Claim No. SE 201403

PRISCILLA JOHNSON — Claimant

and

HOME OFFICE — Defendant

JUDGMENT

A. Introduction

1. On the 8th November 1984 E.W. killed his 7 year old daughter. He stabbed her about 150 times with a pair of scissors, mutilated her private parts and (probably after death) gouged her eyes out. E.W. was then aged 24. He comes from the Afro-Caribbean community in Sheffield.

2. Under S. 5(1)(a) of the Criminal Procedure (Insanity) Act 1964, E.W. was found not guilty of murder by reason of insanity. He was detained as under Sections 37 and 41 of the Mental Health Act 1983.

3. On the 30th July 1993 a Mental Health Review Tribunal (MHRT) directed the conditional discharge of E.W.

4. The Claimant was at this time an approved social worker employed by Sheffield City Council. She had responsibility for patients such as E.W. who had been conditionally discharged under the 1983 Act. She too is Afro-Caribbean and lives and works in Sheffield.

5. The conditions imposed by the MHRT were that E.W. should be under the social supervision of the Claimant, reside where directed by the Claimant and be under the psychiatric supervision of Dr. Andrew MacNeill, E.W.'s responsible medical officer (RMO).

6. The Claimant's responsibilities can be briefly described. She maintained regular close contact with E.W.and his family, particularly his parents. She also attended meetings with Dr. MacNeill, community psychiatric nurses, the staff at the hostel where E.W. lived and others who provided social facilities, training or work for E.W.

7. The Defendant (the Secretary of State) has powers of recall of conditionally discharged restricted patients under Section 42 of the 1983 Act. Through its Mental Health Unit (MHU) the Defendant monitors and exercises overall supervision of all such patients.

8. The RMOs and approved social workers have close contact with the MHU through telephone calls, letters and the regular reports required by the MHU. A close professional relationship develops between the social workers and the MHU.

9. In 1987 the Defendant issued a document entitled "Mental health Act 1983. Supervision and After-Care of Conditionally Discharged Restricted Patients. Notes for the Guidance of Social Supervisors". See pp 103-137 of the trial bundle (red).

10. Section 11 deals with reports to the Defendant and Section 13 with action in the event of concern about the patient's condition and recall. Section 15 covers MHRTs. Paragraph 81 covers reports to the Defendant which are to be sent to the MHRT. "The social supervisor should consider whether his or her report to the Home Office can be fully disclosed to the patient. If not, the part not suitable for disclosure should be recorded on a separate piece of paper and the reasons for its non-disclosure explained".

11. This document and a covering letter dated the 29th September 1993 were sent to the Claimant. See p.2 Defendant's bundle (black).

12. In October 1994, E.W. applied for a MHRT hearing. He wanted his conditional discharge to be made absolute. On the 24th November 1994 the Defendant wrote to the Claimant requesting a report. See p.36 Defendant's bundle. "Your report, together with one from Dr. MacNeill and the Home Secretary's observations will form part of a case statement which will be forwarded to the Tribunal. Unless the Home Secretary makes a recommendation to the contrary, the Tribunal will then disclose the statement to the patient and any legal representative. It would be helpful, therefore, if you would make clear whether you are content for your report to be disclosed in this way and, if not, which parts you wish to be withheld from the patient".

13. The Secretary of State's statement is governed by rule 6 of the MHRT Rules 1983.

Rule 6(4): "Any part of...the Secretary of State's statement which in the opinion of .... (b) (in the case of the Secretary of State's statement) the Secretary of State, should be withheld from the applicant...on the ground that its disclosure would adversely affect the health or welfare of the patient or others, shall be made in a separate document in which shall be set out the reasons for believing that its disclosure would have that effect".

Rule 6(5): "On receipt of any statement provided...the tribunal shall send a copy to the applicant...excluding any part of any statement which is contained in a separate document in accordance with paragraph (4)".

14. The Home Secretary's statement is dated the 12th January 1995 before any report was received from either the Claimant or the RMO. From now I shall refer to the Home Secretary's statement as the Defendant's statement.

15. The RMO submitted reports dated the 9th January 1995 and the 15th February 1995. There was nothing in the first which the RMO advised should not be shown to E.W.

