[2002] EWHC 1600 (QB)

Case No: HQ9903605, HQ9903606

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 July 2002

Before:

THE HONOURABLE MR JUSTICE EADY

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Between :

CHRISTOPHER LILLIE	**Claimants**
&	
DAWN REED	
- and -	
(1) NEWCASTLE CITY COUNCIL	**Defendants**
(2) RICHARD BARKER	
(3) JUDITH JONES	
(4) JACQUI SARADJIAN	
(5) ROY WARDELL	

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Miss A Page Q.C. and Mr A Speker (instructed by **S.J. Cornish**) for the Claimants
Mr G Bishop, Mr I Christie and Ms S Mansoori (instructed by **Wragge & Co)** for the Newcastle City Council and the Review Team

Hearing dates : From 11th January 2002 to 20th June 2002

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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.

.....
The Hon. Mr Justice Eady

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Mr Justice Eady :

1) The factual background

The events of April 1993

1. In the first week of April 1993 a young man called Jason Dabbs pleaded guilty at Newcastle Crown Court to nine counts of indecent assault, and asked that three other similar offences be taken into consideration. All the offences admitted related to children at a local nursery and he was sentenced to seven years imprisonment. He was at the time a student and the offences had occurred while he was on a placement during the course of his studies. This naturally attracted wide publicity and caused anger and concern amongst the public generally, and especially among the parents of young children. The offences had apparently been committed while he was on the nursery premises and indeed in the presence of other adults (who were not in any way implicated in the offences or aware of what was going on). Those particular circumstances were surprising to say the least, and few people had previously addressed the possibility of such abuse taking place within a nursery environment (although, as early as 1987, the report of an inquiry into abuse of primary school children in Cornwall had been published, under the title *Child Abuse in Schools*).

2. An inquiry was commissioned by the Newcastle City Council pursuant to s.81 of the Children Act 1989, and carried out by an experienced practitioner, Mr Peter Hunt, who made findings and recommendations in September 1994 with a view to avoiding such abuse in the future. Mr Hunt (now His Honour Judge Peter Hunt) pointed out the limitations of his inquiry and specifically that he was not in a position to make findings of abuse on any wider basis than the offences to which Jason Dabbs had pleaded guilty. Nevertheless, he was able to conclude (para. 2.6.27) that the busy atmosphere of a nursery class can provide opportunities for determined paedophiles to abuse their charges without being noticed. This would no doubt be contrary to most people's intuitive response to such allegations which would, at least up to that time, have been one of incredulity. It is right to say, however, that Mr Hunt's findings in this respect were consistent with experience of abuse in day nurseries in the United States (see e.g. *Nursery Crimes* by David Finkelhor, 1988).

3. Meanwhile, within days of Jason Dabbs' court appearance, and the publicity it attracted, the mother of a small boy at another nursery situated in the centre of Newcastle, Shieldfield, complained to the police that he had been abused by one of the staff at that establishment. The person concerned was Mr Christopher Lillie, who was then a qualified nursery nurse and had been working there, either on a temporary or permanent basis, since 1988. The boy has been referred to throughout these proceedings as either "Child 22" or "the Index Child".

4. It is probably fair to say that this referral to the police triggered the long and complicated chain of events which unfolded over the succeeding months and years and led, eventually, to the trial of these libel actions over no less than 79 days in 2002. I must now attempt to summarise those events.

5. Following the complaint about Child 22, made during the course of the Easter weekend, the matter was referred to Newcastle Social Services Department and also to the Police Child Protection Unit. A meeting took place on 14 April 1993 between the Child Protection Team, the mother and representatives of the Social Services Department. The next day the child was examined by Dr Neela Shabde. The child was at that stage complaining that "Chris" had hurt his bottom, but the examination revealed no signs of penetrative trauma.

6. On 16 April 1993, Child 22 was interviewed by a police officer attached to the Police Child Protection Unit, Helen Foster, who was to play a significant role in the extensive police enquiries over the next 12 months. On the same day, Mr Lillie was informed that he was suspended from duty pending a full investigation. This information was conveyed to him by Joyce Eyeington, who had responsibility within the local authority for the management of day nurseries. A further conversation took place between them on 20 April during which Mrs Eyeington told Mr Lillie that the medical examination of Child 22 had revealed no physical signs of abuse. In the event, Mr Lillie never returned to work.

7. It so happened that Mrs Eyeington's niece (by marriage), Susan Eyeington, was the officer in charge of Shieldfield Nursery. She was interviewed on 19 April. On 22 April, interviews took place with Susan Elsdon, the member of staff who had responsibility for Child 22 before he came into the care of Mr Lillie, and with Dawn Reed who had been working alongside Mr Lillie in what was known as the "Red Room". That was where Child 22 had been looked after since 1 September 1992.

8. On 27 April, Joyce Eyeington interviewed the child's uncle and aunt who confirmed that he had told them that "Chris" had hurt his bottom and genitals.

9. Naturally, the suspension of Mr Lillie and the reasons for it presented the nursery management and the local authority with a real problem as to how the parents were to be properly informed about what was going on, given their limited state of knowledge at that time.

10. Meetings were organised at the Nursery at which parents were provided originally with only the barest of detail. They were told that a male member of staff had been suspended.

The widening of the investigation

11. During May 1993, two social workers, Vanessa Lyon and Marion Harris, were made available within the same building as the Nursery should any parent/carer wish to raise concerns. Within a short space of time, information had been obtained from 14 of the families. Accordingly, a "strategy meeting" was arranged for 26 May, for the purpose of discussing developments up to that point and what further action should be taken.

12. After what must have seemed to parents, at least, a long period of delay, a letter was written by Joyce Eyeington on 23 July inviting them to a meeting on 28 July. Thereafter, it seems that meetings were held on a regular basis to offer parents information and support.

13. As is well known, any local authority is under a statutory duty to take action for the protection of a child within its area where there is reasonable cause to suspect that he or she is suffering, or is likely to suffer, "significant harm": s.47 of the Children Act 1989. There were in Newcastle at the time procedures in place to enable that obligation to be carried out. In particular, from time to time, case conferences would take place with respect to any child, or children, suspected of being at risk. In the early stages, it was not possible to come to a firm conclusion as to whether the suspension of Mr Lillie on 16 April had been in itself sufficient to eliminate such risk. A case conference was held on 6 May 1993 following the referral by the mother of Child 22, during which she implicated not only "Chris" but also "Dawn". She reported that her son had described "Dawn" as calling him a "little bastard". In consequence, a second member of staff at the nursery, Dawn Reed, was suspended on 12 May. Meanwhile, on 5 May Mr Lillie had been arrested for questioning in relation to Child 22 and released on bail. Thereafter investigations continued with regard to both suspended members of staff.

14. At the case conference on 6 May, according to the note I have seen, the mother was also referring to a house or houses to which he had been taken, where he had seen a man who hurt him and a "lady who looks like a man". He had also "blacked out completely" when coming away from the park. He required constant reassurance that he was in his own house, and also said that "someone had been putting things in his bottom". He was also reported as referring to a monster and as showing some apprehension at the mention of the word "library". These were to become recurring themes in the Shieldfield inquiry over the following months. At that stage Dr Shabde is recorded as expressing the view that he was a "disturbed little boy", and she recommended a "psychological/psychiatric assessment".

15. At this stage further allegations came to be made by other children attending the nursery, to the effect that they too had been abused by Mr Lillie and/or Miss Reed. (Those allegations have often been referred to as "disclosures", despite the fact that this term had been deprecated in the Report of the Inquiry into the Child Abuse in Cleveland (1987), to which I shall naturally have to refer in much greater detail in due course.)

16. In July 1993, Mr Lillie was re-arrested and Dawn Reed arrested for the first time. Those arrests related to allegations of abuse perpetrated on a small girl (Child 23). At this stage their homes were searched for the first time (and criticism was later to be levelled at the police for not having done so earlier). Although both Claimants were released on bail after questioning on this occasion, they were arrested again in September 1993 in relation to allegations made by a boy known as "Child 10" and, having been charged, they were detained in custody. Miss Reed remained in Low Newton Remand Centre until 23 December, when she was granted bail with a condition of residence at a bail hostel. Mr Lillie remained in custody until the trial began in July 1994. Meanwhile, on 22 October 1993, he had been

granted bail by a Judge in Chambers, but as he was leaving Durham Prison he was re-arrested. This was because, on that very day, Child 14 had made an allegation of rape. (Miss Reed was also granted bail and re-arrested on the same day.)

The disciplinary process

17. I was told that considerable resentment grew up among parents at the fact that Mr Lillie and Miss Reed were, during the period of their suspension, continuing to receive their salaries. In any event, the City Council determined to press ahead with disciplinary hearings, despite representations in January 1994 from the Crown Prosecution Service. On 20 January, the Principal Crown Prosecutor, Mr Neil Holdsworth, wrote to the Senior Solicitor at the City Council in the following terms:

> "… any proposed disciplinary proceedings would naturally relate to the same issues as in the criminal proceedings. There is, therefore, not only a risk that the criminal proceedings would be prejudiced, by the availability to the defence of 'abuse of process' arguments, but the defendants themselves would be unable to defend the disciplinary proceedings properly for fear of self incrimination".

18. Separate hearings took place, in February 1994, as a result of which both Mr Lillie and Miss Reed were dismissed. Although there were appeal hearings, the dismissals were confirmed and it then became possible to discontinue salary payments. Following several adjournments, Mr Lillie's disciplinary proceedings took place on 14 February 1994 at Durham Prison. The hearing was held there because he was living there on remand at that time. In the event, he decided not to attend in the light of legal advice. It was believed that there was a risk of prejudice to the pending criminal proceedings (and that he would be unlikely to receive a fair hearing). The hearing took place in front of Mr Graham Armstrong, the Assistant Director of Social Services, who heard from some eight witnesses, namely Joyce Eyeington, Andrew Waterworth, Lyn Boyle, Vanessa Lyon, Dr San Lazaro, Kulvinder Chohan, Isabella Hepplewhite and Marion Harris. Apart from Mrs Eyeington and Dr San Lazaro, they were social workers. Mr Lillie was dismissed for what was found to be "gross misconduct". His appeal was dismissed on 9 May 1994 before a body described as the Corporate Disciplinary Appeals Panel.

19. Miss Reed's disciplinary hearing was held on 21 February 1994, again before Graham Armstrong. She was represented at the hearing by a trade union officer from Unison although she did not herself choose to give evidence. Clearly important was the evidence of Dr San Lazaro, but she was not there to be cross-examined because she was on holiday. Her evidence therefore went by default. She was dismissed the following day, also for "gross misconduct". Her appeal was heard on 11 and 12 May, when her dismissal too was upheld.

20. I need not go into detail about these disciplinary proceedings. They are at the periphery of the present proceedings. I had no wish to comment on them at all. They could hardly be relevant, for example, to the Claimants' allegations of malice in relation to publications in November 1998.

21. Yet Mr Bishop was keen to lead evidence about them. On 22 May he called a Mr Norman Greig who is a personnel officer at Newcastle City Council. I am not sure what purpose this served. I believe the intention was to demonstrate the fairness of the disciplinary proceedings. If so, the exercise was a failure. Since Mr Bishop specifically brought these hearings into this case, and invites me to make findings about them, I shall reluctantly do so. They carry no conviction at all. Not only were they superficial but, as emerged during the cross-examination of Vanessa Lyon on 23 May 2002, they proceeded on the basis of partial and selective evidence. She did not present the material as a whole to the disciplinary panel for its members to make up their own minds. She edited out what *she* thought

was irrelevant; for example, matters favourable to Miss Reed, such as that Child 14 exonerated her in interviews on 4 and 22 October 1993. Indeed, she omitted altogether the interview of 4 October.

22. The disciplinary hearings did play a part in the evidence, however, since it emerged rather surprisingly that the Review Team had later taken the adverse disciplinary findings as being in themselves evidence that Mr Lillie and Miss Reed had committed sexual abuse on at least some children. That is curious, to say the least, in the light of their much vaunted "independence" from the Council. It is perhaps, even more startling when one calls to mind how perfunctory the hearings had been and how they had been conducted with such indecent haste. Mr Kevin Hattam, the trade union officer who represented Miss Reed, later observed that they were the "strangest" disciplinary proceedings he had experienced as there appeared to be "no evidence". The Council was just "going through the motions". The right thing to have done would have been to wait until the criminal proceedings were concluded, and the two individuals concerned would at least have been free from the inhibitions of legal advice and a pending criminal trial.

23. Neither Mr Lillie nor Miss Reed ever took proceedings for unfair or wrongful dismissal (a point to which the City Council attached considerable importance in the course of submissions in these proceedings). In the circumstances, it was hardly surprising.

The criminal proceedings

24. Eventually, a criminal trial commenced at Newcastle Crown Court on 8 July 1994 before Holland J. There were altogether 11 counts, relating to a total of six children. The children who formed the subject of the criminal proceedings at that time have been referred to in these libel actions as Children 2, 14, 19, 23 and 24 (girls) and Child 10 (a boy). (It is to be noted that the prosecuting authorities took the view at an early stage that there was insufficient evidence to justify criminal proceedings in respect of the original complainant Child 22.)

25. One of the charges Mr Lillie faced in the Crown Court was that of raping Child 14. She was born on 17 November 1988 and began at Shieldfield on 21 January 1991. When she began there, she was in the care of Miss Reed and later, with effect from 16 October 1991, of Mr Lillie. She last attended the Nursery on 22 July 1992. Thus, it would appear that, when the alleged rape took place, she was either two or three years old. Holland J heard submissions for several days and, having considered the video evidence in relation to Child 14, concluded on 13 July 1994 that it should not be admitted in evidence. His Lordship's reasons were given during the course of a ruling the following day. It was then decided by the Crown Prosecution Service that there was insufficient evidence for the matter to proceed and, on the learned judge's direction, both Claimants were acquitted. It seems that the Crown took the view that the evidence relating to Child 14 had been the strongest. One of the matters to which Holland J attached significance was that, in the course of two out of the three interviews in which Child 14 participated, she had expressly exonerated Miss Reed of anything untoward. (It will be necessary for me at a later stage to return in much more detail to the content of Child 14's video interviews.)

26. Since it has been so misunderstood or misrepresented subsequently, it is right that I should summarise the ruling.

27. The learned Judge began by reminding himself that his concern, as the trial Judge, could not be limited to reflecting personal sympathy; it had to reflect his duty to ensure that the criminal proceedings were conducted fairly and in accordance with law. That is why he decided to explain the approach he was adopting fully, so that it would be properly understood by the public.

28. He addressed counts 1, 2, 3 on the indictment first. These consisted of a charge of rape by Mr Lillie of Child 14 (Count 1), indecent assault upon her by Mr Lillie (Count 2) and indecent assault by Miss Reed (Count 3).

29. He pointed out that the child was in the Red Room at Shieldfield Nursery between 4 February 1991 and 2 March 1992. She left the nursery altogether, according to the evidence before him, in August 1992. Since she was born on 17 November 1988, this meant that the alleged offences would have taken place over the period when she was two or three years old.

30. The Judge went on to explain that Child 14 was first interviewed by Vanessa Lyon (the social worker) on 4 October 1993 before a video camera. Four days later, she was examined by Dr San Lazaro who concluded:

> "There was unequivocal evidence of previous penetrative damage consistent with blunt trauma with any object from finger size upwards on one or many occasions in the past."

31. A second video interview took place on 13 October between the child and Vanessa Lyon (supported, as she had been on the first occasion, by Constable Helen Foster). A third interview took place on 22 October 1993. So far as those interviews revealed allegations on the part of Child 14, they were made when she was nearly 5 years old.

32. The Judge turned to Count 4 which contained an allegation of joint indecent assault by Mr Lillie and Miss Reed upon [Child 23]. She had been born on 22 February 1990 and was in the care of Mr Lillie and Miss Reed from about August to December 1992 (i.e. beginning when she was two and half years old). She was first interviewed on 12 July 1993 (again before a video camera), when she was three and half. She was examined a week later by Dr San Lazaro who again found a significantly damaged hymen.

33. Count 5 related to [Child 24] and contained a charge of indecent assault by Mr Lillie. She was described as having been in the Red Room from January to November 1992 (her third birthday occurring on 14 August 1992). She was interviewed on 22 June and 30 July 1993. On 18 November of that year Dr San Lazaro made similar findings to those already described.

34. The alleged victim in relation to Counts 6, 7 and 8 was a small boy [Child 10]. The first charge was one of indecent assault by Mr Lillie, the second was of indecent assault by Miss Reed and the third of assault occasioning actual bodily harm by Miss Reed.

35. He was born on 3 July 1989 and was in the Red Room between August 1991 and July 1992. He was interviewed on 18 August 1993 before a video camera and examined by Dr. San Lazaro on 1 September 1993 (when nothing of significance was found). He was just four years old at the stage of interview and speaking of events alleged to have occurred when he would have been two.

36. The learned Judge then turned to Count 9 which related to an allegation of indecent assault by Mr Lillie on [Child 19]. She was born on 7 February 1990 and was in the Red Room from September 1992 until January 1993. She was examined by Dr. Alison Steele on 6 August 1993, when non-specific findings were made (albeit not inconsistent with some degree of trauma). Her video interview took place on 10 August 1993, with a follow up on 2 November 1993. Thus she was three and half years old when interviewed.

37. Counts 10 and 11 related to [Child 2] and consisted of one charge of indecent assault by Mr Lillie and one by Miss Reed. The child was born on 2 September 1989 and was a member of the Red Room from early 1992 until September of that year. The first video interview took place on 22 July and the second on 1 December 1993. She was examined by Dr. San Lazaro on 13 August 1993, who found no significant abnormality.

38. Having reviewed the charges against Mr Lillie and Miss Reed and summarised the various ages of the alleged victims, the learned Judge made three introductory observations:

(1) With the possible exception of [Child 2], no child had made any contemporaneous complaint. Moreover, so far as Child 2 was concerned, having regard to the terms of what she had said, no action was taken at the time.

(2) It was conceded by the Crown that it was impossible, by way of a process of elimination, to prove of any child in respect of whom physical damage was found that access and opportunity to inflict such damage were confined to Mr Lillie and Miss Reed.

(3) Save to the extent that physical findings corroborated the allegation of physical interference (in some cases), and save to the extent that one child could provide "similar fact" support for one or more of the other children, there was no corroboration of the allegations of wrongdoing. Indeed, his Lordship added, to the extent that the children had provided detail as to venue, and as to the circumstances of various alleged incidents, no support had emerged for their contentions (despite extensive police enquiries). Thus, there would be insufficient evidence to prosecute without evidence from at least one child, and preferably more than one.

39. That was the background against which the Crown, through Mr Aidan Marron Q.C., applied under s.32A of the Criminal Justice Act 1988 (inserted by reason of s.54 of the Criminal Justice Act 1991). The Defendants objected to the introduction of the video recordings of the various interviews, and that was the subject of the Judge's ruling. It had been decided to confine consideration, at least initially, to the recordings made by [Child14] and thus to Counts 1 to 3. This was on the basis that if the Crown failed in that instance, then Mr Marron would not try to secure the admission of any of the remaining video recordings. The Judge explained the background to this decision and gave three reasons why it had been decided to focus on that particular child:

a) In a context in which "age is at a premium", she happened to be the oldest girl.

b) Her allegations were the most serious that had been made (i.e. there was a charge of rape).

c) There was a limited measure of corroboration for her evidence afforded by the physical findings following medical examination.

40. His Lordship then identified the consequences that would follow from a ruling in favour of the Crown's application. First, the admitted recordings would have to be played to the jury. Secondly, any statement made by Child 14 would be admissible evidence of any fact which could have been admitted by way of direct oral testimony from her: s.32A (6). Thirdly, the child would then be called by the Crown to give evidence, by way of video link, to supplement her evidence in chief to the limited extent permitted by s.32A (5).

41. The three video recordings which the learned Judge viewed (as I have done) lasted in total for three hours. It was necessary to bear that in mind because, if cross-examination of Child 14 were to take place, it would plainly have been desirable for her to have had the opportunity of following that footage (in the usual way, concurrently with the jury). She would need to have it in mind as the necessary point of reference to understand the questions she was likely to be asked.

42. In addressing the exercise of the court's discretion, the learned Judge asked himself first, "Does such statement [or statements] serve to provide admissible evidence of fact that could have been the subject of admissible, direct oral testimony by [Child 14]?"

43. It was necessary for him, assuming that he concluded that a statement or statements could be classified as *prima facie* admissible, to address three separate concerns:

i) Was he satisfied that Child 14 was available for cross-examination?

ii) Was he satisfied that any rules of court requiring disclosure of the circumstances in which the relevant recordings were made had been complied with?

iii) Were the circumstances of the case such that, in the interests of justice, all or part of the recordings should be excluded?

44. His Lordship then turned to consider the matter of admissibility with regard to any statement or statements the child might have made. He bore in mind, in particular, the opinion of the Privy Council in *Noor Mohamed v. The King* [1949] A.C. 182, 192, and the statutory reflection of those same considerations of policy as later embodied in s.78(1) in the Police and Criminal Evidence Act 1984. His Lordship then considered whether any statement or statements could be said to be discernible within each of the relevant video tapes. As to the first (4 October 1993), he concluded that there were three discernible propositions, each qualifying as a "statement":

i) Mr Lillie exposed himself to her in the toilets of the Nursery in the course of an indecent assault carried out by him on another little girl [who plays no direct part in the present libel proceedings but was known as Child 35].

ii) Miss Reed had done nothing at all to her.

iii) Child 14, Mr Lillie, Miss Reed and a woman called Moira (apparently another member of staff) had been to Mr Lillie's house by bus.

45. As to the second video tape (13 October 1993), the learned Judge found again three propositions which qualified:

i) Mr Lillie had put a needle into her bottom (which, in this context, the Judge took to mean her vagina) and also into the other little girl.

ii) Miss Reed had also put a needle into her bottom and that of the other girl.

iii) All of these events had taken place in the Nursery toilet.

46. Returning to the third video (22 October 1993) the Judge extracted the following "statements":

i) Mr Lillie had acted indecently towards her (initially), and then (finally) had raped her in the toilet of the Nursery.

ii) Miss Reed had done nothing to her.

iii) Child 14, Mr Lillie, Miss Reed and a woman called Amanda (understood to be another member of staff) had been to Mr Lillie's house (this time by train), where Mr Lillie was seen to be in bed with a lady called Doreen.

47. The Judge began his consideration of admissibility by addressing the Crown's case against Miss Reed. He then gave the following important ruling:

> "… I do not regard any of the statement[s] as set out by me, as disclosed by the recordings, potentially probative of anything at all against Miss Reed. It affords, in my judgment, no evidence upon which any reasonable jury could convict her upon Count 3.
>
> It is true that the second video includes a description to the indecent assault by Miss Reed that is relied upon, but the first and [third] videos include, effectively, total exculpation of Miss Reed. One of the striking features of both first and [third] videos is the insistence with which [Child 14] seeks to exculpate her, and the fact that she does so upon her own initiative. Indeed, one of the points made by Mr Cosgrove [her counsel] in the course of his cross-examination of WPC Foster and of Mrs Lyon is that nobody picked up and thought to examine, in any way, this piece of initiative on the part of [Child 14].
>
> The statement would only become potentially probative against Miss Reed if the graphic support for her that is initiated by [Child 14] herself – and that is seen on the videos one and three - is put aside. I can see no basis for doing so. I remind myself that no jury can convict Miss Reed upon Count 3 without being sure and satisfied of her guilt. It is manifest on the evidence of [Child 14] (as disclosed in the statement from the three videos) that there could be no basis upon which they could be sure and satisfied. Indeed, there is a rather better basis for being sure and satisfied that she is innocent of that particular charge. Thus, in dealing with Miss Reed, I have no hesitation in ruling that the Crown's application to adduce that part of the video recordings as making a statement to be relied upon in the furtherance of their prosecution of her fails."

48. The learned Judge then turned to the case against Mr Lillie. In his judgment, it could not be said, in his case, that the relevant statements lacked any potentially probative effect. A possible interpretation of the tapes was of "… a young victim of sexual abuse slowly overcoming constraints imposed by the abuse and abuser, so as to make a full disclosure in response to sympathetic interviewing and effective reassurance".

49. His Lordship then went on to make an evaluation of the prejudicial effect so as to balance it against probative weight. He regarded that exercise as being required by the common law, as well as reflecting the exercise of discretion provided for in s.32A (3) of the 1988 Act.

50. He concluded that the material relating to Mr Lillie could not safely be put before a jury until a full opportunity was afforded for investigation into the history of any complaint. Overwhelming prejudice to Mr Lillie could only be avoided, for example, if there was an opportunity to enquire of the child why nothing he was alleged to have done had been the subject of a contemporaneous complaint by her; why she had made no complaint of assault during her first video interview; why there was no complaint of rape in the second interview; and "above all, as to why the complaint of rape in the third video followed upon an initial cessation of the interview, which cessation had been instigated by her".

51. The learned Judge added that there was a prospect of overwhelming prejudice to Mr Lillie if it was not possible for inquiries to be made on his behalf, of Child 14 in cross-examination, as to why her accounts had varied with regard to Miss Reed. Moreover, the Judge drew attention to the fact that information supplied by the child about any house or flat would not stand up to further investigation. Police inquiries, in other words, had brought forth no confirmation at all. For that reason, he observed, "Those parts of her account cry out for like inquiry…"

52. The main difficulty confronting the learned Judge was that there was really no other way of testing her evidence or exploring the inconsistencies, unless cross-examination were to be permitted. There was no other potential source for answering the queries. His Lordship turned next to the statutory pre-condition for admissibility provided for in s.32A(3)(a); that is to say the child's availability for cross-examination. He held that she was not so available on any material matter. She would have to be physically present, willing to answer questions put on Mr Lillie's behalf, and not incompetent; see s.52(2) of the Criminal Justice Act 1991. He added that it was, in his judgment, necessary also for her to have the capacity to give "an intelligible account of events" (a phrase borrowed from an Irish statute: s.27(1) of the Civil Evidence Act 1992).

53. His Lordship held, without hesitation, that Child 14 did not have the capacity to give an intelligible account of material events at the time when the recording was made (i.e. in October 1993). This was based largely upon his viewing of the three hours of material. While emphasising that his conclusion was in no way intended to reflect upon the child, his Lordship pointed out that her incapacity to give an intelligible account was merely a reflection of her age, of the subject-matter, of its emotional impact upon her, and also of the delay between the events under investigation and the interview itself. In other words, she would be cross-examined almost a year after the original interviews, which were themselves concerned with events which had occurred (if at all) at least 15 months earlier. His Lordship, secondly, saw no reason to conclude that her capacity would be materially improved by the time any cross-examination took place. Since she would not have the attention span necessary to view the three hours of video material concurrently with the jury (as confirmed in evidence by a psychologist), she could not appreciate the necessary premise upon which the line of cross-examination would proceed. Further, and in any event, her 1994 memory for events in 1992 would be "speculative".

54. His Lordship confirmed that the very same factors which led him to the conclusion that Child 14 was not "available for cross-examination", for the purposes of s.32A(3), would have operated to lead him to the conclusion that the admission of any such statement by her would have a prejudicial effect far outweighing any probative value.

55. Following Holland J's decision and the direction to acquit, there was apparently a violent outburst of emotion in court, during which the two Claimants were threatened and reviled.

The steps taken by the City Council meanwhile

56. So far as the City Council was concerned, the acquittals made virtually no difference. One of their representatives, a Mr Flynn who was at that time Deputy Leader, confirmed outside the court that the dismissals still stood and that the Council still regarded them as guilty of "gross misconduct" (i.e. of abusing a number of children in their care, including those in respect of whom they had just been acquitted). Almost immediately, a widespread view took hold that the criminal proceedings had come to a halt as a result of some technicality or inadequacy in the system of justice. Very little attention was paid to the comments of the trial judge as to the state of the evidence; and, in particular, to the remarks made by Child 14 in two of her interviews to the effect that Dawn Reed had done nothing wrong.

57. It is now necessary for me to address, in a little detail, the steps which had been taken in the meantime by the local authority and the statutory context. The government of the day had, in 1988, issued guidance to local authorities under s.7 of the Local Authority Social Services Act 1970. This was intended to facilitate co-operation between various agencies with a view to effective child protection. The guidance operative at the time of the Shieldfield events was that originally published in 1991. It was published under the title *Working Together*. Each local authority was required to establish an Area Child Protection Committee (ACPC), composed of representatives from the local authority, the police, the health authority, the probation service and other relevant agencies. One of the purposes underlying the establishment of the Area Child Protection Committees was that they should be preventative. It was also, however, intended that there should be a forum for co-ordinating an efficient response to any perceived incidents of child abuse, as they arose.

58. There was a meeting under the auspices of the relevant ACPC in Newcastle on 26 May 1993. By that time 14 families had already been seen by social workers. There were further meetings as events developed. There is a procedure laid down by Part 8 of *Working Together* for reviewing specific cases. There would certainly be an obligation to carry out a Part 8 Review where a child has died in circumstances where abuse is suspected or confirmed. Nevertheless, an ACPC should always consider whether to carry out such a review where there is a child protection issue likely to give rise to major public concern. It was felt that the criteria had been fulfilled in the case of Shieldfield, because it was perceived that the ACPC had a case of multiple abuse on its hands, and a Part 8 Review was set in motion in the autumn of 1993. Once information had been gathered from all the relevant agencies an "overview" report had to be submitted to the Social Services Inspectorate (SSI) within the Department of Health. In the present case the Part 8 overview report took some time to complete, and was not submitted to the SSI until October 1996.

59. There exists a quite separate regime for dealing with "complaints" from consumers or other members of the public about services provided by a local authority. Relevant provisions are to be found in the Local Authority Social Services (Complaints Procedure) Order 1990 made under s.7B of the 1970 Act. Every local authority is obliged to establish a procedure for considering representations (including complaints) made to it by or on behalf of a "qualifying individual" relating to its social services functions in respect of the individual concerned. A "qualifying individual" is someone for whom the relevant local authority has the power or obligation to provide a service. By reason of the day care obligations arising under s.18 of the Children Act, it was now necessary for the Council to establish a procedure for considering any complaints made by parents/carers with regard to the services at Shieldfield.

60. It is also provided by s.26 (3) of the Children Act that a procedure should be established when considering any representations (including a complaint) from parents/carers of children "in need" as to the discharge of local authority functions (including the provision of day care under s.18 of the 1989 Act). Thus, one way or another, there was a duty upon the City Council to consider complaints relating to the discharge (or failure to discharge) day care duties with regard to Shieldfield.

61. The Newcastle City Council had established a Comments and Complaints Policy in 1991 following the model laid down by the Representation Procedures (Children) Regulations 1991 (SI 1991/894).

62. In 1993 the current procedure was that a complaint should be registered with the Comments and Complaints Unit (part of the Council's Standards and Quality Assurance Division). It would then be for Mr Bob Hassall (the then complaints officer) to appoint an "investigating officer". Normally, that person would be a local authority employee unconnected with the specific matter under investigation. In an ordinary case, the investigating officer should report to the complaints officer within 28 days upon the outcome of his investigation and the appropriate response to the complainant. In the event that the relevant complainant was not satisfied with the response, it would be open for him or her to request the Complaints Review Panel to investigate the complaint. Such a Panel would comprise an independent chairman, a member of the Social Services Committee of the local authority and an Assistant Director or Principal Assistant of the department (not being directly involved).

63. There was yet a third stage whereby, if the complainant was not satisfied with the recommendation of the Panel to the Director of Social Services, there could be a reference to the Social Services Committee. This three tier complaints structure was in place in 1993 at Newcastle for dealing with complaints made under the 1970 Act or the 1989 Act.

64. It was recognised that there might be occasions when the standard procedure would be inadequate to the task in hand. In this instance, when the complaints were first made about events at Shieldfield, they were registered for investigation in the normal way. Nevertheless, it soon became apparent that there was the possibility of multiple abuse at the hands of Council employees, and it was thought desirable to set up a procedure tailored for this specific case. By the end of 1993, a firm of local solicitors (David Gray & Co) were acting for a number of the Shieldfield parents and, on 20 December, the City Council notified them that an alternative complaints procedure was being set up to investigate and report on the overall situation, in addition to dealing with individual complaints. This was by means of a letter from Jennifer Bernard, the then Director of Social Services.

65. At about the same time, it was resolved that there should be an investigation into the multiple abuse allegations by an *ad hoc* Review Team. The standard complaints procedure was suspended and the solicitors were notified accordingly by Jennifer Bernard on 23 December. By that time some six complaints had been formally registered, although it was appreciated that more would be forthcoming. In effect, what was being proposed was that there should be an inquiry into what had gone wrong, and that recommendations should be made to avoid similar problems in the future, quite apart from specific complaints. It is right to record that it was being contemplated by Jennifer Bernard as early as 3 December 1993 (in a letter to Det. Insp. Findlay of the Northumbria Police) that the Final Report of the proposed complaints review team would be presented to a public meeting of the social services committee.

66. There is a wide discretion under s.111 of the Local Government Act 1972 to do anything calculated to facilitate the discharge of a local authority's statutory functions. If the circumstances warrant it, a local authority may thus commission and fund a public inquiry (such as that carried out by Mr Peter Hunt following the Jason Dabbs case). It was decided, however, in the Shieldfield case that it would not be appropriate to set up a similar inquiry. This was partly because of what was at that time perceived to be the cost and inherent delay, and partly because it was believed that an "adversarial" procedure would not be in the best interests of the Shieldfield parents or children. It was also considered that people might feel inhibited in a public forum and that accordingly it would be difficult to establish the full facts.

67. Not surprisingly, however, there was considerable pressure for the hearing to take place in public because, as often on such occasions, there is a fear of a "whitewash" or "cover up". With such considerations in mind, another firm of solicitors made representation to the Secretary of State

requesting that a public inquiry be carried out pursuant to s.81 of the Children Act. There would also be the power, if this course were adopted, to compel the attendance of witnesses. This proposal was rejected in August 1994 and then, no doubt reluctantly on the part of some parents, it was decided to accept the City Council's compromise proposal. It was thus resolved that matters would be investigated by a Review Team, independent of the Council, consisting of members qualified and experienced in matters of social work and child protection. Their task would include both responding to complaints made by individuals and reporting, more generally, upon the running of the nursery and upon the way in which the Social Services Department of the local authority had discharged its responsibilities. To avoid charges of "cover up", it was at an early stage perceived to be necessary that individual complainants, and indeed all those directly involved with the events at Shieldfield, should be fully informed as to the outcome of the inquiry. How this was to be achieved was left until the Report became available (much later than originally anticipated).

68. Although the terms of reference for the Review Team were already being discussed at the end of 1993, they continued to be debated for some time. (I was told that they were not actually finalised until shortly before the Report emerged.) For example, a change was made in September 1996 to enable the Review Team to "consider and report upon relevant concerns raised by parents or persons interviewed", even though this might go outside the notion of dealing with formal "complaints". Another later amendment concerned the machinery for submitting the Report to the City Council. It was specifically provided, in May 1998, that the Report should be submitted to the Council through the Chief Executive (rather than to the Standards Quality and Assurance Division Manager, as would be normal). The reason for this change was that it was perceived as underlining the principle of independence. The terms of reference, as set out in the published report, will be fully identified in due course (see Section 3 below).

69. For reasons which are perhaps understandable, there was considerable delay setting up the Review Team. The plan was that applicants should be considered by a panel consisting of a chief officer of the Council, a senior medical officer nominated by parents and a project manager for NCH Action for Children (the providers of the Independent Persons Scheme under the Children Act). I understand that there was some delay in the parents choosing their representative on the appointments panel but, in any event, candidates were not interviewed until August 1995.

70. There was a short list of ten candidates and the panel eventually appointed Dr Richard Barker, who was at that time Head of the Division of Child and Family Studies at the University of Northumbria (Team Leader), Judith Jones, a former child protection officer, Jacqui Saradjian, a consultant clinical psychologist and Roy Wardell, whose experience lay in the provision of social services by local authorities. It was not thought appropriate that any of the members should have had any legal training or experience. Their activities were overseen by representatives from the Independent Persons Scheme.

71. Between the end of 1995 and the publication of the Report on 12 November 1998, more than 150 witnesses were interviewed by members of the Review Team. It is to be noted that they chose to divide their labours, with the result that not every member of the Team had the opportunity of assessing every witness or, for example, every child interview. They were only working part-time and there were limitations on the resources available to them. There is no doubt that the Team members worked very hard and showed considerable dedication to their task. Mr Bishop suggested, in closing, on behalf of the Review Team that if they had known how much time and effort was going to be involved they would probably have stayed out of it. I am sure they now regret it.

72. Neither Mr Lillie nor Miss Reed agreed to be interviewed by members of the Review Team although they were invited. They made their respective decisions in accordance with legal advice, and neither felt that they would receive a fair hearing. They did not trust the City Council in the light of the procedures adopted over their dismissals and the remarks made following their acquittals at the Crown Court. Subsequently the Review Team was critical of this "refusal to co-operate", as they perceived it, but in the circumstances the Claimants behaved reasonably. It is one thing not to "co-operate". It may

be quite another, however, to be wary of placing one's fate in the hands of individuals who have arrogated to themselves a right or duty to find out whether a citizen has committed serious criminal offences. If such a person would not be afforded any of the basic safeguards which the law has long provided for individuals in jeopardy of such findings, he or she would be fully entitled to regard the process as flawed and unfair. This would be so even if those carrying out the inquiry were open and above-board about their intentions. Here, as I shall describe in due course, they were not.

73. In the meantime, a number of parents had made claims for criminal injuries compensation and substantial sums of money were paid on the basis that the children concerned had been physically and/or sexually abused by Christopher Lillie and Dawn Reed. These claims were supported by Dr Camille San Lazaro, the consultant paediatrician, who played a very significant part in the history of events forming the subject-matter of these proceedings. She was later to admit in the witness box that what she told the Criminal Injuries Compensation Board was (in her words) "exaggerated and overstated".

74. In due course, no less than 47 children sued the Council for damages for negligence. Although not directly relevant to the present proceedings, some of the witnesses were asked about the stage which those claims had reached. It emerged that some had been settled before the libel hearing started and others not. At all events, the basis of the negligence actions was the same as that of the criminal injuries compensation claims, namely that Mr Lillie and/or Miss Reed had abused the children when they were in the care of the Newcastle City Council at Shieldfield.

75. Before I come to the publication of the Review Team Report, which forms the primary subject in matter of the present dispute, it is right that I should introduce the Claimants in more detail in the light of the evidence I have received. Hitherto, so far as the citizens of Newcastle are concerned (and, for that matter, the general public), they have remained rather shadowy figures about whom only limited information has been available, either through the content of the Report or through the media. Since some of that has been distorted or is inaccurate, it is appropriate to introduce them by reference to their background and careers up to the point when they are alleged to have committed these very serious offences against children in their care.

76. Much attention has been focused on their time at Shieldfield, and in particular the period from March 1992 to April 1993 when they were jointly responsible for the children in what was known as the Red Room in the Nursery. Rightly so. Nevertheless, there is a wider context which it is necessary to take into account. For example, there was no suggestion prior to April 1993 that either of them had misbehaved with any child. Nor has there been any suggestion of paedophile activity or indecent assault, or anything similar, having occurred since the time of their suspensions (on 16 April and 12 May 1993 respectively). I therefore now attempt to summarise the wider background of the two Claimants before addressing the allegations made against them.

2) Christopher Lillie and Dawn Reed

a) *Mr Christopher Lillie*

77. Mr Lillie was born on 10 June 1964 in Wallsend. His parents were separated when he was about five years old and, together with his younger brother and two sisters, he went to live with his mother and the man she then married. He described the period with his mother and stepfather as "a happy time".

78. In May 1977, when Mr Lillie was almost 13, his mother died. At that stage the children went back to live with their natural father, despite not having very much contact with him for about nine years. He had re-married and two children had been born within that marriage. Things did not work out. Mr

Lillie and his brother were not happy in the new environment. They began to get into trouble and were, for example, cautioned for shoplifting in August 1979. Mr Lillie also ran away from home for brief periods. Eventually on 6 November 1979 he was put into care, with a placement for two or three months in Clavering House at Blaydon.

79. In January 1980 he was given a two year supervision order after having pleaded guilty to stealing a bicycle. Thereafter, he was moved to Chalfont Road Children's Home where he remained until September 1981. During this period he was attending Manor Park School in Benton. He took CSE examinations and obtained Grade II passes in Mathematics, Religious Education and Chemistry together with a Grade IV pass in English Language. He left school in May 1980 at the age of 16.

80. My attention was drawn to page 265 of the Review Team Report in which it is suggested that Mr Lillie had been placed in establishments "…in which it appears staff – both male and female – sexually abused children. He may have been exposed to models of vulnerable children being abused as of right by those with power over them". Mr Lillie's response is that in the two care establishments in which he stayed he never saw or heard of any behaviour of that kind. He was not sexually abused himself; nor was he aware of any such abuse having taken place in those establishments.

