Neutral Citation Number: **[2024] EWHC 15 (KB)**

Case No: QB-2022-CDF-000039

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
CARDIFF DISTRICT REGISTRY

Cardiff Civil and Family Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 10 January 2024

Before:

His Honour Judge Harrison
Sitting as a Judge of the High Court

- -

Between:

Mr Anthony Stokes **(A Protected Party by his Wife and Litigation Friend** **Mrs Jacquie Stokes)**	**Claimant**
- and -	
(1) Ministry of Justice **(2) Amey Community Limited**	**Defendants**

- -

Chris Barnes KC and Christopher Allen (instructed by **Thompsons Solicitors**) for the **Claimant**
Richard Seabrook (instructed by **Government Legal Department**) for the **First Defendant**
Suzanne Chalmers (instructed by **Horwich Farrelly Limited**) for the **Second Defendant**

Hearing dates: 10 – 13 October 2023

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Approved Judgment

- -

HIS HONOUR JUDGE HARRISON

Judge Harrison:

Introduction

1. The Claimant brings proceedings against the Defendants arising out of an accident that occurred on the 22nd April 2021 at His Majesty's Prison Cardiff (HMP Cardiff). At the material time he was employed by the First Defendants as a custodial manager and the Second Defendants (Amey) were contractors employed by the First Defendants to maintain the prison.

2. As a result of the accident the Claimant suffered a significant head injury. Indeed the consequences of the accident were such that at least some of the medical evidence obtained to date has concluded that Mr Stokes lacks capacity to litigate this claim and consequently, as a protected party, he proceeds by way of his wife and litigation friend Jacquie Stokes.

3. Case management of this claim has resulted in an order for a split trial and the matter has proceeded before me in relation to the issue of liability only. In giving his directions to trial HHJ Keyser KC gave permission to the parties to rely upon the expert opinion of an engineer or chartered surveyor in relation to the issues of "lighting and the condition of the stairs".

The factual matrix in summary

4. The basic facts regarding the Claimant's claim are reasonably straightforward. On the day of his accident Mr Stokes went in to Cardiff prison at about 6.30am. He was taking over from night orderly Tracey Cox who was also the Custodial Manager and who was in an office on the first floor of the prison, somewhat counter-intuitively known as the number 2 floor ("2s"). He is described by Ms Cox as appearing well in

himself and being happy and excited "*stating that he had been talking to his daughter in Australia and she had told him he was going to be a grandfather again*." The Claimant told her that he needed to visit the lavatory on the ground floor in the Offender Management Unit (OMU) and headed off towards a set of stairs leading down from the "2s" landing to the ground floor number "1s" landing. This was not an area to which inmates of the prison had access and it was not covered by CCTV.

5. At this time Mr Graham Dale was working in the reception (yn Cymraeg Derbynfa) area on number 1 floor. He described opening the door to this stairwell and seeing something in the dark on a small landing area at the bottom of the stairs. As it transpired it was Mr Stokes' unconscious body. Mr Dale raised the alarm and was joined by other members of staff who came to the assistance of their colleague.

6. What makes this case more unusual is that Mr Stokes has no recollection of the events of that day and cannot offer any account of how he came to be unconscious at the foot of those stairs. It follows that in reaching any factual findings regarding the factual matrix of the claim it requires analysis of the available evidence and consideration of the extent to which it is appropriate to draw inferences from primary fact.

7. As one might expect in the aftermath of the accident there was some confusion and a number of members of staff were in attendance. Furthermore, since the consequences of the accident were serious, attempts were made to record that which was found at the scene following Mr Stokes' removal to hospital.

8. The first point of note relates to the prevailing lighting at the time. All witnesses agree that the lighting conditions at the foot of the stairs were dark making it difficult to see Mr Stokes' motionless body. Indeed after the accident it was noted the lighting on the relevant stairwell was not functioning properly. In particular the strip light illustrated

best perhaps at TB 531 was not functioning at all and neither was the bulkhead light shown in the photograph at TB 130 and TB 555, this light fitting being virtually directly over the landing where Mr Stokes was found. At the top of the stairs and on the number 2 landing there are two strip lights controlled by the same switch as would energise the lighting on the stairs. The location of these lights is best shown in the photograph on TB 605. It is further agreed that the light in that photograph identified as "C" was not producing its full output of light, rather it was operating "dimly". In due course the experts instructed in this case attempted a reconstruction and this is illustrated in the photograph at the top of TB 607.

9. The second point that was noted contemporaneously to the accident relates to the condition of the "nosings" that comprised the front edge of each step, specifically one such nosing approximately 4 steps from the top of the flight from the 2's landing.

10. Jade Akomah-Mordi was another of Mr Stokes' colleagues who started her shift at 7.30 on the day of the accident. When she got into work that day she was asked to go to the accident scene and take some photographs since her department had access to camera equipment. In her statement TB 108 she describes taking a series of photographs of the relevant stairs at about 8 am. Her photographs are annexed to her statement at TB 113 and were referred to in the course of the trial. Those photographs show a number of things. Firstly they show that the nosing of the (approximately) fourth step down from the top of the stairs is displaced TB 115 and 117. Secondly they show the nature of the displacement in photographs showing her own hand TB 121 to 125. Lastly the photographs also show that the nosing that was displaced was one of perhaps 3 or 4 that were of a different sort to the rest of the steps in question, being obviously more metallic in construction TB 114. In this respect the available

evidence suggests that these nosings were part of work that was done in October 2019 by the Second Defendants, i.e some 18 months prior to the accident.

11. The maintenance responsibility of the Second Defendants was governed by contract. Maintenance Strategy 2 appears at TB 2787. It provides inter alia;

"*The contractor shall operate and maintain the fixed and installed assets with the objective of:*

a) Providing a safe working environment for each Affected Property users;

12. The Second Defendants sought to discharge their duty by way of regular annual inspections and a reactive system whereby they responded to reports of disrepair etc. The annual inspections immediately prior to the accident took place on 25th July 2020 in respect of the stairs and on 20th October 2020 in respect of the lighting. The reactive system operated at the time of the accident relied upon an electronic system known as Planet FM. The intention of the system being that members of staff would enter defects onto the system and that these would be picked up and actioned by the Second Defendant's maintenance staff. In this respect it is noteworthy that the Second Defendant maintained a permanent presence at the prison with perhaps some 30 members of staff on site.

The Claimant's case in summary

13. Without a recollection of events the Claimant relies upon the extent to which proper inference can be drawn from the primary facts. He points to two factors that the court should conclude materially contributed to his accident, namely lighting and the defective nosing. Put at its simplest, the Claimant contends that having been found at

the foot of a flight of stairs and subsequent investigation having revealed both defective lighting and a significantly loose and displaced stair nosing, then it is a straightforward and obvious inference to draw that one or other or both materially contributed to the fall and thereby caused the accident.