16. The second report (pp 68-70 Defendant's bundle) contained a separate sheet which stated at the start that this part of the report should not be shown to E.W. The RMO then set out an interview he had had with E.W.'s parents on the 7th February 1995. "I am concerned", he wrote, "for the sake of my informants". He repeated the concerns of the parents that E.W. had been staring attentively at his niece, a child below school age, that he might not take medication and about his relationship with his girlfriend.

17. The Claimant also submitted two reports dated the 13th January 1995 and the 15th May 1995. Each contained the same separate page headed "Strictly Confidential". See pp 56 & 81 of Defendant's bundle. The Claimant then set out her account of her meeting with E.W.'s parents on the 5th January 1995. She reported the same concerns as expressed to the RMO but in stronger terms.

18. The Defendant made a supplementary statement commenting briefly on the latest report of the Claimant and the RMO. There was no reference to the concerns of E.W.'s parents.

19. There is no evidence to suggest that the "Strictly Confidential" or non disclosable parts of the reports of either the Claimant or the RMO were disclosed at this time to E.W.

20. Before any MHRT hearing took place, E.W. on the 3rd August 1995 was recalled to Rampton Special Hospital. On that day the Claimant had telephoned the MHU setting out her concern at what E.W. had said to hostel staff about having slept with the 11 year old daughter of his partner and his intention to sleep with his niece. The MHU spoke to the RMO who advised recall. All this is in the letter from the Defendant to E.W.'s new RMO at Rampton of the 4th August 1995: at p.88 of the Defendant's bundle.

21. E.W.'s recall was referred to a MHRT under s.75 of the 1983 Act. Dr. Shubsachs (the RMO at Rampton) submitted a report dated the 5th September 1995. See pp 128-134 of Defendant's bundle. He records E.W.'s reaction to the reasons for recall and E.W.'s irritation toward the Claimant and his parents.

22. The Defendant's statement for this MHRT is dated the 20th September 1995 and is at pp 140-142 of the Defendant's bundle. It is in the same form as all the Defendant's statements in this case. There is the declaration that "The Home Secretary has no objection to this statement being disclosed to the patient". The circumstances which led to the recall are set out in detail. There is no reference to the parents.

23. On the 26th September 1995 E.W. was transferred to Middlewood Hospital in Sheffield.

24. The reference to the MHRT was heard on the 10th November 1995. See pp 160-162 of the Defendant's bundle. The MHRT directed a conditional discharge with similar conditions as were made by the MHRT on the 30th July 1993. The Claimant was once more to be E.W.'s social supervisor.

25. The Claimant gave evidence to the MHRT on the 10th November 1995. In the MHRT's reasons it is written: "We heard at length from Miss Johnson, the social supervisor under the previous conditional discharge. With the patient's consent, some of her evidence we heard in his absence so that she might speak freely". In her evidence before me the Claimant was not asked to comment on this passage.

26. The Claimant continued to submit reports to the Defendant. E.W. objected strongly about the Defendant's involvement in his life.

27. In January 1999, E.W. made an application for a MHRT hearing. Again, he wanted his conditional discharge to be made absolute. The Defendant sent the usual letter (p.294 Defendant's bundle) to the Claimant asking for a report.

28. The Claimant's report is dated the 25th February 1999 at pp 313-314 of the Defendant's bundle. The Claimant did not write a separate page headed "Strictly Confidential" nor that any part of the report should not be disclosed to E.W. There are no references to the niece or the parents' concerns which had been expressed in January 1995.

29. The Defendant's statement is dated the 22nd February 1999 before receipt of the Claimant's report. This statement is at the root of the Claimant's case against the Defendant. It is at pp 307-309 and pp 310-312 of the Defendant's bundle. The handwriting and marks were later added by staff at the MHU.

30. On the first page is the declaration that the Defendant's statement can be disclosed to E.W. Under "5. Other observations" the MHU included: "In addition E.W.'s parents expressed concern to the social supervisor that E.W. was looking at his niece in a "peculiar" way and that they did not feel able to leave the child alone in the same room with E.W." This came from the "Strictly Confidential" part of the Claimant's reports of the 13th January 1995 and the 15th May 1995.

31. The Defendant made a supplementary statement following receipt of the reports of the Claimant and Dr. G. Hayes (now the RMO). It has no relevance.