81. I was told that Mr Lillie prospered to an extent in care, gaining in self-confidence and getting on particularly well with one of the members of staff (and her husband). He recalled how they gave him practical help when he moved into a council flat in Newcastle after he became too old for the residential home.

82. On leaving school, Mr Lillie faced very high unemployment in the Newcastle area and entered some schemes which were being organised through the Job Centre. He worked for several months as a labourer for Community Industry in Heaton, and subsequently as a baker and shop assistant in the Kew House Delicatessen in Eldon Square. He was also, in about 1983-1984, a catering trainee on a youth opportunity programme in Morden Street. Each of these schemes lasted about six months.

83. During the period 1987–1988 he became an assistant organiser of the Newcastle Children's Adventure Group ("NCAG"). This lasted for about a year. Subsequently, from 1989 to 1991 he was a relief caseworker for the Social Services Department.

84. Mr Lillie explained the background of his involvement with NCAG, which began in 1979 when he went away on a trip with the group. It was an organisation which provided adventure opportunities for inner city and other disadvantaged people. Because he had admired the work which they were doing for disadvantaged children, he later volunteered in response to a newspaper advertisement. He worked as a volunteer with them from about 1982 during a period of unemployment. He maintained the day to day running of the office and helped to run a summer camp for NCAG, which catered for children between the ages of 6 and 15. They were camping in tents and took part in activities such as canoeing, windsurfing, climbing and walking. He worked at the camp from 1984 to 1989 (with only one exception) and also attended camp in 1991.

85. He decided that this sort of work suited him and that he had the right temperament for it.

86. One of the leaders at NCAG had a child who attended a mother and toddler group run by Gosforth Social Services on Thursday mornings. Since they were looking for volunteers, Mr Lillie went along and decided that he wanted to work with that age group. When that group ceased to function through lack of funds after about a year, Mr Lillie then enrolled at the North Tyneside College for a two year course training to be a Nursery Nurse. Not surprisingly, references were required and he was able to name referees with whom he had worked at NCAG.

87. The nursery training course ran from September 1988 through to the summer of 1990. Again Mr Lillie invited my attention to a passage in the Review Team Report (at page 48) where it is suggested that he had to repeat his final year. This he disputes. They report a Veronica Dawson as stating that his final year did have to be repeated and that he was a "lazy bones". She was described in the Report as being his ex-tutor. In fact, as he points out, she was his tutor for one course only. His overall tutor was a Ms Doreen Bailey who was never interviewed by the Review Team. He accepts that he had some problems on what he describes as the "craft side" (which apparently included such skills as knitting and artwork), and that for those he had little aptitude. His evidence is that, subject to those problems, he worked hard on the course and was motivated to gain his qualification so as to earn a living in nursery work. He referred to the fact that another male student was required to do a third year, and suggested that this may be the source of confusion. At all events, his evidence (which I accept) is that he completed the course in the standard period of two years.

88. The training course consisted partly of academic study and partly of gaining practical experience. The general pattern was that six days were spent in college and four days on a "placement". It happened that his first placement was at the Shieldfield Nursery. He worked at that stage under the supervision of the then Manager, Susan Eyeington. During the first placement he worked with the age group up to three years for nine days and for 37 days with children of three to five years of age. Miss Eyeington apparently recognised that "progress was necessary" in relation to the preparation and organisation of craft work, but she described him as being good at establishing relationships with children and as being aware of each child's individual needs. So far as she was concerned, he behaved appropriately towards the children and was pleasant and good humoured in his relations with other staff. She also commented that he showed perseverance and commitment to his work.

89. Other placements during his training included work at Raby Street School, Dunston Nursery School, Ashleigh Special School and Monkseaton First School. There was also a "home placement" between January and March 1990 where he was responsible for looking after a baby and a two year old.

90. Mr Lillie found that the work suited him and he considered that he was getting on well at Shieldfield. He decided that this would be the right career for him, despite a certain amount of 'general prejudice' to the effect that nursery work should remain a field for women rather than men.

91. Mr Lillie worked as a relief worker at Shieldfield between May and June 1989, for about eight days, to help with money for completing his course. He did the same at Armstrong Road Nursery between 24 July and 20 August 1989 and also for a week at a children's special needs home. Subsequently he also did a few weekends at various homes for the aged. He accepts too, although he does not have any particular recollection of it, that he is recorded as having worked for a total of five afternoons at Shieldfield between October 1989 and January 1990.

92. As he came towards the end of his two year course, he worked at Shieldfield again in May 1990 so as to cover for Maria Buck, who took maternity leave. Between September and October of the same year he worked at Dunstanburgh Road Nursery as a relief worker. At the stage when he left Shieldfield for Dunstanburgh Road, he received a card from some of the parents at Shieldfield expressing good wishes and saying that he would be missed. One of them was apparently the mother of the girl referred to in this case as Child 14.

93. Just before Maria Buck returned from her leave, another member of staff, Diane Wood, also left for maternity leave and Mr Lillie covered for her as well. He stayed on in a temporary capacity until June 1991. During that summer he did a six week adventure camp with NCAG in Northumberland (and subsequently went on a two week canoeing trip to Norway with two of the NCAG leaders).

94. In September 1991 at the invitation of Susan Eyeington Mr Lillie returned to Shieldfield as a full time temporary nursery officer and remained until he was offered a permanent post there, following the standard interview procedure, in April 1992. (Mr Lillie wished to emphasise that he did not lie in any way in order to be taken on at Shieldfield, since he construes page 47 of the Review Team Report as suggesting that he may have done so.) For almost exactly a year Mr Lillie remained on the staff at Shieldfield, leaving abruptly upon his suspension on 16 April 1993.

b) *Miss Dawn Reed*

95. Dawn Reed was born in South Shields on 20 December 1970, her mother at that time being aged about 18. Her mother was the second of eight children born to her grandparents. The youngest of her aunts was only seven when Dawn Reed was born. She was brought up by her mother in her grandparents' home with her aunts. She explained in the course of evidence that she has never referred to her mother's sisters as "aunts" because, in a sense, they were more like sisters to her. Her mother took the responsibility of looking after her throughout her childhood and did not go out to work until such time as she was old enough to look after herself. She has only ever met her father on one occasion when she was about 19 years of age (i.e. in or about 1989 – 1990). She knows very little about him but understands that his family came from Pakistan, although she does not actually know where he was born.

96. She was keen to make it clear that she was part of a "very large, loving and caring family" and that she had a very happy childhood. Her grandfather, who has since died, was a very proud man who was a former coal-miner. She has said in her statement that there was no time when she was deprived of love, affection or attention. The reason she wished to make this clear was that in the Review Team Report (page 61) the observation is made that "… she had a troubled background and lived with her grandparents for much of her childhood". Miss Reed told me that her background was not in the least bit "troubled". (She was also rather puzzled by a comment in the Report, at page 89, that "... We have been told that Dawn Reed's ethnicity was not considered with regard to its impact on her as a worker or on the nursery". She has no idea why the issue was raised in the Report, since she has never been conscious of any problems of "ethnicity" at all.)

97. One of the experts called on behalf of the Defendants, Dr William Friedrich, describes her as having grown up with a single parent and a number of "alternate caregivers". He says that she was therefore "at risk for maltreatment even sexual maltreatment". That is speculation. Miss Reed and her mother gave evidence on oath and made clear there were no such problems. One of the recurring features of this case has been the willingness of psychologists, professional or amateur, to impose pre-conceived stereotypes or theories upon the facts of the case. I have had to remind myself that evidence must always come first and theory kept in its proper place.

98. At the time of the trial, Miss Reed was half way through a University law course and apparently doing very well. On this basis, it was put to her in cross-examination by Mr Bishop that she must have under-performed at school, in the sense that she left in July 1987 (aged 16) with only one GCE qualification and several CSE passes. As she accepted, it has subsequently emerged that she has greater capacity and application than this would suggest. Asked for an explanation, she told him that she "fell in love" when she met her future (now former) husband. She spent a lot of time with him and generally enjoying herself, rather than applying herself to her studies.

99. In 1990, when 20 years of age, Miss Reed bought a house with her then boyfriend and moved out of her grandparents' home. They lived together throughout her time at the Shieldfield Nursery and eventually married in November 1994, a few months after the termination of the criminal proceedings. The marriage lasted for approximately five years, when they split up and divorced. The main reason for this, she explained, was that they were unable to cope with the pressures and emotional turmoil caused by the "lead up to the Report, its publication and its aftermath".

100. Meanwhile, before she left school, Miss Reed had already decided she wished to qualify as a nursery nurse. She chose to go to North Tyneside College in order to train, and began a two year course in September 1987.

101. Miss Reed had a number of outside interests from an early age. She had been active in the Brownies from the age of seven, with one of her friends, and later progressed to the Girl Guides. She was the first Girl Guide locally to achieve the Baden Powell Trefoyle badge, which was apparently introduced shortly beforehand as a replacement for the Queen's Guide Award. This was the highest distinction available in the Girl Guides.

102. Miss Reed also regularly attended Sunday School in South Shields, when she was small, and later helped in running it by carrying out activities with the children, reading bible stories, creating pictures and making Christmas cards. She was looking after children from the age of seven upwards. The lady who was responsible for the Sunday School at that time was Miss Hazel Singleton, who noticed that she appeared to be "very good with children" and suggested that she might think about becoming a nursery nurse.

103. In due course, Miss Reed trained for a Young Leader's Certificate to enable her to take on a supervisory role in the Girl Guides. She qualified to serve as a Guide Leader at St John's Church. Shortly thereafter she gave this interest up for other things; in particular, she wanted to spend more time with her boyfriend and enjoying social activities. She also had begun to do night classes to achieve an A-level in Sociology. While Miss Reed was at North Tyneside College (1987–1989), she continued to live at home with her grandparents. Like Mr Lillie, she divided her time at college between studying and placements. Her courses included child development, child psychology, social studies, health, biology, education, communications, craft, physical education, music and computer awareness.

104. She also set out in her evidence details of the various placements she obtained during her course.

105. She spent 29 days with five to six year olds at the West Jesmond Infants' School. She also did a home placement as a nanny for 22 days in Jesmond. This was clearly satisfactory as the mother concerned also employed her during summer holidays to look after her four children. At the time, these comprised three girls of eight, three and two years old, respectively, and a baby boy.

106. Miss Reed spent 16 days at the Ingham Infirmary Children's Ward in South Shields with children up to about five years of age. Then there were 58 days spent at Raby Street Primary School with three to four year olds. There were also 14 days at Ashley Special School, North Shields, with children and young people up to the age of 18. This was a difficult placement from her point of view, as it involved dealing with various age groups where all concerned, in effect, had the minds of young children.

107. When she was 18, Miss Reed did 26 days at Shieldfield with two to four year olds.

108. She told me that all the reports in respect of her placements were positive and drew my attention to the terms of the final report dated 16 June 1989:

> "Dawn has continued to show the capabilities noted during her first year. She proves to be very much a part of any team she works with and has equally good relationships with children and staff. She has a quietly confident, caring manner with children and is very perceptive of their needs. She carries out duties reliably and without constant direction, although if unsure always has the confidence to clarify matters with staff. Activities

> have been planned and carried out with children, showing great adaptability and these are always displayed attractively when completed.
>
> Two of her great strengths are her awareness of the needs of children, especially those with problems and the other is her appropriate handling of parents.
>
> She has been an excellent student in all her placements, resulting in her gaining employment in the family centre where she spent a term".

109. She applied for a temporary Nursery Assistant post at Shieldfield, which was advertised by Newcastle Social Services Department, and was appointed on 19 June 1989 subject to passing her examination. The post was duly confirmed. In the light of subsequent events, it is to be noted that on 8 July 1989 she received confirmation that the Department had received a satisfactory police report on her.

110. A six month probationary period was completed without any problems and in early 1990 she applied for a permanent post. She was interviewed on 13 March 1990 and appointed with effect from 19 March 1990. She was upgraded 18 months later to Nursery Officer with a corresponding pay increase.

111. Until the events of April 1993, there had been nothing to suggest to parents or colleagues that Miss Reed was in any way behaving cruelly or improperly towards children in her care. Nor had anyone noticed anything about the relationship between her and Mr Lillie to suggest that they were anything other than work colleagues. There is no doubt that, for one reason or another, perceptions changed among some parents and colleagues as the months passed and it came to be accepted as received wisdom that multiple abuse had been taking place on a massive scale from 1991 to 1993.

112. It is, therefore, instructive to reflect on one example of the contemporaneous reaction of her colleagues. On 2 June 1993, Diane Wood was interviewed by Joyce Eyeington and Mr Mike Godridge (Assistant Director, Residential and Day Care) in the presence of Mr Kevin Hattam. I was supplied with a transcript. She answered "categorically no" to questions as to whether she had ever seen Miss Reed smack Child 22 or any other child or use inappropriate language. Shortly before the interview terminated, she was asked by Mr Mike Godridge for her impression of Miss Reed as a colleague. She replied as follows:

> "I have known Dawn since she was a student. Goodness knows how long that must be now. I can't think how long it is, but she got the job to work in the parents' room which, in those days, was a very hard job. I always admired her for her youth and her age to be able to go into a situation like that and cope very well with it.
>
> I have worked with her myself. She had covered the room that I've been in on several occasions, when a member of staff has been on the sick, and I have always got on very well with her. She is a very unassuming person. She is a very personable type woman (and I say 'woman' because she is not a girl anymore) and I like her an awful lot. To have to listen to what has been said – even the slightest thought of an allegation against her I find totally and utterly ludicrous, because she is such a very, very nice girl – woman I should say – and I hope this doesn't do her career prospects a downer, because as nursery nurses go she has got a lot more patience with younger ones that I ever, ever had. And I have done that job and, yes, I got a lot out of that job, but probably not as much as Dawn's got out of the job with the [two to three year olds]. She has got the right personality for it. She is calm, she is cool, she is quiet, she is unassuming. I have a lot of children in my room who have been with Dawn, who are asking now, bit by bit, 'Where's Dawn? I haven't seen Dawn for a long time. I like Dawn.

> 'She's nice'. Not being pushed or pressured by me, or any other member of staff to say those things. So in those respects Dawn is a very nice woman, and I miss her – miss her a lot, and I think we have a lost a very, very valuable member of staff".

113. On 27 May 2002, Diane Wood gave evidence briefly before me. There is no doubt that her perception changed some time later. She told me that what came like a "bombshell" to her, in about October 1993, was when she learnt that the mother of one child in particular [Child 10] had begun to make allegations. Previously, she too had been supportive of Dawn Reed, and indeed wrote a letter of support to her when allegations began to be made. It seems to have been the fact that this mother had changed her mind that persuaded Diane Wood to change her own view. I need say no more about this for the moment (and the evidence in relation to Child 10 is considered in further detail later in the appropriate place), but in setting out the background prior to the events of April and May 1993, I believe it is worth noting the impression she was making on the colleagues with whom she had worked by that time for several years.

3) The Review Team's Report published on 12 November 1998

114. The Review Team's report was eventually published on 12 November 1998.

115. Central conclusions with regard to the Claimants were as follows:

> Children were hurt, they were hurt involving sexual acts, they were hurt both in the nursery and when they were taken out to other places, some of which were houses, flats and caravans. They were told that some of those places were libraries or Chris Lillie's home, sometimes other people were present and involved in the hurting, sometimes videos and photographs were taken of them, that the children were very frightened and many were most certainly traumatised by their experiences (p.224).
>
> That Chris Lillie and Dawn Reed, sometimes in conjunction with other people outside the nursery participated in sexual acts with children at times involved them in the making of illegal child pornography (p.228).
>
> That Chris Lillie also regularly abused children acting alone both inside and outside the nursery. These sexual assaults took place in various places within the nursery, in particular in the toilets adjacent to the Red Room (ibid.).
>
> In addition, the children were physically and emotionally abused both inside and outside the nursery by Dawn Reed and Chris Lillie in order to attempt to ensure the children's compliance and prevent disclosure of the abuses (ibid.).
>
> There appeared to be a possibility that [the Claimants] had covered their abuse of the children by recording fictional accidents in the Nursery Records for the purpose of disguising either the physical signs of abuse or distress caused thereby (p.244).
>
> From the evidence we have seen, it is clear that Chris Lillie and Dawn Reed had conspired as a pair to abuse children and it is also clear that people outside the nursery were also involved (p.264).

116. On 6 November 1998, it appears that three advance copies of the Report were sent from the printers to the Chief Executive of the City Council and one copy to the Social Services Inspectorate of the Department of Health.

117. On 9 November, a further copy of the Report was supplied to the City Council so that it could be forwarded to the parents of one child, who were by that time in New Zealand. It was accompanied by a letter from the Review Team responding to her parents' particular complaints.

118. On the publication date, 12 November 1998, the Report was placed before a meeting of the Council's Day Nursery Complaints Review Panel (a sub-committee of the Policy and Resources Committee). Copies were supplied not only to members of that sub-committee but also to any members of the press and other persons attending who wished to have one.

119. On the same day, the City Council also distributed it by post, courier or by other means to complainants, parents, solicitors and other persons who were perceived as having a legitimate interest in its contents. The Review Team's individual letters generally accompanied the copies of the Report supplied to the complainants.

120. It appears that the City Council was responsible overall for the distribution of 743 copies of the Report. The circumstances of publication will have to be considered carefully, category by category, when I come to address the arguments on statutory and common law qualified privilege. At all events, the impact of publication was immediate and devastating. It received massive publicity throughout the jurisdiction and, of course, particularly within the Newcastle area. That is hardly surprising. The subject matter of the report was of great interest to the public and the conclusions were striking and a source of great anxiety not only for the parents concerned in this case but also for parents of small children generally.

121. The Report has come under wholesale attack in the course of these proceedings from the Claimants, their legal representatives and expert witnesses. Their criticisms, however, were by no means the first.

122. Shortly after publication, the eminent leading counsel who had appeared in the criminal proceedings (Mr Patrick Cosgrove Q.C. for Miss Reed and Mr Aidan Marron Q.C. for the Crown) penned a letter to the Chief Executive of the City Council making plain their concerns over what they considered to be a travesty. Their letter was in the following terms:

> "REPORT: 'ABUSE IN EARLY YEARS'
>
> Thank you for sending me two copies of the above report. The second I have passed on to Aidan Marron Q.C., who was Leading Counsel for the Crown in the criminal trial of Christopher Lillie and Dawn Reed.
>
> Although I was Leading Counsel for Miss Reed in that trial, I have no continuing professional interest. My continuing interest is in helping to ensure that we can all learn from this case how best to improve the course of justice.
>
> Rightly, there has been much praise of many of the people who were involved in the criminal investigation, such as police officers and social workers. They and others, such as the lawyers in the case, were edging forward in trying to improve their understanding and abilities in these difficult matters. No-one can doubt that the objectives are (a) to protect children, and (b) to do justice by all parties.

I could not agree more with the observation made at the beginning of the Report (page i), namely that: "*Given the proposed massive expansion nationally of day care provision in early years settings this case raises important lessons for consideration in relation to the delivery of services to young children outside their families.*"

It is tragic, therefore, that the Review Team has laboured for so long only to bring forward a report that is fundamentally flawed.

Both academic literature and forensic experience indicate that justice has been hindered by incorrect prejudices that sexual abuse doesn't happen in the family, or isn't committed by natural parents, or by women generally, or by a mother, or by caring professionals outside the home. Our increased understanding leads most of us to reject any such prejudices.

Modern prejudices are more likely to be twofold. At one extreme is the prejudgment that complaints of sexual abuse are likely to be the creation of some form of false memory syndrome. At the other extreme is the prejudgment that sexual abuse once suspected is present, and the only difficulty is in obtaining the evidence to prove it.

The Report's authors implicitly criticise unsolicited correspondents who fall into the trap of the former. There is considerable evidence throughout the Report that they themselves have fallen into the latter prejudgment.

The only safe approach is to keep an open mind in each case, to approach the evidence as objectively as possible in order to discover what it shows. In a free society that is the function of a Court, not the function of investigators, nor of persons with a therapeutic responsibility, nor of teams like the authors of the Report.

It is clear that Professor Davies (see the first paragraph of Appendix 6) has had sight of the Ruling of Mr Justice Holland in the criminal trial, given on 13th July 1994, but it is not clear whether the authors of the Report have read it.

If they have not done so, they have been grossly negligent. If they have read it, their conduct is disgraceful. Nowhere in the Report is there sufficient reference to the Ruling. That fact and the way in which the Report deals with the issues also dealt with in the Ruling lead to the inevitable misleading, even deception of the Report's readers.

It should be remembered that Mr Justice Holland delivered his judgment after careful consideration of the evidence.

The Crown Prosecution Service, no doubt acting on the advice of the police and of counsel, brought forward an indictment based on the six best cases (all of them involving Mr Lillie and four of them involving Miss Reed) from the point of view of the prosecution. No-one, to my knowledge, has questioned the industry or judgment of the prosecution in this case.

Of those six, one complainant (identified in the Report as Child F [now Child 14]) was taken as a 'test case' for preliminary submissions. The details of how this was done are set out clearly in Mr Justice Holland's Ruling. The Report's authors, to be fair, (see pages 148, 225 and 277) also appear to identify this young girl as providing the best evidence in the case.

It is helpful, at this stage, to set out what Mr Justice Holland said about this child's evidence. In the following quotation I have quoted the Judge

verbatim, except that I have substituted 'Child F' for the girl's real name. The passage is to be found at pages 17 and 18 of the Ruling.

'It is convenient to start with the Crown's case against Miss Reed. As to this I do not regard any of the statement as set out by me, as disclosed by the recordings, potentially probative of anything at all against Miss Reed. It affords, in my judgment, no evidence upon which any reasonable jury could convict her upon Count 3.'

They should pause in their righteousness and consider these questions. What if Child F is correct? What if Miss Reed is wholly innocent of any abuse? They have purported to find her guilty of a most serious criminal offence, and have done so in direct contravention of their terms of reference (see below), for which there can be no excuse.

Sexual abuse of children is horrendous. Few things approach it for awfulness. One that does is to be wrongly accused of it. There is no justice for abused children if a wrong person is accused, condemned, convicted and punished.

We do not need to look to America, to the Kelly Michaels case, for examples of how people can be falsely accused. Close to home there is the 'Bishop Auckland satanic abuse case', for example. And we need look no further than Cleveland to see how misplaced zeal can cause a counter-reaction, and confuse the cause of protection of children.

It may be that the Report's authors will claim that they could not refer to the Judge's Ruling because of their Terms of Reference, particularly term 1A (at page 5): *"it should be noted, however, that the Review cannot make any finding on matters dealt with by the Criminal Court"*. If so, that claim would be specious.

In apparent disobedience of that term of reference, the Report does make findings on matters dealt with by the Crown Court, and does so in direct contradiction to the findings made by the Court, although the Report's authors do not have the candour to draw that to the attention of their readers. A classic example is to be found at page 148.

During September a child who had previously been at the nursery began to disclose abuse by Chris Lillie and Dawn Reed. The child, Child F, was medically examined and clear physical evidence of sexual abuse followed. Over three video interviews, she detailed abuse of herself and other children by Chris Lillie, to a lesser extent by Dawn Reed, and she also mentioned other nursery staff's names. Her testimony in these videos, which we have seen, is extremely powerful and provided persuasive evidence of her abuse in the nursery and elsewhere.

In at least one other respect there is a material contradiction between the conclusions drawn by Mr Justice Holland and the Report's authors, and, once again, they do not draw it to the attention of their readers. This concerns the existence or otherwise of any corroborative evidence. I quote (again verbatim) from page 8 of the Judge's ruling.

"… save to the extent that the physical findings corroborate the fact of physical interference in the case of certain of the children and save to the extent that one child might provide 'similar fact' support for one or more of the other children, there is no corroboration of the allegations that are made. Indeed, to the extent that the children have provided detail as to venue and as to the circumstances of various incidents, no support has

emerged for their contentions, despite extensive enquiries to see whether any corroborative evidence is available."

The Learned Judge also gives significant details of the ages of the six 'indictment children', at various stages. Had they been included in the report, which they weren't, readers would have been able to make their own assessments in the light of the valuable research reviews contributed by Professors Bull and Davies.

"It is true that the second video includes a description of the indecent assault by Miss Reed that is relied upon, but the first and second videos include, effectively, total exculpation of Miss Reed. One of the striking features of both the first and second videos is the insistence with which [Child F] seeks to exculpate her, and the fact that she does so upon her own initiative. Indeed, one of the points made by Mr Cosgrove in the course of his cross examination of WPC Foster and Mrs Lyon is that nobody picked up and sought to examine, in any way, this piece of initiative on the part of [Child F].

"The statement would only become potentially probative against Miss Reed if the graphic support for her that was initiated by [Child F] herself – and that is seen on videos one and three – is put aside. I can see no basis for doing so. I remind myself that no jury can convict Miss Reed upon count 3 without being sure and satisfied of her guilt. It is manifest on the evidence of [Child F] (as disclosed in the statement from the tree videos) that there could be no basis upon which they could be sure and satisfied. Indeed, there is a rather better basis for being sure and satisfied that she is innocent of that particular charge.

"Thus, in dealing with Miss Reed, I have no hesitation in ruling that Crown's application to adduce that part of the video recordings as making a statement to be relied upon in the furtherance of their prosecution of her fails."

It may be that the Learned Judge made a slip of the tongue in the second paragraph quoted, and that he meant to refer to the first and third, not the first and second, videos. I rely on my memory for that, and I may be wrong.

In any event, in twenty two years of practice at the bar I have never heard a High Court Judge be so emphatic in an expressed view that the evidence pointed to someone's innocence, as opposed to it being insufficient to prove his or her guilt.

During the course of the criminal trial, there were groups of people outside the Court protesting on behalf of the children. They had placards saying things like *"We believe the kids"*. On this point at least, Mr Justice Holland believed Child F. Why are others so reluctant so to do?

The Report gives the clear and unequivocal impression that the criminal case against both Defendants collapsed only because of the difficulties in getting children's evidence admitted in criminal trials, and that, as a result, two guilty paedophiles have wrongly gone free. The final paragraph of the body of the Report (page 303) is an example of this:

"Like many of the professionals who we have interviewed we share the distress of parents that the Shieldfield children were not able in the end to receive justice. We find that there was a failure of the adult world to provide the processes, systems and environment to ensure that child victims

of assault are not disadvantaged and are regarded as being as entitled to justice as adults."

Yet we can see from Mr Justice Holland's Ruling that the primary reason why the not guilty verdict was entered against Miss Reed was that the evidence of the child pointed to her innocence. Why have the Report's authors hidden that from their readers? Why have they deceived them into thinking otherwise? Why have they misled opinion formers and policy makers like the Council and Members of Parliament? Why have they fed the feeding frenzy of the tabloid press?

There are other elements of the Report which give rise to concern, but the ones canvassed above are particularly grave. The flaws are such that they must bring the reliability and integrity of the whole of the Report into dispute. This is a great pity, as it may well be that many of its insights and judgments have value. It would be a mistake to place reliance upon it, however, as (to adapt a line of the Report at page 130): "*Thus, if the [authors] were wrong with one thing they could be wrong and unreliable about everything else"*.

It would be wrong to pretend that any one of us has the answers to what happened, and what went wrong. That is why people were looking forward to the publication of the Report in the hope that it would give an indication of the best way forward. It is a matter of great disappointment that it does not.

What the Report does highlight is how many of the problems are not to do with the children or their accuracy or reliability, but with the adults, not least in their interpretation of what the child is trying to say. It is clear that the interpretation is not always as objective as the children and those caring for them have a right to expect.

One further area is of continuing concern. The parents of the children have suffered much anguish. The Report finds that children were subject to abuse by a paedophile group and were filmed for pornographic purposes. Given the other flaws in the Report, it would be foolish to rely upon these findings. They may or may not be true. If not true, the authors of the Report are guilty of unnecessarily causing yet more pain to the parents.

It is to be hoped that such a dangerous document does not have a lasting influence.

I appreciate that the Council is now in an impossible position, having agreed to publish the Report without any amendments. I do ask, however, that a copy of Mr Justice Holland's Ruling (amended only by removing identification of the children) be appended to every copy of the Report that is published or distributed. In this way, readers will have a more balanced picture.

I have yet to decide to whom I will send a copy of this letter, but I would be grateful if you would draw it to the attention, at least, of the appropriate chief officers, the chairs of the relevant committees and to the Leader of the Council.

Within the constraints of time, I would be willing to expand upon any of the points raised, preferably in a face to face meeting."

It was signed by both leaders.

123. Moreover, one of the City Council's officers, Mr Tom Dervin (Director of Social Services), expressed his own serious reservations about the content of the Report in no uncertain terms in a letter addressed to the Council Leader, the Chief Executive and the Chairman of the Social Services Committee on 22 January 1999:

> "…I have spent many hours examining and evaluating the information in the Report and in the complaints, and I feel I must offer you my objective opinion on both of them.
>
> In the context of equivalent major inquiry reports this to me is without exception the worst I have read. I mean the worst in terms of quality of information, consistency, judgment, evaluation etc. I think we should be beginning to find a position statement which allows us to accept the report without attributing any significant status to it…..
>
> With regard to the Inquiry Team's responses to the individual complaints, I have the following observations:-
>
> 1. Similar complaints received from a number of parents were given different answers by the Team.
>
> 2. Some comments by parents were turned into complaints when it was not necessary to do so.
>
> 3. Some complaints were given responses even though the complaints were not recorded.
>
> 4. Some complaints were sustained when the reply had clearly shown that they couldn't be sustained.
>
> 5. Some complaints were not sustained but the Review Team merely introduced a parallel issue and turned that into a sustained complaint instead.
>
> 6. The Review Team said it couldn't comment on police matters and then proceeded to do just that.
>
> 7. Many parents made general statements about child care, or staff, or the nursery; these were not answered directly but turned into an opportunity for critical analysis.
>
> My off the record conclusion:
>
> I am certain that children received very poor care at the Shieldfield nursery and I do believe that various forms of abuse and ill treatment took place there. What concerns me in the analysis by the Team however is that they don't evaluate the whole disorganised and haphazard way things appear to have happened.
>
> The context is one where all the symptoms are overt, e.g. the missing clothes, parents turning up for their children and nobody knowing where they are, children showing symptoms of inappropriate regression and so forth. The clear impression given is that Lillie and Reed were among the most disorganised and chaotic abusers in the history of child care, an unusual feature of abusive personalities."

Mr Dervin gave evidence about this letter before me and I address that in due course (section 15 below).

124. The Report itself cannot be reproduced in this judgment and inevitably it is necessary to resort to summaries or extracts whenever addressing criticisms. This naturally gives rise to a risk of unfairness of which I am only too conscious. Those passages selected for complaint by the Claimants as being defamatory are set out in full at Section 5 below.

125. The criticisms levelled at the Report on behalf of the Claimants are essentially of inaccuracy, bias and (specifically in the context of malice) deliberate misrepresentation.

126. With the benefit of hindsight, it is indeed possible to identify a number of inaccuracies in the content of the report. Those are considered later (see sections 12 and 13).

127. I turn next to the allegations of bias. The Review Team considered it part of their responsibilities to enquire into the allegations of multiple child abuse and to arrive at conclusions which were tantamount to findings of guilt of rape, indecent assault and other offences (such as would probably have justified life sentences had the conclusions been reached in a criminal court). Whether this was appropriate at all is a question I shall consider in due course, but it surely goes without saying that anyone taking on such a task has to approach it with fairness and act in accordance with the principles of natural justice.

128. The four members of the Review Team were appointed from outside the City Council because it was regarded as necessary to ensure that the modified complaints procedure, which it was intended they would implement, should be, and be seen to be, independent of the Council itself. Commendable though this idea was in general terms, the Claimants and their advisers have always been troubled by the premises or pre-conceptions upon which they were appointed. The members of the Review Team applied to the City Council to be considered for the task and were interviewed for that purpose. As Councillor Flynn frankly admitted when the Report was published, "We commissioned this report with [the] firm belief in what the children told us and we continue to hold this belief. Our top priority was for the children, parents and carers.....…" The Review Team's task, in that context, was to conduct a review of the complaints made relating to the Shieldfield Nursery and specifically those of the parents. It is necessary, however, to have regard more fully to the vexed question of their terms of reference. I was told that these presented something of a moving target and were not actually finalised until shortly before publication. In a later section of this judgment I shall need to try to identify the precise scope of the Terms of Reference, to construe them in the context of a plea of qualified privilege and make an assessment of how important they were in the developing events with which I am concerned. For the moment, however, I shall merely attempt to set the scene.

129. In the final Report, as published, the Terms of Reference were identified as follows:

A. The investigation of specific complaints made by parents. It should be noted, however, that the Review can not make any finding on matters dealt with by the Criminal Court.

B. Consider and report upon relevant concerns raised by parents or person interviewed.

C. A review of recruitment, selection and vetting procedures as they relate to Social Services Nurseries in general and the relevant day nursery in particular.

D. An investigation into how an alleged abusive situation may have developed and whether or how it may have continued over a period of time without detection.

E. A review of the way that the Social Services Department managed the post disclosure investigation, including Social Services' contribution to inter-agency collaborative working arrangements under Part 8, Working Together, and as outlined in Newcastle Area Child Protection Committee Procedural Manual.

F. A review of the Department's response to parents' concerns once the allegations of abuse were made, including the continuing safety and welfare of children and babies still attending the nursery.

G. To formulate appropriate conclusions and recommendations.

There then followed instructions as to how the investigation was to be conducted:

a) The Complaints Review Team will be provided with accommodation located outside of the Civic Centre and secretarial/typing support.

b) As the Team is being established under amended Complaints Procedures, it will not hear or take evidence in public. Team Members, accompanied as appropriate by an Independent Person from NCH, will visit all complainants and other interested parties in their own homes or other meeting place where evidential statements will be taken. All parties volunteering evidence may have a friend/advocate, legal or trade union representative present.

c) All statements will be returned in typed format to the complainants or other persons or their representatives for them to check accuracy. Any additional information or evidence which an individual wishes to give outside of the formal interview should be added to the typed text in writing and clearly indicated as such.

d) With the author's agreement, these statements may be published as part of the final Report.

e) The Complaints Review Team as proposed is not an inter-agency or multi-agency collaborative venture, and as such, records and documentation belonging to third parties, e.g. health, police etc., have not been made available to the Team. Social Services Department records relevant to the Terms of Reference and subject to any public interest immunity issue will be made available to the Complaints Review Team. In addition, publication of certain material may need to be restricted until the final outcome of any criminal or civil cases relating to this particular nursery. Further, and again subject to their relevance to the Terms of Reference and any public interest immunity issue, individuals' personal files and other confidential person records, though open to scrutiny as appropriate by the Team, will not be available for publication.

f) The Local Authority will fund the costs of legal representation for parents as stated in the attached Schedule.

g) As part of the process of evidence, parents will be enabled to discuss with Members of the Complaints Review Team names of witnesses whom they would wish to see interviewed. Staff members who choose not to provide statements, if requested, will have this noted in the Report.

h) In taking evidential statements, the Complaints Review Team will have the discretionary authority not to identify the source of the information, and to record that the statements were given anonymously. This will not apply to employees of the City Council, or former employees, or employees of other public sector organisations concerned with the relevant day nursery or the Child Protection Investigation relating thereto.

i) Throughout this process, the Manager, Standards and Quality Assurance Division, will ensure that meetings are arranged between the Complaints Review Team and the parents involved and their representatives, so as to allow for discussion on progress being made. The Complaints Review Team will not, however, disclose statements made by individuals, or comment on their findings or view on events until their report is presented.

Directions were also given as to the Report itself:

a) The final Report will be a typed document which covers and answers the areas included in the Terms of Reference.

b) Specific complaints made by parents and their outcome will only be included in the Report with the complainant's agreement.

c) With the authors' consent, and subject to public interest immunity, evidential statements may be published as an addendum to the main Report at the discretion of the Complaints Review Team.

d) The Report will be submitted to the city council through the Chief Executive of the Authority. The Local Authority will determine its publication date, but will undertake not to amend the report, subject only to any public immunity issue.

e) All parties to the report will have the opportunity to have their written observation on the Report considered in full by both Policy and Resources committee and the Social Services committee.

f) A separate Report will be prepared by the Independent Person Scheme.

g) Current legal advice indicates that the Review Team should not begin interviewing witnesses or taking evidence until the completion of all criminal cases relating to the Nursery.

130. An important bone of contention between the parties (having particular relevance to issues of qualified privilege and malice) is the extent to which it was appropriate (if at all) for the Review Team to make findings of "guilt" in respect of what were effectively criminal offences – in particular, those of which the Claimants had already been acquitted in July 1994. It was at least for a time something which troubled those who were responsible, ultimately, for appointing the Review Team. It was drawn to my attention that there had been a significant amendment in the draft terms of reference at that stage, because someone had apparently pointed out that it was going to be difficult for the Review Team to come to conclusions about how things went wrong, or how to avoid similar mistakes in the future, without determining what it was that had gone wrong and to what extent. Accordingly, the complete ban on investigating the subject matter of the criminal proceedings was relaxed. It was coming to be

recognised that some investigation would be integral to the task of establishing the facts and making recommendations for the future.

131. I was shown a document apparently from Bob Hassall dated 11 July 1994, in which the first paragraph in the draft terms of reference had been expressed in the following words:

> "The investigation of specific complaints made by parents excepting any investigation into whether or not the alleged abuse occurred"

The last words were crossed out and new wording was substituted in manuscript. As a result of this change, the paragraph then read:

> "The investigation of specific complaints made by parents. It should be noted, however, that the Review cannot make any finding on matters dealt with by the criminal court".

That obviously corresponds to the final version of paragraph A of the Terms of Reference. It is not possible to say exactly when that amendment was made, but I note that the acquittal of the Claimants was recorded two days after Mr Hassall's note. It is conceivable that somebody made that amendment once the outcome was known. The wording would appear to represent an unsatisfactory compromise between two irreconcilable positions. It was recognised, at least in general terms, that it would not be appropriate to go behind the findings of the court; on the other hand, it was perceived that meaningful recommendations could not be made on the basis of taking the Claimants' innocence (or, for that matter, guilt) as a datum.

132. In their witness statements and in their oral evidence in this litigation the members of the Review Team have insisted that they went into the exercise with no preconceived notions and with open minds, as would befit anyone undertaking a quasi-judicial task. On the other hand, the Claimants' case is that "Throughout the whole of the narrative of their Report, it is strikingly obvious that the Review Team were intent upon only selecting for inclusion material or interpretations of material which they could by some means use to destroy the reputations of the Claimants…. Alternative hypotheses involving the possible innocence of the Claimants were not explored or suggested at any stage throughout their Report…. The gravest assumptions of guilt were made without any warrant or evidential basis. All notions of fairness and justice towards the Claimants were abandoned in the effort to give authority to the guilty findings that the Review Team had pre-determined" (para. 4.2.1 of the Reply).

133. There is no doubt that the Review Team members were placed in an almost impossible position unless they were to assume guilt (in accordance with the City Council's declared belief, originating at least as far back as February 1994, when the dismissals took place). They would otherwise have the task of carrying out an investigation into potentially hundreds of criminal offences without the power to compel witnesses or call for all relevant documents. For this reason alone, it is obvious with the benefit of hindsight (and indeed should have been obvious at the time) that they were simply not equipped for the task. In any event, none of them apparently had any expertise in conducting such an enquiry or in legal principles or processes (as to which, it emerges from their Report in several places that they were, in any event, quite disdainful).

134. The four members of the Review Team claimed that they were throughout fair and open-minded. The Claimants, however, never had any confidence in the outcome because they felt it was going to be a foregone conclusion. Their fears were undoubtedly confirmed by one incident which even the Review Team now recognises as a major embarrassment.

135. On 6 October 1997, the BBC broadcast a Panorama programme about sexual abuse perpetrated by women upon children and teenagers. This was, of course, some 13 months before the Report was published. Yet this apparently in no way inhibited the Fourth Defendant, Jacqui Saradjian, from participating in the programme, in the course of which the fact of child abuse at Shieldfield Nursery was taken for granted. It happens that Ms Saradjian had a special interest in female perpetrators of sexual abuse, and that is no doubt why she was invited to participate. What is clear, however, is that during the course of the programme two Shieldfield children and their mothers were interviewed and allegations were made against Dawn Reed to the effect that a knife and fork were inserted into [Child 4's] vagina, resulting in bleeding.

