



Neutral Citation Number: [2004] EWHC 790 (QB)

Case No: HQ03X00763

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 April 2004

Before:

THE HONOURABLE MR JUSTICE GRAY

Between:

Mr Norman Oliver	<u>Claimant</u>
- and -	
The Chief Constable of Northumbria Police	<u>Defendant</u>

Ronald Thwaites QC, Stephen Suttle QC and Aidan Eardley
(instructed by **Peter Carter-Ruck & Partners**, solicitors) for the **Claimant**
Patrick Moloney QC and Lorna Skinner
(instructed by **Crutes**, solicitors) for the **Defendant**

Hearing dates: 18 February-11 March, and 23-24 March 2004

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
The Hon. Mr Justice Gray

Mr Justice Gray:

An Overview

1. This libel action is, sad to say, between a senior former police officer of the Northumbria force, Mr Norman Oliver, and his Chief Constable. Mr Oliver was a member of a team of police officers which in 1996 embarked on an investigation into what were thought to be suspicious deaths at the Royal Victoria Infirmary in Newcastle (“the RVI”). In due course a nurse at the hospital, Sister Atkinson, was charged with criminal offences including attempted murder. Mr Oliver became concerned that other officers on the team, namely Detective Chief Inspector Sharp and Detective Inspector Paxton, had been or might have been guilty of conspiring to pervert the course of justice by improperly strengthening the case against Sister Atkinson. Mr Oliver prepared a written report setting out his concerns (“the Oliver report”) and submitted it to senior officers.
2. An internal enquiry led by Assistant Chief Constable Crimmens was set up to consider whether any police officer had committed a criminal or a disciplinary offence. Superintendent Taylor and Chief Inspector Borrie led the enquiry team. In its report dated February 1999 (“the Crimmens-Taylor report”), the enquiry recommended that no further action be taken against either Mr Sharp or Mr Paxton in respect of either discipline or criminal matters. In the meantime the criminal proceedings against Sister Atkinson had been dropped.
3. Two years later, at a time when solicitors had been instructed by Sister Atkinson to commence civil proceedings against the Chief Constable, a copy of the Oliver report was leaked to the press. A television journalist contacted Northumbria police to ask about the concerns about the RVI enquiry expressed by Mr Oliver in his report. In response a press release was issued which, without naming Mr Oliver, described the allegations in his report as “unfounded” and called the report “discredited”. The press release was republished in two local newspapers and on local television. Mr Oliver seeks damages for libel and an injunction against the Chief Constable.
4. The Chief Constable admits that he is vicariously liable for the republication of the press release. He also admits that some readers and viewers would have understood the press release to refer to Mr Oliver. At an earlier stage I ruled that the press release was defamatory of Mr Oliver. The defences relied on by the Chief Constable were justification, qualified privilege and fair comment. I have also ruled that the occasion of the publication of the press release was protected by qualified privilege and that the defence of fair comment was not available to the defence. It follows that the issues which now arise for determination are (i) whether the defence of justification should succeed; (ii) whether the defence of qualified privilege is defeated by the alleged malice of officers for which the Chief Constable accepts that he would be responsible and (iii) damages (if Mr Oliver succeeds on issues (i) and (ii)).

The background facts

5. It is necessary for a clear understanding of the issues which I must decide to set out the background to this litigation at some length. In 1996 Sister Kathleen Atkinson was employed at the RVI where she worked in the Intensive Therapy Unit (the “ITU”). She had been on the staff of the hospital for many years.

6. On the morning of 15 January 1996 Staff Nurse Elissa Patterson went to see Charge Nurse Christopher Quinn (“Mr Quinn”) because she was concerned about Sister Atkinson’s mental state and her fitness to carry out her responsibilities in the ITU. The previous Friday, 12 January 1996, Sister Atkinson had rung the ITU when apparently drunk to say that she and her boyfriend had taken an overdose of tablets.
7. In the course of her conversation with Mr Quinn, Nurse Patterson raised a number of concerns. Firstly she told Mr Quinn that Nurse Angela Lawton had told her that she (Nurse Lawton) had been asked by Sister Atkinson to sign a drug additive label (indicating that a drug had been added to the syringe) but to draw up only saline into the syringe without any drug being included. Secondly, Nurse Patterson told Mr Quinn that she recalled an incident prior to January 1993 when Sister Atkinson had appeared to be ready to give prescribed morphine to a dying patient. This patient was subsequently identified as Mary Burdon (Mr Quinn later recalled that Nurse Patterson had also given him specific information regarding times and doses of drugs given to Mary Burdon but this was not the recollection of Nurse Patterson). Thirdly, Nurse Patterson told Mr Quinn that Nurse Lawton had told her that Sister Atkinson had asked her to purchase alcohol and bring it into the hospital. Mr Quinn later made a statement to the effect that Nurse Patterson had also referred to a patient named Claire Marsh but Nurse Patterson did not recall having done so.
8. Having been informed by Nurse Patterson of her concerns, Mr Quinn telephoned Nurse Lawton and Staff Nurse Pamela Race. I shall return later in this judgment to the evidence as to what was said in these telephone conversations.
9. Mr Quinn passed on the concerns which had been reported to him to the hospital authorities. An internal disciplinary hearing followed. The decision of the Board of Enquiry was that Sister Atkinson should be dismissed for gross misconduct. According to the Board that misconduct consisted in the following:
 - i) a failure on her part on 29 December 1994 to administer drugs which had been prescribed for Claire Marsh (a 12-year-old girl suffering from leukaemia);
 - ii) telling Staff Nurse Race on 17 October 1995, in relation to a young patient named Patricia Dryden who had suffered serious burns, “We won’t use the adrenalin, just saline, as she is going to die anyway” and;
 - iii) showing on 8 February 1991 an unwarranted readiness to administer morphine to a dying patient, namely Mary Burdon.

I recite these findings as part of the history; they are not of course determinative for the purpose of the present proceedings.

10. There followed a decision by the Coroner for Newcastle on 13 March 1996 to request the police to investigate the circumstances of the death of Patricia Dryden, the young burns victim.

The police investigation

11. Following the request from the Coroner, a police investigation team was assembled. The Senior Investigation Officer (“the SIO”) was Superintendent Renwick, whose deputy was Detective Inspector Sharp, who left the Inquiry on his promotion to Chief Inspector in July 1996. The statement reader was the Claimant, Detective Inspector

Oliver, who became Deputy SIO when Mr Sharp left the Inquiry in July 1996. At that time Detective Inspector Paxton was brought in to replace Mr Sharp. Other officers involved in the RVI enquiry included Detective Chief Superintendent Wakenshaw; Detective Superintendent Nicholson (who replaced Mr Renwick); Detective Superintendent Dobson (who in turn succeeded Mr Nicholson); Detective Sergeants Appleyard, Noble and Perry and Detective Constable Robson (who served as exhibits officer).

12. The investigation covered the deaths of Patricia Dryden, Mary Burdon, Claire Marsh and Thomas Luke and other patients, all of whom had been under the care of Sister Atkinson. As the enquiry progressed many other allegedly suspicious deaths were reported and became the subject of the investigation. At its peak the number of officers from the Northumbria Police Force who were involved in the Inquiry exceeded 30. Over 190 witnesses were interviewed.
13. A novel technique of interviewing witnesses (not suspects) had recently been introduced within the Northumbria force. It is known as “cognitive interviewing”. The officer principally responsible for the introduction of this technique in Northumbria was Detective Inspector (now Detective Chief Inspector) Gary Shaw. According to his evidence, cognitive interviewing lets the witness describe what he or she can remember and then the interviewer asks the witness to focus on particular elements which need to be developed. The witness is invited to relive the events with as little interruption from the interviewing officer as possible. The practice within the Northumbria Police in 1996 was to tape the cognitive interview but not to transcribe it. Once the cognitive interview had been completed, the interviewing officer would prepare a written statement on the basis of the tape of the interview. Because the technique had only recently been introduced in Northumbria, the officers involved in the RVI Inquiry were unfamiliar with it. In particular Mr Sharp, when interviewed on 27 November 1998, said he had not received any training in the technique.
14. After the necessary logistical steps had been taken to establish the inquiry team and its procedures, Mr Renwick instructed Mr Sharp to start by interviewing Nurse Lawton. Having sought advice from Mr Shaw as to the manner in which the interview should be carried out, Mr Sharp, together with Mr Shaw, duly interviewed Nurse Lawton on 27 March 1996. The interview was tape recorded. Mr Shaw made an abortive attempt to prepare a witness statement for Nurse Lawton from the tape. Mr Sharp took over and he prepared a statement which was signed by Nurse Lawton, with some amendments, two days later on 29 March 1996. Much turns in this case on the question whether the statement prepared by Mr Sharp faithfully reflects what was said by Nurse Lawton in interview or whether Mr Sharp enhanced or embellished it so as to strengthen illegitimately the case against Sister Atkinson. That raises the further question what communications took place between Mr Sharp and Nurse Lawton in the period between the interview and the signing of her statement by Nurse Lawton.
15. I shall have to return to both the interview and the statement of Nurse Lawton hereafter. For the purposes of the narrative it is sufficient to say that both dealt with the patients Claire Marsh, Patricia Dryden and Thomas Luke. The issues addressed, in relation to Claire Marsh, were whether Sister Atkinson had disposed of prescribed drugs by throwing them in the bin and pouring them down the sink; whether Sister Atkinson had instructed or procured Claire to be given a pure saline solution without adding the drugs which had been prescribed for her; whether she had tampered with the ventilator so as to reduce Claire’s oxygen saturation levels and whether she had,

apparently before Claire's death, written out mortuary identification cards for her. In relation to Patricia Dryden the issue with which Nurse Lawton dealt was whether in her case Sister Atkinson had, without any prior authorisation from a doctor to withdraw treatment, decided to give her a syringe of pure saline from which adrenalin had been omitted because Patricia was going to die. As regards Thomas Luke, Nurse Lawton dealt with the questions, firstly, whether, before his death, Sister Atkinson had completed mortuary cards showing his date and time of death (4.30a.m.) and, secondly, whether she had hinted that Mr Luke should be given an extra dose of morphine because he was distressed.

16. On 3 April 1996, Mr Sharp conducted a cognitive-style interview with Mr Quinn, which resulted in a statement dated 12 April 1996. On 1 May 1996 Mr Sharp conducted a further cognitive-style interview with Mr Quinn. The tape recording of that interview, as well as the statement subsequently prepared by Mr Sharp, gave an account of what Nurse Patterson had told him on 15 January 1996 about Patricia Dryden, Claire Marsh, Mary Burdon and the instructions by Sister Atkinson to purchase wine to be brought into the hospital. Mr Quinn also dealt with his telephone conversations later that same day with Nurse Lawton and Nurse Race. This interview resulted in a statement dated 14 May 1996. The third witness interviewed by Mr Sharp using the cognitive technique was Mrs Angela Marsh, the mother of Claire, who was interviewed on 11 April 1996. Mr Sharp produced a witness statement for her, which was signed on 24 April 1996. The interview and statement of Mrs Marsh described the events surrounding the death of Claire and in particular her reaction on learning of the death of her daughter.
17. As has already been recorded, Mr Sharp left the inquiry in July 1996 to be replaced by Mr Paxton. Mr Sharp was involved for a relatively short time. By the time Mr Paxton joined the inquiry, the team was investigating some ten supposedly suspicious deaths. Sister Atkinson had not been charged. One of Mr Paxton's tasks was to prepare advice reports for the Crown Prosecution Service ("the CPS"). A number of such reports were forwarded to the CPS in January 1997. The purpose of such reports is to summarise the evidence for the benefit both of the solicitor dealing with the matter at the CPS (Mr Hugh Glover) and counsel. The witness statements which had been obtained were attached to the police advice reports. I shall have to return later in this judgment to the content of those police reports when I address the issue whether they were inaccurate or misleading.
18. Mr John Milford QC (now His Honour Judge Milford) had been retained by Mr Glover and in early 1997 was asked by him to give preliminary advice as to the case which might be made against Sister Atkinson. The written advice of Mr Milford dated 21 March 1997 dealt with patients Mary Burdon, Claire Marsh, Patricia Dryden and Thomas Luke. He also considered other patients, some named, others unidentified, none of whom are for present purposes material. The conclusions which were arrived at by Mr Milford were as follows:
 - i) that in relation to Mary Burdon there was on the evidence before him a case against Sister Atkinson of murder or, bearing in mind possible problems over causation, at least of attempted murder;
 - ii) in relation to Claire Marsh, that there was no convincing evidence that Sister Atkinson had caused her death. Mr Milford referred to a suspicion that Sister

Atkinson had attempted to hasten Claire's death but pointed out that this was based on the evidence of Nurse Lawton for which there was little support;

- iii) that in relation to Patricia Dryden there was a suspicion that Sister Atkinson had taken it upon herself to anticipate the doctors' instructions to withdraw treatment and had thereby either hastened her death or attempted to do so. In her case Mr Milford also advised that Nurse Race fell under suspicion as having been complicit in the administration of the saline-only infusion. She had admitted as much to Mr Quinn, although that admission was subsequently withdrawn. Mr Milford advised that, since this is the only allegation against her and given the legal difficulties in establishing attempt, it was unlikely that a jury would convict. Mr Milford indicated that the immensely adverse effect of an arrest upon the life of Nurse Race and her reputation should be kept very much in mind; and
 - iv) in relation to Thomas Luke, there was a suspicion that Sister Atkinson had solicited other nurses to murder Mr Luke but in Mr Milford's opinion that evidence was very slight.
19. Mr Milford stressed that the credibility of the witnesses was all important. He pointed out that the cases of Claire Marsh, Patricia Dryden and Thomas Luke all depended upon the evidence of Nurse Lawton. The case of Mary Burdon depended upon Nurse Patterson. She impressed Mr Milford as better witness than Nurse Lawton. Mr Milford advised that, if the similar fact principle can be applied in the case, as he thought it could, Nurse Patterson supported Nurse Lawton and vice versa. Mr Milford concluded that in the cases of Claire Marsh and Patricia Dryden, there was really no prospect of proving that Sister Atkinson's omissions caused their deaths. He considered that those cases did not seem to be the foundation of any criminal offence. Nevertheless the evidence against Sister Atkinson in those two cases was relevant to the case against Sister Atkinson in relation to Mary Burdon. Finally Mr Milford referred to his strong feeling that a jury would be reluctant to convict a nursing sister of the grave offence of murder or attempted murder when she had accelerated or attempted to accelerate the death of terminally ill patients who were only hours from death in any event.
20. Following Mr Milford's Advice, enquiries continued. On 27 May 1997 Sister Atkinson was arrested. She was interviewed but declined to answer questions. She did, however, submit a prepared statement. On 30 May 1997 she was charged with the attempted murders of Mary Burdon and another patient named Miriam Egen and of incitement to murder Thomas Luke. The decision to charge Sister Atkinson was taken by Detective Superintendent Nicholson (who had replaced Mr Renwick as SIO upon his retirement in December 1996). Counsel was not consulted.
21. For the purpose of Sister Atkinson's remand hearing a summary of evidence was prepared by Mr Paxton. I will come later to the criticism that the summary was misleading. In the event Sister Atkinson was for her own protection remanded in custody, where she remained for over two months until granted bail on 7 August 1997.
22. Following the charging of Sister Atkinson, Mr Oliver, in his capacity as deputy SIO, commenced work on the committal file. He was assisted by Mr Noble and Mr Robson. Having examined the evidence, Mr Oliver took the view, with which both

Mr Nicholson and Mr Glover of the CPS agreed, that additional statements should be obtained from Nurse Patterson, Nurse Lawton, Nurse Ratcliffe and, later, Dr Dunlop.

23. In late August 1997 Mr Oliver listened to the tape recording of a cognitive interview of Mr Quinn which had taken place on 1 May 1996. Mr Oliver did so because an earlier request made by him to obtain from Mr Quinn an account in direct speech of what had been said to him on 15 January 1996 by Nurses Lawton and Race in relation to the admission of adrenalin had not been complied with. The tape recording of the interview indicated that Mr Quinn had in the course of it acknowledged that, when he telephoned them on 15 January 1996, neither Nurse Lawton nor Nurse Race was sure that she had actually seen Sister Atkinson omit adrenalin from Patricia Dryden's syringe. Mr Oliver was concerned that there were material discrepancies between Mr Quinn's taped interview and his witness statement dated 14 May 1996, the effect of which was to suppress evidence by Mr Quinn that Nurse Lawton had made statements to him which were inconsistent with her witness statement and also to suggest that Mr Quinn's evidence was that Nurse Race had made an incriminating admission to him, when that was not what Mr Quinn said in the course of his interview.
24. In early September 1997 Mr Oliver raised the apparent discrepancies in the evidence of Mr Quinn with Mr Sharp, who had conducted his interview and had prepared his statement. There is an issue, to which I shall return, as to the explanation Mr Sharp then offered.
25. Mr Oliver had other concerns, including the failure of Nurse Patterson to corroborate what Mr Quinn had stated she told him about Sister Atkinson and what were perceived by Mr Oliver to be lacunae in the statement of Nurse Lawton about whether Mr Luke was, on the night in question, exhibiting signs of distress which might have required the administration of morphine and whether his condition was observable from the vantage point of the nurses concerned.
26. Mr Oliver's evidence was that he followed up his concern about the evidence of Mr Quinn (referred to at paragraph 22 above) by telephoning him at the RVI to try to find out what his correct evidence was. According to Mr Oliver, Mr Quinn informed him that, contrary to his signed witness statement, Nurse Race had not confirmed to him in their telephone conversation on 15 January 1996 that adrenalin had been omitted from the saline syringe for Patricia Dryden (as Mr Quinn had claimed in his witness statement of 14 May 1996). Mr Quinn also told Mr Oliver that the draft witness statement prepared for him by Mr Sharp had a number of alterations and crossings-out on it.
27. This increased Mr Oliver's concerns and prompted him to speak to Mr Nicholson about the discrepancies between the tape recording of Mr Quinn's interview and his statement. Mr Nicholson listened to the relevant part of the tape and read the statement. But later, after speaking to Mr Sharp, Mr Nicholson instructed Mr Oliver that Mr Quinn was not to be re-interviewed in order to obtain an explanation why his taped interview was different from his signed witness statement. Mr Nicholson also declined the requests of Mr Oliver that a statement be obtained from Mr Sharp explaining the discrepancies and that Mr Glover should be informed of the position. According to Mr Oliver, Mr Nicholson told him that, if the differences in Mr Quinn's evidence were to be discovered by the defence, Mr Sharp could deal with it "on his feet in the witness box".

