or the decision letter? Second, did the pursuer suffer any “damage” as a result of the averred data protection breach?

[6] Regrettably, much of the evidence was unsatisfactory.

[7] The pursuer’s position has fluctuated over the years. When the error was first discovered, he told his mother that it was the decision letter that had been wrongly delivered to another prisoner. He maintained that position in his formal written complaint to SPS just a few days later. But in his initial writ, lodged about 18 months after the event, the pursuer asserted that it was the entire dossier that had been wrongly delivered. He repeated that assertion to the medical expert instructed by his own agents to examine the pursuer and to prepare a report for the court. Then, in averment, the pursuer’s position changed again: first, he adjusted to aver that the “decision letter” (not the dossier) had been

erroneously divulged; then, later, he adjusted to aver that it was the “minute” (not the decision letter that had been wrongly disclosed. At proof, the pursuer insisted that it was the “minute” of the Parole Board hearing that had been wrongly delivered to another prisoner. Interestingly, also at proof, the pursuer’s key witness insisted that it was the full “dossier” that was wrongly delivered. Confusion was heaped upon confusion. In fairness, the SPS witnesses were not much better.

[8] Seeking refuge within the contemporaneous documentation, I have concluded that it was the decision letter that was wrongly delivered by SPS, not the minute or the dossier. The decision letter contains nothing of any sensitivity. In any event, it is not the document (or data protection breach) on which this action is founded.

[9] Further, the pursuer has failed to prove that he suffered any loss, injury or damage (material or non-material) as a consequence of the averred breach. He claimed to have suffered psychiatric injury and distress. I rejected this tranche of evidence as neither credible nor reliable. Accordingly, the action fails.

[10] I set out my reasoning below, following broadly the new style of judgment shortly to come into force (Act of Sederunt (Ordinary Cause Rules 1993 Amendment) (Judgments) 2026 (SSI 2026/246)).

The pleadings

[11] In his writ the pursuer seeks payment of £30,000 from the defenders for loss, injury and damage allegedly suffered by him as a result of the alleged breach by SPS of the UK GDPR, the 2018 Act, Article 8, ECHR, and the Human Rights Act 1998, section 6. (In closing submissions, the claim was restricted to £15,000.)

[12] He avers that, in or around August 2022, while he was serving a life sentence of imprisonment, a “minute” of his Parole Board hearing on 22 August 2022 was erroneously delivered by SPS to another prisoner who happened to share the pursuer’s surname. The pursuer avers that the other prisoner then shared the contents of the minute with “the prison population”. The pursuer avers that the minute contained private, sensitive and confidential information including information regarding the pursuer’s offences, health status and previous risk assessments. He complains of breaches of the UK GDPR, 2018 Act, and Article 8, ECHR.

[13] As a result of the data protection breach, the pursuer claims to have suffered “great distress”, feelings of “anger and anxiety”, fear for his safety and well-being, and psychiatric injury in the form of an adjustment disorder. He alleges that he has been subject to “adverse behaviour by the prison community” which is “known to victimise those who have been convicted for offences relating to violence against women”. He avers that “the vast majority of the prison population behaved in a threatening manner towards” him; they “developed a wolf pack mentality” against him; they “heckled” him and would “collectively shout names” at him, such as “beast” and “monster”. This was said to be a regular occurrence from August 2022 until the pursuer left HMP Low Moss in February 2023. He avers that he felt humiliated and feared for his safety. He claims to have been punched by another inmate in around December 2022; he claims he “received several threats of violence” from “several” inmates; he claims his transfer to another prison was expedited as a result of the alleged abuse.

[14] For their part, the defenders admit in averment that an envelope intended for the pursuer was erroneously delivered to another prisoner (who had the same surname). However, the defenders aver that the envelope contained “a routine parole decision letter”

relating to the 22 August 2022 hearing. The defenders aver that the decision letter did not contain any sensitive information about the pursuer (specifically, no information regarding the pursuer's offences, health status or previous risk assessments).

The evidence

[15] Over 4 days, I heard evidence from eight witnesses for the pursuer: (i) Barry Hay, a prison officer; (ii) Caireen Kennedy, social worker; (iii) Darren Eadie, a fellow prisoner; (iv) Jennifer Harkins, a social worker; (v) Donald Hope, a prison officer; (vi) Dr James Harrison, a consultant psychiatrist; (vii) Karen Henderson, the pursuer's mother; and (viii) Kieran Kelly, a former inmate. The pursuer also testified.

[16] The defenders called one witness: Nicole Gordon, an SPS employee.

[17] Two joint minutes of admission were lodged.

Barry Hay

[18] Mr Hay, a senior employee within SPS, was employed as a residential unit manager at HMP Low Moss in August/September 2022. He has known the pursuer for around 10 years in various roles. He testified the pursuer had approached him to complain that "parole letters for him" had been sent to the wrong individuals within the prison. Mr Hay never saw any of these documents. He described the pursuer's demeanour at the time as "annoyed". Mr Hay reported the matter to the prison's "Information Manager" (Dawn Swanson); he gained the impression that Ms Swanson was already aware of the data breach; Mr Hay had no further involvement in the matter. Mr Hay testified that he later heard that it was "only a parole intimation letter" that had been wrongly delivered to another prisoner (named David Henderson) with the result that such information as had

been released was “minimal”. Mr Hay had “no idea” whether the pursuer was ever offered or given an apology by SPS. He denied that he had personally apologised to the pursuer.

Caireen Kennedy

[19] Ms Kennedy, now a social worker employed by North Lanarkshire Council, was the pursuer’s community-based social worker in around August/September 2022. She spoke to contemporaneous social work records made by her of communications with the pursuer and his mother (Karen Henderson) on 2 September and 14 October 2022 (items 5/6/13 & 14 of process). The entry dated 2 September 2022 records an incoming telephone call to Ms Kennedy from the pursuer’s mother in which Ms Henderson is recorded as having advised Ms Kennedy that the pursuer’s “parole decision letter” had been issued to the wrong prisoner; that since this had happened “yesterday” (ie 1 September 2022), the pursuer had been “verbally abused” by other inmates, using terms such as “Boston strangler” and “beast”; that the pursuer, though he has “escalated” matters within SPS, has “refused a move or protection” and that the pursuer has discussed and “will progress” with his lawyer a GDPR complaint. The entry dated 14 October 2022 records a visit by Ms Kennedy to the pursuer (with a colleague, Jennifer Harkins), the purpose of which was to “discuss parole decision minute” and “GDPR concerns”, as well as his ongoing Parole Board application. Ms Kennedy testified that “to this day” she did not know whether it was the decision letter or the minute that had been wrongly delivered. She spoke to the pursuer’s “self-report” was that he was being targeted verbally; he had advised her of one “incident of violence” (with the perpetrator being under the influence of a substance, so the pursuer was unclear if it was a random attack); she testified that the pursuer had complained to her that the alleged data breach had had a detrimental impact on his mental

health, provoking paranoia; she testified that he appeared emotional at the meeting with her on 14 October 2022 and concerned about his safety.

[20] In cross-examination, Ms Kennedy acknowledged that a parole “decision letter” is “very different” from a parole “minute”; there was “no comparison” between the two. She conceded that “automatically in my head” she “believed” that the minute had been wrongly delivered but that later she thought that it could have been either the decision letter or the minute. She did not know which one had actually been wrongly delivered (or which one the pursuer was complaining about). She could not say if her entry dated 2 September 2022 in the social work records was a verbatim account of her discussion with the Mrs Henderson. She considered that the pursuer had “a good understanding of the parole process” and understood the relevant terminology, having attended previous Parole Board hearings.

[21] In re-examination, she testified that, in her experience, a parole decision letter would have been issued within 24 hours of the Parole Board hearing on 22 August 2022 but that a minute could take “anywhere from weeks up to a month” to be issued to the prisoner. She also stated that the reference in her entry in the social work records dated 14 October 2022 to a full “parole minute” was “just my assumption” based on the “level of concern” she detected from the pursuer’s mother in her phone call of 2 September 2022.

