



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 38

P555/25

OPINION OF LADY HOOD

in the Petition of

WILLIAM FREDERICK IAN BEGGS

Petitioner

for

Judicial Review of acts of prison authorities in opening and reading his correspondence without reasonable cause and for delays in providing him with his correspondence

Petitioner: Cox; Drummond Miller LLP

Respondent: McKinlay; Scottish Ministers, Scottish Government Legal Directorate

15 April 2026

Introduction

[1] The petitioner is currently a prisoner in HM Prison Edinburgh. The respondent, acting through its executive agency the Scottish Prison Service (“SPS”), is responsible for the petitioner’s detention. Over the years, the petitioner has brought a number of cases which have contributed to the drawing of the contours of the rights of prisoners with respect to their incoming mail. In this petition, the petitioner seeks to challenge certain aspects of the respondent’s handling of mail addressed to him, in the period between March and July 2025.

[2] At the substantive hearing, both parties adopted their Note of Argument, as well as making oral submissions. They made clear that issues had narrowed since the raising of proceedings, and thus focussed only on those matters which remained in dispute.

Factual circumstances

[3] Support for the parties' factual averments in the petition and answers was provided by affidavits (from the petitioner, and from Steven McCann, Head of Operations at HMP Edinburgh), and productions lodged with the court. From these, I draw the following summary of the relevant factual circumstances.

[4] There are around 900 prisoners in HMP Edinburgh, including the petitioner. Correspondence addressed to them will be sent to the prison. However, incoming mail could be a way of introducing into the prison, items which are prohibited. For example, incoming mail could be impregnated with illicit substances. This is a matter of grave concern - especially since there has been a sharp increase in illicit drug consumption amongst prisoners at HMP Edinburgh in recent times. There have also in the past been instances of persons who are not authorised to do so, re-using business envelopes in an attempt to covertly introduce illicit items into HMP Edinburgh. Cross-contamination of mail can occur, in the process of delivery into the prison for distribution. The respondent has accordingly put processes in place to control incoming mail. In particular, incoming mail in HMP Edinburgh is processed in accordance with the Management of Prisoner Correspondence Policy, and the Management of Prisoner Correspondence Guidance. There are also accompanying Standard Operating Procedures (SOPs).

[5] The SOP on Management of Prisoner Correspondence anticipates that mail will be distributed on the day of its receipt in the prison (although there may be a delay of one

working day at the very start of the process when the designated mail administrator is not on duty). SPS also issue audit standards, to which prison establishments are expected to adhere. The audit standard for mail provides (paragraph 3.4.1.1) that mail

“will normally be delivered to prisoners on the same day it is received; except where it is necessary to delay delivery due to exceptional circumstances such as Industrial Action by staff or loss of facilities”.

Mail received for prisoners at HMP Edinburgh is processed Monday through Saturday. In the mail room, all envelopes are photocopied, and damaged items of mail are removed. Confidential correspondence is separated out from general correspondence. At various stages of this process, the mail is tested using special equipment. The mail is then distributed to the individual halls within the prison. A prison officer, wearing nitrile gloves, will open general correspondence in front of the prisoner to whom it is addressed, before taking it away for photocopying (the prisoner may opt for the principals to be stored or destroyed). At that stage, neither prisoner nor prison officer will read the correspondence, but the prison officer will count the sheets, and will look for any signs that the mail is suspicious, which will lead to it being removed for testing. Sentimental items such as cards or photographs are tested, before being given to the prisoner. Confidential correspondence is given to the prisoner unopened. Although the aim is for mail to be distributed to prisoners in HMP Edinburgh on the day of its receipt into the prison, sometimes this is not possible for operational reasons.

[6] Mail which, on testing, tests negative for a banned substance is given to the prisoner. However, mail which tests positive is passed to the police. In line with the relevant SOP, such mail is not photocopied. Essentially, this is because as a police production, the item should not be handled further, and certain substances could react with a photocopier causing damage to the equipment, or raising a safety issue. The police production bag into

which such mail is placed is not transparent. Police Scotland attend HMP Edinburgh periodically, and collect the items which have tested positive.