136. The appearance of Ms Saradjian on the programme led to a complaint to Dr Barker from Miss Reed's advisers on 17 October 1997:

> "The Independent Complaints Review Team – Shieldfield Nursery Case
>
> You will no doubt by now be aware of the fact that there was a program *[sic]* on Panorama entitled "the Ultimate Taboo" screened on the 6th October this year. We refer to your letter of 12th May in which you indicated that information leaks did not emanate from the review team and that we could reassure our client in that respect. However, you will agree that the program is likely to lead people to the assumption that at least one of the team members by commenting on child abuse matters on a program that was dealing almost specifically with the Shieldfield Nursery case could lead one to assume bias. At no time during the film was Ms Sardijian's *[sic]* connection with the Independent Complaints Review Team into this case made known. Whilst she did not comment directly on the Shieldfield case, clearly the researchers for the program must have interviewed Ms Sardijian prior to her taking part in the program and one could be forgiven for reaching the conclusion that perhaps information on this case would be made known to the program researchers.
>
> The particular program was in itself alarmist and very damaging and you will forgive us for wondering about the independent stance of members of the review team who involve themselves in programs of this type which are commenting specifically on cases which they are reviewing.
>
> You will now perhaps appreciate why our client has taken the stance that she would not be afforded a full and fair hearing by the review team 'in private' as you state in your letter of 12th May, notwithstanding it's terms of reference require it to do so.
>
> As a result of this program, our client has now been convicted in the public's mind notwithstanding being cleared by the Court and with no means of defence.
>
> We understand this matter has already been taken up with the makers of the program and with the complaints authorities but you will appreciate our concern in a member of an enquiry panel taking part in a television program which in effect, itself pre judged the outcome of that persons investigation. We look forward to hearing from you as to your thoughts in relation to this matter and how it can be resolved."

137. Obviously, if a judge or juror in the midst of criminal proceedings had participated in such a programme, when charged with the responsibility of deciding those very issues, the trial would have been terminated and the person in question no doubt suitably chastised. It is surprising that even a lay person should think it appropriate to take part in a television programme relating, at least in part, to the issues which she herself thought she was responsible for impartially determining. She told me on 20

February that she had known from early Summer 1997 that the programme maker had been talking to Shieldfield parents. But she said she faced a dilemma because if she did not appear on the programme she would have no control over how her published work would be used on the programme and it might be sensationalised. I did not find this very compelling because once her work was in the public domain they would be able to refer to it in any way they thought right - whether she appeared or not.

138. It appears, moreover, that she discussed the invitation to participate in the programme with her colleagues on the Review Team. Professor Barker told me that he had indicated to her his preference that she should not accept, but left it to her professional judgment. Ms Jones took a similar approach. Mrs Saradjian thought she was given some encouragement by Mr Wardell, but he rapidly dissociated himself from that suggestion when he entered the witness box. He said she must have misunderstood him.

139. This one incident may be thought to demonstrate a particular mindset and a remarkable naivety over the concept of natural justice. Mrs Saradjian now accepts that it was unwise. She believes she was misled by the programme makers, and deeply regrets her involvement.

140. Needless to say, the Claimants' criticisms do not end there. A number of other matters are pleaded in the Reply and I summarise those below (Section 5).

4) Media coverage of the case

The Newcastle Chronicle

141. Following the publication of the Report on 12 November 1998, the Newcastle Evening Chronicle published a large number of articles. In these proceedings each of the Claimants originally sought a remedy in respect of well over 100 articles against the Newcastle Chronicle and Journal Ltd. They were published between 12 November 1998 and 23 September 1999. Each article was given a separate number although on some occasions one edition of the newspaper contained several articles within it. In some cases, it is possible to say that the whole or part of an article consists of a report of or comment upon the content of the Review Team Report. In other cases, there is to be found coverage of issues which are undoubtedly related to the subject-matter of the report but do not derive from it. I was going to consider the issues as to meaning and the limits (if any) to the protection afforded by statutory and/or common law privilege.

142. On 24 February, however, when the evidence of the Review Team had been all but completed, the proprietors of the Newcastle Chronicle withdrew from the action on undisclosed terms. That left only the claims against the City Council and the Review Team. Up to that point, the Newcastle Chronicle, represented by Miss Victoria Sharp Q.C., had been advancing defences of both justification and privilege. It is not possible to put them completely out of sight and out of mind because they had participated in the trial for six weeks by that time. Miss Sharp had cross-examined and made various submissions of law. This contributed to my overall view of the case. Moreover, even after the departure of the Chronicle, Miss Page continued to rely on some of its coverage by attributing responsibility for it to the City Council and/or the Review Team. For the moment, I must attempt to summarise the content of the articles one by one.

Articles 1-4: 12 November 1998

143. The first article is headed "SHAMEFUL" and is accompanied by the sub-heading "Report reveals scandal of child abuse at nursery". It is attributed to Mr Peter Young, the Political Editor. It is continued inside the newspaper with the heading "Years of anguish: We waited for nothing, say abuse probe families". This comprises 23 paragraphs reporting upon and quoting from the Report, published earlier that day.

144. Alongside the continuation inside the paper, there are two subsidiary articles, headed respectively "Where are they now?" and "Scandal report a waste".. The first was apparently also written by Mr Peter Young and the second by Miss Charlotte Gapper.

145. "Where are they now?" contains four paragraphs alongside photographs of Mr Lillie and Miss Reed. It points out that they have not been seen since the criminal proceedings "collapsed in 1994". It asks readers "Do you know where they are now? If you have any information about them please contact the Chronicle newsdesk on 0191 201 6497". This is a theme to which the newspaper returned on a number of occasions.

146. "Scandal report a waste" contains eight paragraphs with quotations from or on behalf of parents complaining of delay, absence of compensation and what is generally described as "a denial of justice".

Articles 5-10: 13 November 1998

147. On the front page of this issue appears Article 5 under the heading "£7500 – That could be the price of a stolen childhood". The article is described as an "exclusive" by Andrew McKegney. It consists of 10 paragraphs on the theme of the introductory words:

> "TRAGIC toddlers who were systematically abused at a North East nursery will receive just a few thousand pounds in compensation, their solicitor revealed today".

148. It goes on to allege that 65 children were abused by the Claimants over a three year period. Most are said to have been suffering nightmares after being taken to houses and, in some cases, used in pornographic films. Reference was made to damages measured in tens of thousands of pounds "for those who suffered extensive physical and psychological damage". A mother whose daughter was said to have been "raped by Lillie" is quoted as saying:

> "No amount of money would be enough but £7500 as a start is pathetic. My daughter was robbed of her childhood. Her family has been shattered by this".

149. Article 6 was headed "Abuse robbed my son of his boyhood" and is attributed to Charlotte Gapper. It describes the consequences for one of the boys concerned and is introduced as follows:

> "AN ANGUISHED mother told of her heartache today as she struggles to restore her son's stolen innocence.
>
> The mum, whose son was abused at the nursery, told how the ordeal threatens to tear her family apart. The mum-of-4 says her son was a normal little boy when he went to the nursery. Now he has severe behavioural problems and the mental capacity of a child half his age. He is being treated for hyperactivity and she said the things he suffered had robbed him of his childhood.
>
> The boy, now 10 joined the nursery when he was 18 months old. His mum said 'he started coming home with blood on his nappy so I went to speak to the people in charge but nothing was ever done about it.
>
> On several occasions I sent him to the nursery dressed as a boy and he came back dressed as a girl. I went back to the nursery but nobody knew what happened to his clothes.'"

150. In the midst of that article appears a further notification to the readers about the two Claimants' change of identity and the latest information of which the newspaper has knowledge. They are once again invited to "Contact the Chronicle newsdesk". That article, however, is not complained of in these proceedings.

151. On the same page there is an article spread across two pages under the heading "It's time for some answers". There is a sub-heading "Authorities must come clean over damning report which has shocked the region". This too is by Charlotte Gapper. It is 23 paragraphs long and contains a whole lot of questions to be answered by "the authorities". It is introduced by the following allegations:

> "TODAY the Chronicle challenges the authorities to answer the following questions. An appalling catalogue of child abuse, by two nursery nurses was exposed yesterday in a damning report which criticised staff and

> managers. Christopher Lillie and Dawn Reed were part of a paedophile ring which abused children as young as two in the nursery where they worked. The 400-page report has taken three years to produce and although it is extremely detailed it has thrown out lots of questions which we want officials of the city council and other organisations involved to answer".

152. The article is set alongside photographs of the Claimants with the caption:

> "ACCUSED – Nursery nurses Christopher Lillie, left and Dawn Reed, right, are branded abusers in the council-commissioned report, but escaped prosecution as children were ruled too young to testify".

(That purports to be a summary of the ruling of Mr Justice Holland in July 1994.)

153. Article 8 (published on the right hand side of the two-page spread) is under the heading "Long chain of incompetence" and is not attributed to any particular journalist. It consists of nine paragraphs complaining of "a chain of incompetence and ignorance" relating to a number of Council staff, such as Joyce and Susan Eyeington and Mr Brian Roycroft, the former Director of Social Services. There is a photograph published alongside of "a mother of one of the abused children" comforting her youngster.

154. Article 9 (on the same page) is also unattributed and appears under the heading "Former boss is under attack". It is mainly concerned with Mr Brian Roycroft, whose photograph appears alongside. It consists of nine paragraphs relating to the "heavy criticism" directed at him in the Report.

Articles 11-12: 14 November 1998

155. The front page of this issue contains Article 11 within a box described as an "exclusive" by Charlotte Gapper. The heading is "WE WANT ACTION!" There is a sub-heading "Parents demand new police probe into nursery sex abuse scandal". There are 15 paragraphs calling for further police investigations and prosecution of Mr Lillie and Miss Reed. One of the mothers is quoted as saying, "I want to see a lot of heads roll". The article again accuses them of having abused "60 children over a three year period" and of having taken children to houses where they were "abused by a paedophile ring" and, in some cases, "used in porn films". The article also contains quotations from a "spokesman" to the effect that there had been no evidence to support any other charges than those originally brought. The police enquiry was described as "thorough and complete".

156. Alongside the article there are again photographs of Mr Lillie and Miss Reed, with the caption "WALKED FREE – The case against Christopher Lillie and Dawn Reed was halted".

157. On page 5 of the same issue appears Article 12 under the heading "Under fire bosses still working with children". This is attributed to Andrew McKegney. There are 18 paragraphs, mainly directed towards the fact that some of the individuals criticised in the Report were still working with children (Audrey Palmer, formerly Deputy Head of the Nursery, and Joyce Eyeington). There are again photographs of the Claimants with the caption "DEPRAVED – Nursery workers Christopher Lillie and Dawn Reed systematically abused as many as 65 children as young as 2-years-old and took youngsters to home where they were raped and abused by a ring of paedophiles".

Articles 13-15: 16 November 1998

158. Article 13 is by Charlotte Gapper and appeared on page 5 of this issue under the heading "Abuse replies leave a lot to be desired". It contains 21 paragraphs and complains that satisfactory answers

have not been supplied by the "authorities" to the questions posed by Chronicle on 13 November. In the midst of this article appears Article 15, returning to the theme of "Where are they now?" and inviting readers to supply information as to the Claimants' whereabouts.

159. Article 14 appears on the same page under the heading "Sacked from chef's post" and was also written by Charlotte Gapper. There are 10 paragraphs purporting to describe comments by a "former boss" of Christopher Lillie and an attack upon his "lover Lorraine Kelly". It alleges that the former employer only discovered Mr Lillie's "sordid background after sacking him". He is quoted as saying that he had worked as a trainee chef for four months but had been asked to leave because "he wasn't good at his job". There then follow two paragraphs:

> "I had no idea who he was until a gang of guys came in asking for Christopher Lillie. Within days it all came out and I felt sick.
>
> The girlfriend of one of the chefs who worked for me had a daughter at the nursery and he was physically sick outside when he realised he had been friendly with him."

160. The article continues by asserting that Lorraine Kelly "knew about his terrible past before he was branded a child abuser in the Report". It continued:

> "It was claimed Lorraine Kelly only found out about his involvement in a paedophile ring when the report was published on Thursday. But experts who investigated the child abuse scandal said nursery nurse Lillie developed a relationship with Miss Kelly while he worked at the nursery. According to reports yesterday Lorraine Kelly moved out of the house she shared with Lillie in Gateshead last week".

Precisely what is being alleged there is unclear.

Articles 16-18: 17 November 1998

161. On page 5 of this issue appeared Article 16 under the heading "Tots are targeted in pioneering project". This too is by Charlotte Gapper. There are 16 paragraphs on the following theme:

> "The Newcastle nursery where Christopher Lillie and Dawn Reed abused more than 60 children in their care has been running a pilot scheme which will soon be extended across the city.
>
> It targets tots aged 18 months to four years and encourages them to tell someone if they have been frightened".

162. Article 17 is unattributed but appears on the same page under the heading "Mum's horror find". It consists of seven paragraphs alleging that a "mum whose son was abused by Christopher Lillie has discovered video footage showing the nursery nurse with youngsters at a party parents knew nothing about". It suggests that Mr Lillie had "dressed up as Santa".

163. Article 18 is also unattributed and appears on the same page under the heading "Inquiry demand made by City MP". There are six paragraphs describing how a local member of Parliament, Mr Brown, had called upon the Law Society to investigate circumstances in which local firms of solicitors had represented Mr Lillie and Miss Reed, despite the fact that they had connections with people who had served on the City Council.

Articles 19-20: 18 November 1998

164. In this issue there is, in effect, one article beginning on the front page and continued on page 2. On the front page there is a box containing the introduction with the headline "A MUM'S TORTURE", and on page 2 it is continued under the fresh heading "Mum in abuse probe agony". The article was written by Charlotte Gapper, again described as an "exclusive".

165. There is a photograph of each of the Claimants on the front page with the caption "EVIL PAIR – nursery nurses, Christopher Lillie and [*sic*] Dawn Reed abused up to 60 or so young children in their care". The article consists overall of 17 paragraphs and describes the agony of a "tragic mum" who was deeply troubled by the allegation in the Report that Mr Lillie and Miss Reed had used children for obtaining pornographic photographs for the use of a paedophile ring. The effect of it may be summarised by reference to the fifth paragraph:

> "She hopes she will finally be able to end her anguish by discovering if her son was abused in any of the films made by nursery nurses Lillie and Reed".

The article also contains quotations from the Review Team Report.

Articles 21-24: 19 November 1998

166. On the front page of the issue of 19 November 1998 appeared an "Evening Chronicle comment" (unattributed) under the heading "A CAN OF WORMS". There is a sub-heading "Council chiefs should hang heads in shame". There are eleven paragraphs devoted to criticising various people including the Northumbria Police, the City Council and the "boss of the college" where Mr Lillie and Miss Reed trained (for apparently having lost their "training records"). The introductory paragraphs give the flavour:

> "IT is hard to imagine a more shabby and shameful episode.
>
> Up to 60 children are abused by the people who are meant to be caring for them, nursery nurses, Christopher Lillie and Dawn Reed. The men and women running the Newcastle City Council – they presided over this nightmare – can't even bring themselves to say sorry!
>
> They should hang their heads in shame.
>
> From the moment this can of worms was opened, the powers that be have done nothing but wriggle."

167. On pages 8-9 of the same issue there is a two page spread (Article 22) under the heading "Why can't they say sorry?" This is attributed to Peter Young and Charlotte Gapper. Again Mr Lillie and Miss Reed are accused of having caused "up to 60 ruined lives", and the bulk of the article is devoted to asking why the City Council had failed to apologise to the parents of those alleged to have been abused. Alongside that there is another box inviting readers to call the Chronicle newsdesk if they had any information as to the Claimants' whereabouts.

168. Article 23 appears on page 8 of that issue under the heading "College boss is still in the dark". There is an eight paragraph article by Charlotte Gapper about Mr Paul Harvey of the North Tyneside College (where both Claimants trained as nursery nurses). It contains a summary of the criticisms as to the lack of information available about their training. The Chronicle apparently paid £20.00 for a copy of the Review Team's Report so that he could respond to the "slamming" and "rapping" given to his college. He is quoted as saying:

> "My main source of what has been said is the Chronicle. The college will take seriously any criticisms and a full action plan will be prepared.
>
> These particular students were at the college eight years ago and lots of changes have been made since then. The way we monitor courses and students has changed.
>
> We will be looking to see if points have been addressed and if they haven't I will be dealing with them with the utmost priority."

169. Article 24 appears on the same page and contains eighteen paragraphs under the heading "Children let down by error after error". Again the author is Charlotte Gapper. It summarises in eighteen paragraphs "some of the more shocking findings" of the Review Teams Report.

Articles 25-30: 20 November 1998

170. On page 1 appears Article 25, by Peter Young and Charlotte Gapper under the bold headline "SORRY – Chronicle shames council bosses into issuing an apology to nursery abuse families". It consists (together with "Article 28") of a total of seventeen paragraphs recording how "Council bosses bowed to public pressure today and said sorry to the families whose lives had been ruined by the Newcastle child abuse scandal. An eight-year-old is quoted as telling the Chronicle, "I am glad they have said it today. It is a good birthday present that they have said sorry but they should have said it ages ago".

171. Article 26 appears inside the paper under the heading "How many more of our children were abused?" There is the usual box containing photographs of Mr Lillie and Miss Reed with the caption "WHERE ARE THEY NOW? If you have any information about Dawn Reed or Christopher Lillie call the Chronicle newsdesk on 0191 201 6497". The main body of the article contains twenty two paragraphs devoted to the theme that hundreds of other children could have been abused by Christopher Lillie but that their parents were not even told that he was under investigation. There is reference to the schools at which Mr Lillie took student placements during his training and the newspaper adds:

> "The Chronicle believes parents have a right to know which schools are involved as the local authorities have not said they will tell the mums and dads".

172. It is said that the Report revealed that the two Claimants came into contact with 1,450 children in various locations and that, according to the Review Team, there was evidence to indicate that some of the children in those settings "were possibly abused by Lillie or Reed".

173. On the same page appears Article 27 under the heading "Social Worker is suspended". This is unattributed and contains nine paragraphs referring to the suspension of Joyce Eyeington "in the wake of the Newcastle nursery abuse scandal". It refers also to the earlier suspension of Audrey Palmer and Maria Buck.

174. Article 29 consists of a leader on page 27 of the same issue under the heading "Evening Chronicle says A Good Man". It praises the "dogged but gentle expertise shown by the men and women investigating the case" and, in particular, Detective Inspector Campbell Findlay who, the Chronicle declares, "can retire, with his head held high, knowing that Newcastle's trail-blazing child protection work has shown those youngsters that the world is not all bad – and shown it in a way they can understand".

175. Article 30 is by the Chronicle's chief features writer Emma Andrews under the heading "Tough task to protect the young". It too consists of a paean of praise for Detective Inspector Findlay, on the verge of retirement, who had "the heartbreaking task of telling the young victims that the people who had hurt them were not going to prison". He is described as the man who led the harrowing investigation into "one of the most shameful episodes in the history of childcare – the man who fought to bring perverted nursery nurses Christopher Lillie and Dawn Reed to justice".

Articles 31-32: 21 November 1998

176. On the front page of the Chronicle for 21 November 1998 there appeared an article, by Peter Young, under the heading "I'LL MEET TRAGIC FAMILIES – Council boss will meet nursery abuse scandal mums and dads". In the eight paragraph article, the Chronicle reveals that Mr Tony Flynn, the City Council's leader, will have a face-to-face meeting with parents and families "devastated by the child abuse scandal". It was said that the Council would be seeking a change in the law so that young victims of abuse would be able to give evidence in court. This is in the context of Mr Lillie and Miss Reed "walked free" from Newcastle Crown Court "after a Judge ruled video evidence from a four-year-old was inadmissible".

177. Article 32, also by Peter Young, appears on page 5 of the same issue under the heading "I'll meet parents". There are a series of questions posed by the Chronicle and brief answers from Mr Flynn. There is also the usual call for information as to the whereabouts of Mr Lillie and Miss Reed.

Articles 33-35: 23 November 1998

178. On page 7 of the issue for 23 November 1998 appears Article 33 "Battling for justice as victims speak up". This article is by Julie Cush, and is largely devoted to allegations about a Mr Leslie Newton, who had pleaded guilty to some 23 charges involving eight children between 1974 and 1995. It is introduced, however, by reference to a solicitor called Clare Routledge who is said to be representing 27 families whose children were assaulted by nursery nurses Christopher Lillie and Dawn Reed. Alongside, appears Article 34 "Warning signs ignored". This is a short article, also by Julie Cush, in which it is said that Mr Lillie and Miss Reed were, in 1990, asked to help a mother with two young sons. It is alleged that, after they helped bath and put them to bed, one of them had displayed "sexualised behaviour", but the allegations were never followed up.

179. On page 5 of the same issue Article 35 appears under the heading "My first boyfriend – a monster in disguise". Described as an "exclusive" by Charlotte Gapper, the article contains allegations made by an anonymous former girlfriend of Mr Lillie, detailing her "shock at finding former sweetheart ruined children's lives". There are 27 paragraphs in all, introduced as follows:

> "HE LOOKS like a normal young man enjoying himself at his girlfriend's birthday party.
>
> But the person in this exclusive picture is Christopher Lillie, former nursery nurse responsible for the abuse of up to 60 Newcastle toddlers.
>
> And there are no happy memories of that night for the young woman who joined Lillie to celebrate her 18th birthday. She can no longer bear to look at the pictures after just finding out that her first boyfriend was a pervert who preyed on little children.
>
> The woman, who does not want to be named, contacted the Chronicle to express her disgust at the crimes committed by the man who was her first boyfriend".

Articles 36-38: 24 November 1998

180. On page 2 of the issue for 24 November 1998 there was published article 36, believed to be by Mr Peter Young, headed "Abuse scandal staff will not be rapped". This consists of seven paragraphs complaining that senior staff criticised after the "child abuse scandal" will escape disciplinary action. It is said, however, that most of them have left the Council, "which ran the nursery where more than 60 children were abused"..

181. Article 37 appears on page 7 of the same issue headed "We warned of evil abusers years ago". Once again there is a box in the middle of this article inviting information as to the whereabouts of Mr Lillie and Miss Reed. The article is by Charlotte Gapper and consists of 22 paragraphs describing how a couple, whose children were alleged to have been abused by Christopher Lillie and Dawn Reed, claimed to have blown the whistle on "the evil pair" two years before they came under suspicion. They are alleged to have raised concerns with social workers in 1990 after one of their four children received cuts and bruises while living in a children's home and attending the Shieldfield Nursery. It continues:

> "But they said their complaints were dismissed and it meant Lillie and Reed were able to go on and abuse dozens more children".

182. The article is based upon a section of the Review Team Report quoted as follows:

> "We have been told that Chris Lillie took a particular interest in the youngest little boy and that they cared for the children away from the other residents and staff group in an old staff flat which had a separate entrance.
>
> Thus during the day the children saw them at the nursery and in the evenings they were on their own with them from around 6 o'clock through bathtime until when they put him to bed.
>
> One little boy who was cared for by Dawn Reed exhibited sexualised behaviour which concerned staff and was recorded.
>
> A little girl was recorded as being distressed and collecting flowers for her mother whom she seemed to think was dead".

183. Article 38 appears on the same page, also by Charlotte Gapper, headed "We stand by decision". There are six paragraphs referring to City Council condemnation of the Chronicle for identifying the other premises where Mr Lillie and Miss Reed had worked earlier in their career. It is said that the Chronicle's actions can only have the effect of creating unnecessary concern and distress among the parents and carers of the children who attended those premises. The Chronicle defends its position by saying:

> "We took the decision to name the other three as parents were not told their children could have been abused by Lillie. The Report into the scandal reveals social services staff failed to trace youngsters who were at schools where Lillie carried out student placements. In the face of the council's inactivity, we felt those parents had a right to know. We stand by that decision".

Articles 39-40: 26 November 1998

184. On page 2 of the issue for 26 November 1998, there is an unattributed article, possibly by Mr Young, headed "Council repeats abuse apology". This alleges that "City Council chiefs" were not admitting anything which could lead to compensation being paid to the families involved, despite repeating their apology and pledging a detailed response to criticism. It yet again repeats the allegation that "more than 60 children were abused at a council run nursery". At the foot of the article appears an invitation to turn to an article on page 9 in the words "PERVERT FLEES". On page 9, Article 40 is headed "Flat abandoned as abuser Lillie flees". There is also above it a small heading "EXCLUSIVE: Dozens of video tapes left behind as nursery attacker vanishes". There is a photograph of Mr Lillie dressed as a chef, with a knife in front of him on a table, and the caption "DISAPPEARED – Pervert Lillie pictured recently before leaving hotel where he worked as a chef". There are also photographs taken inside the flat where he had been living with his girlfriend, Lorraine Kelly. He said in evidence that permission for those photographs must have been given by the landlord. There is a caption underneath in the words "HOME OF SHAME –Christopher Lillie's flat left abandoned as if he and his partner were forced to leave quickly".

185. The body of the article, by Andrew McKegney, consists of eleven paragraphs introduced as follows:

> "VILE Christopher Lillie has fled his Tyneside home with his new partner, leaving behind a flat full of videos.
>
> The couple have not been seen at the upstairs Tyneside flat since the nursery abuse scandal broke.
>
> And after learning the true identity of his tenant Lillie's landlord has revealed that he will not be renewing the lease and has boarded up the flat. Lillie, 34 had been living at the terrace in Gateshead with Lorraine Kelly for 18 months under his new name Christopher Allen.
>
> But his landlord said he never knew who he was and said the discovery that his tenant was the man who abused dozens of children in his care had left him stunned."

186. The article also repeats the allegation (to be found in the Report) to the effect that Mr Lillie "also filmed his crimes with fellow worker Dawn Reed". Reference was also made to the fact there were two television sets, two VCRs and dozens of tapes. These were said to be the subject of police enquiries "as a result of information received from the Evening Chronicle".

Article 41: 27 November 1998

187. On page 2 of the issue for 27 November, there appears Article 41, "Storm erupts over abuse case". There is a photograph of Sir Jeremy Beecham, a former City Council Leader, who is also a solicitor. The caption is "NO CONFLICT – Sir Jeremy Beecham says any enquiry will conclude that he acted properly in the matter". The criticism was directed to Sir Jeremy because he was a partner in the firm of Newcastle solicitors which was representing Mr Lillie at one stage.

Article 42: 30 November 1998

188. On page 11 of the issue for 30 November 1998, Article 42 was published under the heading "End of the line". This article is by a new journalist, Miles Starforth, and reports an announcement by the Secretary of State for Health of a "Nationwide plan to drive out the evil abusers". There is a photograph of Mr Frank Dobson, the then minister, next to a photograph of Miss Reed. The caption is "READY TO ACT – Frank Dobson wants action to stop abusers like Dawn Lillie *[sic]* right, preying on children". There is also a photograph of Mr Lillie with a caption "SET FREE – former nursery

nurse Christopher Lillie pictured when he worked as a chef at a Sunderland Hotel". The body of the article consists of 16 paragraphs describing the launch, in the wake of the Newcastle nursery scandal, of a "blue print to protect children from cruelty and sex abuse". In the middle of the article there is a strap heading "Dismissed" followed by these words:

> "Nursery nurses Christopher Lillie and Dawn Reed walked free from court in 1994 after indecency charges were dismissed after inadmissible evidence.
>
> But an independent report out two weeks ago [*sic*] disclosed the full extent of the abuse at the nursery and revealed proper recruitment and selection procedures had not been adequately followed".

Articles 43-44: 2 December 1998

189. On page 5 of the issue for 2 December 1998 appeared an article by Mr Peter Young under the main heading "Blunder threatens youngsters' parties". It is reported that various youth projects were being closed down because of a failure to clear the backgrounds of volunteer workers. These developments are the main focus of the story but there is a third paragraph which makes reference to the Claimants:

> "It comes with the Council still reeling over the damning report on serial child abusers Christopher Lillie and Dawn Reed employed at a city nursery".

190. In paragraph eleven it is said that:

> "Nursery nurses Lillie and Reed are accused of child abuse but walked free from Newcastle Crown Court when the case against them collapsed".

191. It is also alleged that Mr Lillie was unqualified and had spent two years under the supervision of a social worker after appearing in court accused of theft.

192. On the same pages appears Article 44, "No action sparks fury". This is a short article (unattributed) which refers to parents yet again "reacting with fury", for the reason that no action was being taken against a police officer who had refused to co-operate with the Review Team inquiry. The article continues:

> "Det. Con. Peter Smith declined to be interviewed by the Inquiry Team which investigated how nursery nurses Christopher Lillie and Dawn Reed were able to abuse more than 60 children in their care. Det. Con. Smith was one of only seven witnesses, including Lillie and Reed who refused to help the Inquiry Team, which praised other police officers. He declined to be interviewed or provide a written statement".

Article 45: 3 December 1998

193. Article 45 was also apparently by Andrew McKegney and appeared under the heading "Inquiry misled". The newspaper raises a series of questions to be asked of Sir Jeremy Beecham's partner, David Lamb, resulting from a mistake he made when he informed the Review Team of the date on which he began to act for Christopher Lillie. It appears that he gave the date 9 November 1993 when in fact he had taken the case up on 21 September. The questions posed by the Chronicle to Sir Jeremy Beecham and David Lamb are not complained of in these proceedings. The principal article consists

of ten paragraphs setting out the mistake and appears under small photographs of the two Claimants with the caption "ABUSERS – nursery workers Lillie and Reed".

Article 46: 4 December 1998

194. Article 46 is headed "Angry parents seeking answers" and consists of eleven paragraphs about the meeting of Mr Tony Flynn with "Families devastated by the Newcastle nursery scandal". It refers to invitations having been sent out to parents "of more than 60 children sexually abused by nursery nurses Christopher Lillie and Dawn Reed". The fifth paragraph contains the following:

> "One mum, whose daughter was raped by Lillie, says 'I want to ask the leader if the council has any intention of stopping this pair working with children again. It's terrible to think that other children could be at risk'".

195. One of the main themes of the article is that the press were not permitted to be present for the meeting with Mr Flynn.

Article 47: 8 December 1998

196. The next article is also by Andrew McKegney and headed "Don't lose out on showdown". This is an eighteen paragraph article reporting fears expressed by a "self-help group", Parents Together Working Together, that few of the parents involved would accept the invitation to meet Mr Flynn. It was suggested that as few as six families might be represented. There are also pictures alongside of Christopher Lillie, with the caption "ABUSER – Nursery nurse Christopher Lillie", and of Dawn Reed with the caption "ASSAULTS – Dawn Reed".

Article 48: 9 December 1998

197. Andrew McKegney is also the author of this article published in the issue for 9 December 1998 under the heading "Parents take fight to the top". There are eighteen paragraphs, underneath photographs of Mr Flynn, Mr Brian Roycroft and Sir Jeremy Beecham. The parents of "young children abused at a Tyneside nursery" are reported as having demanded "showdown talks" with two men at the centre of the scandal (namely, Mr Tony Flynn and Director of Social Services, Mr Tom Dervin).

198. The newspaper reported that many parents came away thinking that the meeting with those two representatives had been helpful, but anger was said to have been expressed at the fact that Mr Roycroft and Sir Jeremy Beecham had not been present. There is reference in the body of the article to the meeting having been called "to meet parents whose children had been abused by nursery nurses Christopher Lillie and Dawn Reed".

199. One woman is referred to in the context of her nephew having been "abused at the age of two". Another "mum" is described as having a daughter abused by Lillie when she was four. She is quoted also as saying:

> "He said as far as he was concerned abuse had happened and they had no doubt that these two had done it and that was as much as they could say".

Articles 49-52: 11 December 1998

200. The story returned to the front page of the issue of 11 December 1998 under the large headline "WE'LL SEE YOU IN COURT – Abuse families reject council's fast-track compensation offer". There are nine paragraphs on the front page, but the story is continued ("Article 52") on page 7 under the heading "Speedy moves". The article is mainly concerned with the dispute between parents/carers and their representatives, on the one hand, and the City Council on the other as to the matter of compensation. The direct references to the Claimants are to be found in paragraph two:

> "Newcastle City Council said it is keen to settle compensation claims by parents abused by perverts Christopher Lillie and Dawn Reed out of court".

201. The next paragraph refers to "one of Britain's worst cases of child abuse".

202. In the continuation article it is said:

> "It remains unclear how many of the other 1,162 children Lillie and Reed may have came into contact with in the years before they were arrested in 1993 will be re-visited".

203. On page 6 of the same issue appear articles 50 and 51 under the headings, respectively, "Quick cash for abuse victims" and "Angry parents lash former Council Chief". Only the first is formally attributed (to Mr Peter Young). It consists of twenty two paragraphs reporting that the Council has not admitted negligence or any form of legal liability " for the abuse of more than 60 children at a city day nursery". It refers back to the Review Team Report and their conclusion that "… the pair took children out of the nursery to be abused by a paedophile ring".

204. There is another paragraph headed "Investigating further possible cases of abuse", containing the following allegations:

> "There are 1,162 children who may have been in contact with Lillie and Reed and the council says this requires further consultation with the Social Services Inspectorate to see whether the investigation needs to be re-opened."

205. Article 51 is set in a box on page 6 under photographs of Mr Lillie and Miss Reed, each captioned "Abuser". The article reports criticisms, once again, of the two Claimants being represented, at various stages, by firms of solicitors with partners who happened to be members of the City Council.

Article 53: 12 December 1998

206. On page 13 of the issue for 12 December 1998 there appears an unattributed article under the heading "Whistle blowers' charter to foil abuse". Once again photographs of Miss Reed and Mr Lillie accompany the article with captions, respectively, "ABUSER – Dawn Reed" and "PERVERT - Christopher Lillie".

207. There are thirteen paragraphs in the article, reporting a proposal to create an official charter encouraging council workers to inform on colleagues having affairs or relationships. It is described as a "charter for whistle blowing" and was supposed to deal with problems arising where personal relations had developed between colleagues. The relevance of this is that the Review Team referred to the one time "close personal relationship" between Mr Brian Roycroft, former Director of Social Services, and Joyce Eyeington. It was alleged that she was appointed without the job being advertised and without an interview. The Report is described in the article as following "their lengthy probe into

the horrific actions of perverts Christopher Lillie and Dawn Reed". The seventh paragraph contains the following allegation:

> "The inquiry also found once she was established in the job, Eyeington went on to employ five of her relatives, including her niece who incompetently managed the nursery where Reed and Lillie preyed on youngsters".

208. An element of bathos was introduced at the end of the article where Mr Roycroft is quoted as saying that the relationship between him and Joyce Eyeington had taken place "25-30 years before the abuse happened".

Article 54: 14 December 1998

209. Article 54 in fact consists of a letter published on the correspondence page on 14 December 1998, under the heading "Such a shock". It was signed by a Mr R. Kirkwood of North Shields. It contains the following passage:

> "The actual case of multiple sexual abuse is terrible and the families of the victims have every right to feel hatred and bitterness and all right thinking people will feel revulsion at the behaviour of Christopher Lillie and Dawn Reed. They have escaped conviction and some of the frustration resulting from this has caused the anger to be displaced from the perpetrators on to Brian Roycroft and the staff who have been suspended".

Article 55: 17 December 1988

210. On page 19 of the issue for 17 December 1998 there appeared an unattributed article (in fact by Mr McKegney) entitled "We won't let this ever happen again". It consists of twelve paragraphs about "council moves to prevent a repeat of the Newcastle nursery scandal". It reminds readers that the Review Team Report had investigated Mr Lillie and Miss Reed "… who abused dozens of youngsters in their care at a council run nursery". There is a photograph of Mr Lillie alongside the article with the caption "ABUSER - Christopher Lillie carried out sex attacks on kids".

Article 56: 24 December 1998

211. Article 56 was published on Christmas Eve with the heading "Pictures of Santa reminds city child of sex assaults". The article is attributed to Charlotte Gapper and is accompanied by two photographs. That of Miss Reed appears the caption "I WISH SHE WAS DEAD – How one mother of a victim feels of Dawn Reed". The picture of Mr Lillie bears the caption "DRESSED AS SANTA – Former nursery nurse and abuser Christopher Lillie". There are nineteen paragraphs, reporting that "The only thing on the tortured youngster's present list was a desperate plea for justice". It is a reference to what is alleged to have been the only Christmas wish of a boy abused during the Newcastle nursery scandal". The boy's mother is said to have been moved to tears because all her son is asking is why Christopher Lillie and Dawn Reed are not in jail. The mother is further quoted:

> "If Reed and Lillie were found that would be our best Christmas present. I want them to go through some of what we are going through.
>
> My son asked me if they were in jail and I had to say no. He asked if we could move house because he is frightened that they will come and get him."

212. The article later contains the allegation that "Lillie and Reed abused more than 60 children in their care but they escaped prosecution because the victims were too young to give evidence". One of the mothers from the Parents Together Working Together is quoted as saying:

> "The best Christmas present would be for Reed and Lillie to be locked up or found dead. They have caused so much heartbreak and broken so many families up."

Article 57: 26 December 1998

213. On Boxing Day article 57 appeared on page 3 under the heading "Probe attack". It was reported in a small article that a former Assistant Director of Social Services, David Johnstone, had attacked Brian Roycroft "for his alleged failure to help investigators probing abuse case nursery nurses Christopher Lillie and Dawn Reed".

Article 58: 2 January 1999

214. Article 58 appears as a small item within a larger "Review of 1998":

> "PARENTS demanded justice after nursery workers Christopher Lillie and Dawn Reed were condemned as being child molesters who escaped prosecution because their victims were too young to give evidence. A damning 312-page report laid much of the blame at the doors of the Newcastle City Council which ran the nursery".

Articles 59-60: 7 January 1999

215. Although described as Articles 59 and 60, there was in effect only one article published on 7 January 1999 under the heading "PROBE INTO SPORTS CENTRE CHILD ABUSE". It was attributed to Charlotte Gapper and was published on pages 1 and 2. The article was apparently reporting a "new abuse alert" in relation to allegations of a sports centre coach abused of indecently assaulting children. On the second page the following four paragraphs appear:

> "It also follows the damning report into the Newcastle nursery abuse scandal which revealed a catalogue of errors made by the City Council.
>
> One of the mums whose child was abused by nursery workers, Christopher Lillie and Dawn Reed while they worked at the council run nursery, said 'You would hope the City Council would now have in place a rigorous system of checks on those employees who worked with children and young people'.
>
> The inquiry team investigating the scandal concluded proper recruitment and selection procedures were not followed in the case of Lillie and references and police checks were not followed up.
>
> The council is supposed to carry out checks with police on staff working with children and young people every three years".

Article 61: 13 January 1999

216. On 13 January 1999 an article appeared on page 18 headed "Parents Together", attributed to Charlotte Gapper. The main focus of the piece is the "latest council abuse probe" concerning the Scotswood Sports Centre. The Parents Together Working Together Group was inviting concerned parents to get in touch with them. There was a passing reference to Mr Lillie and Miss Reed in the context of how the group came to be set up after the allegations against them first came to light.

Article 62: 15 January 1999

217. On page 2 of the issue for 15 January 1999, there appeared an article by Peter Young and Charlotte Gapper with the heading "A war of words over probe into ex-leader role". It returns to the theme of Sir Jeremy Beecham and the allegation of conflict of interest. Sir Jeremy is said to have been "totally vindicated" after a council investigation into an allegation that he breached a code of conduct because of his firm's taking on the case of Mr Lillie, "one of the two nursery nurses accused of child abuse at a council day nursery".

Article 63: 19 January 1999

218. An article under the heading "Vetting for councillors" was published on 19 January 1999. The article was unattributed and referred to the fact that councillors who would come into regular contact with children and elderly people had volunteered to be vetted by police. The background is said to be criticism of the City Council "after a probe into the case of nursery nurses Christopher Lillie and Dawn Reed, pictured left, accused of sex abuse". On this occasion, there are no captions to the photographs.

Article 64: 22 January 1999

219. On 22 January 1999 an article was published, attributed to Peter Young, under the heading "Bitter abuse row is over at last". The story is about a councillor, Norman Povey, who is reported as having decided not to pursue a complaint against the former City Council Leader, Sir Jeremy Beecham, in the wake of the Newcastle child abuse scandal. Although the story refers to Councillor Povey not having had the chance to "state his case properly and put a series of questions to the Chief Executive Kevin Lavery", the article recognises that Sir Jeremy was "cleared of breaching the code of conduct". The article contains background references to the fact that Sir Jeremy's firm had acted for Mr Lillie following the accusations of child abuse against him.

Article 65: 25 January 1999

220. On 25 January 1999 Article 65 appeared, written by Charlotte Gapper, under the heading "Parents seek more answers on abuse". There are three photographs alongside the article. The first appears under the heading and has attached to it the caption "STILL IN THE DARK – Parents attack a police van outside Newcastle Crown Court during Lillie and Reed's trial". The second photograph is of Christopher Lillie with the caption "Paedophile ring", and the third is of Dawn Reed with the caption "Shamed nurse". The main body of the article consists of thirteen paragraphs describing how parents were at that time seeking a meeting with councillors over "some unanswered questions". The article quotes "one of the mums" as saying:

> "We still want to know who the other people in the paedophile ring with Christopher Lillie and Dawn Reed were and why they were not investigated".