14. In respect of the lighting the Claimant invites the court to approach the same in the following way. Firstly the accident occurred during the hours of darkness when ordinarily the prison lights generally would not be illuminated. Secondly on approaching the stairwell it is likely that the Claimant would have used the switch situated as he entered the number 2 landing to illuminate such lighting as was available. In so doing and due to defective lighting he would have been faced with a poorly lit stairwell which was bound to make safely negotiating the same more difficult.

15. Furthermore, with respect to the displaced nosing of the step, the court should readily conclude that its condition caused the Claimant to fall. Either the nosing was displaced before the Claimant stepped upon it or it moved as he stepped upon it. Either way it was its condition that caused the fall. The nosing provides a perfectly understandable and inherently likely explanation for what happened particularly when compared to any alternative explanation for the condition in which it was found.

16. In respect of both the lighting and the condition of the steps the Claimant contends that they represent breaches of the non-delegable duty of care owed by an employer to an employee in common law to provide a safe place and safe system of work.

17. Furthermore, whilst the Defendants each rely upon the system of inspection and reactive maintenance, a general examination of the state of the prison including both lighting and staircases conducted in the aftermath of the accident revealed a sufficient

number of other defects so as to call into serious question how the system maintenance system as a whole was operating. For example it is a feature of this case that the defective lighting on the staircase was noted by an employee of the Second Defendants, namely Mark Lewis. He did not enter this onto the Planet FM system or take any urgent action. Rather he appears to have left remedying the lighting situation to a point later in the week when he would have the assistance of another member of staff.

18. The Claimant also points to the apparent repair or maintenance carried out in October 2019 to the nosing of the stair that ultimately became displaced. In the circumstance of this case it is submitted that for a repair so proximate in time to the accident to fail, the work undertaken must have been substandard. To that end the Claimant points to the evidence as to how that work had been carried out and the apparent inadequacy of fixing.

The First Defendant's case in summary

19. Whilst accepting the principle that in appropriate circumstances inferences can be drawn by the court from primary sources, each Defendant contends that the inferences proposed by the Claimant are in excess of that which is appropriate and amount to speculation.

20. Here they submit there are multiple potential causes for the accident, each with similar likelihoods of being correct, and that the Claimant cannot establish that any breach of duty was a probable cause.

21. Dealing first with the lighting. The Defendants each accept that the position of the displaced step should lead the court to the conclusion that on the balance of

probabilities that the Claimant fell from a point at or above the same. However they each argue that the balance of evidence in the case would suggest that Mr Stokes approached the steps in darkness and did not turn on (energise) the landing and stair light as he approached. If this is correct then the defective state of the lighting in the area would be irrelevant to the fall. Consequentially they submit that one of the explanations for the accident might be Mr Stokes' attempt to negotiate the stairs without himself putting on the lights.

22. Alternatively, even if Mr Stokes sought to energise the lighting then, whilst the foot of the stairs where he was found would be very dark and whilst the lighting further up the stairs would be limited, there would be sufficient light emanating from the lights that were functioning for the stairs at or above the displaced step nosing for a person to be able to see reasonably where they were proceeding. In this respect the Defendants rely upon the conclusions reached by the three expert witnesses in the case and reported inter alia in the joint statement at TB 608. As such it is submitted the lightning would have had no causative effect on the fall either by material contribution or otherwise and a material contribution to risk would not be sufficient for liability to be established.

23. Whilst not entirely supported by their own expert's evidence, the First Defendant joins the Second Defendant's submission regarding the relevance of the condition of the nosing discovered post-accident. Each Defendant contends that the displaced condition of the nosing was likely to be caused by the falling Claimant as opposed to having initiated his fall. This was a contention advocated by Dr Lemon, the Second Defendant's expert and is a matter to which I will return in the analysis of the evidence in this case.

24. Obviously if the displaced step nosing did not initiate the fall then its pre accident condition is again causatively irrelevant.

25. Even if it did initiate the fall then the Defendants each contend that its condition was not "*there reasonably to be found*" as it was put by Mr Seabrook in submissions. The Defendants also relied upon evidence called by the Second Defendant from Ms Sarah Collins (Regional Operations Manager for Amey TB 272) who somewhat surprisingly gave an account of 2 inspections that she carried out in relation to the stairs in question in the days immediately prior to the accident. Furthermore it was submitted that the court needs to approach this issue by reference to the question whether the reasonable operator of a reactive system of maintenance would have identified a defect in the nosing on the stairs.

26. The two Defendants understandably diverge when it comes to who might be responsible for any defective condition found by the court to persist. In summary the First Defendant points to its contract which places obligations regarding the condition of the premises on the Second Defendants. The First Defendant points to the work undoubtedly carried out by the Second Defendants in 2019 and to the obligation on its contractor to undertake the task with reasonable skill and care.

27. In such circumstances the First Defendant's case is that whilst there is no contractual indemnity, the apportionment as between the two Defendants arising from any liability should be 100% against the Second Defendants.

28. Finally, of course, and dependent upon the court's factual conclusions, any award should be reduced to reflect contributory negligence. For example if the stair lights were not energised and Mr Stokes proceeded to negotiate them in complete darkness.

The Second Defendant's case in summary

29. As set out above, the First and Second Defendants make common cause on a number of issues including the factual matrix surrounding the accident.

30. In addition they make specific arguments regarding their responsibility for the alleged defects. Firstly, and accepting that their employee Mark Lewis had noted the defective strip light on the stairs prior to the accident, they contend that it was not outwith a reasonable response to wait until he had assistance to replace the same. Secondly, and accepting that their staff had replaced the nosing in question in 2019, if the court accepts Ms Sarah Collins' evidence then this repair was not signed off as completed on the electronic system until she had inspected the work on two occasions a matter of days before the accident. To sign off would require an inspection of some detail and this would suggest the nosing was secure and not liable to give way in the course of normal usage. This, the Second Defendant argues, is more consistent with the post-accident condition of the step being a consequence of the force applied by a falling Claimant rather than a Claimant whose fall has been instigated by the condition of the nosing.

31. The Second Defendant invites the court to conclude that the relevant nosing was, prior to the accident, reasonably secure.

32. As regards their position vis a vis the First Defendant, the Second Defendant point to a system of reporting that was failing and which was not enforced. It is this failing system that is reflected in the post-accident inspection of stairs and lighting within HMP Cardiff which revealed evidence of defects that had not been either noted on the Planet FM system or actioned by the Second Defendants.

33. In the event of apportionment within the contribution proceedings this means that at least a significant proportion of responsibility must be borne by the First Defendants who were the employers and who had overall control of the premises.