Joseph Henderson

[22] Mr Henderson, a life prisoner, spoke of his Parole Board experience from 2018 onwards following expiry of the 12-year punishment part of his life sentence for murder. He described his knowledge of the “full dossier” (obtained by prisoners prior to a Parole Board hearing); of the decision letter or “intimation of decision letter” received within 48 hours of

the Parole Board hearing; and of the “minute” received, he said, about “10 to 14 working days” after the Parole Board hearing, which contains the “more detailed recommendations” of the Board. He testified that after the Parole Board hearing on 22 August 2022 he did not initially receive a decision letter; he made enquiries of a prison officer (Donald Hope); he was then approached by “somebody” in the prison gym and was told that “some paperwork” was “flying about on level 3”. He testified that a prisoner called Darren Eadie had disclosed to him that “my parole decision” was “on level 3”; it was “about half a dozen pages”; it was his “detailed parole letter”; it was “the detailed minute that comes after”. He testified that he felt terrified, paranoid, scared, “very very uncomfortable”, isolated, jumpy; that he became “scared of every single prisoner”; but said that he was “fortunate” as he had “become friends with persons in authority who stepped in and said: ‘No, he’s not to be touched’.” He insisted that the missing documentation comprised “the detailed minutes of the Parole Board decision” from 22 August 2022. Mr Henderson testified that he approached another prison officer (Barry Hay) and explained that his “papers” had been sent to the wrong prisoner (namely, to David Henderson); Mr Hay told the pursuer to “leave it with me”; Mr Hay then went to the office, retrieved the papers, apologised to the pursuer and then Mr Hay (the prison officer) “put in a complaint for [the pursuer]” (though he could then not recall whether it was Mr Hay or another prison officer, Donald Hope, who had submitted the complaint for him). He could not recall precisely when all this had happened. He testified that he had sent the wrongly delivered envelope and its contents to his solicitor but that his solicitor had misplaced them in the course of an office move; but he then corrected himself and explained that he had sent the envelope and its contents to his mother by recorded delivery. He identified item 5/2/7 of process (the minute) as the document that had been mis-delivered and that “the whole jail ended up seeing”. He

claimed to have been attacked twice as a result: once in an incident which was caught on camera; the second time when a prisoner “jumped on my head”. He testified that his “mental health went through the roof”; he claimed to have been verbally abused; he was called names such as “Boston strangler” and “monster”; he was assaulted; he would have been in further danger were it not for certain prisoners protecting him; that he was offered a transfer to the “protection wing” but declined it. The pursuer spoke to his formal written complaint to the SPS dated 4 September 2022 (item 6/1/2 of process), completed on his behalf by, and at the instigation of, his fellow prisoner, Darren Eadie, and subsequent communications (item 5/5, pages 401 & 404 of process). He acknowledged that his complaint form records that his “parole decision” had been mistakenly handed to another prisoner. When asked to explain what he meant in the complaint form by his “parole decision”, the pursuer replied: “the document from the parole board– the decision”. He spoke to his medical records (item 5/5/12 of process). He acknowledged having suffered from depression and mental ill-health since 2004/2005.

[23] In cross-examination he acknowledged familiarity, both before and after the August 2022 hearing, with Parole Board terminology. Inconsistencies in his description of the mis-delivered document were acknowledged by him but variously explained as follows: he had “mistakenly described” the mis-delivered document in the writ; he had given “everything” to his solicitors, but that the misdescription in his initial writ had been “an error” on his part and “just a mistake of words”; with his medical expert, he had “just got the words mixed up”; that, in the course of adjustment of the pleadings, he had meant to describe the document as the “parole board minute”. He claimed to have been consistent. He acknowledged that the minute of a Parole Board hearing on 11 January 2023 made no reference to the pursuer having suffered any verbal abuse, or physical assault, or any mental

health difficulties (on the contrary, he was said to have “coped well”), as a result of the data protection breach now complained of. He explained this omission on the basis that he had been attacked later in 2023 (dates unknown) and had not disclosed everything to SPS because he did not want to be “known as a grass” within the prison. He claimed to have been assaulted between one and two weeks after the data protection breach; one assault was “caught on camera”. He acknowledged that from August 2022 until 8 February 2023 (when he transferred to another prison) he had not reported, or sought any medical attention concerning, any alleged assault, or verbal abuse, nor had he sought any advice regarding his mental health. He explained this omission on the basis that there was a “nine month waiting list”; he had adequate coping mechanisms to deal with the matters himself; and he did not need to see a doctor every time something happens. He acknowledged that there was no documented observation or report in his medical records of any deterioration in his mental health after the alleged data breach. He confirmed he was employed as a “passman” which allowed him to get “out and about” more than other prisoners. He accepted that his decision letter contained no personal data concerning his physical or mental health or criminal offending.

Darren Eadie

[24] Mr Eadie is a prisoner within HMP Low Moss, serving a life sentence of imprisonment for murder. He adopted the terms of his affidavit dated 15 November 2024. In his affidavit he confirmed having become friendly with the pursuer during their time at HMP Low Moss. He had learned that the pursuer’s “parole documents” had mistakenly been given to another prisoner with the same surname as that of the pursuer. When he had been working in the prison gym, he had seen the wrongly delivered documentation being

passed around among about five to ten prisoners; that the document was then passed to Mr Eadie; that it contained personal and sensitive material about the pursuer's index offence, parole board hearing, and other details; that the document was printed on white paper with the letters "SPS" at the top; that it contained blue boxes; that it appeared that copies had been made of it; that the "parole documentation" then "spread throughout the prison" and was not limited to the prison gym; that, later that morning, before lunch, he privately alerted the pursuer about the situation; that Mr Eadie had then torn up the document he had received and "instructed" others to do likewise; Mr Eadie then informed the pursuer that "sensitive information about his crime" was circulating within the prison; he "warned" the pursuer that other prisoners were planning on attacking him; that the pursuer was "terrified"; that Mr Eadie advised the pursuer to file a complaint with the prison authorities because their data breach had "put him in danger"; that the pursuer was verbally abused and, on one occasion, attacked, as a result of the disclosure, with an assailant punching the pursuer in the face while saying: "That's for being a lady killer"; that the pursuer was frightened and distressed; and that "the entire prison population turned against [the pursuer]".

[25] In supplementary evidence-in-chief, Mr Eadie testified that the wrongly delivered document looked like a "parole dossier"; it disclosed the pursuer's index offence and prior parole hearings; it contained numerous pages. The pursuer was said to be terrified and shocked that people had his personal details and knew his index offence. Verbal abuse and threats were made to him by other prisoners (including shouts of "beast"). He described an incident of assault on the pursuer. The pursuer became "a shell of himself", "a recluse", he "wouldn't go anywhere", he had "the weight of the world on him", he was "terrified to go anywhere", and the wrongful disclosure made him "a different person". Mr Eadie

confirmed that he had completed the prisoner complaint form (item 5/5/11 (page 403) of process and item 6/1/2 of process) based on information provided by the pursuer. Mr Eadie conceded that he had known, prior to data breach, that the pursuer was in prison for murder but did not know any of the pursuer's personal details, or the parole board's assessment of his risk of re-offending, or the like.

[26] In cross-examination, Mr Eadie reiterated that the document that was passed to him in the prison gym bore the initials "SPS" at the top and had blue boxes on the pages. He claimed that copies could be made within the prison's education department or in the prison hall, without supervision and that the mis-delivered document disclosed details of the pursuer's index offence.