221. There is a further paragraph, in the third column, alleging that the Review Team had revealed Mr Lillie and Miss Reed as having "procured other young children for paedophiles". The reaction of Northumbria Police is also given; namely that they would not reopen their investigation unless new evidence was produced.

Article 66: 30 January 1999

222. A short piece was published under "Local News" in the issue for 30 January 1999 with the heading "Nursery abuse parents hit back". The article refers to a meeting which parents had apparently had with one of the Newcastle members of Parliament, Mr Jim Cousins, to discuss their continuing concerns. Although parents are described as wanting to see Mr Lillie and Miss Reed "brought to justice", it is once again recorded that the Northumbria Police would only re-open their inquiry if new evidence came to light. Mr Cousins is described also as wanting to press for a change in the law to deal with the admissibility of children's evidence.

Article 67: 3 February 1999

223. On page 13 of the issue for 3 February 1999 there appeared an article by Charlotte Gapper with the heading "We warned of abuse". The usual photographs of Mr Lillie and Miss Reed appear, with the captions "CHILD ABUSER" in each case. There is also a photograph of people standing with a large banner saying "We believe the kids!" and the caption "FURY – protesters demand action over the scandal".

224. The article consists of eleven paragraphs describing how a family plans to sue the City Council and to apply for compensation from the Criminal Injuries Compensation Board. The article is about the couple who "raised fears about child abusers Christopher Lillie and Dawn Reed two years before they were suspected". Their complaint is that they were still being ignored by the City Council. The article continues:

> "Their four children were living in a residential home where Reed and Lillie worked and told social workers of their fears in 1990.
>
> Dismissed.
>
> One of their sons received cuts and bruises and when he came home is behaviour was very aggressive.
>
> But they claimed complaints were dismissed and Lillie and Reed went on to abuse at least 60 children in the Newcastle nursery scandal".

Article 68: 4 February 1999

225. On page 5 of the issue for 4 February 1999 an "Exclusive" was published by Charlotte Gapper. The article consists of eleven paragraphs and is headed "Ex-Tory leader calls for new abuse probe". There is a large photograph above the article with the caption "TEARS FOR ABUSED CHILDREN – Parents still feel that the full facts of the nursery abuse scandal have still not been revealed". A Mr Mike Summersby is reported as having called for a government investigation into the Newcastle nursery abuse scandal following a meeting with parents. He is a former conservative leader from the North East and is quoted as saying:

> "The more you hear about the details the more shocking and distressing the whole thing is".

The following words are attributed to him:

> "This is a national disgrace not just a local one and I think these parents have a right to a proper hearing of their situation.
>
> Even at this late stage there has got to be intervention. It screams out for justice and proper regard for the facts. It's my intention to involve national politicians".

226. The article concludes as follows:

> "The inquiry team found that Lillie and Reed procured young children for other paedophiles but Northumbria police said that they would not re-open their investigation unless new evidence was produced.
>
> Fighting
>
> Mr Summersby said: 'I cannot understand why the police cannot pursue people named'. One of the mums added: 'It was a very constructive meeting. I hope we can finally get something done after all these years of fighting'."

Article 69: 9 February 1999

227. On page 20 of the issue for 9 February 1999, in the "Any Other Business" column, Peter Young returns to the theme. Yet again he raises to the allegations about Sir Jeremy Beecham and claims that Labour councillors have been involved in a bitter, behind-the-scenes row. The article was introduced as follows:

> "FAMILIES involved in Britain's worst case of multiple child abuse can only sit helplessly on the side lines as councillors squabble over the rights and wrongs of the affair.
>
> Parents are still awaiting some sort of justice six years after their children were badly abused at a council-run Newcastle day nursery. If ever a group have been betrayed by the system and the authorities, it's them. Two nursery nurses accused of abuse, Christopher Lillie and Dawn Reed, walked free after the case collapsed. No one has been brought to justice, despite claims a paedophile ring was in operation."

Article 70:11 February 1999

228. There is a feature article by Noreen Coltman appeared in the issue of 11 February 1999 with the heading "When cash pay-outs just don't add up". Her theme is developed in a sub-heading:

> "A WOMAN who took ecstasy tablets and fell ill is to receive £250,000 pay-out for her suffering, yet the families of those involved in the Newcastle child abuse scandal will get as little as £7,000 each. NOREEN COLMAN asks: Is our compensation system falling apart?"

229. The main article consists of 32 paragraphs developing her arguments and referring to examples of personal injury compensation. The article includes reference to a "Julie Smith" whose son is said to

have suffered years of sexual abuse at the hands of his nursery school carers. It is said that "mum Julie", aged 50, will be picking up the pieces for years to come. He is said to have been abused by "nursery carers Dawn Reed and Christopher Lillie", and she feels the system has let her down.

Article 71: 13 February 1999

230. In the issue for 13 February 1999 under "Local News" appeared another article by Charlotte Gapper, "Dream trip is planned for abused kids". She describes how parents were aiming to raise cash for a "Disney Holiday". There are nine paragraphs describing how members of Parents Together Working Together were organising fund raising events to collect money for a trip to Disneyland Paris. The planned trip was for the purpose of helping to "heal wounds". The article includes the following passages:

> "At least 60 children were abused by Christopher Lillie and Dawn Reed and many of them still suffer from severe behavioural problems. They have told how they were taken out of the nursery, molested in houses and flats in the neighbourhood, and there is evidence they were used in pornographic films.
>
> Lillie and Reed were dismissed by the City Council for gross misconduct but walked free from court in 1984 when a Judge ruled as inadmissible video evidence from a four-year-old".

231. There is also a photograph of the banner ("We believe the kids") with the caption "OUTRAGE – Protesters outside Newcastle Crown Court where nursery abusers Christopher Lillie and Dawn Reed were on trial".

Article 72: 19 February 1999

232. On page 2 of the Chronicle for 19 February 1999 appeared a two paragraph article with the heading "Abuse parents meet". It refers to a second meeting between Mr Flynn and "mums and dads" to discuss what was described as the "council's action plan". The introductory paragraph contains the assertion that "children were abused by Christopher Lillie and Dawn Reed in the Newcastle nursery scandal".

Article 73: 23 February 1999

233. Charlotte Gapper produced another article for the issue of 23 February 1999 under the heading "We've been snubbed again – abuse parents". There are the usual photographs of Mr Lillie and Miss Reed – this time with the captions, respectively, "CHILD ABUSE – Former nursery nurse Christopher Lillie" and "NURSERY SCANDAL – Dawn Reed abused children in her care".

234. Once again Miss Gapper returns to the theme of parents who are said to have raised fears about Christopher Lillie and Dawn Reed two years before they were suspected of abusing children. They were complaining that they were not aware of the Review Team investigation until they saw a report on television about it, despite the fact that it mentioned their children.

Article 74: 24 February 1999

235. Another short piece appeared on 24 February 1999 under the heading "Focusing on abuse". It describes a call for the installation of CCTV in nurseries from parents whose children were alleged to have been abused by Christopher Lillie and Dawn Reed.

Article 75: 1 March 1999

236. Charlotte Gapper wrote another piece in the issue for 1 March 1999 headed "New rules aim to weed out perverts". Yet again the photographs are published each with the caption "ABUSER" attached. The article itself describes how colleges across the North East were drawing up new guidelines for vetting students in the wake of the "Newcastle nursery abuse scandal". The theme is summarised in the heading "Colleges link up to make sure abusers cannot join child courses". There is a reference in the middle of the piece to Mr Lillie and Miss Reed having "abused at least 60 children in their care".

Article 76: 19 March 1999

237. Charlotte Gapper wrote another piece dated 19 March 1999 alongside the usual photographs with the captions "ABUSER". It describes the fight for compensation under the heading "Abuse families could fight all the way". Again the accusation is repeated that they abused "more than 60 youngsters" at the Newcastle nursery. One "mum" is quoted as saying:

> "My son was terrified out of his wits physically and sexually abused and still suffers flashbacks. He's still got to live with that for the rest of his life.
>
> I don't want to settle but fight through the courts and sue the council because of what they have done".

A little later she adds

> "My child didn't ask to be raped and this is what I am fighting for. I hope the other parents stick it out and take it to court".

Articles 77-78: 26 March 1999

238. Peter Young published another "Exclusive" on the front page of the Chronicle for 26 March 1999 under the heading "Child abuse fury". There were six introductory paragraphs on the front page with the "full story" inside on page 2. The front page piece covers a "furious row" because the Council would not admit liability for "what happened at one of its day nurseries when children were abused". The reason given was that such an admission could invalidate the insurance policy which would be used for covering the compensation claim. An angry parent is quoted as saying:

> "The children were taken out of the nursery and abused so they can't say they weren't negligent."

239. Inside on page 2 appear the usual photographs with the usual captions "ABUSER". There are eighteen paragraphs under the heading "Families' fury over report on nursery". Once again Mr Lillie and Miss Reed were said to have taken children out of the nursery and abused them. A representative of Parents Together Working Together is quoted as saying:

> "Had the nursery been run correctly, that would not have happened. As soon as they saw the children returning in a distressed state, something

> should have been done. Somebody has to be liable for the management of the nursery".

240. Again reference was made to the Review Team's conclusion that they had been involved in paedophile ring that abused children.

Articles 79-80: 27 March 1999

241. On page 17 of the issue for 27 March 1999 there is a Chronicle comment under the heading "Video nasty". The point was made that had CCTV cameras been installed outside the nursery "…Reed and Lillie would have been captured on film taking children away to carry out their wicked attacks". The introductory paragraph observes:

> "PARENTS of children who suffered at the hands of evil nursery nurses Christopher Lillie and Dawn Reed have every right to be disappointed by Newcastle City Council".

That is because their pleas for cameras to be installed have "fallen on deaf ears".

242. Article 80 was published on page 13 of the same issue under the heading "Parents' spy hope bites dust". There are 18 paragraphs devoted to the City Council's reaction to the call for the installation of CCTV cameras. There are also the usual photographs. This time the caption for Miss Reed was "ABUSE – Nursery nurse Dawn Reed" and for Mr Lillie "EVIL - Christopher Lillie later became a chef".

243. The article was introduced as follows:

> "A CALL for spy cameras in council run nurseries in wake of Newcastle's child abuse scandal looks set to fail. Parents asked for cameras to protect children after the case of evil nursery nurses Christopher Lillie and Dawn Reed.
>
> The pair were accused of abusing children at a council-run day nursery six years ago, but walked free after a crown court case collapsed".

Article 81: 29 March 1999

244. On 29 March 1999 a two page feature appeared in the Chronicle by Noreen Coltman under the heading "Dealing with evil when little children are suffering". There are 49 paragraphs dealing with the general problem of paedophilia, and how to deal with it, and a new campaign which had been launched by the NSPCC to tackle child cruelty. The article concludes by reference to a woman whose son was said to have been physically and sexually abused by Christopher Lillie and Dawn Reed. She is quoted as saying that "only one thing can cure paedophiles" and adding:

> "Some people argue chemical castration but I think they should have their arms and legs chopped off to stop them getting anywhere near children. When I think what my son went through it really is unbelievable that these beasts got away with what they did for so long.

> My son was two and a half when the abuse started and he's nine now and he is still suffering".

245. It is said that the woman's son was one of 60 pre-school children abused by Mr Lillie and Miss Reed.

246. The mother was also quoted as saying:

> "My son not only suffered terrible sexual abuse which led to him having to have an aids test and treatment for a venereal decease, but he also had a knife held to his throat and was told his eyes would be cut out if he ever spoke about it".

Article 82: 30 March 1999

247. On page 33 of the issue for 30 March 1999, Miss Gapper published an article headed "Abuse row parents win their battle to be heard". Once again the photographs appear with the captions "PERVERT" for Mr Lillie and "ABUSER" for Miss Reed. Miss Gapper focused once again upon the family who claimed to have "blown the whistle" on child abuse by Mr Lillie and Miss Reed back in 1990. It was said that her complaints were ignored, "allowing Lillie and Reed to go on to abuse dozens more children at a Newcastle nursery". She also is quoted as describing the Report as a "joke".

Articles 83-84: 2 April 1999

248. On the front page of the Chronicle for 2 April 1999 appeared another article by Charlotte Gapper under the heading "Abuse pair fight claims". There are eight paragraphs by way of introduction with the "Full Story" (article 84) appearing on page 2. The introduction on the front page was in these terms:

> "STUNNED parents of abused nursery children were left reeling today after paedophiles Christopher Lillie and Dawn Reed protested their innocence. The pair, who abused more that 60 children in a Newcastle council-run nursery are preparing to clear their names".

249. There is reference to a fax from their then solicitors Bindman and Partners, indicating that in due course Mr Lillie and Miss Reed would be responding in full to all the allegations.

250. Inside there is an 18 paragraph article under the heading "Nursery abuse duo say they are innocent". This time the photographs appear with captions "NOTHING WRONG" for Mr Lillie and "I'LL CLEAR MY NAME" from Miss Reed. Parents were described as being shocked by the "claim of innocence" made by the "couple… accused of abusing as part of a paedophile ring in Newcastle". Reference is made back to the Report and its conclusion that they were involved in the paedophile ring "which abused at least 60 children at the nursery". There is also a quotation from "one of the mums whose child was abused":

> "I don't know why Reed is going to comment after all this time.
>
> It would be interesting to see what they say and it would be really good if they went back to court. It seems really strange that they want to clear their names at this point."

Article 85: 7 April 1999

251. On 7 April 1999 Charlotte Gapper wrote a piece, eight paragraphs in length, under the heading "Lawyer in vow to clear abusers", in which she reported an announcement by Mr Geoffrey Bindman who was at that stage instructed on behalf of Mr Lillie and Miss Reed. The third paragraph includes the following allegation:

> "He said that the hated pair, accused of being part of a paedophile ring which abused children at a Newcastle nursery are in hiding in fear of their lives.
>
> But a representative of the Parents Together Working Together action group said: 'they have had six years to clear their names and have said nothing. If they were innocent they should have been screaming it front the rooftops.
>
> Now, six years down the line, when things are getting too hot, they are saying they are not guilty.
>
> There is no way my child made these things up. They were found not guilty in a court of law on a technicality because the children were too young to give evidence'".

252. It did not seem to occur to anyone that they had been acquitted in 1994 and did not need to "scream their innocence" until the Review Team Report was published at the end of 1998. Accordingly, Mr Bindman was quoted as saying, "They have contacted me since there was a barrage of press comment about them. They obviously have become extremely worried".

Articles 86-87: 20 April 1999

253. Article 86 was published on pages 20-21 of the issue of the Chronicle for 20 April 1999 and attributed to K. Jordan. The two page spread consists of 25 paragraphs under the heading "Dreaming of a day when child abuse nightmare is ended". It consists of an interview with Margaret Asquith, who had just taken over the newly created post of head of children services for Newcastle. It does not actually refer to Mr Lillie or Miss Reed directly but is introduced by reference to "the Newcastle nursery abuse scandal".

254. Article 87 is headed "Inquiries uncovered the scale of abuse". The article is not attributed to anyone, but consists of seven paragraphs referring to how the whole nation was shocked when the Report "into the Newcastle nursery abuse scandal" was published. It reports, and adopts, the suggestion that children were taken from the nursery and molested in houses and flats in the neighbourhood, and "evidence" that they were sometimes filmed. It also included a final paragraph referring to the fax from Mr Bindman's firm.

Article 88: 23 April 1999

255. There is a short article in the issue for 23 April 1999 under the heading "Rapped worker leaves", which is unattributed. This announces that Joyce Eyeington, suspended the previous November, has finally "quit". It alleges, on the basis of the Report, that her relationship with Brian Roycroft had "harmed the investigation into the abuse by Dawn Reed and Christopher Lillie, whose trial collapsed in 1994".

Article 89: 26 April 1999

256. Another short piece appeared in the Chronicle on 26 April 1999 under the heading "Parents' fury". It is alleged:

> "The parents of 60 youngsters suspected of being abused by Reed and Lillie have been invited to a meeting of the charity Childline and are furious that an organisation called 'Relatives and Friends of those falsely accused of sexual abuse' are to demonstrate on behalf of the pair".

Articles 90-91: 30 April 1999

257. On 30 April 1999 two articles appeared on page 5 of the Chronicle, both apparently by Julie Cush and Penny Spiller. Article 90 is headed "Lost tot scandal" and consists of 16 paragraphs. It refers to an incident where nursery school teachers were alleged to have taken a group of toddlers to a supermarket and lost one of them. A terrified three year old girl is alleged to have been left "wandering around the store's aisles for about 20 minutes". This provided an opportunity to refer back to "the wake of the Newcastle nursery abuse scandal". The other article (article 91) is headed "Parents standing by nursery staff". This contains nine paragraphs set in a box on the same page. It is introduced as follows:

> "THIS is the second scandal to rock the city's nursery school system and comes after a damning probe into the abuse scandal.
>
> Then, inspectors found that Dawn Reed and Christopher Lillie systematically abused youngsters in their care at a city nursery".

Article 92: 12 May 1999

258. Julie Cush wrote another article in the issue for 12 May 1999 under the heading "Blunder staff to go". The theme is summarised by the smaller heading, "More teachers are being removed from nursery after girl abandoned". This is a reference back to the "Lost tot" story but includes a paragraph in the following terms:

> "The case comes in the wake of the Newcastle child abuse scandal, when toddlers at a council-run nursery were taken out and abused by perverts in a paedophile ring".

Articles 93-94: 17 May 1999

259. On the front page of the Chronicle for 17 May 1999 a three paragraph article appeared under a large headline "5 years too late". There is another heading in smaller type at the top of the page: "Fury as child abuse pair break their silence".

260. There is a photograph of Mr Lillie with the caption "WHY DID IT TAKE SO LONG? – Christopher Lillie has protested his innocence at last". There is a smaller photograph of Miss Reed with the caption "DENIAL – but Dawn Reed is accused of abusing children at a Newcastle nursery school". The substance of the article is as follows:

> "A CLAIM that two Tyneside nursery nurses accused of child abuse are innocent sparked uproar today. The row followed an investigation which said the Independent Inquiry that concluded Mr Christopher Lillie and Dawn Reed were guilty was flawed. The pair walked free 5 years ago when a court case against them collapsed. They protested their innocence but angry families are challenging them to go back to court".

There is an invitation to turn to the full story on page 5.

261. The article on page 5 is attributed to Peter Young, Dave Clark and Andrew McKegney. It is headed "Families' fury". It is also said in a smaller headline that "Claims that city nursery abuse duo are innocent, condemned by parents". There is a large photograph of Miss Reed over the article with a caption "DID SHE DO IT? – A new report says Dawn Reed was wrongly accused of child abuse". There is a smaller photograph of Mr Lillie alongside the text with the caption "BRANDED A CHILD ABUSER- The latest picture of Christopher Lillie". The article is in the following terms:

> "OUTRAGED families today condemned attempts to rubbish the enquiry into the Newcastle child abuse scandal.
>
> Families remain convinced that the report reached the correct conclusions in branding nursery nurses, Christopher Lillie and Dawn Reed, guilty of child abuse.
>
> The case against them, at Newcastle Crown Court, collapsed after video evidence from alleged child victims was ruled inadmissible.
>
> Shocked
>
> An independent inquiry team later concluded children at the nursery were abused by Lillie and Reed and the victims of a paedophile ring.
>
> Parents were shocked by a report in a national Sunday newspaper following an investigation by journalist, Bob Woffinden, and author, Richard Webster suggesting inquiry conclusions were flawed.
>
> Reed, 28 and Lillie, 34 are protesting their innocence, but the families are asking why they refused to give evidence to the independent inquiry, chaired by Dr Richard Barker of the University of Northumbria. They also want to know if the authors spoke to any parents or members of the inquiry team. And they said Lillie and Reed should not be afraid to stand up in court and be cross-examined.
>
> Mr Woffinden, who campaigns against alleged miscarriages of justice, said today he believes Lillie and Reed are innocent.
>
> His information will be passed to Bindman & Co, the London lawyers representing Lillie and Reed. Mr Woffinden declined to say if he had spoken to parents or the enquiry team.
>
> Mr Woffinden said 'the families of the children have been through hell but the important thing is to make sure this story is told correctly and properly. The truth should never hurt anybody.'
>
> Opportunity
>
> But one angry representative of the Parents Together Working Together group, fighting for justice for the families involved, said 'Parents will be

> outraged at this. Lillie and Reed have had every opportunity to protest their innocence at the independent inquiry but they kept quiet'.
>
> One parent who believes her son was abused by Lillie and Reed condemned the claims and said 'I helped out as a volunteer at the nursery at the time and I could see what they were like.
>
> If they wanted to clear their names, why didn't they come before the inquiry I'm sick of it – every time this comes up there is more sleepless nights'? "

Article 95: 18 May 1999

262. The next day Dave Clark and Peter Young returned to the same theme in an article on page 2 of the Chronicle. The headline was "Where do they get the cash?" There is another smaller heading "Abuse families demand to know who is backing the pair". There is a photograph of Miss Reed standing by a tree with an inset photograph of Mr Lillie. The caption is "MAINTAINING INNOCENCE – nursery nurses Dawn Reed and, inset, Christopher Lillie who were cleared of abusing children in 1994".

263. The article consists of 13 paragraphs. The article queries how the "pair" can afford to be represented by Mr Bindman, or whether they are being represented free of charge. Once again, the point is taken that they should have spoken out a long time ago.

264. It is said that families of the abused children are "outraged that doubt should be cast over the findings of the inquiry".

265. The article concludes as follows:

> "The parents would like to see Lillie and Reed back in court so they could be cross-examined, but the only way that can now happen is through the civil action. That is still possible but it would take big money, the sort of money Lillie and Reed would appear to have found to sustain them".

Article 96: 21 May 1999

266. Article 96 appeared in the issue of the Chronicle for 21 May 1999 under the heading "Court bid by Lillie and Reed". It is attributed Charlotte Gapper and appears underneath photographs of Mr Lillie and Miss Reed. Above the photographs appears a heading "Nursery abuse pair in new legal threat". Underneath there is a caption "BRANDED – Nursery nurses Christopher Lillie and Dawn Reed were named as child abusers in an independent report which rocked Newcastle City Council". The article consists of ten paragraphs. It quotes Mr Bindman as saying:

> "They are people without resources and in hiding and unemployed and in a very weak situation.
>
> I have only been involved for quite a short time. There's no evidence against them except very confused statements by very small children and in most cases made long after the event.
>
> There are statements by other children saying that Dawn and Chris did nothing to them at all. The evidence against them is incredibly weak. Of

> course they can say quite a lot about their experiences but they're in the position of being asked to prove they didn't do something".

267. There is then reference to Mr Bindman's age, education and background.

Article 97: 24 May 1999

268. On 24 May 1999 under the heading "Local news" appeared an article by Lisa Hutchinson under the heading "TV cameras needed to prevent sex abuse". There is a photograph of Miss Reed with the caption "BRANDED BY REPORT – Dawn Reed was found not guilty in court, but an investigation into the case claimed there was abuse". A smaller picture of Mr Lillie appears with a caption "CASE DROPPED - Christopher Lillie was cleared by a court". The article contains 15 paragraphs.

269. It is mainly concerned with the need for CCTV cameras to prevent attacks upon children at nurseries. This was apparently a suggestion made by Dr Barker at a Forum on Children and Violence in the City. He warned that the government's plan to increase day care provision for children, with the aim of encouraging women back to work, could mean more chances for abusers to "strike". The article also contains reference to Mr Lillie and Miss Reed having "walked free from court in 1994 after the case against them was dropped".

Article 98: 1 June 1999

270. On page 12 of the issue for 1 June 1999 there is an article by Charlotte Gapper headed "A disastrous holiday for sex-abuse family". It is primarily an article about an unsuccessful holiday at Santa Ponsa Holiday Park in Majorca. The unfortunate holiday makers were a woman and her 11 year old son. Since he was alleged to have been abused by Christopher Lillie and Dawn Reed, the opportunity was taken to include photographs of them. Mr Lillie's is captioned "BRANDED AN ABUSER – nursery nurse Christopher Lillie" and Miss Reed's "ALLEGED ABUSER – nursery nurse Dawn Reed". It is said the holiday was intended to help the son "get over the trauma of the Newcastle nursery abuse".

Article 99: 9 July 1999

271. On 9 July 1999 in the "Chronicle Says" column there appears a four paragraph article under the heading "Answers now". It was said to be intolerable that Dawn Reed was "now involved in martial arts training, working in an environment where close contact with children is almost inevitable". The article concludes:

> "The proposals for tough monitoring of suspected child abusers, registers to keep track of their movements, and a locked door policy when it comes to future activity where it could pose a threat to youngsters, were all designed to provide the protection so clearly necessary. So what has gone so badly wrong?"

Article 100: 7 July 1999

272. Two days earlier, on 7 July 1999, there appeared on page 2 of the Chronicle an article by Peter Dickinson under the heading "Parents' fury as duo escape axe". There are, once again, two photographs published alongside the article. In Mr Lillie's case, it is caption "LABELLED AN

ABUSER – Ex-nursery nurse Christopher Lillie". Miss Reed's photograph is caption "CONDEMNED BY REPORT – Former carer Dawn Reed". The article consists of 17 paragraphs describing how parents at the centre of the nursery abuse scandal have slammed the decision to let two Newcastle council workers keep their jobs. The workers referred to are Susan Eyeington and Peter Blythe, in respect of whom the City Council had apparently announced that they had not committed any acts warranting dismissal. Reference is made to the contents of the Report, alleging that Christopher Lillie and Dawn Reed had abused "more than 60 children in their care". Parents were "disgusted" that Eyeington and Blythe had not been sacked. The article contains a quotation from one "mum", whose son is said to have developed major behavioural problems "because of the abuse".

Articles 101-105: 19 July 1999

273. On 19 July 1999 there was a two page spread across pages 2 and 3 of the Chronicle under the heading "Local News". The main article was headed "Scandal nurse is back in town". The article is attributed to Dylan Dronfield and Dave Clark. There is a prominent photograph of Miss Reed with the caption "NEW LIFE – Dawn Reed, who was at the centre of the Newcastle child abuse scandal, pictured when she was living in the Midlands". There is another photograph of her standing by a car with the caption "BACK HOME – Abuse scandal nurse Dawn Reed is helping out at Perth Green Community Centre". The article consists of 19 paragraphs alleging that "horrified parents" were angry to learn that Dawn Reed was "working alongside children at a martial arts club". One of the parents, whose son was said to have been molested by Dawn Reed and Christopher Lillie, says that she was "stunned". She is quoted as saying:

> "She tortured my son and to be honest I would trust Myra Hindley with my children more than I would her.
>
> She seems as nice as pie on the face of it but I would warn parents to keep a very sharp eye, especially as this must be a contact sport".

Another "mum" is quoted as saying:

> "I wouldn't want my daughter training with her – you just never know do you, after all she has been accused of some terrible things".

274. Article 102 is headed "A catalogue of pain". This includes a brief summary of past events and includes the following:

> "February 1994: Newcastle Council dismisses nursery nurses Christopher Lillie and Dawn Reed for gross misconduct.
>
> July 1994: Lillie and Reed stand trial at Newcastle Crown Court. Lillie denies raping and molesting one girl, indecently assaulting four others and abusing a boy. Reed denies indecently assaulting two girls and one boy. The case collapses after Judge Christopher Holland [*sic*] refused to admit video evidence."

275. There is also reference to the Report in November 1988 and its criticism of Council staff for "failing to spot the abuse or prevent it".

276. Article 103 was published on the front page of the same edition as an "Exclusive" by Dylan Dronfield. The main heading is "TRACKED DOWN". There is a photograph of Dawn Reed with the caption "BACK ON TYNESIDE – Dawn Reed outside the community centre where she helps out".

277. There is a sub-heading "WE FIND ABUSE SCANDAL NURSERY NURSE HELPING OUT AT TYNESIDE CLUB ATTENDED BY CHILDREN". The Chronicle claims to be able to reveal that Dawn Reed was "helping out at martial arts classes attended by children". She is said to have been "helping to organise lessons which are open to children from the age of four upwards".

278. These revelations are said to have "sparked outrage … with parents of children she is alleged to have abused demanding action".

279. Article 104 was published on page 2 under the heading "Innocent dad pays the price". The story relates to a Mr Gary Steele who lived near where Dawn Reed once lived and who apparently drove a similar car to her. He had endured a series of attacks on his car leaving him with him with a £1,000 bill. He blamed the trouble on claims by Mr Woffinden and Mr Webster that "Reed and Lillie were innocent".

280. Article 105 also appeared on page 2, attributed to Dylan Dronfield, under the heading "Children told of ordeals and videos". The article harks back to the report of the previous November and its allegations that Mr Lillie and Miss Reed "abused children for their own needs but also subjected them to sexual attacks for a paedophile ring". It refers to the conclusions:

> "We find many children at the nursery were abused sexually, emotionally and physically by Lillie and Reed.
>
> Evidence suggests children were sometimes filmed when they were being 'abused' outside the nursery and have drawn the conclusion Lillie and Reed were procuring children for pornographic purposes as well as their own motives".

281. The article also refers to "powerful testimony" from a small child naming Lillie and Reed as responsible for sexual abuse. The article refers to the allegations that Mr Lillie and Miss Reed had taken the children from the nursery to places called "libraries", which were in fact houses. It was alleged that they were abused and filmed on these trips.

Article 106: 20 July 1999

282. On 20 July 1999 there appeared an article, attributed to Dave Clark, under the heading "Crisis meeting over scandal nursery nurse". Council officials were described as reviewing their options after a Chronicle revelation to the effect that Dawn Reed had been involved in martial arts classes attended by children. Reference is made to her training alongside children at a Tae Kwondo martial arts club at the Perth Green Community Centre in Jarrow. The article continues:

> "She was branded an abuser in a report into alleged assaults involving up to 60 children in a Newcastle nursery and fled the North East.
>
> But she has now returned and parents are furious that she is involved with children at the popular sports club".

283. Later on the article alleges:

> "Reed was prosecuted along with colleague Christopher Lillie, 34, for alleged child abuse in 1994, but both were formally acquitted when the judge ruled the evidence against them was unreliable.

> The independent report which later named her as an abuser has come under attack from lawyers who claim that the report itself is flawed.
>
> But Reed has never had to answer questions in court."

Article 107: 21 July 1999

284. On page 11 of the issue for 21 July 1999 there is an article headed "Abuse case woman is welcome to stay" by Charlotte Gapper. It reports a "martial arts instructor, defending the presence of Miss Reed at her classes. Matt Krywko is reported as saying he can see no reason why she should leave. There are 19 paragraphs altogether, four of which reflect the general theme:

> "Reed, who now uses her married name Jackson, and her former colleague Christopher Lillie, were cleared of abuse allegations when the court case against them collapsed in 1994.
>
> But an inquiry into the scandal later concluded that they had abused up to 60 children in their care at Newcastle nursery.
>
> Mr Krywko said 'The Traditional Tae Kwondo Association (North East) is well aware of her position.
>
> This person has not been proven guilty in the court of law and we respect that judgment, we follow the same principle and will not pass moral judgement about anybody unless proven guilty by the court of law'."

Article 108: 22 July 1999

285. On page 19 of the issue for 22 July 1999 Dave Clark wrote another piece headed "Suspects clamp". There is a smaller heading "MP moves to close loop hole where child abuse suspects can still work with children". There is a photograph of Miss Reed with the caption "ACCUSED – Dawn Reed caused a new uproar by going to a martial arts class attended by children".

286. The article is introduced as follows:

> "A CAMPAIGNING MP behind a move to root out child abuse is told of her shock today at the Chronicle's Dawn Reed revelations.
>
> Debra Shipley had her Private Member's Protection of Children Bill passed, which should close a loop hole and stop those who are strongly suspected, but not convicted, of child abuse from working with children".

287. A little later, the article continues:

> "The Chronicle revealed Reed, 28, branded a child abuser in an independent report into the Newcastle nursery scandal, has been training alongside children at a Tae Kwondo club.
>
> Reed was named with fellow nursery worker, Christopher Lillie, 34 in the report as abusing children and being part of a paedophile ring".

288. Matt Krywko is quoted as saying that "everyone involved in the club believed Miss Reed was innocent, and that she had the backing of parents and trainers". But one "angry mum" angrily dismissed the claims and said that she would never take her son back. She is quoted as saying:

> "I didn't know Dawn Reed was going to the club, and I don't think many other parents knew.
>
> It's an outrage that the trainers did not tell us, and I'd like to thank the Chronicle for warning us. My son won't be going back. I used to drop him off at the gate and let him go in so I couldn't have seen her myself."

Article 109: 23 July 1999

289. The issue for 23 July 1999 contained an article by Charlotte Gapper under the heading "Family hope to get abuse answer". At the top of the page appear two photographs of Miss Reed and Mr Lillie both captioned "NAMED". The article consists of twelve paragraphs and returns to the theme of "the couple who said they blew the whistle on nursery nurses Dawn Reed and Christopher Lillie two years before they came under suspicion". It was reported that they were to have their case investigated because the Newcastle City Council was looking at cases which were missed, or not looked at in detail, at the time of the Review Team Report. The article recites an allegation from the Report:

> "We have been told Lillie took a particular interest in the youngest boy. They cared for the children away from other residents and staff in an old staff flat with a separate entrance".

Article 110: 29 July 1999

290. Dave Clark wrote an article published on page 4 of the issue for 29 July 1999 under the heading "Clamp down on abusers' jobs". There is a small photograph of Miss Reed with the caption "PERVERT – Nursery nurse Dawn Reed, branded a child-abuser is working with children again at a club in South Tyneside". There are 12 paragraphs in the article. It is on the theme that new legislation is to be introduced to make it more difficult for convicted paedophiles to work with young children for at least ten years. The article continues:

> "Although the legislation will cover paid work and voluntary activities, including sport and religious groups, it would not have prevented alleged paedophile Dawn Reed from joining the North East martial arts club where she has trained alongside children.
>
> The new order will apply only to anyone jailed for more than a year for serious criminal offences against children. Reed, 28, was acquitted of any offence by the courts but later branded an abuser by an official report into allegations of child abuse at a Newcastle nursery".

291. A Home Office minister is quoted as saying that it was "vitally important to plug the loop holes which could be exploited by paedophiles seeking to gain access to children".

Article 111: 23 September 1999

292. On 23 September 1999 an article was published on page 9 of the Chronicle by Charlotte Gapper under the heading "Voices must be heard". The photographs of Mr Lillie and Miss Reed are published alongside the article with the joint caption "ACCUSED". The subject of the article is a new book

published by Beatrix Campbell and Judith Jones (one of the Defendants in these libel proceedings) with the title "Stolen Voices". It is described by the Chronicle as hitting back at claims that abuse accusations are often more fiction than fact. The authors, who both live in Newcastle, are quoted as saying:

> "This book is about a scandal. It is about a decade of discovery and denial, a time towards the end of the 20th Century when the British state briefly took the side of children and almost instantly recoiled from the consequences, producing one of the most bewildering and tumultuous themes in British politics, in policing and in the welfare professions.
>
> The outcome? It became almost impossible for children to get justice in the British Courts".

293. The article goes on to describe Judith Jones as being one of the four people on the independent Review Team, which investigated the scandal and concluded that Miss Reed and Mr Lillie had "abused at least 60 children in their care at a Council-run nursery".

Other Media Coverage

294. One of the unusual features of this case is that very little was said about the words complained of. I believe that the reasons for this are that there was so much coverage of the Review Team's allegations about the Claimants that it was virtually impossible to go through it all, and secondly the allegations were obviously so serious that there was little room for debate on different levels or shades of meaning. At one point in the trial I was handed a bundle labelled simply "Media Coverage" and left to read it. Neither counsel addressed me on it at any stage, but it nonetheless forms part of the case and I should say something about it.

295. The bundle consisted of articles and broadcast items in the aftermath of the Report's promulgation. Apart from the 111 articles from the Newcastle Chronicle summarised above, there were some 306 items spread over a period from 11 November 1998 to 12 November 1999.

296. The first item was a broadcast on BBC television at 6.30 p.m. on 11 November 1998 in anticipation of the Report's publication the following day. Reference was made by Luke Walton, Social Affairs Correspondent, to "uproar when the case collapsed of two Newcastle nursery nurses charged with indecent assault against toddlers within their care". The story also told how 64 children had been taken for medical assessment because they were "showing signs of abuse". Tony Flynn was quoted as saying, "I want the truth to come out and I want, you know, everyone publicly to see the truth come out at the end of the day".

297. There was then massive coverage on the day of publication itself. There were broadcast items on national and local television and also on a number of radio stations. There were 61 items altogether on that day alone. For obvious reasons, the vast majority were broadcast rather than newspaper coverage. Some coverage was given to Professor Barker's press conference on Sky News, for example, at 2.00 p.m. He said:

> "It's relatively easy for a skilled person to get the general truth from them about major issues like, who abused you. But the problem might come that your child might get confused over whether or not the person who abused had got a red shirt on or a blue shirt on a particular occasion".

298. On I.R. Metro at 1.00 p.m. he said

> "Whilst it is true that the risk of abuse can never be completely eradicated, we believe that this report contains some indication of how a system to protect children in early years and other settings can be improved. If that happens perhaps some of the pain and suffering endured by the children and families involved in this case may have been put to good purpose".

299. On BBC television, North East, at 1.32 p.m. it was said that:

> "A damning report published in the last few hours has revealed a catalogue of child abuse at a Newcastle City Council day nursery. Some of the victims were only two years old. The Report on the running of the Nursery, which can't be named to protect the identity of the young victims, highlights several key points. It names former Nursery workers, Christopher Lillie and Dawn Reed who deliberately abused children in their care. It says others, who weren't officers or elected members of the Council – were also involved in the conspiracy. Proper recruitment procedures were not followed. And Brian Roycroft, Newcastle's former Director of Social Services was criticised for allowing personal relationships to interfere with management of the case. The Report is a severe embarrassment to Newcastle City Council…"

There was also much criticism of the perceived inadequacies of the criminal justice system and the need for courts to be more accessible to very young children.

300. At 6.00 a.m. on Radio 4 James Naughtie introduced an item:

> "An independent Report is coming out this morning into a nursery run by Newcastle City Council, where it is alleged more than 60 children were sexually abused. It is expected, the Report, to be critical of the way the council handled the really quite dreadful case. Parents say their complaints were not taken seriously, there were not proper checks on staff. An awful familiar story. Two nursery nurses were found not guilty of abuse of the children in 1994. The case virtually collapsed".

There then followed a long item including part of an interview with Claire Routledge, the solicitor acting for some of the families, who said, "There was quite horrific medical evidence showing very unpleasant injuries to the children which were of a sexual nature".

301. I have provided merely brief extracts from the saturation coverage, since there would be little point in going into greater detail.

302. On the following day, 13 November, there was still television and radio coverage but the newspapers, both national and local, were now able to publish summaries of the Report. There were 42 items altogether, including articles in the Guardian, the Daily Telegraph, the Daily Mail, the Express, the Sun, the Daily Record, the Times, the Daily Mirror, the Daily Star, the Western Daily Press, the Western Mail (Wales) and the Newcastle Journal.

303. In the Guardian, for example, under the heading "Parents to sue Council over sex abuse at Nursery", there appeared an article by Peter Hetherington, which included the following:

> "PARENTS of young children who suffered systematic sexual abuse at a Nursery in Newcastle Upon Tyne were last night planning to sue the City

> Council for substantial damages after an independent report outlined a string of failures by the authority.
>
> After a lengthy investigation, following the collapse of a child abuse trial involving two nursery nurses, a four-strong inquiry team said toddlers had been taken away from the Nursery for short periods – and it hinted broadly that a paedophile ring was in operation.
>
> The team said that as well as the two nurses at the centre of the affair, Christopher Lillie and Dawn Reed, it was clear that others outside the Nursery were involved in abusing children 'for their own gratification and probably also for production of pornographic materials'.
>
> They added: 'These people have not been found.'
>
> With 64 children affected by abuse at the Shieldfield Nursery, and 434 formal complaints made against the Council's Social Services department, Clare Routledge, a solicitor representing 27 families, said her clients intended to pursue compensation claims for all the children affected and were preparing legal action against the council…".

The article continues with quotations from Clare Routledge, referring to a "paedophiles' charter" and to the fact that paedophiles (obviously referring, in this instance, to Mr Lillie and Miss Reed) are "sophisticated people and they know how to target their victims and escape justice".

304. Inside The Guardian on the same day there was a large spread under the heading "Nursery staff ran paedophile ring". There are pictures of Dawn Reed and Christopher Lillie and of Professor Barker. It included the passage:

> "Crucially, the team found that as well as Lillie and Reed, others outside the Nursery were involved in abusing children 'probably also for the production of pornographic material'.
>
> The Report adds: 'These people have not been found'.
>
> Asked by the Guardian whether this implied the existence of a paedophile ring, Mr Barker, after consultation with the Team's solicitors sitting alongside said people would have to draw their own conclusions".