The expert evidence

34. Mr Barnes K.C. is right to remind me of the limitation placed upon expert evidence in the case by HHJ Keyser K.C. I approach such evidence with a degree of caution and note that accident reconstruction is not what was anticipated. There is however bound to be a bit of cross over between the strict evidence related to condition of stairs and lights and the competing submissions as to how the accident happened. For example whether the nosing could be ripped from its position on the stairs by a falling Claimant is a combination of its condition pre accident and what sort of force a falling body can exert. As such it is relevant to the question of what was the condition of the stairs because it speaks to whether the stairs could only have been in a state of disrepair prior to the accident happening. Similarly and for the same reasons, the court must be cautious about over analysing the sort of forces that could be exerted on a stair nosing by a person walking down the stairs.

35. The experts who have provided their opinions to the court comprise Mr Stephen Way (Chartered building Surveyor) for the Claimant TB 281, Mr Nigel Humphrey (Mechanical Engineer) for the First Defendant TB 336 and Dr Lemon (Chartered Scientist and Mechanical Engineer) TB 411. The experts produced a joint statement in September 2023 TB 609.

36. Due to ongoing differences the experts gave oral evidence at trial.

37. The joint statement does however reveal a measure of agreement. The following matters are relevant to this judgment.

38. Firstly, and regarding the condition of the stairs, at paragraph 3.4 the experts state:

> *"d) (sic) the experts agree that the displaced nosing was seen to be displaced after the accident but cannot reach an agreed conclusion as to whether it had been secure, was displaced prior to the incident (and therefore possibly contributed to the incident) or became dislodged as a result of the incident.*
>
> *b) prior to the incident the nosings would likely to have been in one of three conditions:-*
>
> *i) Firmly fixed*
>
> *ii) Not properly secure, or was loose, in a condition that may cause a hazard that would not be visually apparent without closer inspection.*
>
> *iii) Visually loose or lifted, and presenting a hazard.*
>
> *…….*
>
> *f) The experts cannot reach an agreed conclusion, based on the photographs made available to them after the incident, as to the way the nosing had been secured to the tread at the time of the incident. The experts agree that it seems screw fasteners had previously been fitted but, regarding the time of the incident, is not clear which positions fasteners may have been present, how many fasteners were present and whether they had been properly secured into the stair tread with anchors such as suitable plugs. It is not clear whether some adhesive had additionally been used; it is agreed that the use if adhesive is not unorthodox for the fixings of nosings.*
>
> *…….*
>
> *i) The Experts consider it is a matter for the court to decide the most probable condition of the nosing prior to the incident, and the extent to which the condition of the nosing might have contributed to the Claimant's fall.*

39. The joint statement goes on to consider the issue of lighting on and around the relevant stairs. The experts each undertook a site inspection and following the same were able to reach a large measure of agreement on lighting issues. To begin with they helpfully summarised how the relevant lights operated.

40. I have identified at the outset of this judgment that it was noted contemporaneously to the accident that two lights in the stairway were not working at all and that one on the

landing above the stairs was dim. The experts identified their understanding that these lights were part of a single lighting circuit and that this circuit including the defective lights could have been energised using a switch that was situated adjacent to the door through which the Claimant would have accessed the landing. They then went on to consider what would have been the lighting conditions in three scenarios, namely;

i) If the lights had all been functioning properly

ii) If the Claimant had not sought to energise the light via the switch as he approached the stairs.

iii) If the Claimant energised the lights but they operated in a way that reflected the defects observed after the accident.

41. The experts made an additional assumption namely that any lights on No1 floor were not turned on and provided no source of light. On the evidence available to the court, that assumption is appropriate.

42. Predictably the answers to the first two questions are unsurprising. If the lights were working properly and if they were turned on, then the stairs including the treads and nosings would have been clearly visible and the standard of lighting as suggested by relevant guidance would have exceeded the guidance in the Health and Safety at Work Booklet - (HS (G) 38). Secondly if the lights were not energised then the stairway would have been unlit and the stairs, nosings and treads would not have been clearly visible.

43. It is the third question that was perhaps more controversial. At the outset it must be accepted that in order to answer this question the experts plainly had to undertake a degree of reconstruction that was inevitably less that 100% accurate. Firstly they had

to try to reconstruct the operation of a "dim" light. Secondly they had to try to measure light levels on the stairs using light meters and such devices are notoriously dependent on precise orientation. With these caveats in mind I am satisfied that the experts did try as best as they could to replicate the situation and that their evidence in this respect should be regarded as helpful. I set out their conclusion on the basis of the reconstruction in full.

"Had the lighting been energised at the time of the incident, but one light fitting dimmed and two not functioning, then the presence and position of the stair flight, and of the upper treads, would have been clearly visible from the landing at the head of the flight (above the minimum illumination level recommended in HS(G)38). The position of the stair treads and down to (and slightly beyond) the tread found to have a damaged nosing post-incident would also have been clearly visible. Below the damaged nosing (including at and below the half landing where the Claimant reportedly came to rest) the illumination levels reduced and the lower treads would have been illuminated below the minimum illumination level recommended in HS (G) 38."

44. Having set out above the view expressed by the experts to the effect that the condition of the nosings on the relevant step is a matter for the court, it is however helpful to highlight some additional points made by the experts in the course of both their written and oral evidence.

45. In his report on behalf of the First Defendants commencing at TB 336 and dated 25th June 2023, Mr Nigel Humphreys at paragraph 10.18 expressed his view regarding the circumstances of the accident by reference to the displaced nosing observed after the accident as follows:

"Nevertheless, the various witness statements, and the photocopy photographs, do seem to confirm that, post accident, the nosing of tread 4 was not properly secured, or fixed to the tread, and was prone to easy displacement. In my view, the photographs do seem to demonstrate that the condition of the nosing was sufficient to

present a tripping risk, or hazard, or was at least sufficiently insecure such that it was likely to move, or become displaced, if someone descending the stairway stepped onto the nosing, and which, in my view could also cause a loss of balance. However, it still cannot, in my view, be discounted that the lack of security, or improper fixing, of the nosings did not result in the accident, and the displacement could be due to the Claimant impacting, striking, or even snagging the nosing as he fell from further up the stairway."

46. Mr Humphreys had also stated at para 5.6 TB 342 as follows:

"Also, in my view, it is likely that, even prior to the accident, the nosings, at least the nosing on the fourth tread down, were insecure and this was discoverable."

And at paragraph 10.34 he made the same point as follows:-

"*Further, in my opinion, given that the proper fixings of the nosings, it seems, generally relied upon on a number of fasteners and possibly also adhesive, the insecurity of the nosing, or nosings, it seems, was, in my view, likely to have been discoverable prior to the accident."*

47. This view was maintained in his oral evidence. In his view the inspection of a step should reveal loose nosings and in some circumstances simply stepping on a step might cause someone to appreciate that a section of nosing was becoming loose. A person going up and down the stairs would exert a force on the nosings. That force would have a mainly vertical vector but there would also be some horizontal force dependent upon the precise point in the process.