[7] The petitioner frequently receives mail: for example, in the month of April 2025 alone, the petitioner received 103 items of mail. Each mail day, four members of staff are tasked with the processing of the petitioner's mail. In addition to the Policy, Guidance and SOPs already referred to, a special bespoke protocol is in place for mail delivered for the attention of the petitioner.

[8] On 2 April 2025, two items of mail addressed to the petitioner were seized. There is no dispute that these were appropriately classed as items of general correspondence, and that one of the items was a letter from East Ayrshire Council. Both of the items tested positive for the illicit substance, ketamine. The petitioner was issued with two suspicious mail retention forms, which stated that both of the items of mail would be safely destroyed after the police investigation was complete. The petitioner was neither advised of the contents of the mail, nor provided with a copy.

[9] On 12 March 2025, two items of correspondence addressed to the petitioner were seized, both of which were being dealt with as items of general correspondence. However, one of these letters was from NHS Lothian Board Legal Policy, and contained results of tests concerned with the petitioner's health. Had this letter been treated as medical correspondence, and hence confidential correspondence, different rules would have governed how it was handled. The petitioner is not recorded as having a life-threatening illness, nor has authorisation been given by the prison Governor for medical correspondence to the petitioner to be treated as confidential correspondence. The correspondence tested negative for a banned substance, and a photocopy was provided to the petitioner.

[10] On 19 March 2025 and 22 July 2025, legal correspondence addressed to the petitioner was received. These were therefore appropriately classed as confidential correspondence. Neither item of correspondence was marked as damaged on receipt, and the respondent's SOP on the handling of damaged mail was not followed. The item of correspondence received on 19 March 2025 had been delivered to the prison on 17 March 2025. By the time it was handled in the hall, there was a small tear at the transparent "window" of the window envelope. The letter inside the envelope could neither be read nor removed through this small tear. It has been suggested that the tear may have occurred when the addressee was being ascertained through the transparent "window" of the envelope. The seal of the envelope was unbroken. The envelope containing the item of correspondence received on 22 July 2025 was not open on receipt in the mail room. However, on delivery to the petitioner, the envelope was unsealed. Despite an investigation, it remains unclear how this happened, although there is no suggestion that the enclosed mail was read or copied, or that the envelope was unsealed maliciously. The Internal Complaints Committee ("ICC") concluded that this incident was an anomaly, and not a broader failure of the system in HMP Edinburgh.

[11] The petitioner asserts that between March 2025 and July 2025, on seven instances mail had been issued to him late. On all but one of these occasions the delay had been of one day, or 2 days – the remaining instance was a delay of 7 days in issue. The respondent accepts that on three of these occasions, mail was not delivered to the petitioner on the day of its receipt in HMP Edinburgh: one was explicable by staffing issues, another by an incident within the prison. The respondent also considers it possible that there was a delay on one of the other occasions identified by the petitioner. However, the relevant records

held in the prison show that the mail received on two of the other dates in issue was delivered without delay.

Remedies sought

[12] The issues between the parties having narrowed, the petitioner now seeks the following remedies:

- Declarator that the respondent's failure to apply its guidance and policies was unlawful;
- Declarator that the respondent's failure to treat the petitioner's correspondence with NHS Lothian Board Legal Policy as medical correspondence within their policy and Direction is unlawful and irrational;
- Declarator that the acts of the respondent were incompatible with the petitioner's Article 8 rights, and therefore unlawful under section 6 of the Human Rights Act 1998 and beyond their powers in terms of section 57(2) of the Scotland Act 1998;
- An order interdicting the respondent and SPS prison officers from destroying the petitioner's correspondence without him becoming aware of its contents;
- An order interdicting the respondent and SPS prison officers from ordering the destruction of mail items seized from the petitioner on 2 April 2025;
- An order requiring the respondent to update its training and guidance to ensure that prison officers do not interfere with the petitioner's or other prisoners' correspondence except when it has been explained to the petitioner or other prisoners the reason for a belief that the letters or packages contain prohibited articles;

- The expenses of proceedings, and such further orders as seem just and reasonable to the court.

The petitioner did not otherwise insist upon the remedies originally sought within the petition.