305. In the Daily Telegraph the same day, there was also extensive coverage including the words:

> "The Independent Complaints Review Team, led by Dr Richard Barker, Head of the Division of Child Family Studies at the University of Northumbria, Newcastle, catalogued damning evidence against the Council. It found that: The Nursery was run for the convenience of the staff not the children.
>
> Staff failed to recognise the distress among the abused children.
>
> Staff ignored parents' sex abuse concerns and blamed the families.
>
> Parents were wrongly suspected of abuse because of staff attitudes.
>
> There was a failure to recognise the high number of so-called 'accidents' that had occurred under the care of the abusers.

> The Report also found the Nursery had been manipulated by Reed and Lillie for their own purposes".

306. The Daily Mail for the same day had a front page lead story under the headings "NIGHTMARE AT THE NURSERY" and "Shocking report reveals how ruthless paedophiles robbed the very young of their innocence and their childhoods". It was alleged that more than 60 children were involved and continued:

> "Children as young as two were repeatedly molested by staff and taken out of the building to be supplied to paedophiles for filmed sex sessions.
>
> The abuse led by nurses Christopher Lillie and Dawn Reed left scores of families damaged, perhaps forever. The children, robbed of their innocence before they were old enough to go to school, are haunted by the attacks and the accompanying threats.
>
> They were warned that if they said anything their parents would be shot. The abusers said they would come out of the children's wardrobes to get them".

307. There was extensive coverage also inside the newspaper which included photographs of Mr Lillie and Miss Reed, described as "partners in evil" and "the perverted pair who violated the youngsters in their charge". It was said that they were appointed as child carers despite coming from disturbed backgrounds and that neither of them should ever have been let near a child. It also contains the following passage based on the Report:

> "The Report says that there is no evidence that the pair arrived together at the Nursery as some form of paedophile conspiracy to procure children.
>
> It was more likely that they met by chance and that one or the other was already connected to a paedophile group and then 'coerced, pressurised or encouraged the other into becoming involved into the sexual abuse and exploitation'."

308. There was a leading article in the Daily Mail the same day under the heading "A depth of depravity that defies belief":

> "THERE are no words adequate to describe the perverted creatures who inflicted such horrors on tiny children at that Nursery in Newcastle. Some depths of human depravity simply defy belief.
>
> Here was an environment where babies and toddlers should have been safe and secure, a place where trained staff would care for them with warmth and love. Instead the children were delivered into the hands of sexual predators who systematically abused them in a manner which numbs the imagination.
>
> Two members of staff, Christopher Lillie and Dawn Reed, made it a practice to take toddlers -–some of them less than two years old – out of the Nursery on the flimsiest pretexts and deliver them to convenient locations around the city, where they were abused and filmed for the pornographic pleasure of paedophiles.
>
> As we report elsewhere the children lived in uncomprehending terror at what was happening to them. Even today, some five years after Lillie and

> Reed were charged, many of the children and their shattered parents need continued therapeutic support.
>
> … take the way Lillie got his appointment.
>
> References and police checks were not adequately taken up. He was unqualified. He had himself been through an unsettled childhood and home life. He spent years in care. The Report says that 'his experiences were such that he should never have been allowed to work with children'…"

309. In the Express the headline was "Nursery couple sexually abused 'up to 60 children'". Again the allegation from the Report which was given greatest prominence, not surprisingly, was that Mr Lillie and Miss Reed were "part of a paedophile pornography ring". It continued:

> "Christopher Lillie and Dawn Reed procured children as young as two to be filmed as they were sexually abused, the Report found. The victims were attacked in Nursery toilets and at Lillie's flat.
>
> A total of 60 children under five were examined for evidence of sexual abuse during a police investigation".

310. Professor Barker's allegation is also repeated:

> "It is clear others outside the Nursery were involved in abusing children for their own gratification and probably for the production of pornographic material".

311. The Sun on 13 November 1998 carried the headline "Beasts abused 60 children". Mr Lillie and Miss Reed were described as "two perverts who abused up to 60 children and got away with it". It continued:

> "Other toddlers at the Council run centre were farmed out to the evil pair's paedophile pals".

312. There was considerable coverage inside on page 9 of the newspaper including, for example, the paragraph:

> "The Report told how children were filmed as they were abused in the Nursery toilets or at Lillie's home to make videos for paedophiles".

313. There was also a box in the middle of the page with the heading "HELP US FIND THESE FIENDS". The Sun called upon its readers to help find out where "perverts Lillie and Reed are now". Phone numbers were supplied so that readers could supply relevant information.

314. The headline in The Times for 13 November was "Nursery staff 'were part of child sex ring'". The introductory paragraph highlights the same point:

> "TWO Nursery teachers who allegedly abused more than 60 children in their care were probably part of a paedophile ring, an investigation has concluded. Some of the victims were less than two years old."

315. Other coverage in The Times on the same day included a quotation from the mother of Child 22:

> "He had been carted around the homes of other perverts. Reed and Lillie were not the only people to abuse him. He spoke of a man in a wheelchair and another person he referred to as just a dafty man".

316. In the Mirror for the same day on page 17 appeared photographs of Mr Lillie and Miss Reed at the head of an article summarising the allegations in the Report. There was a sub-heading "457 complaints at Nursery where children were abused.. so why did no one in authority take action?". Under a photograph of Miss Reed there appears a caption "SHAMED Dawn Reed … 'she filmed children'".

317. Coverage continued periodically throughout November 1998 both in newspapers and on television. There was a further burst of activity on 11 December 1998 when the City Council gave its first response to the recommendations of the Report. There was then a significant reduction in coverage although allegations continued to surface regularly from time to time. In 1999 there began to appear some balancing coverage, in the sense that the Mail on Sunday and some other newspapers gave coverage to the Claimants' denials and to the possibility of their bringing defamation proceedings to clear their names.

318. In May of that year, for example, the Journal was giving coverage to the comments of Mr Patrick Cosgrove Q.C. and, in particular, to his warning that it would be foolish to rely upon the Report's findings "…that children were subject to abuse by a paedophile group and were filmed for pornographic purposes". He is quoted as saying, "Given the other flaws in the Report, it would be foolish to rely on these findings".

319. On 21 May 1999 space was given in the Journal for Professor Barker to reply to Mr Cosgrove under the heading "Abuse inquiry leader hits back". On 23 May of the same year there was an article by Rosie Waterhouse in the Mail on Sunday reporting a "Call for inquiry into 'flawed report on Nursery child abuse'". Mr Arnold, leader of the opposition, was quoted as saying, "I no longer know what to believe. I am a magistrate and I hear alarm bells".

320. A Conservative councillor on the other hand, Mr Mike Summersby, came to the Report's defence in the correspondence columns of the Journal on 24 May:

> "GIVEN what is at stake for those concerned, we should not be too surprised by recent attacks on the Abuse In Early Years Report.
>
> These spurious attacks, together with belated protestations of the innocence of Christopher Lillie and Dawn Reed by two journalists whose speciality is to challenge legal decisions, have all the appearance of an orchestrated campaign designed to create a climate of doubt around the findings of the independent Review Team which investigated abuse in a Newcastle Council-run Nursery.
>
> This may be of some value to the Council's insurers. Coincidentally, of course. But those best served by the Report's critics are child abusers everywhere. They will take great comfort in the certain knowledge that there will always be those in high legal places who will come to their aid with suggestions that the abuse is more likely to be at home and that, anyway, the evidence of very young children is unreliable.
>
> Paedophiles will know that, provided they are careful to select nursery age victims, they face little danger of being convicted".

321. There is no need for me to set out further citations from the very extensive coverage given over that period. It will suffice to say that there are many repetitions of the grave allegations about the Claimants contained in the Review Team's Report (as well as a small number of misrepresentations or distortions). In so far as they were natural and foreseeable consequences of the original publication, the Claimants seek to recover compensation from the Review Team in respect of those republications.

5) The issues raised in the litigation

322. The Claimants have brought separate proceedings, in which for the most part the issues overlap, against the Newcastle City Council (first Defendant), Professor Richard Barker (second Defendant), Judith Jones (third Defendant), Jacqui Saradjian (fourth Defendant), and Roy Wardell (fifth Defendant). Throughout the proceedings, for convenience, the second to fifth Defendants have been referred to as the "Review Team".

323. Reliance is placed on various publications of the allegations contained in the Report officially published on 12 November 1998. Although commissioned by the Newcastle City Council, the members of the Review Team were supposed to be genuinely independent of it and, accordingly, it has not been suggested that the Council is vicariously responsible for the primary publication by the Team members of the Report itself shortly before 12 November 1998. On the other hand, not surprisingly, they have received an indemnity from the Council in respect of any liability brought about by their publication of Report.

324. The Claimants have selected certain passages in the Report for complaint. It is necessary to set them out in full, as it is the various publications of these words that constitute the cause or causes of action (the numbering on the left relates to pages in the Report). These are the passages complained of by Dawn Reed:

"i *We have concluded that many children, some less than two years of age, were abused both in and outside the nursery.*

We have found many of the events and incidents that were believed by some to indicate a conspiracy proved to have taken place. However having carefully considered all the evidence available we conclude that we are satisfied that there was no organised planned conspiracy by Newcastle City Council officers and elected members to procure children at Shieldfield nursery for abuse, or to cover up what happened at the nursery and elsewhere. We do think that there are individuals -- Chris Lillie and Dawn Reed -- who did ***probably*** *conspire with others unknown, but we conclude that* ***these others*** *were not officers or elected members of the City Council.*

iii *There was a failure to notice and consider the significance of the large number of 'accidents' Chris Lillie and Dawn Reed recorded on children in their care, and a subsequent failure to notice and consider that an accident book covering the period immediately prior to Chris Lillie's suspension is missing.*

Children were frequently and inappropriately taken out of the nursery by Chris Lillie and Dawn Reed on the flimsiest of pretexts ....

v *A lack of an overall steer by Brian Roycroft and a low key response to the first allegations from within the nursery sector contributed to the nursery staff and their management's denial that abuse had occurred for some months after the first suspension .....*

.....Over 1450 children came into contact with Chris Lillie and Dawn Reed during their training and employment, and whilst many have been identified the information given to some parents minimised what might have happened. There has been an apparent failure to contact or evaluate some of the children concerned.

1 *This document considers the case of young children abused whilst they were being cared for outside their families. The location of the abuse was initially perceived to be in one small group of children, the evidence is that it was much more widespread than that.*

2 *Police and Social Services child protection investigations led to papers being submitted to the Crown Prosecution Service and a subsequent criminal trial which collapsed in the initial stages when the judge directed that 'not guilty' verdicts be returned on the two defendants. This was because of problems which were anticipated in dealing with the evidence of young children, as the defendants had not admitted to the charges.*

18 *We are .... deeply aware that many parents prior to and immediately after our appointment had been terribly keen that the review into Shieldfield should be held in public, in part to compensate for what they perceived as the prematurely truncated public court proceedings involving the two alleged perpetrators of the abuse.*

20 *In the case of the nursery staff, parents were not always clear about who might be the subject of their complaint -- for example, many parents complained that staff in the nursery should have noticed the effects of abuse amongst the nursery children cared for by Chris Lillie and Dawn Reed.*

25 *The overriding concern of parents was that children left in the care of staff at Shieldfield Social Services day nursery were abused.*

27 *The overall concern in this category was that it was the poor management of the nursery that created the condition which allowed the children in the nursery to be abused.*

The complaints specifically referred to: .....

- *the lack of effective management of Chris Lillie and Dawn Reed and/or lack of the proper supervision of Chris Lillie and Dawn Reed*

29 *The overall concern was that the abuse has gone on unnoticed, and that there were behaviour and incidents that the nursery staff should have picked up and seen as signs of something untoward occurring.*

43 *The college also stated that at the time of the (alleged) offences Chris Lillie and Dawn Reed were Newcastle City Council employees:* ***'there is no responsibility on the college concerning any checks or supervision related to their employment'.*** *This appeared to overlook the possibility that Chris Lillie and Dawn Reed could have abused children whilst on placement, and seemed to minimise the college's responsibility as the educators and trainers of Chris Lillie and Dawn Reed for their future practice.*

63 *On 12 May 1993 [Dawn Reed] was suspended from duty and on 22 April 1994, was dismissed after a disciplinary hearing on the grounds that she sexually, physically and verbally abused children attending the nursery. She appealed within the Council's internal disciplinary procure against this decision and on 11 May 1994, her appeal was unsuccessful and the decision to dismiss was confirmed.*

90-1 *In one case a member of staff was rightly concerned about an actual injury to a child's vagina. She acted appropriately and took the child to be examined. Susan Eyeington was able to recall this incident but dismissed it as saying she believed that the child* ***'had fallen or had had some accident at home'****. Other staff told us that they knew that this child was very frightened of going into the Red Room. However we do not know if Susan Eyeington was aware of this at the time. She was unable to reconsider this in hindsight of what is now believed to have happened at Shieldfield nursery. When asked the same question as almost everyone else who was interviewed by the Review Team, Susan Eyeington did say that she thought that* ***'something awful'*** *happened at Sheildfield nursery. When asked to explore that further she was eventually able to say by that she meant* ***'it had come to light that a number of children have been abused'****. Regardless of her knowledge that Chris Lillie and Dawn*

Reed had been dismissed for the abuse of children, she struggled to associate those two workers, particularly Dawn Reed, with the abuse of those children.

106 *Following the action against Chris Lillie ... Dawn Reed had four weeks to manipulate the evidence in the nursery if she so wished. If there were other perpetrators in the nursery they also had time to pressurise children, and to interfere with evidence.*

135 *It has been clear to the Review Team that in considering a way forward in the investigation of sexual abuse of very young children we must question the pivotal role of the video interview in the investigation. Its central importance will for good reason concern parents who may feel that the court processes which might flow from it might be not only abusive but also, as in this case, disappointing.*

143 *It was decided that the situations of all the children attending the nursery during April 1993 (Stage I) and all the children who had attended the nursery whilst Chris Reed and Dawn Reed had worked there (Stage II) should be examined. It was agreed that Social Services and the police would make contact with all the parents who currently had children attending the nursery. It was noted at this meeting that over 200 children had passed through the nursery during the period of Chris Lillie and Dawn Reed's employment. The potential enormity was being considered. ..... The information that was presented was that there were 26 children about whom there were concerns, including changes of behaviour, sore bottoms, sexualised behaviour, and changes in toileting habits.*

148 *During September a child who had previously been at the nursery began to disclose abuse by Chris Lillie and Dawn Reed. This child, child F, was medically examined and clear evidence of sexual abuse followed. Over three video interviews, she detailed abuse of herself and other children by Chris Lillie, and to a lesser extent Dawn Reed, and she also mentioned other nursery staff's names. Her testimony in these videos, which we have seen, is extremely powerful and provided persuasive evidence of her abuse in the nursery and elsewhere.*

150 *By September news of the allegations had begun to reach other parents; in addition many of those parents who had thought that their child had not been hurt, were thinking otherwise as their children began to talk. Some of these children were found to have medical evidence of abuse. Nursery staff told us that the situation was becoming very difficult. They had expected that there would be an improvement and a return to normal, even that Chris Lillie and Dawn Reed would return to work. However by September there were further disclosures, further police action and a growing realisation of the seriousness now reflected in the remand of Chris Lillie and Dawn Reed. The conclusions that something very wrong had occurred at the nursery was unavoidable.*

154 *In relation to the possibilities of ongoing child protection concerns about children with whom Chris Lillie and Dawn Reed had come into contact, a process developed in which, as we have shown, children were categorised into 3 different Stages. The Part 8 Overview Report notes that Stage I constituted those 60 children who had places at the nursery on April 16 1993, the day Chris Lillie was suspended, Stage II those 230 children who had had places at the nursery during the period of Chris Lillie and Dawn Reed's employment there, and Stage III those 1162 children who Chris Lillie and Dawn Reed would appear to have had contact with during their careers as nursery workers, childminders, relief residential staff, etc.* ***Therefore, at least 1452 children were potentially involved.***

155 *In relation to their role as employers, as outlined elsewhere in this document, the Social Services Department suspended Chris Lillie in April and Dawn Reed in May 1993 and subsequently dismissed them for sexually, physically and verbally abusing children.*

156 *Stage III ... involved the examination of the large number of children with whom Chris Lillie and Dawn Reed had come into contact prior to working at Shieldfield nursery. The need for such an investigation occurs because evidence tends to indicate that those who sexually abuse children tend to have a long history of involvement in such activity — this had been highlighted by the case of Frank Beck whose history of abuse as a residential social worker*

with children for Leicester Social Services Department and others, received widespread publicity when he was found guilty on 17 counts of sexual and physical assaults of children in his care (including buggery and rape) on 29th November 1991 ...

159 *We were told that the results of Stage III were that no children emerged about whom there were child protection concerns relating to Chris Lillie and Dawn Reed. .... It is the Review Team's opinion as we discuss later, that this conclusion was not merited on the basis of the evidence we heard and saw. There is evidence, some of which is detailed below, that possible abuse by Chris Lillie and Dawn Reed was missed in Stage III, that some situations were never assessed at all, and that in some cases the approach was too low key and minimised the possibilities of abuse.*

162 *On 7 March 1994 a memo from the computer data advisor gave details of establishments and settings worked in by Chris Lillie and Dawn Reed and their 'risk' ratings. An undated list of March 1994 we have seen appears to be this rating ....*

163 *..... The notion of risk and abuse is problematic. Whilst it is clear that there may have been a difference of opportunity between different settings, it is not automatically the case that those in 'low risk' groups were necessarily safer than those in 'high risk' groups. .... Unfortunately, we also do not feel that those who abuse children cannot also abuse adults, eg in the Frank Beck case he abused both children and adults, the latter did not necessarily find it any easier to report the abuse.*

We feel that was an error of judgment to have classified Stage III in this way, all those whom Chris Lillie and Dawn Reed had been in contact with, including the residents of elderly homes, should have been considered to have potentially been equally at risk.

170 *Fernwood, a large Victorian House set in extensive grounds, was a residential establishment based approximately one mile away from Shieldfield nursery. .... Whilst it was still a children's home, on two separate occasions sibling pairs of young children were placed in Fernwood, the J's and the K's. Because of their ages, it was decided to use nursery staff to assist in their care, and Chris Lillie and Dawn Reed were amongst the limited number of staff who volunteered, for overtime pay, to care for these children after their normal working day at the nursery .....*

.... One little boy who was cared for by Dawn Reed exhibited sexualised behaviour which concerned staff and was recorded.....

171 *.....One set of siblings, noted as having been moved out of the area having been returned to the care of their parents, the implications being that they were not contactable. The parents were therefore unaware of the potential risk from Chris Lillie and Dawn Reed..... The other brother and sister were picked up by Stage III. Indeed they were interviewed because social workers were concerned about their recording in the day book. We were able to interview the social worker who was able to confirm that he did speak to the boy, who by this time was 8 years old and able to speak coherently. He described being cared at Fernwood by a woman, for a short time, who had hurt him and frightened him.*

172 *.....we asked Mike Murphy for his views. He agreed that there was a high risk that these children had been abused in care .....*

.... Fernwood thus needed to be included as part of Stage III of the investigation. It was not clear which children other than the J's and the K's Chris Lillie and Dawn Reed had been in contact with, some children and young people were still in local authority care, others were not. The records, which differ, indicate that between 44 and 50 children were involved from Fernwood.

178 *We are also concerned that clear evidence from Stage III, that some of the children involved appeared to have been abused by Chris Lillie and Dawn Reed, was misinterpreted and not followed through appropriately. We conclude therefore, that the results of Stage III indicate*

that some of the children in these various other settings had also possibly been abused by Chris Lillie and/or Dawn Reed.

196 *.... As has been mentioned, nearby in the city of Newcastle immediately prior to these events, other parents had experienced their children being abused whilst in the care of local authority employees, when Jason Dabbs, a student on placement in a local authority nursery, sexually abused children, and was subsequently imprisoned. .... We have been told that the Shieldfield parents were able to learn from some of the experiences of the Dabbs parents.*

198 *This plan noted that two nursery nurses were, at that time, in custody on charges of sexual abusing up to 240 children who had been in their care in the nursery.*

209 *Whilst it is recognised that the following sections may be very difficult and distressing to read, the Review Team felt that it was important that the children's disclosures were described. ..... The children described what had happened to them at the nursery prior to the suspension of Chris Lillie and Dawn Reed over the months that followed. Many of these disclosures were* not *included as part of the criminal proceedings.*

Both girls and boys describe being sexually assaulted in Shieldfield nursery and when they were taken out of the nursery. Within the nursery the children only name Chris Lillie and Dawn Reed as the perpetrators of abuse. However two children both mentioned that another member of nursery staff (Jackie) dealt with them when they were bleeding after being abused. The member of staff denies this occurred. When taken out of the nursery a number of children describe other people also being involved in the abuse.

The children not only described what happened to them but also what they saw happening to other children. On the basis of these disclosures, children who had not been able to talk of their experiences or because of their young age could not talk of their experiences were identified. When investigations were carried out, in many of these cases physical evidence was found that validated the children's testimonies.

210 - 216 ***At the nursery***

Boys and girls describe being sexually assaulted and witnessing other children being sexually assaulted by Chris Lillie and to a lesser extent by Dawn Reed. These assaults were said to have taken place in the toilets, in a cupboard, and in the play house at the nursery. For example one boy said that Chris Lillie had held his penis and ***'rubbed it until it hurt'****. One girl said that when she was angry with her at lunchtime, Dawn Reed had taken her to the toilet and put cutlery into* ***'into her bum and fairy'****. Another child said a* ***'hammer with water coming out of it 'was put into her 'jenny',*** *her* ***'bottom'*** *and* ***'on her head'****. Another child describes Chris Lillie* ***'weeing on his hair'****. Children also describe being shouted at and hit, particularly by Dawn Reed. One child said that* ***'Dawn did most of the scary stuff'****.*

Out of the nursery – the places to which children say they were taken

Children describe being taken to many places by Chris Lillie and Dawn Reed. Some of these trips out seemed to be innocuous while at other times the children describe being taken to places where they were abused. The children said that they were taken to ***'the library'*** *but said they were* ***'different libraries'****. They said various things about these libraries such as they had no books and you could eat there and sleep there. The places that the children later pointed out to be libraries were in fact normal houses and flats.*

The children were able to take parents to and/or describe places to which the parents had no idea their children had ever been. Parents were also surprised at the level of distress and panic some children experienced when they went to these places. Sometime in the course of a routine journey, a child would suddenly become distressed and identify a place that they said they had been taken to by Chris Lillie and Dawn Reed. One child had such a reaction to a house near St Dominic's. The child said that that was ***'where Chris lives, other people go there too. Dawn goes with us and that's where she hurts children'****. One child took his family near to a railway track where he says he was taken by Chris Lillie. Where he pointed to looked like a dead end but he said there was a gap in the fence and hedge to get through and on the other side was* ***'a long house'****. On further investigation the parents found that the child was correct; there was a path through on the other side of which were two mobile homes. However the child then panicked saying* ***'Don't go in. Your bum will get sore'****. When investigating this place the police found a half burnt pair of child's underpants, of a similar colour, style and make to one that the child was missing. One child described a house with a garden. Another child talked of going to a place where horses were. The child describes falling asleep and waking up with no clothes on. He said Dawn covered him with a blanket.*

Several children told of a house with a black door in a named road. Children were also able to give a detailed description of the man who lived in the house which proved to be accurate. A parent said that when she took her child near that house she ***'regressed and went into a panic state'****. The child said* ***'the man who lived there was known as her daddy'****. Children also talked of being taken into lifts to flats. Children talked of going to Chris Lillie's home and children identified this accurately. All the places that the children identified were within walking distances of Shieldfield nursery, close to local parks or en route to the Civic Centre.*

Two member of the Review Team were taken by a parent on the route that her child had taken her from Shieldfield nursery to what is now know to be Chris Lillie's home, at the time, in Red Barnes. The members of the Team were struck by the complexity and intricacy of the route, which was not the most direct one and which would have been unknown to many local residents, let alone a very young child. The Team members shared the parent's surprise as to how a child could have know such a route.

As well as taking children out with Dawn Reed, Chris Lillie also took children out alone, for example to pick up pay slips or to go to a shop or hairdressers.

What children say they experienced

Children describe acts that they endured in these places that would be difficult to understand as anything other than sexual, physical and emotional abuse by Chris Lillie and/or Dawn Reed and/or other people. They describe other people being present some of the time. One child said ***'they gave you to strangers'****. Sometime the children referred to these people as* ***'other mummies and daddies'****. In these places the children describe cameras, including video cameras, being used.*

They described ***'games'*** *which included doctors and nurses. The described a* ***'white ambulance car and being been cranked up like a hospital bed'****. Another child told her mother she had been to the seaside and laid on towels. The children describe Chris and Dawn being in bed together with no clothes on;* ***'Chris lying on Dawn's tummy'; 'they were fighting in bed with no clothes on'*** *and* ***'a child being in the bed with them'****; Dawn being in the bath with children, one child said that she and another child had to sit in the bath with Dawn* ***'like fairies and not cry'****. One child described as Chris Lillie's* ***'willy pointing to the ceiling'****. A child talked about* ***'Chris's willy getting bigger and sweeties would come out and I*** *(the child)* ***would get some'****. The same child talked of* ***'more than one willy'****. Another child talked of* ***'the daft man hurting my bottom'****. The child said that* ***'Chris had told him he's daft and it wouldn't happen again but it did'****. It was reported children said that* ***'he made***

blood in their bottoms' *and* ***'he turned tiddlers round and round'****. One child described how Chris Lillie had put* ***'his tiddler in her fairy'*** *while she was sitting on the edge of a settee in his house. Some children (boys and girls) also physically illustrated how they were held and what was done to them while in this position indicating they had been raped. They also demonstrated what had been done to them by using dolls and/or teddy bears.*

Several children described being give an injection which, we deduce from their descriptions, contained some form of analgesic. One child described injections in the arms, legs, and bottoms that ***'make me go whoooo'*** *and* ***'they hurt my fairy'*** *but after injections* ***'it did not hurt'****. Another child said it make* ***'bottoms feel alright'****. Another child called it* ***'nice juice into bottoms so it would not hurt'****, and another said needles in his bottom* ***'make him dead'****. Another child also talked of* ***'nasty people'*** *putting* ***'cream on bottom'****.*

Other people children say were involved

Children described several other adults being involved in the abuse of them; ***'an old woman who looked funny like a man'****;* ***'man dressed as a woman'; 'Kelly'; 'lady', 'Michelle, with red hair'; 'Neil who had a camcorder, he was laughing'; 'a woman called Doreen'; 'Doreen was in bed with Chris'; 'a nasty doctor – Alistair with brown hair'; 'Larry – no eyes and a dog'; 'Susan and James (big people)'.***

Apart from Chris Lillie and Dawn Reed there is no evidence that any other staff of the nursery were involved in the abuse of children. Two children did suggest that a third member of staff was involved; but they each named a different person, so that their allegations were wholly uncorroborated. Both persons were questioned by the police, who took no further action. We accept that Chris Lillie and Dawn Reed were the only nursery staff involved in the abuse.

Strategies which appear to have been used to control the children

Children have variously stated they have been ***'shouted at'****,* ***'sworn at', 'smacked', 'pinched', 'hit'*** *and* ***'locked in cupboards', 'punched in the belly', 'hit on the willy',*** *called* ***'a bastard', 'naughty', 'horrible',*** *and* ***'shitty knickers'*** *by Chris Lillie and Dawn Reed.*

They also describe many threats if they told about what was happening. These threats were in relation to the children themselves, their parents or grandparents. For example children were led to believe that they or their family would die. They say they were told ***'a man will shoot daddy'; 'a boy and girl had been stabbed because they told their mum'; 'Chris could get into the house at any time and mum will die'.*** *Other threats the children were able to talk about were of monsters, and a dog that would hurt you or scratch your fairy (vagina). One child described Dawn Reed stabbing an orange and saying that she would do that to their eyes. The children were told that the police did not believe children and if children told they would be locked up. Another child said that if they told the lift doors would get stuck and they would stay in the lift forever.*

Behaviours the children were said to exhibit

Complainants describe changes in their children's behaviours after they attended the nursery. A number of parents describe talking about their concerns in relation to their children's behaviours to staff at the nursery. In some cases parents say they told Susan Eyeington and/or Audrey Palmer about the difficulties but in most cases they say that Dawn Reed was the person they discussed the child's difficulties with as she was the class teacher. However

whoever they told of their concerns they say that the member of staff dismissed them as being ***'normal', 'the terrible twos'****, or due to something that was happening in the family.*

The most common symptoms parents described was an increase in wetting and to a lesser degree, soiling. Many children were described as being afraid of going to the toilet. Children who had been previously 'potty/toilet trained' regressed to having frequent 'accidents'. A number of children developed urinary tract problems from trying to retain urine and some children developed problems with constipation. Children experienced soreness of the genital and/or anal region which was generally attributed to ***'wetting'*** *or children not* ***'wiping themselves properly'*** *after going to the toilet. There was more than one incident involving blood on knickers or in nappies.*

Parents also noted that children they had previously experienced as cheerful, confident, outgoing and/or friendly, became withdrawn, unhappy and had a tendency to be frightened of and/or aggressive towards strangers. A number of parents describe children seeming ***'cut off'*** *at time, as if in a daze. There was a higher level of* ***'clinging'*** *to parents and a reluctance to be left at the nursery. Parents described children screaming and/or crying on the way to the nursery.*

Parents described an increase in difficult behaviours including an increase in tantrums. Some children's speech regressed and/or was inhibited and when the abuse was disclosed their speech seemed to improve dramatically. Parents described children regressing in other ways such as going back to using a dummy or a comfort blanket and needing a sleep in the day.

Many children became quite aggressive and would direct this aggression towards adults, including their parents and also towards other children. Some children began to harm themselves in some way; hitting themselves, head-banging, picking at their skin.

Almost all the complainants described behaviours that indicated the children had a high level of fear. At night this manifested itself as sleeping difficulties which included frequent nightmares and waking from sleep shouting and screaming, difficulties in going to bed and only being able to sleep in bed with their parent/s.

The children were also described as seeming to develop a great many fears of things to which they had previously not shown any distress. These fears manifested themselves during the day as well as by night. Parents related children showing uncharacteristic terror in relation to nappy cream, baths, loud noises, lifts, old women, men on roofs, an elderly man, dogs, ghosts, monsters, clowns, masks, dressing up clothes, things in a box, and the baby buggy. Several children developed a terror of needles &syringes) and some were terrified of doctors.

Many parents described their children becoming extremely anxious and distressed if they were called ***'naughty'****. Some children repeatedly questioned parents about whether or not they were naughty.*

Several parents noted that their children exhibited symptoms of panic and extreme fear when taken near specific places and/or houses to which the parent had no knowledge of the child ever having been taken.

Children were said to have an unusual concern about the well-being of their parents, worrying that they would die. One parent described her child as ***'obsessed by death'****.*

Many parents noticed their children engaging in sexualised behaviour. This involved touching their own genitals and inserting objects into their genitals and anus. Children were also seen to try and act sexually with other children, at the nursery and/or in the family, and towards adults both male and female. Parents also noted that children used sexual words not used at home. A number of the children also drew pictures which had sexual aspects.

Physical evidence of abuse

Many of the children were taken to have internal examinations. The majority of the children were seen by Dr Lazaro. She found physical evidence in numerous children of penetrative injury. In four children testing also revealed the presence of a bacterium that was found in the anus which is much more commonly found in the throat. Dr Lazaro describes this as an unusual finding which suggested a common source.

*A number of parents also noted that during the time the children were in the care of Chris Lillie and Dawn Reed they were frequently bruised. Initially they attributed this to normal childhood **'rough and tumble'** but after the disclosure of the abuse they considered that some of these bruises may have had a more malevolent cause.*

217 -218 *Many aspects of the children's evidence that could be verified and were checked out, proved to be accurate. We do know that they were taken out of the nursery more by Chris Lillie and Dawn Reed than anyone else. We do know that the managers of the nursery sometimes said that Chris Lillie, Dawn Reed and the children were in a specific place but they were not. The man the children said lived in the house with the black door did look exactly as the children described him. Chris Lillie did live in the place that the children said he did and more than one child could describe how to get to his home from the nursery. We know that Chris Lillie took a large number of photographs of children, that he regularly borrowed a video camera, and that he told people he could copy videos at home. We also know there was physical evidence corresponding to the sexual assaults that the children said had occurred. In Chris Lillie's interview with the police, he admitted taking one boy to his flat (although he did not admit to the abuse of the child). The Review Team believe this indicates that for some reason which we have been unable to determine, this child was of particular significance in this case.*

Process

Despite the methodological difficulties when the information collected was examined in its totality, the Review Team were impressed by how compatible the process of the disclosures were with how research indicates it is typical for pre-school children to describe traumatic events such as sexual abuse. The review Team was also impressed at the consistency of the core of the children's disclosures while there were significant individual differences in the accounts. The individual differences would be expected due to the individual differences in the sense they were able to make out of such unfamiliar experiences. This pattern of presentation of information lends credence to the validity of the disclosures.

219 - 220 *The Review Team concluded that the style of the children's disclosures related closely to their template suggested by our expert witnesses as indicating non-suggestive disclosures. The children were more likely to describe events that happened in the nursery and the 'library' rather than in less familiar places. They were also more likely to report experiences with CL and DR than with other people who may have less familiar. The children describe many sexual acts which were evidently central to their experiences with these carers.*

While accepting that very young children can misinterpret some events and experiences, during the lengthy process of the investigations, criminal and disciplinary, the perpetrators have never been able to offer an alternative explanation to account for the children's knowledge and disclosures. Professor Davies states that it is very unlikely that children of this age tell convincing lies about sexual acts. He emphasises that children of this agree can lie but that these lies are not elaborate and usually consist solely of an assertion or denial.

Professor Davies recommends that in evaluating a child's statements it is important to scrutinise very carefully the history of those statements. Was the name of the accused suggested or did the statement consistently identify the accused from the earliest stage? As far as it was possible to do so, the Review Team considered the children's statements in the light of this advice. In doing so the Review Team was convinced of the spontaneity of disclosures particularly in relation to: the acts children endured, the involvement of other people, the use

of cameras, and syringes, and that Chris Lillie and Dawn Reed had both been consistently, and differently, implicated as the perpetrators of those acts from the earliest stages.

It is highly likely that the original disclosure was in fact ***'accidental'*** *, that is the child did not intend to disclose that he was being sexually abused and the mother had no intention of eliciting a disclosure. The child could not have been aware of the significance of his response and would not have initially realised that he made disclosures. Sorenson and Snow describe how this is a common process of disclosure for pre-school children.*

221 *In the case involving the children at the Shieldfield nursery, not only are there very compelling aspects of both the content of the children's evidence and the process by which the evidence became known, there is also a considerable volume of medical and circumstantial evidence that verifies many of the children's disclosures.*

223 *In addition it is now recognised that children who are not themselves the direct victims of sexual assaults nor have been made to touch adults or other children in a sexual manner but who are present while this occurs to other children are also likely to have suffered serious psychological damage as a result of trauma. In an environment where children are physically and sexually abused by staff, a corrupt culture is established which facilitates that abuse. This culture often involves the terrorising of the children and/or the rewarding of the children for behaviours that are grossly inappropriate. Thus some children in contact with Chris Lillie and Dawn Reed may not have been directly sexually abused but may have suffered trauma from being within this environment and from what they have seen happening to other children. Research shows that children who have endured abuse and children who have witnessed the abuse of others within a corrupt environment created to facilitate such abuse, are susceptible to developing Post Traumatic Stress Disorder (PTSD).*

223 - 224 ***Conclusions in relation to the children's disclosures***

Whilst to an adult much of what the children say may appear confused and hard to believe, the Review Team has formed the view that the children attempted to describe to the best of their abilities experiences that were cognitively and emotionally overwhelming for them, which they did not fully understand, nor for which they had the appropriate language.

We have considered that some of what we have heard has come via the parents in statements to us which we took some time after the events. Thus we have assumed some changes from the original disclosures due to the time lag and the hearsay nature of the evidence. Thus whilst we cannot form an opinion about the veracity of each individual disclosure we are impressed by the compelling nature of the core factors in these disclosures: children were hurt, they were hurt involving sexual acts, they were hurt both in the nursery and when they were taken out to other places, some of which were houses, flats and a caravan, they were told that some of these places were libraries or Chris Lillie's home, sometimes other people were present and involved in the hurting, sometime videos and photographs were taken of them, that the children were very frightened and many were almost certainly traumatised by their experiences.

227 *One of the terms of reference of the Review Team was to consider how a sexually abusive situation was set up and maintained at Shieldfield nursery.....*

.... It is our hope that by trying to analyse closely what we know occurred at Shieldfield and the context in which it happened ....

228 *No one other than those that perpetrated that abuse can provide definitive knowledge as to how this was carried out and those perpetrators that we know of have declined to talk to us. Therefore what follows can only be speculation based on those aspects of the situation that we do know about placed within a theoretical framework of what is known about perpetrators of child abuse.*

The Review Team finding as to what occurred at Shieldfield nursery

We have considered various possibilities as to the meaning of the disclosures made by the children. We have concluded that it is most likely there were two simultaneous arenas in which the children were being sexually, physically, emotionally abused:

1. That Chris Lillie and Dawn Reed, sometimes in conjunction with other people outside the nursery, participated in sexual acts with children which at time involved the making of illegal child pornography.

2. That Chris Lillie also regularly sexually abused children acting alone both inside and outside the nursery. These sexual assaults took place in various places within the nursery, in particular the toilets adjacent to the Red Room.

In addition the children were physically and emotionally abused both inside and outside the nursery by Dawn Reed and Chris Lillie in order to attempt to ensure the children's compliance and prevent disclosure of the abuses.

229 ***How Chris Lillie and Dawn Reed came to be together at Shieldfield nursery***

The Review Team deliberated over various suggestions as to how Chris Lillie and Dawn Reed may have come to act together at Shieldfield nursery to abuse children. .....

..... It is possible that they met by chance at the nursery; that either DR or CL had connections to a paedophile group; and, that one coerced, pressurised or encouraged the other into becoming involved in the sexual abuse and exploitation.

The third possibility is that someone arranged for one or both of them to obtain posts at Shieldfield nursery so that they could provide children for sexual use and exploitation. This could have been someone within Social Services, someone at the nursery, someone at the college or someone from an unidentified area also common to them both.

232 - 3 *CL and DR decided not to be interviewed by the Review Team and not enough is known about their lives, beliefs, nor the true relationship between them to be able to categorically say what their specific motivations were to sexually, emotionally and physically abuse children.*

.... Sexual offenders tend to think in a distorted way about the children that they sexually abuse which makes them feel they are entitled to meet their needs, whatever they may be, by abusing those children. Thus they tend to objectify the children, and put into these children whatever characteristic they want which will enable the abuser to abuse them. There are many ways of doing this. Some abusers construct ***'a special relationship'*** *between themselves and the children. They then see the abuse of the child as* ***'a natural expression of that relationship'****. Some abusers objectify the children by making them* ***'bad'*** *and behaving as if those children deserve to be hurt. In the case of Chris Lillie and Dawn Reed there are some indications that they used both these justifications. Chris Lillie particularly was seen as having special relationships with some children. There is also evidence that both Dawn Reed and Chris Lillie objectified the children in a highly negative manner, making the children out to be bad. This can be surmised from the names the children said they called them, such as* ***'bastard, horrible, shitty knickers'.***

233 *As CL and DR refused to be interviewed we cannot conclusively determine their personal motivations to abuse children, nor can we conclude what internal inhibitions they had against doing so and how they overcame any such inhibitions. However much more can be said about how they overcame the external inhibitors to allow them to gain access to children, to be with those children and have the opportunity to offend.*

236 *It appears that CL and DR took advantage of the re-organisation of the groups in the nursery to manipulate the situation so that they were working together with children aged between two to three years old ....*

237 *.....The location of the nursery and the fact that the little garden there was, was out of use for some time meant that there was an acceptance in the nursery that children would be taken out regularly ....*

.....The role of DR was vital in enabling this to happen. While the nursery staff and many of the parents admit to finding it hard to believe and accept that Chris Lillie was alleged to have sexually abused children, they found it far more difficult to accept that Dawn Reed could have done so. In part this was because she appeared to them to be ***'so normal'****, a person that many of them like but more than that, it was because she was a woman. Women in our society are seen as carers, nurturers protectors and sexually passive. The idea that a woman particularly a young, bright, articulate and heterosexual woman such as Dawn Reed could be involved in the sexual abuse of children in this way for many people is unthinkable. Consequently people were far less questioning than they may have been, of the fact that Chris Lillie was repeatedly taking groups of children out of the nursery than they would have been if he had always done so alone or with another male. The children were considered safe as they were with her.*

238 - 239 *Due to the young age of the children, it would not have been difficult for CL, DR and/or any other abusers to overcome the child's resistance. .....*

..... From the descriptions of staff, parents and what we know from the children, it would seem probable that DR and CL manipulated the children by being very rewarding to them and then being very punitive. It has been shown that very young children are very sensitive to this kind of treatment and subsequently become highly attuned to the moods of their carers. Thus the children would have learned not to do anything to go against them nor to displease them in any way. From what the children and staff have said Dawn Reed was more effective in instilling fear and controlling the children than Chris Lillie seems to have been.