32. On the 18th May 1999, the Claimant rang the MHU to say that she was most upset that E.W. had seen the Defendant's statement (p.307, p.310 Defendant's bundle) of the 22nd February 1999. The note of the call (p.403 of Defendant's bundle) is that he had seen the final section set out in paragraph 30 of this judgment. The note continues that the MHU "drew this info from a non disclosable report by [the Claimant] dated 1995. She is discussing with E.W.'s solicitor to see whether she (the solicitor) has disclosed the 1995 report to him. The upshot is that her relationship with E.W. is now unworkable. She can only visit with the CPN (community psychiatric nurse) in attendance and she is frightened not sleeping etc."

B. **The Claimant's Case**

33. The Defendant owed the Claimant a duty of confidence in relation to the parts of her reports which were "Strictly Confidential". The Defendant wrongfully breached this duty by including those parts in the Defendant's statement of the 22nd February 1999 and by causing disclosure of them to E.W.

34. Alternatively, the Defendant owed the Claimant a duty of care not to disclose any "Strictly Confidential" material to E.W. The Defendant negligently breached this duty of care.

35. As a result of the disclosure to E.W. the Claimant suffered psychiatric injury and hostility and rejection by the Afro-Caribbean community in Sheffield.

C. **The Defendant's case**

36. There is no evidence that E.W.'s reaction against the Claimant came from the disclosure to him of the Defendant's statement. He could have been shown the "Strictly Confidential" part of the Claimant's report by his solicitor.

37. Disclosure to E.W. came from the MHRT not the Defendant. Thus, the claim of causation is either not established or broken.

38. The Claimant has no right of confidence. Any such right is that of E.W.'s parents. Further, the Defendant has a public interest defence in disclosing information to the MHRT.

39. The Defendant owed no duty of care to the Claimant.

40. Any damage suffered by the Claimant was not caused by any disclosure to E.W. or is too remote.

D. The Causal Link

41. The first issue is whether E.W. first knew of the concerns of his parents towards his niece from the Defendant's statement or from some other source. The second is whether any link between the Defendant and E.W. was broken by the intervention of the MHRT.

42. In para.12 of her statement, the Claimant said that she learned of E.W.'s reaction from the CPN:

"[E.W.] allowed the nurse to read the report and informed her that it was information that I had furnished to the Home Office. The nurse was shocked when she read the contents of the correspondence."

There is no reference to the Defendant's statement.

43. In cross-examination, the Claimant said that when she phoned the Defendant on the 18th May 1999 (para. 32 above) she was aware that E.W. had seen "my report".

44. On the 18th May 1999 the person at the MHU to whom the Claimant had spoken was Miss L. Grover. She made the note at p.403 of the Defendant's bundle. In evidence Miss Grover told me that the Claimant was complaining of the final section of the Home Secretary's statement. I find Miss Grover to be a careful and reliable witness.

45. By May 1999 Dr. G.D. Hughes had become E.W.'s RMO. Having received the Claimant's complaint, Miss Grover wrote to Dr. Hughes asking for his views on the relationship between E.W. and the Claimant since her complaint. Dr. Hughes, having examined E.W., wrote (p.63 trial bundle) that E.W. was concerned about "the comments made about his niece that are alluded to in the reports" and that E.W. "only found out about it when he received the Tribunal reports some six weeks ago". E.W. gave his copy of one of the Claimant's reports to Dr. Hughes. E.W. was also

concerned at the Claimant's comments on his medication in that report. Of the Claimant's two reports (the 13th January 1995 and the 15th May 1995) only the latter refers to medication. This report is in the form of a letter.

46. On the 11th February 2000 the Claimant's employers wrote to the Defendant. They said that E.W. had obtained his own copies of the correspondence by which they meant the Claimant's 1995 reports. See Defendant's bundle p.375.

47. On the 23rd May the Claimant's solicitors (p.388 Defendant's bundle) wrote to the Defendant that E.W. in February 1999 "obtained a copy of this confidential report" and accused the Defendant of negligence for having disclosed the report to E.W.