The law

[13] Section 39 of the Prisons (Scotland) Act 1989 allows rules to be made for the regulation and management of prisons. The Prisons and Young Offenders Institutions (Scotland) Regulations 2011 (SSI 2011/331) (2011 Rules) provide as follows (in so far as relevant):

“55.— Restrictions on general correspondence to and from the prisoner

- (1) This rule applies to any letter or package, other than one to which rule 56 or 57 applies, which a prisoner wishes to send or which is addressed to a prisoner.
- (2) An officer or employee may open a letter or package to which this rule applies and remove, copy and, for the purposes of investigating whether it contains a prohibited article or unauthorised property, test the contents of that letter or package.
- (3) Where an officer or employee proposes to open a letter or package to which this rule applies, or remove the contents of that letter or package, the officer or employee may ask the prisoner to be present when the letter or package is opened or its contents removed.
- (3A) Where an officer or employee copies the contents of a letter or package to which this rule applies, the officer or employee must provide the copy to the prisoner.
- (3B) Where an officer or employee copies the contents of a letter or package to which this rule applies, the officer or employee may retain the letter or package for return to the prisoner upon his or her release.
- (4) The contents of a letter or package to which this rule applies may only be read by an officer or employee—
 - (a) in the circumstances specified in a direction by the Scottish Ministers made under paragraph (7); and

- (b) in accordance with any conditions specified in a direction by the Scottish Ministers made under paragraph (7).
- (5) Subject to paragraph (6), where a letter or package to which this rule applies is, or is found to contain anything, in contravention of the restrictions specified in a direction by the Scottish Ministers made under paragraph (7), an officer or employee may –
- (a) prevent the letter or package, or the contents of the letter or package, from being sent or from being received by the prisoner; and
 - (b) deal with the letter or package, or the contents of the letter or package, in accordance with such arrangements as may be specified in a direction by the Scottish Ministers made under paragraph (7).
- (6) Where a letter or package to which this rule applies is found to contain a prohibited article or any unauthorised property, the Governor must deal with the item in terms of rule 104.
- (7) The Scottish Ministers may specify in a direction any of the following matters in relation to letters and packages to which this rule applies –
- (a) the circumstances in which a letter or package may be read;
 - (b) the conditions under which a letter or package may be read;
 - (c) the officers or employees who may be authorised to read a letter or package;
 - (d) the restrictions as to the number of letters or packages which a prisoner may send;
- [...]
- (i) the general nature and description of letters or packages which a prisoner is not permitted to send or receive; and
 - (j) the arrangements in accordance with which a letter or package, or the contents of a letter or package, may be dealt under paragraph (5)(b).

56. – Opening and reading of confidential correspondence

- (1) This rule applies to a letter or package which can be clearly identified, from the outer face of the envelope or packaging, as containing or comprising confidential correspondence.
- (2) An officer or employee must not open a letter or package to which this rule applies, or remove the contents of that letter or package, unless –
- (a) the officer or employee has cause to believe that it contains a prohibited article or unauthorised property; or
 - (b) the officer or employee has reasonable cause to believe that the contents of the letter or package may –
 - (i) endanger the security of the prison;
 - (ii) endanger the safety of any person; or
 - (iii) relate to a criminal activity.

- (3) Where an officer or employee proposes to open a letter or package to which this rule applies, or remove the contents of that letter or package, under paragraph (2), the officer or employee must—
- (a) inform the prisoner who wishes to send the letter or package or to whom the letter or package is addressed of the reason for opening the letter or package or removing its contents; and
 - (b) ensure that the prisoner is present when the letter or package is opened or its contents removed, unless the prisoner refuses, or does not wish, to be present.
- (4) The contents of a letter or package to which this rule applies must not be read by an officer or employee unless that officer or employee has—
- (a) been authorised by the Governor to do so under paragraph (5); and
 - (b) informed the prisoner of the reason for reading the contents of the letter or package.
- (5) The Governor may authorise an officer or employee to read the contents of a letter or package to which this rule applies where the Governor has reasonable cause to believe that the contents of the letter or package may—
- (a) endanger the security of the prison;
 - (b) endanger the safety of any person; or
 - (c) relate to a criminal activity.
- (6) Where a letter or package to which this rule applies is found to contain a prohibited article or any unauthorised property, the Governor must deal with the item in terms of rule 104.
- (7) In this rule—
- ‘confidential correspondence’ means court correspondence, legal correspondence, medical correspondence or privileged correspondence;
- ‘court’ includes, but is not limited to, the sheriff, the High Court of Justiciary, the Court of Session, the European Court of Justice, the European Court of Human Rights, the International Criminal Court, the Supreme Court, the First-tier Tribunal (Immigration and Asylum Chamber), the Upper Tribunal (Immigration and Asylum Chamber), the Scottish Criminal Cases Review Commission and the Parole Board for Scotland;
- ‘court correspondence’ means a letter or package which is—
- (a) addressed to a court and which a prisoner gives to an officer or employee for the purpose of sending to that court; or
 - (b) sent to a prisoner at the prison by a court;
- ‘legal correspondence’ means a letter or package which is—
- (a) addressed to a legal adviser and which a prisoner gives to an officer or employee for the purpose of sending to that legal adviser; or
 - (b) sent to a prisoner at the prison by a legal adviser;
- ‘medical correspondence’ means a letter or package which contains personal health information about a relevant prisoner and is—

