Neutral Citation Number: [2005] EWHC 201 (QB)

Case No: 1996 F 428

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/02/2005

**Before** :

**THE HON. MR JUSTICE EADY**

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**Between:**

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| **Brian L Friend** | **Claimant** |
| **- and -** | |
| **1. Civil Aviation Authority** | **Defendants** |
| **2. John G Mimpriss** | |
| **3. Patricia A Richardson** | |
| **4. John W Saull** | |
| **5. Russell Williams** | |

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**Captain Friend appeared in person**
Patrick Moloney QC and Andrew Tabachnik (instructed by the Secretary and Legal Adviser to the Civil Aviation Authority) for the Defendants

Hearing dates: 13th January 2005 to 8th February 2005

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# 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.

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**THE HON. MR JUSTICE EADY**

## Mr Justice Eady:

## 1. Introduction

1. The Claimant in these proceedings, which began as long ago as 1996, is Brian Leonard Friend ("Captain Friend"). He seeks remedies against the Civil Aviation Authority ("CAA"), which is a body corporate by virtue of s. 2(1) of the Civil Aviation Act 1982, and four other individual Defendants who were at the material times officers of the CAA. Those are John Mimpriss (the second Defendant), Patricia Richardson (the third Defendant), John Saull (the fourth Defendant) and Russell Williams (the fifth Defendant). Captain Friend was employed as a Flight Operations Inspector ("FOI") by the CAA in its Safety Regulation Group ("SRG") from April 1987 until termination on three months notice given by letter from Mr Saull dated 1st December 1992. The last twelve years have been taken up to a large extent in litigation of one sort or another, but the central events which are relevant to the present claims would appear to have taken place in 1990 and 1991.

2. The factual allegations against the Defendants are relied upon by Captain Friend as giving rise to a variety of causes of action. The claims in tort may be categorised as follows:

   i) Malicious falsehood, based upon the contents of some 24 documents;

   ii) Conspiracy, an allegation now confined to the four individual Defendants, who pursuant to the alleged conspiracy are said to have carried out acts consisting in the compiling and communication of the malicious falsehood documents and a campaign of harassment;

   iii) Inducing a breach of Captain Friend's contract of employment.

   It is said that each of the individual Defendants was, at the material times, acting in the course of his or her employment and that, accordingly, the CAA is vicariously responsible for any wrongful act.

3. There is also a claim in contract based upon a number of alleged breaches, which may perhaps conveniently be grouped as follows:

   i) The giving of instructions which are said to have been unlawful (specifically in relation to two operators referred to respectively as PLM Helicopters and Corporate Jet);

   ii) The campaign of malicious falsehood and harassment, to which I have referred in the context of the tortious claims;

   iii) Procedural unfairness in the disciplinary proceedings, which led to Captain Friend being wrongfully dismissed.

4. So far as the claims for damages are concerned, they are framed in terms of the dismissal by the CAA and its financial consequences. Obviously, therefore, in so far as any wrongful act is established, it would be necessary to address its causal link (if any) with the dismissal.

5. The factual background is inevitably long and complex. I shall need to address it in due course when I come to analyse the evidence and the issues. Meanwhile, however, it will suffice to provide a summary of the parties' differing standpoints. I have so described the nature of the conflict because, although there are undoubtedly disputes of primary fact some of which are significant, it is perhaps fair to say that the main differences between the two sides' cases lie in how they interpret and understand their obligations to one another and the conflicts which arose between them. This is illustrated by the content of Mr Saull's dismissal letter in December 1992, which states in a nutshell the attitude of management towards Captain Friend at that time:

> "You have been given every opportunity over the past two and a half years in which to re-build this credibility with managers but you have patently failed to do so. This is not an acceptable situation for the Authority. Your inflexible attitude clearly indicates that you believe the Authority needs to change policies and procedures to meet your strongly held views which we believe to be misplaced and counter productive to the overall objectives of SRG. This attitude has caused a very considerable amount of management time to be expended on your case which has produced considerable and unwarranted disruption to SRG business.
>
> Regulatory work depends on a responsible and mature approach by the Authority's technical staff to undertake their tasks. The Authority cannot give constant direction on what should be routine tasks for a Flight Operations Inspector.
>
> I have no confidence that your approach to your work will change and I do not believe that the breakdown in the working relationship referred to in the recommendations can be repaired."

From this document it emerges that there was a long period during which the parties were at loggerheads and I shall need to focus on the rival contentions between them and, in particular, whether Captain Friend was behaving reasonably and in accordance with his contractual obligations, or whether Mr Saull's encapsulation of the dispute is a fair one. Captain Friend has characterised his conduct, in the course of his evidence, as that of a tenacious whistle-blower. He says that the Defendants resented his moral stand and wished him to "toe the line". According to him it is "standard practice to co-erce whistleblowers".

6. There was an appeal by Captain Friend against his dismissal and a two-day hearing took place in March 1993 (of which the transcripts are available). The appeal was heard by Mr Paice, who was Group Director, Economic Regulation, and Mr Marx, the Group Director responsible for Personnel and Central Services. They wrote a joint letter of 17th March 1993 summarising their reasons for rejecting the appeal which contained the following passages:

> " … The Panel concludes that Captain Friend has been wrong to pursue his case in the way he has and at the length he has. It is not that [he] has not had answers to his questions: it is that he

> refuses to accept the answers he was given. He can be in no doubt at all that his views have been fully considered at all levels of management senior to himself in the Safety Regulation Group and rejected. In the Panel's view, he is not entitled to disregard this simply because some of his peers in the Safety Regulation group share his own views to some extent.
>
> … The Panel believes however that a threat of legal action, outstanding for 18 months and the nature of which is undefined and the defendants of which are only hinted at, must contribute substantially to the breakdown of normal working relationships. Had Captain Friend been willing to initiate his action, to drop it or to indicate the circumstances in which he would initiate it or, in the alternative, drop it, the damage to working relationships might well have been mitigated, although probably not removed. The Panel is in no doubt that his refusal to follow any of these courses has served to make matters worse. …
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> … Captain Friend simply will not accept the decision of his superiors. The only condition which will bring this dispute to an end so far as Captain Friend is concerned is a statement by the senior management of the [SRG] that [he] was right and they, correspondingly, were wrong. It is this which has led to a fundamental and irretrievable breakdown of working relationships within the SRG. It is difficult to see Captain Friend's tactics of holding out the threat of legal action, but refusing to clarify further on that matter, as anything other than an attempt to gain acceptance of his point of view on the substance of a professional dispute. …
>
> But no organisation can function effectively if employees behave as Captain Friend in simply refusing to accept the decision of his superiors even after he has exhausted every reasonable means of having his point of view considered".

7. Later, there was an industrial tribunal hearing which led to a decision of 22nd June 1994. The dismissal was held to be procedurally unfair but Captain Friend's contribution was assessed at 100%, with the result that there was no award of compensation. The tribunal concluded *inter alia*:

> "What is clear, nevertheless, from the evidence and the documents we have seen, is that in our judgment [Captain Friend] had pursued the matter in a way and to the extent that must inevitably have led to the situation whereby he could no longer continue to be employed by the [CAA]. … There are other matters which lead us to this conclusion but in giving his evidence to us [Captain Friend] himself accepted that trust had broken down irretrievably".

8. There was an Employment Appeal Tribunal hearing and Captain Friend's appeal was dismissed on 24th July 1995. It was not necessary for the CAA's appeal against the finding of unfair dismissal to be determined in those circumstances. The EAT addressed the industrial tribunal's approach to the 100% contribution. The tribunal's conclusion was summarised in the EAT decision as having been to the effect that "… It was the way Captain Friend went about putting his point of view which resulted in his dismissal. … They are saying that [he] contributed to his dismissal by the way in which he pursued his point of view and the extent to which he did so".

9. In due course, on 22nd February 1996 the Court of Appeal rejected Captain Friend's application for leave to appeal against the decision of the EAT. Waite LJ noted that the question for the industrial tribunal had been, not whether Captain Friend was right or wrong, reasonable or unreasonable, in the views he expressed, but whether his way of expressing them, and the steps he took, or omitted to take, as a means of emphasising them, amounted to action which caused or contributed to his dismissal. That is an analysis which will have to be considered as being potentially relevant to the present claim for wrongful dismissal.

10. One of the major areas of dispute between Captain Friend and the various officers of the CAA was over what steps should be taken by a team conducting an inspection of a helicopter operator on an Operational Standards Appraisal Programme (OSAP) audit – and indeed over the composition of such a team. It was observed in the Court of Appeal, however, in 1996 that it had been unnecessary for the industrial tribunal to come to a conclusion on the merits of those conflicting views, since what lay at the heart of the breakdown in relations was the way in which Captain Friend had conducted the dispute and how, ultimately, he had refused to accept the decisions of his superiors over how such audits should be conducted.

11. As I have recorded above, one of the principal disputes in this litigation is whether Captain Friend was given instructions in 1990, after he had been assigned to the department (FOD 8) responsible for conducting OSAP audits in respect of both fixed wing and helicopter operators, which were "unreasonable" and/or "unlawful". This was because he was instructed to take part in an OSAP audit of the operations of a small Group B helicopter operator called PLM Helicopters without a specialist helicopter FOI being part of the team. He maintains to this day, 15 years afterwards, that the instructions were unlawful: the CAA maintains its position that they were not. Although this is probably one of the two main *casus belli*, it is not a central issue to be resolved in this case, but rather forms the background to the conflicts which I have to resolve. It is said, for example, that the acts of conspiracy and malicious falsehood attributed to the Defendants were motivated in large measure by a desire for him to keep quiet and abandon his criticisms of their procedures. It is to be noted, at this stage, that the issue of the supposedly unlawful instructions in 1990 was not causative of the dismissal in December 1992. Thus what has been called the "helicopter safety case", however it is to be resolved, cannot be determinative of any of the causes of action.

12. I have referred to that issue as having been *one* of the principal *casus belli*. I should, therefore, at this stage make clear that the other one turns not upon a difference of opinion or attitude but upon a conflict of evidence. Captain Friend insists that he was given instructions in 1990 by Captain Richardson to write parts of reports in advance of the audits taking place, specifically in respect of the two operators, Merrix Air and

PLM, so that the subsequent visits when they took place would, in those respects at least, merely be going through the motions. That is plainly a serious allegation against the CAA and Captain Richardson, involving dishonesty and a cavalier attitude towards safety. Whereas they accept that a good deal of preparatory work is undertaken before an OSAP inspection takes place, consisting of the compiling of information and preparatory drafting, it is hotly disputed that Captain Friend's underlying allegation is true. That depends in large measure on how I resolve the conflict between Captain Friend and Captain Richardson on the basis of their oral evidence and the contemporaneous documents.

13. Since it is so central to Captain Friend's case that he was given unlawful instructions, it seems right at this stage to turn to the legal framework within which the CAA operates.

## 2. The legal framework

14. Since the CAA is a specialised legal entity, it is necessary to refer to the statutory background and the international agreements underlying it, in order to understand its purpose and functions. More specifically, I can only assess the Defendants' case on Captain Friend's allegation of "unlawful instructions" in the light of the statutory regulations. What the Defendants submit is that there is simply nothing which governs the conduct of OSAP audits or the constitution of OSAP inspecting teams. It is the Defendants' case that the OSAP auditing structure was an additional layer of review instituted on its own account by the CAA, over and above the primary flight operations inspections required by law, and which was therefore purely voluntary in character. If that is correct, it means that it was a matter for CAA discretion whether such audits were carried out at all; what is more, the methods to be adopted and the constitution of the teams responsible would also be a matter of discretion and judgment. There would be thus no legal requirement as to how any such audit was carried out, or to what standards, or by what categories of personnel. Indeed, I was told by Captain Mimpriss that some years ago it was being contemplated that OSAP audits might be dispensed with altogether.

15. The International Civil Aviation Organisation ("ICAO") adopts certain common standards which are to be found in annexes attached to the Chicago Convention of 1944 (which brought it into being). International air conventions set out a number of common standards adopted by the international community but are not directly binding on any individual signatory. So far as the United Kingdom is concerned, the regulation of civil aviation is governed by statute and by the relevant secondary legislation. The CAA has *inter alia* functions concerning the registration of aircraft, the safety of air navigation and aircraft, the certification of operators of aircraft and the licensing of aircrews and aerodromes. It may do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions.

16. Guidance is given by the ICAO through various officially promulgated documents which were included in the documentary evidence for the trial, such as the ICAO Safety Oversight Manual Part A, "The Establishment and Management of a State's Safety Oversight System" (1st edn.) and ICAO Document 8335, "Manual of Procedures for Operations Certification and Inspection" (3rd edn.), which was in force between 1983 and 1995.

17. First, it has to be observed that the ICAO regime has an advisory status only. In any event, its regime is directed at what is in CAA terms the first tier of inspection. There are various departments responsible for the regular inspection of operators (including, in the case of helicopters, FOD 2). The United Kingdom, through the CAA departments, is said to be fully compliant with the ICAO recommendations. It is the submission of Mr Moloney QC for the Defendants that those recommendations are simply irrelevant to OSAP audits, since these represented an additional layer of supervision beyond anything contemplated in the ICAO recommendations. It would follow that, if criticisms are directed at the methods or staffing of OSAP audits, their merits cannot be judged by reference to ICAO, since they are only concerned with the primary tier of inspection. This stance was supported by their expert, Captain Fooks-Bale, in paragraph 25 of his report:

> "When considering the position with regard to the CAA's responsibility under ICAO requirements for safe and effective regulation, I strongly believe that this is satisfied by the normal continued inspection procedures that have always been in place. OSAP inspections have never been a formal requirement, although useful as a further quality control check".

18. The relevant primary United Kingdom legislation is the Civil Aviation Act 1982, of which s.2 briefly describes the constitution of the CAA. Sections 3 and 4 should be set out in full as they stood at the relevant times:

> "3. The functions of the CAA shall be-
>
> (a) the functions conferred on it by the following provisions of this Part of this Act;
>
> (b) the functions conferred on it by or under this Act with respect to the licensing of air transport, the licensing of the provision of accommodation in aircraft, the provision of air navigation services, the operation of aerodromes and the provision of assistance and information;
>
> (c) such functions as are for the time being conferred on it by or under Air Navigation Orders with respect to the registration of aircraft, the safety of air navigation and aircraft (including airworthiness), the control of air traffic, the certification of operators of aircraft and the licensing of air crews and aerodromes;
>
> (d) such other functions as are for the time being conferred on it by virtue of this Act or any other enactment;
>
> and nothing in this Act relating to the CAA shall be construed as derogating from any power exercisable by virtue of any enactment whatsoever (including an

> enactment contained in this Act) to make an Order in Council or other instrument conferring a function on the CAA.
>
> 4. – (1) It shall be the duty of the CAA to perform the functions conferred on it otherwise than by this section in the manner which it considers is best calculated-
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> (a) to secure that British airlines provide air transport services which satisfy all substantial categories of public demand (so far as British airlines may reasonably be expected to provide such services) at the lowest charges consistent with a high standard of safety in operating the services and an economic return to efficient operators on the sums invested in providing the services and with securing the sound development of the civil air transport industry of the United Kingdom; and
>
> (b) to further the reasonable interests of users of air transport services.
>
> (2) In subsection (1) above 'British airline' means an undertaking having power to provide air transport services and appearing to the CAA to have its principal place of business in the United Kingdom, the Channel Islands or the Isle of Man and to be controlled by persons who either are United Kingdom nationals or are for the time being approved by the Secretary of State for the purposes of this subsection."

19. It is important to note that the obligations imposed by these provisions are general rather than specific in character. The statute does not descend to micro-management of the CAA regulatory system and, as the phrase "it considers" in s.4 (1) would connote, much is left to the discretion of the regulatory body itself.

20. The only potentially relevant secondary legislation is the Air Navigation Order 1989 (as it was at the material times). The nature of this statutory instrument is that it was directed towards air operators and not to the CAA itself, which is responsible for regulating the operators. Thus neither the statute nor any statutory instrument prescribed or directed how the CAA was to carry out its regulatory functions. There is certainly nothing to say how it was to carry out its inspections or audits, with what personnel or how often.

21. Against this background it is the Defendants' primary contention that there was no primary or secondary legislation which was material to the constitution or conduct of an OSAP team audit, which was very much a matter within the discretion of the officers of the CAA. Therefore, contrary to the contention of Captain Friend, it cannot have been "unlawful" for the officers to direct Captain Friend to take part in an OSAP audit as a member of the team, since "the law simply does not come into it". That may be something of an over-simplification, since one cannot ignore the common law and the possibility of an action for negligence in the event of a helicopter accident.

## 3. CAA internal documentation

22. At all material times there would have been in effect a CAA inspecting staff manual. It has not been possible to produce complete copies for the period in question but it does seem, from a comparison of the 1978 preface with those for 1994 and 1998, that nothing has significantly changed.

23. It is important to note, as to the status of this manual, that it constituted "general guidance" and it was expressly made clear that it was not to be used in a rigid way or to be regarded as a substitute for common sense. As Captain Sindall confirmed in evidence, it could not and was not intended to cover every eventuality. As the Foreword explained:

> "1. This manual has been compiled to give general guidance to inspecting staff both on their duties and responsibilities and on their relationship with operators and other members of the industry.
>
> 2. Where appropriate, advice is included on the method and frequency of carrying out inspections, but it is impracticable to provide detailed advice to cover every situation and problem that might confront inspecting staff. Therefore it is important to guard against any tendency to use this manual as a substitute for initiative and sound common sense."

24. Chapter 11 is relevant to OSAP. The introduction stated:

> "1.1 The purpose of OSAP is twofold, firstly to identify operators whose systems and standards are consistently good and for whom routine inspections might be relaxed, and secondly, to expose significant weaknesses in an operator's organisation and procedures, and so indicate areas in which future inspection effort should be concentrated.
>
> 1.2 Although the principle of the OSAP inspections' systematic analysis will remain the same for all operators, the detailed work involved will vary with circumstances. A flexible approach is essential."

25. There were also CAA handbooks directed specifically to the functions of OSAP. They were developed by Captain Sindall, again to offer general guidance. The relevant editions are the first, applicable up to July 1991, and the second for the period thereafter. Captain Richardson rewrote the OSAP handbook for the second edition, taking into account *inter alia* the dispute with Captain Friend which had by then flared up. For example, it was made expressly clear in Chapter 1, by the insertion of a new paragraph 2.2, that the handbook did not constitute an official SRG policy document. (For policy one would look to the Inspecting Staff Manual.)

26. For the purposes of the present dispute, I note two matters in particular. First, the CAA regarded it as a matter for the team leader on any OSAP audit (usually in consultation with colleagues) to decide whether a specialist FOI needed to be

appointed for the purpose; for example, whether it was necessary for the purpose of auditing a particular operator to have the services of a helicopter specialist from FOD 2. (It is Captain Friend's view that no OSAP audit ought *ever* to take place in respect of a helicopter operator without such a specialist being part of the team – a standpoint he adopted at the outset of his OSAP training and before completing any OSAP audit.)

27. Secondly, there is a specific provision in the terms of reference of every flight operations inspector which enables the inspector in question not to commit himself on matters in respect of which he is not qualified. The wording is to be found in Chapter 3 of the OSAP handbook, at paragraph 2.3. One of the general functions of an FOI is "… to provide assistance to the team leader according to his requirements, notwithstanding that these may not necessarily involve the application of operational expertise. An FOI should not be required to act as spokesman for the team if the task, as assistant, is one on which he lacks suitable qualifications or experience". Whether he or she is qualified or not, however, to be part of a team would be regarded as a matter for the judgment of the CAA officers concerned.

## 4. Captain Friend's employment with the CAA up to 31st May 1990

28. Following interview, an offer was made to Captain Friend by the CAA on 2nd March 1987 of a position as a Flight Operations Inspector. It was expressly contemplated that, following a move to Gatwick, Captain Friend would be based there with effect from the summer of 1988. It was also made clear that the CAA had the right to appoint him to any post within the department "for which your background, qualifications and experience make you suitable". Employment duly began on 6th April 1987.

29. It is of some interest to note what progress was made and how the relationship developed in the period up to the summer of 1990, when the major clashes took place which form the primary subject matter of these proceedings. Captain Friend suggests that there was a malicious conspiracy on foot from then onwards to make him toe the line because of safety concerns he raised at that time in his capacity as a "whistleblower". It is thus clearly relevant to explore to what extent, if any, managerial attitudes towards him changed at about that time.

30. There was an interim probation report prepared on Captain Friend as early as mid-September 1987. He was there described as borderline "satisfactory" and there were comments made about his judgment, "short temper" and general attitude and commitment. For example:

> "… tends to rush his fences … Plenty of initiative, but there are signs that it is not always directed to further the Authority's ends. I have some doubts about his reliability, but at the moment this is based on little more than instinct. Average ability to express thoughts on paper; a little loud in his oral expressions. Captain Friend appears to have arrived with some misconceptions of the functions of the Inspectorate, and of his role in it. In brief, he misjudged the relationship of both the cog and the wheel. Obviously measures have been taken to rectify

> the situation, but there is still an impression of disillusion, if not disenchantment.
>
> When he sets his mind to it, the quality of his work is good, and provided he can keep a short temper and slightly brash manner in check, he shows promise of being able to establish satisfactory working relationships. He has however been cautioned about the need to maintain a proper distance from public transport operators.
>
> His commitment to the Authority does not seem to be too high, and close supervision of his working pattern will be maintained during the coming months".

31. A recurring theme, in the many volumes of documents generated in the course of his employment, is that of his choice to continue living in Crewkerne in Somerset. He thought at a relatively early stage that it might assist him to have the classification "home as base" for travel and subsistence purposes. An application was duly made in October and granted in November 1987.

32. As planned, the SRG moved to Aviation House at Gatwick on 31st May 1988. Shortly thereafter, Captain Friend's superior, Captain Quilley, accorded him a "satisfactory" rating in his final probation report and, having referred to a "disappointing start", went on without notable enthusiasm to conclude that there were no "no real grounds for not confirming this appointment". A week or so later, on 20th June 1988, the CAA confirmed Captain Friend's appointment upon the conclusion of his probationary period.

33. Nine months later, in March 1989, Captain Friend applied for promotion to the post of Senior FOI. This was turned down following an assessment by his then superior, Captain Coutts, who noted that his "main weakness is his written work and his rather haphazard attitude to office practice; but he is improving". He recorded also that Captain Friend had told him that he missed airline flying overseas and was thinking of returning to that life. He observed, therefore, that he was less than convinced of Captain Friend's commitment to his job.

34. In June and July there were comments by Captain Akhurst on what were thought to be inefficiencies on Captain Friend's part about organising his time over two periods in May 1989. He noted, "Inefficient management of effort!"

35. There was a performance appraisal report for the period up to 31st May 1989 which is dated 4th September of that year. At that time Captain Friend was thought by Captain Coutts to have fully met "normal requirements", although he also noted that his attitude to his job had been somewhat overshadowed by pay dissatisfaction which had "diminished his motivation". Captain Quilley commented that he was "not likely to progress beyond FOI, with the extra commitment to the office and the CAA this needs, unless his attitude changes".

36. A few days later there was a memorandum from Captain Akhurst to Captain Coutts indicating that he was collecting examples of Captain Friend's shortcomings with a view to offering counselling. It was suggested that he was failing to meet "the target

of inspections" and that he was not as effective as he might be through lack of planning, "going from company to company in a random fashion". It was acknowledged that Captain Friend, along with his colleagues, was allocated a higher number of companies than would be "ideal" but he was encouraged, nonetheless, to "structure your programme and allocate priorities effectively".

37. In March 1990 there was another performance appraisal report for the period up to 31st October of the previous year. This time it was said that his performance was "just falling short of fully meeting normal requirements of the job". Captain Akhurst commented at this stage that it appeared that Captain Friend might be "superficial in areas of inspecting" as well as not allocating his efforts as effectively as he might. It was said that he was working well below potential and putting the minimum effort required into the job. Captain Coutts noted that he "gives the clear impression of being lazy and disinterested … He needs close supervision during the coming report period". (It is to be noted that Captain Friend has made no suggestion of malice towards him on the part of Captain Akhurst or Captain Coutts. Indeed, he relied on their evidence at the trial. Captain Akhurst was called and, for reasons of health, he put in Captain Coutts' witness statement.)

38. There had also been comments noted about relatively minor matters such as apparently having taken a complete day off on 16th February 1990 and having an extremely high duty mileage during 1988 and 1989. A comprehensive record of his travel and expense claim forms was being assessed by Captain Akhurst with a view to seeing whether his time might be used more effectively. The only relevance of this aspect of the case is that it is part of the context against which to judge whether *later* criticisms of his working practices or expense claims were being made, not for genuine reasons, but as part of a malicious conspiracy or programme of harassment.

39. It became apparent in April 1990 that a new FOI was being sought for OSAP duties in FOD 8, and a memorandum was sent by Captain Coutts to Captain Quilley identifying Captain Friend as one of two obvious candidates who would benefit from the experience. It was agreed at a meeting on 24th April that Captain Friend would be transferred to fill that vacancy and he was informed later the same day. As I have already noted, it was within the CAA's rights under the contract to appoint him to any post for which he was thought suitable. It seems as though this transfer was regarded positively by his managers. It may have been thought that the opportunity would offer him not only wider experience but also greater stimulus and thus lead to more obvious commitment. On 2nd May Captain Coutts sent him a letter, saying that he hoped Captain Friend would enjoy the assignment and that it would give him exposure to "modern, large jet equipment which has so far not been possible within FOD 5 but for which you have been asking".

40. It appears, however, that Captain Friend told Captain Coutts on the telephone that he intended to refuse the transfer on the basis that the proposal was outside the terms of his contract, that it would ruin his social and family life, and would mean travelling to Gatwick too frequently. Moreover, he even suggested that if the transfer were implemented he would sue the CAA for constructive dismissal. This was clearly not a promising start. He was advised by Mr Page, of Support Services, that it would be better, rather than refusing the transfer, to give it a chance and then if he found it intolerable make representations for an early transfer.

41. Captain Friend sent a memo to Captain Quilley explaining on 12th May 1990 why he thought the proposal inappropriate:

> "I believe that I do not have the temperament or personality to conduct series upon series of exhaustive in depth inspections. I would also find it very difficult to comment upon a company's operation without the guidance of a Standard Operational Doctrine, which is at present lacking in the Authority. I have for many years now advocated the policy of each person's 'psychological profile' being matched to a suitable task. My own *modus operandi* of a friendly, persuasive and personally involved approach, which is very much part of my character, would I believe be inappropriate in the OSAP team environment. I further believe that the effect on my family by my prolonged absence (I could be away from my home over 20 days each month due to the fact that my house is located a long way from Gatwick in Somerset) could be seriously detrimental".

## 5. The move to OSAP

42. The transfer took effect from 1st June 1990. Within a short time a meeting took place between Captain Friend and Mr Kenneth Anderson, who was head of personnel for the SRG. Mr Anderson later, for the purposes of the industrial tribunal, recorded that Captain Friend told him at that time that he would never settle in OSAP and "would do his best to get out as quickly as possible".

43. There was a memo on 4th July from Captain Friend to Captain Sindall in which he referred to his apprehensions "regarding the long term effect of my duties with the OSAP team on my family". He requested that the appointment be reviewed. On the same day Captain Sindall sent a memo to Captain Quilley saying that it appeared that Captain Friend had been unwilling to participate as part of the OSAP team and indicating that "the degree of separation from home life an [OSAP] posting would create might lead him to tender his resignation".

44. The two principal *casus belli* occurred at about this time. It is important to note, however, that they both relate to professional issues which, as Captain Friend would have it, are to be viewed as quite distinct from his concerns about the interruption to his home life. It has sometimes been implied by various officers at the CAA that Captain Friend was really looking for an excuse to avoid carrying out OSAP duties, largely because of the inconvenience of the transfer so far as his family was concerned, but Captain Friend has emphasised throughout that this consideration should not cloud the issue of his professional concerns. It is, on the other hand, fair to record that at a meeting in August 1990 with Mr Anderson he was asked what he was trying to achieve by his "crusade" and responded that "he wanted to get out of OSAP". Mr Anderson was called to give evidence by Captain Friend. I have no reason to think that this account (in his statement for the industrial tribunal) is inaccurate in this respect. Whether Captain Friend meant the remark to be taken literally is another question.

45. It seems that in June 1990 Captain Friend was given an instruction by Captain Richardson in connection with the preparation for an OSAP audit on an operator called Merrix Air. There is a significant dispute as to precisely what the instruction was, but on Captain Friend's account he was told to "write part of the OSAP Report on Merrix Air (the loading section) at Aviation House before the inspection had started at Exeter". It is the CAA's case that it is necessary to do a significant amount of work before an OSAP visit actually takes place and that this can, quite legitimately, include the drafting of parts of the report in advance. It is their case that there would be no question of *completing* the relevant part of the report before the inspection had taken place, which would be dishonest and potentially dangerous. The first draft would be likely to change in the course of time in the light of anything that emerges during the audit or from the input of relevant CAA officials. Captain Mearns confirmed, for example, when he was called on 19th January 2005 by Captain Friend, that it would be quite common practice to research the factual background from operating manuals held at Aviation House and to put this into draft form. So did Captain Richardson. At all events, whatever it was he was instructed to do, Captain Friend, in his words, "ignored the instruction".