28. In November and December 1997 a number of additional witness statements were obtained from Nurse Lawton, Nurse Patterson and Dr Dunlop. In her further witness statement Nurse Lawton conceded that the entry giving the time of Mr Luke's death as 4.30am had not been seen by her written on mortuary cards, but rather on a separate piece of white paper and that her conclusion that Sister Atkinson was going to kill Mr Luke was incorrect. Nurse Lawton also stated that there was really no evidence to suggest that Sister Atkinson's request to check Mr Luke's morphine or give him an extra dose implied that she intended to kill him. Nurse Patterson in her further statement indicated that she had not related to Mr Quinn on 15 January 1996 any specific information about times or doses of drugs; nor had she made any reference to Claire Marsh. As for Dr Dunlop, he in his further witness statement accepted that he could not discount the possibility that, prior to retiring to bed, he had discussed the treatment of Mary Burdon with the nurse in charge and had agreed that they would keep her comfortable with whatever analgesics that role might require. These fresh disclosures fortified the doubts felt by Mr Oliver about the possibility of a successful prosecution of Sister Atkinson.
29. Mr Oliver arranged to meet Mr Quinn at Pilgrim Street Police Station in Newcastle on 12 December 1997. He did so because of the contradiction between Mr Quinn's statement of 14 May 1996 and the assertion by Nurse Patterson in her statement of 11 December 1997 that she had not related specific information regarding times or doses of drugs in relation to Mary Burdon to Mr Quinn. According to Mr Oliver's contemporaneous note of his meeting with Mr Quinn, Nurse Patterson had been unable on 15 January 1996 to remember the name of the patient concerned. Mr Quinn had himself found out that her name was Mary Burdon by looking in the Admissions Book. Mr Oliver's note of the meeting with Mr Quinn also recorded that he needed to be re-interviewed to find out where he had obtained all the information referred to in his statement i.e. times and drug dosages. Mr Oliver was tasked with preparing bundles relating to the criminal charges against Sister Atkinson. He incorporated into them the new statements from the witnesses referred to in paragraph 27 above. Mr Oliver also prepared police reports in relation to the patients Burdon, Egen and Luke in which he raised doubts as to whether the prosecution should continue. Mr Oliver had previously been instructed by Mr Wakenshaw not to submit police reports with the bundles relating to the criminal charges. Mr Dobson ordered Mr Oliver to remove the reports from the bundles.
30. A meeting took place on 2 January 1998 attended by Messrs Wakenshaw, Dobson, Sharp, Paxton and Oliver. The new statements were discussed. According to his evidence, Mr Oliver reported what Mr Quinn had recently told him on 12 December 1997. Mr Oliver had previously raised his concern about the variations in the evidence of Mr Quinn with both Mr Wakenshaw and Mr Dobson. No further mention was made of those concerns at the meeting on 2 January 1998. Following a consultation with Mr Milford QC, attended by Mr Glover, Mr Oliver was instructed to check the accuracy of the advice reports which had been prepared by Mr Paxton in January 1997, a year before (see paragraph 16 above). In Mr Oliver's opinion these reports contained a number of material inaccuracies in relation to Marsh and Luke. I shall deal with these alleged inaccuracies hereafter. Mr Oliver identified and explained the inaccuracies in a report to Mr Wakenshaw. A fortnight later, on 10 February 1998, at a meeting at which the senior officer present was Mr Wakenshaw, Mr Oliver was told that he was being removed from the RVI inquiry forthwith. According to Mr Oliver, Mr Wakenshaw told him that the reason why he was leaving the inquiry was because it had come to an end and he had another job for him. Mr

Oliver did not believe that that was the true reason for his removal. He protested that he felt that he was being made a scapegoat for what had gone wrong with the investigation. Mr Wakenshaw responded that “other people were not happy” with what Mr Oliver had done. Mr Oliver was angry and hurt at his removal. Mr Oliver was given what he considered to be a meaningless job at Police Headquarters in Ponteland. About a month later, however, Mr Oliver was transferred, at the suggestion of Mr Storey and with the agreement of Mr Wakenshaw, to a team which was re-investigating a two year old murder.

31. In February 1998 a decision was taken to discontinue the criminal proceedings against Sister Atkinson.

The Oliver report

32. Mr Oliver had many discussions with Mr Storey about his concerns regarding the RVI enquiry. At that time he felt that he had two options: either he should retire from the police force or he should commit to paper what he had found. Mr Storey suggested to him that he should set out his concerns in a comprehensive report not pulling any punches. Over the following weeks Mr Oliver set about the preparation of a report articulating the concerns he had about the way in which the police investigation into the allegations against Sister Atkinson had been carried out. He had unfettered access to the inquiry papers. In his evidence he said that the purpose of his report was to secure his re-instatement as a member of the inquiry team so as to be able to pursue additional enquiries in order that evidence might be forwarded to the Coroner and to secure consideration for an independent investigation into possible criminal and disciplinary offences.
33. Mr Storey gave Mr Oliver advice on the structure of his report but not on its content. He went through the final draft. It was Mr Storey who passed on the Oliver report to Detective Chief Superintendent Wilson, who was Mr Storey’s line manager and the person to whom the report was addressed. It was dated 30 April 1998.
34. The Oliver report in its final form has an introductory section describing how the RVI Inquiry came to be set up and identifies the senior officers who were members of the team. Mr Oliver describes his own role. In the next section, headed “The Investigation”, Mr Oliver sets out in broad terms the nature of the investigation undertaken and records the arrest of Sister Atkinson and the charges brought against her. In a third section, entitled “Preparation of the Committal File”, Mr Oliver describes how, in August 1997, when preparing the committal file, he formed the view that further clarification and explanation were necessary and that additional witness statements needed to be taken.
35. Much of the remainder of the Oliver report consists in what have become known as Mr Oliver’s “concerns”. As I will recount later, Superintendent Taylor, when he came to set up the inquiry into Mr Oliver’s allegations, felt it would be helpful for the purposes of the inquiry to identify and number those concerns. He identified 55 concerns in the Oliver report. The concerns were numbered sequentially by Mr Taylor in the order in which they appear in the Oliver report.
36. Whilst I can understand why Mr Taylor found it helpful for the purposes of his inquiry to divide up the concerns in this way, the exercise carries with it significant disadvantages. The major disadvantage stems from the fact that Mr Oliver in his

report does not set out his concerns in a logical or structured way. There is a considerable amount of overlapping between the numbered concerns and some duplication. I shall nevertheless adhere in this judgment to the numbering given by Mr Taylor to Mr Oliver's concerns because the concerns have been referred to by their numbers throughout the hearing.

37. I will therefore list, as briefly as possible, the concerns expressed by Mr Oliver in his report by reference to Mr Taylor's numbering. They comprise the following topics:
- 1) the removal of Mr Oliver from his post as deputy investigating officer "presumably because" he had discovered serious problems with the evidence during the preparation of the committal papers;
 - 2) the evidence of Mr Quinn which indicated that Nurse Patterson also mentioned to him the patient Claire Marsh, which would not appear to be the case;
 - 3) the fact that neither Mr Milford QC nor Mr Glover supported the charge of incitement to murder the patient Mr Luke;
 - 4) the failure of Mr Sharp to include direct speech in the witness statement of Mr Quinn dated 12 April 1996;
 - 5) the claim in the witness statement of Mr Quinn that Lawton had witnessed Sister Atkinson and Nurse Race putting up a syringe for the patient Dryden which contained pure saline, when in his taped interview with Mr Sharp Mr Quinn indicates that Nurse Lawton did not (Mr Oliver's emphasis) confirm to him that she had witnessed the omission of drugs from the syringe;
 - 6) the claim in the witness statement of Mr Quinn that Nurse Race had confirmed to him the allegations made by Nurse Lawton about the omission of drugs from the saline syringe for the patient Dryden, whereas in her witness statements Nurse Race always denied any wrongdoing;
 - 7) the "clear discrepancies" between the taped interview of Mr Quinn and his witness statement about his conversations with Nurse Lawton and Nurse Race and the "complete contradiction" between the taped interview and the witness statement;
 - 8) the failure to include in Mr Quinn's witness statement an account in direct speech of what Nurse Race had told him and what she admitted to;
 - 9) Mr Milford's ignorance of the discrepancies between Mr Quinn's taped interview and witness statement when he referred in his advice to the adverse effect of an arrest on Nurse Race's life;
 - 10) the explanation given by Mr Sharp to Mr Oliver in September 1997 that the reason for the discrepancies between the taped interview and the statement of Mr Quinn was that he was prepared to say things in his written statement which he was not prepared to mention in his taped interview;
 - 11) the suggested falsity of Mr Sharp's explanation for the discrepancies set out in concern (10);

- 12) the failure of Mr Nicholson, Mr Paxton and Mr Dobson, to take action when Mr Oliver mentioned his findings to them (I assume that this is the nub of concern (12));
- 13) the information given by Mr Quinn to Mr Oliver on the telephone in September 1997 that Nurse Race had not (Mr Oliver's emphasis) confirmed to him that adrenaline had been omitted from the saline syringe for the patient Dryden and the failure to hand in to the Exhibits Officer the witness statement produced to Mr Quinn by Mr Sharp which contained a lot of alterations and crossings out;
- 14) the information in the witness statement of Nurse Patterson that she had not related to Mr Quinn specific information regarding times or doses of drugs for the patient Mary Burdon;
- 15) the claim made by Mr Quinn both in his taped interview and his witness statement that Sister Atkinson had thrown away drugs prescribed for Claire Marsh saying "what's the point", when, "in actual fact", Nurse Patterson had not informed Mr Quinn of anything about Claire Marsh;
- 16) the absence from the diary entry made by Mr Quinn of the allegations made to him by Nurse Patterson of any reference to Claire Marsh and the apparent falsity of the evidence of Mr Quinn that Nurse Patterson told him anything about Mary Burdon;
- 17) the important pieces of evidence contained in the taped interview of Mr Quinn which are not referred to in his witness statement, including for example Mr Quinn's reference to informing Dr Gascoigne of the allegations shortly after speaking to Nurse Patterson and the question why Mr Sharp did not include this in Mr Quinn's witness statement;
- 18) the opinion of Mr Oliver himself that, from a cursory examination of the taped interviews carried out by Mr Sharp with Nurse Lawton and Mrs Angela Marsh, discrepancies clearly existed in comparison with their signed witness statements; and the opinion of Detective Sergeant Weston and Detective Constable Coan that the witness statement of Mrs Angela Marsh did not reflect her taped interview and the fact that Angela Marsh appeared to have no concerns in relation to the treatment her daughter received;
- 19) the failure on the part of Mr Sharp to comply with a request to obtain a statement from Mr Quinn commenting upon his remark that it was not uncommon for a terminally ill patient to be given morphine prior to the prescribed time;
- 20) the avoidance of an investigation into this statement by Mr Quinn which "appears to be a deliberate step in avoiding evidence which might have supported Atkinson";
- 21) the fact that the evidence of Nurse Lawton in relation to the patient Mr Luke was apparently "at best... embroidered and fanciful but at worst deliberately misleading";

- 22) the conclusion at which anyone would arrive that there are parts of the evidence of Nurse Lawton which are “pure lies” especially when compared with medical opinion in relation to the patients Claire Marsh and Patricia Dryden;
- 23) the description by Nurse Lawton of the condition of Claire Marsh as being poorly but stable with no expectation of her imminent death, when the facts are that the doctors state that the child was very gravely ill and in fact dying;
- 24) the false statements by Nurse Lawton about the oxygen saturation levels of Claire Marsh and the claim by Nurse Lawton that she asked Sister Atkinson to get the doctor a few times when the consultant and her registrar were in an adjacent cubicle waiting for the child to die;
- 25) the description by Nurse Lawton in her statement of Mrs Marsh running and screaming and unable to believe that Claire had died so suddenly, when no-one else describes any hysterical behaviour by Mrs Marsh; and the impression given by Nurse Lawton that Claire had died suddenly without warning and that Sister Atkinson had given reluctant excuses about having done something wrong to Claire;
- 26) the facts that, in relation to the patient Dryden, Nurse Lawton appears to be completely out of touch with medical opinion concerning her condition and treatment and that, at the time when Nurse Lawton allegedly witnesses Sister Atkinson and Nurse Race putting up pure saline, a decision to withdraw treatment had already been made;
- 27) the evidence of Nurse Blythe that Nurse Lawton “likes a bit of melodrama, when she tells a story, she likes to add” and the submission of Mr Oliver that the evidence supporting Nurse Lawton’s allegations is “not just weak but in fact so contradictory as to give rise to suspicion that her evidence is maliciously false”;
- 28) the instruction by Mr Wakenshaw to Mr Oliver not to submit police reports with additional statements which had been obtained by Mr Oliver;
- 29) the concerns of Mr Oliver relating to the whole of the evidence of Nurse Lawton following her retraction statement in relation to the patient Mr Luke;
- 30) the instruction by Mr Dobson to Mr Oliver to remove the report concerning Mr Luke from each bundle of statements prior to submission to the CPS;
- 31) the information given by Mr Dobson to Mr Oliver that the “serious discrepancies” relating to the taped interview of Mr Quinn would not be raised at a meeting attended by Mr Sharp on 2 January 1998;
- 32) the information given to that meeting by Mr Oliver that Mr Quinn had agreed that Nurse Patterson had in fact not provided him with the information set out in his witness statement of 14 May 1996;
- 33) the fact that the police advice report prepared by Mr Paxton in relation to the patient Luke shows inaccuracies “which the reader could find misleading”;

- 34) the fact that the remand summary prepared by Mr Paxton contains a misleading paragraph which indicates to the reader that Mr Luke was receiving double-strength morphine;
- 35) the fact that Mr Oliver made Mr Glover and Mr Sanders of the CPS aware of the discrepancies between Mr Quinn's taped interview and his signed witness statement in the presence of Detective Sergeant Perry (the criticism being, I infer, that Mr Perry took no action about them);
- 36) the statement of Nurse Lawton in her interview that the first time she had worked with Sister Atkinson was the night of Claire Marsh's death, when she had in fact worked a number of times with Sister Atkinson including two night shifts just before Claire died;
- 37) the omission on the part of Mr Paxton to comply with an "Action" request to obtain a witness statement from Nurse Lawton dealing with the occasions when she had worked with Sister Atkinson;
- 38) the contradiction between the evidence of Nurse Lawton and Dr Hale as to the condition and imminent death of Claire Marsh, which was brought to the attention of Mr Sharp and clearly required re-examination of Nurse Lawton's evidence;
- 39) the claim in the police advice report prepared by Mr Paxton that Mrs Marsh overheard Sister Atkinson say "What's the point in giving them, she's going to die anyway", which is not borne out by Mrs Marsh's statement;
- 40) the suggestion that that paragraph of Mr Paxton's police advice report could only have been included to imply that Lawton's evidence was corroborated by Mrs Marsh when in fact it was not;
- 41) the fact that, notwithstanding a subsequent assertion by Lawton that Mr and Mrs Marsh had been present, paragraph 3.13 of Mr Paxton's police advice report was nonetheless incorrect in suggesting that Mr and Mrs Marsh corroborated Lawton's allegation as to what Atkinson had said;
- 42) the removal of Mr Oliver from the RVI inquiry and the statement of Mr Wakenshaw that he was not saying that Mr Oliver was responsible for the discontinuance of the charges against Sister Atkinson but that "other people" were not happy with what he had done;
- 43) the belief of Mr Oliver that he was removed from his post for no other reason than that he had found serious faults in the evidence which had eventually resulted in the charges against Sister Atkinson being discontinued;
- 44) the understanding of Mr Oliver that Mr Perry had said to Mr Dobson that Mr Sharp must be "worried" in view of what had been found by Mr Oliver;
- 45) the statement of Mr Dobson that Mr Sharp had informed him that he had done nothing wrong, despite the fact that Mr Oliver had informed Mr Dobson on several occasions of the discrepancies between the taped interview of Mr Quinn and his signed witness statement;

- 46) the need, in view of her retraction statement relating to the patient Luke, to ask Nurse Lawton why she made false allegations in relation to that patient and the need to re-examine the whole of her remaining evidence;
 - 47) the claim by Mr Quinn in his witness statement that Nurses Lawton and Race had made allegations to him of possible criminal conduct by Sister Atkinson, when it was apparent from his taped interview that this was not correct and the need to examine further the diary entries made by Mr Quinn;
 - 48) the need to carry out these enquiries in order to ensure that the Coroner was not misled, particularly in relation to the patient Patricia Dryden;
 - 49) the absence of any reason for Mr Oliver to be removed from the inquiry, given the statement by Mr Wakenshaw that he was carrying out a first-class job and that his experience and integrity was vital to the RVI investigation;
 - 50) the question why Mr Sharp did not inform the Management Team that Mr Quinn had not been prepared to tell him in interview of the admission made to him by Nurse Race;
 - 51) the many hours of intense questioning to which Nurse Race was subjected because at that time there was no reason to consider that the evidence of Mr Quinn relating to her was not factual;
 - 52) the fact that the actions of Mr Sharp, including his failure to provide information about the conversations which Mr Quinn had with nurses Lawton and Race and the information provided by him to the CPS and Leading Counsel, “have misled the Inquiry team”;
 - 53) the concern expressed by Mr West, a forensic psychologist, that his professional opinion was sought on false information provided to him;
 - 54) the fact that all policy decisions and strategies throughout the RVI Inquiry were ratified by Mr Wakenshaw and Assistant Chief Constable Oliver and
 - 55) the fact that all of Mr Quinn’s evidence is circumspect [sic], the reasons for which “would appear to be within the knowledge of [Mr] Sharp”.
38. The Oliver report concluded with the following recommendation:
- “1. I believe I should be re-instated to carry out or assist in additional enquiries which have been identified... in order that urgent evidence for H.M. Coroner can be immediately progressed.
 2. Consideration should be given for an independent investigation to be undertaken in order that the aspect of possible criminal offences and breaches of the Discipline Regulations be addressed”.
39. The Oliver report, together with its appendices running to almost 300 pages, was given by Mr Oliver to his line manager, Mr Storey, who passed it on to Mr Wilson, the addressee of the report. Shortly after the submission of the Oliver report a

meeting took place between Mr Wilson and Mr Oliver. Mr Wilson asked Mr Oliver if he was saying that Mr Sharp and Mr Paxton had committed a criminal offence. Mr Oliver replied that he was not saying that because he was not fully aware of the circumstances. Mr Oliver told Mr Wilson that the evidence he had found required an investigation and the Mr Quinn and Nurse Lawton should be re-interviewed.