Initially the children would not have understood the nature of the acts that were taking place. From what the children say it seems that the children were often abused in the context of games or being made to play ***'lets pretend'****. One particular game described seems to have involved children playing chase with* ***'water pistols'****. When the children began to recognise that these* ***'games'*** *led to the pain and discomfort associated with the sexual assaults, any resistance they then put up could have easily been overcome by threats and physical abuse. From the disclosures of the children and the degree of terror they showed at times to a whole range of objects, people and places, it is highly probably that the main technique used to overcome any resistance of the children was threatening behaviours and physical assaults.*

The coding on the registers at the nursery could have conveyed at a glance to any potential abuser important information that could be used in manipulating a child to comply with abuse and also the most effective way of instilling fear in that child to try and prevent the risk of disclosure.

In addition, the children's disclosures would indicate that some of them were injected with some form of medication that reduced the children's abilities to physically and/or emotionally resist the abuses perpetrated against them.

239 *Instilling fear in the child also appeared to be the main means by which the children were prevented from disclosing what was happening to them. Once children had made any disclosures about what had happened to them children tended to believe that something terrible would happen to themselves and/or one or both of their parents. Many of the children believed a dog would get to them and hurt them. Many were terrified that someone close to them, particularly a parent or a grandparent would die. It is likely that these were the threats made to the children as to what would happen if anyone found out about the abuse.....*

..... The children also talked about other people's involvement and mentioned the names of other staff from the nursery. This could be because these staff were also involved but it could

also be that CL and/or DR deliberately confused the children into making these often isolated disclosures so that if any disclosures were made they were all the more unbelievable.

244 What emerges from an analysis of the relevant documents is that:

1. There appears to be the possibility that CL and DR abused children and covered their activities by recording fictional accidents to disguise either physical abuse or signs of distress caused by the abuse.

252 As evidence began to emerge what might have happened to children who had been in CL and DR's case in Shieldfield nursery and elsewhere, alongside the investigation a number of children and parents began to need a therapeutic service.

259 As the children who were abused by CL, DR and others grow and develop, there will be a continuing need to provide age appropriate services at particular points in the future.

260 From our enquiries we can suggest that these children were dealing with a number of significant issues resulting from the abuse and to which attention should be paid by those offering a service. The factors which may have made an impact on an individual child are:

- *that some children were made to believe that their parents delivered them to the abuse and that they knew about it*
- *that the distress the child was showing was not recognised as being associated with abuse and was often attributed to home circumstances or the child's age*
- *that the child may have been led to believe that the abuser had power over all the child's world*
- *that the child was led to believe that the abuser had power over life and death including the well being of relatives*
- *that the child was told the abuse was as a consequence of them being* ***'bad'***
- *that the child and those close to the child would be harmed if the child told*
- *that the child may have experienced abuses other than sexual, such as physical assaults, emotional humiliation and rejection*
- *that the child may have been abused in a group where there were hierarchies imposed by the perpetrators*
- *that the child may have seen other children abused, or made to abuse others*
- *that the child still may not feel protected from those who hurt him/her*
- *that the child may not feel that they have received justice from the adult world.*

264 From the evidence we have seen, it is clear that CL and DR had conspired as a pair to abuse children, and it is also clear that other people outside the nursery were also involved.

265 We do think that there are individuals -- CL and DR— who did probably conspire with others unknown, but we conclude ***that those*** *others were not officers or elected members of the City Council.*

268 CL and DR were also amongst the small number of nursery staff who volunteered to provide extra care for young children in a nearby children's home. There is evidence that CL and DR sexually abused some of the children they cared for in the home, although this was not suspected or investigated at the time or since.

269 The police investigation improved after the appointment of DI Findlay to lead it. Children gave their parents detailed information about the venues in which they had been abused, and by whom, which appear to have been followed up e.g. children's allegation that the ***'house with a black door where a man with a black beard had abused them'*** *were progressed, there proved to be - where they said – a house with a black door in which a man with a black beard lived, but we were told that the evidence was not strong enough to be used in court. We are not aware of anyone in this case whom we have interviewed or who is employed by any of the agencies involved who fits this description.*

274 *After the initially slow start, the police investigation of the case appears to have been pursued with vigour. The Council disciplinary proceedings were also pursued robustly, for which the Council should be commended - CL and DR were dismissed for abuse, not on some other, perhaps more convenient, pretext....*
..... As well as CL and DR, it is clear that others outside the nursery were involved in abusing children, for their own gratification and probably also for the production of pornographic materials.

282 ***FINDINGS AND CONCLUSIONS***

1. *We find that many children at Shieldfield nursery were abused sexually, emotionally and physically by Chris Lillie and Dawn Reed, who were dismissed for the same by Newcastle City Council. It is our view that the children described to the best of their ability abusive experiences by Chris Lillie and Dawn Reed and other adults who as yet have not been identified, both inside and outside the nursery, in houses and flats in the locale. We find that there is evidence which suggests that the children were sometime filmed when they were being abused outside the nursery and we have drawn the conclusion that Chris Lillie and Dawn Reed were procuring the children of Shieldfield nursery for pornographic purposes as well as their own motivations.*

2. *In the absence of being able to interview them we have been unable to find either Chris Lillie or Dawn Reed's personal motivations for their abusive behaviours. However, the indications from the children were that Chris Lillie took every opportunity to abuse them, and Dawn Reed was a party to abuse in particular situations, including during filming.*

302 *We do think that there are individuals, CL and DR, who did probably conspire with unnamed others, but we are satisfied that there was no involvement of officers or elected members of the City Council.*

303 *Like many of the professionals who we have interviewed we share the distress of parents that the Shieldfield children were not able in the end to receive justice. We find that there was a failure of the adult world to provide the processes, systems and environment to ensure that child victims of assault are not disadvantaged and are regarded as being entitled to justice as adults.*"

325. The Claimants attributed to the words complained of the following natural and ordinary meanings, namely that they:

(a) sexually, physically and emotionally abused a very great number of young children whose care had been entrusted to them at Shieldfield Nursery, Fernwood House and in other institutions in which she had worked;

(b) were members of a paedophile ring, and used their position at Shieldfield Nursery to procure young children for rape and abuse by themselves and other members of the ring, including the handing over of children to be raped and assaulted and used in sexual acts and in the making of pornographic films; and

(c) had injected children with drugs in order to assault them sexually more easily; and

(d) terrorised children in their care into submission and silence in order to attempt to cover up the evidence of their crimes, including physically assaulting and verbally abusing children, and threatening them with physical harm and with the death of their parents and relatives; and

(e) were reasonably suspected of disposing or trying to dispose of evidence of their crimes in an attempt to prevent them coming to light and to pervert the course of justice; and

(f) were also reasonably to be suspected of the physical and/or sexual abuse of elderly residents of homes, whose care had been entrusted to them.

326. Both the City Council and the Review Team are potentially liable in respect of the publication to the world at large following the official communication of the Report to the Council. It is also alleged that they are thereby also, in law, responsible for the foreseeable re-publications thereafter (most particularly those in the media). This is no doubt based on the principles set out in *Speight v. Gosnay* (1891) 60 L.J. Q.B. 231, C.A. (recently considered in *McManus v. Beckham* [2002] E.W.C.A. Civ 939). The Claimants' contention in this respect would be that these Defendants would not be able to avail themselves of any privilege, and in particular statutory privilege, made available to the media for onward re-publication of such material, since they would not fall within the scope of the public policy underlying that protection (since they are obviously original publishers).

327. On the basis of that argument, the Claimants pray in aid, for the purposes of damages, the devastating consequences caused to them by the widespread publication of the allegations contained in the Report.

328. There is a claim for general and special damages, as well as for aggravated damages. By contrast with the claims originally made against the Newcastle Chronicle, there is no corresponding claim for exemplary damages. (I assume that this decision was made because of the difficulty of establishing any financial or similar motive for publication by these Defendants.)

329. The defences raise a multiplicity of issues. There are arguments about meaning and the responsibility on the part of the various Defendants for the different publications. Also, whereas the Review Team Defendants plead justification, the City Council does not. It was explained to me, at one stage, that the decision was made for tactical reasons in connection with claims for negligence brought against the Council by various parents, who seek damages in respect of the alleged abuse. The Council does not wish to be seen to be asserting the truth of the allegations of abuse, in these proceedings, while leaving the matter open for proof by the various claimants in the negligence proceedings. In practice, this divergence of strategy between the two sets of Defendants made very little difference to the conduct of the trial.

330. The City Council has not been averse to attacking the Claimants, as though they were pleading justification, and clearly wants the best of both worlds. Miss Page has described its attitude as "shameful, hypocritical and offensive in the extreme". What Mr Lavery, the former Chief Executive, said was this:

> "… the Council continues to accept the findings of the Review Team and believes that, on the balance of probabilities, Christopher Lillie and Dawn Reed did abuse a significant number of children in their care whilst they were employed by the Shieldfield Nursery. In addition, the Council stands by its decision to dismiss Lillie and Reed for gross misconduct following the finding of a disciplinary hearing and upon appeal that Lillie and Reed had physically and sexually abused children in their care. The Council is unable to plead particulars of justification because to do so would risk compromising claims which have been brought against it by parents who allege that their child were [*sic*] abused by Lillie and Reed while they were in the Council's care. The Council is required by its insurers not to allege particulars of abuse of those children which might amount to an admission in those other proceedings".

331. The Council was thus in what it no doubt considered the fortunate position of being able to shelter behind the Review Team and watch its own legal team attack the Claimants – but only in their capacity as representing the Review Team. It is this unusual stance which led to Miss Page's strictures.

332. For the purposes of justification, the Defendants relied at the outset of the trial on dozens of allegations in relation to the 27 children selected and to a large extent based on statements attributed to the children concerned (which I have ruled to be compendiously admissible under The Children (Admissibility of Hearsay Evidence) Order 1993). None of the children has given evidence, and therefore close attention has to be paid to the various routes by which the accusations find their way into this litigation. For example, although I have thus allowed in the three video recorded interviews with Child 14, which had been excluded by Holland J from the criminal proceedings in July 1994, that is not to say that the serious concerns expressed by his Lordship on that occasion do not have to be carefully addressed in assessing issues of weight and credibility. By 13 May 2002, five of the children had been withdrawn and the Review Team were ordered to pay the costs of meeting those allegations. It was noteworthy, however, that Mr Bishop confined himself to saying that his clients were not asking for findings of abuse in respect of those children – there was no acknowledgement that the allegations were untrue.

333. In the case of each child pleaded, the Defendants have set out a brief summary of the allegations followed by two schedules. Table A, in each case, consists of information (not all of it, by any means, agreed) about the child's personal history, parents, dates at the Shieldfield Nursery, regularity of attendance, time spent (if any) in the Red Room in the care of the Claimants, whether or not the child was interviewed or medically examined and, if so, the findings made.

334. Table B consists of a series of numbered instances of "disclosures" by the child and/or behavioural symptoms. A certain amount of other information is given about the circumstances or context of each such instance, together with references to documents or witness statements. These are matters to which I shall need to return, in much greater detail, when I address the evidence introduced to support the plea of justification. It would be impossible, however, to address every factual allegation which the Defendants chose to incorporate, since they run into hundreds. There is no doubt that the Review Team threw everything into the defence they could possibly think of. Unfortunately, in respect of much of it, it was not easy to see what significance was supposed to be attached to it. Miss Page characterised the pleading as "oppressive, burdensome and often misleading or confusing". She pointed out that even in relation to allegations of the utmost gravity there was confusion and obfuscation as to what the Defendants were prepared to support – especially with regard to the insertion of cutlery into vaginas. Even now I am not clear whether the Defendants are really alleging this or not. If ever there was a case for clarity and precision, this would surely be it. At the close of the case, the allegations were put rather on the basis that it may have been the handle end of a knife or even that no knife was involved at all – but rather abuse that "felt like a knife".

335. There was a lack of clarity for much of the case also on what the Review Team were saying about the "paedophile ring". This too crystallised on 27 May when Mr Bishop stated the case as follows:

> "… the children were taken, alternatively there are reasonable grounds for suspecting that they were taken, by Lillie and/or Reed to one or more houses or flats in the Sandyford area, including [named] Road, where they were abused by strangers, including one or more men [physical description follows]. One or more of the houses had a black door. Although some of the children have identified particular houses on [named] Road as places to which they were taken, we do not seek to establish or ask the court to find that they were taken to any particular house or that they were abused by any particular person living in the Sandyford area".

336. There was a time when it was said that the plea ought to state the charge with the same precision as an indictment: *Hickinbotham v. Leach* (1842) 10 M.&W. 361. The above formulation appears to fall some way short of that. A Claimant setting out to meet such a case would have some difficulty in knowing how to refute it. It tends to slip through the fingers as one tries to get to grips.

337. There are defences of qualified privilege pleaded on behalf of both the City Council and the Review Team Defendants. Reliance is placed upon the setting up of the Review Team in 1995, for the purpose of conducting a review of the complaints made in connection with Shieldfield Nursery and, in particular those of parents. Reference is also made to the limited nature of the publication and the attempts to communicate the serious allegations about the Claimants to those with a genuine legitimate interest in the subject-matter. The following factors are naturally relied upon to support the defence of qualified privilege:

(a) The obligations and powers of the City Council to provide day care in accordance with s.18 of the Children Act 1989.

(b) The history of the allegations of abuse made in relation to children over the course of the spring and summer of 1993.

(c) The duty undertaken by the Review Team Defendants to report and submit their conclusions and recommendations (which they did through the Chief Executive of the City Council on 5 November 1998).

(d) The duty of the Chief Executive to place the Report before a meeting of the Day Nursery Complaints Review Panel and to provide its members with copies of the Report.

(e) A duty claimed under ss.100B and 100E of the Local Government Act 1972 to make copies of the Report available for members of the public present at the meeting of the Complaints Review Panel held on 12 November 1998.

(f) The City Council is also said to have been under a duty to make a copy of the Report available for inspection at its offices, at all reasonable hours, and to supply copies to any persons who required one: ss.100B, 100C, 100E and 100H of the 1972 Act.

(g) It is said that the City Council was also under a common law duty, and/or had a legitimate interest, to supply a copy of the Report to persons with a corresponding legitimate interest in receiving it. Accordingly, prior to the meeting of 12 November 1998 copies were supplied only to persons who had such a legitimate interest, and on 12 November to persons who were present at the meeting of the Complaints Review Panel, and thereafter only to persons who required a copy of it and/or satisfied the City Council that they had a legitimate interest in receiving a copy.

(h) Alternatively, all five of the Defendants rely upon a common law duty, and/or a legitimate interest, to publish the Report to the public at large. A large number of particulars are set out, giving the reasons why it is said that the subject-matter of the Report was of legitimate public interest, both locally and more widely. I shall return to consider these when I come to rule on the issues of qualified privilege.

338. The Claimants raise allegations of malice against the City Council and, separately, against the Review Team members. Indeed, it was largely to this issue that the cross-examination of the Review Team members was directed.

339. The particulars of malice directed to the City Council were originally relatively short, but I gave permission to amend and expand them on 28 February 2002. They relate to the named individuals and are considered in detail in section 15 below.

340. Those against the Review Team members run to some 60 pages in all. It is not necessary for me to set them all out in the course of this judgment, but I shall attempt to summarise them.

341. The plea of malice against the Review Team is divided into various sections. The first is concerned with the Team's supposed pre-determination to pronounce guilt.

342. Attention is drawn to page 274 of the Report which notes that, in respect of the criminal proceedings, "all the evidence available at that time appears to have been made available for the court proceedings". The point then made is that the Review Team effectively have no new evidence to support allegations in respect of any of the six children in respect of whom those charges had been brought; nor indeed in respect of the greater number of children now alleged to have been abused; nor yet to support the parents' allegations about a paedophile conspiracy and/or the production of pornography.

343. In so far as there were obvious deficiencies in the evidence, the Claimants rely upon the approach adopted by the Review Team in their Report of explaining those deficiencies in terms of the Claimants' guilt; for example, late, reluctant or unspontaneous disclosures being explained on the basis that Claimants must have instilled fear into the children. Lack of credibility or inconsistency in the children's accounts was similarly explained on the footing that the Claimants must have deliberately implanted distorted knowledge in the children's minds to achieve that purpose.

344. Despite the absence of any evidence to support the proposition that the Claimants were indulging in "an intimate, bizarre and highly perverted sexual relationship", the Team nonetheless came to the conclusion that this was in fact the case.

345. Attention is also drawn to the inconsistency of approach on the part of the Review Team as between Mr Lillie and Miss Reed, on the one hand, and any other adult apparently implicated by the children, on the other. Whereas the latter were rightly exonerated because there was nothing to corroborate their involvement, a different test must have been applied to the Claimants since there was little or no apparent corroboration relating to them either. A particular example cited, on the Claimants' behalf, is that of a well known local politician who was quite rightly exonerated through lack of any evidence. So far as the Claimants themselves are concerned, however, the absence of corroboration was explained in terms of their guilt rather than being treated as exculpatory.

346. Despite being very familiar with Mr Peter Hunt's report into the Jason Dabbs affair, *Multiple Abuse in Nursery Classes*, the Review Team announced their findings against the Claimants without giving any weight to the two formidable difficulties which had prevented Mr Hunt from making any other specific findings of child abuse than those admitted by Jason Dabbs. The two main problems were, of course, that video interviews were likely to be flawed by the introduction of leading questions and, secondly, that accounts given by parents as to their children's disclosures had not been tested or explored, but simply for the most part taken at face value (see para 2.3.5 of Mr Hunt's Report).

347. Reliance is placed upon the appearance by Mrs Saradjian in the Panorama programme of 6 October 1997, to which I have already referred.

348. It is suggested also that the claims made in Chapter 3 of the Report, as to the safeguards adopted to ensure fairness to those who might be criticised, were simply untrue, so far as the Claimants were concerned, as the Review Team must have appreciated. In particular, the Claimants were not sent "Salmon letters" or forewarned of the contents of the Report prior to publication. Ironically, in relation to the well known political figure from the North East, the Review Team pointed out at pages 275–276 that public figures (who they thought might become the subject of wild allegations because of their being in the public arena) should not be perceived as having to prove their innocence; they were recognised as having the right to be judged by "exactly the same legal and evidential standards as any other citizens". Particulars are given at paragraphs 12.6 and 12.7 of the Reply of a number of respects in which the Team are said to have applied quite different standards to the Claimants. I shall return to these in due course, when considering my conclusions on the allegations of malice.

349. The Reply goes so far as to allege that the Team's claim in the Report to have carefully evaluated the probative quality of the children's testimony implicating Mr Lillie and Miss Reed was "a dishonest sham"; so too the claim to have performed the investigations necessary to eliminate the possibility that the "disclosures" were led.

350. This is said to be demonstrated, in part, by the Team's attempt to explain away, by way of anticipation, anything that might be thought false, incredible or inconsistent in the children's "disclosures". It was said that their statements were likely to be a mix of accurate and distorted information, implanted by the abusers deliberately for the purpose of rendering their accounts incredible. It is pleaded that this explanation was offered without any evidence to support it at all.

351. It is pleaded also that there was no serious attempt on the Team's part to investigate the origin or cogency of the children's "disclosures" in a dispassionate or objective manner; indeed, that there were only two children in respect of whom the Report discloses any evidence of the Team's attempting to analyse the material, namely Child 22 and Child 14. The Team's approach is said to have been fundamentally flawed in respect of both.

352. The next section of the particulars of malice is devoted to the Team's alleged use of distortion and suppression. This, in turn, is broken down into misrepresentations in respect of the ruling of Holland J and its treatment of the disclosures of Child 14. Because these matters are so central to the case, I have considered them in detail elsewhere and do not intend to set out the lengthy particulars at this point of the judgment. There are also passages relating to the Team's treatment of the "disclosures" made by Child 22.

353. Finally, there are shorter sections dealing with the treatment of "disclosures" by other children generally, the Team's finding of abuse at other establishments, without apparently any evidence at all, and their use of unsubstantiated hearsay and smear.

6) What is the correct approach to justification?

354. Child abuse is sadly a common issue in the courts nowadays. Normally, however, it arises in the context of family work or in the course of criminal trials. In those courts the correct approach to matters such as admissibility and the standard of proof has been worked out in the light of experience. These High Court proceedings do not fall into either of those categories. It is thus necessary to consider such questions in the different context of civil defamation proceedings, recognising that

whether either of the Claimants was in fact guilty of child abuse is a crucial issue in the case. Analogies with other types of proceedings may be helpful but cannot be pressed too far.

355. So far as admissibility is concerned, I ruled in the first week of the trial that hearsay evidence from the young children in question would be admissible in accordance with the order made by the Lord Chancellor in 1993: The Children (Admissibility of Hearsay Evidence) Order 1993. In the light of that ruling, there is no need to conduct an enquiry into the competence of any individual child, which would otherwise have to be addressed in accordance with s.5 of the Civil Evidence Act 1995. Obviously, however, I recognise that issues relevant to competence would be germane, in any event, to the weight and credibility to be attached to any such evidence.

356. As to standard of proof, the law seems to be clear in the light of cases such as *Hornal v. Neuberger Products* [1957] 1 Q.B. 247 and, more recently, *Re H and Others (Minors) (Child Sexual Abuse: Standard of Proof)* [1996] A.C. 563. What has to be applied is the civil standard of proof as traditionally understood. In *Re H and Others* (cited above) Lord Nicholls (with whom Lords Goff and Mustill expressed agreement) approved the approach of the Court of Appeal in *H v. H (Minors) (Child Abuse:Evidence)* [1990] Fam. 86, 94, 100, *Re M (A Minor) (Appeal) (No.2)* [1994] 1 F.L.R. 59, 67 and *Re W (Minors) (Sexual Abuse: Standard of Proof)* [1994] 1 F.L.R. 419, 424. It was also made clear that contrary observations in *Re G (A Minor) (Child Abuse: Standard of Proof)* [1987] 1 W.L.R. 1461, 1466 and *Re W (Minors) (Sexual Abuse: Standard of Proof)* [1994] 1 F.L.R. 419, 429 did not accurately state the law.

357. For the Chronicle, Miss Sharp argued that the proposition of which I have to be satisfied, on the balance of probabilities, is that in each case the relevant Claimant was guilty of child abuse. She submitted that it is not necessary to reach a separate determination in respect of each child pleaded (as a jury would be obliged to do in a criminal case on each count). She was arguing that I need only determine that one child has been abused (in the case of each Claimant) in order to decide that the allegations of sexual abuse were "substantially true". She may be right, as a matter of logic, but it seems to me that it would be highly unsatisfactory to leave any of the allegations hanging in the air and undetermined.

358. In any event, Miss Sharp argued that once abuse has been found in the case of one child, it becomes easier for the Defendants to establish it in relation to another. She referred in this context to the words of Lord Nicholls in *Re H and Others* (cited above) at page 586:

> "The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. 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 event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A step-father is usually less likely to have repeatedly raped and had non-consensual oral sex with his under-age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.
>
> Although the result is much the same, this does not mean that where a serious allegation is in issue, the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, an event occurred. The more probable the

> event, the stronger the evidence that it did occur before, on the balance of probability, its occurrence will be established. Ungoed–Thomas J expressed this neatly in *Re Dellow's Will Trusts, Lloyd's Bank v. Institute of Cancer Research* [1964] 1 W.L.R. 451, 455: 'The more serious the allegation, the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it'."

359. In the light of *Hornal v. Neuberger Products* (cited above) and other cases, Professor Cross has commented (see now Cross and Tapper on Evidence, 9th Edition, at p.152):

> "When the commission of a crime is alleged in civil proceedings, the stigma attaching to an affirmative finding might be thought to justify the imposition of a strict standard of proof; but the person against whom criminal conduct is alleged is adequately protected by the consideration that the antecedent improbability of his guilt is 'a part of a whole range of circumstances which have to be weighed in the scale when deciding as to the balance of probabilities'."

The words in quotation marks were cited from the judgment of Morris L.J. in *Hornal* (at p.266).

360. I saw the force of Miss Sharp's submissions, but it is necessary to remember that the logic of her case would require me to make the finding of abuse in respect of at least one child (for each Claimant) before the hurdle is lowered in the way contemplated by Lord Nicholls. I must, therefore, *start* with the usual presumption of innocence (which applies in defamation as it does in crime). I must consider each of the children and the evidence that is specific to him or her. Because of the gravity of the allegations, I should look for cogent evidence to overcome that presumption.

361. I propose to avoid what Miss Page characterises as the "no smoke without fire" approach. This is perhaps best summarised in the Review Team's pleaded response to a request for further information:

> "It is the Defendants' case that it is necessary to look at the totality of the statements and disclosures of all the children referred to in the particulars of justification and that, looking at those statements and disclosures as a whole, there is overwhelming evidence that Chris and Dawn abused the children in their care".

362. The argument was similarly expressed in the opening submissions of Mr Bishop on their behalf:

> "In the vast majority of cases the evidence relating to that child alone is sufficient to establish that the Claimants did sexually abuse the child, although if in any individual case there is any lingering doubt it is dispelled by looking at the picture as a whole. However, there are a few cases where the evidence specifically relating to a particular child would probably by itself not be sufficient for the court to conclude that the Claimants had abused him or her. Again in those cases it is necessary to look at the totality of the evidence to decide whether abuse probably occurred."

363. I reject any analysis to the effect that, abuse having been alleged in so many instances, it must be a true bill in all or even some cases. Not only is that an inherently sloppy approach to any serious allegation, but it ignores an essential part of the Claimants' case in this litigation; namely, that there has been a "feeding frenzy" leading to a grave risk of cross-fertilisation between the accounts given. Such an approach would in my judgment have obvious dangers. At one level, that which may legitimately be prayed in aid as corroboration is elevated into a substitute for primary evidence. In relation to each

child, there must be admissible and credible evidence before one looks elsewhere for corroboration. At its worst, such a reasoning process leads to manifestly flawed conclusions, such as that reached by the Review Team with regard to Child 9. So confident were they that abuse had taken place, that they were prepared to infer it even in relation to a child who had probably left the nursery before the Claimants arrived on the scene. On the other hand, if in relation to any given child there is credible evidence against a Claimant of abuse, then I believe I can look for corroboration of it (for example, of a particular *modus operandi*) to any comparably credible evidence relating to others.

364. The "no smoke without fire" approach is to be distinguished from the "jigsaw" process, for which the Defendants also contend. It is possible to speak of fitting together the pieces of "a jigsaw" when seeking to determine whether abuse has taken place *with regard to one child*. It may be possible, for example, to piece together a credible case of child abuse from "disclosures" (i.e. statements from the child in question), observations by others (including from other children), medical examination or laboratory findings, and from observation of the alleged victim (e.g. disturbed or sexualised behaviour). That is clearly a legitimate approach for establishing child abuse, especially in very young children. I wish to make clear, however, that I do not intend to adopt a "jigsaw" approach to the evidence *as a whole* - by amalgamating a suspicious finding about one child with something comparable from another, and then concluding that abuse must have taken place in relation to "somebody".

365. It is perhaps relevant to bear in mind the words of Lord Hewart C.J. in *Bailey* [1924] 2 K.B. 300, 305:

> "The risk, the danger, the logical fallacy is indeed quite manifest to those who are in the habit of thinking about such matters. It is so easy to derive from a series of unsatisfactory accusations, if there are enough of them, an accusation which at least appears satisfactory. It is so easy to collect from a mass of ingredients, not one of which is sufficient, a totality which will appear to contain what is missing. That of course is only another way of saying that when a person is dealing with a considerable mass of facts, in particular if those facts are of such a nature as to invite reprobation, nothing is easier than confusion of mind; and, therefore, if such charges are to be brought in a mass, it becomes essential that the method upon which guilt is to be ascertained should be stated with punctilious exactness".

366. I propose to treat myself, therefore, as having been given a similar direction to that which a jury would receive when faced with an indictment containing many counts. I do not propose to regard the allegations of child abuse in this case, formulated as particulars of justification, as being a "job lot". I intend to proceed on the basis that each has to be considered separately, but without prejudice to the possibility of the evidence in one child's case serving to corroborate credible evidence in relation to another. My approach is thus to be contrasted with that claimed by the Review Team, who said that "…whilst we cannot form an opinion about the veracity of each individual disclosure we are impressed by the compelling nature of the core factors in these disclosures".

367. It is necessary, however, for me to bear in mind the Claimants' submissions in the context of the problems thrown up by *R v. Ananthanarayanan* [1994] 1 W.L.R. 788 and in *Hoch v. The Queen* (1988) 165 C.L.R. 292, Federal Court of Australia. I must focus upon the essential principle. Evidence about what A has done to B may be admissible and probative of what A has done to C. The value of such evidence, however, depends upon its independence. If there is a significant risk of contamination undermining that independence, the relevance and value may be correspondingly diminished. It is necessary to be wary in cases where a risk of contamination arises (which is real, as opposed to fanciful) because of the investigation process itself.

368. For example, where a social services department investigates allegations of sexual abuse, whether from the recent or distant past, its inquiries may prompt complainants who would not have come forward of

their own accord. It was made clear in *Ananthanarayanan* that a jury may well need to be given a specific direction in such cases to meet the problem. It would not suffice merely to direct the jury that they need to be sure that there has been no conspiracy to give false evidence; they would need to be sure also that there had been no influence from hearing of the allegations made by other people or by suggestions from some other person. In this case, the Claimants contend that there was a substantial risk of contamination throughout the investigation. Indeed, the Review Team were expressly warned by Constable Helen Foster of the specific risks in this case. Miss Page submits that it was pervasive.

369. She did not submit that this rendered the evidence inadmissible but asks me to bear it very much in mind wherever it may be suggested that the evidence of one child or parent should be treated as corroborative of another's. Here there are various "pervasive" problems. There was a risk of contamination through social services asking questions or suggesting that questions be asked; through parents speaking to children or to other parents; through children speaking to other children; through police or social services interviewers suggesting concepts or events to children; through Dr San Lazaro suggesting that questions be asked, or passing on between parents or children negative messages about the Claimants, or about behaviours or phobias to watch out for.

370. It is also important to remember that if a witness's evidence is incredible it should be rejected. It cannot be given credibility through corroboration: see the remarks of Lord Hailsham in *Kilbourne* [1975] AC 746. The principle is one of common sense and therefore just as significant in the context of civil litigation.

371. Thus, if I am doubtful about an allegation in relation to Child X, because of a risk of contamination or for any other reason, I should assess it on its own merits. If I find Child X's evidence persuasive, then I can take into account corroborative evidence from Child Y provided I keep a sharp lookout for risks of contamination of the kinds I have identified.

372. Miss Page submits that all these considerations underline the need for me to approach each allegation of abuse independently in the first instance and to reject the "overall picture" approach.

373. It is helpful to have regard to some of the family law cases with regard to the court's approach to finding child abuse proved.

374. As so often, an important element in the evidence relied upon in this case (by both sides) consisted of taped interviews carried out with some of the children in 1993 or 1994. I was invited to view some 24 hours of video material. On this aspect of the evidence, therefore, I should take into account the decision of the Court of Appeal (Neill and Ward L.JJ.) in *Re N (A Minor) (Sexual Abuse: Video Evidence)* [1997] 1 W.L.R. 153. There guidance was given on the approach to be taken by courts generally towards video recordings of such interviews. Despite the unusual nature of such evidence, it is nonetheless for the judge to decide its weight and credibility. Thus, although expert evidence may be admitted to explain and interpret what the child has said, and is often helpful, it follows that usually evidence of an expert's belief in the truth of the child's account will be inadmissible. It is obvious that there are special factors in such cases, but the exercise of determining credibility is essentially the same as in any other instance of comparing conflicting evidence. In this particular situation, of course, careful attention has to be given to the whole of the circumstances including, for example, how the evidence came to be elicited. It is clearly relevant for the court to take into account such matters as whether the accusations came in response to leading questions, or in the context of a regime of promises and rewards.

375. In *Re N* Ward L.J. expressed agreement with a passage in the judgment of Wall J in *Re and B (Minors) (No.1) (Investigation of Alleged Abuse)* [1995] 3 F.C.R. 389,409:

> "From a forensic view point para. 12.35 of the [Report of the Inquiry into Child Abuse in Cleveland (1987) (Cm 412) – the unsuitability of having a parent present at an interview] remains a correct statement of the proper practice, particularly in a case where the only evidence of abuse up to the date of the first interview was what the mother has said the child has said to her. Quite apart from any pressure which the mother's presence may place on the child, the golden rule is that each interview is to be approached with an open mind: such a rule is in my view immediately broken if the mother is present at the interview".

376. Attention was also drawn to the words of Morritt L.J. In *Re F.S. (Minors) (Care Proceedings)* [1996] 1 F.C.R. 667, 676-677:

> "The use of child psychiatrists is obviously of the greatest assistance to the court in many cases. In some instances that will extend to pointing out features of the child's evidence which tend either to support or undermine its credibility. But it is usurping the function of the judge to give an opinion directly on whether the man did that of which he is accused. In this case three of the experts stated their respective beliefs that the father had sexually abused N in the way of which she complained, not because of the results of medical examination, but because they believed what she said in the video interview. Not only was such evidence inadmissible, it was capable of being highly prejudicial. …Though judges are often required to put out of their mind inadmissible and prejudicial matters they are entitled to expect the parties and their representatives to use care to see that they are not faced with it in the first place. Moreover, not only may the wrongful admission of such evidence cause problems for the judge, it is also susceptible to giving the accused person the impression that he is being tried by the experts and not the judge".

377. It is now recognised that particular attention has to be paid in the consideration of video evidence to the recommendations of Dame Elizabeth Butler-Sloss in the Report of the Inquiry into Child Abuse in Cleveland (1987). At para. 12.34, it is to be noted that unanimity was recorded among the experts who had given evidence to the inquiry in relation to a number of matters. Those were endorsed by the inquiry team:

i) The undesirability of calling them 'disclosure' interviews, which preludes the notion that sexual abuse might not have occurred.

ii) All interviews should be undertaken only by those with some training, experience and aptitude for talking with children.

iii) The need to approach each interview with an open mind.

iv) The style of the interview should be open-ended questions to support and encourage the child in free recall.

v) There should be where possible only one and not more than two interviews for the purpose of evaluation, and the interviews should not be too long.

vi) The interview should go at the pace of the child and not of the adult.

vii) The setting for the interview must be suitable and sympathetic.

viii) It must be accepted that at the end of the interview the child may have given no information to support the suspicion of sexual abuse and the position will remain unclear.

ix) There must be careful recording of the interview and what the child says, whether or not there is a video recording.

x) It must be recognised that the use of facilitative techniques may create difficulties in subsequent court proceedings.

xi) The great importance of adequate training for all those engaged in this work.

xii) In certain circumstances it may be appropriate to use the special skills of a 'facilitated' interview. That type of interview should be treated as a second stage. The interviewer must be conscious of the limitations and strengths of the techniques employed. In such cases the interview should only be conducted by those with special skills and specific training.

378. In the Cleveland Report it was also emphasised that a careful distinction should be drawn between diagnosis or evaluation, on the one hand, and therapy on the other. As was pointed out by one of the experts, "The attempt to encourage disclosures while providing therapeutic treatment is fraught with difficulty". He was opposed to the notion of treatment and 'disclosure' proceeding in parallel. Another of the Cleveland experts, Dr Underwager, underlined the importance of distinguishing the treatment and investigation of abuse, "one of which was in conflict with the other".

379. In the context of the Cleveland guidelines, my attention was drawn also to the decision of Wall J on 11 November 1993 in *B v. B (Child Abuse: Contact)* [1994] 2 F.L.R. 713 where he highlighted flagrant breaches of the guidelines in the interviews in the case before him. He drew attention to what apparently was at that time an unfortunate tendency amongst those investigating child abuse to concentrate all their efforts on extracting information from the child. He made the following observations:

> "The need for investigators of child sexual abuse to keep an open mind cannot be overstressed. Child sexual abuse is a highly emotive subject. Its investigation requires great skill and sensitivity. Interviewing children is a highly specialised skill which should only be undertaken by those who have been properly trained. Even then the trained interviewer must constantly bear in mind and put into effect the Cleveland guide-lines and now the Memorandum of Good Practice.
>
> Where the interviewer approaches the case with the belief that abuse has occurred it is dangerously easy for the interviews with the child, as happened here, to degenerate into a cross-examination of the child in which the interviewer puts, in leading form, and in an increasingly pressurised way, what he or she believes has happened. It cannot be said too often that such an approach is wholly unacceptable. It not only renders the interview valueless as evidence but is abusive of the child, particularly where, as here, I find that the child has not been abused in the manner which emerged particularly in the final interview.
>
> Let nobody be in doubt that the courts are in the forefront of those who believe that child sexual abuse is a major social evil. At the same time, a

> false allegation of abuse is equally damaging to family life. My criticisms of the incompetent investigation are twofold. First, it is a further abuse perpetrated in the name of child protection on a child who may or may not have already suffered the evil of abuse. Secondly, by muddying the waters it frequently renders impossible the task of the court in deciding whether or not there has been abuse. Thus it may not be possible to make a finding against an alleged perpetrator who is in truth guilty".

380. As late as March 1999, Sir Stephen Brown P was commenting on a serious disregard of the requirements of the Cleveland guidelines in *Re M (Sexual Abuse Allegations: Interviewing Techniques)* [1999] 2 F.L.R. 92. His Lordship referred to the fact that leading questions were frequently being asked, combined with a good deal of coaxing. He noted also the "different approach by those who are seeking to 'treat' children and those who are seeking to elicit evidence which will be appropriate for legal proceedings". He again emphasised that the opinion of an expert is not sufficient, however eminent; nor that of a therapist, however experienced. He continued;

> "The charge of sexual abuse is a grave one and has serious implications. The law requires that whoever makes an allegation must prove it. It is not an idle or artificial burden".

7) The expert evidence relevant to child abuse

Introduction

381. One of the factors I have noticed with regard to the experts in this case is that there are few surprises, in the sense that each expert's view on any given issue was fairly predictable. They tended to be divided along "party lines". That is not, of course, in any way to reflect on the integrity or objectivity of any individual, because in this field there are quite different viewpoints on the significance of relevant data. If an expert starts from one set of assumptions, the conclusion will almost inevitably differ from another person who operates on different assumptions. In this case, it was not difficult to see where each expert was "coming from". It is thus important to focus on the differing "philosophies" about child abuse as much as upon the differing opinions or conclusions about any given child.

382. The expert material adduced was grouped into the following categories:

i) Paediatric evidence relating to physical findings.

ii) Psychological evidence relating to statements or "disclosures" by children.

iii) Evidence about the potential significance of child "behaviours" as possible indicators of sexual abuse.

Dr Jane Watkeys and Dr Kathryn Ward: The paediatric evidence

383. The paediatric evidence was from Dr Jane Watkeys, called on behalf of the Claimants, and Dr Kathryn Ward on behalf of the Defendants. Both are very experienced. Dr Ward is currently Consultant Paediatrician at Airedale General Hospital and has a special interest in child protection. Dr Watkeys is

Consultant Community Paediatrician with Camden and Islington NHS Community Trust and is its "named doctor for child protection".

384. The difference of approach between the two professionals is perhaps illustrated by reference to their general comments in the reports. Dr Watkeys observed (in paragraphs 5 and 7 of her overall summary) that the cohort of children in this case contained "…a surprising number of children in whom abnormal physical findings have been reported". She adds that most of the girls have been reported as having abnormal findings. She finds this unusual for the relevant age group "…*even assuming abuse had taken place*" (emphasis added). She commented that it was surprising to find so many children with abnormal findings attributed to them, bearing in mind the fact that the majority of children who have been abused usually yield none. She confirmed this in evidence on 24 May and highlighted the fact that Dr San Lazaro appears to have found physical signs pointing to abuse in no less than 56.6 per cent of the girls examined (17 out of 30).

385. Moreover, Dr Watkeys would have expected more parents/carers to have noted bleeding, given the number of girls apparently displaying evidence of tears and scarring. She believed, significantly, that Dr San Lazaro had displayed inconsistencies in her descriptions at various stages and exaggerated, or over-interpreted, the findings. She was clearly right, although the true scale of this only emerged when Dr San Lazaro came to be cross-examined. Nevertheless, despite her reservations, she recognises from the reported findings that some children did appear to have diagnostic features of sexual abuse.

386. She points out, however, that the medical findings cannot establish by themselves when or by whom the abuse occurred. She drew attention to the fact that the one child who did have a history of bleeding from the genital area, which she found "concerning", presented with genital bleeding much later (and in circumstances in which abuse was not apparently suspected). She was referring to Child 23.