46. This dispute needs to be considered against the background of Chapter 11, paragraph 3.9, of the Inspecting Staff Manual which provides:

> "The team leader is responsible for collating all inputs to the draft OSAP report and arranging for the production of the first draft report".

47. The second problem which arose was that he was apparently in contemplation by Captain Richardson as leading the operational side of an OSAP audit to be carried out at PLM Helicopters in Inverness at the end of July and beginning of August. Captain Friend did not react favourably. When Mr Penketh, a flight operations inspector, told him about it, it seems that his response was to say that he had not seen a helicopter for years. Mr Penketh gained the impression that "he was not happy about the whole business" and that he intended seeing Captain Quilley about it.

48. On 24th July Captain Friend sent a memo to Captain Richardson including the following:

> "With regard to the above visit, as my flying and operational experience is <u>totally</u> devoid of any involvement with helicopters, would it not be prudent to add some operational credibility to the team, to second an FOI from FOD 2 for this visit. I am in no way qualified to conduct any form of inspection or appraisal on a helicopter operation."

49. There was another memo of the same date to Captain Sindall, in which Captain Friend referred to his concern over the effect on his family of the appointment to OSAP as "paramount". It is not surprising perhaps that the CAA has drawn attention to this document in seeking to question whether or not the professional concerns were truly separate from the domestic ones. Nevertheless Captain Friend says that these two issues were quite distinct, even though they were proceeding in parallel.

50. The following day Captain Richardson recorded in an internal note that she had seen Captain Friend on 24th July and informed him that he would be writing the FOD report following the PLM Helicopters OSAP visit. On 25th July Captain Sindall sent a memo to Captain Richardson, which may be of some significance in disclosing the attitude of management at the time. He was then in his last week as head of OSAP and was writing to Captain Friend's then immediate superior:

> "You may wish to explain to Captain Friend that your having a helicopter licence satisfies me as regards the first point [there being no need for a specialist helicopter FOI from FOD 2 to join the OSAP team at Inverness]. As concerns the second [Captain Friend's lack of qualifications relevant to helicopters], I have no doubt that [he] will profit mightily from the experience of appraising PLM Helicopters in that he will learn a little of how helicopter operations are managed and a lot of how the team works together to tackle the task: having an established framework on which to conduct an appraisal has been shown to be of assistance in all cases where team members have lacked specialist expertise. I should like Captain Friend to play a major role in this appraisal and ask you to see that this is done".

51. Thus, at this stage two of Captain Friend's superiors, at different levels of seniority, had made clear their wish for him to gain experience by joining the OSAP team for the forthcoming visit. It was regarded as an important part of his training. It should be noted that the PLM audit was arranged in accordance with the first purpose identified in Chapter 11, paragraph 1.1, of the Inspecting Staff Manual (quoted above at [24]); that is to say, its systems and standards had appeared to be consistently good. It was a candidate for a more relaxed regime of routine inspections.

52. It so happened that on 25th July 1990 there was an unfortunate helicopter accident that further fuelled Captain Friend's concerns, which he recorded in a memo to Captain Richardson. It is fair to say that there is no evidence of any link to the OSAP functions. The CAA contends that there was simply no logical connexion. This factor of helicopter accidents has continued to crop up in the narrative from time to time, including in the expert evidence for the trial. Between November 1989 and June 2004, according to the evidence, there were 28 "serious incidents" involving legal public transport flights of UK registered aircraft over which the CAA flight operations department would have had jurisdiction. It is thus right to record that (a) there is no evidence that any of them had anything to do with the composition of OSAP teams or, in particular, with the absence from any such team of a helicopter FOI, and (b) there is no instance in that 15 year period of the independent Air Accident Investigation Branch having criticised the CAA in relation to its supervisory responsibility for helicopter operations.

53. On 26th July Captain Quilley made the following point in a memo to Captain Friend:

> "I understand that you handed over your last FOD 5 assignment only last Monday and that, due to your leave arrangements, next week's visit to PLM will be the first OSAP visit you will have attended from beginning to end. It would therefore be

> appropriate to complete that and your contribution to the OSAP report before any decision is taken about your future".

He also indicated that Captain Mimpriss would be taking over line management responsibilities for Captain Friend with effect from 1st August.

54. That very day, however, Captain Friend restated his position in a memo:

> "I am forced to conclude that, as I have absolutely no qualifications or experience in the operation of rotary wing aircraft, it would be improper and imprudent of me to participate in an inspection of a Public Transport or Aerial work helicopter operating company".

The following day he made clear in the course of a meeting that he was refusing to attend, but he was told in no uncertain terms that he was instructed to do so. This was confirmed in a memo from Captain Sindall. He also asked Captain Quilley to investigate Captain Friend's refusal to attend. Captain Friend, on the other hand, expressed himself in a further memo addressed to Captain Richardson, among others:

> "I will not conduct any inspections or reviews related to Helicopters or Gyroplanes".

That day there came into existence the first of the 24 documents sued upon by Captain Friend for malicious falsehood (MF1). It was sent by Captain Richardson to Captain Sindall and, in view of the background I have summarised so far, she expressed the view that "the situation is now intolerable as the whole section is being disrupted by Captain Friend's behaviour". No doubt at a somewhat lower level of gravity, she referred in a further memo to an allegation by Mr Penketh that Captain Friend had been rude to him and Captain Dudley; that Anne Evans, who was head of the FOD administration, had complained about noise and disruption caused by Captain Friend; and that he had "again caused disruption in the section this morning".

55. Mr Penketh died many years ago. Before his death, however, he did write to Captain Friend to inform him that he had no recollection of his having been rude to him. Captain Friend relies on this, but it is not necessarily inconsistent with his having mentioned it to Captain Richardson at the time. She pointed out that, as Captain Friend's dispute with the CAA became more bitter and widely known, people kept their heads down and sought to avoid involvement. So far as Captain Friend is concerned, however, this is a clear instance of Captain Richardson having been caught out "lying". On the other hand, it would be a remarkable thing for her to have invented complaints of rudeness by two identified individuals. Captain Sindall could have had the allegations checked with them and she could thus have been easily caught out.

56. My attention was drawn to a memo from Captain Friend to Captain Sindall which was described by Mr Moloney in the course of cross-examination as an example of "protesting too much". Captain Friend sought to emphasise that his refusal to comply with instructions from his line managers was "in no way connected to the severe strain that my appointment to FOD 8 will continue to put on my family". He added that he would not attend "even if the company was within five minutes of my home or

located in paradise". Mr Moloney's point was, of course, that since no one had yet accused Captain Friend of taking advantage of the professional arguments purely to achieve his personal objectives it was somewhat curious that he should be anticipating such an argument. I am not sure that this is significant, since both aspects of his complaints were then current, and it was reasonable for him to make it clear that in his mind they were distinct.

57. Captain Friend was as good as his word and despite his instructions he failed to attend at Luton airport for an onward flight to Inverness. In the meantime, on 27th July, Captain Sindall referred to legal advice having been taken on the points Captain Friend had raised; in particular, the responsibility of the CAA and the reasonableness of the instructions given to inspectors. Mr Britton apparently stated that it was the CAA rather than individual employees who bore responsibility for any actions in the course of executing authorised tasks. Whether he was speaking of criminal or civil responsibility is unclear. I have no idea whether he was asked to address the distinction or whether he did so. It may not matter very much – any more than whether his advice was right or wrong. It would miss the point Captain Friend was making. *If* he was being asked to do something unlawful, or to take short cuts which might constitute negligence, it would not salve his conscience to be told that he could not personally be held responsible in law.

58. Secondly, Mr Britton is recorded as having expressed the opinion that it would be a reasonable instruction for an FOI to be tasked to take part in any OSAP appraisal "in that it was within his competence that he should do so". As so often, the worth of a lawyer's opinion depends on the instructions he has been given. As Captain Friend would see it, the premise was wrong, since helicopter appraisal was *not* "within his competence". What is more to the point, and seems to be implicit in Mr Britton's advice, is that it was for the CAA to determine, for the purposes of its own inspections or audits, what were the relevant qualifications for participating according to the circumstances of the particular case. As was painstakingly explained in evidence by Captain Sindall, who devised the OSAP handbook, a qualified FOI should have the relevant competence to participate in any OSAP audit, at least when training was complete. Sometimes, however, in the case of the audit of a helicopter operator, the head of the OSAP team, or the head of OSAP, or the head of FOD 2, might take the view that the circumstances called for a specialist helicopter FOI to be part of the team. There would no doubt sometimes be circumstances in which opinions would differ on this point, but the decision needed to be taken, according to the CAA, by the officer or officers charged with the responsibility.

59. Not surprisingly, in view of Captain Friend's refusal to comply with his instructions, Captain Sindall stated in a memo dated 30th July that he had no confidence that he could perform the duties assigned to him as an FOI either under his management or that of his senior. He went on to make the points:

> "The terms of reference for an FOI attached to a team, and acting as assistant (which specifically is what Captain Friend has been tasked to do) contained a clause inserted deliberately to protect any individual from having to commit himself in any way on any subject [on] which he was not competent to comment. With this safeguard in mind, [he] could remain confident that he would not be asked to report on any matters

> that required special knowledge or experience: he could, on the other hand, contribute to the appraisal by undertaking reviews of duty and training records (which should have been carried out in accordance with schemes specified in the Operations Manual), the management structure, accommodation, and any other matters that would normally attract the attention of an FOI e.g. external marks on aircraft, the security of baggage carried in the cabin, compliance with specified fuel policy etc."

When he referred to the "terms of reference", what Captain Sindall clearly had in mind was Chapter 3, paragraph 2.3, of the OSAP handbook (cited above). Captain Sindall concluded that Captain Friend's attitude was unacceptable and requested that he be removed from the section.

60. On that day there were also meetings between Captain Friend and Captain Sindall, which concerned (a) the non-attendance on the Inverness OSAP and (b) the manuals which were to form the basis of final OSAP reports.

61. Captain Sindall, again on 30th July, sent a further memo to Captain Quilley explaining his instruction to Captain Friend. He was of the view that there was no need to be type-qualified; that is to say, for an inspector to be qualified as a pilot on the type of aircraft being inspected. He explained:

> "My being prepared to allow Captain Richardson's [private pilot's licence] helicopter experience as sufficient in these circumstances is due to the fact that PLM Helicopters is a relatively small operation, it was recommended for inclusion in the OSAP programme because the Operator believed that he had high standards and wished this to be confirmed, and because FOD has an exceptionally high knowledge of all it does (Captain Mimpriss … flies with them)".

Captain Sindall also recorded that preparation in advance of an OSAP audit was essential and that Captain Friend had been asked to do that by Captain Richardson - rather than finalise parts of the report in advance of the appraisal.

62. The reaction of management to Captain Friend's outright refusal was not to dismiss him or transfer him immediately. There followed a period of two and a half years in which efforts were apparently made (albeit not, according to Captain Friend, in good faith) to supervise and rehabilitate him. Mr Murphy, who had been Managing Director of the CAA at the time, gave evidence on 21st January 2005 to the effect that, when he came to address Captain Friend's final appeal against dismissal in the spring of 1993, what struck him was just how long matters had been allowed to drag on; in other words, how much leeway Captain Friend was allowed. The tone was set by a memo from Captain Quilley of 30th July 1990. He asked Captain Sindall to prepare a paper on his unacceptable activities since joining OSAP two months earlier and identifying what would be required of him in future "and the steps to be taken to review his rehabilitation".

63. A week later, Mr Page (Head of Support Services Division) wrote to Captain Friend on 7th August formally notifying him of the allegations against him. These were

identified in a handwritten memo from Captain Richardson of the same date. Mr Page's letter is the second communication pleaded as a malicious falsehood (MF2). Since Mr Page is not alleged to be malicious, the suggestion seems to be that it was prompted by the malice of Captain Richardson. The allegations were four in number:

> "a) Despite advice to the contrary you did not comply with the instructions of your Head of Section to go to Inverness to attend the appraisal on PLM Helicopters. You had been properly notified of the time and been briefed on the programme. This task is part of the job description for your post.
>
> b) During your training in your current post you have objected to carrying out tasks assigned by the Team Leader hampering the efficient conduct of the appraisal.
>
> c) You have held many telephone conversations during working hours not directly connected to your work. This has interrupted your work and your telephone manner has disrupted your colleagues.
>
> d) You have been consistently late in attending for duty at Aviation House thereby preventing you from participating effectively in the work of your Section".

64. On 10th August Captain Sindall reported to Captain Mimpriss on Captain Friend's past schedule within OSAP and that proposed for the future. He indicated also that permission had been given for him to work at home when drafting reports. Meanwhile, however, on 8th August Captain Friend had applied for transfer out of OSAP on "compassionate" grounds, citing his domestic circumstances; specifically that he had a teenage daughter and a septuagenarian mother and mother-in-law. Eventually, this request was discussed at a meeting on 8th October and rejected in a memo from Captain Mimpriss dated 17th October. He suggested that the real source of difficulty was Captain Friend's choice to live in Somerset despite being offered a relocation package by the CAA to assist him to move closer to Gatwick. This had been offered some time before but he explained at the meeting on 8th October that he had rejected it "for family reasons". I should record that Captain Friend stated in evidence (somewhat inconsistently perhaps) that he thought the relocation package was (a) a bribe to buy his silence and (b) not a genuine offer.

65. In parallel with the issue of "compassionate" transfer, Captain Friend's refusal to obey instructions was also being separately addressed. A meeting took place on 15th August between Mr Page, Captain Mimpriss, Captain Stewart and Mr Magee, both of the Institute of Professional Managers and Specialists (IPMS), and Captain Friend himself. The purpose was to discuss the allegations set out in Mr Page's 7th August letter. There are some notes of the meeting apparently prepared by Captain Stewart. It seems to have been largely unproductive.

66. Captain Friend denied the two relatively minor allegations, about noisy telephone conversations and persistent lateness for duty. (In due course these were not pursued.) As to item (a) in the 7th August letter, Captain Friend and Mr Magee of course accepted that he had refused to go to Inverness, but took the line that he was entitled to do so because " … it raised a question of professional judgment". The stance taken

by Mr Page and Captain Mimpriss was that they were not qualified to make that judgment. That is an impasse which persists to this day.

67. Likewise, so far as (b) is concerned, Captain Friend stated that he thought it an improper instruction to prepare in draft parts of the PLM and Merrix OSAP reports before the audits had begun.

68. As I have already noted, at some point after the disciplinary hearing on 15th August, Captain Friend went to see Mr Anderson to discuss his concerns over helicopter safety but, according to Mr Anderson's evidence for the industrial tribunal, when he was asked what he hoped to achieve by his "crusade" he replied that he wanted to get out of OSAP. There is, of course, no necessary inconsistency between the two positions. There is no doubt that Captain Friend did wish to be transferred out of OSAP, but it would still be possible for him to take a conscientious stance on his refusal to obey Captain Richardson's instructions in the respects identified (albeit, according to the CAA, misguidedly).

69. On 17th August 1990 Captain Mimpriss sent a memo, which was relied upon as the third example of malicious falsehood (MF 3). It was addressed to Captain Sindall and copied to Captain Richardson, Captain Willett and Mr Page. The purpose was to report the meeting of 15th August, which was described as "rambling at times". He requested that there be fortnightly reports on Captain Friend's conduct and that he, Captain Friend, be kept advised of "any misdemeanour that occurs" and "all deficiencies that occur in his work". The memo concluded:

> "This is not a happy situation for any of us. I sympathise totally with those of you who will have to live with this problem on a daily basis. I expect, and I believe I am entitled to expect, full cooperation from Captain Friend in carrying out his duties as a member of OSAP. If he does not satisfy that expectation, I intend that he is made aware of his deficiencies. If he continues not to deliver the necessary standards of professional ability, application and reasonable cooperation, then I will be obliged to take further disciplinary action against him. Your cooperation in seeing this problem through, one way or another, is appreciated."

70. On the same day Mr Page notified Captain Friend that his work was to be scrutinised over the next three months and would be formally reviewed at the end of the year. Meanwhile, he was told that the matters of disruptive telephone calls and lateness were not to be pursued "at this time". The CAA's position was also spelt out on the obligation to obey reasonable managerial instructions. In particular:

> "It was also explained to you that the decision on whether to include an FOD 2 Inspector on the team was one rightfully taken by the Head of the Operational Standards Section. In the case of PLM Helicopters which is a single engine VFR operation the inclusion of an FOD 2 Inspector was not considered necessary and we do not believe that it is part of your remit to question the composition of the team properly decided by the Head of Section".

71. On 31st August 1990 the fourth document relied upon as a malicious falsehood (MF 4) was sent by Captain Richardson for the purpose of reporting on Captain Friend's performance in the last two weeks of August. She noted *inter alia* that he had "made some efforts to carry out the duties assigned to him in a more professional manner". More negative comments included that he was "not prepared to carry out any tasks which were not detailed in the OSAP handbook" and that he had no contact with other members of the team outside office hours apart from transport to and from the hotel accommodation. He was also advised in writing, apparently, that he should not ask an operator to book accommodation on his behalf except in very exceptional circumstances. Captain Richardson explained that there was someone employed by the CAA whose responsibility that was. This arose in connection with a visit to an operator in the Channel Islands called Aviation Beauport. In cross-examination, Captain Richardson summarised her most fundamental concern about it in the words "… the problem was the fact that you had booked three days work in January when you were only authorised to go over just after lunchtime to visit, with a single flight back to Gatwick. There should have been no hotels bookings whatsoever". This had also been referred to in the summary at the end of MF4.

72. The fifth such document (MF 5) was a memo from Captain Mimpriss to Captain Sindall commenting on this report and sent on 4th September 1990. Perhaps the most significant observation was that the OSAP handbook was written as a briefing for new FOIs and "not as a contract". He observed to Captain Sindall that he might have to "extricate us from the situation where the OSAP handbook is used as the only way in which an OSAP can be conducted". In other words, he was recording that Captain Friend regarded the guidance in the handbook as though it was exhaustive and to be rigidly interpreted. This was clearly Captain Mimpriss' understanding of what Captain Richardson had included in her report. No one apart from Captain Friend appears to have interpreted the handbook so strictly. It had always been intended that there should be scope for initiative and common sense.

73. On 14th September there was another fortnightly report from Captain Richardson to Captain Sindall reporting on Captain Friend for the first two weeks of that month (MF 6). Inevitably, when someone is being reported upon fortnightly, there will be a tendency towards micro-coverage, and thus relatively trivial detail, rather than a broad sweep of change. The report referred to the OSAP audit on Aviation Beauport. She noted that there had been a period of sick leave until 13th September but that Captain Friend had virtually completed his first draft of the OSAP report whilst on sick leave and she gave credit for that fact. The "downside" would appear to be rather trivial, in that he was criticised for turning up at the operator's premises with some duty free goods purchased at Southampton airport prior to departure. They were left with the receptionist. This, apparently, was not considered businesslike, but Captain Friend indicated that, if he had known, he would not have transgressed. On the same day there was another memo from Captain Richardson reporting on a number of apparent irregularities in Captain Friend's August travel and subsistence claims. She thought it, for example, unacceptable for him to claim a night allowance in Hammersmith (it now appears that he was staying with his son) prior to coming to Gatwick to start work at 9.45. She thought that it was inappropriate to have a night stop allowance after a half-day taken off in lieu of duty and that, since night subsistence was payable for the Gatwick area, a mileage claim for the 61 miles between Gatwick and Hammersmith was not acceptable.

74. There was a rather sarcastic memo from Captain Friend to Captain Richardson over the duty free issue, dated 17th September, showing his frustration. He demanded to be told which rules forbade him from taking advantage of duty free privileges on a public transport flight. He also rather personalised the matter by putting the word "you" and/or "your" into italics every time he used it. The implication seemed to be that Captain Richardson was seeking to impose whims of her own. This clearly does not lie at the heart of the case.

75. On 18th September there was a memo from Mr Anderson to Captain Mimpriss on the subject of Captain Friend's travel and subsistence claims for the month of May. It is not suggested that Mr Anderson was malicious but, nonetheless, the document is relied upon as a malicious falsehood (MF 7). I need not address the detail, but the conclusion was that Captain Friend appeared to be "milking" the travel and subsistence regulations "to suit his own pocket". He then went on to say that "whilst we may not be able to do anything about his claims submitted to date, I feel that we should give him positive guidance as to what we consider is appropriate for future claims". Captain Friend's case is that the publication of the document to Captain Mimpriss was caused by Captain Richardson and tainted with her malice. Time and again, Captain Friend explained that his claims were always authorised and he thus implied that, although the managers were scrutinising his claims in minute detail, they could not come up with any infringement. It is to be noted that the word "milking" in this context does not necessarily mean that the claims were outside the scope of the rules. It is equally consistent with the rules themselves being "milked" to Captain Friend's advantage.

76. Although it is important not to become enmeshed in the detail of these relatively trivial matters, I should make clear that one of the outstanding queries against Captain Friend at this time related to the unused part of a return ticket to Toulouse. Unfortunately, Captain Friend contributed somewhat to management's suspicions when he reported on 19th September that "The unused part of my ticket was subsequently returned to the staff travel office". Later, on 28th September, he reported again that "My own records indicate that the unused ticket coupon was returned to the Staff Travel Office on the 5th June 1990". There was attached what appeared to be a copy of the ticket with a handwritten note "Returned to Staff Travel 5/6/90". This could not be traced and the matter was unresolved until 11th October, when Captain Friend found the unused ticket in the bottom of his brief case and returned it to the travel office. Although Mr Moloney was at pains at the outset to say that it was not part of the Defendants' case to accuse Captain Friend of dishonesty, it is hardly surprising that at the time there were some reasonable suspicions about him, since the hand-written note he submitted from his "records" was plainly inaccurate. Although I have described these travel and subsistence queries as being relatively trivial, it is worth noting that the value of the unused ticket was £196. Mr Moloney submitted that it was hardly justified to describe management's queries as "petty and dispicable (*sic*)", as Captain Friend had done in a letter to IPMS on 12th August 1990.

77. On 4th October 1990 there was a further report from Captain Richardson on Captain Friend's activities for the last two weeks of September, during which there were three days of leave and one day's sickness for a minor operation. The period was apparently uneventful and Captain Richardson reported that "the work required was completed with no problems being reported". The next day there was a further memo from

Captain Richardson, also to Captain Sindall, referring to the rather sarcastic note she had received dated 17th September. She commented:

> "It must be remembered that he was being assessed on his ability to lead an OSAP team at the time. I have not replied to his letter as I have a suspicion that the whole episode has been manufactured to cloud the basic issue of his unwillingness to co-operate in the OSAP section".

Captain Sindall had a word with Captain Friend and the "duty free" issue was then regarded as closed.

78. As I have noted already, by 17th October it had become clear that Captain Friend's application for a "compassionate" posting out of OSAP had been rejected. Shortly afterwards, he returned in a memo of 19th October to the professional matter relating to the composition of OSAP audit teams. No criticism is made of the memo, since any employee was entitled to express his views to management and make suggestions. What he said was:

> "In view of the *litigious tide* that appears to be spreading across the Atlantic to the United Kingdom, would it not be prudent to include, when possible, type rated inspectors appropriate to particular OSAP inspections. This should negate any possible future legal disputes, that an *in depth appraisal inspection*, had been conducted by improperly constituted inspection team, because more *appropriate expertise had been available for inclusion in the team"*.

As Mr Murphy explained in the course of his evidence, what was regarded as unacceptable was the fact that he pursued the point after the suggestions had been considered by those layers of senior management who were responsible.

79. The other bone of contention, that is to say the dispute over advance preparation for OSAP audit reports, was addressed by Captain Sindall in a memo of 22nd October 1990 which encapsulates the CAA's position as it has remained down to the hearing in 2005:

> "Captain Friend was asked, prior to the PLM Helicopter appraisal, to review the content of certain parts of the [operating manual], in particular those sections which would be addressed in the report. The notes made would then form the basis upon which each section of the report might be drafted. By this means he would have a clear perception of what the operator specified for his staff. The <u>adequacy</u> of those instructions could only be assured by visiting the Operator and reviewing that matter in which he conducted his business.
>
> There was no expectation that a 'draft report' would be written <u>before</u> the visit: This was, it appears, a straightforward misunderstanding by Captain Friend as to what was expected.

> …
>
> [Paragraph 2.3 of the OSAP Handbook] specifically safeguards an FOI from commenting to an Operator on areas of operation in which he is not suitably qualified. However, this does not prevent him from being a member of an appraisal team and employed in areas in which he is competent to observe, evaluate and comment".

80. On 25th October Captain Mimpriss sent a memo to Mr Saull and Mr Anderson (MF 8), which is alleged to constitute malicious falsehood. He referred to two memos of 19th October from Captain Friend, one concerned with the appeal against the decision on "compassionate" grounds, and the other concerning the professional issue about the constitution of an OSAP team. As it happens, this also encapsulates the relevant part of the CAA's case as it has remained to this day:

> "With regard to the memo concerning qualifications of members of the OSAP team. You will see that I have already responded to Captain Friend. Taking Captain Friend's comments literally it would mean that we would require a fully qualified (license and current) FOI on every type of aircraft operated within the UK in order to ensure that we have a suitably qualified FOI for every OSAP. I regret to note that he has so far failed to appreciate precisely what OSAP is about. Namely an independent audit by a team who are more interested in standards rather than the nitty gritty aspects of aircraft handling characteristics. It is very easy, in this game, to cry wolf. However, the OSAP team is performing an independent audit of the operational manning, management, and general effectiveness of an AOC operator. I do not consider therefore that the content of the OSAP team would leave us open to some form of legal action in the event of an accident sometime after the event. In conclusion I would reinforce my belief that Flight Operations Inspectors are employed as inspectors; not as airline pilots which need to keep themselves qualified on every type.
>
> …
>
> Captain Friend has made a formal complaint to his association with regard to harassment that he believes he has experienced. To my knowledge there has been no intention to harass Captain Friend. His general manner and the way he conducts himself does leave him open to criticism. I would also like to stress that I have high regard for everyone in the OSAP team. They are all working long hours (with the exception of Captain Friend) and are continuing to work cheerfully in what is gradually becoming very trying circumstances. I fear that the time is not far off that I will have to remove Captain Friend from OSAP duties because of the disruptive influence he is having on everyone else's work. His memo to me concerning the litigious

> tide of change that is spreading across the Atlantic to the United Kingdom does make me wonder whether he is suited for inspectorate duties in any capacity. Certainly, I do not see how he can be returned to normal FOI duties, and he is rapidly demonstrating that he cannot be used in OSAP duties. That does leave me the only option left, namely that if this reaches a point where I have to move him, I will have to then place him in my Policy Section doing policy work until we can find some vehicle for giving him further training and then redeploying him".

81. Although it is not complained of as malicious falsehood, there is another illuminating memo from Captain Mimpriss dated 26th October 1990. He repeated that there was no question of harassment and explained that Captain Friend had been given written comment or criticisms on deficiencies in his work and that this was done on his (Captain Mimpriss') instructions "having taken due regard of his statement that no-one had given him any notice of criticism previously". He then continued to address the possible personality clash between Captain Friend and Captain Richardson:

> "I wish to record that I have total confidence in Captain Richardson who I also believe is not a difficult person to work with. However, she does have difficulty sometimes in accommodating fools. A problem that I suffer from and recognise. I do not believe that the way the OSAP team works should put team members under pressure that a clash of personality should come to a head. I also believe that this is a phenomena (*sic*) which all aircrew have been taught to recognise and learn to live with. Lastly, I wonder if there is such a clash, rather it is an indication to me that Captain Richardson, as senior, is doing what is expected of her".

82. On 29th October, Captain Friend was told by Captain Mimpriss of the management decision regarding the composition of OSAP teams:

> "You may also wish to know that I consider OSAP duties require no specialist skills other than those I would expect from Inspectorate staff after suitable familiarity with OSAP procedures. I have no plans, at this time, to alter the composition of the OSAP team nor do I have any difficulty with the programme as arranged by Captain Sindall".

There was a further spat during the evening of 30th October 1990, when Captain Friend was with an OSAP team in Aberdeen for the purpose of inspecting Business Air. He moved out of the hotel which the other members of the team were occupying and found his own accommodation (because, as he told me, the reception area smelt of beer and vomit). This apparently led to problems when all the other members of the team had to travel a considerable distance to and from his new hotel. It seems that because of the additional cost Captain Richardson contacted him in Aberdeen to explain that such expenditure had to be authorised in advance. Captain Mimpriss' note of 31st October records subsequent events:

> "Captain Friend phoned Captain Richardson back five minutes later. He said that he was appalled that she had considered contacting him on this subject. He said that he would book into a hotel that suited him. If he thought it was not suitable, he would move to another, regardless of any instructions given to him. He would not comply with the instruction to stay in the same hotel as the team and he would stay where he wanted. He added that he was not prepared to be a Boy Scout, nor was he prepared to work on OSAP matters in the evenings.
>
> …
>
> Captain Richardson has impressed on me the fact that none of the OSAP team like working with Captain Friend because of his disruptive nature, and that she had had to talk the team into accepting him on this OSAP any way".