Jennifer Harkins

[27] Ms Harkins, a social worker, was employed as a prison-based social worker by East Dunbartonshire Council in September 2022, working at HMP Low Moss. She prepared the pursuer's Parole Board report dated 20 June 2022. She recalled that in September 2022 the pursuer spoke to her about a miscommunicated letter from the Parole Board; she believed that she would have seen the letter at the time, but was now uncertain due to the passage of time; she believed the miscommunicated letter "would be the outcome of the parole hearing"; but, when pressed in examination-in-chief, she stated that she "genuinely can't recall which document it was" that the pursuer complained had been wrongly communicated. She identified a letter dated 13 October 2022 written by her to the Parole Board in which she expressed the opinion that the pursuer had "dealt with a particularly stressful situation with regards his parole minutes and coped well..."; but, when asked to explain what she understood by the term "the parole minutes" she testified

that these would be “the shortened version immediately sent out by the Parole Board or the longer minutes”; she had no recollection of what document she was referring to in that letter or what document was the subject of the pursuer’s complaint at that time. She reiterated that, due to the passage of time, she could not now recall which document (the decision letter or the minute) was said by the pursuer to have been wrongly delivered to another prisoner but assumed that it would have been the “fuller longer document”. She testified that “in reality” a lot of prisoners within the prison will know what other prisoners are in prison for, though an unlawful disclosure of a Parole Board minute would bring it “to the fore again”. She opined that violent offenders against women are at more risk of violence within a prison environment and are “kind of shunned” because there is an understanding among prisoners of what is “acceptable violence”. With some hesitation, she recalled that the pursuer had been a “victim of assault” after the date of the alleged disclosure. No other specification was given. She recalled meeting with the pursuer (and her colleague, Ms Kennedy) on 14 October 2022; that the pursuer was “very stressed” about the data breach, that he felt “upset” and “unsafe”, but she did not recall any details and could not recall whether the pursuer had complained at that time of having been assaulted. She did not recall whether any other issues had been experienced by the pursuer from the prison population though she speculated that “perhaps things were being shouted at him in the Hall”, and she “imagined” it might include the word “beast”.

[28] In cross-examination she reiterated that she could not now recall which document was alleged by the pursuer to have been wrongly delivered but that, now that she had looked at both documents in the witness box, she was sure it was the “full letter” because she then claimed to recall that the pursuer had given her a letter and an envelope and that the envelope was open. She also considered that, if the alleged disclosure had only involved

the decision letter, she would not have regarded that as a sufficient reason for him to be distressed.

[29] In re-examination she reiterated that she now had a recollection that the pursuer had actually given her the mis-delivered envelope. She reiterated her opinion that if the envelope had merely contained the decision letter (as opposed to the minute) she would not have considered his asserted reaction to have been “proportionate”.

Donald Hope

[30] Donald Hope, a prison officer, was employed at HMP Low Moss in 2022. He testified that the pursuer had approached him to complain that “his letter” had been wrongly delivered to another prisoner (“The terminology was he had said someone had received his letter”); he asked Mr Hope to “look into it”; the pursuer seemed “a bit frustrated” but not frightened; the matter was referred to the SPS Business Improvement Manager for investigation. Mr Hope checked with SPS staff to identify which letters had been received by SPS for the pursuer. He did not recover the missing document. He did not recall how the matter had resolved. He did not apologise to the pursuer. He testified that a Parole Board minute can take “weeks” to be issued, but that a decision letter (or “intimation letter”) comes much more quickly, either on the same day as, or the day after, the Parole Board hearing. He had been “led to believe” that the wrongly delivered document was a decision letter. Although at that time he was not the pursuer’s “Lifer Liaison Officer” (“LLO”), he did subsequently attend two of the pursuer’s Parole Board hearings in that capacity, as a substitute for an absent colleague; he accepted that in the redacted minute of a Parole Board hearing on 11 January 2023, Mr Hope (as LLO) bears to have reported to the Board that the pursuer had been “the victim of a significant data breach”, that the Board’s

“minute” dated 22 August 2022 had been provided to another prisoner”, and that “an unreserved apology” had been given by SPS to the pursuer. Mr Hope claimed to have no recollection of the January 2023 Board hearing; he relied on information that had been given to him; that information may have been inaccurate or “misinterpreted” by others; he “may have said the first thing that came into my head”. He reiterated his belief, held at the time, that it was merely the decision letter that had been wrongly delivered; he may have “mis-spoken”. He was unaware of any incident of verbal or physical abuse of the pursuer following the data protection breach.

Dr James Harrison

[31] Dr Harrison, a consultant psychiatrist, spoke to his first expert report (item 5/1/4 of process) dated 11 December 2023, following an examination of the pursuer on 8 December 2023. He confirmed that the pursuer had explicitly told Dr Harrison that he had been expecting to receive “a full copy of his dossier”; that he had discovered that his “dossier” had been given to another prisoner (called David Henderson); that his “entire dossier” had then been circulated within the prison population; and that “additional copies had been distributed as well” (paragraph 3.5, first report dated 11 December 2023). At the date of the first report, Dr Harrison had not seen the pursuer’s medical records. Notwithstanding, Dr Harrison diagnosed the pursuer as having suffering from an adjustment disorder with anxiety. He had ceased to meet the threshold for an adjustment disorder by February 2023. The pursuer was not exhibiting any symptoms of adjustment disorder when Dr Harrison examined him.

[32] Dr Harrison also spoke to a second version of his report dated 11 December 2023 (lodged as item 5/3/8 of process) (identified on the pursuer’s third inventory as “updated

expert witness report”). This second report was identical to the first but all references in the first report to “dossier” had been deleted and substituted with the words “Tribunal Hearing Minute” or “minute”. This amendment had been made at the request of the pursuer’s solicitors. Dr Harrison understood this amendment to be merely a “clarification” because the same document was being referred to (albeit by a different name). He disputed that the amendment undermined the credibility of his report.

[33] Dr Harrison subsequently reviewed the pursuer’s medical records (item 5/12 of process). Nothing in those medical records caused him to change his opinion. He acknowledged that the medical records disclosed the pursuer’s long-standing mental ill-health and anxiety disorders. He had not asked the pursuer about this. It is not mentioned in his report.

[34] In cross-examination Dr Harrison volunteered that psychiatric diagnoses are based predominantly on self-reporting which is “essentially taken at face value”, provided it is consistent with other information available; Dr Harrison had “no reason to question” the truth of the pursuer’s self-reported symptoms; usually Dr Harrison would have cross-referred to medical records, but those were not available at the time; Dr Harrison had contemporaneous hand-written notes of what he was told by the pursuer at the examination in December 2023; those notes refer to the mis-delivery of the “dossier”; he could not recall when he was asked to amend his first report but thought it was perhaps in around autumn 2025.

Karen Henderson

[35] Karen Henderson, the pursuer’s mother, testified that the pursuer had telephoned her from prison to tell her that “paperwork” intended for him had been given instead to

another prisoner on another prison Hall. The pursuer was “very upset”, “very depressed”, “crying”, “agitated”. She immediately called the social worker to report the matter, and to request that social work visit the pursuer to check on his welfare, specifically his mental health. She was asked to clarify what “paperwork” was said to have been mis-delivered. She replied: “It was the parole. It was the parole decision. Whatever it was, I’m not sure. He’d been at his parole hearing”. She then conceded that the pursuer did not tell her what was in the wrongly delivered envelope and that she did not know what was in the envelope. She confirmed that the social work record dated 2 September 2022 of her telephone discussion with Caireen Kennedy (item 5/6/13 of process) was correct and accorded with her own recollection. The pursuer then sent the wrongly delivered envelope to her by post; the “decision” was in the envelope. She claimed to have seen the contents of the envelope but could not now recall what the contents were; she did not know whether the document within the envelope comprised the “minutes” or the “decision”; all she knew was that it came from the Parole Board. She took a photograph of the front of the wrongly addressed envelope; she sent that photograph by WhatsApp to the pursuer’s solicitor (item 5/4/10 of process); she then posted the envelope and its contents to the pursuer’s solicitor. The pursuer was “absolutely terrified” as a result of the data breach, scared that inmates would attack him. He “took a dip on his mental health side” and was “put on other medication”.