- (a) addressed to a registered medical practitioner and given to an officer or employee by the relevant prisoner for the purpose of sending to that registered medical practitioner; or
- (b) sent to the relevant prisoner at the prison by a registered medical practitioner;

‘privileged correspondence’ means a letter or package which is—

- (a) addressed to a person, authority or organisation specified in a direction made by the Scottish Ministers and which a prisoner gives to an officer or employee for the purpose of sending to that person, authority or organisation; or
- (b) sent to a prisoner at the prison by a person, authority or organisation specified in a direction made by the Scottish Ministers;

‘relevant prisoner’ means a prisoner who—

- (a) is certified as having a life-threatening illness by the registered medical practitioner from whom the prisoner is receiving treatment for that illness; and
- (b) has obtained the Governor's prior consent to communicate with that registered medical practitioner in confidence.

57.— Confidential correspondence which cannot be clearly identified

- (1) This rule applies to a letter or package which—
 - (a) cannot be clearly identified from the outer face of the envelope or packaging as containing or comprising confidential correspondence;
 - (b) an officer or employee has opened, and removed the contents thereof, under rule 55(2);
 - (c) the officer or employee proposes to read in accordance with rule 55(4); and
 - (d) the officer or employee subsequently identifies as containing or comprising confidential correspondence.
- (2) From the moment that an officer or employee identifies a letter or package to which this rule applies as containing or comprising confidential correspondence, that letter or package must be treated in accordance with paragraphs (3) and (4).
- (3) The contents of a letter or package to which this rule applies must not be read by an officer or employee unless that officer or employee has—
 - (a) been authorised by the Governor to do so under paragraph (4); and
 - (b) informed the prisoner who wishes to send the letter or package or to whom the letter or package is addressed of the reason for reading the contents of the letter or package.
- (4) The Governor may authorise an officer or employee to read the contents of a letter or package to which this rule applies where the Governor has reasonable cause to believe that the contents of the letter or package may—
 - (a) endanger the security of the prison;

- (b) endanger the safety of any person; or
- (c) relate to a criminal activity.

(5) In this rule 'confidential correspondence' has the meaning given by rule 56(7).

[...]

104. —Seizure and treatment of prohibited articles and unauthorised property

- (1) Any item found—
 - (a) in the possession of a prisoner or any other person in the prison; or
 - (b) anywhere else in the prison,
may be seized by the Governor where the Governor has reasonable cause to believe that the item is a prohibited article or unauthorised property.
- (2) Subject to the following paragraphs any item that is seized under paragraph (1) may be retained by the Governor for no longer than is necessary to establish whether the item is a prohibited article or unauthorised property.
- (3) Where the Governor is satisfied that an item seized under paragraph (1) is not a prohibited article or unauthorised property, the Governor must—
 - (a) return the item to its owner;
 - (b) where nobody claims ownership of the item upon reasonable enquiries being made by the Governor, return the item to the person from whom it was seized; or
 - (c) where nobody claims ownership of the item and the item was not found in the possession of any person in the prison, dispose of or destroy the item by any appropriate means.
- (4) Where the Governor is satisfied that an item seized under paragraph (1) is a prohibited article the Governor may deal with the item as appropriate subject to—
 - (a) any powers of seizure exercisable by the police; and
 - (b) paragraph (5).