48. Dr Lemon for the Second Defendant confirmed in his oral evidence the view expressed in his report and summarised at paragraphs 5.3.1, 5.3.2 and 5.3.7 namely;

"It is within my direct experience that the detachment of nosing strips from stair treads is unorthodox. During normal use, nosing strips are compressed beneath the foot; such compression decreases the likelihood that nosing strips will be detached forcibly in circumstances where fixings are weakened or have failed.

Further to the above, although I cannot discount entirely the possibility that the nosing strip detached underfoot during the Claimant's decent of the flight, I consider this very unlikely.

In summary, I consider it unlikely that the nosing would have detached beneath the Claimant's foot suddenly and/or without warning during a normal descent of the

stairs; the forces applied to a nosing during normal use would primarily act to compress the nosing against the tread beneath. I consider that the application of an extraordinary force to the nosing strip would have been required to result in the detachment of the nosing strip."

49. It was this analysis that led Dr Lemon to prefer the theory that the detached stair nosing that was observed in the aftermath of the accident was a consequence of Mr Stokes falling rather than a cause of his fall. At paragraph 5.3.16 TB he said:

"I consider that the kicking of the Claimant's legs during a fall could almost certainly have resulted in the detachment of a nosing strip from a tread."

50. Dr Lemon's view of the forces applied to a step on normal loading were explored in questioning. Whilst he maintained his view of the overwhelming nature of the vertical force during the majority of the process of descending he did accept that there was a horizontal force acting forward on initial contact with the step and that the vertical force built up upon loading.

51. Without seeking to diminish the importance of the evidence of Mr Stephen Way for the Claimant, it was the evidence of the other two experts that formed the basis of much of the argument before the court. That said Mr Way's report did provide useful information regarding the manner in which the nosing had been fixed to the relevant step prior to the accident. Whilst Mr Way was careful not to speculate as to how the nosing came to be in the condition it was following the accident, he did at pages 304 to 308 provide a helpful description of what he was able to deduce from contemporaneous photographs. The photograph at TB 305 shows that prior to the accident the nosing on this particular step was fixed with 4 screws only. There has been some suggestion of a further 5th screw on the far right hand side of the photograph but on the evidence available I do not find this to be the case. The photographs (Images 6, 7, and 9) also importantly demonstrate that in fixing the nosing with 4 screws two of the screws were placed extremely close to the edge of the

step. Whilst the proximity to the edge probably did not cause a problem on the wall side of the stairs, it certainly did for the third screw from the wall. Image 9 TB 307 shows this fixing to have missed the concrete entirely. It was a further matter of agreement between the experts in oral evidence that positioning the screw in that way was ineffective and inadequate. As Dr Lemon put it, it was "*not very good putting it there*". Before leaving this point it is to be reiterated that the relevant nosing to this step was on the balance of probabilities fixed in October 2019 by operatives working for the Second Defendant.

Post accident inspection of the prison staircases and lighting

52. Mr Richard Aspinall was a Health, Safety and Fire Advisor at HMP Cardiff. In such capacity he was tasked with undertaking an accident investigation. His statement appears at TB 234 and attaches his relevant records. His conclusions were limited and are summarised at paragraph 17 of his statement thus:

"There was a large scale investigation into this accident. However, the investigation could not be closed because we could not ascertain what exactly happened"

53. However the occurrence of the accident did result in Mr Aspinall undertaking an inspection of all staircases including the lighting thereof. The findings are set out in an email sent on the 30th April 2021 TB 258 and in my judgment they are important. I therefore set out the document fairly fully:

"Been out and about this morning checking the integrity of the staircases and lighting in the areas and there is quite a lot of remedial work required.

Hazard identifies as follows:

AB centre stairwell going from ground floor to 4's

All lighting is out on stairwells and requires fixing. There is one light casing which is actually smashed to bits. Stair nosing is ok.

CDE centre stairwell going from ground floor to 5's

C2-C3 stairwell has a piece of step missing on a stair.

Loose nosing on 3rd step on C4-C5 staircase.

Lights out on C5 stair landing.

C-Wing

Lights out on centre of staircase on C wing going up to the 3's landing and all the way up.

Staircase next to C-wing servery going up to C wing office

Loose nosing on first step on second flight of stairs.

Staircase going onto to (sic) D/E-Wing

Loose nosing on top step going up to D/E -Wing.

Loose nosing 1st, 4th and 5th step on last set of stairs going up to D/E wing.

Light not working on staircase.

Staircase E-wing servery

E-Wing staircase going down to the server has 2 steps completely missing nosing and in poor condition. No lights working on the staircase.

D-wing

Bottom step going from D1-D2 landing loose and needs fixing back.

These are the first ones going round lunchtime to check the others as they are getting ready to serve lunch. Will send over the rest of Res (sic) after lunch. I have got photographs of the hazards identified. I am more than happy to go round with the person carrying out the remedial work to show them if unsure from email as it can be quite tricky."

54. In addition the scene of the accident was inspected on the same day by Mr Jonanthan Miles (statement at TB 192) shortly after it occurred. Mr Miles has only been employed at Cardiff by His Majesty's Prison and Probation Service as a Health Safety and Fire Advisor since February 2022 but his work history sheds some light on how maintenance was delivered at HMP Cardiff. In 2011 he had joined the National

Offender Management Service (NOMS) as an electrician. In 2015 Amey won the contract for facilities management at the prison and like many other staff who were employed directly by the Ministry of Justice he was transferred over to Amey to do the same work. In 2017 he became a works supervisor. Thus at the time of the accident he was working for Amey.

55. Mr Miles was told about the accident when he arrived at work on 22nd April 2021 at about 8am. He was told about a problem with lighting and when he visited the scene he could see that the stair nosing on the fourth stair from the top had already been removed.

56. However, attached to his statement are a series of emails. At 16.41 that day he wrote an email as follows:

"We have left barriers up at the moment in case someone wanted to check the area over. I have one light fitting issue to resolve first thing, the small one at the bottom of the stairs. All the others have been upgraded to LED lights.

We have also secured nosings down the stairs, however as Adrian said, given the fact that the majority are 20 years old and they are shallow nosings, so all the pressure is on the edge of the step, it could be worth changing to something deeper, such as the ones on E wing servery stairs."