48. My conclusion on the first issue under this heading is that E.W. first knew of what his parents had told the Claimant when he read the Home Secretary's statement of the 22nd February 1999. First I unhesitatingly accept Miss Grover's evidence and careful note made on the 18th May 1999. Her reference to "doc.4 (final section)" was to the Defendant's statement. Second, Miss Grover (by her note) clearly knew of the difference between reports submitted to the MHU and the Defendant's statement which drew on such reports. Third, by contrast, the authors of the two letters at pp 375 and 388 of the Defendant's bundle did not appreciate this difference. Fourth, I am unable to rely on Dr. Hughes' report as evidence that E.W. had seen first one of the Claimant's reports. Dr. Hughes was not concerned with how E.W. found out what his parents had said to the Claimant but with whether E.W.'s relationship with the Claimant had been affected by the disclosure. Fifth, I find the Claimant's evidence on this unreliable. I am in no doubt of the accuracy of Miss Grover's note. Finally, there is no evidence to suggest that first disclosure was made by E.W.'s solicitors. They had not done so in 1995. It is more likely that they gave E.W. copies of the reports after he had seen the Home Secretary's statement.

49. There is no evidence to review on the second issue under this heading.

50. Under rule 12 of the MHRT Rules 1983, the MHRT is required to consider whether any relevant document is disclosed to the patient. This includes any withheld in accordance with rule 6. It is therefore open to the MHRT to disclose part of the Defendant's statement notwithstanding that the Defendant has given the opinion that it should be withheld from the patient.

51. In my judgement, this is most unlikely to happen without some discussion between the Defendant and the MHRT. There is no duty on the MHRT to review the decision of the Defendant that there is "no objection to this statement being disclosed to the patient".

52. It follows that the causal link was not broken by the fact that the Defendant's statement went to the MHRT and from there to E.W.

E. Breach of Confidence

53. Miss Michalos for the Defendant submits that the classic test for breach of confidence is found in the judgment of Megerry J. in Coco v AN. Clark (Engineers) Ltd. [1969] R.P.C. 41 at p.47:

> "In my judgement three elements are normally required if, apart from contract, a case of breach of confidence is to succeed. First, the information itself in the words of Lord Greene M.R. in the Saltmer case on p.215 must "have the necessary quality of confidence about it". Secondly, that information must have been imparted in circumstances importing an obligation of confidence. Thirdly, there must be an unauthorised use of that information to the detriment of the party communicating it".

I agree. I must therefore decide if the Claimant has proved the three elements.

54. The "Strictly Confidential" information given by the Claimant to the Defendant had, in my judgement, the quality of confidence about it.

55. Further, that information was imparted in circumstances importing an obligation of confidence. It was given by E.W.'s parents to the Claimant. They did not want E.W. to know what they had said. The obligation of confidence was on the Claimant. She never breached that obligation. She had a parallel duty to make full reports to the Defendant. This she did, without breaching her obligation to the parents by heading a separate page "Strictly Confidential".

56. The Claimant had the same duty to the MHRT. Again, she acted professionally correctly by giving part of her evidence to the MHRT in November 1995 in E.W.'s absence. I assume that this evidence was what the parents had reported.

57. The right of confidence in that information was that of E.W.'s parents. The right was not shared by the Claimant as the recipient of the information. In Fraser v Evans and Others [1969] 1 Q.B. 349 at 361 Lord Denning M.R. said:

> "The jurisdiction [to restrain publication of confidential information] is based not so much on property or on contract as on the duty to be of good faith. No person is permitted to divulge to the world information which he has received in confidence unless he has just cause or excuse for doing so...But the party complaining must be the person who is entitled to the confidence and to have it respected. He must be a person to whom the duty of good faith is owed."

The second element of Megarry J's test in Coco is not made out.

58. Nor is the third. The party communicating the information was E.W.'s parents.

59. The Claimant's claim for breach of confidence therefore fails.

F. Negligence – Duty of Care

60. In Caparo Industries Plc v Dickman [1990] 2 A.C. 605 Lord Bridge of Harwich considered how the existence and scope of the duty of care which one person may owe to another has been and should be determined. At 617C-618C he said:

"The most comprehensive attempt to articulate a single general principle is reached in the well known passage from the speech of Lord Wilberforce in Anns v Merton London Borough Council [1978] A.C. 728, 751-752:

> "Through the trilogy of cases in this House – *Donoghue v Stevenson [1932] A.C. 562, Hedley Byrne & Co.Ltd. v Heller & Partners Ltd. [1964] A.C. 465,* and *Dorset Yacht Co. Ltd. v Home Office [1970] A.C. 1004,* the position has now been reached that in order to establish that a duty of care arises in a particular situation, it is not necessary to bring the facts of that situation within those of previous situations in which a duty of care has been held to exist. Rather the question has to be approached in two stages. First one has to ask whether, as between the alleged wrongdoer and the person who has suffered damage there is a sufficient relationship of proximity or neighbourhood such that, in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter – in which case a prima facie duty of care arises. Secondly, if the first question is answered affirmatively, it is necessary to consider whether there are any considerations which ought to negative, or to reduce or limit the scope of the duty or the class of person to whom it is owed or the damages to which a breach of it may give rise: see *Dorset Yacht* case [1970] A.C. 1004 per Lord Reid at p.1027".

But since the *Anns* case a series of decisions of the Privy Council and of your Lordships' House, notably in judgments and speeches delivered by Lord Keith of Kinkel, have emphasised the inability of any single general principle to provide a practical test which can be applied to every situation to determine whether a duty of care is owed and, if so, what is its scope: see *Governors of Peabody Donation Fund v*

Sir Lindsay Parkinson & Co.Ltd [1985] A.C. 210, 239F-241C; Yuen Kun Yeu v Attorney-General of Hong Kong [1988] A.C. 175, 190E-194F; Rowling v Takaro Properties Ltd. [1988] A.C. 473, 501D-G; Hill v Chief Constable of West Yorkshire [1989] A.C. 53, 60B-D. What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of "proximity" or "neighbourhood" and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other. But it is implicit in the passages referred to that the concepts of proximity and fairness embodied in these additional ingredients are not susceptible of any such precise definition as would be necessary to give them utility as practical tests, but amount in effect to little more than convenient labels to attach to the features of different specific situations which, on a detailed examination of all the circumstances, the law recognises pragmatically as giving rise to a duty of care of a given scope. Whilst recognising, of course, the importance of the underlying general principles common to the whole field of negligence, I think the law has now moved in the direction of attaching greater significance to the more traditional categorisation of distinct and recognisable situations as guides to the existence, the scope and the limits of the varied duties of care which the law imposes."

61. I shall first consider "the proximity" between the Claimant and the Defendant then (under separate headings) whether it would be just and reasonable to impose a duty of care and foreseeability.

62. With restricted patients there needs to be a relationship of trust between the Defendant and the professionals looking after and treating the patients. Such a relationship is in the interests of the patient, the public, the Defendant and the carers. The best decisions are more likely to be taken.

63. The tenor of the Defendant's notes for the Guidance of Social Supervisors is that such a relationship should be built. See for example, paras. 52 & 61 of the Notes.

64. Para.81 of the Notes (see para. 10 of this judgment) refers to rules 6 and 12 of the MHRT Rules 1983 which cover the withholding of information from the patient which might adversely affect the welfare of the patient or others. Dr. MacNeill was aware of the risk to E.W.'s parents when he reported on the 15th February 1995 (see para.16 above of this judgment).

65. In her evidence Jean Bushell, an experienced HEO at the MHU told me that from her knowledge of E.W. she was aware of the risk to E.W.'s parents when she read Dr. MacNeill's report. She added that she was aware of a risk to the Claimant.

66. I am satisfied that every decision by the Defendant on the disclosure of the Defendant's statement to the patient should be made with regard to the safety of the patient and others. In E.W.'s case, those others should have included the parents and the Claimant.

67. I therefore conclude that on grounds of proximity there was a duty of care owed by the Defendant to the Claimant. That duty of care was not to disclose to E.W. (except after further consultation with the Claimant) anything which the Claimant had notified to the Defendant should not be disclosed.

G. Is it just and reasonable to impose a duty

68. For the Defendant, Miss Michalos submitted that a duty of care should not be imposed on a person exercising a public duty or a discretion within a statutory scheme. It would be contrary to public interest that the Defendant exercising its statutory responsibility over restricted patients should be at risk of litigation arising from proper use of information provided to it. The Defendant should be free to use its discretion to include relevant information in the statement without fear of litigation.