The Crimmens/Taylor report

40. Responsibility for the supervision of the Complaints and Discipline Department within the Northumbria force lay with the Deputy Chief Constable, Mr Alan Brown. He was provided with a copy of the Oliver report. His opinion was that, in view of the serious allegations made, an investigation was necessary. He decided upon an internal inquiry rather than bringing in an outside force to carry out the investigation. Given the nature of the allegations, Mr Brown decided to appoint Mr Crimmens, Assistant Chief Constable, to supervise the inquiry. Mr Crimmens would himself have preferred that the investigation should be carried out by an outside police force. However, he deferred to Mr Brown's preference for an internal investigation. Mr Brown appointed Mr Taylor to assist Mr Crimmens. According to Mr Brown, he selected Mr Taylor because of his extensive experience in Complaints and Discipline and because he was not from a CID background. The terms of reference of the Inquiry were to review and investigate "alleged irregularities" in the evidence in relation to the RVI Murder inquiry.
41. Mr Crimmens was not actively involved in the preparation of what was to become known as "the Crimmens/Taylor report". But Mr Taylor reported regularly to him. Mr Crimmens took a number of policy decisions in relation to the manner in which the investigation was to proceed. Most of the decisions were taken by Mr Taylor and are recorded in the Policy book. After discussion between Mr Crimmens and Mr Taylor, Chief Inspector David Borrie was selected as Deputy Senior Investigating Officer. There were two teams working under Mr Borrie. The first, consisting of Inspector Parrish and Sergeant Carr, was principally responsible for investigating the allegations surrounding the witness Nurse Lawton; the second, consisting of Inspector Coates and Sergeant Dennet, dealt with the allegations surrounding the witness Mr Quinn.
42. As already mentioned, Mr Taylor identified from the Oliver report 55 separate concerns (listed above). He discussed and agreed these with Mr Oliver. Mr Taylor also decided upon the methodology for the investigation. After discussion with experts in the technique of cognitive interviews, Mr Taylor gave instructions for the transcription of all the cognitive interviews of the material witnesses. Copies were obtained of the draft statements of those witnesses and of their final, signed statements. Mr Taylor devised a system for identifying the differences between on the one hand the transcribed taped interviews and on the other hand the draft and final statements of those witnesses. The two teams undertook the task of making the comparisons. Members of the team also studied the appendices to the Oliver report as well as the documents generated by the RVI Inquiry team, including documents prepared for submission to the CPS. In the early days of the Crimmens/Taylor investigation, regular meetings took place between Mr Taylor and Mr Oliver which were designed to keep Mr Oliver informed of progress.
43. Mr Taylor caused to be served on Mr Sharp and Mr Paxton notices pursuant to regulation 7 of the Police (Discipline) Regulations, 1985 identifying the allegations

which had been directed against them. In regard to Mr Sharp the allegations related to the differences between the tapes of the interviews of Mr Quinn; the contents of the typed statement of Mr Quinn in relation to the information supplied to him by Nurse Lawton; the omission from that statement of the fact that Mr Quinn informed Dr Gascoigne of the allegations made by Nurse Lawton; the failure to respond to an “action” about the practice of giving extra morphine to a patient prior to the prescribed time; the failure to provide the Exhibits Officer with notes of the interview with Mr Quinn; the failure to inform the Management Team that Mr Quinn was prepared to say things in his statement which he was not prepared to say during his taped interview; the failure to re-examine Nurse Lawton about the medical condition of Claire Marsh prior to her death; the lack of awareness of the potential problems of the credibility of Nurse Lawton in relation to the patients Claire Marsh, Patricia Dryden and Thomas Luke and the failure to notify senior officers that the evidence of Nurse Lawton was suspect and contained major discrepancies. The regulation 7 notice notified Mr Sharp that the allegations against him, if proved, might amount to a criminal offence and/or disciplinary offences.

44. The regulation notice in the case of Mr Paxton identified the following allegations directed against him: the police advice report prepared by him in relation to the patient Luke contained a number of inaccuracies; the remand summary prepared by him following the arrest of Sister Atkinson was also inaccurate; the failure to respond to an “action” raised to clarify the times that Nurse Lawton worked with Sister Atkinson and the inclusion in a further Police Advice Report of a claim that Mrs Marsh overheard a compromising comment made by Sister Atkinson when there is no reference in Mrs Marsh’s statement to the alleged comment. The notice concluded with the same warning as was contained in the notice addressed to Mr Sharp.
45. It was decided that both Mr Sharp and Mr Paxton should be interviewed. Mr Borrie prepared detailed draft questions principally based on the perceived differences between the tapes of the witnesses’ interviews and their draft statements. Both Mr Borrie and Mr Taylor participated in the interviews. Each officer was represented by a solicitor. The interviews took place under caution. A major topic of the questioning was that differences existed between the taped interviews of certain witnesses and their subsequent witness statements. The explanation given by Mr Sharp in interview for the differences was that “middle clarification” had taken place. Mr Sharp explained that he had spoken to the witnesses on several occasions after the interviews but before the finalisation of their witness statements to obtain clarification of their evidence.
46. Mr Borrie initially took the view that it might be necessary to interview the civilian witnesses, Mr Quinn and Nurse Lawton. In the event, however, these witnesses were not interviewed by a member of the Crippens/Taylor investigation team but by Inspector Whittle. Mr Whittle had been charged with presenting to the Coroner an objective assessment of the evidence available in relation to the deaths at the RVI. The decision was taken by Mr Borrie (in the absence of Mr Taylor who was on sick leave) that a short written statement should be taken from Mr Quinn and Nurse Lawton as to whether or not they were happy with the content of their written statements. In statements made on 30 September and 9 October 1998 respectively, Mr Quinn and Nurse Lawton confirmed the veracity of the statements which they had made. No further interviews with either of them took place.

47. In addition to interviewing Mr Sharp and Mr Paxton, Mr Taylor and Mr Borrie interviewed Mr Shaw (who had interviewed Mr Quinn in conjunction with Mr Sharp). Others interviewed on behalf of the Crimmens/Taylor inquiry included Dr Gilbert Park (who had been retained to give expert advice on questions of medical ethics); psychologists and police officers at Bramshill familiar with the technique of cognitive interviewing and an expert on adrenaline. Responses to written questions were obtained from several senior police officers who had been involved in the RVI Inquiry, namely Mr Wakenshaw, Mr Renwick, Mr Nicholson and Mr Dobson. Responses to written questions were obtained also from Mr Glover of the CPS.
48. Following completion of their investigations and enquiries, Mr Taylor and Mr Borrie proceeded to prepare the draft Crimmens/Taylor report. Mr Taylor drafted the formal parts of the report, whilst Mr Borrie prepared draft conclusions in relation to each of Mr Oliver's 55 concerns. The structure adopted in the report was to set out in each case the terms of the concern; the identity of the officer involved; his response to the concern; documentary references and, finally, the "assessment" of the authors of the report of the concern in question. Mr Borrie discussed with Mr Taylor his initial draft and Mr Taylor made some amendments. The draft report was in its final form by January 1999.
49. The draft report was submitted to Mr Crimmens and, after discussion with Mr Taylor, approved by him. Mr Crimmens submitted the Crimmens/Taylor report to Mr Brown under cover of a memorandum dated February 1999. The memorandum recorded, amongst other things, a proposal by Mr Crimmens that he should go through the report with Mr Oliver. This proposal was agreed by Mr Brown on 8 February 1999. Thereafter meetings took place between Mr Crimmens, Mr Taylor and Mr Oliver on 9, 10 and 12 February 1999 when the findings were explained to Mr Oliver. Although Mr Crimmens had recommended to Mr Brown that Mr Oliver be moved from his current post, Mr Brown decided to permit Mr Oliver to continue in his post under the supervision of Superintendent Fordy.

The Crimmens/Taylor report

50. The Crimmens/Taylor report starts by setting out its terms of reference:

"To consider whether any police officer has committed a criminal or disciplinary offence. Ensure the propriety of all contents (sic) that are ultimately to be forwarded to H.M. Coroner. Report on matters of procedure and policy where appropriate".

Mr Sharp and Mr Paxton are identified as the officers facing criminal and discipline allegations. Five other senior officers are identified as being the subject of "management issues" relating to the RVI inquiry. The report then gives an account of the RVI inquiry. There follows an account of the investigation by the Crimmens/Taylor team. Over the next 110 pages the authors of the report address Mr Oliver's 55 concerns following the pattern described earlier in this judgment. I shall return later to the conclusions arrived at in relation to the individual concerns.

51. The remainder of the Crimmens/Taylor report consists in a brief account of the antecedents of Mr Oliver, Mr Sharp and Mr Paxton. There follows an assessment of the witnesses. Reference is made to the content of a number of witness statements,

particularly nursing staff, being “either contradictory or confusing in places”. The authors of the report express the view that there is no evidence to challenge the integrity of any witness. Inspector Whittle is stated to be satisfied as to the credibility of Nurse Lawton and Mr Quinn and the integrity of what they included in their witness statements at the time they were made.

52. In a section headed “Conclusion”, which runs from page 124 to 128 of the report, the authors state:

“The allegations against Detective Chief Inspector Sharp relate to his dealings with a number of key witnesses, particularly Quinn and Lawton, who were subject to a ‘cognitive-style’ of interview. There are certainly differences between the original taped interview with these witnesses and the subsequent signed written statement that was produced for court purposes. Detective Chief Inspector Sharp has consistently explained these differences as part of the mid-clarification process i.e. the initial taped interview provided the basis for that person’s witness statement, but there was a need for further clarification and amendment before a draft statement could be produced. Even at that stage the witnesses involved made considerable amendments to the draft statement before the final document was produced – the signed witness statement.

Detective Inspector Oliver has consistently chosen to ignore this explanation or even discuss the matter directly with Detective Chief Inspector Sharp. He takes a simplistic view that any differences between the contents of the original taped interview of a witness and the subsequent signed witness statement denotes impropriety on the part of the officer and in consequence an attempt to pervert the course of justice. In the case of the witness Quinn he alleges the matter has progressed further and infers that there has been a conspiracy between the witness and Detective Chief Inspector Sharp to pervert the course of justice.

The allegations against Detective Inspector Paxton relate in the main to police reports he submitted in connection with the prosecution against Kathleen Atkinson. Whilst the officer has accepted making a genuine mistake in one of the documents, he pointed out that he submitted those advice reports through Detective Inspector Oliver!

Both Detective Chief Inspector Sharp and Detective Inspector Paxton were subject to protracted criminal interviews under the provisions of the Police and Criminal Evidence Act. At the conclusion of those interviews the solicitor representing them pointed out that there was not a shred of evidence against either officer to support the allegation that they had attempted or conspired to pervert the course of justice. This view is shared by the Investigating Officer and, indeed, by the Senior Officers who carried out the interviews.

Accordingly there is no evidence to support the criminal allegations directed at those officers or the corresponding disciplinary offences. No further action is required in this matter.

With regard to the inferred criticism by Detective Inspector Oliver of a ACC Wakenshaw and other Senior Officers involved in the RVI Inquiry, these are management issues rather than disciplinary matters. Nevertheless there is no evidence that any of those officers have acted improperly or with any impropriety in this matter. Indeed both Senior Investigating Officers (Det Supt's Renwick and Nicholson) in written responses are highly critical of Det Inspector Oliver and challenge his professionalism.

Sadly Det Inspector Oliver has lost the respect of the Senior Officers with whom he worked on the RVI Inquiry and, from the evidence obtained by this investigation, he did not have the respect of junior officers who worked alongside him on the Inquiry.

At the end of a protracted, in-depth investigation into the various concerns articulated by Det Inspector Oliver, against a number of Senior Officers of Northumbria Police, I am able to conclude that there is no evidence to substantiate his claims..."

53. Having identified a number of management issues to be brought to the attention of the Head of Crime Management, the Crimmens/Taylor report concludes by recommending that no further action be taken against Mr Sharp or Mr Paxton either in respect of criminal or discipline matters. The report further finds no cause to criticise the management decisions taken by Senior Officers.
54. As I have already indicated, the Crimmens/Taylor report was submitted to Mr Brown under cover of a memorandum dated February 1999. In that memorandum Mr Crimmens confirmed the conclusions arrived at by his investigation. He added that the investigation has identified a number of concerns about the conduct and professionalism of Mr Oliver which challenge both his ability and suitability to continue to perform the role of Detective Inspector. Mr Crimmens further informed Mr Brown that Mr Taylor would brief the Coroner about the outcome of the Crimmens/Taylor investigation. Mr Crimmens stated that Inspector Whittle was satisfied with the integrity of the evidence being prepared for the Coroner.
55. The evidence of Mr Brown was that he read the Crimmens/Taylor report at home during the evening of 8 February 1999. He expressed himself wholly satisfied with the manner in which the inquiry had been carried out and the conclusions arrived at in the report. Mr Brown saw Mr Oliver on 26 March 1999 and informed him that the investigation had concluded that his allegations were unfounded. There is an issue whether or not Mr Oliver informed Mr Brown at this meeting that he intended to retire within a year.
56. The Crimmens/Taylor report was not published. Indeed, according to the evidence, its circulation was restricted to a relatively small number of officers within the

Northumbria force. Mr Oliver himself did not receive a copy of the report, although (as I have recorded) he was informed of its contents.

The inquest

57. Mr Whittle prepared his report for the Coroner and submitted it to his office prior to the inquests.
58. The inquest concluded on 10 May 2001. The verdicts returned were as follows: in respect of Mary Burdon, an open verdict; in respect of Gladys Ward, death by natural causes contributed to by neglect following the unauthorised withdrawal of treatment; Claire Marsh, death by natural causes and Patricia Dryden, accidental death. The outcome of the inquest received some local press publicity.

The press release

59. Mr Oliver was dissatisfied with the Crimmens/Taylor report and felt that his concerns had not been fully or properly investigated. On 18 May 2001 Mr Oliver received a telephone call from Mr Haswell, a solicitor acting for Sister Atkinson, who wished to discuss Mr Oliver's involvement in the RVI Inquiry. Mr Oliver declined to do so. He telephoned the Solicitor to Northumbria Police, Miss Aubrey and met her on 21 May 2001. Mr Oliver informed her of his dissatisfaction with the Crimmens/Taylor investigation and told her about some of the issues which he had raised. This meant little to Miss Aubrey but she told Mr Oliver she would inform Mr Michael Craik, who had been appointed Deputy Chief Constable in July 2000. She did so that same afternoon. Mr Craik told her that he believed all Mr Oliver's concerns had been properly investigated. The following day Miss Aubrey drafted for Mr Craik a reply to a letter dated 22 May 2001 in which Sister Atkinson's solicitor, Mr Haswell, registered a formal complaint against the officers who had handled the case against his client. In the meanwhile Mr Craik had called for and read both the Oliver report and the Crimmens/Taylor report (although not the appendices to either report). Mr Taylor also briefed him about the history and provided more details.

The press release

60. On 7 August 2001 Mr Craik was advised that a journalist had obtained a copy of the Oliver report. (I should make clear that it has not been suggested that Mr Oliver was responsible for the leaking of the report). Nigel Green of Tyne Tees Television had telephoned on that day seeking a response by Northumbria Police to the allegations contained in the Oliver report.
61. Mr Craik convened a meeting later that same day which was attended by Miss Aubrey, Ms Sue Nicholson (Head of Media Services) and Mr Taylor. The purpose of the meeting was to discuss whether a response to Mr Green's enquiry should be made and, if so, in what terms. Mr Craik wanted to respond in terms which reflected the conclusions of the Crimmens/Taylor report. He was concerned about the reputations of Mr Sharp and Mr Paxton, both serving officers, and about the reputation of Northumbria Police generally. He felt that a vigorous response was called for. A form of words for a press release was discussed and agreed by Mr Taylor.
62. Shortly after the meeting Mr Craik contacted Detective Chief Superintendent Machell and asked him to inform Mr Oliver (who was on holiday in Scotland) of the response

which was going to be made to the press enquiry. Mr Machell did so on 10 August 2001. Mr Oliver protested about the wording of the proposed press release.

63. The release issued by the Press Office of Northumbria Police was, so far as material, in the following terms:

“Solicitors acting for Mrs Atkinson have indicated their intention to take action for false arrest, which will be vigorously defended by Northumbria Police... The allegations made by the author of this report were rigorously investigated by an assistant chief constable. They were judged to be unfounded and were discredited... We have declined to register this as a complaint as the allegations are based on a discredited report by a member of the investigating team. This has already been investigated and the contents deemed to be unfounded.”

Enquiries made of the Press Office during August 2001 elicited a response in those terms.

64. The terms of the press release were substantially re-published on Tyne Tees Television News at 6pm on 13 August 2001; in a report published in “The Evening Chronicle” on 20 August 2001 and in a report published in another Newcastle newspaper, “The Journal”, on 21 August 2001. Tyne Tees Television has a large viewing audience covering the whole of North East England. The two newspapers circulate widely in the Newcastle area and elsewhere in Northumbria. Mr Oliver was not named in either the television news bulletin or in either of the newspaper reports. However, his evidence is that it was well known within Northumbria Police that he had submitted a written report identifying causes for concern in relation to the investigation and charging of Sister Atkinson. His case is that his family and many friends and acquaintances would have been aware that the articles referred to him.

The issues in the libel action

65. The claim form in these proceedings was issued shortly before the expiry of the limitation period on 31 July 2002. The claim was initially confined to the re-publication of the press release in the two newspaper articles. The claim in respect of the television news bulletin was added later by amendment. The Particulars of Claim include particulars of the matters relied on in support of Mr Oliver’s contention that the words would have been understood by viewers and readers to refer to him. The natural and ordinary defamatory meaning asserted on behalf of Mr Oliver is that the words were understood to mean that

“the Claimant had in a report, knowingly or recklessly or at the very least grossly negligently, made allegations about the investigation and arrest of Sister Atkinson by Northumbria Police which were unfounded and which in consequence deserved no credibility”.

66. Also set out in the Particulars of Claim were matters relied on by Mr Oliver in aggravation of damages. The prayer includes a claim for an injunction.

67. By his Defence the Chief Constable admits that Mr Craik (for whose acts he accepts vicarious liability) authorised the publication of the press release in response to media questions including those from the Evening Chronicle and the Journal and Tyne Tees Television. It is also admitted that Mr Taylor had expressly approved the inclusion in the press release of the words “unfounded” and “discredited” in relation to the Oliver report. The Chief Constable also accepts vicarious responsibility for the acts of Mr Taylor. The Defence further admits that, as well as the journalists making the enquiries, a small number of readers would have known that Mr Oliver was the author of the leaked report and so would have understood the words complained of to refer to him. The defamatory meaning put on the words on behalf of Mr Oliver is denied. Two substantive defences are relied on: firstly, qualified privilege and, secondly, justification. An additional defence of fair comment on a matter of public interest was added to the Defence by amendment. I will return to the defences of qualified privilege and justification hereafter. In addition to responding to the matters relied on in aggravation of damages, the Defence includes a plea in mitigation of damages.
68. I will not attempt in this judgment to give a comprehensive summary of the Reply to that Defence served on behalf of Mr Oliver. Having been amended four times, it runs to over 90 pages. The Reply is essentially in three parts. The first part, which covers paragraphs 5 and 6 of the statement of case, sets out the grounds upon which Mr Oliver denies that the words complained of were published on an occasion of qualified privilege. It is pleaded that no fair-minded person who had read the Oliver report could honestly have reached any other conclusion than that his concerns were founded on reasonable and cogent grounds and that no fair-minded person who had read the Crimmens/Taylor report could honestly have agreed with their conclusion that there was no evidence to substantiate Mr Oliver’s claims. It is contended that it was apparent on the face of the Crimmens/Taylor report that the investigation had been defective. Detailed criticisms are set out of the conclusions arrived at in the Crimmens/Taylor report in relation to a number of Mr Oliver’s individual concerns.
69. The second part of the Reply, contained in paragraph 9, is a detailed response to the plea of justification with which I shall deal later. There is also a denial that the words complained of were fair comment on a matter of public interest.
70. The third section of the Reply alleges in paragraphs 10 and 11 that one or other or both of Mr Craik and Mr Taylor were actuated by express malice. The case sought to be made against those officers is similar: each is charged with having published the words complained of in the knowledge that they were false or at least with reckless indifference as to whether they were true or false and in any event with the dominant improper motive of untruthfully sacrificing the reputation of Mr Oliver and untruthfully discrediting concerns which Mr Oliver had raised in his report rather than leave Northumbria Police exposed to well-founded criticism of the conduct of police officers in relation to the investigation and prosecution of Sister Atkinson and/or to a claim by Sister Atkinson of wrongful arrest and/or malicious prosecution. There follow detailed particulars of the facts and matters relied on in support of those charges of malice. Incorporated by reference into those particulars are many of the matters relied on in opposition to the plea of qualified privilege and by way of rebuttal of the plea of justification. I will consider those detailed particulars later in this judgment.