57. On the 14th May 2021 he sent a further email detailing that which he had found on the day of the accident and after referring to work done to the lighting said:

"From a step perspective, we obviously found the one nosing was removed by the team in the morning. This was found to be bent out of shape where the fixings must have held, and then the other nosings were secure but some felt weaker than others. We secured a new nosing to replace the one removed in the morning, and secured a further 5 steps with screws drilled into the concrete."

The evidence of Sarah Linda Collins

58. A surprising element of the evidence in this case was provided by Ms Sarah Collins whose witness statement appeared at TB 272 and is dated 15th May 2023. Ms Collins

was employed by Amey as a Regional Operations Manager based at HMP Cardiff and she was the only witness called for the Second Defendant.

59. The thrust of her written evidence was to the effect that Amey complied with their obligations in respect of inspecting the lighting and the relevant staircase. Both were inspected on a 12 monthly basis. From the documentation available to her she was able to say that the lighting was last inspected before the accident on 21st October 2020 and the staircase on 24th July 2020. On each occasion no defects were noted. She also confirmed that no defects had been alerted to Amey as part of the reactive system of maintenance operated by the prison either by way of the Planet FM system or otherwise.

60. There was a caveat to this point. As mentioned above it is accepted that in the days leading up to the accident an electrician employed by Amey, Mr Mark Lewis, had noted that the tube lighting running along the stairs was not working. He was not able to repair it there and then and intended to repair it a few days later. Inexplicably he did not enter his observation onto the Planet FM system. Ms Collins considered in her statement what, if anything, would have happened had he reported the defective light. She explained that a "light outage" had a standard priority code "D". This meant that under the reactive system of maintenance it was attended within 2 days of notification and repaired within 4 days of notification. From this Ms Collins was able to conclude that irrespective of when Mr Lewis' failure to report the "outage" it would not have meant that the light was repaired prior to the Claimant's accident. Furthermore she complained that in general terms there was a tendency for the prison management staff to save up complaints about "outages" until they had collected 20 or so rather than report them as and when they happened.

61. Mr Lewis was not called to give evidence. He did however produce a statement in the aftermath of the accident and that statement appears at TB 621. His estimate is that the stair light had been out of action for a couple of days before the accident occurred.

62. In her statement Ms Collins dealt with the condition of the staircase as follows:

Para 26

"I confirm that under job number 472377 there was a works order to attend area, remove old nosings and fit 4 new 1200mm nosings which was done on or around 1st October 2019. I do not have access to the works order for this job though believe that the incident nosing was one of the 4 nosings replaced during this job."

Para 28

"There is no written method as to how stair nosings are to be replaced. It was likely 1 of 3 maintenance operatives who would have done the job in October 2019. We only ever employ experienced and competent operatives with at least 20 years experience each."

Para 31

"I am aware than (sic) Jonathan Miles did a test the next day after the Claimant's accident and have seen a email confirming he secured new nosings and secured a further 5 steps with screws drilled into the concrete but I do not know which stair nosings were fixed/refixed. It is possible that the stair nosings which were attended to after the accident were a mixture of old and new. After the Claimant's accident health and safety went out to check and sent out a list of the stair nosings that needed changing."

63. However, when Ms Collins gave oral evidence she gave an account that was unheralded in her statement. She referred to the series of documents appearing at TB 725 and following and said that the first time she had seen these documents was just before she gave her evidence.

64. Her account was as follows. The documents did not establish that checks of the works carried out to the nosings in October (or September) 2019 had been undertaken contemporaneously as they should have been. These checks would have to be undertaken by management to "close down" the relevant entry. She said that in April 2021, and probably due to the migration of data from an older version of the Planet FM system to a new version, it was realised that these checks had not been done. Looking at the document on pages 725-726 she thought that it revealed that it was her who had in fact signed off the 2019 work in April 2021, more specifically as a result of visits to the staircase on 16th April 2021 and 20th April 2021 respectively.

65. In fact her evidence went further. In order to carry out the checks she would have inspected each replaced step individually physically testing the steps and in particular the nosing. In other words Ms Collins' evidence became that she had carried out two physical checks of the stairs that were alleged to have been defective in the days leading up to the accident, indeed one being on the day before the accident, and she did not observe anything of concern. Ms Collins had no explanation as to why this information had not found its way into either the accident investigation or her witness statement save that she said she did not realise it should be included.

66. Understandably this part of her evidence was the subject of severe criticism, a criticism compounded by the florid description given of how meticulous the inspection would have been.

67. Again understandably, it was submitted that the court should be very slow to accept that such inspection as the witness described actually occurred. Furthermore if it had occurred with the level of care described, then the absence of any recorded defect is

astonishing as was her failure to note the inadequacy of the fixing of the nose that was displaced in the accident.

Resolution of factual issues.

68. As I have said the Claimant can give no account of the circumstances of the accident and the court is invited to draw such inferences as properly can be drawn from such evidence as is available. I have been reminded of the need to approach the drawing of inferences with care and not to speculate. In the course of argument I was referred to the principle of what was termed "*Keefe benevolence"*. This arises from the case of *Keefe v Isle of Man Steam Packet Co [2010] EWCA Civ 683.* In that case a Claimant in a noise induced hearing loss case had failed at first instance because he had been unable to satisfy the trial judge as to the amount and duration of exposure. Part and parcel of the problem facing the Claimant was that the Defendants had failed to comply with their duty to undertake noise surveys. On appeal Longmore LJ said:

> *"If it is a defendants duty to measure noise levels in places where his employers work and he does not do so, it hardly lies in his mouth to assert that the noise levels were not, in fact, excessive. In such circumstances the court should judge a Claimant's evidence benevolently and the defendant's evidence critically. ……..a defendant who has, in breach of duty, made it difficult or impossible for a Claimant to adduce evidence must run the risk of adverse factual findings.*

69. In my view whilst the principle is not irrelevant to this claim, it cannot be said to be on all fours with Mr Stokes' case. For example here there is no direct evidence from the Claimant personally to treat benevolently. What there is, as highlighted in detail below, is a failure on the part of each Defendant, to do things that could or should have identified the condition of the relevant part of the workplace at an earlier stage. These failures mean that arguments, for example, to the effect that the step was not in a condition "reasonably to be found" or more particularly evidence from the

Defendants to the effect that they were unaware of any defective condition of the nosing prior to the accident should be judged critically.

Lighting

70. In my view the first factual issue to resolve relates to the prevailing lighting conditions at the time of the accident. Specifically did Mr Stokes seek to turn on the lighting system as he approached the relevant staircase?

71. It appears clear that if Mr Stokes did not turn on the light switch at the top of the stairs then there would be little light in the area at all and it would be impossible to see any distance. The Claimant invites the court to conclude that the suggestion that he would attempt to proceed to negotiate the stairs in virtually total darkness is inherently unlikely. Whilst he was of course very familiar with the route that he was taking to visit the lavatory, he simply would not do that without switching on the lights as he got on to the landing.