387. Dr Ward, on the other hand, went so far as to conclude that there was "…significant evidence that children who had attended Shieldfield Nursery were the subject of abuse by Christopher Lillie and Dawn Reed". While recognising the primary role of the forensic paediatrician as being the assessment of physical signs and symptoms, she regards it as essential to take into account the "global presentation of the child" and, most importantly, to listen to the child. She reminded me of a principle identified in *Physical Signs of Sexual Abuse in Children*, 2nd Edition: "The single, most important feature in the diagnosis of abuse is a clear statement by the child". She recognised the concern that very few physical signs are diagnostic of abuse and that, accordingly, if one limits investigation to such findings many abused children will "slip through the net".

388. I know that the "jigsaw", global or holistic approach is very much in line with current thinking, but what has emerged from this case is that there are inherent drawbacks. First, it is asking a great deal of any paediatrician, however dedicated or experienced, to be a psychologist, a detective, and a social worker as well as struggling to identify the significance of genital findings (especially in the elusive anatomy of the infant hymen). It is necessary for a judge placed in my position to recognise that no one expert can embrace all these disciplines. I must, of course, acknowledge that on physical signs great weight must be accorded to the opinion of the physicians. Nonetheless, when it comes to notches, nodules and disruptions there is enormous scope for difference even over the appropriate terminology. In listening to Dr Ward and Dr Watkeys, I sometimes had the impression that it was a case of "your guess is as good as mine".

389. Indeed, it is the very intractability of infant genitalia that leads to the fear that abused children may (as Dr Ward put it) "slip through the net". That is all very well, but when a paediatrician moves off that territory and starts to interpret the "surrounding circumstances", it is vital always to focus on the boundaries of the particular witness's true expertise. When it becomes necessary, in order to interpret a particular physical finding, to take into account what a mother says, or what the mother says the child has said, the judge may be in as good a position to weigh that evidence as the paediatrician – especially

where the judge has heard the mother in person or seen the child on video, and the paediatrician has not.

390. The experts in this case were inevitably dependent on the information they were provided with by the instructing solicitors. So far as physical signs and children's behaviours were concerned, it is necessary for me to bear in mind not only the second or third hand nature of their basic raw materials but also the scope for interpretative overlay. Also, Miss Page invites me to bear in mind the Review Team's ambivalent approach to the Nursery Day Book from Shieldfield.

391. Information from these is relied upon by the Defendants for the purpose of establishing behavioural symptoms. On the other hand, they are often in other contexts disparaged as inaccurate or incomplete. As the Review Team told the parents of Child 28, "….as we have found that much of the information was recorded inaccurately, we would not expect that the Day Books gave us a realistic insight into the Child's behaviour". Yet, as Miss Page points out, these very Day Books form a significant part of the materials upon which the experts were supposed to pronounce in respect of behavioural indicators.

392. A loud warning about the holistic approach is to be found in this case in the evidence of Dr San Lazaro herself. On 16 May she was attempting to explain why she had deliberately overstated and exaggerated her findings when reporting to the Criminal Injuries Compensation Board:

> "The problem about sexual abuse and the issue of compensation is that physical findings alone – the absence or presence of physical findings are of no consequence. The largest consequence for sexually abused children is the emotional and traumatic effect upon them, upon their families, upon their future and on their children. So in essence the damages have very little to do with a tear in the hymen or a tag of the anus. It is to do with the emotional aftermath and the long term effects. I think that I am qualified to talk about those things and I still do them".

393. The truth is that, where physical findings were negative or equivocal, Dr San Lazaro was prepared to make up the deficiencies by throwing objectivity and scientific rigour to the winds in a highly emotional misrepresentation of the facts (as, for example, in her so-called "generic report" for the Criminal Injuries Compensation Board or in her cranky letter about Child 1: see below). The problem is that her emotive misrepresentations carried with some readers the authority of a senior medical practitioner.

394. Mercifully, I can assume that Dr San Lazaro is very much the exception among senior paediatricians. But it is necessary to recognise the dangers of the holistic approach which make it so important to have colposcopy and the ready availability of peer review. Dr San Lazaro told me that she slipped into the role of advocate because she was so affected herself by the children's trauma (real or perceived). Although she rejected Miss Page's suggestion that she had a "morbid" obsession, she did accept in re-examination that she had a real "dread" of child abuse. I am sure she is not alone in this. I must remember the stress and the pressures to which paediatricians are sometimes subject in these circumstances when dealing with parents. The more routine use of colposcopy and peer support may help to reduce the risk of professionals going off the rails, as she undoubtedly did. But I do believe that the nature of the problem needs to be spelt out.

395. First, where physicians are advising on broader matters outside their immediate expertise, whether in court proceedings or otherwise, it is essential to make clear when they are doing this, so that readers are not unduly influenced by the professional status of the witness in areas where it is of less significance. The classic example is where a conclusion as to abuse is based not upon physical findings but upon hearsay or partial information which the doctor is in no better position to assess than anyone else.

396. Secondly, in an area where there is so much room for subjective interpretation based on "experience", it is important to be sure that external factors are not allowed to convert a neutral or non-specific finding into an indicative or diagnostic finding of abuse. The two types of information should be kept quite separate. It is one thing to say of a child there are no physical findings but that her sexualised behaviour strongly suggests trauma. It is quite another to elevate neutral notches or nodules into a physical indicator purely because of the behavioural signs. Unhappily, in this case there are some examples of Dr San Lazaro ratcheting up the physical findings as she went along.

397. Dr Watkeys explained how she thought child abuse should be diagnosed. She and Dr Ward both recognise the importance of the holistic approach, but Dr Watkeys regards it as necessarily an inter-disciplinary exercise involving all relevant "agencies". Despite her own great experience of examining and interviewing children, she would be reluctant to pronounce on matters falling outside her paediatric expertise; in particular, behavioural or psychological issues. By contrast, Dr San Lazaro's approach seems to have been to take it upon herself to carry out a holistic diagnosis without making clear to what extent she was applying judgments extraneous to whatever skills she possesses as a paediatrician.

398. Since the physical appearance of normality is often to be found in cases where abuse *has* occurred, it is important in Dr Ward's view to document carefully even minor ano-genital signs as well as negative findings (as did Dr San Lazaro). Much turns upon interpretation of physical findings, which will often depend in part upon the professional skill and experience of the paediatrician. As I have said, it may also have much to do with the wider context of how the child is behaving, what he or she is saying, and the circumstances to which that child has been exposed.

399. It is important for me also to bear in mind that much attention has been given over the last 15 years or so to the scope and extent of "normal" genital anatomy. As Dr Watkeys explained, in girls there is recognised nowadays a wide range of attributes within the definition of "normal" including the presence of nodules, notches, hymenal bands and adhesions.

400. It is thus obvious, but important, that there are pitfalls to be carefully negotiated in all elements of the "global presentation" of a child. Quite apart from the uncertainties of physical findings, there is also the need to be wary of statements or "disclosures", in order to ensure that they have not been tainted in the ways contemplated by the Cleveland guidelines and the Memorandum of Good Practice. Even if, as some clearly think, the Memorandum is not tailored to the requirements of very young children (say under-fives), one cannot simply ignore the possibility of tainting. In those age groups, suggestibility is at least as important a factor as in any other.

Professor Maggie Bruck and Professor William Friedrich: The "disclosures"

401. That brings me to a general consideration of the expert evidence directed towards that very subject. Not surprisingly, in the circumstances of this case, the Claimants have placed reliance upon Professor Maggie Bruck, whose research work and publications with Stephen Ceci have attracted so much attention in recent years.

402. The "disclosure" evidence for the Claimants came from Professor Maggie Bruck and that for the Defendants from Professor William Friedrich. This is a subject which is being investigated in various parts of the world, as a matter of on-going research, and has given rise to a good deal of controversy. There is plenty of room for divergence as to the correct interpretation of the data so far available, and there seems to be no doubt that there are strongly held views among the differing experts. A mere lawyer has to approach such matters with care, conscious that nothing is certain, and to pay close regard to the evidence in the specific case or cases, without being drawn into taking sides on the more general debate.

403. An important proposition based on Professor Bruck's influential research, in recent years, is that when young children are interviewed by an adult about some question of fact, by no means confined to sexual abuse, their accounts may come quickly to conform to the suggestions or beliefs of the interviewer. Moreover, when the inquiry is extended to issues going beyond matters of fact, such as interpretation or value judgments, a child's responses will often come to conform similarly with the interviewer's point of view. It is impossible, of course, to do justice to that research when summarising for the purposes of this judgment. Nonetheless, it is fair to say that a central thesis is that, if interviewers believe that all the children they are interviewing have experienced a certain event, then it is probable that many of the children will come to make such claims even if they did not.

404. A separate but related thesis thrown up by the research of Bruck and others is that biased interviewers will inaccurately report or interpret what children have actually said, thus bringing their testimony into compliance with their own hypothesis. Indeed, Part IV of Maggie Bruck's report for the present litigation was concerned with adult memory and its vulnerability in such circumstances. Objection was taken to this passage, on the basis that expert evidence was to be confined to the children rather than adults. Therefore I should not take Professor Bruck's findings into account in assessing the statements of adults, such as social workers, police officers, parents or carers. I had pre-read the Report over the Christmas vacation and the objection was formulated afterwards, but I think that the objection is well founded and I must therefore do my best to apply my own judgment to the adult evidence without reference to Professor Bruck.

405. She made a number of general observations about the children's "disclosures" in the present case, as well as addressing the children individually by reference to what they are recorded as having said. I shall summarise her views shortly. I should say, however, that what I derive from the expert evidence generally (and indeed from the Cleveland Report, the Memorandum of Good Practice and the recent judicial pronouncements on the subject) may be shortly and simply stated:

(1) Young children are suggestible.

(2) Great care is required in analysing and assessing the weight to be given to statements from young children.

(3) It is important to take into account the context of any such statement and how it was elicited (for example, whether any pressures, rewards or leading questions were used).

(4) It is necessary to focus also on the wider circumstances of the child's life in the period leading up to any such "disclosure" that might explain or colour what the child is saying.

(5) It is vital to take into account delay between any event recounted and the statement itself.

(6) One should take into account carefully any bias or pre-conceived ideas in the mind of an interviewer.

(7) It is desirable to have in mind throughout any scope for contamination by statements from others, whether children or adults.

(8) Similarities between what one child is saying and the statements of another may be two-edged, in the sense that they might tend to corroborate one another's accuracy or merely reflect a common source.

(9) One should be wary of interpreting childish references to behaviour, or parts of the body, through the distorting gauze of adult learning or reading (e.g. with regard to matters of oral or anal sex).

406. I note that the Review Team's own expert Professor Bull told them that "… the way in which a child is interviewed/questioned will have a profound effect on the accuracy of a child's testimony, especially if the child is very young and the event(s) in question are in the distant past…".

407. The general thrust of the research carried out in recent years by Professor Bruck and her colleagues is well known. Indeed, as Ms Judith Jones herself volunteered in the course of evidence, anyone nowadays looking into allegations of child abuse would be "mad" not to take it into account. It is, of course, elementary that one should put to one side any notion that an unwillingness to place reliance on a child's evidence of sexual abuse necessarily imputes bad faith to the child, its parents or any other adult interrogator. What the research has thrown into stark relief is quite simply that very young children do not appear to have the same clear boundary between fact and fantasy as that which most adults have learnt to draw.

408. At the risk of over-simplification, it is possible to highlight some of the propositions thrown up by the research that need to be addressed. (The research is still at a relatively early stage, of course, and in due course these may prove to have greater or less significance than is now attached to them.) It is important, first, to recognise that, although such obvious factors as leading questions, repetition, pressure, threats, rewards and negative stereotyping can fundamentally undermine the evidential worth of a child's account, it may well be that a child will tailor his or her account in response to more subtle and less easily detected influences. In particular, there is (or may be) a tendency to say what the child perceives the questioner would like to hear. Moreover, it may not be as easy to spot that a child is adopting such an approach, as it would be to identify a leading question. What had, I believe, not been generally appreciated prior to the recent research was that children do not merely parrot what has been suggested to them but will embellish or overlay a particular general theme with apparently convincing detail. This can be very difficult to detect, even for those who are experienced in dealing with children.

409. Turning to the interviews in the present case, Professor Bruck drew attention to the general point that any statement by a child about any adult, other than Mr Lillie or Miss Reed, as being either present or involved, tended to be disregarded by police or social workers. Where such adults were eliminated from suspicion, for example because a denial was accepted, the child's evidence was nonetheless taken to be sufficiently reliable for condemning one or the other of the Claimants. Indeed, she added (in the case of four children) that statements positively exculpatory of Dawn Reed were ignored.

410. In some cases, Professor Bruck thought it possible that repeated questioning led children to learn the notion of sexual touching, where there had been an initial inability or unwillingness to indicate any such thing. She also referred to instances of silence or denial where the Review Team hypothesised fear or lack of vocabulary as possible explanations – without apparently addressing the third possibility (i.e. that abuse did not occur).

411. In her view, children from Shieldfield were interviewed "until they could stand it no longer". Their distress or frustration was then interpreted not as due to the interviewers' pressure but rather to the child's resistance to telling the truth.

412. She also had comments to make on the approach to behavioural symptoms, although her primary focus was upon oral disclosure. There is clearly an overlap between the two concepts, although the parties to a greater or lesser extent tended to draw a rigid distinction between them. Professor Bruck's point was that it is a fallacy to presume that there is a common constellation of symptoms that are diagnostic of sexual abuse. Indeed, the majority of sexually abused children are asymptomatic. Where children are displaying unusual behavioural traits, before attributing them to sexual abuse one needs carefully to examine other possible causes. In this case, many of the relevant children were reported as suffering such symptoms as anxiety, enuresis, night terrors and apparently sexualised behaviour. Yet these are not uncommon in children of certain age groups and, sometimes, may be associated with other circumstances. Professor Bruck referred to the work of Kendall-Tackett, Williams and Finkelhor, 1993, *Psychological Bulletin*, 113, 164-80.

413. She highlighted in this context also the tendency for some parents/carers to change their accounts of behavioural symptoms with the passage of time, and as they became more convinced (for whatever reasons) that their children had been abused.

414. Professor Bruck also emphasised that initial disclosures were made to parents/carers who, in turn, provided their own memories of what they were told after considerable periods of delay. There are thus obvious questions as to:

i) how spontaneous the disclosures were in the first place;

ii) whether the disclosures were in response to questions and, if so, how many;

iii) whether the accounts were derived from information coming untainted from the child or from suggestions put by the parent;

iv) how accurately the parent recalled the child's statement.

415. In the light of such considerations, Professor Bruck suggests that the most reliable evidence of disclosures would be found in the video recordings. This would also help to determine how much prompting, if any, was required to elicit them. Unfortunately, in the present case the interviews were largely unsatisfactory. Those she was asked to review contained so many suggestive interviewing techniques that they were "chaotic". Not surprisingly, she referred to the literature which demonstrates that the number of false allegations is liable to increase as the interviews become more suggestive. One reason for this is that the bias of the interviewer becomes correspondingly clearer.

416. Professor Bruck's overall conclusions (at page 132 of her report) were as follows:

> "I have reviewed hundreds of interviews with children suspected of abuse; the quality of these interviews has ranged from excellent to very poor. The interviews that I examined in the present case are among the worst that I have ever encountered. In this case, extremely young and bewildered children were brought in and interrogated (sometimes for over an hour) by one, by two and even by three interviewers. These interviewers used the full array of suggestive techniques to elicit allegations of abuse. When the children denied that they had been abused, they were bombarded with more suggestions, they were scolded, they were threatened and they were bribed. And when some children whimpered, moaned or begged the interviewers to end the questioning, the interviewers continued. In sum, the interviews were abusive and the children were victims of the interviewers. There were

> three aspects of these data that are incontrovertible: (1) these video-taped interviews provide the only opportunity for us to hear the children's own words; (2) the children did not initially make statements that were indicative of abuse; (3) when they did make statements these were preceded by extremely suggestive techniques that render all subsequent statements unreliable".

417. Professor Bruck gave evidence from 10-12 April. She was a careful, moderate witness. She was always ready to acknowledge the limitations of her experience or skill and to recognise that some of her opinions might have to be revised in the light of later knowledge or second thoughts. She was not in the least dogmatic. She seemed to me to be objective and measured in her assessments. She did not claim to have all the answers, and she emphasised the limited value of some of the literature. In particular, she stressed more than once that there is often difficulty, when assessing data, in determining how certain one can be that any particular child or class of children has been abused.

418. Another central plank of her evidence was that it was important to focus on what a child first said and, if a voluntary disclosure had been made, that a video recorded interview should take place very shortly thereafter without encouraging the child to say anything further in the interim. It was undesirable, in her view, that days or weeks should elapse before the child's account was recorded.

419. Professor Bruck did not hold herself out as an expert on child behaviour for the purposes of this trial and had intended to confine her report to the significance of verbal disclosures (and in relation to the limited number of children reviewed). She was nevertheless asked questions about child behaviour in general and some of the behaviour disclosed in the video interviews in particular. She did not attach significance to what the children were doing in the videos, as opposed to what they were saying and, in so far as she thought that the interview techniques were deeply flawed (as she clearly did), she saw no reason to think that behaviour should be regarded as somehow immune from the same tainting process as that affecting the statements.

420. I found her approach illuminating and in no way undermined in cross-examination. In particular, I did not find her prone to overstatement or exaggeration. Quite the opposite. She seemed keen to be as accurate as she possibly could while recognising the limitations of scientific studies into very young children. It is true that she had an informal, almost casual style. She tended to smile and laugh a good deal – certainly more than the average expert witness. But I did not construe this as in any way undermining the rigour of her analysis or the seriousness with which she approached her task.

421. In closing, Mr Bishop described Professor Bruck's performance as "just lamentable". This took me by surprise. It is almost as if he and I were watching different witnesses. All I can do is record my own impression.

422. Dr Friedrich approached the case from a different angle and his original overall conclusion was as follows:

> "It is my clinical impression, based on the view of the documents and video tapes provided to me, in combination with my experience in the evaluation and interviewing of very young children, that the majority of the evidence points to sexual abuse of these 28 children. I believe that the abuse onset can be tied to their entry into the Shieldfield Nursery and the weight of the evidence indicates that the perpetrators were Lillie and Reed".

423. There was, however a new development at a relatively late stage. On 10 April, I was handed a short supplementary report from Dr Friedrich which contained the following introductory paragraph:

> "The actual interview process as well as the verbal output from the interviews of the Shieldfield children can be criticised for many reasons. For example, parents were present during interviews, leading questions were common, and the rooms were filled with distracting toys. In addition, the children that were interviewed were typically 2-3 years old. Not only are children of this age more likely to comply with suggestions/leading questions by adults, their expressive language was extremely immature, not just in terms of vocabulary, but in understanding the 'rules of conversation,' e.g. the need to respond to questions. They also lacked a grasp of self-representation, the purpose of the interview, and had no mastery of advanced concepts such as number and place. These difficulties are particularly true for the boys given the typical lag in maturation that young male children exhibit relative to same-aged females. In addition, all of the children were expected to converse in an emotionally charged setting about an emotionally charged subject."

424. Not surprisingly, on receiving this Miss Page queried whether it was any longer necessary to call Professor Bruck, since he appeared to be conceding her central thesis. Indeed, in her closing submissions Miss Page submitted that his supplemental report "laid to rest" the Review Team's reliance upon the video interviews (all 24 hours of them). It must follow too, she argued, that any subsequent statements by the children would be at least as unreliable.

425. But Miss Page was unduly optimistic in thinking that Professor Bruck's evidence could be agreed. The emphasis of Dr Friedrich was now placed rather more on behaviour than verbal disclosures and he wished to make reference to his recently developed Evaluation Rating Scale. This is a list of behavioural symptoms said to be indicative, to a greater or lesser extent, of sexual abuse.

426. Like Professor Bruck, Dr Friedrich is a clinical researcher. He has published 14 articles on the topic of child abuse and another 49 articles on that of specifically sexual abuse. He has also written 17 chapters on sexual abuse. He received the Research Career Achievement Award in 1995 from the American Professional Society on Abuse of Children. He is also on the editorial boards of three specialist journals, namely *Child Maltreatment, Journal of Interpersonal Violence,* and *Journal of Child Sexual Abuse.* He has studied the sexual behaviour of over 3,000 non-abused children between the ages of two years and twelve years and of over 1,000 sexually abused children within the same age group. He also developed the Child Sexual Behavior Inventory as a checklist to assist in the evaluation of children where sex abuse is suspected. It has been translated into Dutch, Swedish, Spanish, German, Flemish, Latvian and Italian. His most recent book, *Psychological Evaluation of Sexually Abused Children and Their Families,* 2001, outlines various strategies for assessing such children.

427. Elements of what one might call "refined prejudice" emerge in the section of the Report entitled "Risk Factors", relating to each of the Claimants' backgrounds. I have already referred to his erroneous assessment of Dawn Reed's family background. He also addressed that of Christopher Lillie, highlighting such factors as that he is that relatively rare phenomenon a "male nursery care provider"; his "history of violating the law" (i.e. consisting principally in a conviction for the theft of a bicycle when he was aged 15); his mother's premature death; and the fact that, with the benefit of hindsight, various Shieldfield parents describe him as aloof and as not making good eye contact.

428. These factors do not loom large in my assessment of the grave charges against Mr Lillie, and the fact that Dr Friedrich has highlighted them has not given them added significance. Although he comments that a "thorough assessment must review the alleged perpetrators", any such review would presumably need itself to be thorough in order for it to be of any value.

429. It is interesting that Dr Friedrich has also prayed in aid the relationship of Joyce and Susan Eyeington (i.e. aunt and niece by marriage) as support for an increased "odds ratio" of the children being maltreated. This is what he describes as the "incestuous nature of the nursery staffing". This example of prejudice may be somewhat less "refined", and I am wary of an expert who is prepared to clutch at straws in this way on the basis of incomplete information. His expertise as a clinical psychologist does not assist me to take into account factors of that kind, in so far as they are relevant.

430. One matter that Dr Friedrich emphasised was the need to "rely on more than a child's statement in a forensic setting". In particular, he asserted the validity in young children of physical demonstrations of what has occurred, without verbalisation. He mentioned a small child who demonstrated that she had been anally penetrated by poking a pen into a doll in broadly the right location. The particular case he had in mind was an instance where the perpetrator had confessed. It is probably fair to say, however, that context and background would be equally important in assessing the weight to be attached to such a statement, as in the case of a verbal account.

431. He was clearly conscious of the risks of contamination and expressed a general scepticism about "multi-victim/multi-perpetrator sexual abuse cases", largely because he had experienced allegations of that kind "where their contamination could be observed". A major factor in enabling him to overcome his doubts in the Shieldfield case was that the children disclosed similar matters, which were accompanied by agitated behaviour. It was not to me self-evident that this necessarily weighed against contamination. Be that as it may, other significant factors for Dr Friedrich were to be found in the "evidence" he had pertaining to the Nursery and "the alleged perpetrators". I have already commented on the quality of that. It is merely superficial.

432. Dr Friedrich warns of the difficulty of evaluating verbal disclosures by pre-school children, owing to their immaturity and lack of communication skills. That is, of course, a statement of the obvious. Disclosures by "pre-schoolers" are lacking in detail and, at times, appear "random, bizarre, and unbelievable". Dr Friedrich then moves from that general proposition, in paragraph 13 of his report, to "these children" (i.e. those from Shieldfield). He asserts that it is likely that they "were threatened to give their co-operation and secrecy". That "likelihood" surely only arises, however, if one assumes that they have been abused. At all events, Dr Friedrich believes it important to focus on evidence of distress and behaviour, as much as upon verbal reports, which may often consist of bare denials or fragmentary accounts. "At this very young age, non-verbal reports are as important as verbal reports". Also, he comments that the statements of very young children become more believable when "linked with genuine affect and behaviour".

433. Dr Friedrich then proceeds to address the evidence made available to him in relation to each child. He concludes in each case that abuse is likely to have taken place. Subject to what follows, I shall take into account the factors he lists in due course, when I come to assess the overall picture of the evidence relied upon by way of justification.

434. In the witness box on 12 April Professor Friedrich seemed objective but so cautious as to be non-committal – making such observations as that it was a very complex case and that he was glad that he did not have to decide the facts. When pressed in cross-examination as to his methodology, he spoke very slowly and cautiously, his answers being circumlocutory and difficult to follow. For the most part, they seemed to amount to little more than saying that one had to gather as much information as possible before attempting to make a judgment. He seemed to experience particular difficulty when asked to explain with what degree of probability he was advancing his conclusions of sexual abuse; whether it was uniform in respect of all children or varied from child to child, and the extent to which his conclusions were based on individual cases or global impression. It was all a bit vague:

> "A: That is – you know I do not think anyone told me that the, what the standard of proof that we are using a standard of proof, but the standard of – you know if I asked to provide expert testimony in a criminal trial based on

> this information I would provide that information and I would make that statement and the standard of proof in a criminal trial is beyond a reasonable doubt and I approach this. Yes, I was not informed about the standard of evidence that I had to meet. It was what do you think of this data? What is your conclusion?"

435. Professor Friedrich's cautious approach in the witness box appeared to contrast with some of the bolder statements in his original report. I take the following examples:

> *Paragraph 13* "It is likely that these children were threatened to gain their co-operation and secrecy. In fact 17 out of the 28 children reported threats to either self or others. Most child molesters are not silent during this process but will actively shape the child's view of what was going on".
>
> *Paragraph 14* "With this group of nursery children, there is ample evidence that the perpetrators shaped the child's view both of himself and of the abuse".
>
> *Paragraph 18* "In fact, it is likely that many of the sexual behaviors that were perpetrated on these children were subtle and deliberately mislabelled by the perpetrators. This is the likely explanation for Child 14 stating that Lillie's 'Wiggy' landed in her friend's 'Mary,' rather than a statement that more clearly describes what actually happened".
>
> *Paragraph 40* "It is also very likely that the alleged perpetrators actively distorted what was going on by relabeling what was happening or where the child was. For example, many of these children talk about their 'other parent' or their 'other house'. Masturbation is likely to have been called 'water pistols,' 'a game' mentioned by at least two children. Buildings became libraries with a few books, a perfect ploy to use if the child was asked where they had gone that day. The abuse occurred in situations of high anxiety, further reducing the child's capacity to retain what was happening. All of these strategies by the alleged perpetrators add to the difficulty we can having in understanding young abused preschoolers".

436. In the light of Professor Friedrich's cautious and restrained approach in the witness box, I can only interpret these assertions as theories or postulates. The report consists of a theoretical construct as to what *could* have happened. Professor Friedrich was completely open and frank in cross-examination. When speaking of his "Evaluator Rating Scale to rate specific behaviors" which emerged from the waves fully formed on 10 April, he recognised that it contained a list of behaviours which could be consistent with abuse (e.g. touching the crotch) or could also be consistent with another explanation (e.g. needing to empty the bladder or some other form of discomfort). He said he never attached points to any such findings by way of marking their significance. This rather suggests that the terms "rating" and "scale" might perhaps give a misleading impression of greater precision and rigour than is truly warranted. He described it as being just a "check list".

437. He was asked about the scope for cross-contamination between children who were seeing a good deal of each other. He readily accepted (unlike the Review Team) that this was a major factor, although it was not clear how it was taken into account in arriving at his conclusions. He was asked how he approached a situation in which a child was giving an account which included an apparent allegation of sexual abuse against Mr Lillie or Miss Reed but which also contained verifiably inaccurate information (e.g. that other children or teachers were present). How was he able to decide that the one nugget of truth in such an account was that relating to the Claimants? He described it as "an excellent question" but appeared to have no especially informative answer.

438. Miss Page was doing well, it seemed, because later the same afternoon she asked another question he characterised as "excellent". This time she wanted to know (with reference to paragraph 14 of his report) how he could have concluded that "the perpetrators shaped the child's view both of himself and of the abuse" unless he assumed that abuse had taken place. Similarly, one needs to know how he could have arrived at his conclusion in paragraph 13 (that the children had been threatened to ensure their silence) unless an assumption had been made. These "excellent" questions required a cogent answer. There was a long rambling response extending over two pages (164-166) of the transcript. It was, however, no more than incomprehensible verbiage. It would be a waste of space to include it in this judgment.

439. Rather engagingly, he said that when he was first instructed in this case he thought to himself "Not another day care case!" He regards such cases as "very daunting". They provide "a huge challenge". Much of the information is, as he described it, "contradictory and difficult to fathom". He was invited by Miss Page to suggest how the court might approach this "daunting" task. He said that it was desirable to look not only at verbal statements but also at the children's behaviour, but to see it all in context. The example he gave was that Child 2 had other factors in her life which could cause anxiety or account for behaviours relied upon, quite apart from the possible explanation of child abuse at the nursery.

440. In the course of his evidence, Professor Friedrich said that children need to feel good about themselves. He gave the example of his own small son whom he had often taken to play football and who, on one occasion, asked his father if he had seen the two goals he had scored. In fact, his team had lost and the boy scored no goals. This is an example, no doubt, of a child feeling good about himself but, more important for present purposes, it illustrates the tenuous boundary for young children between fact and fantasy. It demonstrates a fundamental difficulty about this case overall. It is, moreover, noteworthy that Professor Friedrich told me that at the time of the football incident he described his son was as much as five years old – significantly older than the Shieldfield children were at any material time.

441. Mr Bishop put to Professor Bruck more than once that very young children (of three to four years old) might well need prompting to say anything at all. In other words, a certain amount of leading is required. Professor Bruck did not dissent but put her finger on the central problem about all the "disclosures" in this case; namely, that while leading questions may yield allegations consistent with sexual abuse there is no sure way of telling whether they are true or false. One simply has to assess them like any other piece of evidence, taking into account the overall context and how they came to be elicited (if that information is available).

442. It is necessary not to lose sight of the elementary fact that the study of human behaviour is not a precise science. One needs to be wary also of over-interpreting child behaviour and of what Dr Cameron (the Claimants' child behaviour expert) rather grandly called the "fallacy of post-event matching". What this means, simply, is that one cannot merely look at disparate aspects of a child's behaviour and ascribe them to trauma. One needs also to assess the evidence (if any) that trauma actually occurred. All this, of course, falls well short of "rocket science" and leaves me in the position of having to make up my own mind in the light of the evidence.

443. Unfortunately, when the court re-assembled on the morning of 15 April, Professor Friedrich's cross-examination went into a downward spiral. He appeared to be out of his depth. It soon emerged that I could place no reliance on his evidence at all. He was very frank and apologetic about it but agreed with Miss Page that his report was of very poor quality. He could hardly do otherwise. It now became quite apparent why there had been such a divergence between his original report and his cautious approach in the witness box.

444. Although Appendix 2 indicated that he had seen the videotapes listed there, it appears that he had not done so before writing the Report in December 2001 (except for part of Child 14's interviews). Nor

had he seen transcripts, except in two or three cases. He only had videotapes in the American format in February 2002. When he did see them, he was obviously not very impressed and this must have accounted for the first paragraph of his supplementary report provided on 10 April (quoted above). He was asked why he had not come to that conclusion in his first report. What emerged was that he had not seen enough to form a view although, crucially, anyone reading his report between December and April would have thought that he had seen all relevant videos.

445. This was not a promising start to the day – especially in view of the fact that Professor Friedrich was the expert put forward on the significance of the children's verbal disclosures (in opposition to Professor Bruck). I infer that, having seen the tapes, he realised how deeply flawed the interviews were. Since, however, he had already committed himself to firm conclusions to the effect that child abuse had taken place, he had to find some other peg on which to hang those conclusions. He shifted his centre of gravity to "associated behaviours" in his supplemental report, despite the fact that Dr Hewitt was supposed to be the expert in that arena. This seismic shift failed to carry conviction, and he would have done rather better to own up at an earlier stage that he had never seen the "disclosures" he was supposed to be evaluating.

446. Miss Page put to him that, in his capacity as "disclosures" expert, he should have focused on the transcripts (if the tapes were not available) as his first priority. That was obviously right. He said he would have been doing a disservice *only* to focus on them. This was to miss the point of Miss Page's question, since he had not focused *at all* on either the videos or the transcripts in respect of approximately a dozen children he was telling the court had been abused. That *was* a disservice.

447. It might have seemed that things could hardly get worse. They did. In relation to Child 1, he purported on page 19 of his report to be describing the content of the first video interview on 28 July 1993. It seems in fact that he was actually having a shot at describing the *second* video of 7 February 1994. Even that, however, was inaccurate. He gave the impression to anyone reading his report that Child 1 was saying, as early as July 1993, that Christopher Lillie had "hurt" him. He did not. Worse still, however, is the fact that he did not do so in the second video interview either. Instead of recognising his blunder, Professor Friedrich decided to have a third crack at upholding his conclusions "on the spot" (in both senses). He said that the content of the first (28 July) video was quite "rich" even though the child said nothing at all against Christopher Lillie or Dawn Reed.

448. Not unreasonably, Miss Page put to Professor Friedrich that his rather bold conclusions were based on misinformation. He replied merely, "I would conjecture there are a couple of date errors here and there".

449. He then tried to say that his mistaken account of the July interview at least corresponded to what the child had earlier told his mother. Professor Friedrich would then be able to base his conclusions (at this stage free-floating and without support) on such earlier statements. Unfortunately, this was simply not true. He had *not* told his mother that Chris has "hurt" him. The next strategy was to say that, even if he had not reported physical harm to his mother, he had at least said things to her that were capable of being construed as *emotional* abuse. At this stage I could hardly keep up with Professor Friedrich's footwork. At all events, I realised finally that I could place no reliance on him at all. It was a complete waste of time and money.

450. I was in two minds as to whether to bring the exercise to a conclusion, as it would simply be better in some respects to move to the next witness. But I thought this would probably be unfair to both sides.

451. Next, Professor Friedrich was asked if he had been told of Chief Inspector Campbell Findlay's warnings to the Review Team about placing any reliance on the mother of Child 1 (which they chose to ignore or reject) or anything about his difficult home background. There was a certain amount of

obfuscation, but it was clear that he had not been told. That was hardly his fault since he could only proceed on what he was given.

452. In his report (page 18) Child 1 is described by Professor Friedrich as adopting a posture and he uses the words (in quotation marks) "proffers his bottom". That supposed quotation came from nowhere. Despite being in quotation marks, it is Professor Friedrich's interpretation of the information form the mother's police statement of 17 August 1993 that he had his head and shoulders near the ground with his bottom raised in the air. There is no information contained in that document as to whether the child was clothed, naked or partially clothed or as to which way he was facing. His mother's reaction was apparently to tell him to sit properly. He made the point that the boy did not say who had "taught" him to do this. Clearly, the sinister but unspoken assumption is that Christopher Lillie had taught the child to position himself with his bottom raised in the air for the purposes of buggery or some other penetrative abuse. When Miss Page confronted Professor Friedrich with this grave allegation, which he appeared to be endorsing in his expert report, he rather drew back from it (as well he might). Nevertheless, his report makes the claim (on page 21) that "his physical findings are consistent with sexual abuse". The only relevant physical finding is in Dr San Lazaro's report of 22 July 1993. This was that anal inspection "revealed a symmetrical pattern and no evidence of previous significant damage". Another false point.

453. When one remembers the gravity of these allegations, and the truly daunting implications for Mr Lillie and Miss Reed, it beggars belief how casually this so-called expert report was thrown together and served up to the court.

454. Attention was then turned to Child 5. This was the girl who only overlapped with Mr Lillie at Shieldfield for a few days up to 7 April 1993, and was throughout in the care of Jackie Bell, Diane Wood and Patricia Hammemi. Professor Friedrich for some reason proceeded in his report on the misinformation that the child had been in the Red Room with Mr Lillie. According to Appendix 2, Professor Friedrich had seen the relevant Day Book entries for Child 5 which cover the days in question. For obvious reasons, they were not in the writing of either of the Claimants, and there was not the remotest possibility of forgery or collusion by any of the three actual carers.

455. Professor Friedrich, in order to prop up his allegation that Child 5 had been abused, asserts "… even in this brief time period, she is reported to have started to wet herself". There is nothing in the Day Book entries to support the assertion. Where he got it from is the "disclosure chart" prepared by the lawyers, but there no date is given. It was Professor Friedrich who decided to attribute it to the brief period up to 7 April 1993. If he had bothered to read the Day Book entries, he could have seen for himself that the child was not in the Red Room *and* that there was no evidence of wetting. In these respects, therefore, Professor Friedrich does not have the excuse that he was given misleading information. The mistakes are his.

456. Miss Page also focused on Child 28. With my permission (contained in a ruling on 15 April), she carried out this exercise, in order to save time, by inviting Professor Friedrich's comments on the much longer comments of Professor Zeitlin on this child. Professor Zeitlin is the expert engaged on the City Council's behalf in the negligence proceedings. He presented a rather different picture, but it is important to emphasise that this extract from his report was not introduced as evidence of its contents, but as a convenient vehicle for challenging Professor Friedrich on his methodology (both in relation to Child 28 and generally). As it happened, by the time she turned to this Miss Page did not really need it. She had already despatched Professor Friedrich over the pavilion for six. He was no longer in contention.

457. There came a time when Professor Friedrich was asked by Miss Page to choose any child and demonstrate to the court how he had satisfied himself in that instance that other factors could be eliminated, so as to enable him to conclude that the weight of the evidence pointed to the child having

been abused by Mr Lillie and Miss Reed. He chose Child 10. This was perhaps surprising in view of the fact that this boy had been later diagnosed as suffering from Attention Deficit Hyperactivity Disorder (ADHD). The case therefore presented a particular challenge because the symptoms had to be carefully considered with a view to eliminating that as a potential explanation – quite apart from addressing the usual factors of family and domestic circumstances and other life events which could be relevant.

458. Nevertheless, having opted for Child 10, Professor Friedrich tumbled straight into the elephant trap. He was invited to look at what he had written on page 35 of his original report. He said that "Child 10 had considerable exposure to the care of Lillie and Reed and his persistent behavioral regression, sexualization, and symptoms of post-traumatic stress disorder are in keeping with this exposure".

459. Miss Page put to him that this was an example of his "palpable bias". He was starting from an assumption that there had been abuse in the Red Room. His response was unimpressive. He said that he found the mother of Child 10 to have been "benign" and that accordingly he was left with Shieldfield as the source of his problems. Given the scale of this boy's problems, even as disclosed in the Day Books (which Professor Friedrich received), and the pressures that his mother was having to cope with (as a single parent), it was a superficial approach to put the ADHD to one side without any apparent attempt to fit it into the picture.

460. This was perhaps all the more remarkable in the light of what Professor Friedrich was saying on p.138 of his most recent book on sexually abused children; namely, that some of the clusters of symptoms are commonly found in groups of children other than those who are known to have been sexually abused – including specifically those with ADHD. It seems extraordinary that Professor Friedrich, of all people, should not have set about explaining carefully how Child 10's cluster of behaviours could with such confidence be attributed to sexual abuse rather than ADHD. What he said was that he was looking at the Shieldfield children as a whole and that, so far as Child 10 was concerned, he focused on his sexualised behaviour:

> "Well, if we stay with Child 10 the degree of sexual and aggressive behaviour that he does exhibit is going to be very separate from, say, a diagnosis of ADHD or a stressed out single parent and so we do go back to sexual behaviour and the origins of that and thinking about what is possible in this child's life".

This does not really meet the point.

461. An important topic for Professor Friedrich to address, as I have said, was that of cross-contamination. There were obvious potential sources of contamination both with regard to parents and children. But one in particular became the main focus of Miss Page's cross-examination. That was the Yellow Room during the period when Child 23 was there. There were a number of common themes which, she argued, on a balance of probabilities could be attributed to contamination by Child 23 in that environment. Miss Page wanted to know how Professor Friedrich had eliminated that factor as a possible explanation for statements made by Children 4, 5, 7, 8, 17 and 28. He did concede that over the weekend of 13-14 April, when doing some "homework" set him by Miss Page, he had decided that he could not conclude that Child 5 had been abused. Nevertheless, he still held out for abuse in the case of the others. It was therefore pertinent to find out how he had discounted cross-contamination for them. Much time was spent pressing for an answer and there were generalities in response, such as taking into account early statements and other behaviour, but I was not convinced. There is no evidence that it was addressed in any analytical way at all.

462. Similarly, there was the Child 87 factor. He was exhibiting worrying and persistent sexualised behaviour and aggression during the summer of 1993 and had been a thorough nuisance in this respect. He was trying to get into girls' knickers and simulate intercourse (in particular, with Child 21).

Professor Friedrich was only told about this after his report was written. It is obvious therefore that he was not in a position to eliminate it as at least a partial explanation for sexual interest on the part of those who came into contact with him. Anyone who failed to address these points might just as well be giving a general seminar on potential factors in child abuse. It does not greatly assist the more specific inquiry as to what happened in the Shieldfield environment a decade ago.