[...]

- (6) Where the Governor is satisfied that an item seized under paragraph (1) comprises unauthorised property the Governor may deal with the item in any of the following ways—
 - (a) where the item is seized from a prisoner it may be retained in order to be returned to the prisoner upon his or her release;
 - (b) where the item is seized from any other person in the prison it may be retained in order to be returned to that person upon his or her departure from the prison;
 - (c) in any other circumstances the Governor may dispose of or destroy the item by any appropriate means."

[14] The Scottish Prison Rules (Correspondence) Direction 2021 was made in terms of Rule 55(7). In so far as relevant, the Direction provides as follows:

“3.—Reading of prisoners’ correspondence

- (1) Subject to sub-paragraph (2), the contents of correspondence to which rule 55 applies must not be read by an officer or employee unless the officer has reasonable cause to believe that the contents of the correspondence may—
- (a) endanger the security of the prison,
 - (b) endanger the safety of any person,
 - (c) relate to a criminal activity, or
 - (d) constitute a breach of paragraph 5.

[...]

- (3) Correspondence may only be read by an officer under sub-paragraphs (1) or (2) where—
- (a) the officer has explained to the prisoner concerned the reason why the correspondence is being read, and
 - (b) the prisoner concerned is present when the correspondence is being read.

[...]

6. —Arrangements for the disposal of certain correspondence

- (1) Where any correspondence sent by or to a prisoner is found to be in contravention of any of the restrictions in paragraphs 4 or 5 and is subsequently prevented from being sent or received by the prisoner under rule 55(5)(a), an officer may—
- (a) in the case of correspondence sent to the prisoner and the sender is known to the officer, return the correspondence to the sender,
- [...]
- (c) in the case of correspondence which may be of assistance to the police in any criminal investigation, deliver the correspondence to the police.
- (2) Sub-paragraph (1) does not apply to correspondence which falls to be dealt with under rule 55(6).”

[15] Section 6 of the Human Rights Act 1998 makes it unlawful for a public authority to act in a way which is incompatible with a Convention right (save in certain circumstances).

Section 7 of the 1998 Act permits proceedings to be brought by a person who claims that a

public authority has acted unlawfully in this regard, provided that he is a victim of the unlawful act. Article 8 of the Convention is to the following effect:

“8. Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Decision

The two mail items seized on 2 April 2025

[16] There was no dispute that in circumstances where the prison authorities tested and seized items of correspondence which had been sent to the prison for the petitioner’s attention, this engaged Article 8, ECHR. However, the Convention right is not framed as an absolute right. The petitioner took no issue with the legitimacy of the aim underlying the respondent’s regime for testing correspondence received for prisoners. Nor was there any dispute that items which tested positive for an illicit substance could not be given to a prisoner, and might ultimately be destroyed. The petitioner’s complaint was two-fold:

(i) he was given no further details of the testing, such as the nature of the substance detected, and the level of contamination; and (ii) he was not told of the nature of the correspondence, i.e., the sender of the letter or its contents.

[17] The legal issue was therefore one of the proportionality of the respondent’s actions in terms of Article 8. Applying the well-known formulation in *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 38; [2014] AC 700, per Lord Reed at [74], it was accepted that the objective of

the measure was sufficiently important to justify the limitation of the Article 8 right, and that the measure was rationally connected to the objective. It was agreed that the real question for the court was “whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective”.

[18] To this end, the petitioner proposed that his first concern could be dealt with by the respondent providing testing results detailing the substance involved and the intensity of the contamination. His second concern could be dealt with in a number of different ways: (a) he could be provided with a photocopy of the correspondence in question – if it could not be removed from a production bag, then transparent production bags could be used, so that both sides of the correspondence could be photocopied whilst within the bag; (b) the item of correspondence could be opened in front of the petitioner, and he be allowed to read the correspondence without handling it; or (c) as a bare minimum, the sender of the correspondence ought to be identified, and the petitioner informed of this.