Kieran Kelly

[36] Mr Kelly, a former prisoner, is a “close friend” of the pursuer. He came to know the pursuer through a relation, with whom the pursuer had served time in prison. The pursuer had telephoned him (on an unspecified date) to tell him that the pursuer’s “paperwork” had been given to another prisoner in error; the pursuer was said to be “extremely worried” due

to a perceived likelihood of being “attacked”. When asked what “paperwork” the pursuer had said was wrongly delivered, Mr Kelly replied: “I’m sure it was possibly the minutes from his parole board hearing, so it had all the information in it”. Mr Kelly never saw the document in question.

Nicole Gordon

[37] Nicole Gordon has been employed by SPS for 5 years, initially as an administrator and, since October 2024, as parole coordinator. In August/September 2022, she was an administrator; the parole coordinator was off work on long-term sick leave; another staff member was covering the role temporarily; Ms Gordon was assisting an *ad hoc* basis (including with the processing of parole papers); she was relatively new to the role. She described the SPS mail process: communications (including decision letters and minutes) would be received by email from the Parole Board; she and the acting parole coordinator would print them off and put them in an envelope bearing the relevant prisoner’s name, number, and cell location; the envelopes would then be delivered to the mail administrator for distribution to the prisoners; this happened twice a day. She explained that the Business Improvement Manager had received a report of a data breach; Ms Gordon had been asked to check what emails had been received for the pursuer from the Parole Board; she checked the SPS computer; she identified that, at that point in time, the last document received from the Parole Board for the pursuer was an intimation or decision letter; she specifically recalled that the decision letter recorded that the pursuer’s case had been deferred; she was aware that another prisoner, who also had the surname “Henderson”, had also attended a Parole Board hearing at around the same time and his Board hearing had also been deferred;

and from this she inferred that the two letters had been “put into the wrong envelopes”. She could not specifically recall when she had first been alerted to the data breach.

[38] In cross-examination, Ms Gordon confirmed that a decision letter (or “intimation letter”) tends to be issued by the Parole Board (and received by SPS) within 24 hours of the Board hearing; a “minute” is issued later; in her experience, a minute is not received any sooner than 10 working days after the hearing; she did not know when the pursuer’s minute was received. She said she was not aware that there was any dubiety as to which particular document had been wrongly delivered; she thought that the issue in dispute was where the missing document had gone, not what the missing document was. She was a temporary administration assistant at the time; she had been asked to check the generic email inbox to identify the most recent document received for the pursuer; the last document received for the pursuer at that time was a decision letter; so, she assumed that it had been printed off and mixed up with the other prisoner’s letter. She admitted that she printed off the decision letter; that it was her handwriting on the mis-delivered envelope, a copy of which was shown on the photograph (item 5/4/10 of process); and that the envelope, in her handwriting, had originally borne the wrong prisoner number and cell location. She conceded she did not actually know if there were two envelopes with two different addresses, she had merely assumed that was the case.

[39] In re-examination, she reiterated that, when she was first alerted to the issue, the minute of the Board hearing had not then been received.

Closing submissions

[40] The parties lodged detailed written submissions, supplemented orally. For the pursuer, I was invited to conclude that the pursuer’s Minute was the document that had

been wrongly delivered to another prisoner. As a result, the defender infringed (i) the pursuer's right to data confidentiality and security under the UK GDPR; (ii) the pursuer's right to lawful and fair processing of his data, in terms of the 2018 Act; and (iii) the pursuer's right to respect for his private life under Article 8, ECHR. On the basis of the unchallenged evidence of Dr Harrison, I was invited to conclude that the pursuer had suffered an adjustment disorder as a result of the wrongful disclosure and to award a global sum of £15,000 as compensation (under UK GDPR) or "just satisfaction" (under the Human Rights Act 1998), plus interest at the judicial rate from 1 September 2022 to date, to reflect the damage sustained.

[41] For the defender, I was invited to conclude that the mis-delivered document was the Decision Letter, not the Minute; that there was nothing sensitive in the former; that the pursuer had not suffered any damage (in the form of psychiatric injury or distress); and that absolutor should be granted. *Esto* an award was to be made, compensation should be assessed at a modest sum only.

Objection

[42] In the course of the pursuer's evidence-in-chief, the defenders objected to a line of questioning regarding an alleged assault upon him in 2025. It was said that there was no foundation on record for the line. The evidence was allowed under reservation.

[43] Having resumed consideration of the matter, I have sustained the objection and excluded the evidence. In any event, it would not have been material.

Findings in fact and law

[44] Having considered the evidence and closing submissions, I make the following

FINDINGS-IN-FACT:

1. The pursuer is Joseph Henderson, a prisoner presently incarcerated in one of His Majesty's prisons.
2. The defenders are the Scottish Ministers representing the Scottish Prison Service ("SPS").
3. The pursuer is currently serving a life sentence of imprisonment for the murder of his girlfriend, Pamela Knight, by strangling her on 3 February 2006.
4. On the evening of the murder, the pursuer and Ms Knight had been arguing; the pursuer was 21 years old; Ms Knight was 18 years old; both had consumed a large quantity of alcohol; Ms Knight shouted at the pursuer and scratched his lip and arm; the pursuer, who was subject to two separate bail orders at the time, lost his temper, climbed on top of her, pinned down her upper arms with his knees, and strangled her to death.
5. Forensic medical evidence at the trial suggested that the pursuer must have used his hands to apply pressure to Ms Knight's neck for a minimum of 15 to 30 seconds, possibly for at least a minute, in order to create the petechial haemorrhages which were subsequently observed in her eyes.
6. The force which the pursuer applied with his hands to Ms Knight's neck was sufficient to fracture her thyroid cartilage (that is, the cartilage around her Adam's apple).
7. There was also medical evidence at the trial of pressure having been applied to Ms Knight's mouth, which caused injuries to the inside of her lips.

8. On 10 August 2006, after a trial in Glasgow High Court, a jury (by majority) convicted the pursuer of Ms Knight's murder.
9. On 6 September 2006, the pursuer was sentenced to life imprisonment; the punishment part of the sentence was fixed at 12 years; and the punishment part of the pursuer's life sentence expired on 3 February 2018.
10. By August 2022, the pursuer was serving part of his sentence within HMP Low Moss.
11. On 22 August 2022, a hearing was convened before the Parole Board for Scotland for a determination as to whether the pursuer should be released on parole, following the expiry of the punishment part of his sentence.
12. The hearing was the fifth such Parole Board hearing that had been convened (since expiry of the punishment part of the pursuer's sentence in 2018) to consider whether the pursuer should be released on parole.
13. All preceding Parole Board hearings had resulted in decisions to refuse release of the pursuer on parole.
14. In the event, on 22 August 2022, no substantive decision was taken by the Parole Board on the issue of the pursuer's release on parole; instead, the hearing was adjourned (to a date to be later assigned) in order that further information could be obtained and provided to the Parole Board; the pursuer was in attendance at the hearing with his solicitor; the decision to adjourn, and the reason therefor, was taken in the presence of, and disclosed to, the pursuer and his solicitor at the hearing.
15. Ordinarily, a set of documents (commonly known as a "dossier" or "parole dossier", and herein referred to as "the Dossier") is delivered to a prisoner, such as the pursuer, in advance of a Parole Board hearing; the Dossier comprises a copy of all of

the documents that are available to the Parole Board tribunal for the forthcoming hearing

16. Ordinarily, following a Parole Board hearing, a document is issued by the Parole Board tribunal to the prisoner within 24 to 48 hours thereafter (commonly known as the “parole decision letter” or “intimation letter”, and herein referred to as “the Decision Letter”); this document briefly sets out the decision of the Parole Board tribunal at the hearing; of the tribunal; this document comprises a summary of the decision; and the Decision Letter will state that a further document, setting out the full reasons for the decision at the preceding Parole Board hearing (herein referred to as “the Minute”), will be sent to the prisoner within 10 working days of the Parole Board hearing.
17. Commonly, in 2022, the Decision Letter would be issued by the Parole Board to the prisoner within 24 to 48 hours of the preceding hearing.
18. Commonly, in 2022, the Minute would not be issued by the Parole Board to the prisoner within 10 working days of the preceding Parole Board hearing; instead, commonly, the Minute would be issued on, or shortly later than, the 10th working day after the preceding hearing.
19. The pursuer is (and, as at August 2022, was) familiar with the parole process, Parole Board procedure, and the difference between a Dossier, a Decision Letter and a Minute.
20. All communications from the Parole Board to prisoners in Scottish prisons eligible for parole (including communications to the pursuer) are transmitted by email to SPS, and a copy is then printed off and delivered by hand by SPS to the relevant prisoner.