69. I was referred to Elguzouli-Daf v Commissioner of Police of the Metropolis and another [1995] Q.B. 336 where the CPS had been sued in negligence by a prisoner and to the judgment of Steyn L.J. at 439:

"That bring me to the policy factors which, in my view, argue against the recognition of a duty of care owed by the CPS to those it prosecutes. While it is always tempting to yield to an argument based on the protection of civil liberties, I have come to the conclusion that the interests of the whole community are better served by not imposing a duty of care on the CPS. In my view, such a duty of care would tend to have an inhibiting effect on the discharge by the CPS of its central function of prosecuting crime. It would in some cases lead to a defensive approach by prosecutors to their multifarious duties. It would introduce a risk that prosecutors would act so as to protect themselves from claims of negligence. The CPS would have to spend valuable time and use scarce resources in order to prevent law suits in negligence against the CPS. It would generate a great deal of paper to guard against the risks of law suits. The time and energy of CPS lawyers would be diverted from concentrating on their prime function of prosecuting offenders. That would be likely to happen not only during the prosecution process but also when the CPS is sued in negligence by aggrieved defendants. The CPS would be constantly enmeshed in an avalanche of interlocutory civil proceedings and civil trials. That is a spectre that would bode ill for the efficiency of the CPS and the quality of our criminal justice system."

70. The unreported case of W v The Home Office in which the judgment of the Court of Appeal was given on the 19th February 1997 contains a helpful review of the cases of negligence against a public body exercising a statutory discretion. Lord Woolf M.R. set out five principles. At p.13 he said:

"4. There can be no liability in respect of anything done within the ambit of a discretion conferred by statute. Somebody may act so unreasonably as to be acting outside the ambit of the discretion (see again the speech of Lord Brown-Wilkinson in W v Bedfordshire CC [1995] 2 AC at 736-737 and Lord Hoffman in the passage

already cited from his speech in Stovin). Lord Browne-Wilkinson emphasised the drawing of a distinction between the exercising of a discretion, and the manner in which a statutory duty has been implemented in practice, and at 737E, Lord Brown-Wilkinson continued:

> "It follows that in seeking to establish that a local authority is liable at common law for negligence in the exercise of its discretion conferred by statute, the first requirement is to show that the decision is outside the ambit of the discretion altogether; if it was not a local authority cannot itself be in breach of any duty of care owed to the plaintiff."

5. It is less likely that a duty of care will be imposed on a person exercising his public duty i.e. even where the statutory duty is being implemented, if:

> (1) a potential conflict could arise between the carrying out of the public duty, and acting defensively for fear of an action in negligence being brought;
>
> (2) where the category of public servant is one similar to the police or CPS as considered in Hill v The Chief Constable of West Yorkshire [1989] 1 A.C. 53 and Elguzouli-Daf v The Commissioner of the Metropolis [1995] Q.B. 335 and where(a) the general sense of public duty of such servants is unlikely to be appreciably reinforced by the imposition of liability;
>
> (b) the recognition of the existence of a cause of action even in quite limited circumstances would likely to lead to the bringing of a substantial number of cases, and a diversion of the public servants concerned away from their duties contrary to the general public" interest."

71. In this case, Lord Woolf's principles 4 and 5 must be applied against the statutory scheme of the 1983 Act and the MHRT Rules 1983. The Defendant does have a discretion as to what is disclosed to a patient but the Defendant must have regard to

the safety and welfare of the patient and others including persons such as the Claimant.

72. The public interest is served where part of the Secretary of State's statement is not disclosed to the patient. That part still goes to the MHRT. The MHRT is not denied any information or opinion.

73. There is also the safeguard for the patient in rule 12(3) which requires any document withheld from the patient to be disclosed to the patient's authorised representative.

74. My conclusion is that it is fair just and reasonable to impose the duty of care on the Defendant.

H. Was there a breach of that duty?

75. All the Defendant's witnesses accepted that the Defendant's statement should not have included the "Strictly Confidential" information together with the declaration that the statement could be disclosed to E.W. They immediately sought to change the statement by deleting the wrongly included information. See the copies at pp 309 and 310 in the Defendant's bundle.

76. The Defendant breached the duty of care owed to the Claimant by negligently including in the Defendant's statement information which should have been withheld from E.W. There was no exercise of the rule 6 (MHRT Rules) discretion.

I. Foreseeability

77. All the witnesses knew of the risk presented by E.W. They knew that he might get angry. It follows that they knew that he might use physical violence.