Rulings made prior to the trial

71. At the pre-trial review in this case on 14 October 2003 I was asked to determine, amongst other issues, the following questions:

- 1) what, if any, defamatory meaning the words complained of bear;
- 2) whether the defence of fair comment is available to the Defendant and
- 3) whether the publications took place on occasions of qualified privilege.

On that occasion I gave a reasoned judgment in relation to those three questions. It will serve no purpose to reiterate what I then said. Accordingly I shall do no more than summarise my conclusions.

72. On the question of the meaning of the words complained of, the real issue which fell to be determined was whether or not the words complained of imputed bad faith to Mr Oliver. My answer to that question was in the negative, although I accepted that the words were nonetheless defamatory of Mr Oliver. I concluded that the words bore the defamatory meaning that, in compiling his report, Mr Oliver had been guilty of negligence in that he included allegations which are factually wrong and not worthy of belief.

73. As to the availability of fair comment, there was argument whether the words “unfounded” and “discredited” constituted fact or comment. But the reason why I concluded that in the circumstances of this case the defence of fair comment was unavailable to the Defence was that no sufficient substratum of fact was stated or indicated in the words complained of so as to provide the publishee with sufficient information to judge for himself how far the opinion of the commentator was well-founded. I therefore struck out that defence.

74. In regard to the question whether the publication of the press release on behalf of the chief constable was protected by qualified privilege, I ruled that there was no real prospect of Mr Oliver being able to establish that the occasion of the publication of the press release was not protected by qualified privilege. I set out in my judgment the circumstances which led me to that conclusion.

75. The effect of those rulings was to reduce the number of issues which remained live at the trial. The outstanding questions, with which this judgment is concerned, are three in number:

- i) whether the words complained of are substantially justified (the plea of justification). If the answer to this question is “yes”, Mr Oliver’s claim fails and questions 2 and 3 do not arise;
- ii) whether Mr Craik or Mr Taylor or either of them was guilty of malice which (as is accepted) is to be imputed to the Defendant Chief Constable on the basis that he is vicariously responsible for the malice of the officers. If the answer to this question is “no”, it follows from my earlier ruling that the defence of qualified privilege succeeds and the claim fails; conversely if the charge of malice is proved, the defence of qualified privilege is defeated;

- iii) in the event that the plea of justification fails and the defence of qualified privilege is defeated by malice, then the question of damages arises.

The evidence at trial

76. Before turning to those issues I should give a brief account of the evidence called at trial. The hearing of the evidence, which took place in Newcastle, occupied 17 days. Save in a few cases there was little or no evidence in chief. Mr Oliver (whose witness statements took up about 180 pages) was in the witness box for two-and-a-half days or thereabouts. In the course of his evidence it became clear that, in addition to Mr Craik and Mr Taylor, he was effectively also accusing Mr Borrie of bad faith (Mr Oliver said that he had been “stabbed in the back” by Mr Borrie). This led to an application on behalf of Mr Oliver at the start of the eighth day of evidence for permission to amend the particulars of malice so as to include a number of allegations against Mr Borrie. Mr Thwaites eschewed any suggestion that there had been a plot or conspiracy but accepted that his case had to be that Mr Borrie was intent from an early stage upon exculpating Mr Sharp and Mr Paxton at all costs.
77. A number of supporting witnesses were called on behalf of Mr Oliver. They included four police officers who are to a greater or lesser extent sympathetic to Mr Oliver’s cause, namely Messrs Robson, Storey, Noble and Perry (whose statement was read). Mr Glover of the CPS gave evidence on behalf of Mr Oliver, as did Mr John Milford QC (as he then was) whose statement was also read. Finally Mrs Susan Lowe, a long-standing friend of Mr Oliver, gave evidence.
78. The officers who gave evidence on behalf of the Chief Constable were Messrs Shaw, Borrie, Brown, Taylor, Whittle, Crimmens and Craik. The Northumbria Force Solicitor, Miss Aubrey, also gave evidence. Neither Mr Sharp nor Mr Paxton was called, although each of them had made a witness statement on behalf of the Chief Constable.
79. At the conclusion of the evidence on 11 March 2004, the case was adjourned. Closing submissions were made in the Royal Courts of Justice on 25 March 2004.

Justification: the issue to be determined

80. I turn to the issue of justification. There is no dispute between the parties as to the applicable law. In order for this defence to succeed, the Defendant has to prove on the balance of probabilities the substantial truth of what was published in the press release quoted at paragraph 63 above in the meaning which, as recorded at paragraph 72 above, I have found that the words of that press release bear. The sting of the alleged libel is that Mr Oliver was guilty of negligence in the compilation of his report or, to put it another way that he did not exercise reasonable care in relation to the inclusion in that report of assertions which were to be put before senior officers.
81. There was some debate as to standard to be applied in determining the question whether Mr Oliver was negligent in the compilation of his report. Mr Moloney submitted that the standard of care to which Mr Oliver should be held is that of a reasonable, objective Detective Inspector with full access to the files, familiar with the case and conscious of the gravity of the criminal and disciplinary allegations he was making against experienced fellow officers. Mr Moloney further submitted that, in deciding whether allegations were included negligently in the Oliver report, those allegations should not be devalued to the status of mere “concerns”. Mr Oliver does

not use the word “concern” in his report. A further contention advanced by Mr Moloney was that the issue of negligence falls to be determined in the light of the information known or available to Mr Oliver at the time when he prepared his report. Finally, Mr Moloney emphasised that the meaning which he has to justify is that the Oliver report “included” allegations which are factually wrong or not worthy of belief. It is not, he submitted, necessary that the Defendant establish that all or even a majority of the allegations in the report are wrong or unworthy of belief.

82. I did not understand Mr Thwaites to quarrel with the proposition that the standard of care to be expected of Mr Oliver in the preparation of his report was such care as might reasonably be expected of an officer of Mr Oliver’s standing, experience and knowledge of the RVI inquiry. But Mr Thwaites contended that the report does no more than call for an investigation, so that the question is whether Mr Oliver had reasonable grounds to invite senior officers to investigate the allegations contained in the report. He submits that the test to be applied is the subjective test applied in police arrest cases. Mr Thwaites further submitted that Mr Oliver cannot be judged to have been guilty of negligence in relation to allegations in his report which can be shown to be well-founded, even if that can only be established by reference to facts which were not known to Mr Oliver at the time of his report.
83. I accept that the standard of care to be applied is that for which Mr Moloney contends and which I have recorded at paragraph 81 above. The test is in my view an objective one. I accept that it was not incumbent on Mr Oliver to satisfy himself according to the criminal standard of proof before including concerns in his report; I did not understand Mr Moloney to suggest otherwise. In my view the issue of negligence falls to be determined by reference to information known to Mr Oliver at the time of the preparation of his report. It is possible for what turns out to be a well-founded allegation to be made negligently, just as it is possible for an unfounded allegation to be made with due care. I cannot accept that, in relation to the issue of negligence, it follows from the fact that subsequent investigations by others establishes grounds for a particular concern that Mr Oliver cannot have been negligent in including it in his report. But I agree that, in such circumstances, the Defendant would be unable to establish that the concern in question was unfounded. In deciding whether negligence has been established against Mr Oliver I bear in mind that the Oliver report concludes with a recommendation that an investigation be undertaken into “possible” criminal offences and breaches of disciplinary regulations. But I must also have regard to the language employed in the body of the report and to the allegations, whether express or implied, which are contained in it. It appears to me that the ultimate question which I have to determine in relation to the plea of justification is whether the Defendant has satisfied me that a reasonably careful officer in the position of Mr Oliver and possessing his knowledge, experience and standing would not have included in his report for communication to senior officers the allegations about those involved in the RVI enquiry.
84. It is, as I have said, for the Defendant to satisfy me that this question should be answered in the negative. In order to discharge that burden it is not in my view necessary for the Defendant to show that such reasonable grounds did not exist for communicating any of the concerns in that report. It will suffice if the Defendant can show that a sufficient proportion of those allegations was factually wrong or unworthy of belief for it to have been unreasonable for an officer in the position of Mr Oliver to have communicated his report to senior officers. The answer to that question falls to be decided, not by reference to the number of allegations which are wrong or

unworthy of belief, but qualitatively by reference to the relative gravity of the allegations for which it can be shown that Mr Oliver should have appreciated that there existed no sufficient basis.

Mr Oliver

85. Before I come to the individual concerns, I should record my impression of Mr Oliver. Not only did he give evidence over a period of two days, he was naturally in court throughout the trial. I therefore had ample opportunity to form an assessment of him. In addition, many witnesses, both those called by Mr Oliver and those who gave evidence for the Defendant, testified as to his qualities. Mrs Susan Lowe, a long-standing and loyal friend of Mr Oliver, gave evidence of his personal qualities.
86. I accept without hesitation that Mr Oliver is a man of the highest integrity. He has given a lifetime of service, initially to the Durham Police force and, from the date of its amalgamation with the neighbouring force, to the Northumbria Police. He has accumulated enormous experience as a detective. I have no doubt that he has over the years devoted a huge amount of effort into his police work. I do not doubt that Mr Oliver holds sincerely to the views expressed in his report.
87. Many witnesses spoke of Mr Oliver's meticulousness and his devotion to detail. In one sense those are of course qualities to be commended. But in my view they carry with them the risk that attention to detail may sometimes obscure the bigger picture. Mr Oliver struck me as being someone who is prone on occasion to attach disproportionate significance to matters which, judged objectively, are relatively unimportant. He risks concentrating on the trees to such an extent that he loses sight of the wood. The evidence revealed a propensity on his part to view as sinister matters which others might regard as insignificant and to be expected. It was abundantly plain to me both from his evidence and from his demeanour in court that establishing the legitimacy of the concerns which induced him to compile his report has become something of a crusade for Mr Oliver. But I do not attach undue significance to this. It is inevitable in a case of this kind that feelings run high on both sides.

Mr Oliver's concerns

88. In the "Summary of Justification" attached to his written closing submissions, Mr Moloney did not address all 55 of the concerns which Mr Taylor discerned in the Oliver report. In some instances that was because the so-called concerns are mere narrative and not capable of being construed as allegations against anyone. Into this category come concerns (2), (3), (10), (13), (31), (44), (53) and (54). I will say no more about them.
89. But there is another category of concerns which Mr Moloney did not address. It comprises concerns (1), (9), (12), (21) to (24), (26) to (30), (32), (35), (38), (42) to (43), (45) to (46), (48) to (50) and (52). Mr Moloney accepted that, to the extent that he did not address these concerns, it was not open to him to say that at the time when he prepared his report Mr Oliver had been guilty of negligence in making the allegations comprised in those concerns. The majority of these concerns make allegations which are principally directed at individuals other than Mr Sharp and Mr Paxton. Concerns (21) to (24), (26) to (27), (38) and (46) relate to Nurse Lawton and concern (32), amongst others, relates to Mr Quinn. Concerns (1), (12), (28), (30), (42), (43), (45) and (49) appear to relate to what were to be described in the

Crimmens/Taylor report as the “managerial issues” relating to senior officers in the RVI inquiry.

90. What is the significance of the fact that there exists this category of concerns which are not mere narrative and in relation to which Mr Moloney levels no charge of negligence against Mr Oliver? In my judgment I should accept that in relation to those concerns, there did exist reasonable grounds for Mr Oliver to make the allegations comprised in them. However, it appears to me that, when it comes to the plea of justification, the most significant allegations are those which relate to Mr Sharp and, to a lesser extent, Mr Paxton. I say that because it is necessary to bear in mind that the press release was issued in the context of a journalist making enquiries of the Northumbria Police about a leaked copy of the Oliver report which had come into his possession. It would have been immediately apparent to the journalist that the principal targets of the criticisms contained in the Oliver report were Mr Sharp and, to a lesser extent, Mr Paxton. Whilst I do not overlook the existence of a body of concerns or allegations directed at other officers and civilian witnesses, it appears to me that the substantial truth of the words of the press release is capable of being established by reference to the absence of a sufficient basis for those allegations which relate to Mr Sharp and Mr Paxton alone. In other words, the fact that the Defendant does not seek to make out a case of negligence against Mr Oliver in respect of allegations against individuals other than Mr Sharp and Mr Paxton is not fatal to the plea of justification.

The nature of the Defendant’s case on justification

91. In effect the Defendant adopts as his defence of justification the findings of the Crimmens/Taylor report. Objection was taken by Mr Oliver at an early stage to the Defence being formulated in this fashion. In my view it is unfortunate that this objection was not sustained at that time. In the result, when deciding the issue of justification, I must decide whether the findings set out in the Crimmens/Taylor report warrant the conclusion that a sufficient proportion of the allegations made in the Oliver report were either factually wrong or unworthy of belief for it to have been negligent for an officer in the position of Mr Oliver to communicate his report to senior officers. For the reasons already explained the allegations upon which I have to focus are those relating to Mr Sharp and Mr Paxton.
92. Mr Thwaites was highly critical of the fact that neither Mr Sharp nor Mr Paxton nor any of the senior officers criticised by Mr Oliver were called to give evidence on behalf of the Defendant. I understand that Mr Thwaites would have welcomed the opportunity of cross-examining them. But it does not appear to me that on analysis the evidence of those officers is relevant to the issue of justification (any more than it is relevant to the issue of malice). The issue in relation to the defence of justification is whether Mr Oliver exercised reasonable care in relation to the preparation of his report and in particular in relation to the conclusion of the allegations against Mr Sharp and Mr Paxton. In deciding that issue I have to have regard to what Mr Oliver knew about what those two officers did and did not do. I would not have been assisted by whatever evidence Mr Sharp and Mr Paxton might have given, long after the event, at this trial.

Mr Oliver's concerns about Mr Paxton

93. I will consider first the concerns expressed by Mr Oliver in his report about Mr Paxton. They are concerns (34), (36) and (37), and (39) to (41). They are summarised at paragraph 32 above. I will take them in turn.
94. Before doing so, however, I must deal with the submission, made for the first time in the written closing submissions on behalf of Mr Oliver, that his recommendation for an independent inquiry into possible criminal and/or disciplinary misconduct was confined to Mr Sharp and did not extend to Mr Paxton. That is certainly not how the addressee of the Oliver report, DCS Wilson, interpreted it: see his memorandum to Mr Brown dated 5 May 1998. Besides, as I have already recorded, following the submission of the Oliver report, regulation 7 notices were served not only upon Mr Sharp but also on Mr Paxton (see paragraph 39 above). I do not read the recommendation at the end of the Oliver report as relating solely to Mr Sharp. There are allegations against Mr Paxton contained in the Oliver report and to these I now turn.
95. *Concern (33)*: This concern relates to the police advice report prepared by Mr Paxton in relation to the patient Luke. Mr Oliver asserts that there are inaccuracies in that report which the reader “could find misleading”. The alleged inaccuracies are identified in a subsequent police advice report prepared by Mr Oliver and annexed to his report at “AE”. The assessment in the Crimmens/Taylor report at page 90 is that none of them would be capable of forming the basis of a prima facie case of attempting to pervert the course of justice or any corresponding discipline offence. I agree with that conclusion. I accept that it is over-stating the position to say, as Mr Paxton does at paragraph 3.18 of his report, that the discovery of the Notification of Death form relating to the patient Luke was “fully corroborated” in the statement of Nurse Halford. But that paragraph has to be read with paragraph 4.3 of the report, where Mr Paxton says, correctly, that Nurse Halford “in part” corroborates the evidence of Nurse Lawton. The second inaccuracy perceived by Mr Oliver in Mr Paxton’s report relates to the sentence in paragraph 3.25 which reads “this comment being ignored by all three members of staff”. That comment relates to the suggestion said to have been made by Sister Atkinson that Luke should be given an extra dosage of morphine. Mr Oliver reads the comment as being Mr Paxton’s own conclusion. But it is in my view clear that Mr Paxton is recording the evidence of Nurse Lawton and doing so correctly. Indeed, subsequent paragraphs of Mr Paxton’s report, namely paragraphs 4.3 and 4.5 point out the limited extent to which other nurses corroborate the evidence of Nurse Lawton in relation to this incident. A further criticism made by Mr Oliver of Mr Paxton’s report relates to paragraph 4.7, where Mr Paxton points to what he describes as a “discrepancy” in the evidence of Nurse Lawton in that she does not refer to the son of Mr Luke being present throughout the night at his bedside. Mr Oliver’s criticism is that Mr Paxton should have mentioned that Luke’s son had no criticism of his father’s treatment. But my reading of Mr Paxton’s report is that this was the “discrepancy” to which he was referring. I do not accept that there were reasonable grounds for Mr Oliver to criticise Mr Paxton in relation to this advice report. I do not accept that what Mr Paxton wrote was, even potentially, misleading.
96. *Concern (34)*: This concern relates to a remand summary prepared by Mr Paxton to assist the CPS at the hearing before the magistrates. The criticism relates to a single sentence in a four-page report: “On examination, Drugs Prescription Charts show that Luke was given double-strength morphine which was against the terms of the

prescription written out by Dr Adams”. The criticism made by Mr Oliver is that this sentence is “misleading” in that Mr Paxton omits to mention that the double-strength morphine was being administered at half the usual rate, thus bringing it back to normal. The conclusion in the Crimmens/Taylor report about this concern is that the omission “does not satisfy the criteria necessary to establish either a criminal offence of attempting to pervert the course of justice or the disciplinary offence of falsehood or prevarication”. Crimmens/Taylor point out that the report was not used at the remand hearing. Mr Milford QC was fully aware that the rate of infusion was halved and so he was not misled. I see no substance in this concern. I accept that by omission the rate of infusion of morphine was over-stated. But, given that this report was prepared for a remand hearing (and was not in the event used), the omission does not appear to be of any real materiality. It cannot be said against Mr Paxton that he was seeking to conceal the true rate of infusion: he had correctly stated the position in an earlier advice report (appendix AB to the Oliver report at paragraph 3.30).