21. Item 6/1 of process is a true copy of the Decision Letter dated 22 August 2022 in respect of the pursuer (“the pursuer’s Decision Letter”).
22. The pursuer’s Decision Letter was sent by the Parole Board to SPS by email on 22 or 23 August 2022 following the hearing on 22 August 2022.
23. Upon receipt of the pursuer’s Decision Letter on 22 or 23 August 2022, SPS, in error, hand-delivered a copy of it to another prisoner (namely, David Henderson), who happened to share the same surname as the pursuer; thereafter, the other prisoner (David Henderson) disclosed the contents of the pursuer’s Decision Letter to other prisoners.
24. The erroneous delivery of the pursuer’s Decision Letter to David Henderson occurred as follows: the pursuer’s Decision Letter was emailed by the Parole Board to the Scottish Prison Service on 22 or 23 August 2022; shortly thereafter, Nicole Gordon, an administrative employee of the Scottish Prison Service, then working temporarily within the Parole Co-ordinators Office in HMP Low Moss due to staff absence, printed a copy of the pursuer’s Decision Letter; she placed it in an envelope and addressed the envelope, in her own hand-writing, to “Joseph Henderson” (being the pursuer’s name); however, in error, she wrote on the envelope the prisoner number and cell location of a different prisoner who happened to share the same surname as the pursuer (namely the prisoner number and cell location of David Henderson); and, as a result, the envelope containing the pursuer’s Decision Letter was delivered by other SPS staff to the wrong prisoner (namely, David Henderson).
25. By 1 September 2022, the pursuer had still not received a copy of his Decision Letter.

26. On 1 September 2022, the pursuer was told by a fellow prisoner (Darren Eadie) that documentation from the Parole Board pertaining to the pursuer had been erroneously delivered to another prisoner; the pursuer reported this suspected error to a SPS prison officer; the prison officer reported the suspected error to the SPS Parole Co-ordinators Office within HMP Low Moss; Ms Gordon then checked the SPS computer system and ascertained that, as at 1 September 2022, the most recent communication for the pursuer that had been received by SPS from the Parole Board was the pursuer's Decision Letter; Ms Gordon then suspected that the pursuer's Decision Letter may have been erroneously delivered to David Henderson (due to the shared surnames of the two prisoners); on the basis of this suspicion, a SPS prison officer then attended upon David Henderson and retrieved from him the pursuer's Decision Letter and the accompanying envelope; the envelope was correctly addressed to the pursuer but did indeed erroneously bear, in Ms Gordon's hand-writing, the wrong prisoner number and cell location (being the prisoner number and cell location of David Henderson); the Decision Letter and accompanying envelope were returned Ms Gordon; Ms Gordon corrected the errors on the envelope by scoring out the (erroneous) prisoner number and cell location of David Henderson and substituting, in her own hand-writing, the (correct) prisoner number and cell location of the pursuer; and the pursuer's Decision Letter and accompanying envelope, as so corrected, were then delivered to the pursuer by a SPS prison officer later on 1 September 2022.
27. Item 5/4/10 of process is a true photographic copy of the envelope in which the pursuer's Decision Letter was delivered to the pursuer on or shortly prior to 1 September 2022; as depicted on the photograph, the envelope bears the name of

the pursuer, hand-written by Ms Gordon; the envelope also bears the (erroneous) prisoner number and cell location of David Henderson, but these have been scored out and replaced with the (correct) prisoner number and cell location of the pursuer, all in Ms Gordon's hand-writing.

28. The pursuer's Decision Letter does not contain any sensitive information concerning the pursuer such as his criminal history, his health status, or his previous risk assessments.
29. The pursuer's Decision Letter discloses, principally, that on 22 August 2022 the Parole Board had deferred a decision on the question of the pursuer's release on parole pending receipt of further information.
30. On 1 September 2022, the pursuer's Decision Letter and accompanying envelope having been retrieved from David Henderson, the pursuer telephoned his mother (Karen Henderson) to tell her that his Decision Letter had been erroneously delivered by SPS to another prisoner, and he then posted to his mother the Decision letter with the accompanying wrongly addressed envelope.
31. The following day, on 2 September 2022, the pursuer's mother received by post the pursuer's Decision Letter and accompanying wrongly addressed envelope; at around 2.00pm that day, the pursuer's mother spoke by telephone with the pursuer's prison-based social worker (Caireen Kennedy) to advise her that she had spoken to the pursuer and had been told by him that the pursuer's Decision Letter had been erroneously delivered to another prisoner; she took a photograph of the wrongly addressed envelope and, at 10.04pm on 2 September 2022, she sent a copy of the photograph and a brief message (via the WhatsApp social media platform) to Ms Kennedy.

32. Item 5/4/10 of process is a true copy of the photograph taken by the pursuer's mother and of a message sent by her to Ms Kennedy (the pursuer's prison-based social worker) on 2 September 2022 at 10.04pm.
33. Item 5/7 of process is a true copy of the Minute relating to the pursuer as issued by the Parole Board to the pursuer (by email to SPS) following the hearing on 22 August 2022 ("the pursuer's Minute").
34. In contrast to the pursuer's Decision Letter, the pursuer's Minute (though also dated 22 August 2022) was first emailed by the Parole Board to SPS at some point after 1 September 2022.
35. In contrast to the pursuer's Decision Letter, the pursuer's Minute contains sensitive and confidential information concerning *inter alia* the pursuer's health status and previous risk assessments.
36. On 4 September 2022, on the advice of Darren Eadie, the pursuer lodged a formal written complaint (in Form PCF2) to SPS regarding the erroneous delivery of the pursuer's Decision Letter to the other prisoner (David Henderson); Mr Eadie hand-wrote and completed the complaint form (Form PCF2) on the pursuer's behalf; the complaint form states: "Recently my parole decision was mistakenly handed to another prisoner with the same surname as me..."; and item 6/1/2 of process is a true copy of the pursuer's complaint form.
37. In the pursuer's initial writ, as lodged at court and served upon the defenders, the pursuer averred that the document that had been erroneously delivered to the other prisoner (David Henderson) after the hearing on 22 August 2022 was the "parole board dossier".

38. On 8 December 2023, on the instructions of the pursuer's agents, the pursuer was examined remotely, by video conference call, by Dr James Colin Harrison, a consultant psychiatrist, for the purpose of preparing an expert medical report in support of the pursuer's claim; in the course of that examination, the pursuer explicitly recounted to Dr Harrison that his "dossier" and "entire dossier" had been erroneously delivered to another prisoner and distributed around the prison; these terms were then reproduced in Dr Harrison's report dated 11 December 2023; but, in around autumn 2025, at the request of the pursuer's agents, all references in Dr Harrison's report to "dossier" and "entire dossier" were deleted and substituted with the words "Tribunal Hearing Minute" or "minute".
39. Following the lodging of Defences, during the adjustment period, the pursuer's agents adjusted the averments in the initial writ to delete all references to the erroneous disclosure of the pursuer's "dossier" and to substitute therefor the words "parole decision letter" (as disclosed in the open record number 9 of process lodged for the pursuer on 10 May 2024).
40. Between 10 May 2024 and 7 June 2024, in the course of further adjustment, the pursuer's agents again adjusted the averments in the initial writ to delete all references to "the pursuer's parole decision letter" and to substitute therefor the words "parole minute" and "minute" (as disclosed in the open record number 9/1 of process lodged for the pursuer on 7 June 2024).
41. For many years prior to 2022, the pursuer suffered mental ill-health; since around 2004/2005, he has received psychiatric treatment, psychiatric counselling, and anti-depressive medication; he suffered from depression in January 2006; he attempted suicide by hanging while in custody; he has suffered from anxiety and

obsessive compulsions; and he suffered from an acute anxiety attack in December 2020.