[19] With regard to the first of the petitioner’s concerns, I am satisfied that in the context of the Article 8 right, it was sufficient that the petitioner was informed that the reason for the seizure of the mail was that it had tested positive for an illicit substance. It was unclear what legitimate benefit could be derived by a prisoner knowing more detailed information as to testing which has been carried out. The only reason which was proffered here was that the petitioner was concerned that (despite never having previously been suspected of illicit drug use) the incident might in future be referred to within Parole Board proceedings – and that, if so, the petitioner might wish to make submissions that (based on the level of contamination) cross-contamination must have occurred. Presumably a suitable expert would first require to be identified and instructed to investigate this, before any such

argument could be made. In any event, it was not suggested that at present this went beyond a hypothetical concern and related to any ongoing process before the Parole Board.

[20] With regard to the second of the petitioner's concerns, one can well understand his anxiety to know the sender of the seized correspondence and further information as to the contents of the letter in question. However, the difficulty lies in identifying a less intrusive measure which could be used without unacceptably compromising the objective of preventing illicit substances making their way into HMP Edinburgh. In particular, each of the measures suggested by the petitioner presents insuperable practical difficulties, which were outlined by the respondent in their submissions. As soon as an item of correspondence tests positive for a banned substance, it is essential that it be separated and treated appropriately to its status as a potential adminicle of evidence: this will involve its further handling being kept to a minimum, its placing inside a suitable production bag, and the labelling of that bag. If contact with the photocopier could result in a chemical reaction, plainly the item cannot be photocopied, both because it could compromise the evidence, and because it could pose a safety risk to staff or cause damage to prison equipment. Even if transparent production bags could be procured, the possibility of taking a photocopy of the production bag when the correspondence is inside raises the difficulty that not all of a multi-page document could be captured in this way. The suggestion that the correspondence in question be taken into the hall, and the petitioner permitted to read it without handling it, falls foul of the practical problem of how a multi-page could document be read without the item being handled by the prisoner. Much more fundamentally, there are plainly security risks in taking into the prison halls, to an individual prisoner, correspondence contaminated with an illicit substance. Finally, given that the source and contents of correspondence will often not be plain from the envelope itself, it would be necessary for a prison officer to open

and read correspondence, in order to inform a prisoner, such as the petitioner, of that information. The current framework of rules in place seeks to strictly control the situations in which a prison officer will be permitted to read correspondence which has been sent to a prisoner.

[21] In all of these circumstances, there has been no breach of Article 8, ECHR, and the respondent has not acted unlawfully. The petitioner is not entitled to the declarator and interdict which he seeks in this regard.

The correspondence received from NHS Lothian Board Legal Policy

[22] In essence, the petitioner's complaint is that this letter ought to have treated as medical correspondence, and hence as confidential correspondence. It was accepted by the petitioner that the letter did not fall within the definition of 'medical correspondence' in terms of the current rules: NHS Lothian Board Legal Policy is not a registered medical practitioner, and the petitioner is not a 'relevant prisoner' in terms of the rules.

[23] The petitioner only faintly pressed the point that at common law it was irrational (or Wednesbury unreasonable) for the respondent not to categorise this item of correspondence in that way. It was acknowledged that irrationality presents a high threshold, particularly within the context of operational decisions made by the prison authorities. In the case of *Beggs v Scottish Ministers* [2018] CSOH 3; 2018 SLT 199, Lord Tyre (at [22]) concluded that the respondent's decision as to which bodies to include on the list as a sender of 'privileged correspondence',

“was a policy decision taken by the respondents, having regard, on the one hand, to a desire to allow prisoners to correspond on sensitive (but not legally confidential) matters without their mail being opened (though not read) and, on the other hand, to the need to restrict means by which prohibited items such as drugs may enter

prisons. It is one with which the court should be slow to interfere unless it is obvious that it is beyond the range of decisions reasonably open to the respondents.”

The issue of what is classed as confidential correspondence was again considered, this time in the specific context of correspondence received from the Scottish Bowel Screening Centre and relating to testing within a national screening campaign, in the case of *Beggs v The Scottish Ministers* [2018] CSOH 110. In that case, Lord Ericht endorsed the earlier decision of Lord Tyre, and was not persuaded that it was irrational for such correspondence not to be included within the category of confidential correspondence.