78. Physical violence or the threat thereof may cause psychiatric injury.

79. The Claimant does not claim to have been the victim of a direct physical violence by E.W. Before I review the evidence as to what, if anything, E.W. did after the disclosure, I must decide if it is necessary for the Claimant to prove that any psychiatric injury resulted from physical violence towards or confrontation of her by E.W.

80. Mr. Prestwich for the Claimant referred to Page v Smith [1995] 2 W.L..R. 644 in which case the House of Lords considered the "nervous shock" or psychiatric injury cases in relation to foreseeability. The appellant had not been physically injured in an accident but psychiatrically damaged. That physical injury to him was foreseen rendered the psychiatric damage equally foreseeable.

81. In all of the cases considered by the House of Lords, there was physical injury or the fear of physical injury to someone. I can imagine cases where there could be the foreseeability of psychiatric injury without an associated physical injury or fear thereof. A letter from a doctor to a patient announcing the wrongful diagnosis of a major disease could be such a case. The relationship between the Claimant and the Defendant does not lead to the same conclusion.

82. I am satisfied that the Claimant cannot succeed on foreseeability if her psychiatric damage arose from her getting to know that the confidential information had been disclosed to E.W. She must prove physical violence or a threat of it or some form of physical confrontation by E.W.

83. I now turn to E.W.'s post disclosure behaviour towards the Claimant.

84. In her statement, the Claimant did not say that she had seen E.W. since the disclosure. She described in para.12 of her statement how she learned of the disclosure and E.W.'s reaction from the CPN. The CPN saw E.W. again and told the Claimant that E.W. was even more angry towards her and "frothing at the mouth". In cross-examination, she said she had seen E.W. twice before passing him over to another. "I could not have worked with him", she said but she described no confrontation.

85. As a result of speaking to the Claimant on the 18th May 1999, Miss Grover wrote to the RMO. She said that as a result of the disclosure E.W.'s relationship with the Claimant had broken down and that E.W. was very angry with his mother. Miss Grover asked the RMO for his views on the possible risks posed to the Claimant. See p.328 Defendant's bundle.

86. As p.336 of the Defendant's bundle is the RMO response dated the 3rd June 1999. He said that he had had several discussions with the Claimant and re-examined E.W. There is no mention of any physical confrontation or threat. The RMO concluded that the relationship between E.W. and the Claimant had irretrievably broken down.

87. On the 23rd June 199 at a Care Programme Meeting (p.334 Defendant's bundle) the RMO, E.W. and the Claimant were all present. The minutes record: "The previous viewpoints between himself and Phil Johnson, Social Supervisor had been resolved to everyone's satisfaction".

88. The only evidence of confrontation is in the report of Dr. Goodhead made on behalf of the Claimant for this trial (see p.140 of the trial bundle): "She described how this man lived in a flat...and this man had refused to see her for a period without an advocate and when he did see her he acted in a very threatening manner and she described a very frightening interview in which the man was clearly anxious and in which she described his eyes seeming to be bulging with anger and how he seemed to froth at the mouth".

This is a close reflection of what the Claimant said in her statement the CPN had reported to her.

89. On all this evidence I cannot be satisfied that there was any confrontation of the Claimant by E.W. or any physical threat to her by him.

90. The Claimant also claimed loss of standing in the Sheffield Afro-Caribbean community. This damage is too remote and not foreseeable. In any event I reject her evidence on this. In short, I cannot accept any community which had treated with hostility a child killer returned to its midst would turn against a well known social worker simply because it was thought that she might have let him down. The Claimant never claimed that she had been accused by the community of betraying the confidence of the parents.

J. Conclusions

91. It follows that the Claimant's claim in negligence is on the ground that any psychiatric injury was not caused by any physical violence, threats thereof or confrontation by E.W. and therefore was not foreseeable. The claim under breach of confidence also fails.

92. If I am wrong about the need to prove physical violence, threat or confrontation resulting from the disclosure, I will make a decision as to whether the psychiatric injury was caused by the disclosure.

93. In addition to the evidence already reviewed, there is the Claimant's medical history taken from volumes of medical notes and the medical reports. There is a history of minor psychiatric episodes since 1975 – nervous tension, depression, stress and the prescription of valium. After the disclosure there are references to stress at work. Reasons for this are given but not the disclosure or E.W.'s behaviour.

94. Had I been required to decide this I would not have been satisfied that the disclosure had caused the Claimant any psychiatric injury.

ANTON LODGE, Q.C.