42. The pursuer did not suffer distress, fear, alarm, mental ill-health, or deterioration in his mental health, as a result of the erroneous delivery of the pursuer's Decision Letter to another prisoner.
43. The pursuer did not suffer fear of danger to his life as a result of the erroneous delivery of the pursuer's Decision Letter to another prisoner.
44. The pursuer was not assaulted or verbally abused within the prison as a consequence of, or following, the erroneous delivery of the pursuer's Decision Letter to another prisoner.
45. The pursuer did not develop an adjustment disorder as a consequence of the erroneous delivery of the pursuer's Decision Letter to another prisoner.
46. As at August 2022, the pursuer shared prison accommodation with other long-term prisoners, including convicted murders; it is, and was then, common-place for long-term prisoners to be familiar with the convictions and criminal backgrounds of other offenders within the same prison environment; the pursuer's conviction is, and was then, a matter of public record; the pursuer's conviction is, and was then, a matter of general knowledge within the prison environment at HMP Low Moss; the pursuer's Decision Letter contained no new or material information that would not already have been a matter of common knowledge within the prison population at HMP Low Moss.
47. No incident of physical or verbal abuse, threat, intimidation, or adverse behaviour by any prisoner against the pursuer is recorded in the SPS records in the period from 22 August 2022 to February 2023.

48. There is no documented instance in the SPS records of any report by, or observation of, the pursuer having experienced isolation, physical or verbal abuse, threat, intimidation, or adverse behaviour by any prisoner against the pursuer in the period from 22 August 2022 to February 2023.
49. No reported or observed deterioration in the pursuer's mental health is recorded in the pursuer's medical records for the period from 22 August 2022 to February 2023.
50. There is no documented instance in the SPS records, for the period from 22 August 2022 to February 2023, of any report by, or observation of, the pursuer experiencing any mental health difficulty or deterioration, or of the pursuer seeking, or being the subject of, a referral in respect of his mental ill-health.
51. In the period from 22 August 2022 to February 2023, the pursuer continued to work as a pass-man within HMP Low Moss and to enjoy the privileges of that position; he continued to attend the gym regularly; he completed a 10K marathon; and he engaged in regular daily circuits and exercise.
52. In February 2023, the pursuer was transferred from HMP Low Moss to a different prison.

[45] I made the following FINDINGS-IN-FACT AND IN-LAW:

1. SPS was a data controller in respect of the pursuer's Decision Letter and Minute, for the purposes of Article 4(7) of the UK GDPR and the 2018 Act.
2. The pursuer, having failed to prove that the pursuer's Minute was erroneously delivered to another prisoner, is not entitled to reparation for breach of the pursuer's rights under the UK GDPR, the 2018 Act, or Article 8, ECHR.

3. In any event, the pursuer, having failed to prove that he suffered loss, injury or damage (material or non-material) as a result of the averred breach by SPS of the pursuer's rights under the UK GDPR, the 2018 Act, or Article 8, ECHR, is not entitled to reparation therefor.
4. *Separatim* having regard to all the circumstances of the case, an award of damages is not necessary to afford just satisfaction to the pursuer, in terms of section 8 of the Human Rights Act 1998.

[46] I made the following FINDING-IN-LAW:

1. The pursuer having failed to prove that SPS breached the pursuer's rights as averred, in terms of the UK GDPR, the 2018 Act, or Article 8, ECHR, the defenders should be assolized.
2. The pursuer having failed to prove that he suffered loss, injury or damage (material or non-material) as a result of the averred breach by SPS of the pursuer's rights under the UK GDPR, the 2018 Act, or Article 8, ECHR, the defenders should be assolized.
3. *Separatim* an award of damages not being necessary to afford just satisfaction to the pursuer in terms of section 8 of the Human Rights Act 1998, the defenders should be assolized.

Reasons for Decision

The limited scope of the dispute

[47] There is no dispute that certain obligations were owed by SPS to the pursuer, by virtue of SPS's status as (i) a data controller, for the purposes of Article 4(7) of UK GDPR and

the 2018 Act; and (ii) as a public authority, for the purposes of section 6 of the Human Rights Act 1998.

[48] There is no dispute that a Parole Board document intended for the pursuer was wrongly delivered by SPS; that the document was seen by another prisoner; and that the pursuer's data was thereby not processed in accordance with the data protection obligations imposed on SPS, as data controller.

[49] There is no dispute that the pursuer's Minute contains private, sensitive and confidential information including regarding the pursuer's offences, his health, and previous risk assessments.

[50] However, two key factual issues are in dispute: (i) first, whether the document which was wrongly delivered was the pursuer's Minute, as the pursuer avers; and (ii) second, whether the pursuer sustained any "damage" as a result of the wrongful delivery of the Minute.

[51] The defenders admit that a document intended for the pursuer was wrongly delivered to another prisoner. However, they maintain that (i) it was the Decision Letter that was wrongly delivered, not the Minute; and, in any event (ii) no loss, injury and damage (material or non-material) was suffered by the pursuer as a result of the erroneous delivery.

[52] If, as a matter of fact, the Minute was wrongly delivered, SPS, as the data controller, would be liable to pay compensation to the pursuer for "material or non-material damage" suffered by him as a result of that data protection breach (Article 82, UK GDPR).

[53] Importantly, a mere infringement of data protection legislation does not, of itself, give rise to a right to compensation. The claimant must still prove the occurrence of damage (material or non-material) and a causal link between the unlawful processing (or other data

breach) and that damage (*UI v Österreichische Post AG*, Case C-300/21, [2023] 1 WLR 37029, paragraphs 28-42). The term “material damage” is sometimes used to describe any financial loss or physical or recognised psychological injury, but excluding distress (or other negative emotions not amounting to a recognised psychiatric illness) (*Lloyd v Google LLC* [2022] AC 1217, paragraph 92). In contrast, “non-material damage” can include distress, or even a well-founded fear (as opposed to a purely hypothetical risk) that an infringement might result in the data subject’s personal data being misused by third parties. However, it remains a moot point whether purely fleeting or transient subjective reactions, such as mere irritation or annoyance at a data protection breach, would necessarily qualify as “non-material damage” (*Farley v Paymaster* [2025] EWCA Civ 1117, [93]-[95]). In any event, a claimant does not require to cross a minimum “threshold of seriousness” for damages to be awarded (*UI v Österreichische Post AG*, *supra*, paragraph 45), but that does not relieve the claimant of the onus of proving the occurrence of actual damage and its causal link with the breach.

[54] Conversely, if, as a matter of fact, the pursuer’s Minute was not wrongly delivered at all, the pursuer’s action would fail. That is because the action (and the data protection breach complained of) is founded solely upon the wrongful delivery of the pursuer’s Minute. The pursuer has no alternative claim founded upon the wrongful delivery of the pursuer’s Decision Letter or any other document.

What document was in the envelope?

[55] What document was in the wrongly delivered envelope? Three possibilities have been mooted: the Dossier, the Decision Letter, or the Minute.

[56] The evidence led for the pursuer on this key issue was inconsistent, contradictory and wholly unsatisfactory.

[57] It is important to bear in mind that the Parole Board hearing of 22 August 2022 was the pursuer's fifth such hearing. By his own admission, he was familiar with the parole process and terminology. He knew the difference between a dossier, a decision letter (or "intimation letter") and a minute, and the usual timeline for issuing each of these documents.