83. The team leader on the Business Air OSAP was Mr Stovold who on about 5th November recorded his account of those events:

> "He was advised all were endeavouring to keep within the allocated allowances and that it was not considered necessary to revert to actuals [i.e. actual expenditure incurred by Captain Friend over and above the bookings arranged].
>
> The remainder of the team were asked their views of the hotel and everyone was quite satisfied, in fact I believe quite delighted with the olde world charm of the place.
>
> The fact Brian moved into a hotel in Dyce necessitated us having to drop him off first in the opposite direction to our own hotel, requiring us to negotiate the rush hour traffic in both directions, twice a day.
>
> Comments passed by team members indicated they were not at all happy with this arrangement and he should consider making his own transport arrangements if he chose to be different.
>
> …
>
> As I mentioned to you on the phone, I am in no position to judge Brian's ability to carry out his work but since he joined OSAP he has created an unparalleled atmosphere of concern within the team for its continued team spirit and moral[e]".

There is no reason to suppose that Mr Stovold was malicious or making it all up.

84. The next document relied upon as a malicious falsehood (MF 9) is a memo from Captain Richardson of 5th November harking back to the Business Air OSAP in Aberdeen. It is a six-page hand written memo. It embraced a number of matters, some of which I have already summarised above. She also referred to the fact that Mr

Phillips, another member of the team, had been asked to give his views on what had happened:

> "Mr Phillips was unhappy as he felt that the OSAP section is 'being torn apart'. Mr Phillips feels that with the amount of effort that he has put into finding suitable accommodation he cannot accept that effort being 'thrown back in my face'. Mr Phillips would also like to ask why Captain Friend can leave the pre-booked hotel and insist on the rest of the team adding 30 minutes to their journey time to collect him from his hotel. This means that the rest of the team had an extra 1 hours travelling per day".

There was also a complaint from Mr Phillips that Captain Friend had not checked an apparent over-weight take-off and landing that he had found, and also to the effect that Captain Friend "was hardly ever present during the OSAP. He was either flying or chatting to the staff, leaving Mr Phillips and Captain Whittle to do the vast majority of the paperwork". There were also complaints that he had not arranged adequate training for Captain Whittle (something he hotly disputes). Moreover, Captain Richardson reported observations from both Mr Phillips and Mr Stovold to the effect that Captain Friend had made constant attacks on Captains Mimpriss, Sindall and Richardson, which were unacceptable. Mr Stovold also apparently commented to her that he was not prepared to continue to work in the OSAP section if Captain Friend remained. She concluded:

> "It is becoming obvious that if Captain Friend remains in the section standards will deteriorate and that team spirit will disappear. An FOI in the OSAP section should have an in depth knowledge of the requirements and should display an ability to work in harmony with both the operators and other members of the OSAP team. Captain Friend does not have either of these qualities".

She also observed that Captain Friend's behaviour was unacceptable to her and that she found her own position becoming "untenable". She told me that one of Anne Evans' complaints of disruption in the office was that Captain Friend was shouting at her (Captain Richardson).

85. Two matters, in particular, need to be noted about this episode. First, for whatever reason, the OSAP team had clearly not been "a happy ship". Secondly, whatever Captain Richardson had to relate about the matter was, in the nature of things, based upon reports from other members of staff. It follows, presumably, that for these comments to constitute a malicious falsehood it would be necessary for Captain Friend to demonstrate that she was deliberately misrepresenting the content of these reports.

86. Also on 5th November there was a memo from Captain Sindall (attaching Captain Richardson's hand-written memo) and requesting Captain Friend's removal from OSAP. This is not complained of in itself as a malicious falsehood, but it is important in reflecting the nature of management's concerns at the time:

> "… You will be aware of the difficulties that have been experienced by Captain Friend in settling down to working at OSAP business, but I must now draw your attention to standards of behaviour exhibited by Friend that, if are as have alleged (*sic*), are unacceptable.
>
> I am now of the opinion that Captain Friend has shown no serious intent of working to OSAP disciplines, neither obeying the instructions I have specified nor complying with those given by his superior officer (Captain Richardson). I realise that the attitude he has displayed towards the latter is, at the very least, discourteous, and certainly indicates the difficulty he has in taking instructions from her.
>
> I also wish to draw your attention to the allegation that Captain Friend began preparations to operate as a pilot's assistant whilst carrying out an inspection: I would not have expected such a mistaken approach to be taken by an FOI of his length of service in the Inspectorate, and consider that it brings into question his professional competence.
>
> The continued presence of Captain Friend in OSAP is something that I suggest should now be terminated. The volume of complaints about his conduct and behaviour raised by his colleagues, his unprofessional attitude and poor time keeping, and his refusal to accept reasonable instructions communicated to him by his superiors in the Section combine to reveal a character that acts against the best interests of himself, Department and the Authority ".

87. On 6th November 1990 Captain Mimpriss gathered together a summary of complaints "in the event that some form of hearing was required in connection with Captain Friend and his sojourn with OSAP". The history is set out under various categories and under paragraph 2 ("Circumstances leading up to the first hearing and the warning issued to Captain Friend") he noted that Captain Friend had written to Captain Richardson on 24th July advising her that a helicopter specialist should be included in the OSAP visit to PLM and added:

> "What he did not know was that helicopter specialists were not always included in an OSAP; further, that PLM Helicopters was judged to be a good company where no problems were anticipated, and that anyway, OSAP required a standard procedure to be exercised using inspecting techniques which did not require specialist input".

At the end of the memo the position was summarised as follows:

> "Genuine attempts were made to absorb Captain Friend into the OSAP team. He rejected everybody and everything all the way through. His judgment as an FOI is undoubtedly in question as a result of the reports received from the Business Air OSAP.

> His memory of facts, after the event, does not always accord to the understanding of everyone else involved. I find it hard to believe that we are all wrong, always. The issue over the [Toulouse unused] ticket is a good indication that his memory is not as good as he would like to emphatically declare. His (*sic*) is a man with a sharp temper, not afraid to raise his voice in public places. At one stage during the hearing, in front of Mr Page [on 15th August], he threw a file at me in a moment of anger.
>
> I regret to have to note that he appears to be totally unmanageable, and that the problems we experienced in the OSAP team were symptomatic of somebody who had run roughshod through the system and had, for the first time, been stopped".

88. It appears that by this time Captain Friend was already threatening to sue Captain Sindall, Captain Richardson and Mr Saull for libel. According to Captain Mimpriss, he had been approached some time in September or October 1990 by Basil Courtman, a member of the Flight Operations Policy Section of SRG, who had told him that Captain Friend had been speaking about him, Captain Sindall and Captain Richardson in derogatory terms and saying that "he is going to have you in court for libel".

## 6. Captain Friend's time in the Policy Section

89. Not surprisingly perhaps, in these circumstances, it was on 7th November decided that Captain Friend was to be moved out of OSAP to the Policy Section.

90. There is a dispute between Mr Williams and Captain Friend as to whether, shortly after the transfer, Captain Friend had told Mr Williams that he would not let the matter rest and that he hoped that Captains Mimpriss, Sindall and Richardson would all be dismissed.

91. Alongside the allegations of disruption, rudeness, insubordination and the dispute over professional issues, there were continuing rumbles in parallel about travel and subsistence claims which were being investigated. Very few days went by in the autumn of 1990 without documents being generated on these various topics. It is impossible and unnecessary to go through them all.

92. I should turn now to the document of 27th November 1990 which is said to constitute another malicious falsehood (MF 10). This consisted of a memo from Captain Mimpriss to Mr Saull and Mr Anderson identifying seven matters to be addressed with Captain Friend. The categories listed were as follows:

    i) Original reasons for posting to OSAP (including the Box 4 "barely satisfactory") marking, a recommendation to improve his written work by posting to OSAP, concern over time allocation, and over his high mileage.

    ii) Conduct while in OSAP:

        a) Refusal to go on the PLM OSAP.

b) Questioning the management of OSAP and refusing to do tasks not included in the handbook.

c) Not making a statement concerning possible irregularities during the Aviation Beauport OSAP.

d) Not adequately supervising the work of Mr Phillips and Captain Whittle while under training on the Business Air OSAP and failing to investigate an apparent over-weight operation.

iii) Conduct since leaving OSAP: failing to undertake any effective work in relation to a Special Objective Check (SOC 22).

iv) Inappropriate behaviour for a FOI (requesting Aviation Beauport in the course of an OSAP to book accommodation – thus getting a discount, arriving with the duty free bottle, proposing to take part in the flight inspection by acting as a crew member for Business Air in the course of an OSAP).

v) Personal behaviour, including disruption, rudeness, lack of courtesy to the OSAP leader, speaking in derogatory terms of various members of management, moving out of the accommodation and causing inconvenience to other members of the team, the request that he be removed by his colleagues.

vi) Alleged abuses of the travel and subsistence system, with regard to overnight expenses, excessive mileage and a claim in respect of Exeter Airport.

vii) Irregularities about duty hours worked.

He concluded by saying:

> "In summary, Captain Friend will need to demonstrate over the next six months that he is capable of:
>
> a) Working full and regular hours at Aviation House.
>
> b) Adopt a flexible and courteous approach to his management.
>
> c) Carry out all instructions given to him.
>
> d) Demonstrate his ability to become a member of a team.
>
> e) Only claim overnight expenses when they can be justified. Such claims should not be for excessive mileage (viz more than 15 miles overnight when at Gatwick)".

93. It is right to note that on 14th November Captain Mimpriss recorded that he was "reasonably happy with the explanation over night stop at Exeter".

94. Various efforts were made to achieve a satisfactory working relationship with Captain Friend. A way forward was suggested by Mr Page in a memo of 29th November addressed to Mr Saull. This followed discussions with Captain Stewart and Mr Magee of IPMS. I should mention at this point evidence given by Mr Magee about a

conversation he had at about this time when Mr Page said something to the effect that Captain Friend "had a point" but he should not be allowed to win it "in this way". This is supposed to have lent support to the allegation of conspiracy. There is nothing in it, however, since it merely reflected the management view that Captain Friend was entitled to raise any safety concerns. What he was not entitled to do was to pursue them in the way that he did, defying every layer of management above him and refusing to accept their judgment. Mr Page summarised matters as follows:

> "Turning to the question of Friend we had a very frank exchange of views concerning his attitude and the way in which he approached his job. There is clearly an acknowledgment from the IPMS representatives that Friend is not the easiest employee and they accepted what we said in terms of his abilities and the fact that his appraisal markings last year clearly indicated shortcomings. I told them that our objective was to interview Friend and establish an action plan with him starting with some work under close supervision and direction leading, given satisfactory performance, to further training as an FOI before he could be allowed to carry out FOI duties. I emphasised the need for the Authority to have total confidence in FOIs who operate independently with the Companies being regulated and this view was supported strongly by Stewart.
>
> An impediment to the initiation of such an action plan is the disciplinary letter which still remains on the file concerning the PLM helicopter incident and the associated complaints which we had concerning Friend's behaviour. IPMS suggest that there is some uncertainty concerning the duties and rights of Captain Friend in such a situation and in the light of subsequent events and our intention to rehabilitate him it might be helpful if we formally withdrew the allegations in that letter in order to allow your counselling to have maximum effect. I would not have any serious difficulty with this if you are happy to go down that road. Please advise. I think we need to move quickly on this matter in order to get the programme under way".

95. A few days afterwards, on 3rd December 1990 Mr Page wrote to Captain Friend stating that the disciplinary charges originally raised on 17th August should be considered as "withdrawn". Unfortunately, however, over the past fifteen years the parties have continued to interpret this gesture quite differently. The CAA takes the view that this was an indication that the charges had been withdrawn without prejudice to their stance over the professional issues, in order to try and give Captain Friend a chance to be rehabilitated. He, on the other hand, asserts that the withdrawal represented a victory for him and an implicit acknowledgment by the CAA that his stance had been correct.

96. Captain Friend acknowledged that Mr Page's letter "had been constructive" but went on to say that his motives throughout this affair had been to protect the interests and reputation of the Authority and its inspectorate. There was a meeting on 12th December attended by Captain Friend, Mr Saull, Mr Anderson and Captain Stewart. The line taken by Captain Stewart and Captain Friend was that the professional

questions could not be ignored even though the disciplinary "slate" had been wiped clean. Mr Saull indicated that management had the "right to manage" and could not accept any individual member of staff refusing to carry out instructions from line managers or heads of department. In the course of the trial, Captain Friend told me that this was the moment when Mr Saull had become a conspirator. He interprets this as a desire to assert the right to manage for its own sake and to accord it greater priority than air safety. On the other hand, management do not see the two as distinct issues. They take the view that, when it comes to making assessments of risk and judgments on the requirements of safety, it is the duty of senior management to take what *they* consider to be the right decisions (while taking due account of any constructive suggestions from others, including more junior staff).

97. At all events, Mr Saull indicated that it had been decided that Captain Friend should serve for a time in the policy section and if, after six months, this proved satisfactory then consideration would be given to reallocating him to FOI tasks. His performance and attitude needed to be closely monitored before this could take place.

98. Thereafter, Captain Friend continued to pursue the "professional issues" and also wanted to know why there was still a lack of confidence in him to carry out FOI duties. Mr Saull replied to Captain Friend on 19th December when he stated his position as follows:

> "The lack of confidence stems from your challenge and unwillingness to accept some of the Authority's policies and procedures which have been developed over a considerable period of time. Personal, as well as team effort is vital to the overall success in Flight Operations inspecting and auditing work, indeed it applies throughout SRG activities.
>
> Since your posting to the OSAP team, your attitude to working effectively and expeditiously has been unfavourable and not in a co-operative spirit which has caused disruption to the department's work. Your personal situation seems to have taken precedence over work considerations, which is not helping matters.
>
> As stated at our meeting on 12th December, I would like to see a period of consistently sound work and a co-operative approach with your colleagues. I therefore, wish you to remain in Flight Operations Policy and Standards Department for nominally a six-month period.
>
> I believe the management is doing its best to put past events behind in order to progress your career in the Authority. I would like to reassure you that it is my desire to get you back into the Flight Operations Inspecting role as soon as possible, making the best use of your considerable experience. However, I must first have confidence that your views on the Authority's policies and procedures are consistently acceptable. I do not intend to transfer you back to an Inspecting Section at present".

The CAA rely upon documents of this kind to support their propositions (a) that there was no conspiracy to damage Captain Friend's interests but rather an intention to give him every opportunity to rehabilitate himself, and (b) that there was no question of the Authority changing its stance or recognising that Captain Friend's approach to the "professional" issues had been correct.

99. By this time Captain Friend had been working in the Policy Section for about a month and on 20th December submitted his draft of SOC 22. That copy was annotated with comments from a supervising reviewer and the final version was dated 12th February 1991. Mr Williams told me how frustrating he found it that Captain Friend, having been fully briefed on 12th November, did not come up with a draft until 20th December.

100. 1991 began with a memo dated 4th January from Captain Friend to Mr Saull in which he claimed that his refusal to attend the OSAP in Aberdeen had been "totally vindicated". He never appeared to accept that the withdrawal of the charges at the beginning of December had been "without prejudice". He therefore requested that he be returned to FOI duties forthwith, although not working with Captains Mimpriss, Sindall or Richardson. He made similar points in memos dated 11th January to Mr Saull and Mr Ashford (who was group director of SRG) respectively. Mr Saull was thus obliged to repeat that he wished to get Captain Friend back into a Flight Operations role as soon as possible, but "before this could happen I need to see a period of consistently sound work and have confidence that your views on the Authority's policies and procedures are consistently acceptable, of which I am not yet convinced". On 22nd January he wrote again in response to the memo of 11th January:

> "You persist in stating that your views on OSAP have been vindicated – I cannot agree. I consider the OSAP procedures are sound and the policy has not changed as a result of your criticisms, despite your views. As a direct result of your attitude with working in OSAP you lost the confidence of three levels of management above you - I suggest you might care to reflect on this fact. I have done my best to give you a fresh start which you appear to reject and continue to challenge my right to manage the Operating Standards Division. I am not prepared to transfer you back to a Flight Operations Inspecting role unless I have the necessary confidence, a situation which cannot go on indefinitely".

101. Next there is a further document from Mr Saull addressed to Mr Ashford setting out his standpoint. This is dated 23rd January 1991 and is also sued upon as a malicious falsehood (MF 11), although it should be noted that it is primarily based on assessments by others. He referred to Captain Friend's allegation of harassment and noted that he had not received any substantiation of it.

102. He continued:

> "6. I have reviewed the OSAP procedures set out in the OSAP Inspecting Handbook and can find no fault with them. The preparations for an OSAP are entirely sensible despite Captain Friend's misplaced criticisms. Captain Sindall has confirmed

> that no changes have been made to the policies and procedures in the OSAP team. Captain Friend continually states his criticisms including that of not including a professional helicopter FOI in the OSAP team have been vindicated. The next OSAP after that of PLM was a major operator, (BIH). As per normal procedures, a helicopter specialist was included on the team. PLM was a requested OSAP situation to ensure they were managing their affairs well (Captain Mimpriss flies the line with PLM).
>
> …
>
> In summary: -
>
> - He has lost the confidence of three layers of management during the past six months (SFOI, PFOI and head of department). He has been very disruptive to the working of the Flight Operations Department and his work output very limited.
>
> - He continues to challenge my right to manage and will not accept he is wrong in any way.
>
> - Although his straight technical ability has not been in serious question, his attitude to the CAA professional management (OSAP in particular) is not acceptable and could seriously embarrass the Authority if he was out on his own.
>
> - His overall work production in the first month in the Policy Section was low. He seems to find ways of not spending much time in the office – always a good excuse.
>
> - He has, in my opinion, been devious in his handling of the 'harassment' allegations.
>
> - He has clearly demonstrated he is unable to work in a team environment and it is not a good situation even as an FOI, away from base.
>
> - He must, in my opinion do a first class job in Flight Ops Policy Section and change his attitude before I am willing to position him back to FOI duties".

103. On 29th January 1991 Mr Ashford informed Captain Friend that he would remain in the Policy Section at least until the end of March and might be returned to FOI duties thereafter if there were "satisfactory reports on your work and attitude" from Mr Williams. At that time Captain Friend had described Mr Williams, at a meeting on 23rd January, as a man of integrity in whom he had confidence. (He now asserts that he too was malicious and part of a conspiracy to damage him.)

104. At this stage Captain Friend's Member of Parliament, Mr Paddy Ashdown, was brought into the dispute and he received Captain Friend's summary of events on 3rd February 1991. On the same day Captain Friend sent a memo to Mr Ashford in which he stated that he made no apologies for aggressively pursuing his case to achieve justice.

105. The then chairman of the CAA (Lord Tugendhat) was drawn in by Mr Ashdown who invited him to let him have his comments. A few days later, Mr Page by memo of 14th February had to brief Lord Tugendhat. He encapsulated the position after reporting in some detail as follows:

> "*The Way Ahead*
>
> The CAA has been making a genuine effort to bring Captain Friend back into the FOI team. He is a man of great principle and is now in an entrenched position. He does not accept that the questions he has raised have been addressed and that his managers take a different view from his.
>
> It is difficult to see how we can have confidence in him as an FOI without a change of attitude".

106. On the same day there was a memo from Captain Richardson to Captain Mimpriss dealing with other details of Captain Friend's performance (MF12). She was commenting in particular on his performance in connection with OSAPs at Aviation Beauport and Business Air. During the Beauport appraisal Captain Friend was detailed to lead the appraisal accompanied by Captain Richardson. The flight inspections and the assessment of training and testing documentation were dealt with solely by Captain Richardson. As to the Flight Ops draft report this was submitted by Captain Friend but was "below the standard that would have been expected". She claimed that in excess of ten drafts were required before an acceptable document was produced.

107. As to Business Air, this audit was led by Mr Stovold, and Captain Friend carried out three days of flight inspections. In her view he had failed to use his time to the best advantage, and there were two matters in particular which she thought "beyond comprehension". That is to say, there were flights on consecutive days on the same aircraft with the same crew on the same route and, secondly, the fact that he contemplated acting as a crew member. He was also criticised for removing a pilot's training records despite the fact that the company was obliged to retain them in its possession for two years.

108. The very next day there was another document sued upon as malicious falsehood (MF13). This was from Mr Williams to Captain Mimpriss assessing Captain Friend's progress in the Policy Section. He observed that:

> " … Due to his dispute with the Authority and a period of sickness, it was difficult for him to produce any effective work. He now appears to have settled in to a degree but it is evident that he resents the situation he finds himself in, and is still

> actively trying to alter it. After some initial reluctance he now willingly undertakes tasks allocated to him.
>
> …
>
> Overall, his productivity and effectiveness to date (15/2/91) within the Section is not to the required standard or quality of the Policy Section Flight Standards Officer, but then the Authority did not originally employ him as such. In my opinion it is doubtful if he would satisfy the basic FSO requirements in terms of background of staff work and report writing ability together with an analytical and logical mind".

There were also criticisms that he was spending time on the telephone, apparently directly related to his ongoing dispute against the Authority. He assessed him initially as below standard but then as improving to a "low box 4 marking (i.e. falling some way short of fully meeting normal requirements of the FSO job he is currently undertaking)".

109. On 20th February Lord Tugendhat eventually replied to Mr Ashdown (largely relying upon Mr Page's detailed memo). This is relied upon in itself as a malicious falsehood (MF14). Since, however, neither Lord Tugendhat nor Mr Page is alleged to have been malicious, the claim appears to be based upon information having been fed to them maliciously by one or more of the individual Defendants. Captain Friend suggested in cross-examination that all four were responsible. He described it as "full of falsehoods".

110. It was a detailed five page letter of which the following paragraphs are of particular significance to the present dispute:

> "Captain Friend's allegations that the authority was not following correctly the procedures laid down for the Operating Standards Appraisal Programme (OSAP) have been discussed, as the file shows, on a large number of occasions with Captain Friend and the representatives of his Trade Union. The procedures for OSAP inspections have been reviewed carefully by the managers concerned but Captain Friend has been unable to accept that the procedures he was asked to follow were not only correct but were those which had been used with great success for many years.
>
> It is crucial to an understanding of this position that the two types of inspection are recognised. Firstly, there are the formal routine visits on the part of the Flight Operations Inspectors (FOIs) who are assigned to each holder of an Air Operators Certificate. These staff are not only fully trained in inspection procedures but they are also experienced professional pilots well acquainted with the role of company and the types of aircraft it operates. The second type of inspection is known as an OSAP. It acts as an in-depth quality assurance audit but many of the techniques involved are substantially different

> from those employed in the first type of inspection. An OSAP is carried out by a team of FOIs and aircraft maintenance surveyors who belong to a Section specifically set up for this purpose and which, from August 1990, has been in a chain of responsibility independent of the management of routine inspections.
>
> The OSAP task is to probe into the overall soundness of a company's operational management and control. Among other things it checks support arrangements, staffing, accommodation, application of the Flight Time Limitations scheme, fuel policy and training procedures. Personnel in the OSAP team, therefore, do not necessarily need to be specialists on the type or class of aircraft operated by the Company. The general skills of the staff together with their OSAP training and the laid down procedures are sufficient qualifications in themselves.
>
> Of course, each OSAP inspection has to be considered on an individual basis and the OSAP team can be, and is, augmented by specialist staff whenever the circumstances warrant it.
>
> FOIs are recruited and trained to use specialist inspecting skills in order to supervise AOC operations conducted by UK operators. In relation to a routine inspection programme we assign FOIs with appropriate experience to monitor the operators whose standards they will supervise. Conversely in the OSAP team Inspectors are required to use more of their inspecting skills rather than particular aircraft type knowledge.
>
> Captain Friend has not been able to understand the difference between his previous FOI inspection task and that which he is required to undertake as a member of the OSAP team".

111. On 27th February 1991 Mr Williams produced Captain Friend's annual staff report for 1990. He made a Box 5 assessment (i.e. inadequate performance). This was countersigned by Captain Mimpriss who agreed it. He referred to his continuing negative behaviour and attitude and concluded that:

> "I have not seen any real commitment from him to addressing his problems, nor do I have confidence that he would represent the views of the CAA with operators. I cannot at this time recommend that he is suitable for FOI duties".

There followed a letter on 5th March from Mr Page warning him that there was required "a marked change in your approach to your work, an improvement in the quality of work produced and a demonstrable commitment to carrying out your tasks in accordance with the instructions, practices and procedures laid down by your managers".

112. After further briefings from Captain Stewart (not himself a helicopter expert) and from Captain Friend, Mr Ashdown pursued the matter with Lord Tugendhat in a letter dated 11th March.

113. It is instructive to bear in mind exactly how Captain Stewart was briefing Mr Ashdown in March 1991, no doubt in consultation with Captain Friend. He sent him a memorandum which was headed as follows:

> "Please use this report as a detailed response to the Chairman CAA's letter, to you, of the 20th February 1991. It provides an objective view, factually correct, of the mess that the SRG of the CAA is in".

It contained just over three pages of allegations including the following:

> "… The implied threats of his managers were ill-advised and clearly demonstrate their own judgment weaknesses and unprofessional attitudes. This is the behaviour of managers who do not understand, nor apply, normal practices and procedures. To threaten a person who properly brings valid points to their attention, particularly at the time of a fatal North Sea Helicopter accident, indicates that the whole management structure needs to be reviewed, not the normal practices and procedures, as suggested.
>
> … management eventually accepted both IPMS and Captain Friend's arguments, and the managers, by the 3/12/91 (contrary to discipline procedure time scales) withdrew the wrongfully structured and 'flawed' charges.
>
> The extended time interval allowed for continued petty snipes, by managers, to be made, which collectively resulted in threats, victimisation and harassment.
>
> … The letter from J Saull (8/11/90) explains the correct reason for the temporary transfer not as they have stated. This is a further example of his advisers, concealing from him, the chairman, the true facts of this matter. They have also misled the Group Director, and therefore any assessment he may consider for 1991 is flawed.
>
> … They have stated a difference between normal inspections and OSAP. This is incorrect. OSAP uses exactly the same ISM instructional background but is wider in its application.
>
> … In the brief description of OSAP they omit to mention, Flight Inspections, which are mandatory.
>
> … Page 5 of [Lord Tugendhat's letter] infers that Captain Friend was mistaken in that 'he was asked to complete reports before carrying out inspections'. He was, on at least two

> occasions. He does know how to prepare for OSAP – the notes are available for inspection. He rightly finds the instruction improper and regardes it (*sic*) as 'prior prejudice' in legalistic terms.
>
> In their summary they state that a review has been carried out, over the last six months, of CAA procedures. That was not required. All Captain Friend wanted to do, was comply with the established procedures, proven, as they state, over a number of years, but the managers, do not understand them, or wish, it appears, to follow them. Instead they have deliberately tried to victimise and harass Captain Friend to cover up for their own deficiencies. They have even included matters not connected with this case, that we have already answered. … The managers have scrutinised his work, without advising him, in the hope that they would trap him. The end result appears that they have trapped themselves.
>
> Captain Friend should never have been displaced from FOI duties. He knows the Authorities position very well, better than his 'managers' and therefore it is their judgment that should be examined for reliability not his. … We believe that the Chairman has been seriously mislead (*sic*) by his subordinates [about] the facts of Captain Friend's grievances.
>
> … It is apparent that the Chairman permits a management structure within the CAA that would not be allowed in an AOC holder".

Whether this document provides, as claimed, "an objective view, factually correct" is open to question, but it is hardly surprising that there was unease among Captain Friend's managers and a lack of trust.

114. There was a bright spot on 14th March 1991 when Captain Grange reported to Captain Mimpriss in respect of performance from 1st February to 15th March. He described Captain Friend as having performed to a satisfactory standard and as having been enthusiastic in his approach to the work and as accepting guidance when appropriate. The next day, however, there was another document sued upon as a malicious falsehood (MF 15). This was a memo from Captain Mimpriss to Mr Ashford, in which he reaffirmed his view that Captain Friend remained unfit to return to FOI duties.

115. He was particularly concerned at the allegation by Captain Friend to Mr Ashdown that the OSAP report on PLM Helicopters had been "flawed". What was clearly troubling Captain Mimpriss at the time was the suggestion to the Member of Parliament that the report could be construed as "condoning the company's use of its helicopters outside their certificated limits". He concluded by saying:

> "Whatever the reasons for his actions, this affair has confirmed in my mind that I could not for the foreseeable future recommend his being returned to FOI duties.