72. The Defendants contend that such a submission does not pay sufficient regard to the evidence from others working at the prison, to the effect that during the hours of darkness they often did not turn on the lighting so as to avoid disturbing the prisoners. Thus, they submit, whilst superficially it would be surprising for someone to choose not to switch on lighting, that is what in fact occurred on a daily basis.

73. Furthermore the Defendants point to the evidence called by the Claimant from Mr Graham Dale and Ms Sarah Jones TB 163 and 171 respectively. Each approached Mr Stokes from the bottom of the stairs and each recalled how dark it was. Each thought that the lights at the top of the stairs were not on, although Ms Jones described in her statement TB 173 para 9 asking another officer who was on the ground floor to reach

behind him to engage the switch at the bottom of the stairs, but when he did so it made no difference.

74. Conversely the Claimant pointed to the evidence of witnesses who provided statements for the First Defendant namely Kara Trebilcock TB 224 and Tracey Cox TB 266. More specifically they referred to contemporaneous witness statements given by each of those witnesses in the aftermath of the accident and which appeared at TB 1916 and 1917 respectively. Ms Trebilcock and Cox undoubtedly arrived at the scene shortly after the alarm had been raised. Unlike Mr Dale and Ms Jones they approached from the top of the stairs, ie the direction Mr Stokes was taking.

75. On 27th April 2021 Ms Cox made a statement I the following terms:

"On the morning of the 22nd April 06.30hrs, CM Tony Stokes arrived in work to take over from myself as I had just finished my night shift.

Tony arrived in work and appeared well in himself, he was excited and happy stating that he had been talking to his daughter in Australia and she had told him that he was going to be a grandfather again.

Tony then said that he needed to go to the toilet, so I told him to go and that I would hand over the details from the nights when he came back, so he advised me that he was going to go to the OMU to use the toilet down there.

…….

At 06.40hrs I was on my way OMU when the fire alarm was raised, this came over the radio and E1 landing, as I was already on my way to OMU I responded to say I was on my way.

I arrived at the top of the stairs leading to OMU when I seen a member of staff laying on the floor face down on the little landing part of the stairs, I soon realised it was Tony Stokes, he was lying with his top half of his body on the landing part and his legs were up the stairs."

76. Kara Trebilcock, in a statement produced on the 29th April 2021 said

"As we were both responding to the alarm we seen a member of staff lying on the stairs with his head on the floor and body up the stairs on the front. Officer Hopkins was knelt down talking to the staff member. We continued down the stairs and

realised it was CM Stokes. At first I didn't think he was breathing and was worried about moving him not knowing what injuries he had sustained."

77. Neither Ms Cox or Ms Trebilcock described a need to turn on the lights as they made their way onto the landing at the top of the stairs. Whilst it was dark, they were able to make out the body at the bottom to the stairs. Neither indicated that they had to turn on the lights on the landing in order to negotiate the stairs. This evidence is consistent with the sort of defective lighting reconstructed by the experts being energised. It is not consistent with there being no lighting turned on at all. It is consistent with either the lights already having been energised before Mr Stokes made his way onto the landing or Mr Stokes turning on the lights.

78. The evidence from Ms Jones that she asked someone (Mr Hopkins) at the bottom of the stairs to turn on the lights has some relevance. She had made the same point in her contemporaneous statement made on 31st May 2021. What she said was that when the switch was operated it made no difference. If the lights at the top of the stairs were not energised, then the expectation might have been for there to have been a change in the level of light provided.

79. It is also important to consider the evidence relied upon by the Defendants to the effect that it was the "done thing" not to turn on lights during the night and to negotiate the prison in darkness. There is however an important caveat to that evidence. The caveat is encapsulated at paragraph 10 of the statement of Paul Cotterell TB 186:

"At HMP Cardiff, lights are generally turned off during the night to allow prisoners to sleep. Prison officers use torches to walk around when conducting night patrols. We have to provide our own torches as they are not standard issue. I don't think that Mr Stokes would have had a torch as he was due to start the day shift and he is not an operational prison officer either."

80. The area where the accident happened was not particularly adjacent to prisoner accommodation. Furthermore the practice of not turning on the lights seemed to have been predicated on the use of a torch. Without a torch Mr Stokes would be negotiating stairs in total darkness and it does beg the question as to why he would do that.

81. The most powerful evidence in favour of the conclusion urged by the Defendants is that of Mr Dale and Ms Jones. However, it must be remembered that their focus was on the casualty where, due to the fact that two lights on the staircase were not working, it was undoubtedly very dark. Consequently when I weigh the available evidence and when I reflect upon the inherent unlikeliness of someone without a torch deciding to negotiate the staircase together with the evidence of Ms Cox and Trebilcock I am driven to the conclusion that, on the balance of probabilities, the Claimant has established that the lighting system was energised by him.

The condition of the stair nosing prior to the accident and its causative effect if any.

82. In this case there are certain facts that can be established with little controversy. Before the accident Mr Stokes had indicated an intention to walk from the number 2 floor to the number 1 floor in order to visit the lavatory. Shortly afterwards he was discovered unconscious towards the bottom of a staircase leading between the two levels. In the previous paragraphs I have found that on the balance of probabilities Mr Stokes would have energised the lights by way of the light switch on the number 2 landing. The effect of doing so is set out in the analysis of expert evidence again dealt with above.

83. In the aftermath of the accident contemporaneous inspection revealed that the nosing on the step approximately 4 from the top had lifted and come away from its position

in a way illustrated in the photographs attached to the statement of Ms Jade Akomah-Mordi beginning at TB 113. Those photographs show that whereas one end of the nosing has remained attached to the step, the edge on the left hand side as one approaches the from top is unattached and has pivoted forward.

84. The evidence also established that this piece of nosing had been a replacement that had been fixed by the Second Defendants in September or October 2019 (approximately 18 months prior to the accident). Furthermore by reference to TB 305 and 307 the manner by which the nosing was fixed was inadequate due to the positioning of one of the 4 screws used at a point where it did not gain purchase on the concrete structure of the step.

85. Lastly, in general terms, the evidence from the First Defendants regarding inspections undertaken in the aftermath of the accident showed that loose or even missing nosings were apparent on other staircases within the prison. Thus, whilst the maintenance system that was operated within the prison seemed to depend upon members of staff reporting defects, Mr Aspinall's conclusion, and I agree, was that for whatever reason the system was not working and that people were not reporting defects.

86. The argument advanced on behalf of the Defendants, encapsulated in the evidence of Dr Lemon, is that these facts do not establish a link between the condition of the step after the accident and initiation of the Claimant's fall.