[58] Against that background, his fluctuating descriptions of the document that was allegedly delivered are difficult to excuse. In the initial writ, as lodged and served, the pursuer expressly avers that it was the "dossier" that was wrongly delivered. In the course of adjustment, this averment was deleted and substituted with an averment that the wrongly delivered document was the "parole decision letter". However, just one month later, by July 2024, the pursuer was now averring in the open record that the wrongly delivered document was the "parole minute".

[59] Nor do matters end there. When the pursuer was examined in December 2023 by his expert medical witness (Dr Harrison), he explicitly reported to Dr Harrison that it was his "dossier" and "entire dossier" that had been wrongly delivered. The subsequent irregular re-writing of that expert report (to delete reference to the "dossier" and to substitute references to "minute") did nothing to support my confidence in the reliability of the pursuer's account.

[60] The confusion was exacerbated by the pursuer's key witness, Darren Eadie, a fellow prisoner. In his written affidavit (adopted as part of his evidence-in-chief) he testified that the mis-delivered document (which he claimed to have seen personally in the prison gym) was the pursuer's Dossier. He was adamant on the point. Indeed, he provided colourful

and intriguing detail: the mis-delivered document, he said, bore the initials “SPS” printed on the top of each page and contained various blue boxes. However, incontrovertibly, neither the pursuer’s Decision Letter (item 6/1/2 of process) nor the pursuer’s Minute (item 5/1/4 of process) bears the letters “SPS” at the top of any page, and neither contains any “blue boxes”. As a result, the reliability of this testimony was fatally weakened.

[61] As for the pursuer, in his oral testimony, he initially described the wrongly delivered document as a parole letter. Later, he insisted that it was the Minute that was mis-delivered and adhered to that term thereafter.

[62] Amid this maelstrom of inconsistency, I sought refuge in the contemporaneous documentation. I inferred that, given its contemporaneity with the events in question, it was, perhaps, more likely to provide a reliable account of the events. An entry dated 2 September 2022 within the social work records refers to a telephone discussion between the pursuer’s mother (Karen Henderson) and the community-based social worker (Caireen Kennedy). Ms Henderson is recorded as having reported to Ms Kennedy that the pursuer had, the previous day (1 September 2022), complained to her that his “parole decision letter” had been wrongly delivered to another prisoner. This record is interesting for two reasons. First, it is the most contemporaneous written record of the pursuer’s complaint (albeit hearsay). Second, it pin-points the latest date on which the document could have been wrongly delivered (namely, 1 September 2022).

[63] The next contemporaneous document is the pursuer’s formal complaint to the prison governor. It does not state that the Minute or the Dossier were wrongly delivered. Instead, it records that the pursuer’s “parole decision” was wrongly delivered. Given that the form was completed by Mr Eadie on the pursuer’s behalf, based allegedly on information provided directly by the pursuer, it beggars belief that two experienced inmates, supposedly

aggrieved at and concerned by a “significant data breach”, should fail to identify the misdelivered document as the “minute” (or, according to Mr Eadie, “the dossier”). Instead, somewhat feebly, the document is described merely as the “decision”. That terminology is more consistent with the Decision Letter, than the Minute or Dossier.

[64] The oral testimony from the pursuer’s mother (Karen Henderson) and close friend (Kieran Kelly) was of no value. Mrs Henderson had candidly and repeatedly conceded that she had no idea whether the envelope received by her from the pursuer (being the envelope which was allegedly wrongly delivered to the other prisoner) contained the parole decision letter or the minute, or something else entirely. She knew only that it was from the Parole Board. (It is, of course, also unhelpful to the pursuer that the principal envelope and its contents were not lodged, despite having allegedly been posted to the pursuer’s solicitors). For his part, Mr Kelly knew nothing whatsoever of the content of the wrongly delivered envelope, other than what he had been told by the pursuer. Even then, his account was unimpressive: he said he was “sure it was possibly the minutes”, an odd phraseology, akin to a bold yet tentative speculation, which gave me no confidence as to its reliability. He had never seen the document that was said to have been wrongly disclosed.

[65] The two social workers (Ms Kennedy and Ms Harkins) were also of little assistance. Both seemed too keen to assist and support the pursuer, perhaps a feature of their supportive and pastoral role. Neither had any direct knowledge of the content of the wrongly delivered envelope; their knowledge was derived entirely from either the pursuer or the pursuer’s mother. Ms Kennedy’s contemporaneous note dated 2 September 2022 (bearing to record her discussion with the pursuer’s mother) records that she was told that it was the parole decision letter that had been wrongly delivered. That contemporaneous record is significant. Ms Harkins likewise had no direct knowledge of the content of the

envelope. She had a tendency to indulge in *ex post facto* rationalisation. Ultimately, she conceded that she did not know either way whether it was the parole board minute or the parole decision letter that had allegedly been disclosed; she conceded it could have been either.

[66] Lastly, the temporal context is of relevance. Clearly, a document had been wrongly delivered on (or prior to) 1 September 2022. But which document? By that date, the pursuer's Decision Letter would certainly have already been issued by the Parole Board; in contrast, by that date, the pursuer's Minute was unlikely to have been issued by the Parole Board. To explain, the consensus of evidence was that, in 2022, a minute of a Parole Board hearing was, in practice, unlikely to be issued *earlier* than ten "working days" (ie earlier than 14 calendar days) after the relevant hearing, notwithstanding the standard wording in the preceding decision letter that a minute would follow "within" 10 working days. In practice, according to the evidence, such minutes were commonly issued not earlier than the tenth working day from the hearing or later. By simple arithmetic, 10 working days from (Monday) 22 August 2022 is (Monday) 5 September 2022. By 1 September 2022 (by which date the document had already gone astray within the prison), only 8 working days (that is, 10 calendar days) had elapsed since the date of the Parole Board hearing on 22 August 2022. Therefore, on balance, it may reasonably be inferred that, by 1 September 2022, the mis-delivered document is likely to have been the Decision Letter, not the Minute, because the Minute had probably not yet even been issued by the Parole Board. That would be consistent with one aspect, at least, of Ms Gordon's testimony (namely, that, by 1 September, the last, most recent document received by email from the Parole Board for the pursuer was the Decision Letter). It would also be consistent with one aspect of Mr Eadie's evidence

(namely, that the mis-delivered document had been circulating “at large” for about a week before the pursuer was alerted to the fact by Mr Eadie in the prison gym).

[67] The high watermark of the pursuer’s case may be the minute of a subsequent Parole Board hearing on 11 January 2023. It bears to record that Donald Hope, then acting *ad hoc* as the SPS LLO, reported to the Board that the pursuer’s parole “minute” of the 22 August 2022 had been wrongly delivered to another prisoner; that this constituted a “significant” data breach; and that SPS had apologised unreservedly. However, I attach little weight to that record. Firstly, the minute of 11 January 2023 is itself redacted and incomplete. Secondly, the minute is not strictly contemporaneous with the events of September 2022; it was prepared several months after the events in question. Thirdly, to the extent that the information in that subsequent minute derives from Mr Hope himself (in his capacity as acting LLO), I approach that evidence with caution. I was unimpressed by the testimony of Mr Hope who struck me as a witness who paid no attention to detail and had little regard for his duty (as *ad hoc* LLO) to give accurate information to the Parole Board or the court. His manner was unashamedly apathetic. In his own words, he “may have said the first thing that came into [his] head”. I have little confidence that his account to the Board in January 2023 was reliable; I have little confidence that his account to the court was reliable; I treat his accounts (to the court and the Board) on this particular issue with scepticism.