> Until early February I believed Captain Friend had indeed taken heed of everyone's advice and was attempting to address his problems. The current saga with Mr Ashdown's letters indicates that he believes himself to be correct in every issue. Alternatively, he judges that by mounting a 'scare' campaign, whether true or not, he can seek vindication from a rather clumsy attempt to be posted out of OSAP.
>
> When we talked yesterday our conversation was directed along the lines of how we could re-introduce him back into FOI duties.
>
> You will recall that I expressed great reservations about returning him direct to Flt Ops Inspecting and proposed that the only option available was that he should do a period of re-training in the OSAP team. My arguments being that we were aware of too many deficiencies to be able to release him to FOI duties because it would be impossible to have him paired and supervised fully for some time into the future. Distasteful, though that option will be for my staff, I felt that putting him in a team would be the best way to protect the CAA's responsibility and interests. However, on reflection I believe such an option could create antagonism between himself and the OSAP staff presently employed. I believe we can address these concerns by seeking an undertaking from Captain Friend that he will behave in a co-operative manner and will obey all reasonable instructions of his managers. With that understanding, I will be able to seek the co-operation of the OSAP staff.
>
> Having now discovered the background to the charge that the PLM OSAP was 'flawed', I have to admit that I believe he is unsuited for FOI duties. However, we should attempt to rehabilitate and educate him if we can. I could not recommend returning him to FOI duties under supervision, but I do believe we could attempt such an exercise under close controls that could exist in the OSAP team".

116. When Captain Mimpriss referred to the "background" to the allegation that the report was flawed, he was referring to some observations of Mr Tony Hutchings (who was a specialist on helicopter certification in the SRG). These observations apparently formed the basis of Captain Friend's allegation, but Captain Mimpriss thought he had wilfully misunderstood them. Mr Hutchings, as a helicopter specialist, had apparently made a remark to the effect that wording on the front of the PLM report was "unfortunate in that it could be misinterpreted". He was referring to the statement that the company operated Group B Helicopters over "hostile terrain". He explained in a memo of 14th March that " … the Company Manual as a whole goes to great lengths to ensure that pilots are fully aware of the limitations of Group B Helicopters in particular when operating over the Scottish highlands", having regard to the fact that such aircraft need to be operated "in such a manner that a landing can be made at any time en route". He was satisfied that there was no need for the wording to be amended

or to take any further action, since all relevant parties understood the meaning behind the use of the phrase "hostile terrain". It was against this background that Captain Mimpriss clearly thought Captain Friend's comment to his Member of Parliament was mischievous. The supposed justification for using the word "flawed" was not explained to Mr Ashdown.

117. In view of the allegation of malice against Captain Mimpriss in respect of the 15th March document, it is appropriate to note his response to the positive remarks of Captain Grange the day before. On 18th March he wrote to Mr Page:

> "As discussed on Friday 15th March, provided Captain Friend continues to apply himself satisfactorily in Policy Section I will be in a position, by the end of the month, to suggest that he could be returned to OSAP for a six months re-training programme/appraisal period. You are aware of my strong reservations concerning his commitment and suitability for FOI duties, but I do accept that by re-posting him back to OSAP, we do allow him the opportunity to satisfy us that my reservations are unfounded".

118. It is right to record that Captain Friend described Captain Mimpriss' "alternative" scenario of the "clumsy attempt to be posted out of OSAP" as a "disgraceful" comment. It has to be seen, however, against the background that Captain Mimpriss simply did not believe, in the light of what he had been told by Mr Hutchings, that Captain Friend could genuinely believe that the report was "flawed". He was therefore wary of him and his motives.

119. There was another letter from Lord Tugendhat to the Member of Parliament on 19th March. Again, it is to be noted that the stance of the CAA on the matters relevant to the current proceedings was as it has remained over the last 14 years. It is of some relevance to the proposition that the withdrawal of disciplinary charges in December had "vindicated" Captain Friend and betokened a change of policy:

> "The fact of the matter is that Captain Friend, a relative newcomer to the Authority, has sought to substitute his judgment for that of his senior managers on how an OSAP team should be composed and what procedures the team should follow. He was, as you know, a reluctant transferee to OSAP duties because of the effect on his domestic and social life.
>
> As I made clear in my letter to you of 20th February, I have satisfied myself that the Authority's OSAP procedures are indeed properly carried out by staffs who are appropriately qualified for the purpose. I am, of course, fully aware of the very significant differences between aeroplanes and helicopters. I am also aware of that there are no significant differences between the regular inspections of the aircraft operators which are carried out by assigned inspectors and an OSAP inspection. The latter is not a substitute for but a supplement to the former. I have no doubt that an OSAP of a small helicopter company like PLM Helicopters, including the

> OSAP flight inspection, can properly and competently be carried out by a team which does not include a professionally quailed pilot. Indeed, the fresh eye which a fixed wing pilot brings to a helicopter flight inspection has, on occasion, been shown to have positive advantages. The attachment to your letter of 11th March repeats the allegation that Captain Friend was asked to draw up inspection reports before the inspection had begun. What Captain Friend has interpreted as an instruction to draft a report was an instruction to review the Operations Manual of the company to be inspected and to list under headings any deficiencies which he perceived in the procedures set out in the Manual, in order that those deficiencies could be looked into and discussed with the company during the course of the OSAP. Such a procedure is by no stretch of the imagination tantamount to drafting a report in advance of the inspection. The matter has been fully explained to Captain Friend by a senior manager, but he has chosen not to understand.
>
> Since Captain Friend appears not to recall the criticisms which have been made of his work and behaviour during his career with the Authority, I have asked for a list to be drawn up and given to him as soon as possible …
>
> Captain Friend still has an opportunity to re-establish himself and to gain the confidence of his managers. I sincerely hope he will take it".

It is perhaps unfortunate, with the benefit of hindsight, that it was not spelt out to Mr Ashdown from the outset that Captain Ramsdale, as head of the helicopter department, was quite satisfied that no specialist FOI was needed for the PLM Helicopters OSAP visit.

120. Another positive report came from Captain Grange to cover the last two weeks of March on 2nd April 1991. He reported that Captain Friend continued to work to a satisfactory standard.

**7. The period of sick leave from April to July 1991**

121. There was then an unfortunate hiatus because on the same day, Captain Friend having been kicked by a horse, he became unable to work because initially of concussion and broken ribs which later led to pleurisy. He therefore did not return to work until the middle of July.

122. Meanwhile, on 8th April Mr Page sent a letter to Captain Friend providing a list of criticisms, as had been foreshadowed in Lord Tugendhat's letter. It is sued upon as a further malicious falsehood (MF 16). Again it is not said that the allegations of malice or dishonesty are to be laid at the door of Mr Page. It listed concerns over past performance from September 1989 through to November 1990. (It is unnecessary to rehearse them, since most have been covered already.) There was also a general reminder of various occasions when there were criticisms of his work arrangements

and travel and subsistence claims. He was also reminded of interviews with Captain Sindall, in October, and with Captain Mimpriss in December 1990 who offered guidance as to the future.

123. In view of the allegations of malice and conspiracy subsequently made against him, it is to be recorded that Mr Williams' report on Captain Friend's activities from 18th February to 31st March 1991 referred to a "reasonable standard of work".

124. One of Captain Friend's complaints of harassment was that he was prevented from flying, presumably as a punishment or in order to reflect management disapproval, but it is important to note that at the material time there were general budgetary constraints which affected flying generally. Captain Willett pointed out in a memo on 15th April 1991:

> "The purpose of this Internal Memo is to point out to all FOIs the budgetary situation and request that any allocated flying that cannot be fully justified by the CFOI, as budget holder, should not be undertaken. Any successful organisation must positively strive to contain costs at all levels. In our case it means making the most of the allocation of expensive flying hours".

This was addressed to *all* flying operations inspectors. There is a dispute between Captain Friend and the CAA as to whether or not the restraints imposed on him were temporary or permanent. It is important that this issue should be resolved in due course against the budgetary background.

125. On 17th April there was a memo from Anne Evans indicating that Captain Friend had been allocated eight hours flying for the purpose of training during the 1991/1992 financial year.

126. Because of concerns expressed by Captain Stewart of IPMS over the fairness or accuracy of the annual appraisal for Captain Friend for the previous year, specifically with reference to SOC 22, Mr Williams explained the position more fully in a memo of 25th April:

> "… This report was eventually compiled by Captain Friend after two meetings at which both Mr Courtman and myself had to virtually spell out exactly what to write. There appeared at that time to be no incentive or inclination on Captain Friend's part to use his own experience on the SOC or his own initiative in order to compile the report, conclusions and recommendations. It was all initiated by either Mr Courtman or myself. Indeed, despite all our guidance the first draft had to be altered extensively, both in layout and wording and, to a lesser extent, in content. The point about this is that at the time Captain Friend could not apparently work unsupervised and it did need a Flight Standards Officer to spend time on it. Similarly, the Draft Notice to AOC holders that Captain Friend provided was also inadequate".

127. One of the challenges that Captain Stewart had raised was that there had been hardly any alterations. The case advanced by the CAA in the course of the trial was that Captain Stewart had not seen the first draft and thus had a misleading impression as to the extent of the changes. He himself accepted in evidence that the draft he had seen was dated 17th January 1991 – not that of 20th December 1990. This document of 25th April is not complained of as a malicious falsehood, although of course Captain Friend does allege malice and conspiracy against Mr Williams more generally.

128. On 7th May 1991 Captain Friend was repeating his complaints about having been "instructed to draft Inspection reports before having conducted inspections". He cited again the cases of Merrix Air and PLM Helicopters. He was still apparently insisting that the instructions he had been given were improper and inconsistent with the OSAP handbook. He also made the point that, in his view, Lord Tugendhat's explanation of the matter had changed between his first letter to Mr Ashdown dated 20th February 1991 and the second of 15th March. He highlighted what he considered to be a change in terminology between the use of the word "preparations" on the first occasion and the description used in the second letter (i.e. making a list of headings to be discussed with the operator).

129. On 8th May 1991 Captain Richardson sent a memo to Captain Mearns, in which she explained that he would not be asked to inspect companies that operate complex helicopters "without specialist assistance", notwithstanding that he held an Air Transport Pilot's licence relating to helicopters. This appears to tie in with the evidence that she gave in the witness box to the effect that PLM Helicopters operated only very simple aircraft. This was one of the reasons why it was not deemed necessary in respect of that OSAP to have specialist assistance.

130. On 14th June 1991 a letter was sent from Peter Carter-Ruck and Partners to Mr Murphy, as Managing Director of the CAA, claiming that Captain Friend had been libelled and would be willing to settle if he received an apology and costs as well as reinstatement to FOI duties. Mr Moloney suggested that 13½ years between the letter before action and the date of the trial might be a record. Be that as it may, it was made clear from the outset that any such claim would be strenuously resisted. The demands were wholly unrealistic. Since management had serious doubts about Captain Friend's commitment and reliability, it would have been quite wrong to re-assign him to those responsibilities.

131. On 16th July 1991 there was a meeting at which Mr Saull handed to Captain Friend a letter which explained that the CAA had been very close to terminating his contract, but recorded that "it is clear that from the middle of February until the end of March you have made a real effort to comply with the tasks that you have been set". It will be remembered that in the interim Captain Friend had been away sick. It was indicated that with effect from 24th July 1991 (a year after the "professional" dispute arose) he would be returned to OSAP for the purpose of demonstrating his commitment to the CAA and his willingness to work harmoniously as a member of a team. In the light of progress, there would be an assessment as to his suitability for transfer back to one of the other FOI departments. It was thought, however, that four specific undertakings on his part would be appropriate:

> " • you must agree to work as a fully committed member of the team and offer total co-operation to the management, the team leaders and your colleagues;
>
> • you must comply with instructions given to you by those responsible for particular activities including the participation in any OSAP task and must abide by the practices and procedures of the Authority;
>
> • you must recognise that the way to draw attention to matters which give you concern is to use normal reporting lines and that when such matters have been properly investigated you are expected to abide by the decisions of your managers;
>
> • you must ensure that your decision not to accept CAA transfer terms but to continue to live in Crewkerne does not in any way affect the conduct of your duties and that you will organise your work and travel so as to minimise Travel and Subsistence expenditure.
>
> The position will be reviewed in December 1991 and, depending on the outcome, a decision will then be made whether to transfer you to other FOI duties, to leave you in the OSAP team or to dismiss you.
>
> You must realise that there are serious misgivings about your long term suitability as an FOI and I have to tell you that unless you give the undertakings set out above and demonstrate by your conduct and attitude your complete acceptance of the conditions attached to this opportunity, we shall have no alternative but to terminate your contract of employment as an FOI without further delay".

132. The meeting took place between Mr Saull, Captain Mimpriss and Captain Friend. There were put in evidence notes taken both by Mr Saull and Captain Mimpriss. The olive branch was not perceived as such by Captain Friend and was rejected. He thought it incredible that he should be re-transferred to OSAP. He referred to a deliberate campaign of harassment and alleged that certain members of the CAA staff had lied in their criticisms. He appears to have expressed the view that he should not be asked to work for Captain Richardson and Captain Sindall, who he believed to be liars. Captain Friend secretly taped all of the meeting and apparently said later, when challenged on this, "I don't bloody trust you". Unfortunately, the tape was insufficiently clear to serve as a record of the meeting and I am therefore dependent upon the contemporaneous notes and the recollections of the participants. It is at least clear that Captain Friend's reaction did not bode well for future teamwork or harmonious relations. (In the course of the trial, he admitted that he had secretly taped another meeting on 10th June 1992, but he had not disclosed it.)

133. Indeed, on the following day Mr Saull wrote to Captain Friend referring to the secret tape recording and observed that his lack of judgment did not inspire confidence that

"we shall be able to establish the measure of mutual trust essential to a working relationship". In view of Captain Friend's disinclination to give the undertakings sought, it became necessary to delay his return to OSAP (first until 30th July) to allow him more time. He was given some encouragement by Mr Ashdown who commented in a letter of 24th July that Mr Saull's letter appeared to put unfair pressure on Captain Friend "to try and keep your mouth shut". Like Peter Carter-Ruck, he was only being informed on an incomplete and partial basis.

134. It seems clear that Captain Richardson was not looking forward to her assignment either. She wrote to Captain Mimpriss on 26th July seeking clarification as to the duties that Captain Friend would be expected to undertake in OSAP. She said that she was unhappy about her briefing since she had been given no further guidance than to be "laid back". She was troubled, in particular, about rumours circulating to the effect that Captain Friend was about to launch legal proceedings against her and other colleagues. It appears from a memo of 30th July 1991 that Captain Friend had been given legal advice that he should not sign Mr Saull's letter; in other words that he should not give the undertakings sought in their present form. A further extension was given by Mr Page to 7th August for Captain Friend to respond. On that date Captain Friend refused to give any of the undertakings and regarded the request as indicative of "spite and ill will".

135. It is worthy of note that on 8th August 1991 Mr Page wrote to Mr Ashford stating that he did not think that there had been any other helicopter inspection without an FOI from FOD 2 since the PLM audit a year before. He stated, however, that there had been no change in policy. This has to be seen in the context of evidence given by Captain Mimpriss to the effect that there would only be a handful of audits in any given year relating to helicopter operators. What is more, it would only be in straightforward cases concerning simple helicopters that a team leader would think it unnecessary to have a specialist included.

136. It was on 14th August that the next document relied upon as a malicious falsehood was sent by Mr Saull to Captain Friend (MF17). He was notified that a disciplinary hearing would be held to deal with the charge that he was refusing to give an assurance that he would carry out lawful and reasonable orders of the CAA. The letter contained some other complaints relating to his conduct since June 1990. It is fair to say that Captain Friend had on 8th August written to Mr Saull requesting details of any deficiencies in his conduct and performance that had not previously been notified to him. These were grouped into separate headings of (a) behaviour to other members of staff, (b) commitment to his work, and (c) matters of professional judgment. Mr Saull rejected Captain Friend's claim that the CAA had changed its policies as a result of his protests. He continued:

> "… There has been no change in the Authority's policy. In appropriate cases OSAPs of helicopter operators will continue to be done by teams which do not include a professionally qualified helicopter pilot. This was made abundantly clear to you by Captain Mimpriss during our meeting on 16th July 1991, but you continue to assert the contrary.
>
> As an employee of CAA you are of course entitled and indeed expected to raise any safety concerns you may have with your

> senior managers. It is for them to consider whether those concerns are valid. If they conclude that they are not, you are expected to abide by their decision and comply with their instructions. The safety concerns which you raised while working in the OSAP team related to the proper composition of an OSAP team conducting an inspection into a helicopter operator and what constituted proper preparation for an OSAP inspection. Your senior managers carefully considered and rejected your concerns. You should moreover bear in mind that your immediate senior managers at that time belonged to the same professional discipline as yourself.
>
> Following your refusal in July 1990 to comply with instructions to participate in the PLM OSAP, you have been given every opportunity to start again with a clean sheet. However, in your reply to my letter of 16th July 1991 [i.e. the one handed to him at the meeting] you make it clear that you are not prepared to give an unequivocal commitment to abide by the decisions of your managers. I can therefore have no confidence that you are prepared to carry out the lawful and reasonable orders of your employer".

The letter concluded by making it clear that none of the previous complaints about his conduct was going to be addressed at the forthcoming disciplinary hearing, the sole reason for which was the refusal to give an assurance that he *would* carry out the lawful and reasonable orders of the CAA.

137. Eventually, on 20th August, Captain Friend gave Mr Saull his assurance that " … I will always, to the best of my ability, obey all orders of the United Kingdom Civil Aviation Authority that are lawful and reasonable whilst I am in their employ". A copy was sent to IPMS and to Mr Peter Carter-Ruck.

## 8. The return to OSAP in August 1991

138. In the light of this assurance Mr Page agreed to cancel the disciplinary hearing. He stated that Mr Magee of IPMS had been told quite clearly that Captain Friend would probably be returned to OSAP, and that he might be instructed to attend inspections including of rotary wing aircraft operators without an FOD 2 inspector. Accordingly, in the light of Captain Friend's assurance, he was notified by Mr Saull that he was to start in OSAP with effect from 28th August. The next audit to which he had been assigned was that of Corporate Jet Services. Captain Friend takes the view that this was done out of spite, or deliberately to provoke him, because it was likely to be another example where a helicopter operator would be inspected without a specialist FOI in attendance. It was put to him by Mr Moloney in cross-examination, however, that this was an unfair assessment in the light of the fact that he had delayed coming back to OSAP for about a month because of his refusal to sign the undertakings. Had he returned to work earlier, he would no doubt have been assigned to other duties first. Captain Mimpriss explained in evidence that if he had returned on 24th or 30th July, as asked, he would have "missed" the Corporate Jet OSAP.

139. On his first day back, on 28th August, Captain Friend wrote to Captain Richardson formally registering his objection to the failure to include a qualified helicopter FOI in the inspection team. He made it clear, however, that he was not refusing to participate. Lord Tugendhat and Mr Murphy received a copy, as did Mr Carter-Ruck and Mr Ashdown.

140. On 29th August 1991 Captain Sindall reacted to Captain Friend's memo. He sought guidance from Captain Mimpriss:

> "It will not be easy to have Captain Friend working alongside Captain Richardson and myself if there is no trust present, and I considered that his [internal memo] may be taken as indicating an attitude that does not accord with that which team members must display if appraisals of air transport operators are to be conducted efficiently and effectively.
>
> I seek your guidance as to the response that should be made to his IM: I am suspicious that more lies beneath this single act on his part than simply to express an opinion, and call to mind all issues of a contentious nature that have arisen between Captain Friend and the Authority in the last 12 months. It therefore seems appropriate that, from the outset, all communications involving Captain Friend on this subject should be handled at an appropriate level, and on this I ask your advice".

By "this single act" he was referring to the fact that, on his first day back in the OSAP office, Captain Friend had formally registered his "professional objection" on the failure to include a qualified helicopter FOI in the inspection team. What is more, since he had circulated his memo so widely, Captain Sindall noted that he would be causing doubts to arise in many people's minds as to the suitability of his managers to be trusted with the responsibility for planning and conducting an appraisal programme. This gave rise to doubts in Captain Sindall's mind as to the genuinness of Captain Friend's commitment. No one doubts, of course, Captain Friend's right to communicate with his Member of Parliament or with his own lawyers, but it would surely be disconcerting to his managers that he was, with the assistance of Captain Stewart, "slagging them off" to third parties to such an extent (as he had also been doing in the serious allegations to Mr Ashdown in March).

141. On 30th August Captain Friend wrote to Mr Saull stating that he did not understand why one of the helicopter FOIs had not been appointed to the team conducting the inspection on Corporate Jet, since the visit had been programmed since June. He added that "Prior to 1988 all OSAP inspections of helicopter operators had a qualified Helicopter FOI included in the inspection team". The letter was again widely distributed.

142. On 3rd September Captain Mimpriss explained the background to Miss White, legal adviser and secretary to the CAA. He explained that he was involved in OSAP between 1984 and 1986. Although he was not a qualified helicopter FOI, he had some helicopter experience as a pilot and felt competent to carry out about ten helicopter OSAPs including one on British Airways Helicopters. When Captain Eddy took over OSAP between 1986 and 1988, he had no helicopter expertise within his team and, on

the few helicopter OSAPs that it was necessary to carry out in that period, he did seek expert assistance from FOD 2. Later, in the autumn of 1992, Captain Coutts when it became his responsibility preferred always to have helicopter specific expertise when carrying out a helicopter OSAP. There is no doubt that views differed.

143. On 9th September 1991 there was a memo from Captain Richardson to Captain Sindall which is relied upon as a further malicious falsehood (MF 18). She was reporting on Captain Friend's conduct during the Corporate Jet OSAP. She reported that he had said, among other things, that he would carry out her instructions but was not prepared to co-operate with her. He had also failed to carry out preparatory work which she had instructed him to do. It appears that he had told her during the OSAP that he had not had sufficient preparation time to complete the work and apologised for not carrying out the fuel planning preparation. He had not looked at the fuel planning section of the operations manual for lack of time. When she showed him the relevant passages, and explained that it was a case of simply "standard jet potted fuel tables", he asked her to come outside the building with him.

144. Here there was a conflict of evidence between them. Captain Friend said that he did not become emotional but was merely "icy". His family could bear out that he became "icy" when roused, but always remained in control of his emotions. She described him as very "emotional" and said that in the course of his "tirade" she thought at one moment that he was going to hit her. According to Captain Richardson, Captain Friend eventually calmed down and told her that "despite everything" he actually liked her. Captain Friend certainly denied saying that. At all events, during the course of the conversation he referred to his libel lawyers and said that he was going to take action against herself and Captain Sindall over their lies (as foreshadowed in the letter before action of 14th June 1991). She states that he also told her that he found her patronising and that he did not like her "attitude". He made it clear that he did not wish to work in OSAP, and in particular for herself or Captain Sindall. She concluded, "For the remainder of the day he worked quite well and behaved in a reasonable manner".

145. On 11th September, Mr Saull responded to Captain Friend that in his view the OSAP had been appropriately constituted for Corporate Jet. There were other letters from Captain Friend to Mr Saull dated 13th and 28th September and 11th October concerning the "professional" issue, with copies sent to the usual external recipients.

146. On 8th October there was another positive report by Captain Grange on Captain Friend covering the period 18th March to 27th August 1991 (for most of which period, of course, he had been absent through illness). He concluded that he had "made a reasonable contribution to the [Policy] Section".

147. On 6th November 1991 Mr Saull wrote to Captain Friend emphasising again the distinction between a standard FOI inspection and an OSAP audit. He included the following passages:

> "It is not practicable or necessary to match the expertise in the industry and it is an accepted regulatory practice that one does not have to be qualified on any type to be able to assess the level of safety of operation of that type. Your apparent inability to accept this fact must bring into question how you believe

> you are able to fulfil your responsibilities as an inspector with regard to any type of aircraft other than that on which you are currently qualified.
>
> An FOI 2 inspector was not included on the recent Corporate Jet Services OSAP team because it was not considered necessary to have specific expertise on this particular inspection.
>
> I can assure you I have complete confidence in my flight operations managers to carry out their responsibilities in a professional and effective manner. Your comment that I have been ill advised by my junior managers is rejected".

Mr Saull had been responding to Captain Friend's letters of 28th September and 11th October. As so often, he was having to explain the situation not only for the benefit of Captain Friend but also, indirectly, to those outside the CAA, such as Peter Carter-Ruck and Mr Ashdown, who would receive copies.

148. On 11th November there was a memo from Captain Hodge, who was chairman of the IPMS Aircrew Branch, to an IPMS committee meeting. For some time previously, Captain Stewart had been acting closely in concert with Captain Friend over his "professional" dispute. Captain Hodge was of the view that Captain Stewart had behaved "like a bull in a china shop". He also observed that he did not believe Captain Stewart to be on solid ground in relation to his stance over the Corporate Jet OSAP. He added:

> "The CAA have not appointed a non-helicopter specialist to regularly inspect a helicopter operator; they asked the head of the Helicopter Section whether a specialist was necessary and then followed his recommendation. Frankly as a specialist, I find it difficult to disagree with them. It is better that such matters are raised in the professional forum as it is there that they can and should be fully discussed".

149. On 12th November, yet again, Captain Friend wrote to Mr Saull pressing him on why it had not been necessary to have a specialist helicopter FOI on the Corporate Jet OSAP. Again he chose to distribute it widely. On 27th November Mr Saull responded that he now regarded "this correspondence as closed".

150. There was a memo of 27th November from Captain Mimpriss to Mr Saull recording a conversation with Captain Coutts. It appears that Captain Coutts had been asked by Captain Friend to provide a statement because he intended to sue the CAA and, at that stage, also Captains Richardson and Sindall and Mr Page and Mr Saull. According to what Captain Coutts told Captain Mimpriss, the view was expressed by Captain Friend that the issue of proceedings would make a "nice Christmas present". Captain Friend denies this and, since Captain Coutts was not fit to be called to give evidence, that particular sub-issue cannot be definitively resolved. It is, however, of no great significance in itself.

151. On 26th November 1991 Captain Friend had written to Mr Saull alleging that flight inspections on helicopter operations had been conducted in some instances in the past by FOIs with "no helicopter experience whatsoever". After Mr Saull sought clarification, Captain Friend wrote on 18th January 1992 citing instances of flight inspections on North Sea helicopter operations by Captains Sindall, Taylor and Murphy. Yet again he returned to the subject of the Corporate Jet OSAP. On 6th February 1992 Mr Saull replied to the effect that Captain Friend's assertion about flight inspections on North Sea helicopters was "misleading" and he stated that a qualified helicopter FOI had been included in each of the major North Sea operator OSAPs for that very purpose. He again repeated that the issue of the Corporate Jet OSAP was "closed".

152. There was an assessment report for Captain Friend for the period 1st August to 31st December 1991 dated 28th January 1992. He was given a Box 3 assessment (i.e. to the effect that his performance was fully meeting normal requirements). The assessment was that of Captain Richardson and confirmed by Captain Sindall. That is clearly relevant for judging her state of mind at this time and in particular the extent to which she was exhibiting any malice towards Captain Friend. She also recorded that Box 3 would have been the assessment by Captain Grange in respect of the time spent in the Policy Section at the beginning of 1991 down to the period of sick leave in April.

153. On 11th February 1992 Captain Friend wrote to Captain Sindall, saying that he found it extremely hard to work in an environment (i.e. OSAP duties) that disregarded his professionalism and he called for an immediate transfer back to FOI duties in his previous section (FOD 5). This was prompted by the fact that his comments had been edited out of the draft Corporate Jet OSAP report. He had, on three separate occasions, inserted the formula:

> "I wish to qualify my involvement in the present inspection and report by recording that I submit observations and opinions regarding helicopter operations with the utmost reluctance, in view of the fact that I have no professional qualifications, experience or training whatsoever in that particular field".

Captain Sindall explained the next day that such statements had no place in an OSAP report.

154. In the course of February Captain Willett expressed some surprise that Captain Friend had recently been given a Box 3 assessment rather than Box 4 (i.e. somewhat less glowing). In a memo of 24th February Captain Sindall explained that he and Captain Richardson continued to attempt to ignore the matters of dispute between Captain Friend and management and to concentrate solely on assisting him to become productive once more. He explained also that the Box marking was based solely on technical performance, although it should not be construed as indicating that management found his attitude towards the Authority and his colleagues acceptable.

155. On 28th February there is a memo from Captain Richardson complaining about Captain Friend's conduct in respect of more OSAP audits, in this instance of RM Aviation and Brymon Airways. She gave considerable detail and concluded:

> "It can be seen from the above that Captain Friend cannot be trusted to complete any task allocated to him and is unable to conduct an appraisal effectively. His presence within the section causes friction and the other members of the OSAP team feel that he is allowed to do exactly as he pleases. I have produced a future OSAP programme but I have not allocated Captain Friend as team leader as I feel that he is incapable of carrying out the task and secondly I do not wish to insult the members of the OSAP team by asking them to work under his instruction. I find the situation quite intolerable".