97. *Concerns (36) and (37)*: These two concerns can be taken together because both relate to the allegation that Mr Paxton failed to obtain a further statement from Nurse Lawton as he had been required to do by Action No 2682. The position was that Nurse Lawton had stated that she had not “worked with” Sister Atkinson before the night of Claire Marsh’s death, whereas duty rotas indicated that she had previously worked six shifts with Sister Atkinson. The conclusion arrived in the Crimmens/Taylor report about these concerns was that Mr Paxton’s judgment that a further statement from Nurse Lawton on the point was not required was a perfectly reasonable one. The authors found nothing furtive or improper in Mr Paxton’s actions. I accept that Mr Paxton is open to some criticism for not doing that which he was required to do by Action No 2682. But that criticism pales into insignificance when one bears in mind that Mr Paxton had resolved the discrepancy in Nurse Lawton’s evidence on the point by obtaining from her, albeit not in statement form, the explanation that she had worked the same duty rotas as Sister Atkinson on several occasions but that they had not worked alongside one another. Mr Oliver was in my view right to concede in cross-examination that this criticism could not possibly have formed the subject of a criminal or disciplinary charge against Mr Paxton.
98. *Concerns (39), (40) and (41)*: These three concerns can be taken together because they all relate to the question whether a claim by Nurse Lawton about a remark said to have been made by Sister Atkinson was corroborated by Mr and/or Mrs Marsh, the parents of Claire. The remark attributed to Sister Atkinson was “What’s the point in giving them, she’s going to die anyway”. In his advice report (appendix AH to the Oliver report), Mr Paxton said that this remark had in fact been overheard by Mrs Marsh. Mr Oliver asserts that this statement was wrong because, according to Nurse Lawton’s statement dictated 29 March 1996, Mrs Marsh was elsewhere having a cup of tea when the remark was made. Mr Oliver in his report goes so far as to assert that paragraph 3.13 of Mr Paxton’s advice report “could only have been included to infer to the reader that this aspect of Lawton’s evidence was corroborated by Angela Marsh when in fact it was not”. This would appear to me to be an imputation against Mr Paxton that he intentionally misrepresented the position so as to strengthen the case against Sister Atkinson. In a further statement dated 9 July 1996 Nurse Lawton said that she had reconsidered whether Mr and Mrs Marsh were present when Sister Atkinson made the remark quoted earlier and now recalled that they definitely were present. Mr Oliver re-iterates that neither Mr nor Mrs Marsh corroborate the making of the remark in their written statements. The nub of the criticism is that Mr Paxton falsely claimed that Mrs Marsh corroborated Nurse Lawton as to the making of the

remark. The authors of the Crimmens/Taylor report point out that Mrs Marsh in her statement does claim to have overheard a similar comment being made by Sister Atkinson, namely “There’s not much point in putting these [drugs] in, but they’ll have to be put in anyway”. That remark is recorded in paragraph 2.17 of the same advice report. According to the Crimmens/Taylor report it is a “matter of judgment” whether the latter comment is so similar to the first as to justify Mr Paxton stating that the first remark had been overheard. The authors of the report state that the matter should have been clarified by Mr Paxton in his advice report. Although the Crimmens/Taylor report does not in terms say so, I believe Mr Oliver has misinterpreted what Mr Paxton was intending to convey in paragraph 3.13. It appears to me that in that paragraph he was summarising the evidence of Nurse Lawton, not making an assertion of fact of his own. Moreover, paragraph 2.17 of Mr Paxton’s report was accurate and the comment quoted in that paragraph was indeed similar to the remark quoted in paragraph 3.13. It does not appear to me that there is any proper basis for the suggestion made by Mr Oliver that Mr Paxton was seeking deliberately to mislead. I cannot accept that the allegations levelled against Mr Paxton in these concerns was one which a reasonably careful officer would have thought fit to include in a report to his senior officers.

Conclusion on the issue of negligence in relation to Mr Paxton

99. My overall conclusion in relation to the concerns about Mr Paxton is therefore that in respect of them the contention that Mr Oliver was negligent (in the sense indicated above) is made out. A reasonably careful officer in the position of Mr Oliver would have appreciated that there was no sufficient basis for including the allegations against Mr Paxton in the Oliver report, exposing Mr Paxton, as it did, to the risk of a lengthy criminal and/or disciplinary investigation. I am in no way deflected from that conclusion by the fact that in the course of their investigation Mr Taylor and Mr Borrie put to Mr Paxton, effectively in cross-examination, the assertions in the Oliver report. They would have been failing in their duty had they not done so. I do not understand them to have been adopting Mr Oliver’s concerns. I have dealt with the concerns regarding Mr Paxton first because Mr Moloney submits that the inclusion in the Oliver report of the allegations against Mr Paxton is of itself sufficient negligence to meet the sting of the libel. I do not accept that contention. The inclusion in the Oliver report of allegations against Mr Paxton for which there was no real basis is certainly some evidence of negligence on the part of Mr Oliver. Whether the overall charge of negligence is substantially justified appears to me to depend on the extent to which, if at all, the allegations against Mr Sharp were such as would have been included in a report for senior officers by a reasonably careful person in the position of Mr Oliver.

The concerns about Mr Sharp: preliminary observations

100. The concerns about Mr Sharp are more numerous and more serious. For understandable reasons they do not appear in Mr Oliver’s report in order of their gravity. I shall for the sake of clarity take the concerns in the order in which they appear in the Oliver report, grouping the concerns together where appropriate.
101. Before addressing the individual concerns, there are a number of preliminary observations to be made about the concerns expressed by Mr Oliver about the RVI inquiry in general and Mr Sharp in particular:

- i) The RVI inquiry had been preceded by the HEB investigation, which had itself generated a body of evidence which required consideration by Mr Oliver before including his concerns on his report. Some of that evidence reinforced those concerns but some assists the Defendant. As I have already said at paragraph 12 above, the RVI inquiry was a huge affair. It needs to be borne in mind that, for the relatively short period when Mr Sharp was involved in the inquiry, it already extended to a large number of suspicious deaths in addition to those mentioned in the Oliver report. The witnesses whom Mr Sharp interviewed were by no means unimportant but there many others. Mr Quinn was unlikely to have been called as a witness in any criminal trial, save perhaps if proceedings had also been brought against Nurse Race;
- ii) I should add to what I have already said in paragraph 13 above about the technique of “cognitive interviewing”. Mr Oliver’s concerns about Mr Sharp are based to an important extent on what are said to be “discrepancies” between what witnesses said in their initial cognitive interviews and what was subsequently contained in their witness statements. It appears to me to be necessary, when considering Mr Oliver’s concerns in this area, to have well in mind that cognitive interviewing was a very new technique within the Northumbria force. Mr Oliver would have been aware of that fact. It is not for me to say whether the advantages of this technique outweigh its disadvantages. But the evidence in this case does lead me to conclude that a significant disadvantage of the technique is that an unstructured interview imposes significant additional burdens on the officer who has the task of preparing a statement from that interview, particularly if the officer has little experience of the technique. As often as not witnesses, if given free rein in interview, may be unclear, repetitive and sometimes inconsistent. This leads into a further consideration of which I believe account also needs to be taken. When dictating a draft witness statement from the interview tape, the officer is not to be taken to be committing the witness to sign up to what is contained in the draft statement. Such an officer is entitled to assume that, before signing his or her statement, the witness will, particularly in a murder inquiry, carefully read through the statement before signing it in order to check its accuracy;
- iii) the tapes of interviews themselves and the so-called “dictation tapes” were deposited by Mr Sharp himself with the exhibits officer, Mr Robson. They were retained in safe custody and would have been discoverable in any criminal proceedings. Whether those discrepancies would have been revealed depends of course on the assiduousness of the defence. It would have been foolish for Mr Sharp to gamble on their not being uncovered;
- iv) in the case of all the allegedly discrepant witness statements the witnesses were prepared to sign the statements. It cannot be assumed that they would have done so without care, particularly in a major murder enquiry.

Mr Oliver was aware of these factors at the time when he prepared his report. I come now to the individual concerns expressed in that report.

The individual concerns

102. *Concerns 4 and 8:* these concerns both relate to Action No. 283 raised by Mr Oliver which, according to him, required Mr Sharp to take a witness statement from Mr

Quinn to contain in direct speech his recollection of his conversation with Nurse Race. The criticism is that Mr Sharp did not do what he had been told. In the context of the other concerns voiced in the report and bearing in minds its recommendations, a reader of the report might well infer that Mr Oliver was suggesting that Mr Sharp chose deliberately not to follow up the matter. There is no dispute that the Action was raised and that the statement from Mr Quinn which resulted did not include direct speech of what Nurse Race had said. The Crimmens/Taylor report accepted that direct speech would have been preferable but concluded that the reason why it was not included was that, because ten weeks had passed between Mr Quinn's telephone call to Nurse Race and the subsequent police interview, Mr Quinn was understandably unable to recollect what words she had used. The authors of the report added that it would have been helpful had Mr Sharp included in Mr Quinn's statement the fact that he could not longer recall Nurse Race's words.

103. I am prepared to assume in Mr Oliver's favour that, at the time when he was compiling his report, he did not appreciate that Mr Quinn was unable owing to the lapse of time to remember Nurse Race's actual words (if indeed that be the case). Even so, I see no valid basis for this allegation. Action No. 283 does not require direct speech. It requests Mr Sharp to "detail the telephone conversation that Quinn had with Race... Detail in full the content of this telephone conversation... [Re-interview].. Quinn to clarify various details in his [earlier statement]". Mr Sharp duly obtained a further statement from Mr Quinn. Although it does not contain direct speech, it is clear and unambiguous.
104. *Concern 5:* This is the first of several concerns relating to alleged discrepancies between the taped interview of a witness and his subsequent witness statement. In this case Mr Oliver alleges that Mr Quinn in his written statement says that Nurse Lawton informed him that she witnessed Sister Atkinson and Nurse Race being involved in the deliberate omission of drugs from a "saline syringe" for the patient Dryden shortly before her death, whereas in interview Mr Quinn told Mr Sharp that Nurse Lawton did NOT (Mr Oliver's underlining and capitals) confirm to him that she had witnessed this omission. The passages from the interview tape which are relied on by Mr Oliver include the following:

"[Nurse Lawton] stood by the doorway and saw Pamela Race and Kath Atkinson checking the drug that she had, or checking the prescription that she had refused to check and Angela's assumed that she's checking normal saline to get put up without the adrenaline in... She couldn't say for definite whether or not it was omitted or not but the things that were, the ampoules of saline that were on the divider, were they that were being checked and that's what she saw being put up so I don't know if she witnessed adrenalin being omitted; so that was the Pam Race's name came in; that's what prompted me to contact...".

However, in the statement (dictated by Mr Sharp on the same day as the interview) which he was to sign on 14 May 1996, Mr Quinn said:

"Before leaving the room she clearly saw her colleague, Pam Race, who was also aware of the situation, sign the erroneous drug record. She also witnessed Kath Atkinson and Pam Race putting up the syringe of pure saline".

The Crimmens/Taylor report acknowledged that an explanation was required for the difference between the account in interview and that given in Mr Quinn's statement. The authors of the report found that Mr Sharp's explanation of "middle clarification" (see paragraph 46 above) was certainly acceptable, especially given the confused account which Mr Quinn had offered during interview. The report found no impropriety on the part of Mr Sharp, commenting that Mr Quinn had told the Hospital Enquiry Board ("the HEB") that Nurse Lawton had told him she had witnessed the omission. This was said by Mr Quinn in a letter to the HEB; the Crimmens/Taylor report was in error when it said that Mr Quinn had repeated this evidence verbally to the HEB.

105. Determining the question whether or not sufficient grounds existed for the making of this criticism is made no easier by the fact that Mr Quinn's interview includes a number of ambiguous statements, some of which can be read as meaning that Nurse Lawton had indeed told Mr Quinn that she saw Sister Atkinson and Nurse Race omitting drugs from Dryden's saline syringe. Such ambiguities are inherent in the technique of cognitive interviewing. Bearing in mind what Mr Quinn had written to the HEB (of which Mr Oliver acknowledged he had been aware at the time of compiling his report) and the indications, albeit unclear, in the interview that Nurse Lawton had witnessed the incident, I am not persuaded that reasonable grounds for voicing this concern existed. Nor do I accept that Mr Oliver can derive assistance from the alleged implausibility of Mr Sharp's explanation of "middle clarification" because, at the time when he compiled his report, Mr Oliver was unaware of that explanation and unaware also of the short interval between the interview of Mr Quinn and the drafting of his statement.
106. *Concerns 6 and 7:* These concerns are similar to concern 5 and both relate to alleged discrepancies between what Mr Quinn said in interview about a telephone call made to him by Nurse Race and what he later said in his witness statement about that conversation. The potential significance of Mr Quinn's evidence on this point is that, although the prosecution intended to rely on the patient Dryden as similar fact evidence in the case against Sister Atkinson, Mr Quinn's evidence of what Nurse Race told him was potentially relevant on the ground that it was an incriminating admission by her. In his report Mr Oliver emphasises that Nurse Race always denied any wrongdoing and that there was a "complete contradiction" between Mr Quinn's interview and his statement as to what Nurse Race admitted to him. In interview Mr Quinn had said:

"I phoned Pam and I explained... that a deliberate omission of adrenalin had occurred and she and Pam's response that she actually remembers there was a lot going on but that she just remembered checking drugs after Angela had left the room and, but She said she can't remember I think whether or not she had omitted anything or not but she knows she checked something with Kath and that she was in that position; and I think later on that day when I actually saw Pam on the late, on the night shift, she couldn't remember a thing... so she went from remembering it, remembering the situation and she remembers Kath asking her to check things and she remembers checking it, she didn't say whether she omitted the adrenalin or not but she remembers checking it and that would link in to what Angela actually saw when she was standing at the door, but then at the

night time she can't remember a thing... She said she remembers checking a syringe and it being erected but I can't honestly put my hand on my heart and say that she omitted the adrenalin but she remembers checking something..."

Mr Sharp: "But she won't go the whole way to say 'I've omitted drugs'; is that what you're saying?" Quinn: "Yeah; well, to be honest I can't really be specific about that but I know that she would have said that she remembers checking a saline syringe and she said that she remembers doing it and then by the night time, by the time she's actually come in she can't remember a thing".

In his witness statement of 14 May 1996 Mr Quinn said:

"I outlined the specific allegations in relation to the omission of the drug from the saline syringe whilst caring for the burns patient.

Pamela Race confirmed to me on the telephone that the allegations made by Angela Lawton were in fact true. She also confirmed to me that she could recollect the incident in question with Kath Atkinson. There was no doubt in my mind at this point that Pamela Race was fully confirming and corroborating the allegations outlined by Angela Lawton with regard to the omission of drugs from the saline syringe".

The Crimmens/Taylor report accepts that there is a "conflict" between the interview and the statement. Reference is made by the authors of the report to an earlier interview with Mr Quinn on 3 April 1996 in the course of which he appeared to confirm that Nurse Race did make what amounted to an admission to aiding and abetting the omission of a drug from the patient Dryden. The point is also made that Mr Quinn did put his signature to the statement in which he says that Nurse Race did admit to him the omission of drugs. The report rejects any suggestion of wrongdoing on the part of Mr Sharp.

107. Once again Mr Quinn is very unclear in interview. He appears to be saying that he had two conversations with Nurse Race, in the first of which she told him she remembered witnessing the deliberate omission of adrenalin and in the second of which she could not remember the situation at all. There were inconsistencies in Mr Quinn's recollection. At some stages he appears to have been saying that what Nurse Race told him did evidence deliberate omission of the drug. For example he said "... I'm quite convinced that because of the activity in the room she might, may possibly not have been aware of, but that she was witnessed to have checked a syringe of saline and that deliberate omission of adrenaline had occurred". In deciding whether Mr Oliver was negligent (in the sense indicated above) in giving voice to these concerns, I have to take account of Mr Quinn's earlier statement in which he did recollect Nurse Race admitting that she had witnessed the omission and the fact that Mr Quinn was prepared to sign a statement to that effect. As in the case of concern 5, it appears to me that for the reasons given in Crimmens/Taylor Mr Oliver did not exercise reasonable care about making what was an allegation of some seriousness against Mr Sharp.

108. *Concern 11*: Mr Oliver suggests that a witness statement made by Mr Sharp on 15 May 1996 was false. It appears that the basis for this suggestion is that the statement refers only to the taped interview of Mr Quinn and the preparation of his witness statement but says nothing of the explanation provided by Mr Sharp to Mr Oliver for the discrepancies, namely that Mr Quinn had been prepared to say things in his written statement which he was not prepared to mention in his taped interview. The Crimmens/Taylor report concluded that there was no evidence that Mr Sharp's statement was false or that he intended to mislead. The authors point out that Mr Sharp's statement indicates that a draft statement for Mr Quinn was produced and that it was subject to amendment prior to signature.
109. It seems to me to be plain that Mr Sharp's witness statement was a *pro forma* document the purpose of which was to exhibit the tapes for later disclosure. I do not accept that it can properly be described as "false" because it omits to refer to the explanation for the discrepancies between the interview and the statement. I should, however, add that the explanation said by Mr Oliver to have been given to him by Mr Sharp for the discrepancies strikes me as bizarre. But that is not the basis of concern 11.
110. *Concern 14*: this concern relates to the patient Mary Burdon. Mr Quinn's witness statement of 14 May 1996 says that on the morning of 15 January 1996 Nurse Patterson was able to recall specific times and dosages of drugs at the time of the patient's death five years earlier. The purpose of obtaining a statement from Nurse Patterson was to obtain corroboration for that evidence given by Mr Quinn. In her statement of 11 December 1997 Nurse Patterson said that she had not related any specific information regards times or doses of drugs in relation to Mary Burdon to Mr Quinn. Mr Quinn's own contemporaneous diary entry suggested that Nurse Patterson's evidence was correct. According to Mr Oliver, the importance of the inconsistency between the evidence of Mr Quinn and Nurse Patterson was that the evidence of the latter cast doubt on the reliability of the evidence of the former. The authors of the Crimmens/Taylor report point out that in a statement taken almost two years later dated 11 December 1997, Nurse Patterson clearly states that she did not give Mr Quinn details of Mary Burdon's drugs. They further point out, correctly in my view, that the evidence of what Nurse Patterson said to Mr Quinn would not have been admissible at any subsequent criminal trial of Sister Atkinson. Mr Oliver and Mr Noble thereafter spoke to Mr Quinn, who is said to have confirmed Nurse Patterson's version of events. The Crimmens/Taylor report is critical of those two officers for failing to make a formal record of this meeting.
111. What is, however, clear (although not mentioned in the Crimmens/Taylor report) is that Mr Quinn had obtained the details of Mary Burdon's drugs from the hospital records relating to her, as is apparent from the notes of the HEB interview with Mr Quinn on 7 February 1996 (which Mr Oliver had read). Mr Oliver agreed in evidence that he was aware at the time of compiling his report that Mr Quinn had had access to Mary Burdon's prescription. In my view there is no basis for a suggestion, perhaps implicit in concern 14, that Mr Sharp furnished Mr Quinn with information about Mary Burdon's drugs. I do not consider that concern 14 establishes any reasonable basis for alleging or even investigating the commission of a criminal or disciplinary offence by Mr Sharp or any other officer. At most it establishes changes of heart, for whatever reason, on the part of two civilian witnesses.