[24] Since confidential correspondence is passed to prisoners unopened, it is understandable that the respondent will seek to appropriately limit the correspondence categorised in this way, because of the need to prevent illicit substances being introduced into the prison through the mail system. As has been recognised in the decisions of Lord Tyre and Lord Ericht, such categorisation is a policy and operational matter, with which the court will interfere only in limited circumstances. Such circumstances do not exist here. Letters received from NHS Lothian Board Legal Policy are not sent by a medical practitioner, and need not relate to medical treatment. It remains unclear why the particular letter received by the petitioner from this source contained the results of a test: it is not obvious whether it was informing the petitioner of such a result, or simply making reference to it. It is not said that it was recommending or discussing future medical treatment arising from the results, and it is not obvious why that department of NHS Lothian would do so. In all of the circumstances, the respondent’s categorisation of this item of mail does not fall outwith the range of decisions reasonably open to the respondent.

[25] The petitioner placed greater reliance on his argument that the treatment of the letter from NHS Lothian Board Legal Policy was in breach of Article 8, ECHR. It was accepted

that the current definition of “medical correspondence” in the applicable rules (which did not encompass the letter in question) accorded with the particular circumstances of the European Court of Human Rights case of *Szuluk v the United Kingdom* (2010) 50 EHRR 10. However, it was submitted that the *ratio* of *Szuluk* was not confined to those particular circumstances, and that it should be interpreted more broadly because of its reference (at [47]) to the case of *Z v Finland* (1998) 25 EHRR 371.

[26] Again, there is no dispute that Article 8 is engaged by the respondent’s handling of the letter received from NHS Lothian Board Legal Policy, nor that the action taken by the respondent was in accordance with legal rules and in pursuance of a legitimate aim. Once more, the question is one of proportionality. In *Szuluk*, the starting-point for the European Court of Human Rights was that a measure of control over prisoners’ correspondence was needed and was not incompatible with the Convention, but that stringent standards had been developed relating to the confidentiality of legal correspondence. The case of *Z v Finland* was drawn upon as evidence that the importance of the confidentiality of health data had also been recognised. However, in then going on to strike the necessary balance in Mr Szuluk’s case, the ECHR indicated the factors which were of particular importance, such as that Mr Szuluk suffered from a life-threatening condition, that his correspondence was with a named medical professional who could mark this appropriately on the correspondence, that the correspondence might contain criticism of the prison’s care which could impact on their relationship with Mr Szuluk, and Mr Szuluk’s risk categorisation within the prison system. It is not suggested that such factors exist in the petitioner’s case. Nor do I find the very general discussion of principle in *Z v Finland* to be of particular assistance in determining whether a fair balance has been struck in the specific circumstances of the respondent’s handling of the NHS Lothian Board Legal Policy letter

addressed to the petitioner. As already noted, in considering whether to broaden the category of mail which is treated as confidential and hence passed unopened to prisoners, the authorities must weigh up the considerations of maintaining the security and health of the prison population, and the Convention rights of individual prisoners. The approach sought here by the petitioner would presumably involve all letters received from NHS Lothian Board Legal Policy being treated as medical correspondence regardless of their actual content - despite the fact that it is not obvious that that department of NHS Lothian would commonly contact an individual prisoner to discuss or recommend particular medical treatment. Indeed, it remains unclear why test results were included in the letter which was sent to the petitioner. Nor is it suggested that there was any marking on the envelope to indicate that test results were enclosed. There was thus no way for the respondent to know that this was not a routine letter, but contained information personal to the petitioner. There was nothing to justify the respondent treating this item of correspondence differently from the system normally adopted. The circumstances of this case are not analogous with those which were present in *Szuluk*, and have a greater affinity with those considered by Lord Ericht in *Beggs v The Scottish Ministers*. The definition of “medical correspondence” applied by the respondent in this case, in exclusion of the letter from NHS Lothian Board Legal Policy, struck a fair and proportionate balance. There was no contravention of Article 8, ECHR. The respondent has not therefore acted unlawfully, and the petitioner is not entitled to the declarator which he seeks in this regard.