A few days later Captain Sindall expressed his agreement with this assessment.

156. On 12th March 1992 Mr Williams requested Captain Friend to attend a meeting so as to answer two questions, (a) whether he still intended to institute proceedings against the CAA and/or its employees, and (b) whether he had intended to do so but had decided not.

157. On 16th March 1992 Captain Friend yet again asked Mr Saull why there had been no specialist helicopter FOI as part of the Corporate Jet team, and the letter was distributed to the usual recipients.

158. On 18th March Mr Williams clarified for Captain Friend that the proposed meeting was to be a disciplinary investigation but *not* a disciplinary hearing. It was also made clear that there was no attempt being made to limit his recourse to legal advice or legal remedies. Two days later he further clarified the CAA's position and explained that:

> "… Having the threat of litigation hanging over it and certain of its staff could be construed as non-compliance with paragraph 3 and that part referring to maintaining good relationships with colleagues and managers".

He was referring to the code of employee conduct.

## 9. The period of suspension from March 1992

159. When the meeting took place on 20th March Captain Friend recorded his answers to the two questions, apparently on legal advice, as "no comment". Because he refused to answer, a letter was sent from Captain Willett to Captain Friend suspending him on full pay with immediate effect pending the outcome of a disciplinary hearing. This provoked a letter from Russell Jones and Walker on Captain Friend's behalf, dated 1st April 1992, protesting that he appeared to be put on a disciplinary charge for exercising his right to take legal action.

160. The following day Captain Willett explained to Captain Friend:

> "Your failure to give a clear response as to your intent with regard to proceedings means that the Authority is unable to clarify the situation and has reason to question your compliance with your obligation to maintain good relationships with

> colleagues and managers and present a positive attitude to the work requirements and your colleagues at all levels …
>
> During the past year you have approached a number of colleagues directly or through your solicitors in order to express your intention to undertake legal proceedings against employees of the Authority and to request assistance from them. You have intimated that legal measures would be taken if information was not given voluntarily. Your threats of litigation against some of your colleagues have had a damaging effect on relationships within the Flight Operations Department and have resulted in the management of the departments being unable to deploy you properly as a Flight Operations Inspector. The disciplinary charge is that these actions appear to be in breach of your obligations under the Code of Conduct and Disciplinary Rules and Procedures paragraph 1.2 and paragraph 3".

There were set out six examples of documents said to support the charges.

161. It was clear that by 11th May 1992 Captain Mimpriss had had quite enough. He listed five particular examples of Captain Friend's conduct during the time he was in his department and concluded, "… I have no confidence in Captain Friend, nor do I have any trust in his judgment. I do not consider him suitable for further FOI work and do not wish to have him as a member of my staff". As so often, it is necessary to be wary of confusing strongly held feelings with the concept of malice.

162. On 21st May 1992 there was a meeting between Mr Williams and Captain Sindall on the subject of Captain Friend and there was a lengthy discussion. In the course of it Mr Williams asked Captain Sindall if he was aware that he was being threatened with legal action by Captain Friend. He replied that he did know about it, albeit not officially, and he was worried. Indeed, Mr Williams had recorded in his personal diary for 22nd May, only disclosed in the course of the trial, that he almost thought Captain Sindall was "close to tears at one stage". This was one of a number of interviews Mr Williams was conducting at that time into the whole of the Brian Friend "saga". He also interviewed Captains Richardson, Eddy, Gibbs, and Coutts, as well as Mr Phillips.

163. On 21st May 1992 Mr Williams had conducted his interview with Captain Richardson and the notes of that interview are sued upon as constituting a malicious falsehood (MF 19). She went back over much of the old ground and explained why she had no confidence in him. One of the matters discussed, however, was the use of a mobile phone during an OSAP. She suggested that it was obvious that Captain Friend had been dealing with other personal business. She said that Captain Friend had told her that he was in the business of renting out properties in the London area, but she was not sure whether this was true or if he was just making it up. Captain Friend has said there was no truth in this suggestion. Quite how it came about, whether through misunderstanding or not, is difficult now to determine. The mobile telephone issue, in the context of the case as a whole, is of relatively minor significance.

164. Mr Williams's notes of his interview with Captain Mimpriss are also sued upon as a malicious falsehood (MF20). This took place on 8th June 1992. Captain Mimpriss told

Mr Williams that he had felt under pressure when he was Captain Friend's manager and felt that he needed to be very cautious when dealing with him. He had realised that Captain Friend was "beyond help" soon after Mr Grange became his manager. His view was that all Captain Friend had to do was "stop pursuit of his vendetta against management, stop his accusations and start working normally again". Captain Friend had, however, refused to do this. Captain Mimpriss gave the example that whenever Captain Friend was given a simple task he would "write back asking for step by step, detailed instructions as to how to achieve it", as though he was laying a trap for management. As to travel and subsistence claims, Captain Mimpriss told Mr Williams that "there was always a feeling of unease, but that he had never stepped on anything you could say was obviously fraudulent". He did, however, refer to the missing Toulouse return ticket. Mr Williams recorded:

> "From this episode Captain Mimpriss wonders how a photo-copy can be produced to show its return, when in fact it had not, and also was surprised to be accused of harassment over this affair, when in fact, as a manager, he was ensuring one of his staff did not lay himself open to a serious charge".

165. Captain Mimpriss also told Mr Williams that he had no faith in Captain Friend and that he could not be trusted. He added that he had demonstrated that he was incapable of working unsupervised and that, by definition, he could not therefore be used in the field of flight operations inspection. He said that he had doubts regarding his technical judgment and that he could not be left unsupervised to deal with operators. He was also concerned as to how Captain Friend could have claimed to his Member of Parliament that the CAA had issued a "flawed" OSAP report in the light of the fact that his original source, Mr Hutchings, had indicated that he was not in fact concerned about it. Mr Hutchings had confirmed this to Captain Mimpriss on 14th March 1991.

166. On 10th June 1992 there was a meeting attended by Mr Williams and Mr Magee together with Captain Stewart and Captain Friend. A Mrs Hill was also present to take minutes on behalf of Mr Williams. These are available, as well as those of Captain Stewart. The object of the exercise was to prepare the way for a disciplinary hearing to take place under Mr Payton. There were discussions as to the disciplinary charges and a lot of challenges to the relevance of the questions Mr Williams was asking. Mr Magee did not think the charge, based upon breakdown of relationships with colleagues, was a proper one. This was one of the meetings which Captain Friend had secretly taped.

167. Shortly after the meeting of 10th June it seems that there was an approach by Mr Magee of IPMS with a view to seeing whether the disciplinary charges could in some way be compromised. Mr Page discussed this in a memo to Mr Saull of 24th June. He expressed the view that working relationships had become so sour that it would be difficult to see how he could be reinstated in the FOI team. If he were to go back to OSAP it would be necessary to move Captain Richardson, which no one wished to do.

168. On the same day there was Mr Williams' report following his detailed investigation. This is relied upon as a series of malicious falsehoods also (MFs 21-23). The section headed "Dispute between the Authority and Captain B Friend: Resume of management's view" was MF21. It contains a number of familiar propositions including that:

> "Captain Friend continually disagreed with the way OSAPs are undertaken and questioned the whole philosophy. He steadfastly refused to accept reasonable management explanations and therefore adopted an uncooperative and unmanageable attitude to his work compared to other Flight Operations Inspectors.
>
> It appears that Captain Friend deliberately and consistently refused to use his initiative to achieve tasks set him. If as much effort were put into using his great experience to achieve tasks set as opposed to questioning them, it is likely this dispute could have been contained and resolved much sooner."

There is also reference to the enormous amount of paperwork generated by Captain Friend and his lack of participation in the OSAP role. There is a paragraph (5) which deals specifically with the "professional" issue:

> "Captain Friend refused to go on a helicopter OSAP for no valid reason. He refused to accept Management's and Legal Department's re-assurances and appeared intent on bringing things to a head. Any reasonable person in his position would have undertaken the helicopter OSAP if only to establish precisely the level of participation possible on what is largely an in depth study of the records and paperwork. He would then have written a paper to address any perceived problems".

On my copy of this document someone has scrawled alongside "Balls". I can only assume this to have been Captain Friend. The document also accused him of "dumb insolence".

169. MF 22 consists of the main body of the report headed "Report of an investigation into the dispute between Captain B L Friend and the Civil Aviation Authority". It is a lengthy document setting out the narrative in some detail and traversing what is by now familiar territory. The conclusions are, however, of significance:

> "1) Management have totally lost confidence in Captain Friend's ability to undertake any form of FOI duties. Indeed it is doubtful if any work as an employee of the CAA, without close supervision, could be undertaken.
>
> 2) Despite protestations to the contrary Captain Friend, by his conduct and behaviour, particularly since his return to OSAP in August 1991, has made himself apparently unmanageable, except on his own terms.
>
> 3) Captain Friend's threat of litigation (June 1991 letter from his solicitors plus verbal threats to Captain Richardson) made the working situation in OSAP untenable and one which the Authority felt obliged to resolve.

4) There appears to be no doubt that Captain Friend will take legal action against the Authority based on his perceived technical and flight safety case. This was virtually confirmed by Mr Magee at Captain Friend's interview.

5) From the moment of his posting to OSAP it was evident that Captain Friend's attitude was not conducive to establishing good professional or personal working relationships as an OSAP team member.

6) By his actions Captain Friend generated an enormous workload upon his manager and upon Senior Managers in the Authority. His continual requests in writing, copied to the highest levels in the Authority, and his solicitors, for experienced FOIs to attend OSAPs, and his utter refusal to accept management responses to that correspondence has caused total frustration within Management. If every FOI behaved in a similar fashion, picked a controversial 'safety' issue (and there are any number) and then generated the amount of correspondence Captain Friend has, the CAA would cease to be able to function.

7) Management at all levels have of necessity been forced to be extremely careful in their handling of anything to do with Captain Friend. They have consciously avoided anything that could remotely be construed as harassment and have given Captain Friend at least two opportunities to conform to normal standards of conduct and behaviour as all other FOIs within the Authority currently do. However Captain Friend has retained his attitude steadfastly. That attitude is not acceptable within the Authority and there seems no likelihood of it ever changing.

8) Captain Friend's claims of harassment are unjustified. Any reasonable FOI would not have got himself into the situation Captain Friend found himself in and would have avoided it by simple sound common sense and clearing things ahead of time, (night stops, DOILs, questionable conduct during OSAPs (portable telephone use, removal of training records, duty free, acting as Pilot's assistant on OSAP)). All these items whilst seemingly petty and minor when treated individually, add up to at best a case of poor judgment on Captain Friend's part which inevitably led to the mistrust of his managers and therefore their continual and justified questioning of his actions, whereabouts and motives. They would be failing in their duties had they not done so.

9) With the threat of litigation in the offing and Captain Friend's intransigent attitude it is very difficult to see how the Authority could permit Captain Friend's return to any form of employment within the Authority."

170. MF 23 consists of a "Résumé of Captain Friend's view (as far as can be ascertained)". It attributes to Captain Friend the view that his posting to OSAP was "totally unfair", which he says is a claim he never made. It recorded further that he was not on a vendetta against the CAA, but that where he saw practices being undertaken by the Authority which were "wrong", he felt it his duty to try and rectify matters. He claimed also that he was put under stress by management's continual sniping at his actions and behaviour.

171. The final document relied upon as a malicious falsehood (MF 24) is a memo from Mr Saull to Mr Page dated 25th June 1992:

> "… Captain Friend has lost credibility in the Flight Operations department.
>
> Jo Magee's proposal is not an acceptable way forward, regardless of the outcome of the Disciplinary Hearing or future legal events. Captain Friend has made it quite plain he intends to clear his reputation which I assume means he will continue his action; we should not back down.
>
> We cannot turn the clock back on Captain Friend's behaviour over such a long period; our considerable efforts to try and put matters right, in a fair and reasonable way, have had very little effect. He has been given several opportunities which have been spurned. He could no longer be entrusted with the position as an FOI working in the front line of the Authority's operational inspection activities".

172. By 13th July 1992 the evidence gathered by Mr Williams could be sent to IPMS. There had been some delay, apparently caused by Captain Friend not commenting on the notes of his interview with Mr Williams on 10th June until that date. He had earlier said that he would be able to do so by 18th June. Because of the delay the proposed disciplinary hearing scheduled for 15th July 1992 had to be cancelled. This in itself caused considerable inconvenience and disruption.

173. A disciplinary hearing eventually took place over four days, namely 28th July, 4th August, 10th September and 1st October 1992. Following the hearings a memo was sent by Mr Payton and Mr Anderson on 10th November recommending to Mr Saull that the complaint against Captain Friend be dismissed. Mr Murphy, as he confirmed at trial, found this decision surprising. They seemed to be sitting on the fence and recommended a further attempt at rehabilitation:

> "The cause of the breakdown in relationships between Captain Friend and some of his managers are complex and not clearly attributable to one side or the other. The Hearing has made clear that Captain Friend has a genuine concern, albeit arguably misguided, about certain aspects of the way in which OSAP inspections are conducted, and that management has failed to give him the reassurance he needs. On the other hand, Captain Friend does not appear well suited to regulatory work and it is also quite possible to understand why he could be considered

> difficult to manage. In some respects, his approach to his work appears somewhat pedantic. A possible approach to attempt this situation might be to appoint a senior line manager and an experienced colleague of Captain Friend from within Flight Operations Department to work together on a programme of rehabilitation for Captain Friend. An overt commitment to the success of this proposal would be necessary both from managers and Captain Friend.
>
> If whole-hearted efforts to achieve a successful return by both sides fail, then we can see no alternative to the termination of Captain Friend's employment because the present situation cannot be allowed to continue to the detriment of the Authority as a whole".

## 10. Captain Friend's dismissal and the internal appeals

174. This recommendation was not thought satisfactory by management, who took the view that every reasonable latitude had already been given. Accordingly, Mr Saull sent Captain Friend a letter on 1st December indicating that he was to be dismissed (as I have recited above) on the basis of an "irretrievable breakdown in your working relationships with the Authority and that you have lost credibility and the trust of SRG management".

175. There was an appeal against the decision which was heard by Mr Paice and Mr Marx over two days (2nd and 10th March 1993). Their conclusion was communicated by letter of 17th March 1993 to Captain Friend, from which I have already quoted.

176. There was a final appeal hearing before Mr Murphy, then Managing Director, in June 1993 and he notified Captain Friend of its rejection by letter dated 16th June. In the course of his evidence, Mr Murphy refuted any suggestion that he had already made up his mind before the hearing on 4th June. He accepted that he had expressed surprise at the recommendation of Mr Payton and Mr Anderson, but he went back to square 1 for the purposes of the appeal and considered all material afresh.

## 11. The history of subsequent proceedings

177. As I have said, shortly afterwards proceedings were launched before the Industrial Tribunal.

178. After a six day hearing it was concluded on 22nd June 1994 that "The conduct which led to his dismissal by the Respondents, was not that he had formed the view which differed from the Respondents, but the manner in which and the extent to which he pursued that dispute". The conclusion was that Mr Saull's decision to dismiss was flawed in three respects:

    i) Mr Saull had a pre-formed view that the disciplinary process might very well result in the Applicant leaving the Respondent's employment, because he had written on 25th June 1992 expressing agreement with Mr Page that it was difficult to see how Captain Friend could be re-instated in the FOI team.

ii) The contents of Mr Saull's lengthy correspondence with Captain Friend concerning his professional dispute and other matters, expressed in forceful language, played a part in influencing his decision to dismiss.

iii) In the judgment of the tribunal, before overturning the conclusions and recommendation of Mr Payton and Mr Anderson, and substituting a different result, partly based on his own prior knowledge of Captain Friend, a reasonable employer in the position of Mr Saull would have notified Captain Friend of his intentions, and his reasons, so as to give him an opportunity of making further representations.

The tribunal also concluded that the appeal process in March 1993 was not effective to cure the initial unfairness and that the dismissal, as a whole, was unfair. In arriving at this conclusion the tribunal derived assistance from *Byrne v BOC Limited* [1992] IRLR 505, EAT. The tribunal went on to conclude that Captain Friend had contributed to his dismissal to the extent of 100%. They decided it was unnecessary to make a decision as to whether or not Captain Friend's views as to the make up of OSAP teams were sincerely held. Captain Friend had, in the tribunal's view, "pursued the matter in a way and to the extent that must inevitably lead to the situation whereby he could no longer continue to be employed by the [CAA]". The conclusion was drawn that Captain Friend himself accepted that trust had broken down irretrievably. Accordingly, no award of compensation was made.

179. Captain Friend appealed against the tribunal's decision on his contribution, and the CAA appealed against the underlying finding of unfair dismissal. I have already recited the conclusions of the EAT, a year later, on 24th July 1995. Captain Friend's appeal was dismissed.

180. As I have recorded, on 22nd February 1996 the Court of Appeal rejected Captain Friend's application for leave to appeal the decision of the EAT.

181. Before these proceedings were commenced on 2nd July 1996, there had been two prior High Court writs in actions 1995 F703 and 1995 F704. These had both been launched on 29th September 1995. They were claims for libel brought respectively against the CAA itself and six individual employees. These proceedings eventually foundered when they were struck out as a result of an order of the Court of Appeal on 29th January 1998.

182. Other High Court proceedings were launched after the present action began.

183. First, there was a claim was based upon a letter from Sir Malcolm Field (then Chairman of the CAA) dated 27th June 1997 and the letter of 20th February 1991 from Lord Tugendhat. The sole defendant was the CAA. Later, on 27th August 1998, came a writ alleging breach of contract and negligence against the CAA. Those two actions were struck out by order of Sir Oliver Popplewell on 21 December 2000, along with the present action. On 18th July 2001, however, this action was restored by order of the Court of Appeal (Simon Brown, Chadwick and Tuckey LJJ) and then took its course to trial.

184. This was because, unlike the Judge, the Court of Appeal rejected the argument that it would be an abuse of process for Captain Friend to continue with this action, having

regard to the outcome before the industrial tribunal. This was on the basis that it had been concerned only with Captain Friend's conduct immediately precipitating the dismissal and not at all with the employer's conduct. This might itself have been tortious or in breach of contract, a factor which could conceivably have led him to act as he did. Simon Brown LJ drew a contrast with the issues in the present action:

> "Certainly it would seem to me quite impossible to say of any court that comes to hear the 1996 action … that it would be irrelevant for it to address the question whether the appellant was right or wrong, reasonable or unreasonable in the view he held and expressed on the helicopter safety issue. Rather this issue would lie at the very heart of the claim for wrongful, as opposed to unfair, dismissal. If [Captain Friend] could prove in his civil action that he was being unlawfully instructed to carry out unsafe procedures, that must inevitably affect the court's reaction to his attitude and behaviour whilst refusing to be coerced into such action, for example his bloody-mindedness".

He added that the fact that Captain Friend accepted that trust had broken down irretrievably said nothing as to where the blame for that lay. The Court of Appeal thus concluded that it would be for the trial judge to determine *inter alia* that question of blame – a matter not addressed by the industrial tribunal.

## 12. The factual disputes to be resolved

185. I was provided by the parties with a list of issues, which I understand to be agreed, identifying the factual disputes which the Court is required to resolve. These were divided by reference to five periods of time.

186. The first period is from April 1987 to June 1990. During this period Captain Friend was working as an FOI in FOD 5 (dealing with fixed wing aircraft operators) and the principal issues are identified as follows:

i) The express/implied contractual terms applicable;

ii) Captain Friend's record/standing within the CAA at the time he joined OSAP on 1st June 1990;

iii) What was Captain Friend's attitude towards the transfer to OSAP?

187. The second period is from July to November 1990. This covers the early part of Captain Friend's term in OSAP and, in particular, audits relating to PLM Helicopters, Aviation Beauport and Business Air. It also covered the first disciplinary investigation. The issues were identified as follows:

i) Was Captain Friend given an improper order by Captain Richardson to draft part of the PLM report in advance?

ii) Was his conduct in refusing to go to Inverness on the PLM inspection reasonable and proper, or did it constitute a breach of contract?

iii) Whether, and to what extent, it was (or was not) unlawful and/or unreasonable for the CAA to conduct an OSAP audit of a small helicopter operation, such as PLM without including a fully qualified helicopter FOI on the team;

iv) Did a conspiracy then arise between any or all of the four remaining individual Defendants with the object of injuring Captain Friend within the CAA (and inducing it to breach his contract) because of his stand on the helicopter safety issue?

v) Was that conspiracy carried into effect through the medium of:

a) the alleged malicious falsehoods.

b) other instances of harassment/discrimination complained of.

c) in breach of the CAA contractual obligations?

vi) Were the first ten malicious falsehoods relied upon (MFs 1-10) substantially true? If so, do they evidence:

a) persistent conduct by Captain Friend, in breach of his own contractual obligations?

b) or reasonable grounds for suspicion justifying management's conduct?

188. The third period is from December 1990 to July 1991. During this period Captain Friend was working in the Policy Section under Mr Williams (although there were substantial periods of sick leave). The principal issues identified are:

i) whether his work in the Policy Section was unsatisfactory, or whether Mr Williams' criticisms of it (contained in MF 13) represent further instances of management conspiracy/harassment/breach;

ii) whether Captain Friend behaved reasonably or unreasonably in continuing to pursue the "helicopter safety" case in the manner he did;

iii) whether MFs 11, 12 and 14-17 written during this period, but relating back to Captain Friend's first spell in OSAP, are true/honest or reflect a continuance of management's campaign against him.

189. Next is the period from August 1991 to March 1992. This covers Captain Friend's second period in OSAP (including the audit of Corporate Jet) and down to his suspension. The principal issues identified here are:

i) whether Captain Richardson's account of her dispute with Captain Friend at Corporate Jet (MF 18) is further instance of management's campaign against him, or on the other hand a further instance of unreasonableness/breach on his part;

ii) whether Captain Friend behaved reasonably or unreasonably in continuing to pursue the "helicopter safety" case in the manner he did;

iii) whether, during this period, he used the continuing threat of libel proceedings against management in an unreasonable manner.

190. The fifth period is from April 1992 to February 1993. It covers the period of suspension, the internal disciplinary investigation and proceedings, and ultimately the dismissal contained in the letter of 1st December 1992. The principal issues are identified as follows:

i) whether Mr Williams' investigation was biased and/or malicious (MFs 19-23) so as to amount to a breach of contract;

ii) whether Mr Saull was similarly biased, both during the investigation (MF 24) and in his ultimate decision to dismiss;

iii) or, on the other hand, whether Mr Saull was entitled to conclude that Captain Friend had by his own persistent and unreasonable conduct made it impossible for the employer/employee relationship to continue.

191. The sixth and final period runs from March 1993 to the present time. It covers the internal disciplinary appeals, the industrial tribunal and EAT proceedings and the subsequent High Court litigation. The issues identified here are:

i) Whether the conduct of higher management (in particular Mr Murphy) is evidence of conspiracy;

ii) whether the internal disciplinary appeals "cured" any unfairness in the dismissal decision;

iii) damage and, in particular, what (if any) losses have accrued to Captain Friend over this period in respect of income, alternative employment, pensions, consultancy earnings and other matters as a result of any unlawful conduct on the part of the Defendants.

## 13. The limited role of the "helicopter safety issue"

192. On a number of occasions Captain Friend has stated in the course of cross-examining witnesses, and in closing submissions, that the purpose of the trial was to determine who was right on the need for a specialist helicopter FOI to be in attendance at an OSAP audit. I believe that this is a misapprehension. The primary matter to be resolved is whether he can demonstrate that any of his pleaded causes of action have been made out in the light of the evidence. The "helicopter safety issue" forms an important part of the background context, but it is not necessary for the Court to conclude, definitively, whether on each and every helicopter OSAP a specialist was essential or, alternatively, whether it was a matter to be judged by the appropriate officers of the CAA in the circumstances of each case.

193. Views differed among the experts. It cannot, however, be said that any OSAP audit was "invalid" if no specialist FOI participated, or that it was "unlawful" to carry out the tests in such circumstances. It makes no sense. There was no legal requirement either way. The auditing function was an additional and distinct one from that of primary safety inspections (when a specialist FOI would always be assigned). It was

instituted by the CAA and directed towards the overall operations of the relevant operator. How it was to be carried out was a matter for the CAA, through its senior management, to judge in the light of their knowledge and experience of risk assessment.

194. Suppose the Court were to come to a different conclusion from CAA management and decide that it was necessary always, even in the case of an operator using small single-engined helicopters, to have a helicopter specialist at an OSAP audit. That would hardly assist in the resolution, let alone be determinative, of the Claimant's pleaded case.

195. He claims, for example, that the four individual Defendants were malicious or dishonest and that they conspired to injure him. It has to be said, however, that even after prompting by the Court he showed considerable reluctance to put his case to them in the witness box. He seemed to think that all that was required was to canvass his view of the "safety issue". Since they all profoundly disagreed with him, he decided there was little point in taking the cross-examination any further. It would just be, in his words, a game of "ping pong". He was of the view that the "safety issue" lay at the heart of his case, and that he was right about it, purely as a matter of common sense. He therefore concluded that this would be sufficient to establish the merits of his case.

196. It is elementary, however, that just because the four individual Defendants disagreed with him fundamentally this fact does not entail that any one of them was dishonest or malicious.

197. He also claims that the CAA was in breach of contract, in the sense that he was instructed to carry out tasks which were "unlawful" or "unreasonable". That is certainly a matter for me to determine, as the Court of Appeal contemplated in July 2001, but it is not co-extensive with the question whether Captain Friend was "right" on the helicopter safety issue or whether some other CAA staff (e.g. Captain Coutts and Captain Orringe) happened to agree with him. The fact that one person, or group of persons, takes one view within a range of reasonable options does not mean that others who disagree (e.g. Captains Ramsdale, Fooks-Bale, Sindall, Mimpriss and Richardson) are taking an unreasonable stance – any more than it means they were endorsing an illegal course of action.

198. Expert evidence was adduced by both sides on the desirability or need for a specialist FOI to attend a helicopter OSAP. It is a somewhat unusual situation for the Court to receive and adjudicate upon such evidence when it does not bear directly upon an issue to be resolved. This is not a claim for negligence. One could envisage circumstances, I suppose, where a claimant brought proceedings for negligence against the CAA in respect of some identifiable loss caused by a helicopter crash and, in the course of establishing causation, sought to demonstrate that on the balance of probabilities the accident would not have occurred if there had been a helicopter FOI at a recent OSAP audit because the cause of the crash would have thereby been prevented. One might think, if the CAA were to be sued, that the first line of attack would be something that had been missed by the assigned helicopter FOI at one of his or her routine inspections – rather than upon the more remote auditing function of OSAP. Nevertheless, one could, with some difficulty, at least imagine the theoretical possibility. But that is nothing to do with this case. Despite what Captain Friend told

his former Member of Parliament, there is no reason to suppose that the PLM or Corporate Jet OSAP reports were "flawed" in any way. Nor is there any ground for thinking that, had he attended under training in accordance with his instructions, the outcome of the audits in question would have been any different.

199. It was decided in 1990 by Captain Ramsdale as head of FOD 2, which is the specialist helicopter department within SRG, that the PLM Helicopters OSAP audit did *not* require the presence of one of his specialist FOIs. This was recognised as potentially significant by the lawyers Captain Friend consulted in 1992, because it gave rise to a major stumbling block if they were to attempt to prove malice. Furthermore, he was advised by counsel on 12th February 1992 that the decision by Captain Ramsdale:

> "… suggests that there may well be respectable grounds for contending that Captain Friend's stance was mistaken. If so, this would make the defence of justification a live issue, quite apart from the consequences for media discussed below."

200. At all events, what matters in this litigation is not whether a judge in 2005 thinks Captain Ramsdale was right, but whether these four Defendants thereafter had any reason to think he was wrong. The primary allegation against them is that they knew that Captain Friend was in the right and tried to shut him up by a campaign of harassment, and by publishing 24 documents which they (or at least one of them) knew to be false, or as to the truth of which they were indifferent. It is thus obvious that for me to apply an Olympian objective test, 15 years after the event, will not help to resolve those very serious allegations about the Defendants' states of mind and motivation.

201. Since expert evidence has been introduced by both sides, it is right that I should review it but I emphasise that it has limited relevance to the central issues. What is more, it is clearly a matter of judgment and there are genuine differences of opinion. The question is whether, for the secondary level of inspection involved in an OSAP audit, it is *always* necessary to have a specialist FOI attending a helicopter audit, or whether it is a matter that can reasonably be left to be judged against the individual circumstances: for example, depending on the nature of the aircraft, the extent of the particular OSAP involved and the experience of the personnel who are going to attend.

202. The first step is to consider the distinction between the function, on the one hand, of a routine safety inspection by the specialist assigned FOI and, on the other, that of an OSAP audit. Captain Friend took the *a priori* view that inspecting functions were so similar as to make no difference. It was clearly not a view based on OSAP experience because he was new to the Department. There is no doubt that others took a quite different approach.