87. Specifically Dr Lemon contends that a fall by the Claimant from a point above the 4th step was capable of dislodging the stair nosing as he tumbled down to the bottom. In his view this was a more satisfactory explanation of the post-accident findings as he opined that the overwhelming vertical force applied by someone stepping on a step would mean that it was unlikely to cause a nosing to be moved or displaced.

88. I have already identified the limitation placed on the use of expert evidence during the case management of this case. As such I approach with some caution elements of accident reconstruction mechanics as have been led before the court. Ultimately it is a matter for the court to determine on the balance of probabilities what occurred or alternatively to conclude that the prima facie facts cannot be established by the Claimant upon whom the burden rests.

89. That said, it seems to me that on the balance of the expert evidence analysed above, there would also be an element of horizontal force applied by someone stepping on the nosing of a step and that the vertical force is not applied directly downwards in an instant. Not only does this accord with the expert evidence but it also accords with common sense and experience.

90. It follows that the court can readily conclude that a section of nosing that had become loose could cause a person to lose their footing on the stairs and fall.

91. In the context of this case there is inevitably a cross over between findings as to the condition of the stairs and how the accident occurred. To use an obvious example, if the evidence established that prior to the accident the stairs were in a generally good condition, then the likelihood of the displaced nosing initiating the fall would be limited. Here the position is rather different. There is general evidence about the condition of nosings at the prison and there is specific evidence of the inadequacy of the fixing of this particular nosing in the autumn of 2019.

92. Of course there are many reasons why someone might fall down a flight of stairs. Simple inadvertence is always a possibility. Had Mr Stokes attempted to negotiate the steps in total darkness, that of itself might have increased the risk of him just missing a step at the top of the stairs. I have however reached a conclusion in respect of the

operation of the lights and whilst they were undoubtedly defective, the experts have agreed that the top of the stairs would have been sufficiently light for the steps to be seen.

93. That said, people ordinarily do not fall down stairs. Stairs are a part of everyday life with which we are all very familiar and which we all negotiate without incident. Of course care has to be taken, but in the ordinary course of events we negotiate them without thinking about it. Here we have evidence of a poorly fitted piece of nosing, that was found to be displaced after the accident and a background of a system of reporting defects that was not operating to identify loose or missing nosings either on these stairs or other stairways.

94. Consideration of this central element of the case cannot be complete without mention of the evidence of Ms Collins. Her oral evidence suggested that in the days leading up to the accident she had gone twice to the accident scene and carried out a comprehensive check of the repair work undertaken in October 2019. I am unable to accept that account. Firstly, if correct, it is extraordinary that it did not get highlighted either in the post-accident investigation or in her statement prepared for these proceedings. Secondly, had she gone to the site to properly check on the work undertaken in 2019 then she would or should have noticed the poor method of fixing that had been adopted or indeed the other issues subsequently identified. The fact that she failed to note these means either that she did not undertake the inspection that she should have done or that if she did go to the steps then the inspection was cursory and inadequate.

95. I have not ignored the evidence obtained in the aftermath of the accident from Mr Clifford, a prisoner who had apparently cleaned the floor of the stairs on the previous

day and who did not notice a problem. Like Mr Mark Lewis, a decision was taken not to call the witness to give evidence. As such there is only a limited amount of weight that could be attached to the same. Whilst he may have noticed a very obvious danger from a grossly displaced nosing, I do not think general looseness or similar would have caused him to take any particular note. His evidence must be seen against the background of a malfunctioning reporting system. We also know from the post-accident inspection that nosings, including nosings on this staircase, were at least loose and these were not the subject of report or comment. In my judgment Mr Clifford's evidence is of little help.

96. In my judgment this is a case where proper inferences can be drawn from the established facts. I am satisfied on the balance of probabilities that prior to the accident the relevant section of nosing was in a condition either that was loose to the extent that when someone using the stairs stepped upon it, it could be displaced or that a previous user of the steps had displaced it such that it was in a precarious position when Mr Stokes stepped upon it. Either way I am satisfied on the balance of probabilities that it was the condition of the step that initiated the Claimant's fall.

The relevance of lighting

97. It is an established fact that the lighting of the stairwell on the day of the Claimant's accident fell below that which was intended. Furthermore it is an established fact that an employee of the Second Defendants Mr Mark Lewis had noticed at least part of the problem before the accident and had not reported it or actioned it. He plainly did not regard it as a particular priority. However we also know that the state of the lighting was such that at the bottom of the stairway upon which the Claimant had his accident was extremely dark. Were it the case that the Claimant had fallen at the bottom of the

stairs then the court would have had little difficulty in concluding that the lack of appropriate lighting made a material contribution to the accident. However as I have concluded above the evidence points to the likelihood of the Claimant having fallen from a point on the stairway near the top, specifically as a result of the condition of the observed displaced nosing.

98. The Defendants rely upon the conclusion of the experts in the joint report set out above at paragraph 44. Doing the best that they could the experts tried to reconstruct the effect of the lighting conditions that prevailed at the time of the Claimant's accident. They concluded that even with the lights that were defective or not working properly, the top of the stairs including the relevant step would have been "clearly visible".

99. The Claimant attacks the reconstruction as being an assessment that was unreliable because it was dependent upon small variances in the position of the light meters used to obtain a reading and because it was difficult to replicate exactly the light conditions on the relevant day. They submit that in any event to apply the general standard within HS (G) 38 is to fail to recognise the particular need to provide good lighting around stairs BS4395 TB 490. A view was taken to provide a certain amount of lighting and if that was not provided then it is a short step indeed to conclude that the absence of the intended level of light made a material contribution to the accident.

100. The problem with this submission is that the experts have all agreed that their approach to the reconstruction represented their best efforts to demonstrate the light situation at the time. It is, of course, an inexact science and the method of assessment is bound to be capable of criticism. However, as regards the accident their agreed position is that at the time of the accident the area around the step from which I have

found the claim to have fallen was "clearly visible" and I accept that evidence as a fair assessment of the likely situation.

101. In my judgment this evidence leads me to conclude that the Claimant falls short of establishing that the lighting conditions made a material contribution to the accident. Indeed in reaching my conclusions as to how the accident occurred I have to some extent relied upon there being sufficient light at the very top of the stairs so as to make an inadvertent fall less likely than a fall caused by the step.

Breach of duty

102. In submissions there was no real debate as to the nature of the duties owed by the respective Defendants. The First Defendant, as the Claimant's employer owed a non delegable duty of care in common law to provide a safe place of work. The Second Defendants as maintenance contractors would owe a duty of care to those who might reasonably be foreseen as being effected by their action and that would include the Claimant.

103. The Defendants submit that in addition to any findings that I may make as to the condition of the stairs at the time of the accident, in order for liability to attach the court would have to go on to conclude that any defect was "there reasonably to be found".