Treatment of confidential correspondence from solicitors

[27] The petitioner’s challenge is confined to the two letters received on 19 March 2025 (from John Pryde SSC) and 22 July 2025 (from Drummond Miller LLP). It is not disputed

that there is in place a system for delivery of letters in a way which clearly indicates that these have not been opened or read, compliant with the case of *Matwiejczuk v Poland* ((App no. 37461/97), 2 December 2003 at [99]). However, it is asserted by the petitioner that the respondent failed to follow its guidance and policies with regard to these two items of correspondence, and hence acted unlawfully.

[28] In the case of the letter from John Pryde SSC, any damage to the envelope was slight. It appeared to be at the transparent “window” of the envelope, through which the name and address of the recipient is displayed. It is clear from the photocopy produced that the manner in which the letter has been folded and placed within the envelope is such that the name is a little difficult to read, and it is plausible that a tear could have occurred in trying to ascertain the addressee. The petitioner contends that this tear to the envelope meant that the correspondence should have been dealt with in terms of the SOP relating to damaged mail. While it was accepted that there was no definition of “damage” in the SOP, it was argued that a cautious approach ought to have been taken by the prison authorities. I prefer the respondent’s argument that, in interpreting the relevant SOP, useful guidance can be derived from its underlying purpose. The SOP provides assurance to prisoners against unauthorised tampering with their mail. There was no question here that the letter could have been removed or read as a result of any small tear. In instances of minimal marks or tears, it is inevitable that individual judgment may differ as to whether they constitute damage in this context. I do not find that this incident represents a failure on the respondent’s part to follow its guidance and policies. The petitioner is not entitled to the declarator which he seeks in this regard.

[29] The letter from Drummond Miller LLP dated 22 July 2025 appears to have become unsealed in its transit between the mail room and the hall. A complaint was raised and

investigated within the existing framework open to the petitioner. Although it remains unclear how this happened, there is no suggestion that the enclosed mail was read or copied, or that the envelope was unsealed maliciously. It appears to have been an isolated incident, and does not seem indicative of a broader failure of the system. Even were this to be considered to represent a failure by the respondent to follow guidance and policies, it would in any event not be appropriate to grant a declarator in the terms sought by the petitioner. It falls within the category of “a past act with no practical or continuing consequences” for which the court will not grant declarator (*Beggs v Scottish Ministers* [2018] CSOH 3; 2018 SLT 199, per Lord Tyre at [19]).

Delayed receipt of correspondence

[30] The petitioner contends that the respondent has failed to follow its guidance and policies, and thus acted unlawfully, because on seven occasions mail was not delivered to him on the same day that it was received in the prison. The respondent takes issue with this, to the extent that they contend that there was only a delay on certain of those occasions. In any event, other than on one occasion where the delay may have been one of seven days, any delay was no longer than one day or two days. The respondent did not seek to make light of this. However, it must be placed in the context that the period under challenge is one of around five months, and in one of those months alone the petitioner received 103 items of correspondence.

[31] The applicable legislation does not itself set down a rule that mail must be distributed to prisoners on the same day it is received at the prison. One must look to the policy, guidance, SOPs, and audit standards which have been established within that legal framework. In its own terms, these acknowledge that there will be occasions when mail

cannot be distributed to prisoners on the day of receipt in the prison. Moreover, as

Lady Stacey observed in the case of *Beggs v Scottish Ministers* [2015] CSOH 98; 2015 SLT 487

(at [36]):

“As regards delay, I find that as discussed in the case of *X v Federal Republic of Germany* a prisoner is not entitled to expect or demand a perfect mail delivery system. The SPS accept that they require to have a system of delivering mail on the day it is received in the prison, but that has to be subject to operational requirements which occasionally necessitate delay. All systems are vulnerable to the occasional failure due to human error. I do not find anything other than those types of failure.”

[32] In the current case, two of the asserted instances of delay were not vouched by the paperwork maintained by HMP Edinburgh, and two of the instances were explicable by operational reasons of the type which occasionally arise. When set against the volume of mail received by the petitioner alone, I am not persuaded that the remaining three instances represent anything other than occasional failures due to human error. The vouched instances of delay are not evidence of a broader systemic failure in the implementation and operation of the respondent’s systems and policies. The respondent accordingly did not act unlawfully in this regard. The petitioner is not entitled to the declarator which he seeks.

Disposal

[33] I shall therefore repel the petitioner’s first to seventh pleas-in-law and refuse the petition. I shall reserve all questions of expenses.