112. *Concern 15*: this is similar to concern 14 in that it is a further alleged inconsistency between the evidence of Mr Quinn and Nurse Patterson in relation to their conversation on 15 January 1996. According to Mr Quinn, Nurse Patterson told him, in relation to Claire Marsh, that Sister Atkinson had thrown away prescribed drugs saying, “What’s the point”. Mr Oliver points out that in her statement written on 15 January 1996 and in subsequent statements, Nurse Patterson does not say that she informed Mr Quinn of anything about Claire Marsh. Mr Oliver did, however, accept in his evidence that Mr Quinn had said that Nurse Patterson had told him about the Marsh case long before he met Mr Sharp. Mr Oliver’s case is that the inconsistency is important because it casts further doubt on the reliability of the evidence of Mr Quinn. The authors of the Crimmens/Taylor report draw attention to the fact that in a written statement to the HEB dated 25 January 1996 (before Mr Sharp became involved in the inquiry), Mr Quinn had recorded Nurse Patterson telling him that Nurse Lawton had witnessed Sister Atkinson discarding drugs into a waste bin saying “What’s the point, she is dying anyway”. The report rejects Mr Oliver’s apparent insinuation of criminal impropriety on the part of Mr Quinn, commenting that a more plausible explanation for the inconsistency would appear to be flawed memory on the part of either Mr Quinn or Nurse Patterson. As regards Mr Sharp, the report rejects any suggestion of malpractice on his part since the inconsistency existed some weeks before any police involvement.
113. I agree with the conclusions of the Crimmens/Taylor report in relation to concern 15. A careful officer would not have sought to set the wheels of a criminal or disciplinary investigation in motion on the basis of concern 15.
114. *Concern 16*: this is the third concern relating to Mr Quinn’s account of what Nurse Patterson told him on 15 January 1996. It relates to a diary entry (appendix G to the Oliver report) made by Mr Quinn about that conversation. The entry indicates that Nurse Patterson informed Mr Quinn of Nurse Lawton’s concerns regarding Claire Marsh. Mr Oliver writes that Nurse Patterson “DID NOT” refer to Claire Marsh that morning. Mr Oliver comments that the evidence of Mr Quinn must surely be false. It is asserted that Mr Sharp ought to have detected at an early stage how unreliable was the evidence of Mr Quinn. (Mr Oliver also poses the question how Mr Quinn can recall details of the treatment of Mary Burdon, given that the diary entry does not record Nurse Patterson having informed him about that patient. This comment is dealt with at paragraph 110 above). The Crimmens/Taylor report accepts that Mr Quinn’s diary entry and his statement dated 14 May 1996 are not easily reconciled. But the authors reject any suggestion that Mr Sharp had acted inappropriately. The authors of the report suggest that this concern evidences an inadequacy on the part of Mr Quinn to manage the situation.
115. That appears to me to be a charitable conclusion. On the other hand I do not accept that the evidence before the Crimmens/Taylor team (or indeed the evidence before me) warrants the conclusion that Mr Quinn’s diary entry was forged. That appears to be the nub of this concern. It is a very slender basis for so grave a charge against Mr Quinn. Concern 16 is capable of being read as implying some impropriety on the part of Mr Sharp. I cannot accept that this concern, even when allied with concerns 14 and 15, provides evidence of police malpractice sufficient to found a complaint against Mr Sharp or a call that his conduct be investigated.
116. *Concern 17*: this is an alleged discrepancy by omission between Mr Quinn’s interview and his statement of 14 May 1996. In interview Mr Quinn recalls having mentioned

the allegations made by Nurse Lawton to Dr Gascoigne, whereas his witness statement makes no mention of that fact. Mr Oliver makes the criticism of Mr Sharp that he should have included this point in Mr Quinn's witness statement. The authors of the Crimmens/Taylor report reject the criticism of Mr Sharp. They point out that any evidence from Dr Gascoigne would have been double-hearsay and so unlikely to be admitted at any criminal trial.

117. It is evident from the taped interview that the reason why Mr Quinn spoke to Dr Gascoigne was to get him to break up the manager's meeting so that Mr Quinn could speak to them. It is not easy to see what purpose would have been served by the inclusion in Mr Quinn's statement of second-hand evidence relating to Dr Gascoigne. In the event Dr Gascoigne was interviewed by police and provided a witness statement in relation to the patient Dryden. There is in my view no basis for any suggestion that Mr Sharp tried to suppress his evidence.
118. *Concern 18*: this concern embraces alleged discrepancies between the interviews by Mr Sharp of Nurse Lawton and Mrs Angela Marsh, which took place on 27 March and 11 April 1996, and their witness statements dated 29 March and 24 March 1996 respectively. (The dates are significant when it comes to considering Mr Sharp's explanation of "middle clarification"). The interview of Nurse Lawton runs to four tapes and covers about 150 pages. Mr Shaw was present throughout and did much of the questioning. As Mr Oliver would have been aware at the time of his report, neither Mr Sharp nor Mr Shaw possessed the medical expertise that was later to be provided to the inquiry team by Mr Appleyard. Mr Oliver accepts that, at the time of his report, he had not listened to the tape in full and the only specific discrepancy to which he referred in his report was between "okay" and "okay-ish" in relation to the condition of Claire Marsh.
119. Although, as I have found, the issue of Mr Oliver's alleged negligence falls to be judged by reference to his state of knowledge at the time of his report, I should record the extent of the discrepancies relied on in relation to Nurse Lawton. They are most conveniently set out in Mr Oliver's schedule 2, where 28 discrepancies are listed. They are selectively summarised at pages 52 to 57 of the written final submissions on behalf of Mr Oliver. In relation to Claire Marsh they include discrepancies as to whether a saline-only syringe was prepared and put up for her; in relation to Patricia Dryden, the inclusion in her statement of the claim that Sister Atkinson made her own decision to withdrawn life-saving drugs before any consultation with the doctors who were nearby; the fact that Nurse Finley disputed Nurse Lawton's recollection of the conversation between them as to whether Sister Atkinson had "done it" before; the inclusion of a claim that Sister Atkinson had asked Nurse Lawton to sign an erroneous adhesive label; in relation to the patient Luke, the inclusion in Nurse Lawton's statement that Sister Atkinson had had a clear intention of helping Mr Luke to his death at 4.30am and that she had kept a close eye on him that night; the omission of any reference to Nurse Lawton having taken a 90-minute tea-break finishing at 4.30am and, in relation to the complaint to Mr Quinn, the fact that in her witness statement Nurse Lawton claimed credit for reporting the incidents to Mr Quinn, whereas it was clear from her interview that it was Nurse Patterson who had set the ball rolling. It is contended on behalf of Mr Oliver, apart from their individual seriousness, that the cumulative effect of these discrepancies was to render her statement stronger than was warranted by her interview.

120. The 13 discrepancies relied on relating to the evidence of Mrs Marsh detected by the Crimmens/Taylor team are set out in Mr Oliver's Schedule 3 and summarised in part at pages 58 to 61 of Mr Oliver's final submissions. They include the "pure and emotive invention" of words attributed to Mrs Marsh "I shall never forgive the nurse, Kath, for switching off the alarm" which she had not claimed in interview; the attribution to Mrs Marsh in her statement of the words "I can obviously remember with vivid clarity the events of that terrible night" which were not spoken in interview; the attribution to Mrs Marsh of the words "what I heard next completely shocked and disgusted me" which again were not spoken in interview; the attribution to Mrs Marsh in her statement of the words "I did not want to antagonise [Kath] for fear of any further neglect towards Claire" which words had not been spoken by her in interview; the further alleged invention in Mrs Marsh's witness statement that "I was of the opinion because of Kath's attitude that the cleaning would not be done satisfactorily", when in fact Mrs Marsh had not said during interview that she had any concerns about Claire's treatment by Sister Atkinson; the omission from her witness statement of Mrs Marsh's description of the erratic changes in the "SATS" which were to be expected; the statement by Mrs Marsh that she knew that the SATS level had dropped "dramatically", whereas in interview she had said the drop "wasn't really drastic"; the attribution to Mrs Marsh in her witness statement of the words "the only member of staff that I can criticise is Kath" and the further reference in her witness statement to being "extremely suspicious about any of [Sister Atkinson's] actions in treating Claire".
121. The Crimmens/Taylor report concludes that, whilst the content of the statements of Nurse Lawton and Mrs Marsh is not materially different from the tapes of their interviews, the tone would appear more firm than is conveyed in the taped interview. The authors make the point that the evidence suggests that both witnesses were happy with their statements which they duly signed.
122. In the light of the single and limited discrepancy which Mr Oliver had identified at the time of his report in relation to Nurse Lawton, it does not appear to me that there was sufficient reason for him to recommend that a criminal or disciplinary investigation be undertaken into the conduct of Mr Sharp. As to the discrepancies relating to the evidence of Mrs Marsh, I recognise that, whilst individually they might seem minor, taken cumulatively they strengthen the case against Sister Atkinson to a greater extent than the authors of the Crimmens/Taylor report allow. I accept that a reasonable officer in the position of Mr Oliver could have concluded that those discrepancies required investigation. Mr Oliver was not aware at the time when he wrote his report of Mr Sharp's "middle clarification" explanation. The alleged implausibility of that explanation does not appear to me to have any bearing upon the issue of justification.
123. *Concerns 19 and 20:* according to Mr Oliver, Mr Quinn said in the course of his interview by the HEB "it was not uncommon if a patient is prescribed morphine, to give it prior to the time limit in a patient who is terminally ill". This led Mr Oliver to raise Action No. 1155, requiring Mr Sharp to re-interview Mr Quinn. Mr Sharp's response to this Action was to endorse it in manuscript "Quinn clarifies the above point in statement dated 24/07/96". In concern 19 Mr Oliver criticises that response saying that "any softening of the interpretation of prescriptions by nursing staff would clearly have weakened the case against Sister Atkinson". In concern 20 he adds the serious allegation that "[this] appears to be a deliberate step in avoiding evidence which might have supported Atkinson". I read that as an assertion that Mr Sharp appeared to have sought deliberately to pervert the course of justice.

124. The Crimmens/Taylor report notes that Mr Oliver omitted from his report a further comment made by Mr Quinn to the HEB that “we usually corroborate this [giving morphine prior to the prescribed time] with the doctor”. Mr Quinn had also said in that interview that they would usually ask the doctors in advance whether the drug could be given early. The report rejects the allegation that Mr Quinn’s evidence to the HEB had been suppressed, adding “far from it, it has actually been fully disclosed to the CPS and Mr Milford QC”. The report concludes that there is no evidence to support the fact that there was any intent on the part of Mr Sharp to mislead. Mr Oliver would have known that the relevant papers were disclosed. The report does, however, accept that Mr Quinn had been extremely inconsistent on the degree of discretion a nurse would have in relation to the administration of morphine.
125. In my view Mr Sharp’s response to Action No. 1155 was inadequate. Mr Quinn’s further witness statement of 24 July 1996 does not identify the circumstances when there may be a departure from “policy” in regard to administering morphine. Mr Sharp could and should have followed up that question with Mr Quinn. However, his failure to do so does not appear to me to be an omission which justifies reference being made to it in a report to superior officers. Moreover, the charge of deliberate suppression of evidence made against Mr Sharp in the Oliver report appears to me to be without foundation and one which a reasonable officer in Mr Oliver’s position would not have thought fit to make.
126. *Concern 47:* As is accepted on behalf of Mr Oliver, this concern effectively duplicates concerns 5 to 7 and 13 to 16 with which I have dealt earlier.
127. *Concern 51:* This concern is that Nurse Race was subjected to “many hours of intense questioning” on the footing that, as matters then stood, the evidence of Mr Quinn had to be believed and in consequence put to Nurse Race. Mr Oliver’s comment that the evidence of Mr Quinn had been “generated from a taped interview” carries with it a further implied criticism of Mr Sharp. Reliance is placed by Mr Oliver in support of this concern on the evidence of Mr Noble, who conducted the first interview with Nurse Race, that the interview was robust and was the result of Mr Quinn’s statement. The Crimmens/Taylor report deals briefly with this concern. It concludes that, in order properly to evaluate doubts about Mr Quinn’s evidence, any investigation team had to proceed on the assumption that his evidence was credible and accordingly should fully explore and put it to Nurse Race.
128. It appears to me that in point of fact relatively little of the interview of Nurse Race was devoted to putting to her the evidence of Mr Quinn. The questions were largely and appropriately based on the evidence of Nurse Lawton. The interview lasted a total of one hour ten minutes with a break. I would not describe the questioning as “intense”. The father of Nurse Race was present throughout. I see nothing inappropriate in the questioning. Mr Quinn was a witness whose evidence was inconsistent. But it was potentially admissible in criminal proceedings if indeed Nurse Race did make incriminating admissions to him. That was in my view an issue which required to be explored with Nurse Race. I do not accept that Mr Oliver had reason to be concerned either about the fact that Nurse Race was interviewed or about the manner in which that interview was conducted.

Conclusion on the issue of justification in relation to Mr Sharp

129. In paragraphs 102 to 128 above I have expressed my conclusions in relation to the individual concerns which were addressed by Mr Moloney in his Closing Submissions. Almost all of those concerns cast aspersions either expressly or impliedly on Mr Sharp. I have explained in paragraph 90 above why I consider that, in relation to the plea of justification, the most significant allegations are those which relate to Mr Sharp (and to a lesser extent Mr Paxton). I do not, however, overlook the fact that there are a number of concerns which Mr Moloney has not suggested were unfounded. As will be apparent from the preceding paragraphs of this judgment, I have found in relation to the individual allegations against Mr Sharp that there were no or no sufficient grounds for a reasonably careful officer in the position of Mr Oliver to include those individual allegations in a report for senior officers. I have dealt with the allegations individually because that is the way in which they were dealt with in the Crimmens/Taylor report and also the way in which this case has been argued. But there is a disadvantage in this approach because it tends to obscure the fact that, as I have pointed out, some of the allegations against Mr Sharp in the Oliver report are graver than others. Some impugn his integrity as a police officer whereas others do not. For the reason given in paragraph 84 above, it appears to me that the crucial question is whether, considered qualitatively by reference to their gravity, so many of the allegations against Mr Sharp are without foundation that a reasonably careful officer in the position of Mr Oliver would not have communicated his report to senior officers. My answer to that question in the case of Mr Sharp is, as it was in the case of Mr Paxton, in the negative. In my judgment the Defendant has established that in the respects indicated earlier it was negligent on the part of Mr Oliver to have communicated to senior officers the allegations about Mr Sharp which were contained in his report, thereby (as Mr Oliver appreciated) exposing him to a lengthy criminal and/or disciplinary inquiry.

Overall conclusion on justification

130. It follows that in my judgment the defence of justification succeeds.

The issue of malice: the nature of the Claimant's case

131. At paragraph 70 above I have briefly summarised the case sought to be advanced on behalf of Mr Oliver that, in publishing (or in the case of Mr Taylor, agreeing to publish) the press release, Mr Craik and/or Mr Taylor was actuated by malice. I also explained that in the course of the trial the allegation of bad faith was extended to Mr Borrie. Two aspects of Mr Oliver's case on malice are worthy of comment. The first is that no direct evidence of malice, extraneous to the Crimmens/Taylor report itself, is relied on. That is to say, there is no suggestion of any personal animus on the part of Mr Craik or Mr Taylor (or Mr Borrie) against Mr Oliver; nor are any personal reasons put forward why any of those officers should want to exculpate Mr Sharp or Mr Paxton. The case for Mr Oliver is that malice can and should be inferred from the manner in which Crimmens/Taylor undertook their investigation and from the four corners of the report. The second comment is that, as Mr Thwaites accepts, the motive or desire of the authors of the report to uphold the honour and integrity of officers in the Northumbria Police cannot without more be said to be capable of amounting to malice. It is accepted that such motivation cannot be regarded as malicious unless it be shown against one or more of the officers that he knew that the criticisms of the conduct of Mr Sharp and/or Mr Paxton were well founded and with

that knowledge set about discrediting the concerns expressed by Mr Oliver in his report. The case sought to be made against Mr Craik, Mr Taylor and Mr Borrie is therefore one of unqualified dishonesty.

132. With those preliminary comments, I now set out the way the case against Mr Craik and Mr Taylor is stated in the Reply:

- i) “Mr Craik accordingly published the words complained of in the knowledge that they were false or at least with reckless indifference as to whether they were true or false and in any event with the dominant improper motive of untruthfully sacrificing the reputation of Mr Oliver and untruthfully discrediting the concerns which Mr Oliver had raised in his report rather than leave Northumbria Police exposed to well-founded criticism of the conduct of police officers in relation to the investigation and prosecution of Sister Atkinson and/or to a claim by Sister Atkinson for wrongful arrest and/or malicious prosecution”.
- ii) The case advanced against Mr Taylor is identical but in his case reliance is placed in addition upon a number of matters of which it is contended that Mr Taylor must have been aware, including the fact that no-one reading the Oliver report could honestly have held the view that his concerns were unfounded or undeserving of credibility and that no fair-minded person could honestly have agreed that there was “no evidence to substantiate” Mr Oliver’s claims.

If one includes the material incorporated into the particulars of malice by reference, the supporting particulars in the statement of case run to over 50 pages.

The law on malice

133. It is admitted on behalf of the Chief Constable that he is vicariously liable for any malice which may be found on the part of Mr Craik or Mr Taylor. (He would of course also be vicariously responsible for any malice on the part of Mr Borrie but he was not a party to the publication of the press release). It is common ground that the case of malice against Mr Craik and Mr Taylor must be considered separately, although the malice of either one of them would suffice to defeat the privilege which I have found to exist in relation to the application of the press release.

134. The authoritative statement of the law as to malice is still to be found in the speech of Lord Diplock in *Horrocks v. Lowe* [1975] AC 135:

“If it be proved that [the Defendant] did not believe that what he published was true this is generally conclusive evidence of express malice, for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another... If he publishes untrue defamatory matter recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false”.

135. In addition I was referred by Mr Moloney in his closing submissions to an Australian case, *Roberts and another v. Bass* [2002] 194 ALR 161. The High Court of Australia analyses Lord Diplock’s speech, emphasising amongst other things at paragraph 103 that:

“Carelessness of expression or carelessness in making a defamatory statement never provides a ground for inferring malice. The law of qualified privilege requires the defendant to use the occasion honestly in the sense of using it for a proper purpose; but it imposes no requirement that the defendant use the occasion carefully. Even irrationality, stupidity or refusal to face facts concerning the plaintiff is not conclusive proof of malice although in ‘an extreme’ case it may be evidence of it. Mere failure to make enquiries... is not evidence of malice”.