104. The Claimant's contend that the court should approach the issue by reference to the logic in *Ward v Tesco Stores [1976] 1WLR 810* as amplified by Pill LJ in *Dawkins v Carnival PLC (t/as P and O Cruises) [2011] EWCA Civ 1237*. These of course were cases involving transient hazards on flooring (spillages) where the Claimant could establish the presence on the floor of something that should not have been there but

could not adduce evidence as to how long the floor had been in that condition. Importantly the Defendants had control of the relevant area. The Court of Appeal in *Ward* found that once the Claimant had established a prima facie case of presence of a hazard on the floor of an area under the control of the Defendant, then an evidential burden switched to the Defendant. Evidence adduced by the Defendant of a system of inspection and observation might displace the prima facie case in negligence such that, when the evidence was taken as a whole, negligence was not established by the Claimant. In *Dawkins* the court held that merely establishing the existence of a system of inspection would generally be insufficient, what was required was evidence that the system was actually being operated. At para 28 Pill LJ said:

"In my judgment, in the absence of evidence from members of staff claimed to be implementing the system, the judge was not entitled to infer from the existence of a system that the spillage which led to the fall occurred only a few seconds, or a very short time, before the accident."

105. In my judgment the proper analysis of Mr Stokes' case is as follows. In the autumn of 2019, the nosing on the step that I have found caused the Claimant's accident was attached by an employee of the Second Defendants, the method used to attach the step was inadequate in that one of the limited number of screws used (4) was not screwed into the concrete body of the step and was thus ineffective from the very start. The poor positioning of the screw would or should have been apparent to the person undertaking the job and anyone inspecting the work.

106. Ordinarily work undertaken by the Second Defendant's employees was the subject of inspection. Here inexplicably the documents seem to have recorded that inspections of the work had taken place in the days leading up to the accident. If those inspections took place and if they were carried out properly then they should have identified the poor manner of fixing the nosing. It will be noted that Ms Collins did not apparently

identify the issues with nosings on the very same steps that were picked up after the accident had occurred.

107. Nosings on steps are, of course, the subject of wear and tear and the stresses of use. As a matter of common sense a poorly attached nosing would be unlikely to stand up to the stresses of the same as much as a properly attached section of nosing.

108. On my findings the condition of the stairs at the time of the Claimant's accident was such that it represented a hazard for the reasons set out above. The existence of this hazard was, bearing in mind the background summarised above, more consistent with fault on the part of each of the Defendants than with the absence of fault on their part. This is akin to the reasoning of Pill LJ in *Dawkins* see paragraph 26.

109. The evidence adduced by each of the Defendants as to system of inspection and maintenance was generally poor. I have already commented upon the unsatisfactory nature of the evidence from the Second Defendants, but the evidence led on behalf of the First Defendant regarding system was also generally poor. Mr Aspinall accepted that the system of reporting defects was not working. In fairness he had little option. Plainly his post-accident inspections had revealed a significant number of issues including those related to the fixing of nosings on stairs, that had not been reported and which should have been. Consequently whilst the Defendants had a system to deal with the development of hazards, the court can readily conclude on the evidence available that it was not operating effectively.

110. In my judgment the First Defendants are in breach of their non-delegable duty to an employee to provide a safe place of work and a safe means of access or egress by reason of their permitting the stairs to be in the condition that I have found above. They did not operate an adequate system to identify defects or maintenance targets in

that they did not take steps to enforce obligations to report. In short their system was failing.

111. Equally the Second Defendants are in breach of their duty of care to the Claimant. Their employee failed to repair the nosing adequately when it was refixed in 2019. The work was either not inspected or checked after completion as it should have been. As a result they caused or materially contributed to the nosing of the step being in the condition that caused the accident.

112. This is not merely a material contribution to risk case. Such a conclusion would be insufficient to establish liability. It is a case where I have found that the breaches of duty materially contributed to the condition of the particular step and that this condition caused the Claimant's fall.

113. For the reasons set out above I am satisfied that the condition of the step was "reasonably to be found". Indeed the Second Defendants had actual knowledge as to how the nosing had been fixed.

114. I have already reached a conclusion regarding the lighting and whether it had a causative effect on the accident. I have concluded that whilst each Defendant was in breach of duty to the Claimant, such breaches were not causative. However, the evidence regarding the lighting is informative when it comes to analysing how the system of identifying and remedying defects was operated at HMP Cardiff. The fact that inoperative lighting on a stairway was noticed by an employee of the Second Defendants but not actioned or reported is telling. Similarly the lack of any report by employees of the First Defendant is again consistent with an environment whereby the importance of reporting was not reinforced.

Contributory negligence

115. Having found as a fact that the Claimant energised the lights as he approached the relevant staircase, I am satisfied that this is not a case where contributory negligence arises. To criticise the Claimant for proceeding when the foot of the stairs was in darkness is in my judgment to place too high a burden on an employee following a travel route that he would have followed on many occasions previously.

Contribution, Indemnity or Apportionment

116. In the course of submissions comparatively little was said about the Part 20 proceedings brought by the First Defendant against the Second Defendant. Indeed a limited amount of evidence was led on this issue. I have already referred in the introduction to this judgment to the relevant contractual term relied upon by the First Defendant at TB 2787.

117. The starting point is the apparent agreement that the findings made by the court set out above render each Defendant jointly and severally liable to the Claimant in full, subject to any deduction for contributory negligence. Next it is to be noted that this is not a true case of apportionment but rather a claim for 100% contribution or indemnity from the Second Defendant. Lastly it is, of course, not a case of contractual indemnity.

118. It follows that the exercise to be undertaken by the court, if not strictly apportionment, is akin to the same in that it is assessing how much contribution should be made to the claim against the First Defendant by the Second Defendant if all damages were sought to be enforced by the Claimant against the First Defendant.

119. The conclusions set out above regarding the respective breaches by the parties do not need to be repeated here. In summary the Second Defendant failed in the way the nosing was installed, maintained or repaired, and failed to inspect the work undertaken adequately or at all. However the First Defendant failed to operate or enforce a proper system of identifying and remedying maintenance issues. It is a combination of these factors that resulted in the stairs being in the condition that I have found.

120. In such circumstances it would in my judgment be inappropriate to afford the Claimant's employer a 100% indemnity against the Claimant's damages arising from an accident consequent upon the state of the workplace. Some indemnity would however be appropriate but in my judgment in the very particular circumstance of this case it is limited to 60% of the award. The effect of this decision is that the respective Defendants should be responsible for the Claimant's damages according to the proportion 40% from the First Defendant and 60% from the Second Defendant.

121. I invite the parties to file a draft order within 7 days of handing down of this judgment, in default of which the matter will be listed for a short hearing.