203. Because of his experience, I found the evidence of Captain Sindall particularly helpful on the distinction between the functions of an OSAP audit and those of the routine FOI inspections of operators. He was called to give evidence by Captain Friend on 20th January 2005. He explained that the OSAP inspecting handbook was his own invention. He told me that the inspecting staff manual gave general guidance and that the section dealing with OSAPs did not address in any form of detail the manner in which OSAP appraisals or audits should be conducted. He continued:

> "Before I took on the post that you have described, I was myself head of OSAP. I was based in London, but my surveyors were based at Redhill and it seemed to me appropriate at that time I should give thought to devising a structure by means of which we could all work together, singing from the same hymn sheet if you will, and so, together with those members of OSAP, I constructed what I then called the OSAP Inspecting Handbook, and they were guidelines. They set out in more detail the sequence of events to be followed when tasked to carry out an OSAP appraisal. They therefore detailed the general duties of the members of the OSAP team in making preparations, in conducting the appraisal, in writing the report, and the format in which that report should be compiled. So, the OSAP guidebook was my own invention to help better manage the resources that I had available to me … I expected you to follow those general guidelines under the direction, of course, of your immediate head of section, the head of OSAP".

204. He was asked by Captain Friend to explain the objective and purpose of OSAP, to which he responded:

> "Can I just clarify a fact? It was not an OSAP 'inspection'. The two terms are contradictory. An OSAP was an audit, and inspection was a different activity. The purposes of an OSAP were, I believe, identified clearly in the inspecting staff manual …"

205. He explained that sometimes an OSAP team might be tasked to go and have an in depth look at an operator because the assigned FOI was concerned that the extent of non-compliance might be greater than he was capable of discovering from routine visits. That would be the normal reason an OSAP would be arranged. On the other hand, as with the PLM inspection, an OSAP team might be sent to an operator where it was felt that the quality of compliance and the standard of safety was sufficiently above average that the inspector assigned to the company might possibly visit them less often. The OSAP team might be tasked to confirm the FOI's preliminary view that the operator was not concealing any poor standards.

206. He was next asked by Captain Friend whether the ultimate aim of all the inspections was to achieve higher standards of flight safety. He drew a distinction between two activities: on the one hand there were the inspecting activities of the assigned FOIs and, quite separately, there were the activities of OSAP. The objective of OSAP was to ensure compliance with the specified standards contained in the operations manual. He added:

> "The purpose of the OSAP was to audit the activities of the operator being appraised in accordance with the content of the operations manual. For that purpose, it was never necessary that the pilot or engineer members, or executive officer members of an appraisal team, be qualified on the types [of aircraft] that they were looking at".

He explained that all FOIs had considerable experience and competence before coming to the authority and that, once trained, they were perfectly competent to make a general appraisal and audit of an operator's activities. He explained that he himself had carried out appraisals of Concorde and light two-engined aeroplanes – and almost everything in between. "The principles once learnt could be applied equally to whatever aircraft type was being used for public transport that we were asked to go and look at".

207. Captain Sindall was invited by Captain Friend to explain the similarity between fixed wing aircraft and helicopters. He explained that both are required to have external markings; that the pilots who fly them are required to have been trained and to remain competent for the purpose; the tasks they are asked to fulfil must be carried out in compliance with the approved flight time limitation scheme; the preparations and the conduct of the flight, as recorded in the paper work (e.g. the load sheet, the aircraft technical log and the pilot navigation log) were, broadly speaking, similar across the range. For the purposes of an OSAP audit, once one has the operations manual and the paperwork, it is possible to compare the one with the other.

208. Whether the OSAP was in respect of a fixed wing or a helicopter operator, he explained that there would be similarities of approach in that the relevant member or members of the OSAP team would accompany the crew for their initial briefing, look at the facilities provided for them and accompany the crew out and ensure that the safety equipment was on board and in date. It would be necessary to check that the aircraft documents required by law to be carried were present, that the crew had licences, and that they were fulfilling their duties in accordance with the check list and agreed procedures. Likewise, after the flight, it was to be checked that they recorded any deficiencies in the technical log, and that they completed the voids report and other paperwork. They were also to complete the task without seriously degrading the fuel to below the permitted limits. Those, he explained, were fairly general issues which could be taken by any trained assigned FOI "into almost any environment of public transport".

209. The question was raised as to a flight inspection (known as "Check E") and how an FOI who was not specifically qualified on helicopters could deal with those aspects. Captain Sindall replied:

> "I would like to just clarify this answer. Between operation of aircraft and handling of aircraft, … (… in the case of a helicopter hands on the cyclic and collective controls) is not a matter that the auditing inspecting needs to be too concerned about. Those issues are issues that naturally fall to the specialist, we are talking about helicopters, the helicopter flight operations inspector at the time the company applies for its air operator certificate. The expert FOI(H) is responsible to his superior for being the link with the company and to satisfy himself that all the issues concerning the performance and aircraft handling, which must also be in compliance with the aircraft flight manual, had been properly reflected in the training and in the operations procedures, specified in the operations training manuals. So that is where the level of expertise is required.

> The auditing OSAP inspector does not need to bother himself with those issues. He just has to ensure that he observes the crew fulfilling their tasks in accordance with those specified procedures".

210. On the more specific matter of the PLM Helicopters OSAP, Captain Sindall explained:

> "It was my practice always to ask the head of the flight operations inspectorate, which at the time was known as 'Flight Ops Department 2', if he wished to send one of his helicopter inspectors with us and on the occasion of PLM he [Captain Ramsdale] said that he did not wish to do so".

Captain Sindall said that he still considered the matter himself, independently, and there were some particular aspects of the PLM situation which led to his conclusion that there was no need to have a specialist FOI:

> "One of them was that it was a company that had been recommended to us in the second category that I have described, that is to say that their operational standards were thought to be so high that possibly the frequency of inspections might be reduced. So there was no obvious safety risk in these circumstances that we were possibly looking out for.
>
> The second was that there was in the team a pilot who had helicopter experience, Captain Richardson, and I think those were probably the two main points that decided me that I was content to allow the team to proceed with the constitution that was put to me".

211. He later added:

> "That we were not looking at the flying of the helicopter. We were looking at the operation of it. That is the essential difference. The flying side of it was neatly tied up because it had to be flown in accordance with the flight manual and then the crews had to be trained and competent, and regularly retested on their proficiency and competency to fly that helicopter. The assigned inspector would keep an eye on them as well. So the chances of something not in compliance in these circumstances were remote… the flight inspection is complementary to the audit in that it helps understand at the end what all the effort is being channelled towards."

I regarded this evidence as very important as to the distinction between the functions of an OSAP audit and the routine FOI inspections. Similar evidence was, of course, given by other witnesses such as Captains Mimpriss and Richardson. Because of his particular experience, however, and the fact that the OSAP handbook was in effect his own "invention", the evidence in this respect of Captain Sindall was especially illuminating and authoritative. Captain Friend has throughout insisted that routine FOI

inspections and those conducted in the course of an OSAP audit are essentially the same and that accordingly in the case of a helicopter operator precisely the same expertise was required. I see no reason, however, to reject the evidence of these more senior and (in this context) experienced officers. Captain Sindall was called by Captain Friend and was a very impressive witness whose integrity was almost tangible. He is not accused of malice or dishonesty in these proceedings (although there was apparently a time on 10th March 1993 when it suited Captain Friend to charge him with "corruption and malpractice" in the course of the disciplinary appeal). On the other hand, his evidence on these matters was entirely consistent with that given by the four Defendants.

212. As Captain Hodge had observed on 11th November 1991, if senior management had asked Captain Ramsdale whether a specialist was necessary (in the case of Corporate Jet) and followed his recommendation, "I find it difficult to disagree". It is a matter of professional judgment and risk assessment. Captain Friend was plainly entitled to his own opinion, as was Captain Coutts for example, but it is difficult to see why Captain Friend, with his lack of OSAP and of helicopter experience, was in a position to state dogmatically that the instructions he was given as part of his OSAP training were "unlawful" or even "unreasonable".

213. Bearing in mind that evidence as to the particular nature of the OSAP function, I turn to consider the conflicting evidence of the parties' experts.

214. Captain Sindall's did not have the status of expert evidence but in the present context the boundary between factual and expert evidence seems hazy to say the least. Captain Friend adduced his expert evidence from Captain Orringe and from Captain Mearns, who gave evidence both of fact and in the capacity of an expert. The Defendants relied on Captain Fooks-Bale and Captain Hodge (both of whom were helicopter specialists). All these witnesses have served in the CAA carrying out flight operations duties and may have differing opinions about the role of OSAP audits and the appropriate way of carrying them out in respect of single-engine helicopter operators, but this is not one of those cases where any of the experts is in a position to give uniquely authoritative evidence or to 'trump' that of the factual witnesses.

215. It may be thought a little unusual that a witness, Captain Mearns, should be giving expert evidence for one side when he has been involved in a personal spat with one of the parties on the other side. He gave evidence about his falling out with Captain Richardson. I should therefore make it clear that I have no doubt about Captain Mearns' personal qualities or his qualifications to be an expert witness. It is, however, unfortunate that in this capacity he should have chosen to attack the credibility of the Defendants and their experts. He said that he was "forced to question" their motives and accused them of a "clear intention to mislead". That is an unusual stance for an expert to take. Most experts recognise that it is for the Court to form its own view of the credibility of witnesses.

216. There is a further general point that I should make in relation to the expert evidence. Some space was devoted in the reports to the statistics relating to helicopter accidents over periods of time between 1989 and 2004. In the course of his opening, Mr Moloney put matters in context for his clients by reference to the figures relevant to public transport helicopters. As he put it in the forefront of his argument, it is only right that I should refer to it. Between 1990 and 1999 there were three fatal helicopter

accidents and twenty reportable accidents, ten of which were classified as "serious" and ten as "minor". During that period public transport helicopters, which would be within the jurisdiction of the supervisory role of the CAA, flew over three million flights and accumulated 1.3 million flight hours. It is also right to say that the period led to a reduction in the reportable accident rate of approximately 30%. Captain Friend did not challenge these figures.

217. Although much detail was addressed on the statistics of helicopter accidents as a whole, I did not find this especially helpful in resolving the issues pleaded in this case. It is not suggested that any of the incidents involving helicopters or operators within the jurisdiction of the CAA was in any way connected with the composition of OSAP teams or, more particularly, with whether there was or was not a specialist helicopter FOI in attendance. This is why I have difficulty understanding the supposed relevance. Over the period when Mr Ashdown was involved as Captain Friend's then Member of Parliament, he was fed with material about helicopter accidents and this no doubt, understandably, encouraged him to pursue the question with Lord Tugendhat. Unfortunately, however, despite the claims of Captain Stewart to "objectivity" the apparently alarming statistics were as irrelevant then as they are now.

218. The expert evidence of Captain David Orringe and Captain David Mearns may be summarised as follows. In their opinion it was inappropriate to conduct an OSAP audit of a helicopter operator, in *any* circumstances, without a qualified helicopter FOI as part of the team. They consider that the experience and qualifications of a fixed wing pilot are so different from those of a rotary wing pilot, and the nature of the checks and tests carried out during a routine FOI inspection are so similar to those forming part of an OSAP audit, that an FOI who is only qualified as a fixed wing pilot would not have appropriate qualifications to participate in a helicopter OSAP audit. What is more, when Captain Orringe was appointed as head of OpsQa (the successor to OSAP) in 1996, he immediately determined that only inspectors who were in his view properly qualified would be used to audit helicopter operations. He would not allow such an audit to take place without such an inspector participating. As I have said, Captain Coutts also, when he was responsible in the autumn of 1992, adopted a similar policy. He did not discuss this with senior management. He simply adopted the policy of his own account, as he was fully entitled to, but it was not adopted as an official CAA policy. There was no change of heart in this respect on the part of those who had been involved earlier, such as Captain Mimpriss, Captain Sindall and Captain Richardson. It is simply that different people made different judgments.

219. The views expressed by the Defendants' expert Captain Fooks-Bale were encapsulated in paragraphs 18–22 of his report:

> "18. All helicopter operators holding an AOC (Air Operators Certificate) and conducting Public Transport operations are assigned a Flight Operations Inspector (Helicopter), this has always been the case.
>
> 19. The role of the assigned Flight Operations Inspector assumes a close working relationship with the management of the companies that he inspects. At the time that this case relates to, each company would be inspected at a frequency of 4 visits

per year. On each of these occasions a full check of the company standards would be carried out. However it was usual to concentrate on one or two specific areas each time, which over the course of a 12 month period would ensure that an 'in depth' picture of the company evolved.

20. The OSAP team within the Flight Operations Department was at that time very small. There were approximately 100 helicopter operating companies, with a much larger number of fixed wing operators. It follows that most helicopter companies were never the subject of an OSAP inspection. In my view, as Senior Flight Operations Inspector, this did not create any risk to safety. As a manager of approximately 5 Inspectors, who in turn inspected approximately 40-50 operators, I was satisfied that with the normal periodical inspections carried out, together with an annual inspection which included a visit by myself any serious operating deficiencies would be found whether or not the company had been the subject of an OSAP.

21. My opinion is that OSAP inspections at that time on small companies such as PLM Helicopters were probably unnecessary and usually found very little that the assigned Inspector could not. However as the system developed it proved to be a very good tool for inspecting a much broader range of paper records, particularly in the larger Helicopter companies operating on the North Sea. These companies were/are the equivalent of a major airline, carrying out large numbers of flights, transporting many passengers, operating many aircraft and employing many pilots, engineers and other staff. Helicopters are broadly divided into two categories, Group A and Group B. Group A helicopters are multi engine and above a weight of 5700 kgs, required to be operated by a crew of two pilots. Group A helicopters can operate by day or night in both VMC (Visual meteorological conditions) and IMC (Instrument meteorological conditions), some have approved icing clearances, all have the ability to continue flight and land safely in the event of an engine failure. Group B helicopters in contrast are small, usually single engine and may not operate for the purposes of Public Transport either by day or in cloud (IMC). The helicopters operated by PLM as an example were all simple Group B single engine aircraft.

22. Because of the simplicity of Group B operations, I fully support the rationale that a Flight Operations Inspector (Helicopter) was not required to be present during OSAP inspections of small helicopter companies. In fact to do so would in my opinion have real potential ramifications for other helicopter safety measures when considering the entire helicopter industry as it would have taken valuable resources away from more complex and demanding areas such as the

> North Sea where there was a definite requirement for the presence of experienced Flight Operations Inspectors (Helicopter)".

220. It was Captain Fooks-Bale's evidence that the major portion of work carried out during an OSAP audit consists in the examining of records and of paper checks. The statutory requirements for completion and retention of all flight and crew records is similar for fixed wing and rotary wing public transport operations. The individual company's operations manual forms part of the company approval to hold a certificate and contains detailed instructions. An inspector would need to be familiar with and carry out checks against those manuals. In his opinion, therefore, any person trained in audit/inspection techniques, specific to aviation, whether by way of background a helicopter pilot or a fixed wing pilot, could carry out the major parts of an OSAP audit. Indeed, he pointed out that people who had not been pilots at all were employed for appropriate tasks within the CAA in connection with OSAP audits. Suitable staff had been trained to assist in the checking of records.

221. Not surprisingly, there was agreement between the experts that there are significant differences between helicopters and fixed wing aircraft. Different motor skills are required for the pilots and different training. There are quite separate pilot licences. There is a considerable degree of overlap in the examination subjects taken by helicopter and fixed wing pilots; for example, in air law, flight planning, navigation in general, meteorology, radio navigation, communications, flight instruments, radio aids and weight and balance. There is a distinction, however, when it comes to principles of flight (theory), performance and aircraft systems.

222. Not every OSAP audit would involve a flight inspection and Captain Fooks-Bale expressed the view that a flight inspection in the course of an OSAP audit would be of very little importance to the regulatory oversight of the smaller helicopter companies. He explained that any flight inspection carried out, whether as part of a routine FOI inspection, or as part of an OSAP audit, would be a check on operating procedures rather than a check on the competence of any pilot's handling or flying skills. They would have been independently and rigorously tested over the previous twelve months in a number of respects:

i) Medical fitness (every six months over the age of 40).

ii) Certificate of Test (every six months). This test would be carried out by a CAA authorised examiner checking competence as to all emergency procedures and handling.

iii) Base check (every six months). This is a flying and handling skills test, which would be carried out by a CAA authorised examiner checking competence at all manoeuvres, both emergency and standard.

iv) Line check (every twelve months). This would be very similar in content to that of a flight inspection and would be carried out by a CAA authorised company examiner.

v) Emergency and survival check (every twelve months). Again this would be carried out by a CAA approved examiner checking competence in all aspects of emergency and survival procedures.

vi) Instrument rating renewal (every twelve months). Again this would be carried out by a CAA authorised examiner checking the competence of aircraft handling in emergency and normal manoeuvres for pilots required to operate in instrument meteorological conditions.

The assigned FOI, who would be a helicopter specialist, would have carried out over the previous twelve months at least one and probably two flight inspections of the same kind as envisaged in an OSAP audit.

223. Apart from flight inspections, it was the view of the CAA witnesses that a *properly trained* FOI, including one with a fixed wing pilot's background, should be competent to carry out all the necessary checks envisaged in chapter 11 of the SRG Inspecting Staff Manual. Indeed, it was suggested that most of the "in flight" elements of a flight inspection (Check E) could also be carried out by such a pilot. It is worth identifying those elements:

a) Use of checklists;

b) Crew briefing for take-off and landing;

c) Altimeter setting drill;

d) Crew co-operation and flight deck efficiency;

e) Communication procedures;

f) Double check on radio aid efficiency;

g) Adherence to ATC instructions;

h) Fuel management;

i) Navigation and use of navigational aids;

j) Descent and approach procedures;

k) Aircraft handling technique.

It was the view of Captain Richardson that a trained fixed wing FOI should be able to check on all of those items with the exception of "aircraft handling technique" and possibly also "descent and approach procedures". It has not been suggested that, if he were to have taken part in any helicopter OSAP audit which included a flight inspection, Captain Friend would have been asked to be responsible for these aspects of the flight check in any event. Against this background, Captain Hodge thought the fundamental differences between helicopters and fixed wing aircraft were not relevant to core work of an OSAP audit, since this involved an in-depth inspection of the operation and, in particular, the retained records of the operator. It was not its purpose to review or replicate routine FOI inspections or pilot training.

224. Captain Mearns expressed the following opinion:

> "Without the professional knowledge and experience of the likelihood and consequences of these aerodynamic phenomena [relating to helicopters and described in paragraph 9 of his report] a fixed wing pilot would not know if the helicopters was (*sic*) being flown safely or not, or if the relevant information required in the Operator's various Operations and Flight Manuals was valid".

In response to this passage, Captain Hodge observed that the validity of flight manuals would not fall within the remit of the assigned specialist FOI, let alone an OSAP team. Such matters would probably fall within the remit of the certifying authority and would usually have involved test pilots rather than FOIs. Another area of disagreement between Captain Hodge and Captain Mearns was over helicopter take-off and landing performance figures. Captain Mearns suggested that these involved complex calculations and required specific training in both theory and practice. Captain Hodge pointed out, however, that the helicopters operated at the relevant time by PLM Helicopters and by Corporate Jet were single-engine Group B helicopters. Thus, he said, performance calculations in retained company records would have been very simple, consisting essentially in a check that the weights of the helicopter at take-off were within the specified limits. This would have been a constant within the United Kingdom. He did not agree, therefore, that this would be a matter beyond the capability of a trained fixed wing FOI.

225. At the trial Captain Mearns sought to introduce a matter which had not been covered in his report. He wished to offer the opinion that a fixed wing FOI would not have the competence to carry out a ramp check with regard to a Group B helicopter ("Check D" in the ISM). At first Mr Moloney objected because the contemporaneous checklists were not available, but overnight they were obtained and he was content to give Captain Friend the opportunity of addressing this new issue on Friday 1st February. After going through the listed checks required by the ISM, Mr Moloney put to Captain Mearns that a fixed wing FOI *could* satisfactorily carry out the tasks required of him in the ISM. He replied that it was probably fair to say that he could do most of what was on the list. Although he said "most", he never identified any listed item in respect of which he wished to make an exception. Despite various leading questions in re-examination, it seemed to me that the point therefore had no substance to it.

226. There were two aspects of Captain Mearns' evidence which suggested that he may not have focussed on the narrow issue between the parties. At two points he went into matters that would only be relevant to Group A helicopters and thus had no bearing on the case. These were "management ability as far as crew co-operation is concerned in a multi-crew aeroplane" and "large cargo loads, perhaps even external loads". Neither topic was relevant to the Group B helicopter operators in question. Secondly, he said, "… as captain of the aeroplane, you are legally responsible for the technical status, and you have to satisfy yourself that the aircraft is technically correct". This, as Mr Moloney put to him, rather suggested that he was not properly distinguishing the functions and qualifications of an FOI on an OSAP audit from those of a helicopter pilot. This apparent confusion of thought naturally made me wary of attaching too

much weight to his expert evidence when set against that of Captain Fooks-Bale and Captain Hodge.

227. As to Captain Orringe, there were a number of unsatisfactory aspects to his evidence. First, as he readily admitted, he had no helicopter qualifications. Secondly, he seemed to be under the impression that the OSAP handbook specifically required a helicopter specialist to attend an OSAP audit for a helicopter operator and to carry out a flight inspection. This was plainly not so. Otherwise the Defendants would hardly be contesting the "safety issue". Their whole case is that there was no mandatory requirement. It was a matter for judgment in the circumstances.

228. Thirdly, he thought that his predecessors in OSAP had all regarded it as necessary to have a helicopter specialist FOI for a helicopter OSAP. Obviously this was not so, because Captains Sindall, Richardson and Mimpriss had not thought it necessary.

229. Fourthly, he seemed to adopt an inconsistent posture on Question 12 of the "Agreed/Not Agreed Issues" for the experts. He there acknowledged that helicopter OSAPs *did* sometimes take place without a flight inspection. He could not explain the discrepancy.

230. Fifthly, he recognised that he had cited in error, at paragraph 4.2 of his report, guidance material from the European Joint Aviation Authorities (JAA) in support of Captain Friend's case. It was irrelevant and Mr Moloney put to him that, when he included the reference, either he had been "extremely careless" or he had known that it was not directly in point. He responded merely, "I included it in error and I have already retracted it".

231. Sixthly, he relied upon the ICAO Document 8335. He had asserted that it detailed ICAO mandatory standards but only described recommended practices, but he later accepted that it did not refer to or deal with OSAP audits. Not only that. He also accepted that the Document did not do either of the things he attributed to it. It actually gave guidance at a level below mandatory standards and recommended practices. He therefore accepted that his evidence had been wrong, but he was unable to explain how this had come about. Mr Moloney therefore put to him that when he had answered the relevant question (in the "Agreed/Non-agreed Issues") he had not been applying his mind at all. He replied that he thought this was "overstating it".

232. Seventh, he offered the opinion that the instructions Captain Friend had been given were "probably unlawful" but that is clearly unsustainable.

233. These factors inevitably tend to lessen the weight that can be given to Captain Orringe's expert opinions.

234. What I therefore derive from the expert evidence, as a whole, is that there are simply differences of opinion as to whether for a helicopter OSAP it was at the time *always* necessary to have a specialist FOI in the team, even for a Group B operation, or whether it could be judged by the relevant managers according to individual circumstances. What I do not derive are either of the propositions for which Captain Friend contends; namely, that it was "unlawful" and/or "unreasonable" for his managers to instruct him to participate in a Group B OSAP without a specialist FOI in attendance.

## 14. Malice

235. Malice in the context of the tort of malicious falsehood is a concept that is analysed by the law in the same way as it is in defamation: *Spring v Guardian Assurance* [1993] ICR 412, CA. It is tantamount to dishonesty. It is necessary for a claimant to prove that the defendant or defendants in question published the relevant allegations either knowing them to be false or being genuinely indifferent to their truth or falsity. That is a heavy burden to discharge. It is not enough to show that someone has been mistaken or pig-headed, or jumped to conclusions on inadequate material. Nor is it to be assumed that because a person dislikes the claimant or is wary of him, or exasperated by him, he or she is therefore malicious. As Lord Diplock reminded us in *Horrocks v Lowe* [1975] AC 135, 151, it is difficult "to hate the sin but love the sinner". The question is whether or not the person communicating information about the claimant was acting in good faith in doing so.

236. It is of interest to note the advice which Captain Friend himself received in counsel's opinion as long ago as 12th February 1992. Having made clear that malice was not to be confused with "exasperation with [Captain Friend's] intransigence", he confirmed:

> "In this context I am concerned at the recent information suggesting that representation on OSAP teams considering helicopters has been decided by the Head of the Helicopter Section. That could certainly found an honest belief that [Captain Ramsdale] was more likely to be right than Captain Friend".

There can be little doubt, therefore, that Captain Friend has been aware of the hurdles confronting him on malice since before he was suspended – let alone dismissed. He was expressly told that, if the safety issue was "open to different views", then the prospect of success on malice would materially diminish. The first step confronting him would be to show "… that anyone with the requisite professional knowledge would have appreciated the validity of Captain Friend's position". At that time, counsel had so little information that he could only advise, as he acknowledged, on a "speculative" basis. It has been crystal clear, however, for more than a decade that Captain Friend could never prove that "*anyone* with the requisite knowledge" would appreciate that his position was valid. The long narrative set out above demonstrates how many people profoundly disagreed with him.

237. In theory, it is possible for a defendant to believe in the truth of the information and yet still be held malicious if it can be demonstrated by the claimant that the dominant motive for communicating it was to injure him. Lord Diplock emphasised, however, that courts should be slow to draw such an inference. I know of no examples of this having occurred since Lord Diplock canvassed this possibility.

238. There were a number of submissions made about the individual allegations of malicious falsehood. For example, in some cases, it may be difficult to see how any of the individual Defendants can be held responsible for causing the publication at all. In other cases, the words complained of may be thought to be in the nature of opinion or comment rather than factual in character. In the case of those allegations which are factual, it is said that Captain Friend has failed to disprove them. But the primary submission, which applies to all 24 of the pleaded communications, is that there is no

evidence of bad faith or of a dominant intention to injure the Claimant. The pattern which emerges from the narrative of the events set out above is of managers leaning over backwards to give him every opportunity of rehabilitation. Standing back from the trees, and looking at the wood as a whole, one needs always to remember that, if any of the managers concerned had the dominant motive of being rid of Captain Friend, quite apart from terminating his contract for breach of its terms, there was always the option of giving three months' notice. They could have brought his employment to an end in 1990 but instead it ceased finally only on 1st March 1993.

239. If they wished to silence him, an alternative course available was to concede his point, either tacitly or overtly, and give official higher level sanction to the approach later taken by Captain Coutts. They could simply say that for every OSAP audit of a helicopter operator there would have to be a specialist FOI in the team. There were only a very few such audits in any one year, and even fewer where the relevant managers would not require a specialist to take part. Indeed, as emerges from the documents, there would appear not to have been a single instance in the year between the PLM Helicopters OSAP (at the beginning of August 1990) and that of Corporate Jet (at the end of August 1991). It would have been easy to accommodate.

240. Instead, everyone from Lord Tugendhat to Captain Richardson maintained and defended the policy that the need for a specialist was to be determined, as a matter of judgment, according to the circumstances of the individual case. This stance was maintained internally and externally at the time (e.g. to Peter Carter-Ruck and Mr Ashdown) and has been maintained publicly throughout the subsequent proceedings – down to February 2005. The suggestion must be that they are all not only wrong but also wrong-headed, in the sense that they know Captain Friend is right but have chosen to risk public safety purely to spite him. It is hardly possible to overstate the charge.

241. It is appropriate to recall the analysis of Lord Nicholls in considering the civil standard of proof in the rather different context of *Re H (Minors)* [1996] AC 563, 586:

> "When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the events occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability".

242. Here the inevitable conclusion of Captain Friend's case, involving not only these Defendants but so many of the senior officers of the CAA, is so far-fetched that it would require the most cogent evidence for a court to come to such a counter-intuitive conclusion.

243. There is a wealth of evidence in this case, both documentary and oral, including many unguarded remarks committed to writing, which at the time could not have been anticipated as destined for public scrutiny over the next decade and a half. A significant selection of them have been incorporated in this judgment. Yet I have found no evidence (let alone cogent evidence) to support the sinister scenario for which Captain Friend now contends. There is exasperation, there is anxiety. But there is also patience and tolerance to a remarkable degree. Some thought, at least at the

outset, that his stance on the "professional" issues was a ploy to have himself transferred out of OSAP and back to FOD 5. Despite this, it seems that Captain Friend was always given the benefit of the doubt, in the sense that he was credited with the sincerity of his belief. Unlike the scurrilous allegations being fed to Mr Ashdown by Captain Stewart in March 1991, it is to be noted that Lord Tugendhat when briefed by Mr Page was told that Captain Friend was a "man of great principle".