The parties’ respective contentions

136. I start with the contentions advanced on behalf of Mr Oliver in support of his case on malice. It is submitted that “unfounded” and “discredited” are words of wholesale and unqualified condemnation. That is said to have been what Mr Taylor and Mr Craik intended to convey to the journalist, Mr Green. At the meeting immediately prior to the release of the press statement Mr Taylor expressed the view that there had not been a shred of evidence to support the allegations by Inspector Oliver. In his witness statement Mr Craik asserts that all 55 concerns had been investigated by Crimmens/Taylor and found to have no foundation. In condemning the Oliver report as being unfounded and discredited, Mr Taylor and Mr Craik each knew, or at least deliberately closed his mind to the fact, that such a condemnation was untrue and unwarranted. It is argued that there is no need for the Claimant to prove the existence of some conspiracy to injure Mr Oliver or to provide extraneous evidence of some motive for injuring him. It is contended that the “obvious benefit” of discrediting Mr Oliver and his report was the avoidance of media scrutiny not only of the actions of Mr Sharp and Mr Paxton but also of the senior officers who failed to treat Mr Oliver’s concerns with the seriousness they warranted.
137. The case advanced against Mr Taylor is that the evidence points overwhelmingly to a systematic and determined refusal on his part to confront the grounds for concern which Mr Oliver had raised in his report. Instead Mr Taylor disingenuously sought to deny, suppress and divert attention from them. Analysis of the individual concerns is said to reveal intellectual dishonesty on the part of Mr Taylor. He sought to avoid or suppress or belittle the importance of the material discrepancies between the taped interviews and the witness statements and ignored failure to comply with Action requests and the misleading assertions in Mr Paxton’s reports. Reliance is further placed on the absence of any adequate explanation for the deliberate policy of not interviewing either Mr Quinn or Nurse Lawton about the discrepancies, even after Mr Sharp had given his implausible account of “mid-clarification”. Mr Taylor is alleged to have compounded that omission by not interviewing Mr Oliver himself or the other nurses or Mr Marsh. It is said that inadequate enquiries were made of expert witnesses and statements were taken from an insufficient number of police witnesses. Detailed criticisms are advanced of the conclusions in the Crimmens/Taylor report.

The allegation of malice against Deputy Chief Constable Craik

138. Mr Craik joined the Northumbria Police in July 2000 when he was appointed Deputy Chief Constable. He was still with the Metropolitan Police at the time when Mr Oliver submitted his report and he played no part in the Crimmens/Taylor investigation. His evidence was unchallenged that, shortly before the issue of the press release, he had read the Oliver report and the Crimmens/Taylor report but none

of the attached documents. The case of malice mounted against Mr Craik is that he did not wish to confront the truth as to whether Mr Oliver's report had raised matters of well-founded and legitimate concern requiring explanation, but was only concerned to discredit it in the eyes of the press and the public so as to discourage further discussion of Mr Oliver's concerns. That is said to be the reason why he agreed to the use of the term "unfounded" and suggested the addition of "discredited" in respect of all of Mr Oliver's allegations. It is argued that it must have been evident to Mr Craik from his reading of Mr Oliver's report that the grounds for concern were detailed and cogent. It is said further that even a perfunctory reading of the Crimmens/Taylor report must have demonstrated to Mr Craik that it did not conclude that all 55 of Mr Oliver's concerns were unfounded or that he should not have raised any of them. As should have been obvious to him, the Crimmens/Taylor report did not meet all of Mr Oliver's concerns head on and indulged in repeated criticism of his professional conduct. It was also evident that Mr Oliver had not been given an opportunity to answer those criticisms. The inescapable inference which Mr Oliver invites to be drawn from the inadequate questioning of Mr Taylor by Mr Craik about the conclusions of the Crimmens/Taylor report is that Mr Craik had set his face against asking any question which might confirm that the report was not a trustworthy document. Finally it is submitted that the role played by Mr Craik in the formulation of the wording of the press release evidences an overriding desire on his part to do whatever was necessary (including threatening defamation proceedings) to stamp out any further press discussion so as to shield his officers from press interest which he knew may have been legitimate with words which he knew might be untrue.

139. The principal arguments of the Defendant in refutation of the case of malice include the following:
- i) that the allegations of knowledge of falsity and reckless indifference as to truth fall to be tested subjectively, by reference to the meaning or meanings intended to be conveyed by Mr Craik and Mr Taylor respectively. It is said to be unlikely that either of them intended the words "unfounded" and "discredited" to be understood literally as applying to every single proposition in the Oliver report;
 - ii) in formulating the wording of the press release both Mr Craik and Mr Taylor were addressing whether the specific matters raised by the journalist, Mr Green, in the light of the position which arose after the Crimmens/Taylor report. It is submitted that it was plain that Mr Green was investigating the criminal and/or disciplinary allegations against Mr Sharp and Mr Paxton set out in the Oliver report. The purport of the press release was that, in the light of the conclusions of the Crimmens/Taylor report, those allegations were unfounded and hence discredited;
 - iii) reliance is placed on behalf of the Defendant on what are said to be positive extraneous indications in the evidence that Mr Craik and Mr Taylor were expressing their honest belief about Mr Oliver's concerns. Conversely it is contended that Mr Oliver's case on malice is inherently inconsistent and improbable; and
 - iv) it is contended that such errors or omissions in the way in which the Crimmens/Taylor team investigated Mr Oliver's concerns and arrived at its conclusions about the conduct of Mr Sharp are overstated and in any case

amount to nothing more than carelessness, impulsiveness or irrationality in arriving at an honest belief which does not amount to malice.

The allegation of malice against Deputy Chief Constable Craik

140. In determining whether the charge of malice against Mr Craik is made out, I take into account that he had joined the Northumbria Police as recently as July 2000. For the preceding 23 years he had served in the Metropolitan Police, rising rapidly through the ranks. He had no direct personal knowledge of the RVI inquiry prior to his arrival in Northumbria. At the time of the issue of the press release he had never met Mr Oliver and indeed has still not done so. Apart from briefings when he took up his post as Deputy Chief Constable, Mr Craik's first involvement with the Oliver report occurred in May 2001 in the circumstances described at paragraph 59 above. Mr Craik gave evidence that at that time he was aware of the existence of Mr Oliver as a police officer. But he had not read either the Oliver report or the Crimmens/Taylor report. There does not appear to me to have been any reason why he should have done so.
141. As recorded in paragraph 59 above, after Miss Aubrey told Mr Craik of Mr Oliver's approach to her, Mr Craik called for and read both the Oliver report and the Crimmens/Taylor report (but not their appendices). He gave evidence that, having done so and having discussed the matter with Mr Taylor, he was satisfied that the matter had been dealt with and saw no reason to resurrect it. It was put to Mr Craik in cross-examination that he should have carried out some random checks to see if the Crimmens/Taylor report did adequately answer Mr Oliver's concerns. Mr Craik rejected that suggestion. As he put it in his evidence, he was not in the business of re-investigating Mr Oliver's concerns. The Crimmens/Taylor report had been accepted and approved by the Assistant Chief Constable. Mr Craik said he trusted the judgment of Mr Brown. Mr Craik took the view that the Crimmens/Taylor report had covered all the concerns expressed by Mr Oliver in his report.
142. When Mr Craik was informed in August 2001 that a journalist had possession of a copy of the Oliver report and was seeking a response from the Northumbria Police as to the allegations contained in it (see paragraph 60 above), Mr Craik gave evidence that he considered that he had a duty on behalf of both the Northumbria Police and also the officers who were criticised in Mr Oliver's report to respond to that enquiry. He said that his experience was that it is preferable to respond openly and as quickly as possible to such enquiries from the press. Mr Craik confirmed the accuracy of Miss Aubrey's note of the meeting which took place on 7 August 2001 which was convened in order to decide how to respond to the journalist's enquiry (see paragraph 61 above). Mr Craik also confirmed the accuracy of the evidence which had been given by Miss Aubrey about the meeting, that is, that he had expressed the view that it would be wrong to let allegations remain hanging over the heads of officers after they had been the subject of investigation and cleared of wrongdoing. Mr Craik confirmed that the possibility of making no response to the journalist's enquiry had been considered at the meeting. Also taken into account were the consequences of responding and the proportionality of any response. There was discussion about the possibility that, if no response was made, either Mr Sharp or Mr Paxton or both might bring defamation proceedings. Miss Aubrey gave advice about the defence of justification which might in those circumstances be relied on.

143. Asked in cross-examination about the wording of the press release, Mr Craik accepted that he had been intent on strengthening the response to the leak of the Oliver report. He wanted to stop press speculation. His experience with the press told him that a vigorous response was the best way of protecting officers. According to Mr Craik, the wording of the release was designed to demonstrate that Mr Oliver's allegations had not been substantiated. Mr Craik rejected the suggestion put to him in cross-examination that he was being aggressive. He said that there had been specific discussion at the meeting about not using Mr Oliver's name in the press release. He accepted that, even if he was not named in the statement, Mr Oliver would be capable of being identified by some readers. But it was the evidence of Mr Craik that he had to weigh in the balance the need to protect all the staff. Mr Craik's position was that it was fairer to protect Mr Sharp and Mr Paxton against the devastating wrong which would be done to them if an accusation of dishonesty on their part were to come to the knowledge of the public. Mr Craik testified that, having taken advice from Mr Taylor, he honestly believed that the Crimmens/Taylor report was right in its conclusions. He denied that he had been reckless; he said he took particular care and sought advice.
144. In deciding whether the charges against Mr Craik of dishonesty or alternatively recklessness are made out, the starting point must be my assessment of the manner in which he gave his evidence. I accept without hesitation that my impression of his character and demeanour cannot be determinative but it is a material factor. Mr Craik is a very senior officer. I bear in mind that he is doubtless experienced in giving evidence. Making every allowance for that, it appeared to me that Mr Craik gave his evidence in a thoughtful and conscientious manner. He was firm in his denial of the allegations of dishonesty and recklessness which Mr Thwaites, as he was bound to do, put to him in cross-examination. I found him to be an impressive and credible witness.
145. Even if one leaves Mr Craik's denials in the witness box out of account, I have little hesitation in rejecting the charge of malice made against him. Having read the Oliver report in conjunction with the Crimmens/Taylor report and taken advice from Mr Taylor, Mr Craik could and in my judgment did come to the conclusion that there was nothing in Mr Oliver's concerns that criminal or disciplinary offences had been committed by officers involved in the RVI inquiry. I do not accept that it was incumbent on Mr Craik to second-guess the conclusions in the Crimmens/Taylor report by making sample checks. Even if it had been careless on his part not to do so, that would not constitute malice: see paragraph 135 above. For the reasons elaborated upon in the section of this judgment dealing with justification, Mr Craik was entitled to regard and in my view justified in regarding the Crimmens/Taylor report as having dismissed the generality of Mr Oliver's concerns about misconduct on the part of Mr Sharp and Mr Paxton. I reject the suggestion that Mr Craik had "every reason to be sceptical" about the Crimmens/Taylor report. In my opinion the contrary is true.
146. It is not suggested that Mr Craik had any axe to grind or that he bore Mr Oliver any personal ill-will. I accept that, in deciding whether and if so in what form to issue a press statement, Mr Craik was, as he said, motivated by a desire to protect officers in his force against what he perceived would be the injustice to them if they were to be publicly accused of the very wrongdoing of which they had been cleared by Crimmens/Taylor. I have no doubt that the meaning which Mr Craik intended to convey was that it was the allegations against Mr Sharp and other officers in the Oliver report which were unfounded. I do not believe he intended the press release to

pronounce a wholesale condemnation of all the allegations in the Oliver report. I accept that Mr Craik was concerned so far as possible to protect Mr Oliver and his family from unfair publicity and that, on that account, it was decided not to name Mr Oliver in the press statement. That concern is in itself difficult to reconcile with the case of malice levelled against Mr Craik.

147. For the above reasons I have concluded that the allegations of dishonesty and recklessness against Mr Craik in publishing the press release are unfounded. So too is the suggestion that Mr Craik had the motive of untruthfully sacrificing the reputation of Mr Oliver and untruthfully discrediting his concerns. To the contrary, his motive was the proper one of protecting police officers under his command from what he honestly believed would be unjustified public allegations of misconduct. The charge of malice against Mr Craik fails.

The allegation of malice against Superintendent Taylor – and against Chief Inspector Borrie

148. Although I have rejected the allegation of malice against Mr Craik, it will suffice to enable Mr Oliver to defeat the defence of qualified privilege if he can establish his case of malice on the part of Mr Taylor for which the Defendant would be vicariously liable (see paragraph 132 above). In deciding whether the case is made out against Mr Taylor, I shall at the same time deal with the allegations against Mr Borrie which emerged in the course of the trial. The reason for doing so is that it was the unchallenged evidence of both Mr Taylor and Mr Borrie that it was the latter who played the major role in the Crimmens/Taylor investigation. As already stated at paragraph 43 above, Mr Taylor decided the methodology for the investigation and supervised the investigative work carried out by the two teams working under Mr Borrie (see paragraph 42 above). Sometimes Mr Taylor and Mr Borrie worked together: for example they were both present and asked questions when Mr Sharp was interviewed. As I have already recorded Mr Oliver's case is that Mr Borrie was implicated in the design to discredit Mr Oliver's concerns and to exculpate officers involved in the RVI inquiry from the time when he was appointed to the investigation team or at any rate shortly afterwards. Accordingly it appears to me to be appropriate to consider the charge of malice against Mr Taylor in conjunction with the closely-related allegations made against Mr Borrie.
149. The case of malice against Mr Taylor goes back to the time of at an early stage of his involvement in the Crimmens/Taylor investigation. In this respect the case against Mr Taylor (and Mr Borrie) differs from the case against Mr Craik. In effect, Mr Oliver accuses Mr Taylor and Mr Borrie of engaging in a cover-up designed to shield Mr Sharp, Mr Paxton and other more senior officers from exposure of their serious misconduct in connection with the RVI inquiry.
150. It appears to me that there is much force in the comment made by Mr Moloney that the unchallenged evidence of the manner in which Mr Taylor and Mr Borrie set about their investigation casts real doubt on the proposition that it was a sham investigation from the start. There is ample evidence that Mr Taylor, Mr Borrie and the other members of the team set about their duties conscientiously and thoroughly. It is plain that Mr Taylor took great care to establish the structure and working methods of the inquiry team. Detailed records were kept of the progress of the investigation, as can be clearly seen from the policy book, Mr Taylor's diary and notebook, Mr Borrie's working papers and from the letters sent to and responses obtained from senior

officers and Mr Glover of the CPS. Detailed schedules were drawn up to compare the taped interviews of the various witnesses with their witness statements. Careful and detailed lists of the questions intended to be put to Mr Sharp and to Mr Paxton were prepared in advance. The interviews themselves were lengthy and thorough. Of course it is possible that all this was an elaborate charade designed to conceal the true agenda of the Crimmens/Taylor inquiry but it appears to me to be unlikely.

151. There is a further feature of the case of malice which is to my mind curious: which officers does Mr Oliver allege to have been privy to that agenda and to have engaged in that charade? It was Mr Brown who decided to establish the investigation. But it is not suggested that he was involved in the cover-up. (It was also Mr Brown who decided that the inquiry should be carried out internally by the Northumbria Police rather than by an outside force. That was in my view an unfortunate decision but it is not one that can be laid at the door of Mr Taylor). Nor is it suggested that Mr Crimmens, who was in overall charge of the investigation, or any other officer on the investigation team (apart from Mr Taylor and Mr Borrie) was a party to or aware of the cover-up. On the evidence it was a close-knit team. Nor is it suggested that Mr Shaw, who was brought in because of his expertise in the technique of cognitive interviewing, was part of any conspiracy. Whilst again I accept that it is possible that Mr Taylor and Mr Borrie were guilty of subverting the ostensible purpose of the investigation behind the backs of the other officers and without their knowledge, that appears to me to be an unlikely scenario. In this connection it is noteworthy that there came a stage in Mr Oliver's evidence when he expressed suspicions, as he put it, about several other officers than Mr Taylor, including Messrs Nicholson, Shaw and Wakenshaw. But malice is not alleged against them.

An assessment of Mr Taylor and Mr Borrie

152. Having made those preliminary observations, I start with an assessment of the manner in which Mr Taylor and Mr Borrie respectively gave their evidence. I repeat that such assessment is far from determinative of the issue of malice but it is a relevant consideration.
153. Mr Taylor described in his evidence his career in the police. He joined as a police cadet in 1967. After several promotions over the next 25 years he has served for nearly 10 years in the Complaints and Discipline section. He was promoted to Superintendent in July 1997. That section was charged with dealing with complaints against police officers ranging from police constables to the most senior ranks. Mr Taylor's evidence was that his investigations resulted in 12 police officers being prosecuted. In 1994 Mr Taylor was appointed MBE for both his police service and charity work for the under-privileged. He retired from the Northumbria Police in October 2002 but thereafter has continued to carry out similar work for Cleveland Police, where he is a Senior Civilian Investigation Officer. The point is made on behalf of the Defendant: why should Mr Taylor sacrifice his reputation for independence in investigations of other officers which he has built up over the years for the sake of protecting Mr Sharp, Mr Paxton and other officers. Mr Taylor gave evidence that he first met Mr Sharp when the latter worked for one year in his section (although not in his team). Mr Taylor says he has not worked with Mr Sharp since and does not know him socially. He cannot recall having met Mr Paxton until the Crimmens/Taylor team was set up. Mr Taylor was subjected to a vigorous and wide-ranging but entirely proper cross-examination. He rejected the suggestion that it had been his purpose to "see off" Mr Oliver and incidentally to benefit Messrs Sharp and

Paxton and other senior officers. Later in cross-examination Mr Taylor firmly denied the suggestion that he had deliberately closed his mind to Mr Oliver's concerns, pointing out that he had spent months on a meticulous investigation of his allegations. Mr Taylor was, again quite properly, taken by Mr Thwaites in cross-examination through most of Mr Oliver's concerns. He was cross-examined over a period of approaching four days.

154. My impression of Mr Taylor is that he is plainly an intelligent man (as his academic achievements would suggest). His answers in the course of his sustained cross-examination were articulate, even if on occasion longer than necessary. He was inclined to be argumentative. It is suggested on behalf of Mr Oliver that Mr Taylor manifested hostility towards Mr Oliver. I did not detect anything of the kind. I accept that Mr Taylor was angry and hurt at the repeated accusations that he had been guilty of dishonesty. But that is understandable. I saw nothing in the way in which Mr Taylor gave his evidence which lent support to the claim that he was malicious. On several points he was ready with the benefit of hindsight to concede that errors had been made in the course of the investigation. My overall impression of Mr Taylor as a witness was a favourable one.
155. Mr Borrie gave evidence before Mr Taylor and was cross-examined for almost three days. He joined Northumbria Police in 1978 as a police constable and has served in the same force since then sometimes in uniform and sometimes in plain clothes. At the time of the Crimmens/Taylor inquiry he was a Chief Inspector. Thereafter in September 2002 he was promoted to Superintendent and assigned to the Professional Standards Department. According to Mr Borrie's evidence, he has had passing contact with Mr Oliver once or twice during his career. Prior to the Crimmens/Taylor investigation he had no knowledge of the Oliver report. He has never worked nor socialised with Mr Sharp. Mr Borrie gave evidence that in 1998 he knew Mr Sharp and Mr Paxton only in passing. In the course of his evidence he described in detail his role in the Crimmens/Taylor investigation. He said that he was the principal draftsman of the substance of their report, including its conclusion, leaving it to Mr Taylor to draft the formal parts. He expressed the opinion that Mr Oliver's allegations are indeed unfounded and discredited. He felt that those words fairly and accurately described Mr Oliver's allegations. For his own part, Mr Borrie would have expressed himself in the Crimmens/Taylor report in a way more critical of Mr Oliver. He denied the suggestions put to him in cross-examination that his dominant purpose in that investigation had been to ruin Mr Oliver's reputation rather than to investigate his concerns. He repudiated Mr Oliver's suggestion that the Crimmens/Taylor investigation had been a "back-stabbing exercise". Mr Borrie said that it would have been suicide for him to have covered-up misconduct, especially as all the material which would establish that the report was a whitewash was delivered up by him to senior officers at the conclusion of the investigation. If the Crimmens/Taylor report had been false, his livelihood would have been on the line.
156. Mr Borrie struck me as an impressive witness. His answers were clear, intelligent and to the point. Like Mr Taylor, Mr Borrie resented being the subject of a charge of dishonesty in his capacity as a police officer. That led him on occasion to be combative in the witness box. That is understandable in his case as it is in the case of Mr Taylor. Nothing emerged from the cross-examination to support the allegation that Mr Borrie was actuated by dishonest or improper motives.