[68] That brings us to Nicole Gordon. Regrettably, her evidence too was unsatisfactory. What emerged from her evidence is that she was also acting in an *ad hoc* capacity due to staff shortages at the time. She was a temporary administrative assistant. Her testimony was unsatisfactory because, as it progressed, it became evident to me that she was overly defensive of her role in the affair and was seeking to absolve herself of criticism. She

initially asserted that two letters had been printed off at the same time, one to the pursuer and one to the other prisoner, but that they had been placed (by someone) in the wrong envelopes. This account did not bear scrutiny. There is no evidence that the pursuer had received any communication addressed to or intended for the other prisoner. Concessions were grudgingly drawn out of her in cross-examination. It emerged that it was her handwriting on the envelope. It was evident that she had wrongly addressed the envelope. She had written the pursuer's name on it but had inserted the wrong prisoner number and the wrong cell location. There never were two envelopes; there was only one envelope on which she had written the correct name (Joseph Henderson), but the wrong prisoner number and cell location. It was as simple as that. The contrived explanation about there being two envelopes was, I inferred, a misguided attempt to divert attention from what was a simple human error. In fairness, she finally came to acknowledge this.

[69] That said, what I do take from Ms Gordon's evidence is that, as at the date when Ms Gordon was first alerted to the data breach (namely, on 1 September 2022), she checked the SPS computer system and discovered that the last, most recent, communication from the Parole Board to the pursuer was the Decision Letter. That is also consistent with the temporal context discussed above. In short, by 1 September 2022, when the data breach had occurred, the pursuer's Minute had probably not yet even been received by SPS.

[70] In summary, I reject the evidence for the pursuer, and from the pursuer's witnesses that the pursuer's Minute was erroneously delivered to another prisoner (namely David Henderson). Instead, I infer from the evidence available that it was the pursuer's Decision Letter that was wrongly delivered. While that did itself constitute a data protection breach, it is not the breach of which the pursuer complains or upon which this action is predicated.

[71] Overall, one might have thought it would have been a simple matter to ascertain direct from the Parole Board precisely when these two documents (the Decision Letter and the Minute) were actually emailed to SPS. In the event, no such evidence was available to me. Therefore, I was left to reach findings-in-fact on the inconsistent, contradictory, and unsatisfactory probative material before me.

Was any damage actually suffered?

[72] Separately, the onus remains on the pursuer to prove that he suffered loss, injury or damage as a consequence of the alleged data protection breach (*UI v Österreichische Post AG*, *supra*, paragraphs 28-42). In my judgment, he failed to do so.

[73] I did not accept his testimony (or that of his witnesses) to the effect that he suffered any deterioration in his mental health, or was alarmed, distressed, “terrified”, in fear of his life, and became reclusive. None of this had the ring of truth about it. None of this was supported by reliable, independent vouching.

[74] Firstly, in my judgment, it is virtually certain that the pursuer’s index offence was a matter of common knowledge within the prison. Ms Harkins testified that this was likely to be the “reality”. The pursuer was convicted after trial, in open court, of murdering his 18-year-old girlfriend. He was housed with other life prisoners. According to the evidence, prisoners tend to be inquisitive and curious as to the crimes committed by their fellow inmates. I infer that information about, and knowledge of, the pursuer’s public trial and conviction will have been readily available and known to his fellow long-term prisoners. It is naïve to pretend otherwise.

[75] Secondly, the pursuer’s medical records were produced in full. They disclose that, throughout his period of incarceration (since 2006), he frequently consulted the prison

health authorities; he frequently sought medical attention; he frequently sought medical input on a wide variety of symptoms and ailments, major and minor; he is a ubiquitous patient. He also has a long history of mental ill-health in the form of depression and anxiety; he has received anti-depressant medication for many years; and he frequently consulted with the prison health authorities on his mental health. However, what is striking is that there is no record of any consultation by him with the prison health authorities concerning any alleged deterioration in his mental health in the period from 22 August 2022 up to February 2023 (when he was transferred to another prison). Of itself, that omission is significant. He is not a man who is slow to seek medical attention. More oddly still, during the same period, he was in frequent contact with the prison health authorities about multiple minor physical ailments but never complained about his mental health and was never observed to be suffering from any mental health deterioration. For example, on 9 September 2022, he was seen by the dentist for a filling; on 2 October 2022, he was seen by a doctor regarding a sore foot; on 7 October 2022, he attended Stobhill Hospital for an X-ray of his foot; on 17 October 2022, he consulted medical staff regarding a rash on his forehead; in late October 2022, he self-referred to the dentist about a hole in a tooth; on 21 December 2022, he consulted the doctor about a cough (but was otherwise described in the medical notes as “fit and well”); throughout December 2022 and January 2023, he consulted with various doctors and nurses about changing his medication for joint pain and “long-standing nerve damage”; and on 8 February 2023, when he was transferred from HMP Low Moss, he was examined again and was recorded as having no thoughts of deliberate self-harm or suicide. Multiple further entries ensue in the months thereafter, ranging from grit in his left eye to routine podiatry, but with no complaint or adverse observation regarding his mental health. The inference I draw from this is that, in truth, he never did suffer the calamitous

effects now alleged by him. His testimony is not only unvouched by contemporaneous medical records but not credible, in the context of this frequent consumer of prison health care.

[76] Thirdly, the pursuer's assertion that he became reclusive is not vouched by the contemporaneous records. On the contrary, on 4 October 2022, when he had consulted the prison health authorities regarding a sore foot, not only did he make no mention of any mental health deterioration, but it is recorded that he had just completed a 10K run three days earlier, that he had been on "regular circuits daily", and that he had been doing "box jumps". This is a far cry from the "terrified", "reclusive", paranoid, and depressed individual portrayed by the pursuer in his testimony. There is also no documented evidence in the SPS records of the pursuer having been subjected to any physical or verbal abuse as a consequence of the data protection breach.

[77] Fourthly, I attached little weight to the observations (visual and aural) of the pursuer's lay witnesses regarding the supposed emotional effects on the pursuer of the data protection breach. Their accounts were vague, light in detail, prone to exaggeration, over-inclined to speculate in the pursuer's favour, and not independent.

[78] Fifthly, though I do not attach much weight to it for the reasons previously explained, the minute of the subsequent Parole Board hearing on 11 January 2023 made no reference to the pursuer having suffered any verbal abuse, or physical assault, or any mental health difficulties as a result of the data protection breach now complained of. On the contrary, he was said to have "coped well".

[79] Lastly, as for the pursuer's expert medical witness, his diagnosis is founded entirely on the pursuer's self-reported symptoms, none of which are independently vouched by reliable evidence. Dr Harrison conceded that he took the pursuer's account at face value;

there were no extant or observed symptoms of any adjustment disorder at the date of his examination of the pursuer; and he had not cross-referred to any other information (such as medical records) at the time of completing his report. Besides, my confidence in the reliability of his conclusions was further undermined by the irregular and unsatisfactory circumstances surrounding the amendments to his report (which sought to change the pursuer's narrated history of the key events). I attribute no deliberate wrongdoing to Dr Harrison; he appears not to have appreciated the significance of the terminological differences, though those differences do impact materially upon the credibility and reliability of the pursuer's account; but it was certainly an ill-judged attempt by the pursuer's agents to interfere with a material element of the pursuer's narrated history.

[80] Accordingly, I conclude that the pursuer has failed to prove the averred data protection breach on which the action is predicated. In any event, I also conclude that he has failed to prove that he suffered any loss, injury, or damage ("material or non-material, per Article 82, UK GDPR) as a result of the averred data protection breach.

Orders of the Court

[81] For these reasons, I shall: (i) sustain the defenders' objection to the examination of the pursuer concerning an alleged assault upon the pursuer in 2025, in respect that there is no foundation on record for the same; exclude the evidence pertaining thereto; (ii) make the findings in fact and in law as set out in this Judgment; (iii) repel the pursuer's pleas-in-law numbers 2 & 3; (iv) sustain the defenders' pleas-in-law numbers 2 & 3; and (v) assoilzie the defenders from the craves of the writ. Meantime, expenses are reserved *sine die*. Parties are encouraged to seek to agree expenses within the following 14 days, failing which, on a

motion being lodged by either party, an early hearing can be assigned to determine the issue. An interlocutor will be issued separately.