244. One thing this case does not lack is contemporaneous evidence from which to make a judgment. There are hundreds of documents from which to make an assessment of the motives of the main protagonists. This is, perhaps unusually, of more importance in the context of malice than is the assessment of the Defendants as individuals on the basis of their performance in the witness box. I have referred to Captain Friend's reluctance to cross-examine on the issue of their good faith, but they did give evidence from which, at least, some assessment of character could be made. Nevertheless, I regard the detailed archive of their contemporaneous reactions as more informative. From the documents which have been drawn to my attention, I can see nothing which leads me to conclude that any of the individual Defendants was dishonest or motivated by personal spite towards Captain Friend.

245. Of course, there are signs of frustration and statements as to lack of trust. But these are always based on things that Captain Friend has said, or done or omitted to do, or on reports about him from others. All the individual Defendants had an obligation to manage Captain Friend in the best interests of the CAA and, ultimately, the public. The question is whether any of the communications or discussions about him is more consistent with personal spite - as opposed to discharging that duty as best they could in difficult circumstances. I see no reason to draw that conclusion.

246. Moreover, in so far as one can gain an impression of individuals in the witness box, and their states of mind nearly 14 or 15 years ago, this was entirely consistent with the picture that emerged from the documents.

247. I should say something specifically about Captain Richardson, who was perhaps more the subject of criticism by Captain Friend than others. I think she probably did have a tendency to put people's backs up through her style of management. There is a euphemism often used for people who are rather insensitive to those who work for them. It is said that they do not suffer fools gladly. That, of course, is exactly what was said about her by Captain Mimpriss on 26th October 1990. Apart from Captain Friend, however, she succeeded in causing offence also to Captain Mearns and Captain Gibbs. There was a tentative suggestion put to Captains Friend and Mearns, although expressed more politely, that they were just sexist bigots. This will not do. It has to be remembered that Captain Mearns felt humiliated by the way she spoke to him in front of subordinates and that Captain Gibbs suffered from stress related illness for a time – at least in part due to relationships becoming "a little difficult" when she was his line manager in 1995 or 1996. Indeed, as early as 1990 it seems that Captain Gibbs had put in a request to his section boss that he should not have to fly together with Captain Richardson in an HS 125 jet aircraft which the CAA at that time used for keeping fixed wing inspectors in "current practice". One finds the phrase "personality clash" cropping up in the papers. I think that, during the relevant period, there probably was a certain insensitivity on Captain Richardson's part and a somewhat imperious manner not calculated to make subordinates feel at ease.

248. It is important that this be addressed openly because malice is a quite separate matter. I see no reason to think that Captain Richardson was dishonest or malicious. She was under a duty to report regularly on Captain Friend at intervals, which was no doubt tedious for her, and in the course of reporting there were a number of relatively trivial matters which possibly would not have been referred upward to her managers in the ordinary way; that is to say, if she had not been instructed to keep him under particular scrutiny. But I do not detect evidence of malice. She found him irritating but she was not alone in that. She also attempted to give credit where it was due – and even when she probably thought it was not (e.g. over the Box 3 marking at the beginning of 1992).

249. One aspect of Captain Richardson's character, along with those I have already described, is that she was probably a "stickler" – a quality for which one should no doubt be grateful in someone charged with responsibility for safety in flight operations. She demanded obedience, co-operation, teamwork and careful attention to detail. She understandably felt that these qualities were distinctly lacking in the case of Captain Friend. She felt it strongly. It was not a dishonest pretence. He felt that she was unfair to him – but he felt the same about several layers of management above her. He alleges a campaign of harassment by all and sundry. No doubt he believes that. Yet Captain Friend is not the only one who stands up for what he believes to be right. Whatever he or Captain Mearns or Captain Gibbs may think about her as a manager, I am left in no doubt that what she said about Captain Friend she believed to be true. She still does.

250. I said earlier that one of the *casus belli* turned upon the resolution of a conflict of evidence between Captain Friend and Captain Richardson. It will be remembered that his case (as passed on by Captain Stewart to Mr Ashdown) was that twice she had instructed him to write parts of an OSAP report before the relevant audit took place (in respect of Merrix Air and PLM Helicopters). The clear implication is that it was to be *finalised* in those respects, without carrying out the proper checks. The audit would thus be a mere formality. That is a breath-taking allegation. It not only reflects upon Captain Richardson, attributing to her a gross dereliction of duty and disregard of public safety; it also embraces all those who were responsible for the relevant reports and for checking the final drafts. Since I am now addressing the question of Captain Richardson's honesty, it is appropriate to mention that subject here. If she was guilty of compiling dishonest reports, that could provide her with a motive for harassing and damaging Captain Friend.

251. Time and time again, over the last 15 years, it has been carefully explained how preparation and drafting would take place before the audit visit. It was rehearsed again in the witness box by Captains Richardson, Sindall and Mimpriss. There is nothing wrong with drafting information in the form of an OSAP report and amending or adjusting it as the audit takes place, and as other people review the information afterwards. I have no hesitation in saying that this allegation against Captain Richardson (and implicitly also against others) is completely false. It is simply nonsense. Whether it was due initially to a "misunderstanding" by Captain Friend of his instructions, as was suggested by Captain Sindall in a memo of 22nd October 1990, I know not. It does not matter for present purposes. I find it difficult to believe that the misunderstanding has persisted for so long despite the explanations which have been given. The ease with which Captain Friend is prepared to spread allegations of this

gravity about others contrasts starkly with his own readiness to take offence at relatively minor criticisms of himself. Although she understands only too well the lack of merit in the charge, I cannot believe that it has been comfortable for Captain Richardson to live with this allegation of dishonesty for the last 15 years.

252. Captain Friend wished to introduce evidence from Captain Gibbs on a quite separate matter because he thought it would show Captain Richardson dishonestly rewriting or constructing a report *ex post facto* in the wake of an accident in 1990. It was of questionable admissibility, but I allowed Captain Friend to make what he could of it. As soon as Captain Gibbs was asked about it on 20th January 2005, it became obvious that Captain Friend had got hold of the wrong end of the stick. Captain Gibbs most certainly did not suggest that Captain Richardson did anything deceitful. The episode illustrates once again how Captain Friend is prepared to leap to conclusions and to make the most serious of charges without checking his facts. It was all of a piece with his more central allegations about the Defendants. He has a tendency to seize upon incidents, to distort them and to invest them with sinister significance which they will not bear.

253. There is also one matter specific to Mr Saull, on which emphasis was laid in the course of evidence. Captain Stewart said that he had made a "disgraceful" remark at a meeting on 12th December 1990 to the effect that the CAA was insured. No doubt this would have been factually accurate, so far as it went, but what Captain Friend and Captain Stewart thought "disgraceful" was their interpretation of Mr Saull's words. They seemed to think that he was saying implicitly that corners could be cut on safety because they were covered by insurance. Captain Stewart thought he said words to the effect that he was not troubled by the possibility of the CAA incurring substantial legal liabilities as the Authority was insured against such problems. There is nothing in the contemporaneous notes of the meeting to cast light on this matter. It will be remembered that Mr Britton's advice was partly concerned with the question of the individual employees' liability in law if there were a legal challenge to the carrying out of the CAA's role in safety regulation. Rightly or wrongly, it seems to have been thought at the time that this was one of Captain Friend's concerns (see e.g. Captain Sindall's hand-written memo of 27th July 1990). If he were sued it may well be that he would be covered by the CAA's insurance. It is possible that the matter was mentioned in this context. Mr Saull has no recollection of insurance being mentioned, but in any event I am quite satisfied that he would not have said anything to the effect that proper safety precautions could be jettisoned because there was insurance cover. I believe that Captain Friend was suggesting that Mr Saull was malicious towards him because he was not prepared to countenance this cynical and cavalier attitude on the part of management. That is clearly in my judgment a misinterpretation of anything Mr Saull may have said about insurance. It would be contrary to the whole philosophy of safety regulation, to which he had devoted his energies for so many years.

254. I conclude that there is no evidence that Captain Richardson, Captain Mimpriss, Mr Saull or Mr Williams were dishonest or malicious. Therefore Mr Moloney's primary and compendious argument on malicious falsehood succeeds. That essential element is absent.

## 15. Has Captain Friend proved the untruth of the "malicious falsehoods"?

255. For the sake of completeness, I should also consider whether Captain Friend has discharged the burden of proving, on the balance of probabilities, that the factual allegations which he relies upon as malicious falsehoods were in fact untrue. It is appropriate to give consideration to each of the individual documents, although I shall attempt to do so as briefly as possible and to confine myself to the allegations which appear to be the more significant ones. I shall not waste time in what is an already lengthy judgment by addressing comments or opinions, since the tort of malicious falsehood is not directed towards such matters. I need hardly say that the Defendants advance a positive case in relation to all the factual allegations to the effect that they are substantially true. They do not merely rely upon Captain Friend's having failed to discharge his burden.

*Captain Richardson's memo of 27th July 1990 (MF 1)*

256. The relevant factual allegation is to the effect that the whole OSAP section was being "disrupted by his behaviour". This is what made the situation "intolerable" so far as Captain Richardson was concerned. There can be little doubt that this was true.

*Mr Page's letter of 7th August 1990 (MF 2)*

257. Two preliminary points are taken on this letter which, in themselves, seem to be perfectly valid. First, it is said that it was not published to any third party but only to Captain Friend himself. Secondly, since it was published with a view to possible disciplinary proceedings, it would fall within the contemplation of the disciplinary rules incorporated in his contract. It was part of the framework that the relevant employee should be informed at every stage. Against this background, it is submitted that in the light of *Friend v Civil Authority (No 1)* [1998] IRLR 253 Captain Friend must be taken to have consented to the communication.

258. Mr Page was relying upon matters reported to him and based upon Captain Richardson's handwritten memo of 7th August 1990. In the light of the evidence of Captain Richardson, the underlying allegations were substantially true and Mr Page's report of them accurate.

*Captain Mimpriss' memo of 17th August 1990 (MF 3)*

259. It is unclear from the particulars of claim precisely what is complained of as the falsehood here. Captain Mimpriss was attempting to provide a summary of Captain Friend's views as conveyed at the meeting two days earlier. I can find no basis for concluding that any of the contents do not accurately reflect Captain Mimpriss' understanding.

*Captain Richardson's memo of 31st August 1990 (MF 4)*

260. This document related to the Aviation Beauport OSAP visit and represented Captain Richardson's understanding of what had taken place. As so often, the contents fall into several categories.

261. A potentially serious matter had arisen in relation to one of the pilot's logbooks. As she explained in evidence, it appeared that either these or those of the aircraft had been falsified. Her complaint was that Captain Friend had refused to assist on this investigation (e.g. by checking records) without legal advice. This she no doubt regarded as unreasonable. She summarised the position at paragraph 3:

> "During the appraisal it was thought that there were irregularities but Captain Friend was not prepared to make any written statement regarding the findings without legal advice. The task was completed by Captain Richardson".

I accept her evidence about this.

262. The second matter which arose at this time was that of accommodation being booked through Aviation Beauport. She recorded her understanding, on the basis of what she was told by Captain Friend, that the operator had booked accommodation at his request. I cannot accept that she made this up. It reflects her honest understanding.

263. Reliance was placed at trial on a letter of 24th July 1992 (i.e. two years later) from Captain Graham, who had been Aviation Beauport's Managing Director. He was replying by fax to a request from Captain Friend of the same date to answer whether he (Captain Friend) had asked Captain Graham or any of his staff to book hotel accommodation in connection with the OSAP visit. What checks were made before answering is unclear, but the response was as follows:

> "At no time prior to or during the OSAP inspection did anyone from Aviation Beauport make hotel bookings for you or anyone else from the CAA team. Nor were we asked to make such bookings by you".

I am certainly not prepared, in the absence of Captain Graham or any other probing of that document, to regard it as a sufficient basis for simply disbelieving what Captain Richardson said. She was purporting to reflect her understanding of what she had been told by Captain Friend. I have no reason to believe that she was misrepresenting the position – still less dishonestly. As a result of what she had been told she advised Captain Friend, as the document records, that he should not ask a company to book accommodation on his behalf "except in very exceptional circumstances".

264. There were various comments about Captain Friend's "attitude" as well, but these are essentially admitted to be true.

*Captain Mimpriss' memo of 4th September 1990 (MF 5)*

265. One of the remarks to which Captain Friend took particular exception in this document was the warning:

> "We will need to watch that Captain Friend does not claim a form of quasi overtime working in the evening, unsupervised, in his hotel room".

This was not, of course, a statement to the effect that any bogus claim had actually been made; it was a warning based on information from Captain Richardson. This was to the effect that Captain Friend had no contact with other members of the OSAP team outside office hours (a stance which he also adopted on other occasions). Against the background of earlier concerns about expenses and the general impression he was gaining that he was dealing with an "awkward customer", it is not altogether surprising that observations of this kind were made. For present purposes, however, what matters is that it is not a factual assertion which can be demonstrated to have been "false".

266. Another comment to which Captain Friend objected was Captain Mimpriss' observation to Captain Sindall:

> "You will need to extricate us from the situation where the OSAP Handbook is used as the only way that an OSAP can be conducted".

This again is not a factual assertion, rather a warning for the future. He was genuinely under the impression that Captain Friend was using the handbook too literally and inflexibly.

*Captain Richardson's memo of 14th September (MF 6)*

267. Captain Richardson was here expressing the view that it had been inappropriate to carry duty free goods on to an operator's premises, when carrying out an OSAP audit, and leave them with the receptionist. How significant this is is another question, but as to its factual content there is no dispute. Captain Friend agreed that he had in fact done this.

*Mr Anderson's memo of 18th September 1990 (MF 7)*

268. This contained the reference to "milking" the travel and subsistence regulations to suit Captain Friend's own pocket. Offensive no doubt, but I have no reason to believe that this was not an honest conclusion drawn by Mr Anderson from the information he had been given. It is not alleged, incidentally, that Mr Anderson was malicious and he was called to give evidence on Captain Friend's behalf. There is no doubt whatever that by this time management had legitimate concerns as to how Captain Friend was handling his expenses and it was regarded as important that he should be given guidance for the future. Indeed, Captain Friend in cross-examination was not disposed to disagree that there had been reasonable concerns on this front. During the course of the trial Captain Friend explained that the address where he stayed in Hammersmith was that of his son. He stated that he paid the allowance to his son, or recompensed him in kind by taking him out to dinner. It was not revealed at the time. What he told Mr Saull on 2nd December 1990 was that he had found "acceptable accommodation within the night subsistence rate in Hammersmith". Whether this was legitimate or not, as a matter of strict contractual interpretation, it might reasonably be categorised as "milking" – especially since he was also claiming mileage between Hammersmith and Gatwick. The management view was that, if necessary, he could stay at an appropriate hotel near Gatwick (thus avoiding the mileage claim).

269. There was no evidence that Mr Anderson had been induced or encouraged by any of the individual Defendants to make this allegation. He confirmed that the comments expressed represented his own opinion.

*The memo from Captain Mimpriss of 25th October 1990 (MF 8)*

270. This is largely a question of Captain Mimpriss' opinions about Captain Friend and his suitability for FOI duties. His opinions were based upon familiar factual information, such as Captain Friend's refusal to attend the PLM Helicopters OSAP appraisal, his subsequent reaction to the views of management, and his approach to Captain Richardson's instruction to carry out advance preparatory work for Merrix Air and PLM Helicopters. He has not proved any of that underlying factual material to be false.

*Captain Richardson's memo of 5th November 1990 (MF 9)*

271. This document largely concerned the Business Air OSAP visit. Captain Richardson had no direct knowledge of what had taken place and had to rely upon conversations over the telephone with Captain Friend and on notes of interviews with other participants, such as Mr Stovold, Mr Phillips and Captain Whittle. Once again the observations fall into separate categories.

272. I have no doubt in the light of the evidence of Captain Richardson and the contemporaneous comments of Mr Phillips and Mr Stovold that disruption was caused by Captain Friend's changing hotels. It caused inconvenience to colleagues.

273. Next there is the question of whether Captain Friend failed to give appropriate guidance to Captain Whittle. He believes that he arranged appropriate supervision from someone qualified to give it. There is no doubt that Captain Richardson was giving an accurate account of what she understood the position to be, which is what matters for present purposes. Captain Richardson made contemporaneous notes and, it seems, Mr Phillips told her that he and Captain Whittle were left with an unfair share of the work, and that seems to be corroborated also by Mr Stovold. It is not appropriate to try out the merits of that underlying dispute, since it is more important to focus on whether Captain Richardson was misrepresenting the contents of those reports.

274. Mr Phillips appears to have told Captain Richardson that Captain Friend had not followed through an overweight take-off, in order to see whether it was an isolated incident or part of a wider pattern. Again, I have no reason to suppose that she was other than accurately reporting it.

275. Again, so far as Captain Friend's manner to Captain Richardson over the telephone is concerned, I have no doubt that he was grumpy and appeared to her to be rude. He thought that he was within his rights, in the sense that he was entitled to keep himself to himself and not to have to respond to queries outside working hours. Again, however, that is not the point.

276. I have no doubt that the possibility of Captain Friend's forming part of the crew was raised with him by a senior officer of Business Air. He did not initiate it himself. But that was not Captain Richardson's criticism. She thought that it was so elementary to

know that it was inappropriate that Captain Friend should simply have refused without referring the suggestion back. There does not seem to be any significant factual dispute about this since Captain Friend accepted, in cross-examination, that it would not be approved.

*The memo of 27th November 1990 from Captain Mimpriss (MF 10)*

277. This was really addressed to the future rather than the past. In other words it concerned suggestions for Captain Friend's rehabilitation. These were based upon factual matters that are largely not in dispute or, in so far as there is a conflict, on Captain Mimpriss' understanding of what had taken place. One of the matters which Captain Mimpriss had in mind was the fact that Captain Friend appeared to be making derogatory comments about his superiors to his colleagues. This was clearly not acceptable and undermined teamwork and morale. The pattern is clear enough. As Captain Richardson noted following her conversation with Mr Phillips, he reported, "constant ear bashing – derogatory comments about PR, TS, JM". Mr Stovold too had said that those attacks were unacceptable.

278. Earlier, in September or October, Mr Courtman had told Captain Mimpriss that he (Captain Mimpriss), Captain Sindall, Captain Richardson, and Mr Saull were being "castigated" by Captain Friend and that he had threatened to sue them for libel.

279. It seems that at about the same time, when he was transferred to the Policy Section, Captain Friend had told Mr Williams that he hoped that Captains Mimpriss, Sindall and Richardson would be dismissed. I accept that evidence.

280. Similar criticisms were made at a meeting on 12th December 1990 with Mr Saull, but in those circumstances there would not be the risks to morale and discipline which would be likely to flow from his more widespread allegations.

281. Another matter raised in this memo is the lack of effort over the so-called SOC 22. There had been criticism, as Mr Williams told me in the witness box, over the period of five weeks which Captain Friend occupied in producing the first draft on 20th December. It was also a regular irritant that he kept on insisting that the services of a computer programmer should be engaged. There may be differences of interpretation, but there is basically no dispute as to the nature of what happened. So far as Captain Friend was concerned, he was simply carrying out what he thought were the prior instructions. The problem was that they had been superseded and he did not respond to the guidance he was given from above.

282. Another topic was rudeness to other members of the team. There is no doubt that Captain Friend was rude, by most people's standards, to Captain Richardson on various occasions. There is a denial on his part that he was rude to either Mr Penketh or Captain Dudley, but I have no doubt that at the time this was what was reported to Captain Richardson – even though they appear to have been unwilling to accept this when later challenged by Captain Friend.

283. Finally, there is the criticism of Captain Friend's hours of working. He was said to work less than the full eight-hour day. This is a theme which recurs over a long period of time. I have no reason to believe that Captain Mimpriss was not representing the position accurately.

*The memo of 23rd January 1991 from Mr Saull (MF 11)*

284. This document was reporting to Mr Ashford (as well as to Mr Page and Mr Anderson) on the current situation, as Mr Saull perceived it, in the light of his own knowledge and reports to him. The document covered a multitude of "sins". There was reference to "disruptive behaviour", Captain Friend's criticisms of the professional ability of team members, his persistence that he had been vindicated by the withdrawal of the disciplinary charges, the loss of confidence in him on the part of three layers of management, his challenges to Mr Saull's "right to manage", his attitude to professional management as creating a risk that he could "seriously embarrass the Authority if he was out on his own", his capacity for finding ways of not spending much time in the office ("always a good excuse"), "deviousness" in his handling of the allegations of harassment, inability to work in a team environment, and the need for him to do a first class job in the Policy Section, together with a change of attitude, before he could go back to FOI duties. I have no doubt at all that this is an accurate reflection of what Mr Saull believed had taken place up to that time, in the light of the information before him.

*The memo from Captain Richardson of 14th February 1991 (MF 12)*

285. This harks back to an extent to material already covered. There was some criticism also of Captain Friend's work on the OSAP report for Aviation Beauport. She said that it required many drafts and the quality was below average. It is not possible to be definitive about how many drafts there were or how significant the changes that were necessary. The documents are not available. What is clear, however, is that there were doubts about Captain Friend's ability to draft reports well before the crisis of confidence in June and July 1990. I do not believe that Captain Richardson was making up this criticism.

286. There was reference also to Captain Friend's alleged failure to use his time to best advantage during the Business Air OSAP and to his having removed, impermissibly, a pilot's training record. The point about that is that the operator should retain it for two years.

287. Captain Richardson found incomprehensible the fact, which is not disputed, that Captain Friend carried out flight inspections on consecutive days on the same aircraft, with the same crew, on the same route. There is no question of her making it up.

288. Again, subject to possible differences of interpretation or emphasis, it seems to me that Captain Friend has failed to disprove the substance of any of these allegations.

*The memo from Mr Williams of 15th February 1991 (MF 13)*

289. This again is concerned with SOC 22. First there is the insistence upon using a computer programmer, despite Mr Williams having given clear instructions to Captain Friend on 12th November 1990 what was expected of him. Although there had been reference in the August 1990 terms of reference to a requirement that "all data received to be stored on computer database", this had been superseded. Captain Friend's insistence on a computer programmer was therefore perceived as irrational and insubordinate.

290. The other criticism was in relation to the need for re-drafting. As I understand his evidence during the trial, Captain Friend's stance is that he simply agreed to differ on what was "substantial" in this respect. There is no reason to suppose that anything Mr Williams said in this document was false.

*The letter from Lord Tugendhat of 20th February 1991 (MF 14)*

291. As I have recorded above, Lord Tugendhat was briefed in some detail before he responded to Mr Ashdown's queries. He clearly believed what he was saying to be true, and I am unable to find anything in the letter to support the proposition that he had been fed false material.

*The memo from Captain Mimpriss of 15th March 1991 (MF 15)*

292. As explained elsewhere, Captain Mimpriss plainly thought there was no basis for Captain Friend's allegation that the PLM Helicopters OSAP report was "flawed". He had been debriefed by Mr Hutchings on the subject, and there is no doubt whatever that he believed that Captain Friend was not giving a fair or accurate account to Mr Ashdown. He was not told the nature of the "flaw".

293. Because Captain Mimpriss had reason to believe, and obviously did believe, that Captain Friend was not being entirely frank in his communications with Mr Ashdown, he was entitled to speculate on the possibility of a less worthy motive than "helicopter safety". He was not making a factual assertion, but his consideration of the matter was undoubtedly based on facts which he thought to be accurate in the light of what Mr Hutchings had told him.

*The letter from Mr Page of 8th April 1991 (MF 16)*

294. This contained a summary from Mr Page of complaints against Captain Friend up to that time. It would appear to be an accurate summary, and there is no reason to suppose Mr Page was misrepresenting the position.

*The memo from Mr Saull of 14th August 1991 (MF 17)*

295. The point is taken that the publication appears to have been only to Captain Friend himself, which would not suffice to give rise to a cause of action. Moreover, there is no basis for me to conclude that any of the factual matters traversed by Mr Saull were inaccurate or misrepresented by him in the light of the information available to him.

*The memo from Captain Richardson of 9th September 1991 (MF 18)*

296. This relates to the Corporate Jet OSAP. I have no doubt at all that this represents an accurate account of the occasion when Captain Friend invited Captain Richardson to "come outside". His interpretation of those events was slightly, but hardly materially, different. Captain Richardson, on the other hand, was clearly telling the truth as she saw it.

*The record of Captain Richardson's interview with Mr Williams (MF 19)*

297. This is one of the documents to which, in law, Captain Friend must be taken to have consented in the light of clause 5.2.2 of the disciplinary code. Statements were

required to be taken from witnesses in the course of a disciplinary investigation and this was incorporated within his contract: see *Friend v Civil Aviation Authority (No. 1)* [1998] IRLR 253.

298. Captain Richardson was giving Mr Williams her honest recollection and the views that she had formed in the light of her experience. Captain Friend has certainly not demonstrated the document to be untrue.

*Captain Mimpriss' interview with Mr Williams (MF 20)*

299. The consent point obviously applies to this document also. Again, Captain Friend has not, in any event, demonstrated the contents to be untrue.

*Mr Williams' summary of management's views (MF 21)*

300. Again, this was a part of the disciplinary process and the consent point is again valid.

301. It is plainly an accurate account of management's views on the dispute with Captain Friend. Captain Friend has not demonstrated that any of the factual allegations in the document are untrue.

*Mr Williams' report (MF 22)*

302. The same points obviously apply.

*Mr Williams' résumé of Captain Friend's stand-point (MF 23)*

303. The consent point applies once again. There is no material inaccuracy which has been demonstrated. It may be that Captain Friend had never actually said that his posting to OSAP was "totally unfair", but in the context of the case as a whole, if it is inaccurate at all, it is not a material falsehood.

*The letter from Mr Saull of 25th June 1992 (MF 24)*

304. Mr Saull was expressing opinions in the light of the way events had developed up to that point. So far as the content of the document is factual, there is no reason to suppose that it is untrue. The opinions were plainly strongly and honestly held.

**16. Conspiracy**

305. It is necessary to address the ingredients of the tort of conspiracy. The tort is "a modern invention altogether … of use primarily when the act which causes damage would not be actionable if done by one alone": *Midland Bank Trust Co Ltd v Green* [1982] Ch 529, 539 *per* Lord Denning MR. A conspiracy consists in the agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means. Thus, there are two forms of the tort. In the case of a conspiracy to use unlawful means, there is no necessity to prove a predominant purpose to injure; on the other hand, this is required where the tort consists of "conspiracy to injure": see *Lonrho plc v Fayed* [1992] 1 AC 448, 463-8.

306. Liability for "conspiracy to injure", where the acts would without combination be lawful, constitutes an exception to the general rule that the mere agreement of a

number of persons to act in concert cannot make the act of any one or more of them wrongful, if it would not be wrongful when done by each alone independently: see e.g. *Ware and de Freville v Motor Trade Association* [1921] 3 KB 40, 70 *per* Scrutton LJ and *Clerk and Lindsell* on Torts (18th edn.) at 24-116 *et seq*.

307. In the case of either of these forms of tort, however, there are two further essential ingredients. There must be a combination of two or more persons, and whatever is done in combination must lead to pecuniary loss to the claimant.

308. It would appear from the re-amended statement of claim that in this case the Claimant relies upon the "unlawful means" form of conspiracy. There is clearly an overlap with the other causes of action, since the allegedly "unlawful means" consist in the publication of the malicious falsehoods and in breaches of the individual Defendants' own employment contracts.

309. No particulars are pleaded of any agreement or combination between the relevant Defendants, and it would thus appear that the Claimant invites an inference to that effect to be drawn from the activities of the four persons concerned, as disclosed in the contemporaneous documents and addressed in the course of evidence.

310. The Defendants' case on the conspiracy is co-extensive with their defence to malicious falsehood. If the Court holds that the cause of action in malicious falsehood fails for any reason (including, of course, if the words are held to be substantially true or the case of malice is not made out), then the relevant publications would not have been unlawful. It is also said on the Defendants' behalf that it is highly implausible that they were motivated in their activities, whether done in combination or singly, by the desire to silence Captain Friend's criticism of the constitution of the OSAP teams in respect of some of the small helicopter operators.

311. Mr Moloney prays in aid in this context, in particular, the following matters, already recited in the narrative above:

a) The persistent refusal to comply with Captain Friend's request to leave OSAP and to return to the role of an assigned FOI.

b) The decision to transfer him back into the OSAP department from the Policy Section with effect from August 1991.

c) The decision to include him, effectively as soon as he returned to OSAP on 28th August 1991, as part of the OSAP team for the Corporate Jet audit, involving as it did another small helicopter operator – something which he regarded as provocation.

d) The fact that these decisions and steps were taken after the involvement of the third parties who appear to have taken up Captain Friend's cause, i.e. Mr Paddy Ashdown MP and Mr Peter Carter-Ruck, which would be calculated to lead to further criticism rather than allowing the controversy to die down.

e) What is more, the causal link between the dismissal in December 1992 and the alleged conspiracy, and its implementation, has not been

> demonstrated. The decision to dismiss was taken, following the rejection of the recommendation of the disciplinary inquiry, because of the opinions held by senior management, including Mr Saull, of Captain Friend's attitude towards the discharge of his duties and his relations with colleagues and management. It would appear to have been based upon his refusal to comply with reasonable and lawful instructions, his refusal "to take no for an answer" over the helicopter safety issue, and his repeated use of threats of litigation (not to say harassment) against individual colleagues. It is also pointed out that the decision to dismiss was confirmed by Messrs Paice, Marx and Murphy. None of these is alleged to be liable for the tort of conspiracy.