The intended meaning

157. In connection with the issue of malice, the “concerns” in the Oliver report which are material are those which relate to Mr Sharp and Mr Paxton. I accept that, in concurring with the wording of the press release, Mr Taylor intended to convey that there was no credible evidence to support any of those concerns. For the reasons spelled out at length in paragraphs 93 to 128 of this judgment, I have concluded that there was no foundation for the concerns in relation to Mr Paxton and effectively no foundation for them in the case of Mr Sharp. Such limited basis for the concerns about Mr Sharp as existed at the time when Mr Oliver compiled his report was substantially removed by the conclusions of the Crimmens/Taylor investigation. It would serve no useful purpose for me to repeat what I said earlier in this judgment about those concerns. Suffice it to say that I do not accept that any support for the case of malice against Mr Taylor or Mr Borrie is to be derived from the fact that he agreed to the use of the terms “unfounded “ and “discredited” in the press release.

The deficiencies in the investigation relied on by Mr Oliver

158. But that is by no means an end of the case which is advanced that Mr Taylor and Mr Borrie were malicious. Mr Oliver relies on what he asserts to be serious deficiencies in the manner in which the Crimmens/Taylor investigation was carried out, which deficiencies individually or collectively warrant the conclusion that Mr Taylor was actuated by the dishonest and improper motive alleged. To the extent that I have not already done so in this judgment, I will address those contentions in turn.

159. The principal deficiency relied on is the failure of Mr Taylor and Mr Borrie in their questioning of Mr Sharp to elicit the fact (as Mr Oliver asserts it to be) that “middle clarification” was not capable of explaining the discrepancies between the taped interviews and the subsequent witness statements signed by Mr Quinn, Nurse Lawton and Mrs Marsh. I have already expressed my view that the discrepancies are, generally speaking, far less significant than Mr Oliver claims. But for present purposes I shall assume that the discrepancies set out in the Claimant’s various schedules do require explanation.

160. There is in my view nothing novel about the concept of “middle clarification”, although the term itself was evidently unfamiliar to other officers and may have been coined by Mr Sharp. It is commonplace for officers who have interviewed witnesses to need to clarify with the witness, after the interview has taken place, points which are unclear or which have not been covered in the course of the interview. The thrust of Mr Oliver’s case is that, given the short available time span between the relevant interviews and the date when the witness statements were dictated, it is quite simply incredible that middle clarification with the witnesses can have taken place on the scale claimed by Mr Sharp. Mr Oliver relies in that connection on the list of alleged discrepancies which was drawn up by the Crimmens/Taylor team. It is pointed out on behalf of Mr Oliver that it was acknowledged by Mr Taylor that the discrepancies (or some of them) required explanation, so that Mr Taylor cannot be heard to say that he honestly believed he could exonerate Mr Sharp without first obtaining a satisfactory explanation from him. In evaluating this submission, I remind myself that the material question is what Mr Taylor (and/or Mr Borrie) honestly believed to have happened and not whether Mr Sharp was telling the truth when he gave the explanation of middle clarification. That is why I consider that the complaint about

Mr Sharp not being called to give evidence for the Defendant on this point is misplaced.

161. I therefore ask myself, firstly, what was the state of Mr Taylor's knowledge at the time of the issue of the press release in relation to the explanation of "middle clarification". As regards the witness statements of Mr Quinn and Mrs Marsh, I am satisfied that the amount of time available for middle clarification between their interviews and the dictation of their statements (which did not differ materially from the statements in their final form), was not apparent to Mr Taylor (or to Mr Borrie). I accept that the amount of time available for middle clarification could have been determined by the Crimmens/Taylor team from an inspection of the Property Register in which its custodian, Mr Robson, recorded the time when the dictation tapes had been "found", i.e. the date when they had been dictated. But the existence of that Property Register was not then known to Mr Taylor. Mr Borrie accepted that he or his team would have consulted it but he did not at that time appreciate its significance. It cannot therefore be said against either of them that he knew about the very short time span between the dates of the interviews of Mr Quinn and the dictating by Mr Sharp of their respective draft witness statements. It does not assist Mr Oliver's case on malice to assert that Mr Taylor and Mr Borrie ought to have found out about the property register and inspected it. Neither incompetence nor carelessness constitutes malice. In any event I accept the explanation given by both Mr Taylor and Mr Borrie that at the material time they were focusing on the differences between the taped interviews and the statements rather than the timetable. (I should at this point record my doubts, shared by Mr Borrie, that the entries in the Property Register recording the dates when the tapes were "found" can be treated as an accurate guide as to when the tapes were made. But, since Mr Robson was not cross-examined on this point, I will assume that the entries are accurate).
162. The position is somewhat different in relation to the first witness statement of Nurse Lawton. In that case no more than a single clear day was available for middle clarification to have taken place. Attention is drawn on behalf of Mr Oliver to the substantial number of discrepancies said by Mr Sharp to have been clarified by Nurse Lawton when he contacted her. (In the case of Nurse Lawton the draft statement dictated by Mr Sharp was effectively in the same terms as the final version signed by her). The limited period of time available for middle clarification would have been apparent to Mr Taylor and Mr Borrie without recourse to the Property Register. The tapes themselves are dated, as are the transcripts of the tapes. According to the evidence of Mr Taylor and Mr Borrie, which I accept on this point, the significance of the timing was overlooked by them; they did not appreciate how limited was the time available for middle clarification. But this failure on the part of Mr Taylor and Mr Borrie cannot assist Mr Oliver on the issue of malice unless he can show that the officers deliberately ignored the time factor. In my judgment there is no evidence to establish any such proposition. The thoroughness with which the investigation was otherwise conducted, upon which I have commented earlier, points strongly towards an opposite conclusion. I reject the contention that Mr Taylor (or Mr Borrie) was aware that middle clarification could not explain the discrepancies. I do not accept that either of them dishonestly accepted from Mr Sharp an explanation which they knew to be untenable.
163. A related basis on which Mr Oliver alleges malice against Mr Taylor and Mr Borrie in relation to their conduct of the Crimmens/Taylor investigation is that they are said to have disregarded criticisms made by Mr Shaw about Mr Sharp and his conduct of the

interview with Nurse Lawton. It will be recalled that Mr Shaw accompanied Mr Sharp to that interview, took part in the questioning and made an abortive attempt to dictate a witness statement on the basis of the tapes of the interview. According to a note of an interview of Mr Sharp carried out by Mr Borrie on 13 August 1998, Mr Shaw told him that he was “never happy about Lawton” and that the statement drafted by Mr Shaw was “stronger than Lawton was purporting to be”. The note further records Mr Sharp’s view of Lawton as being:

“Didn’t like her. Had an axe to grind with Atkinson – not reliable. ‘Happy to agree’ and open to leading and susceptible. Motive – peeved about wine business. Sharp’s version of Lawton’s account too strong”.

The note further records Mr Shaw as saying that he did not feel that the case was strong and adding:

“Lawton held key. Wouldn’t have got off the ground. Gary [Shaw] would’ve done [statement] differently and has distanced himself”.

Criticism is made on behalf of Mr Oliver that no mention is made in the Crimmens/Taylor report of the doubts expressed by Mr Shaw as to Nurse Lawton’s reliability and integrity as a witness or of the motive which she may have had for exaggerating her evidence, namely to keep Mr Renwick happy. The latter criticism is based upon another passage in Mr Borrie’s note which records Mr Shaw as having said:

“things said to John Renwick to keep him happy – abrasive personality – tell him what he wants to hear. No-one wanted to tell him it was a weak case”.

164. For the purpose of the issue of malice the material question is what Mr Taylor and Mr Borrie honestly believed about the conduct by Mr Sharp of his interview with Nurse Lawton. What Mr Shaw had to say on that point is of course relevant. It cannot be said that Mr Taylor or Mr Borrie sought, when compiling the Crimmens/Taylor report, to suppress the comments made by Mr Shaw about the interview because the notes made by Mr Borrie to which I have referred were exhibited to the report. Besides, Mr Shaw made clear in his evidence that, whilst he would have done Nurse Lawton’s statement in a different way, he had no concerns about the content of the statement drafted by Mr Sharp. He testified that he had thought the statement was stronger in some of its terms and phrases; he did not think there was any change from the points that Nurse Lawton was making but some of the phrases were a little bit stronger than what he thought Nurse Lawton was trying to say. Mr Borrie gave evidence that, in the course of his discussion with Mr Shaw on 13 August 1998, Mr Shaw had said that the statement was factually accurate but that the style and language used was stronger than the way in which he (Mr Shaw) would have prepared the statement. Mr Borrie further pointed out that Mr Shaw had later told him that he did not feel it appropriate to include in his witness statement the opinion which he had expressed about the statement prepared by Mr Sharp because he felt that all the evidence was available to the inquiry team to make their judgment. Mr Borrie further noted that reference was made in the Crimmens/Taylor report at internal page 58 to the fact that the tone of Nurse Lawton’s statement appeared more firm than was

conveyed in her taped interview. I think that Mr Moloney is right when he submits that such criticism as Mr Shaw had to make of Nurse Lawton's witness statement was in relation to style rather than content. In any case the Crimmens/Taylor report did, as Mr Borrie pointed out, reflect the fact that there was some difference between Nurse Lawton's taped interview and her witness statement. In these circumstances I cannot accept that Mr Taylor or Mr Borrie can fairly be said to have disregarded the criticisms made by Mr Shaw of the conduct of that interview or that the manner in which they dealt with Mr Shaw's criticisms provides any support for Mr Oliver's case on malice.

165. A further deficiency in the method of operation of the Crimmens/Taylor investigation which is relied on in support of the allegation of malice against Mr Taylor is the decision to re-interview Mr Quinn and Nurse Lawton on a limited basis. As is recorded in the Policy Book, the instructions ultimately given to Mr Whittle, who was charged with re-interviewing the two witnesses, were that he

“should, at this time, limit his inquiry with the witnesses Quinn and Lawton as to whether or not they were happy that the content of each written statement, made by them, was true and accurate to the best of their knowledge at the time of signing. If this is the case a short written statement to that effect will be obtained. If not, a brief verbal outline as to why should be sought, however the discussion to be terminated at the first suggestion of any criminal impropriety on the part of any witness or police officer. Any verbal account to be brought to the attention of the Coroner and his view sought as to relevance”.

The case advanced on behalf of Mr Oliver is that those instructions reflect a determination on the part of Mr Taylor and Mr Borrie to prevent Mr Whittle from investigating with Mr Quinn or Nurse Lawton why their statements differed from what they had said in the course of their interviews and whether middle clarification had in fact taken place. This is said by Mr Oliver to be one of a number of ways in which Mr Taylor sought in an “intellectually dishonest” manner to suppress or belittle Mr Oliver's concerns.

166. Both Mr Taylor and Mr Borrie were cross-examined about those instructions to Mr Whittle. Mr Taylor said that he had agonised over what to do with the civilian witnesses and had sought advice from the CPS on the point. He had originally anticipated seeing the civilian witnesses but, as the inquiry proceeded, the veracity of the complaints which had been made by Mr Oliver diminished. The advice from the CPS had been to interview the officers first and then decide if Mr Quinn and the other civilian witnesses should be treated as suspects or mere witnesses. There was concern that the civilian witnesses still had to give evidence to the Coroner. When Mr Robson challenged the integrity of Mr Whittle, Mr Taylor considered that Mr Quinn and Nurse Lawton had to be seen so as to ensure that what the Coroner was being told was correct. Mr Taylor said that he was worried that Mr Quinn or Nurse Lawton might change their stories or refuse altogether to give evidence to the Coroner. He was also concerned that Mr Quinn and Nurse Lawton might refuse to be interviewed if they were cautioned at the outset.

167. Mr Borrie gave evidence to like effect. He said that at an early stage it appeared that Mr Quinn and Nurse Lawton would need to be interviewed. But, as time went on, it appeared that almost all the answers to the alleged discrepancies were to be found in the tapes of their interviews. The discrepancies were not significant. The credibility of Mr Oliver's report slowly but surely diminished. The decision to interview Mr Quinn and Nurse Lawton in restricted terms had been taken by Mr Taylor. It did not prevent further interviews taking place. But in that case they would have to be cautioned. Mr Borrie said that he and Mr Taylor wanted to avoid interviewing the two witnesses without cautioning them with the result that problems would arise in the event that criminal proceedings were commenced against them. Mr Borrie accepted that it was ultimately his decision to interview Mr Quinn and Nurse Lawton on a restricted basis; it was a cautious decision and Mr Borrie totally disagreed with the suggestion that it was a wilful attempt to pre-judge the issue.
168. It appears to me that these answers are corroborated by the contemporaneous entries in the Policy Book. An entry for 21 May 1998 records Mr Taylor's anticipation that all witnesses would be interviewed to ensure the integrity of all written statements submitted to the Coroner. Mr Taylor also indicates that he will seek CPS advice whether any witnesses need to be interviewed under caution. The next relevant entry is dated 3 July 1998: Mr Taylor records that he has contacted the CPS in York and has been advised that the police officers should be interviewed before any of the nursing staff are seen. On 15 September 1998 Mr Taylor records advice from Mr Corrigan (CPS Durham) who was in full agreement with his intention to allow Inspector Whittle to obtain further statements from Quinn and Lawton covering the discrepancies between their former and latter statements. Mr Taylor adds that this is required for the files being prepared for the Coroner but will also be considered as part of his inquiry. The entry concludes by saying that, if there is a need for Quinn and Lawton to be interviewed further, he will consult first with the CPS.
169. I agree that the decision to re-interview Mr Quinn and Nurse Lawton on a limited basis calls for an explanation. I consider that a satisfactory explanation has been provided by Mr Taylor and by Mr Borrie, confirmed by the entries in the Policy Book to which I have referred. For the purpose of the issue of malice, it matters not whether the decision was right or wrong. The question is whether it was a deliberate attempt on the part of either Mr Taylor or Mr Borrie to conceal the truth about the evidence of Mr Quinn and Nurse Lawton. I reject the suggestion that in this regard either Mr Taylor or Mr Borrie was guilty of intellectual or any other kind of dishonesty.
170. Much was made in cross-examination of the Defendant's witnesses of a note made by Mr Whittle shortly after his re-interview of Nurse Lawton. The material passage reads:
- “With regard to the investigating officers, whilst not mentioning any names, [Nurse Lawton] said that a couple of times she had felt pressurised by one officer whom she described as a bit of a ruffian, to such an extent that her union representative (who had been present during the taking of each statement) had intervened and told him to ‘ease off’... As far as my personal view of her demeanour is concerned, I concur with Sergeant Frazer's view that she was guarded, I am

reluctant to venture an opinion as to her reliability or truthfulness ”.

Attached to that note as appendix B is a note made by Sergeant Frazer, who was also present at the re-interview. He records Nurse Lawton has having said:

“A couple of times I felt pressurised. Some of the words used weren’t mine. He was a bit of a ruffian. My union representative had to tell him to ease off”.

171. I am not persuaded that there is anything in this note which assists Mr Oliver to establish that Mr Taylor or Mr Borrie is guilty of malice. What emerges clearly from the statement which Nurse Lawton signed at the conclusion of the interview is that she had not wanted to change any of her statements and that the content of those statements was as she believed the facts to be at the time when she made them. Nurse Lawton had also confirmed that she was happy with the overall content of her statements. That is wholly inconsistent, as it appears to me, with the thesis advanced on behalf of Mr Oliver that Mr Sharp had procured false witness statements from Nurse Lawton and that Mr Taylor in conjunction with Mr Borrie (but, curiously, not Mr Whittle) was intent on concealing that fact. It is also inconsistent with the notion that there was a plot to misinform the Coroner. The reference to the “ruffian” is obscure. I find it impossible to deduce from that reference the existence of any sinister motivation on the part of Mr Taylor or Mr Borrie.
172. On the other hand I do accept that the Crimmens/Taylor report is in error when it states at internal page 123 that Mr Whittle was satisfied as to the credibility of Nurse Lawton as the passage quoted earlier from his note reveals, he had expressly declined to express his opinion on the point. But I am quite satisfied that this was an innocent error on the part of the authors of the report. I reject the suggestion that it was a deliberate misrepresentation on their part. Mr Whittle’s note was not only attached to the Crimmens/Taylor report as an appendix, it was also referred to twice in the text (see internal pages 57 and 108).
173. A further ground for alleging malice is the omission on the part of Mr Taylor and Mr Borrie to put to Mr Oliver prior to the finalisation of the Crimmens/Taylor report the criticisms of him which are contained in it. I accept that criticisms of Mr Oliver are undoubtedly to be found in the report and especially in the concluding passages. That was perhaps inevitable given the opinions at which Mr Taylor and more particularly Mr Borrie arrived about Mr Oliver, namely that there was no foundation for the grave accusations which he had made against his fellow officers. The reason given by Mr Taylor and Mr Borrie for not putting the criticisms to Mr Oliver was that he was the complainant and that it was not the practice for investigators in their position to revert to a complainant as the investigation progressed. For the purpose of the issue of malice I have to ask myself, not whether there was unfairness to Mr Oliver or even whether the practice is a wrong-headed one, but rather whether the failure to put the criticisms to Mr Oliver evidences dishonesty, recklessness or improper motivation on the part of Mr Taylor or Mr Borrie (or indeed Mr Craik, who expressed similar views to theirs). I am entirely satisfied that it does not.
174. I have dealt with the principal grounds on which I am asked to infer malice on the part of Mr Taylor and Mr Borrie. There are to be found in the voluminous particulars relied on in support of the charge of malice and in the lengthy closing submissions for

Mr Oliver a number of further detailed reasons why it is said that Mr Taylor was malicious. Almost all of those reasons consist of criticisms of the Crimmens/Taylor report: see for example paragraph 49(3)(a) to (w) at pages 99 to 106 of the Claimant's Final Submissions. I have expressed my conclusion about the validity of the material parts of the Crimmens/Taylor report in the earlier section of this judgment dealing with justification. In doing so I have addressed most of the criticisms of the Crimmens/Taylor report. I do not accept that the additional criticisms provide, whether individually or collectively, any grounds for the conclusion that Mr Taylor (or Mr Borrie) was malicious.

Conclusion on liability

175. It follows from what I have said that this claim fails, both on the ground that the contents of the press release were substantially true in the meaning which I have found it to bear and for the reason that I have rejected Mr Oliver's case on malice with the result that my earlier ruling stands that the publication was protected by qualified privilege. In these circumstances the question of damages does not arise.