312. I have already made findings in relation to the alleged tort of malicious falsehood, as a result of which it is clear that the acts relied upon cannot constitute "unlawful means" for the purposes of the alternative claim in conspiracy. I now need to consider the contention that there was unlawful conduct on the individual Defendants' part by reason of breaches of their own contracts of employment (with the CAA). I have not addressed this so far because, in the nature of things, there could be no separate cause of action against them at the suit of Captain Friend – since he was not a party to those contracts. Thus the only possible relevance of the alleged breaches of *their* contracts is in the context of possibly constituting the "unlawful means" conspiracy.

313. The alleged breaches on the individual Defendants' part must therefore be considered in separate categories. First, there are the allegedly unlawful or unreasonable instructions given on various occasions to Captain Friend. Those consisted, as has by now become clear, in instructing Captain Friend (a) to draft OSAP reports prior to conducting the relevant audits, and (b) to participate in OSAP audits of small helicopter operators without a specialist helicopter FOI as part of the team.

314. I am quite satisfied that Captain Friend, at least originally, misunderstood the instructions given to him by Captain Richardson in relation to the drafting of reports. What she asked him to do was unobjectionable, whether one describes it as preparatory work or as putting relevant material into the form of a first draft. There is no question of Captain Richardson, or indeed any one else, inserting material into a report without its being checked or verified in the course of the audit itself.

315. The decision whether or not a specialist FOI should attend on the OSAP team for a Group B helicopter audit was a matter of judgment and for senior management to take. This would normally involve consultation with the head of FOD 2 (at the relevant time Captain Ramsdale) and/or the head of OSAP. There is no basis whatever for suggesting that the decisions taken in relation to PLM Helicopters and Corporate Jet, in this respect, were unlawful. Nor were they unreasonable. Accordingly, the suggestion that any of the four individual Defendants was thereby in breach of his or her contract of employment is rejected.

316. The communications alleged to have constituted malicious falsehood and the acts of management or supervision in relation to Captain Friend cannot be characterised as harassment; nor can the 24 documents relied upon be regarded as malicious falsehoods. Again, therefore, there is no question of any breach of contract on this account.

317. Finally, there is the question of procedural irregularity with regard to the internal disciplinary procedure which led to the dismissal of Captain Friend. It will be recalled that the conclusion was reached by the industrial tribunal that there had indeed been irregularity in three respects. On the other hand, because of the 100% contribution, it was held that no compensation was payable. Captain Friend had recognised that by the time of dismissal there was no trust and that relations had irretrievably broken down. In the present context, the Defendants do not accept that the CAA was in breach of its contract of employment with Captain Friend (a matter to which I shall return below) or, for that matter, that Mr Saull or Mr Williams was in breach of his contract. For this purpose, it can hardly be suggested that either Captain Richardson or Captain Mimpriss had a significant role to play in the "flawed" disciplinary process.

318. The Defendants' case is developed in paragraph 27 of the amended defence:

i) Although he thought it unlikely that he would not reach a decision adverse to Captain Friend, Mr Saull gave anxious and fair consideration to his determination prior to dismissal and did not approach it with a closed mind.

ii) There would have been no purpose in allowing a further opportunity to Captain Friend to make further representations in the light of the recommendations made by Mr Payton and Mr Anderson. He had already been given ample opportunity to put his case, and Mr Saull was fully aware of it.

iii) The fact that Mr Saull's decision may have been influenced by earlier correspondence is of no consequence or materiality.

iv) The allegations of bias against Mr Williams are denied, but in any event this had no material operative effect on the decision to dismiss Captain Friend.

v) Following the two internal appeals (i.e. in March and June 1993), the alleged breaches of contract had been waived and/or can no longer be the subject of complaint.

vi) If the dismissal of Captain Friend was in breach of contract:

a) his dismissal was nevertheless not wrongful having regard to his contract being terminable on three months' notice in writing;

b) it is denied that any such breach of contract has caused Captain Friend any loss or damage.

I reject this basis for alleging illegality also. I address the procedural criticisms further in relation to the allegations of substantive breach (see [333] *et seq*.).

## 17. The alleged breaches of contract

319. Captain Friend's contract of employment was put in evidence and incorporated within it would be the CAA disciplinary procedures and code of conduct. These were also in evidence.

320. It is necessary first to consider the relevant terms of the contract. Those for which the Defendants contend are set out in paragraph 4 of their amended defence broadly as follows:

i) The Claimant was employed at the material times within the Safety Regulation Group as a Flight Operations Inspector, and would thus be expected to carry out the duties associated with such a post.

ii) When he was appointed, the CAA reserved the right to appoint Captain Friend to any post within the relevant group for which his background, qualifications and experience made him suitable. He was also available to be deployed in any part of the United Kingdom in the course of his employment.

iii) Once confirmed, as it was in April 1988, Captain Friend's contract was terminable on three months' notice in writing by either party.

iv) He would be required to fulfil his terms of employment to the best of his ability and, in doing so, he had an obligation to maintain good working relationships with colleagues and managers, and to observe and maintain acceptable standards of conduct and behaviour.

v) In disciplinary matters, any relevant manager must have regard to the principles of natural justice and scrupulously apply the disciplinary procedure.

vi) Disciplinary investigations were normally to be conducted by the employee's line manager, or another manager when the line manager was involved in the allegations in question.

vii) The manager appointed to conduct the disciplinary hearing must not have been the investigating manager or implicated in the complaint or have been a witness.

viii) The employee must be given adequate time to prepare his response to any disciplinary charge, but, subject to that, the disciplinary hearing was to be held as soon as possible to facilitate the speedy and fair resolution of the matter.

ix) The disciplinary decision could be taken by a manager who had not been present at the disciplinary hearing, in which event the manager in question would need to satisfy himself that the key issues had been fully explored.

x) Employees had the right of appeal against any form of disciplinary decision.

xi) In cases of dismissal, the employee had a right of final appeal to the managing director, but only on the grounds that the disciplinary procedure had not been followed or that the penalty was "inconsistent" (i.e. there was some disparity with the way others had been treated).

xii) The Claimant would obey lawful and reasonable instructions issued by his managers to him.

xiii) Neither the Claimant nor the first Defendant were to conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust necessary between the parties.

321. There is no significant dispute as to the incorporation of these terms in Captain Friend's contract of employment. Indeed, the terms I have listed above were expressly admitted in his pleading. Although allegations are also pleaded by Captain Friend in relation to the terms of employment of the four individual Defendants, these are irrelevant save in the context of the plea of "unlawful means" conspiracy, which I have already considered.

322. I therefore turn to consider Captain Friend's allegations of breach on the part of the CAA. The first category of breaches alleged relates to the supposedly "unlawful" or "unreasonable" instructions given to Captain Friend (a) to draft parts of OSAP reports in advance of the audits taking place, and (b) to participate as a member of an OSAP team, in the case of helicopter operators, without a specialist qualified helicopter FOI taking part. These allegations have already been considered at length in other contexts, but now they must be addressed specifically by reference to the law of contract.

323. For an employer's instruction to be classified as "unlawful", it would be necessary for the relevant claimant to demonstrate that he was thereby required to commit either a crime or a civil wrong of some kind. I have considered the legal framework, in general terms, against which the CAA carries out its regulatory responsibilities. There is no conceivable basis, despite the bare assertion of Captain Orringe, for suggesting that the instructions to which Captain Friend took exception infringed any provision of law. Nor is there any basis for demonstrating that, if he obeyed them, he would be participating in a breach of duty or any other form of civil wrong.

324. There is authority on the more elusive concept of what is "unreasonable" in this context. For the law to be applied in a practical way, the threshold clearly has to be a relatively high one. In considering the extent of this exception to an employee's obligation to obey his employer's instructions, the learned editors of *Chitty on Contracts* (29th ed.) summarised the law in this way:

> "… the employee is not bound to obey an order to do something which is outside the contract of employment, nor an order which places him in danger not reasonably contemplated at the time he entered the employment, e.g. an order to remain in a place in which his personal safety is endangered by violence or disease".

I have little doubt that this exception could, in general terms, extend to an instruction which entailed a risk of danger to a third party or to a fellow employee, even though the circumstances might not give rise to a cause of action at the suit of such a person (i.e. because there was no civil wrong). There seems to be no authority to demonstrate this proposition, but no doubt Captain Friend would seek to support it as a matter of principle. If it can be "unreasonable" for an employee to place himself in danger, why should it be any more "reasonable" to require him to place another person at peril? I consider that the problem confronting Captain Friend is not so much one of principle as of discharging the burden on the particular facts of this case. I have seen no

evidence for supposing that the instructions he was given, in particular by Captain Richardson, placed him or anyone else at risk of physical injury.

325. I have already characterised the suggestion that Captain Richardson required him to put parts of an OSAP report into final form prior to the audit as "nonsense". I reject any suggestion of that kind. Any provisional drafting in advance of the audit would be subject to change or verification as the process developed.

326. Moreover, nothing has persuaded me that the instruction to participate in one or more OSAP audits in relation to Group B helicopter operators could qualify as "unreasonable", so as to justify Captain Friend's disobeying it.

327. The Defendants rely upon a fall-back position, in that they draw attention to the fact that Captain Friend's dismissal, when it ultimately happened, was not based upon the failure to comply with any such instruction, but on other factors identified in the letter of dismissal. Thus no loss would have followed from the alleged breaches in any event.

328. The second category of conduct alleged to constitute a breach consists in the publication of the 24 "malicious falsehood" documents and the alleged campaign of harassment. I have already held, specifically with reference to the claim in tort, that the publication of the documents relied upon did not constitute malicious falsehood. It is necessary, however, to consider in a little further detail what is said to constitute the campaign of harassment and the legal significance of the conduct pleaded.

329. The acts relied upon as harassment are set out at paragraph 21 of the re-amended statement of claim. Although these are said to be "non-exhaustive" examples, I should identify the ten specific instances given, since they can no doubt be said fairly to represent the nub of Captain Friend's complaint in this respect:

i) Being put on fortnightly report by Captain Mimpriss on 17th August 1990.

ii) Being refused permission to stay at airport hotels at Gatwick.

iii) Instructions given to Captain Friend on 9th October 1990 to stay overnight close to Gatwick airport but not in an airport hotel; and not to travel to Gatwick on a non-working day so as to position himself for a normal start at Aviation House (said to be contrary to an agreement reached between the CAA and IPMS relating to "home base for duty" arrangements).

iv) The investigation in about September 1990 of Captain Friend's travel and subsistence claims on the instructions of Captain Mimpriss and Captain Richardson (which he described as "looking for ammunition").

v) Being instructed not to work through the lunch hour (by Captain Mimpriss).

vi) The stopping by Captain Mimpriss in May 1991 of Captain Friend's simulator training on the Airbus A310 and A310-600.

vii) Being instructed to "line fly" with Jersey European Airways only on a Monday or a Friday, while being refused permission to stay at a hotel close to the departure airport the night before.

viii) The suggestion that Captain Friend was instructed to stop line flying with Jersey European Airways in August 1991 (said to be unique to him).

ix) The transfer in November 1990 to the Policy Section (which Captain Friend regarded as a demotion).

x) Frequent challenges to Captain Friend's written work by Captain Mimpriss, Captain Richardson and Mr Williams which were unwarranted.

330. In general terms, the Defendants' response to these allegations of "harassment" is that Captain Friend has no legitimate complaint because they did no more than supervise and manage him as the circumstances reasonably required. He was not singled out for discriminatory treatment.

331. More specifically, although the Defendants' stance will already have become largely apparent from the narrative, I should identify the nature of their individual responses to the ten identified complaints:

i) Fortnightly reporting was a legitimate step for Captain Mimpriss to take for the reasons explained in his memo of 17th August 1990 from which I have cited extracts at [69] above.

ii) The Defendants did no more than apply established CAA policy on the matter of overnight accommodation: that is to say, "actual" expenses were not recoverable but only a standard allowance.

iii) Captain Friend was told that, whenever it was necessary for him to stay overnight in the locality, he should stay at an appropriate local hotel and not claim a mileage allowance between Hammersmith (where, it has recently emerged, he stayed with his son) and Gatwick. Nor was he entitled to claim time off in lieu for travel on a non-working day (whether to Gatwick or anywhere else) unless it was necessary having regard to the business for the next day (e.g. an early start). This was standard practice, and in no way discriminatory against Captain Friend. Indeed, a particular concession had been made to him, because of his choice to live in Crewkerne in Somerset, so that he was permitted to arrive as late as 10 am.

iv) The Defendants were entitled to scrutinise the travel and subsistence claims put in by Captain Friend. All members of OSAP teams were scrutinised from time to time, and there was thus no discrimination against him. Nor was the scrutiny motivated by his refusal to comply with instructions in relation to PLM Helicopters. This was illustrated by the fact that his claims had previously attracted the attention of Captain Sindall from the beginning of July 1990. Before that, however, concerns had been expressed by Captains Coutts, Akhurst and Quilley.

v) Captain Mimpriss had informed Captain Friend on 3rd December 1990 that it was not considered acceptable to reduce the working week hours by working through lunchtime. It was provided by paragraph 1.1.2 of the staff manual that the five-day week of 40 hours gross included meal breaks.

vi) It was accepted that in May 1991 (i.e. some two months prior to his return from sick leave) Captain Friend's simulator training was stopped. There were severe budgetary constraints, since the department's flying budget had been reduced in April 1991 from £1.3m to £0.7m. The allegation of discrimination in this respect was denied. In a memo of 13th May, Captain Mimpriss explained to Captain Friend that, "I am applying the same rule to you as is being exercised across the Inspectorate…" It was also pointed out that later in 1991 Captain Mimpriss stopped *all* aircraft training because of a possible overspend for that financial year.

vii) It was with Captain Friend's agreement that he was to "line fly" with Jersey European Airways on a Monday or Friday, and the Defendants did no more than apply their general policy with regard to claiming for an overnight stay.

viii) It was accepted by the Defendants that, at the meeting of 16th July, Captain Mimpriss had told Captain Friend that he should not undertake any "line flying" *for the next three months*. The contemporaneous notes (signed by Mr Saull and Captain Mimpriss) confirm this. So too the "notes for guidance" in manuscript, for the benefit of Captain Richardson, state "no line flying for 3 months". This was at about the time of his return from sick leave, and one of the objectives was to give him a concentrated period to settle down and prove himself following the proposed return to OSAP. Another objective was to ensure that, after the three months had elapsed, there would be sufficient monies available for Captain Friend to resume line flying. In support of this proposition, the Defendants prayed in aid a memo of 27th November 1991 in which Captain Sindall submitted a bid for Captain Friend to maintain jet-operating expertise – if funds became available.

ix) The Defendants do not accept that the transfer to Policy Section was a demotion. Mr Saull had informed Captain Friend at the meeting of 12th December 1990, as he was entitled to, that he was going to be kept in the Policy Section for a six-month period to provide an opportunity for assessing his performance and attitude.

x) On the subject of challenges to written work, the Defendants denied the very general allegation, and it was thus for Captain Friend to prove that any particular "challenge" was by way of harassment rather than within the ordinary scope of supervision and training.

332. I accept the evidence of the Defendants on these issues, which was entirely consistent with the contemporaneous documents and was, as a matter of fact, also largely unchallenged. I must make allowance, however, for Captain Friend's lack of knowledge and skill in this respect. He was not intending that his lack of challenge should be accepted as indicating acceptance of the witnesses' accounts. I should therefore view the Defendants' evidence critically in the light of that. Even so, the picture emerged with seamless consistency over the years. There was no conspiracy or harassment but merely attempts to manage the affairs of the CAA in difficult circumstances.

333. I need to consider whether there was any breach of the procedural requirements attaching to the internal disciplinary regime and incorporated in the contract of

employment. This was the third category of breach relied upon. It will be recalled that the industrial tribunal in 1994 found that there had been three flaws when assessing "unfairness" for the purposes of the statutory jurisdiction it was exercising. I am not bound by that finding, in the sense that I am determining a different, albeit closely related, question. I am concerned with whether there was a breach of any contractual term, including that imposing an obligation upon the CAA to comply with the rules of natural justice in carrying out its disciplinary procedures.

334. I should view that procedure as a whole and construe the contractual obligations in a realistic and practical way, having regard to the particular employment context. The concept of "natural justice" is well known. It consists in affording an opportunity to be heard and in the avoidance of bias. In the light of the industrial tribunal's findings, which are naturally entitled to respect even though not binding, I should address certain specific questions. First, I turn to Mr Williams. Was there a breach by reason of the fact that Mr Williams carried out the preliminary investigation? There is no evidence either internally, in the light of the documents generated in the course of his inquiry, or externally from any other source, that Mr Williams was biased. His documentation discloses a detailed and painstaking inquiry into a long running dispute. The test is that of the reasonable onlooker.

335. Nor can I find any reason why Mr Williams was personally disqualified from carrying out an investigation. He was not, for example, "involved in the allegations in question".

336. Secondly, I must ask whether there was a breach by reason of the fact that it was Mr Saull who was the CAA officer who made and conveyed the decision to dismiss.

337. There is no reason to suppose that he failed to give careful and dispassionate consideration to the *findings* of Messrs Payton and Anderson before deciding to reject their *recommendation*. It was his responsibility to decide what steps should be taken, but he was not in any way impugning the evidence disclosed as a result of the hearing. Moreover, in arriving at their conclusions, they had afforded Captain Friend the opportunity to be heard and to make representations. It is to be presumed that everything he wished to say and to be taken into account had been addressed. There is thus, in my judgment, no reason why there should be yet another opportunity for representations before Mr Saull made his decision on dismissal. I conclude that there is no basis for alleging a breach of contract for this reason either.

338. It is necessary to have in mind, when considering Captain Friend's very large claim for special damages in contract, that he was paid in respect of the three months' notice period and that, subject to one matter, he would be limited if any breach could be demonstrated to an award of nominal damages.

339. Had I concluded otherwise, and if a further period for comment should have been permitted, then there might have been a claim for salary corresponding to that lost period. But that does not arise. Not only was there no need to allow a further period, but it has not been proved that the overall disciplinary process needed to be extended by any specific time.

340. Thirdly, for good measure, there is the suggestion that Mr Murphy did not approach his final appeal task in an open-minded way. This was put to him in cross-

examination, but he made it clear that he had gone back to consider matters afresh and took time to come to his conclusion. It may be true that he found it difficult to understand how Mr Payton and Mr Anderson had, despite the history, decided to recommend a further period of grace for Captain Friend to be rehabilitated, but that does not mean that he was not capable of addressing objectively an appeal from Mr Marx and Mr Paice. Again I find no breach.

341. I should perhaps add a few words about a suggestion made at one stage by the Defendants as to the notion of "curing" a procedural irregularity. What was mooted was that the second and third tiers of the disciplinary procedure (i.e. the Marx/Paice appeal and the Murphy final appeal) might cure any defect in Mr Saull's decision making. The point was not pursued in closing argument. I do not believe, assuming a breach of contract to have been established, that there is any doctrine whereby later events could be said to "cure" it. There might only be an entitlement to nominal damages but that is different. Nor do I believe that the Defendants have made out their pleaded case on waiver and none of the closing submissions were directed to supporting the proposition. This is all, however, irrelevant on the present facts, since I do not believe that there was any breach in Mr Saull's involvement or in his decision making process.

## 18. Inducement to breach of contract

342. This claim can be addressed more shortly. It is necessary to identify the relevant individual employee(s) of the CAA upon whom it is said that the relevant inducements were brought to bear. Captain Friend's contract being with the CAA, any inducement can only have been exercised upon some human representative. The breach in question must presumably be the allegedly wrongful dismissal as notified by Mr Saull in December 1992. In so far as this claim is intelligible, therefore, it must be suggested that one or more of the other three individual Defendants induced Mr Saull, directly or indirectly, to give notice of termination. He could not have induced himself. In any event, as I have already held that there was no breach, that crucial ingredient of the tort of inducement is missing. Moreover, since the salary was paid in respect of the contractual notice period, no loss can be demonstrated either. Perhaps the fundamental requirement for this tort to be made out is that the relevant defendant has set out with the intention of inducing a breach. Here, for reasons which will already be apparent, I am quite satisfied that none of the individual Defendants had any intention that the CAA should breach Captain Friend's contract. They were acting throughout in good faith, attempting to discharge the respective management functions in the context of a situation created by Captain Friend's attitude and conduct. What is more, they were only too conscious that he was being advised by lawyers and of the need scrupulously to avoid giving them any further ground for complaint.

343. By the time of the decision to dismiss, Captains Mimpriss and Richardson had already discharged their functions and were not directly involved in the ultimate decision. It was taken by Mr Saull, who reasonably concluded that there was by that time no alternative. Mr Williams' attitude is apparent from the documents generated in June 1992 following his enquiry. Again, Captain Friend simply cannot demonstrate any intention on his part to induce a breach of contract. It is clear that his conclusion (expressed on 24th June) was that it was "very difficult to see how the Authority could permit Captain Friend's return to any form of employment within the Authority". In

other words, he was contemplating termination in accordance with, rather than in breach of, the contract of employment.

344. The acts of alleged harassment and the malicious falsehood documents are relied upon as the primary instances of inducement. It is difficult to see how, even if there were harassment of Captain Friend, such a course of conduct could amount to an inducement to the CAA to breach its contract. Moreover, so far as the alleged malicious falsehoods are concerned, I see no evidence that any of them was written or sent with the intention of inducing any CAA officer, in particular Mr Saull, to terminate the contract wrongfully. It was also pointed out on behalf of the Defendants that, with regard to those documents emanating as a result of his enquiry from Mr Williams (MFs 19-23), any chain of causation would be broken by the intervention between July and October 1992 of the disciplinary hearing conducted by Mr Payton and Mr Anderson.

345. Finally, it was submitted that any liability to compensate for inducement to breach of contract would not exceed liability for the breach itself. Since the salary for the three-month notice period was paid long ago, the pleading of this tort would not appear to afford Captain Friend any measurable advantage over his claim in contract (already rejected).

346. In the circumstances I have described, there is simply nothing to support the case on inducement to breach of contract.

**19. Findings on the agreed factual issues.**

347. So far I have set out my findings and conclusions by reference to the pleaded causes of action. Although it is perhaps not strictly necessary to do so, I shall now return to the list of agreed factual disputes which I have set out above at [185] *et seq*. and attempt to provide specific answers. The issues were identified according, not to causes of action, but to certain stages in Captain Friend's career. I shall give my findings in corresponding sequence.

348. Between April 1987 and June 1990 relations between Captain Friend and the CAA were governed, so far as material, by the express and implied terms set out at [320] above. After three years, when he joined the OSAP department on 1st June 1990, Captain Friend's record and standing within the CAA were somewhat mixed, to say the least. There were significant doubts about his enthusiasm and commitment to his employment and to the CAA. His report writing skills were not highly valued, and there were also considerable misgivings about his ability to use his time effectively. He was very reluctant and resentful about his transfer to OSAP and wished to be transferred out as soon as possible.

349. The second period was defined as July to November 1990:

i) Captain Friend was not given an improper order by Captain Richardson in any respect, but specifically he was not told to draft either the Merrix Air report (in June) or the PLM Helicopters OSAP report (in July) in advance of the relevant audit – in the sense of pre-empting the findings. He was asked to do preparatory work including drafting parts of the report *in provisional form* in the light of such information as was available at Aviation House.

ii) His refusal to go to Inverness was not reasonable; it was a breach of contract. It thus follows (to adopt the formulation of the issue by Simon Brown LJ in July 2001) that the "blame" for the ultimate breakdown in relations lies with Captain Friend.

iii) It was not unlawful or unreasonable for the CAA to conduct the PLM Helicopters OSAP audit without a helicopter specialist FOI as part of the team; nor was it a breach of contract to require Captain Friend to attend as part of his training.

iv) There was no conspiracy between the four individual Defendants or anyone else with the object of injuring Captain Friend, or inducing a breach of contract by the CAA, whether over the "helicopter safety issue" or otherwise.

v) It follows that no such conspiracy was carried into effect.

vi) The first ten alleged "malicious falsehoods", in so far as they contained factual propositions, were substantially true and, in so far as they contained the expression of opinions, those were honestly held. They do accurately disclose, for the most part, persistent breaches of contract by Captain Friend and, in some instances mostly connected with expenses claims, reasonable grounds for suspicion.

350. The third period is from December 1990 to July 1991 (including three months of sick leave):

i) Mr Williams' criticisms of Captain Friend's work in the Policy Section were honestly expressed opinions about the quality of his work and do not provide any evidence of management conspiracy or harassment or breach of contract.

ii) Captain Friend's pursuance of the "helicopter safety issue" was not reasonable in the light of the full and repeated responses he had received from several levels of more senior management. It was stubborn, irrational and obsessive. Again this supports the conclusion that the "blame" for the breakdown was his.

iii) MFs 11, 12 and 14-17 were not malicious and were substantially accurate and/or consisted in the expression of honestly held opinions. They do not reflect any conspiracy or campaign of harassment.

351. The fourth period is from August 1991 to March 1992:

i) Captain Richardson's account of the unfortunate episode at Corporate Jet (MF 18) is an honest one and it evidences unreasonable behaviour on Captain Friend's part.

ii) Again, Captain Friend's persistence over "helicopter safety" was unreasonable.

iii) Captain Friend was entitled to take legal advice and, if he thought fit, to sue anyone he wished. But his *modus operandi* was unreasonable in that it undermined morale and teamwork and naturally made managers and colleagues wary of him. They were entitled to know where they stood. He tended to use the threat of libel proceedings as a sword of Damocles in going

about his every day business; he was inclined to fetch out the name of Peter Carter-Ruck or his legal opinions and to use them, like Mr Punch, to lay about him and beat people over the head. Whatever Russell Jones and Walker or IPMS might say, this made life impossible for his colleagues and prejudiced the smooth and efficient working of the CAA.

352. The fifth period is from April 1992 to February 1993. Neither Mr Williams nor Mr Saull was biased or malicious. Mr Saull was entitled to conclude (as effectively did the industrial tribunal 18 months later) that Captain Friend had made it impossible for the employer/employee relationship to continue.

353. The sixth period runs from March 1993 to date. There is no evidence of conspiracy and no contractual breach in the implementation of the disciplinary process or in the ultimate dismissal. I see no reason to conclude that Mr Murphy's decision in June 1993 was tainted by bias or malice. There was no unlawful conduct or liability on the part of the Defendants for any loss suffered by Captain Friend.

**20. Some observations on the claim for damages.**

354. In the result, I hardly need to consider the issue of damages, but I had addressed to me some helpful expert evidence and submissions on the subject and I should make some brief observations upon them. First, it would have been necessary to demonstrate that any cause of action which succeeded actually led to the dismissal and its financial consequences. There would be no question of recovering general damages except, perhaps, if there had been evidence of injury to feelings flowing from malicious falsehoods. It was stated in a recent Court of Appeal decision that this tort is a form of defamation: *Khodaparast v Shad* [2002] 1 WLR 618, 630-631. It seems to have been contemplated that it can lead in certain circumstances to general damages for injury to feelings (albeit not for reputation). This was not addressed at all in submissions by Captain Friend or supported by evidence.

355. Otherwise, the formulation of the damages claim appears to have been in terms of losses flowing from the dismissal. There could, however, have been insurmountable problems in proving any causal link between any of the allegedly wrongful conduct and the dismissal itself. That was brought about by Captain Friend's own behaviour, which rendered impossible the continuing relationship of mutual trust contemplated by the contract.

356. Secondly, there is the important principle that in a case of wrongful dismissal a claimant is only entitled to recover any loss attributable to not having been accorded his contractual period of notice. Here the relevant period was three months and, as I have already recorded, Captain Friend was paid in respect of his entitlement up to 1st March 1993. It is difficult to see, therefore, how the CAA could be held responsible for Captain Friend's alleged loss of earnings over the subsequent period. As to the claim for £1.265 million in respect of lost property and rents, there was no evidence to support it in any event.

357. In view of the outcome on liability, I shall confine myself to noting those formidable difficulties of principle and will not go into detail of the calculation of losses – as to which Mr Moloney sensibly suggested he would wish to make detailed submissions, if necessary, in the light of any finding of liability.

## 21. The final outcome

358. The claims are dismissed and judgment will be entered for the Defendants.