463. Professor Friedrich was also pressed on how he could possibly, on the limited information before him, make the claim contained in paragraph 100 to the effect that the weight of the evidence pointed to abuse by Christopher Lillie and Dawn Reed. Miss Page put to Professor Friedrich that his evidence was flawed, unscientific and lacking in objectivity. He begged to differ, but she was clearly right. It might be thought offensive of Miss Page to suggest, as she did, that Professor Friedrich's reasoning represented no advance on the reading of tea-leaves. But it was a good deal less offensive than the accusations he was making against Christopher Lillie and Dawn Reed, for which he was claiming scientific and professional objectivity. He told me that he had his introduction to the two Claimants through the Review Team Report. That clearly coloured his whole approach. Everything he addressed was used as a pointer to child abuse. That is the opposite of scientific objectivity. It is simply a case of the very phenomenon of cross-contamination he was being asked to analyse.

464. At one point Professor Friedrich said (I believe somewhat unguardedly) that he had calculated the likelihood of the Defendants' allegations being true. When asked for the answer he had worked out, there was nothing very precise forthcoming. That is hardly surprising, but what is objectionable is that all his speculations should be clothed in a mantle of scientific rigour. What he actually said was this:

> "A: Well, take, for example, the association of sexually intrusive behaviour – by that I mean children touching other children sexually. That was reported in 17 of these children. That is a very unusual behaviour for it to be reported in a group of children like this. It suggests something that is clearly not random. It suggests something that is very likely – very unlikely to have occurred without some actual sexually abusive experience having been common in these children's lives and so that would make it highly likely that these children had been exposed to a sexually abusive experience. If you simply go to the risk factors in Mr Lillie's life, you do not have that high degree of likelihood. You simply have increased the likelihood of him having - of him maltreating, maybe on the order of two to three times more likely. So that is one way that I looked at probability across different scenarios, different behaviours, different individuals."

465. This stream of consciousness material is of no value whatever (even if it is possible to attribute meaning to the words). As to the "risk factors in Mr Lillie's life", Miss Page asked him if he had a single piece of evidence outside the Shieldfield context of Mr Lillie maltreating anyone in his life before or since. Of course, he had not.

466. Miss Page asked several times for the validation of his evaluator scale methodology. She got nowhere. His supplemental report included a statement that it had been validated by the research of a postgraduate, but he was being supervised by Professor Friedrich himself. In any event, this research was not produced. As a checklist, there is nothing wrong with a catalogue of symptoms or behaviours, as Dr Cameron recognised, but just because he accords it the smart title of "Evaluator Rating Scale" it does not mean that Professor Friedrich's opinions need to be given particular weight. Fundamentally important for any scientist's opinions, in court or elsewhere, are the data on which they are based. Here the material was so partial, incomplete and misleading as to render any opinion worthless. Once flaws are pointed out, a scientist will go back to the drawing board or the laboratory bench and start afresh. Here what was so astonishing was that Professor Friedrich clung to his original opinions with whatever piece of rope he was thrown. In re-examination, for example, he was shown odd bits and pieces of material he had not seen at the time of his original report and adopted it as support for his conclusions without any testing or analysis at all.

467. In re-examination, he was shown a report by an expert instructed in the City Council's negligence action and said that his approach was quite similar. But I did not find this helpful as that report had clearly got several of the children hopelessly muddled up.

468. At the conclusion of his evidence, I was glad that I had not encouraged greater brevity the day before (as I had contemplated) because the longer he went on the more it became apparent just how feeble his pseudo-scientific claims were.

469. I was seriously troubled how it could have come about that an expert could have presented the Claimants' advisers and the court with a report on the children's disclosures while claiming in Appendix 2 to have seen the video interviews (the raw data he was being asked about) when he knew that he had not. Moreover, he actually states in his overall conclusion (quoted above) that his clinical impression was "based on the view of the documents *and video tapes* provided to me" (emphasis added). That was just simply untrue. On 16 April I asked Mr Bishop whether his solicitors were aware of this at the time they served the report. I wanted to know how it was allowed to happen that for some four months the Claimants' advisers (and, for that matter, the court) had been misled into thinking that Professor Friedrich had seen the videos on which he was purporting to base his conclusions. It was a continuing misrepresentation. Either he misled the solicitors (for the Review Team and the Newcastle Chronicle) or he had informed them that he could not view the material (because he did not have the American formatted video tapes). If the latter, the unlikely scenario was beginning to emerge that solicitors had been party to this deception. The following day I was told by Mr Bishop that his instructing solicitors did find out shortly after serving the report that Professor Friedrich had not seen the videos – but they failed to pass this on to the Claimants' advisers. I asked for an explanation by way of witness statement from the solicitor.

470. I was provided on 13 May with a statement by Mr Cunningham of Wragge & Co, the firm representing the City Council and Review Team Defendants. It emerged that Mr Bishop had been misled. It did not dawn on Wragge & Co until 12 April that Professor Friedrich had not seen the video tapes prior to writing his report which contained the false claim to which I have referred. Indeed, I was shown an attendance note of a telephone conversation on 15 January, when it appeared that Wragge & Co were assured by Cathryn Smith of Foot Anstey Sargent (the Chronicle's solicitors) that experts "had seen copies of all the video interviews". In due course, in the midst of closing submissions on 18 June I received a full witness statement from Cathryn Smith explaining the position form her point of view. She said that she only became aware that Professor Friedrich had not watched the tapes prior to his Report being served when she read the transcript of these proceedings for 17 April. She said "I was astonished by this revelation, because Professor Friedrich had been instructed to comment upon the verbal disclosures contained within the interviews, had been provided with copies of them for the purpose of viewing them". She also said that it was not right that she had given an "assurance" to Wragge & Co that Professor Friedrich had actually watched the videos. The discussion was rather about the provision of DVD copies to Professor Friedrich and the court. I expect she is right about that, but what is clear is that neither of the firms of solicitors were aware of the omission. It would seem that the primary responsibility therefore lies with Professor Friedrich.

471. In June, after the evidence was concluded, I was invited to take into account a letter from Professor Friedrich explaining his position. In fairness to him, I should set out its contents:

> "I was asked to reply to a question raised on Thursday, April 25th, regarding the intent of my statement from paragraph 11–100 of my report. The statement reads "It is my clinical impression based on a review of the documents and video tapes provided to me in combination with my experience in the evaluation and interviewing of very young children that the majority of the evidence points to sexual abuse of these 28 children".
>
> The concern of the court is that this statement constitutes a misrepresentation as to what I had and had not reviewed prior to writing my

report. I will address three issues in this reply. The first pertains to what I had told Foot Anstey Sargent about my materials review. The second issue is [*sic*] pertains to what it is that I meant in the above quote, and the third issue addresses the relevant circumstances regarding the review, e.g. timetable, time pressures, deadlines, etc.

The primary issue pertains to the fact that while prior to my report I had reviewed all of the transcripts that were provided to me (Children 1, 14, 19-a partial transcript, 22-a partial transcript, and 24), I had only fully reviewed 1.5 videotapes. These were half of the 3 videotapes that were available on Child #14. I do not have any documentation of what I specifically informed Foot Anstey Sargent prior to sending the report to them. I do know that after my first phone call with Cathryn Smith on 10-19, I had phone calls with Foot Anstey Sargent representatives on 11-13, 11-20, 11-30, 12-3 and 12-4. I was receiving boxes of materials on a regular basis and using every available moment to read what was being sent to me. I do know that on at least one of the phone calls, I said that I was having problems reviewing the videos since they were in a European format. I was informed around the 20th of December that Wragge & Co. had already embarked on transferring the video material to DVD format and these arrived in early January. By that time I had personally arranged to have the videos changed into a North American format and had embarked on the task not only of reviewing the verbal content but also coding the nonverbal behavior displayed during the interview.

Finally, I did not create the list of documents reviewed (Appendix 2) that was attached by Foot Anstey Sargent to the end of my report. On April 24, I did provide Mr Cunningham with an itemized list that indicated what of that list I had reviewed. Appendix 2 was generally complete, although I had reviewed several documents that were not cited in Appendix 2.

The second issue asks for an answer as to what I meant in my statement, '… based on a review of the documents and videotapes provided to me…'. First, I would like to offer that this statement does not mean that I read every line of every document or watched every second of videotape. My charge was to primarily focus on the verbal productions of these children. As soon as case materials began to arrive in early November, I first reviewed an executive summary of the review team's report. I next reviewed all materials that were specifically about or from Lillie and Reed. I then reviewed every parent statement and then all of the interview transcripts. I was not surprised to read in these transcripts what I typically hear from American preschoolers. What I read were earnest and well-meaning professionals interviewing minimally disclosive children. That impression was supported by the videotaped interviews I reviewed on Child#14. I concluded that the child interviews would not be the source of data that would enable me to arrive at a decision about what if anything had happened to these children.

Consequently, I then began to read the therapist notes, the daybooks, and the expert reports by a variety of mental health professionals. I used the disclosure summaries to point to specific primary sources that I would read if I had not yet done so. In addition, I reread the case data in order to code behaviors of these children along the dimensions of PTSD and sexual behavior. I moved in this direction since it has been my experience which is supported by research literature, some of which I had contributed to, that behavior was the most important source of information about a preschool child's abuse status.

> I can appreciate that there was a decision in this case that asked for an expert to review the verbal disclosures and another to review the children's behavior. This decision makes sense if these children had been older at the time they were first interviewed, or if the interviewers had been more expert. But the transcripts were clear that what I heard in Child 14's videotapes was typical of the other children. The same is true of the brief quotes from the child interviews that were summarized in the disclosure tables for each child.
>
> Consequently, I believe I comprehensively reviewed the key material that was available on these children, and partially reviewed the direct verbal output of these children in the forensic interviews. I believe that I targeted my efforts to maximize the utility of my time spent on the volumes of material that were sent to me.
>
> If I had meant to misrepresent my review to the court, I would have been less straightforward on the witness stand when I stated that I had only reviewed half of the taped material on Child #14. In addition, I also expressed to the court that some the handwritten therapy notes and Daybook materials were also difficult to read in their entirety, although I made every attempt to do so. Finally, after reviewing additional material during the course of my testimony, I reversed my decision about one child. This speaks further to my objectivity and willingness to listen to the data.
>
> Finally, I have never worked so intensely and under such pressure as I have on this case. I had only put in 2 hours of document review prior to 11-14, when I was able to clear my calendar and concentrate on the regularly arriving boxes from the U.K. Between 11-14 and the delivery of the report, I spent over 130 hours reading case materials and coding data points that I could further analyze. This does not begin to reflect the additional hours I spent thinking about the case when away from the actual material. I have occasionally completed document reviews on similar cases with fewer children and have never spent as much time per child as I did with the Shieldfield case. I truly do believe that I gave the material the review that was necessary to analyze the data and arrive at a valid and completely justifiable conclusion.
>
> I hope that this information will make my position clear and I would be pleased to answer any further questions the court may have about the preparation of my report.
>
> Yours sincerely
>
> William N. Friedrich, Ph.D., ABPP"

472. Ms Smith also commented on this letter. She said that she had no reason to believe that Professor Friedrich had not overcome any difficulties he had mentioned in watching the videos in European format. She certainly believed that he had watched them.

Dr Sandra Hewitt and Dr Hamish Cameron: Child behaviour

473. The experts dealing with interpretation of child behaviour, and the extent to which certain manifestations might or might not be linked to sexual or other abuse, were Dr Sandra Hewitt for the Defendants and Dr Hamish Cameron for the Claimants. Each of them considered individual children and the available information about their behavioural patterns, but also addressed more general issues.

474. Dr Hewitt records how she would often encounter very young children and experience difficulty in structuring interviews in a way that would efficiently extract reliable information. She explained that this was, or appeared to be, because the children were lacking in the language skills (and presumably also concepts) that were necessary to communicate what she wanted to know. She then decided that she could regard behaviour as "the language they did have". She claimed that "suddenly" it was easy to understand children. "Behaviours are the mirrors of young children's experiences. In assessing cases of pre-school sexual abuse, that is where we were to look for information about a child's past".

475. As to the 28 Shieldfield cases she reviewed, she referred to a recurring leitmotiv ("something very powerful") which they had in common. She claims that they were caused "massive dysregulation from their stable entrance behaviours". She identified eight issues to be considered:

1) The combination of significant trauma and atypical sexual behaviours.

2) A commonality of fears, actions and references to places (not normally experienced in a random sampling of abused children) pointing to a common source.

3) She thought old memories were triggered and recalled in detail following a medical examination or formal interview. She describes "remarkable responses" to such events that were "unprompted and unstructured", thus emerging "with emotion and content intact".

4) Consistency of recall "not only within their accounts, but also across many children".

5) The commonality of atypical sexual behaviours she regards as "virtually impossible" without a common source.

6) She excluded the hypotheses of cross-contamination and suggestive questioning in her child-by-child analysis.

7) The commonality of atypical symptoms across so many children defies the probability of other causes than the origin of the trauma at Shieldfield.

8) In sum, she concludes, the cases reviewed match a "research and practice population of sexually abused pre-school children" but, in any event, the rich behavioural data cannot be explained by any other reasonable hypothesis than the experience of sexual abuse at Shieldfield Nursery during the time the children were in the Red Room with Lillie and Reed as their nurses.

476. This list gives rise to questions that I shall have to consider carefully, namely (1) the extent to which these eight issues are truly distinct from each other, (2) whether significant questions have been begged, and (3) whether Dr Hewitt has been operating on correct factual data. (For example, Child 5, Child 11, Child 14 and Child 31 were never in the Red Room.)

477. Once again, the experts divided more or less on "party lines". Dr Cameron was asked to consider a sample of only seven Shieldfield children. While he agrees that sexualised behaviour in two to four year olds, provided it is "persistent, intrusive and seems 'driven' within the child", should alert one to the possibility of sexual abuse, neither this nor any other behaviour can be regarded as probative or

diagnostic of sexual abuse. So much depends on context. He highlighted the very important point that one cannot come up with a responsible diagnosis on paper without having seen the child and investigating his or her particular circumstances. That is something Dr Cameron is used to doing either clinically or for the purposes of family litigation.

478. Some of the behaviours noted at Shieldfield are neither probative nor indicative of sexual abuse in two to four year olds (e.g. nightmares or disturbed sleep, lack of speech development, fear of dogs, becoming upset in certain locations, fear of clowns or beards, pre-occupation with death, aggression, bed-wetting or soiling). In the course of cross-examination, Dr Hewitt was quite prepared to put the issue of clowns to one side as irrelevant to the matter of child abuse.

479. On the other hand, unusual sexual posturing or play can at least be indicative of sexual abuse. It is thus important to be careful about what is classified as "sexual" in this context – a matter I shall turn to again.

480. It is necessary to allow for "separation anxiety" when starting at a nursery, or changing rooms within it, as a possible explanation for behavioural changes or regression. Moreover, behavioural deterioration arising *after* questioning might connote the awakening of dormant memories of past abuse or, alternatively, the arousal through clumsy interviewing of fears about certain individuals, if portrayed as threatening or wicked people. It is inevitably the case that a belief that one (or, in the case of a parent, one's child) has been subjected to wicked behaviour can in itself lead to trauma and severe disruption of one's life.

481. While Dr Cameron recognises that it is established knowledge that one of the techniques used by paedophiles is that of threatening or cajoling their victims into silence, he regards it as unrealistic to suppose such a technique could have worked in relation to *all* of these children, so as to prevent the making of contemporaneous complaints. He considers that a significant proportion, at least, would have complained immediately to a principal carer or trusted relative. He expressed "grave doubt" as to whether any of the relevant children's remarks could be construed as indicating coercive threats or enticement. It is his opinion, in respect of the children he reviewed, that such remarks as could be interpreted as reflecting enticement, or coercive threats, were so inconclusive that a reader would have to construct that scenario out of very few facts. In this context, it is naturally worth remembering how widely the Review Team cast the net of the Claimants' alleged abuse. They did not in the Report confine their findings to the 27 children in this case. Far from it. They suggest that the abuse was much wider. On Dr Cameron's thesis, therefore, it becomes even less likely that all the supposed victims would have remained silent.

482. Dr Cameron considers that it is important to focus first on more common or expected causes for clusters of symptoms in young children, before attributing an explanation which is not within ordinary experience. Each child has to be considered individually, with particular reference to family background and personal circumstances. It is also important to recall that the large majority of children suffering from sexual abuse incur it within the family. "Stranger sexual abuse is less common. Even rarer is sexual abuse by an unrelated man and woman working together to organise and systematically sexually abuse a large number of children in their care". Unlike Dr Hewitt, Dr Cameron does not regard the recurring themes in the children's "disclosures" as pointing inexorably to abuse by Mr Lillie and Miss Reed. He refers to some of these notions (e.g. "flats", "lifts", "an old woman", "nakedness in bed together") as having an "interactive imaginative quality, typical of childhood story telling under questioning". He went, originally, so far as to offer the opinion that, focusing specifically on the behaviours described, the balance would be 90:10 in favour of common place explanations rather than a planned sexual abuse programme engineered by Mr Lillie and Miss Reed which, in his view, remains no more than a "possibility". (I believe, in the witness box, he accepted that putting a precise figure to the probabilities was unsatisfactory and that, in any event, if one were to assess the evidence separately in relation to each child the probabilities would vary.) In coming to an overall conclusion, of course, Dr Cameron accepts that one has to factor in to the exercise

other forms of evidence and, in particular, statements by the children and any physical findings by paediatricians.

483. Because he was taking a cautious approach rather than claiming certainty, very little was added to the overall picture by his oral evidence on 16-18 April. But I found him helpful, cautious and objective. It is true that he started off a little bumptiously and cracked a few jokes, but he soon got into his stride. His primary message was to warn about leaping to conclusions too readily – especially in the light of the Cleveland inquiry to which he had given expert assistance 15 years ago. One needs to approach the matter in an open-minded way and without being wedded to pre-conceptions or any *idée fixe*. He was referring particularly to Dr Marietta Higgs and her apparent obsession with reflex anal dilatation. He said that one always needs to be watchful for any professional who was narrowly specialised and over-zealous in diagnosis. That is wise advice and I bore it in mind.

484. There was an interesting example of the need for full information in the course of his cross-examination. His attention was directed to Child 23 whose video material he had been asked to watch before giving evidence. He said that it was necessary to consider carefully all possible explanations for her symptoms. He had not been given her GP notes and was, therefore, unaware of her history of urinary problems and associated soreness. When told about this, he immediately recognised that it was a material factor. This is simply one of many examples in the case where the addition of one new category of information about a child can significantly shift the balance of probabilities derived from first impressions.

485. There were a number of significant general propositions put forward by Dr Cameron and underlined with considerable conviction. First, at the beginning of his evidence on 18 April, he referred to the situation where a mother may suddenly come to believe (as a result, say, of a parents' meeting or some other conversation) that her child has been abused, and thereafter becomes obsessively committed to an idea which had not previously entered her head. This is, as it were, the "zeal of the converted":

> "A difficulty, my Lord, is that that kind of sudden understanding, the flash of understanding comes with such force into the mind of the mother, a very reasonably concerned mother about her child, is often so strong that [it] becomes really a very entrenched belief which has far more energy from the emotions attached to it than from the logic attached to it, but I agree that it is understandable and reasonable presumption that the mother leapt to. But it is the way it sticks in the mind. It is the sudden conversion of belief which is driven emotionally as much as by intellect".

486. Secondly, Dr Cameron was asked by Miss Page about the possibility for diagnosing child abuse without the opportunity of seeing the relevant child or children or of investigating the family circumstances. He made the following point:

> "I actually think paper exercises are very difficult things to do and fraught with risk in drawing conclusions. I like the approach that Dr Hewitt talked about the interview and I particularly like when she says [in her book] 'to schedule at least a 2 hour intake period'. 'At least' is in my experience quite the operative word. You often need a long time to really get the feel of the child. A paper exercise can take you so far, but actually it is in my view a very risky business going and drawing conclusions from papers alone. That is the difficulty I have myself found in giving evidence in this case – that I have been asked about behaviours on paper, and that is it, and I think it has come out in cross-examination. This is – it is a limited exercise".

487. Shortly afterwards, Dr Cameron gave evidence which is fundamentally important for this case and it is therefore desirable that I should set it out *in extenso*:

> "Did it occur or did it not occur? What I was trying to say is that, as I understand this case, Christopher Lillie and Dawn Reed are alleged to have abused a group of children, a substantial group of children, so that the children themselves are the focus of having been abused, and the case emerges out of that group phenomenon. The parents say 'our child has been abused'. The alternative view is that there is still a group phenomenon but the group phenomenon is based on a collective belief that the children have been abused. The first one, the child has actually been abused. The second one, is there is a collective belief the children have been abused. When that collective belief takes root in a group it is a very powerful force. It actually holds people in a group, who mutually reinforce each other and it is quite difficult for professionals, unless they are very experienced, to stand back from the weight of that belief system. Now, that is the sort of belief system that child psychiatrists (of whom a number have been mentioned in this case) are familiar [with] when parents have a belief about a sickness in their child. That is the factitious disease by proxy idea: 'I believe my child is ill or harmed, therefore my child *is* ill or harmed, and my neighbour's child is ill or harmed, and my neighbour's neighbour's child is ill or harmed. All of us together as parents who have a child at this nursery – our children are ill or harmed'. What is striking is that when one looks at that group of parents who come to occupy that belief, you find that others within the group will not say the same and that they refuse to join that group. They say, 'No, no, we do not think anything went on', but the belief system is a very powerful one. So when I am talking about the alternative hypothesis I am not trying to have a 'yes – no, were these children abused or not?' I am trying to say these children *have* suffered harm. Either these children have been physically and sexually abused, as described, and they had actually been harmed, or the belief system in the group of parents, supported sometimes by professionals, has led to the perception that they had been harmed, and that perception has itself been abusive to the children. These children have been emotionally abused by the collective belief. So that is what I am saying, when I just wanted to set out the context within which I would analyse the case".

488. I asked Dr Cameron to elaborate further, so as to give any examples either from his own experience or from the literature of such a group phenomenon in operation. He told me that he had come across it himself in the context of new religious movements and, in particular, the "Children of God" case in which he was involved. He said that there was a collective belief system about the children within that organisation. He did, however, refer to other examples in the literature such as the Kelly Michaels case and the Little Rascals case in the United States. As to this jurisdiction, reference was also made to *Re E* [1991] 1 F.L.R. 420 (Scott Baker J) and *Rochdale Borough Council v. A* [1991] 2 F.L.R. 192 (Douglas Brown J). Both of these cases are well known and I do not think anything would be gained by my summarising them or addressing parallels with, or distinctions from, the present case. Each factual situation must be addressed individually.

489. Dr Sandra Hewitt found herself in a difficult position because she was being asked to offer an opinion in a case for which, as she put it, there were "no road maps". She agreed with Dr Cameron as to the limitations upon a purely paper exercise such as that she was required to carry out. She did not regard it as her function to "diagnose" child abuse in this case. She accepted that the decision as to whether abuse had taken place at Shieldfield could only be taken by the court in the light of the overall evidence. Since, however, she had been asked by the Defendants' solicitors to offer an opinion on the behaviour of children in this case, she would do her best. But she emphasised that it was an artificial one-off exercise, since not only was her task to be carried out on the papers alone but it was to be confined to behaviour (thus excluding many potentially relevant factors).

490. This was a perfectly reasonable stance to take, but it seemed a little difficult to reconcile with what she had actually said in her report. For example, Miss Page referred her to page 21, where she appeared to be offering something very like a diagnosis in respect of Child 2:

> "Child 2's patterns, over time and across situations, strongly indicate that she suffered trauma as a result of the placement with Lillie and Reed. Her behaviours, coupled with [her] statements best identify the source of trauma".

491. Dr Hewitt would not accept that this could be described as a "diagnosis"; she preferred to call it "a conclusion from data". This is, of course, to some extent a matter of semantics.

492. It is quite obvious to me that Dr Hewitt took a great deal of time and trouble over preparing a report in this case and that she was determined to be as objective and helpful as she could. I must pay particular attention, however, to the fact that she (like the other experts) finds herself in unusual circumstances in this case. The exercise is inevitably an artificial one because she had to work on what she called "retrospective data" without seeing the children or having an opportunity to establish the complete factual background in relation to any child. Nevertheless, her terms of reference may somewhat obscure the limited nature of the enterprise. She referred me to a passage on page 9 of her report, which included the request from the Defendants' solicitors that she should "… express an opinion as to the extent to which any inference may reliably be drawn from the behaviours of those 28 children as to (a) whether they have been abused; and if so (b) what form the abuse took; (c) when the abuse took place and (d) the setting in which the abuse occurred". It is noteworthy that Dr Hewitt was not, in principle, prepared to take what has been described as a "leap too far". She has rightly emphasised that all she could do was to assist the court by reference to the limited data in the light of her experience. I am grateful for that assistance but naturally I can only regard anything in her report that looks like a "conclusion" or a "diagnosis" as of limited value.

493. Dr Hewitt focused very much in her report on the concept of traumatic stress disorder and referred to the recognised criteria for understanding trauma responses in young children to be found in the *Zero to Three Diagnostic Classification Manual*. As I have already made clear, Dr Cameron has pointed to the danger of looking at symptoms sometimes associated with traumatic stress disorder and working backwards from them to a conclusion that, in any given case, a trauma must have taken place. In the course of his re-examination, he said this:

> "I have great respect for Dr Sandra Hewitt's work, my Lord, but I have to say that when children have experienced a major trauma at the hands of carers they will actually tell people that they have experienced something awful and frightening and in my view if trauma (by that I mean menacing violent actions towards the child) is fundamental to the assessment, and there is no evidence of that, no satisfactory evidence of that whatsoever… then I cannot professionally see how there can be a post traumatic stress disorder assumption. You have to have a trauma before you can have a PTSD. If you diagnose PTSD in a child and then say, 'therefore there must have been a trauma', that is not logical and it does not add up".

494. This warning ties in with the content of a chapter in *Expert Witnesses in Child Abuse Cases: What Can and Should Be Said in Court* published by the American Psychological Association under the editorship of Stephen Ceci and Helene Hembrooke. The chapter is by Celia B. Fisher and Katherine A. Whiting, *How valid are child sexual abuse validations?* It contains the following relevant paragraphs, at p.166:

> "Psychologists applying the PTSD diagnosis as validation of child sexual abuse fail to recognise the tautological nature of this position (Fisher, 1995). According to *DSM-IV* (American Psychiatric Association, 1994), the

> essential feature of PTSD is 'the development of characteristic symptoms *following exposure*, to an extreme traumatic stress' (italics added, p.424). Thus, the validity of the PTSD diagnosis depends on first establishing that the child has been a victim of an uncommon trauma. Accordingly, to meet ethical and forensic demands for scientifically based evidence of child sexual abuse, a PTSD diagnosis cannot be established in the absence of independent documentation that sexual abuse has occurred.
>
> In some cases, PTSD-like behaviors may be a consequence of the stressful nature of repeated interrogations by investigators, parents, therapists, or some combination of these people who attempted to substantiate whether sexual abuse had occurred (Fisher, 1995; Gardner, 1994). For example, in some instances, overenthusiastic social workers, police investigators, or psychologists may attempt to elicit from a child information regarding suspected abuse by describing lurid accusations made by others about the accused (see Bruck, Ceci, & Rosenthal, 1995). According to *DSM-IV*, learning about serious harm experienced by family or close friends may also trigger PTSD symptoms. Gardner suggested that court-appointed evaluators of child sexual abuse should attend to the temporal framework of PTSD symptoms, thereby distinguishing between abuse-related PTSD symptoms due to a sexual abuse trauma (usually present, to varying degrees, during and immediately following the discontinuation of the abuse) and investigatory-related PTSD that does not appear until after the disclosure and interrogation. Other investigatory-related PTSD-like symptoms, such as repetitive play in a therapist's office, may be a product of the repetitive nature of the therapy sessions rather than a pathological acting out of a traumatic event (Fisher, 1995)."

495. Against that background, it seems to me, Dr Hewitt's resort to *Zero to Three* has to be approached with caution. I did not understand her to disagree. As Miss Page pointed out, at an early stage in cross-examination, that document in itself quite expressly makes clear that it is not intended to be used in the context of any legal application. She accepted this, although she agreed that with the benefit of hindsight it would have been better to make that clear in the body of her report. She emphasised that she was not using the criteria in a standardised way, but merely as an aid to assisting the court in these very unusual circumstances. She explained how she came to use it shortly before her report was due for delivery in the middle of December:

> "I was trying, as I said earlier, to look at this data through the framework that I used to analyse the cases or to organise the cases that come to my practice – the prior history, 'rule out' factors, objective measures – and somewhere, about a week and a half before my report was due, I was feeling very crazy because none of the data … I could not manage it, there was no way I could get it into conceptual framework that made sense to me and then suddenly I realised I could not stay with the framework – as it was not working and I did not know where to go. Based on what I had read and the cluster of symptoms which I was concerned about, it felt to me that the best framework was going to be some measure of traumatic stress behaviours that are seen with children that comes out of a reliable source. Now, I went to the conference at Zero to Three when the sequelae to some earlier research were discussed and ended up being in this version of the manual with the traumatic stress disorder and I thought, I bet if I look at this data, organised around traumatic stress factors and central behaviour factors, it may make some sense, and in fact that is what I did. Suddenly, that lens organised the data for me. It is from looking at that, I could then reach the conclusions that the combination of traumatic stress behaviours, coupled with the atypical and unusual level of sexual behaviours would come together to say there has been a traumatic history for this child".

496. Shortly afterwards, Dr Hewitt emphasised the special use she was making of these criteria:

> "If I am not to make a diagnosis, then I am not using this in that sense to frame a diagnosis, I am using it in combination with factors. I am using this cluster of behaviours which ends up being at a level which is significant. It is across the various types of behaviour that children can exhibit and across a number of sub-categories".

497. She was very clear that the manual was intended for assisting the diagnosis in individual cases – not to have application in the present circumstances for what she called "a review of group data". It follows that I must look at the available data for each child separately and weigh any of the behavioural symptoms in the individual context (remembering that there is no cluster of symptoms diagnostic of sexual abuse).

498. Miss Page took Dr Hewitt through her conclusions relating to a number of individual children (which looked remarkably like diagnoses of sexual abuse). There is no need for me to reflect them in detail in this judgment, but she focused particularly on Children 1, 2, 11, 14, 21 and 24. She demonstrated in doing so that (despite her terms of reference, however artificial) Dr Hewitt had in fact taken into account matters other than behaviour.

499. She purported on a number of occasions also to take into account statements, but without having seen the videos, up to that time, or without having the full context of the statements before her. Miss Page suggested that Dr Hewitt had indeed made a "leap too far" and, what is more, that she had displayed bias in her methodology. This may have been partly a factor of her limited information, and I am sure it was unconscious. Nevertheless, Miss Page was clearly right about this. There were a number of examples, but perhaps the most striking was Dr Hewitt's classification of vulval soreness as an "unusual sexual behavior" with reference to Child 2. It was also curious that this should have been so readily accepted as a pointer to Red Room abuse since Dr Hewitt herself listed the symptoms *before* as well as during the Red Room period. When pressed, Dr Hewitt agreed that her report was "misleading" at least in this respect. No doubt all the experts are very busy people, but by December 2001 when the reports of Dr Friedrich and Dr Hewitt were prepared it must have been apparent how grave the allegations were that the Review Team had chosen to make. Sloppiness of this kind is not good enough.

500. Dr Hewitt explained that her very strong conclusion in respect of Child 2 (that she had suffered trauma while in the Red Room) had been reached by combining behaviour with statements. I can readily understand the artificiality of separating out behaviour and statements. I noted the same problem with Professor Friedrich, who was supposed to be concentrating on verbal disclosures but decided to refer to behaviour in addition (for reasons I have explained). Nevertheless, it was a fair point for Miss Page to make that Dr Hewitt did not make clear when and to what extent she had departed from her specifically behavioural brief. Miss Page pointed out to her that the picture she had been given was somewhat incomplete since the mother of Child 2 had in May 1993 described her as "loving" the Nursery at the material time (i.e. prior to July 1992).

501. One of the more surprising claims of Dr Hewitt was that the court could rule out cross-contamination as a factor in respect of certain children (including Child 2). Miss Page suggested this as an indicator of bias, but more importantly it was a matter outside Dr Hewitt's expertise and she lacked a good deal of relevant information now before this court. In any case, although she tried to explain how she had ruled out cross-contamination (on the morning of 19 April), I found this part of her evidence difficult to follow.

502. Once again, I shall have to address the opinions expressed by these two experts on child behaviour, in relation to the individual children, when I come to assess the evidence relied on for the purposes of justification.

8) The evidence of multiple abuse

General Introduction

503. I shall now turn to consider the evidence relied upon by those Defendants pleading justification to support the primary allegations of rape and indecent assault, child by child, as well as the secondary (but obviously grave) allegations of involvement in a paedophile ring and the supply of pornography.

504. Ms Judith Jones made the point in her evidence (probably regarded in some quarters as controversial, and certainly of some sensitivity) that, since this was primarily a social services nursery, one would expect a significant proportion of the children to be suffering from some form of abuse simply on the basis of ordinary experience. She would also have expected to find some of them on the child protection register. What surprised her in the present case was how few, relatively, were so registered. It is clearly necessary to factor in this evidence to the exercise of weighing what is or is not inherently unlikely, in the context of applying the principles discussed by Lord Nicholls in *Re H* (cited at paragraph 358 above).

505. As I have noted elsewhere (paragraph 481), Dr Cameron made the very telling point that, over a large cohort of supposedly abused children, it would be quite astonishing if threats by abusers could be so effective as to prevent any single child from making a contemporaneous complaint. One of the factors mentioned by Holland J in July 1994 was that none of the indictment children (subject to one possible minor qualification) had made such a complaint. Given that the Review Team have now airily accused Mr Lillie and Miss Reed of abuse on such a massive scale, the absence of contemporaneous complaints has become a major factor. It is true that the Review Team brushed it aside, on the basis of speculation, but I cannot take such an approach. Such a widespread and deafening silence prior to April 1993 *could* be explained on the basis that Mr Lillie and Miss Reed had so skilfully terrified dozens of children that they were unwilling to disclose ongoing abuse to parents/carers, but Dr Cameron thinks it highly unlikely. So do I. The relevance of the point is that I propose to look carefully at each and every case to seek some solid evidence of threats by Mr Lillie and/or Miss Reed that might account for the child's silence.

506. Miss Page sought to introduce similar evidence given by Professor Bruck in a supplementary report served in June 2002. Her focus was not so much upon threats to child victims but rather to the ability of children, in general, to "keep secrets". She cited a number of studies, from which I believe it is fair to say that the general import is that a significantly high proportion of children appear to be unable to comply with requests not to reveal matters which they have been asked to keep secret and, what is more, that the proportion would appear to increase inversely to age.

507. Professor Bruck suggested in the light of the papers she cited (and indeed some others which were not available for production) that the data indicate that at least 50% or more of children under the age of five will tell a secret even if asked not to by their mother or a familiar adult.

508. It is unnecessary to rehearse the underlying materials in any detail, but one study might have appeared to be of particular interest which focused particularly upon children aged three to five. They witnessed "a male confederate" break a particular glass. He instructed the children not to tell anything about the incident. Some of the children were offered a reward not to tell; some were told "sternly" not to reveal the information; others were told it would be "fun not to tell". Most of the children who were simply

instructed not to tell revealed the secret in due course (86% of three year olds and 57% of five year olds). Those who were instructed not to tell "sternly" appeared more reluctant to reveal the information, but the pattern was similar (64% of three year olds and 50% of five year olds).

509. Another factor which emerged from research by Douglas Peters and colleagues was that there is a tendency to keep a secret only for so long as the "transgressor" is present (see *Jeopardy in the Courtroom,* Ceci and Bruck, 1995, p.145). Another trend revealed by research (Thompson, Clarke-Stewart and Lepore, 1997, *What did the Janitor do?*) is that, perhaps not surprisingly, there is a greater initial reluctance to reveal such information when questioned in a neutral manner (e.g. "What happened?"). Leading questions, of one sort or another, are more likely to reveal "a secret" without delay. Even, however, neutral interviewing, if pressed further, appeared to lead to revelation.

510. Shortly after I received this supplementary report, Mr Bishop responded and it became clear that he did not accept that what Professor Bruck was saying amounted to a fair representation of the current state of research. It would not be right for me to take these matters into account without Mr Bishop having an opportunity to cross-examine or call evidence in rebuttal.

511. I naturally appreciate, in any event, that these experiments have to be approached with caution. Not only are they inherently artificial, but the factual circumstances are very far removed from the issues with which I am concerned in this case. It would, therefore, clearly be appropriate to approach this information conservatively and to allow a considerable discount when addressing percentages. I propose, therefore, to concentrate on the evidence of Dr Cameron, to which I have already referred, which suggests strongly that the scenario for which the Review Team would contend (upwards of 60 children being cowed or cajoled into silence) is at least as unlikely as untutored common sense would suggest.

512. A further general point arises from the evidence of Lorraine Kelly. She has been Mr Lillie's partner over the last decade. It is necessary to emphasise that it has never once been suggested, or even hinted in the Review Team's case, that Miss Kelly was implicated in any way in criminal or paedophile activity. She gave evidence about the flat they shared in Red Barns from December 1992. It will be remembered that a constant theme in the pleas of justification advanced on behalf of the Review Team (and until 23 February also by the Newcastle Chronicle) was that children were taken to "Chris's flat" and that abuse took place there. Allegations are variously made that on such occasions people took baths, indulged in sexual intercourse, rape, buggery, oral sex, and also sadistic assaults with knives, forks, spoons and scissors. There was urination, ejaculation and bleeding. Yet not once did Lorraine Kelly come home before, during or after December 1992 and find any signs of disturbance. There were no blood stains, no seminal stains on carpets or bedding, no wet sheets or clothing. There was not so much as a damp towel. There was nothing.

513. She was cross-examined by Miss Sharp (still participating at that stage for the Chronicle) on the basis that she must surely have found disturbed or damp towels because a friend of hers came sometimes to exercise and feed the dog – and he surely must have washed his hands from time to time. It did not seem to strike any particular chord with Miss Kelly. But even if he did wash his hands, that would hardly advance the case Miss Sharp was then putting forward of regular orgies and sadism.

514. Naturally, Miss Kelly's evidence would not trouble the Review Team. Ms Jones, for example, took the line that if a child refers to "Chris's house" that may not actually mean Chris's home at all. It might simply be a reference to Mr Lillie's domain in the Nursery. If this reasoning is taken to its logical conclusion, it might well apply to every reference made to "Chris's house". Therefore, presumably, one should take every such allegation with a pinch of salt. Moreover, if it is reasonable for me to treat one or more of the "disclosures" about Chris's house as truly relating to the Nursery, one has to address the alternative scenario that the orgiastic behaviour alleged took place in the

Nursery without parents or other members of staff spotting anything amiss. The Jason Dabbs case affords no precedent for anything remotely like that.

515. As Detective Constable Helen Foster confirmed, in evidence on 22 May, the immediate neighbour at Red Barns had been shocked when she found out about the allegations because she had heard and seen nothing suspicious. It is hardly realistic to suppose that if children and/or paedophiles were trooping in and out of Miss Kelly's flat she would have remained oblivious. The police were given this important piece of evidence but it seems to have been accorded no significance. Nowadays, Miss Foster acknowledged, a statement would have been taken from the neighbour.

516. Of course, one could overcome these difficulties if one transfers all these abusive trips to an unspecified flat (perhaps with a lift) or a house (perhaps with a black door or a red door) in some other location within push-chair distance of the Nursery. That is a very attractive option to the Defendants because not only is it difficult to prove a negative but virtually impossible to destroy a chimaera. The problem I face is that this would be purely speculative. It is not simply that there is no corroboration for such allegations (although that is certainly true). In the present context, I am postulating (at Ms Jones' invitation) that one rejects all references to "Chris's house" as being inaccurate. I am therefore not concerned with corroborating a child's account at all (since it is *ex hypothesi* wrong). I am not prepared to conjure up such flats or houses, to serve as imaginary substitutes for "Chris's house", out of thin air. There is simply no solid evidence. There are some statements attributed to children which I shall have to consider in individual cases, as I come to them, but they all have to be assessed according to the circumstances of each particular case – including Ms Jones' warning that they are not necessarily to be taken literally.

517. One of the general propositions to which great significance was at one time attached by the Defendants was that Mr Lillie and Miss Reed were supposed to have an exceptionally high ratio of recorded accidents as compared to other staff. The theory was that they were recording bogus accidents to cover abuse. What was said at page 244 of the Report was:

> "There appears to be the possibility that Chris Lillie and Dawn Reed abused children and covered their activities by recording fictional accidents to disguise either physical signs of abuse or distress caused by the abuse".

518. This fell apart as soon as it was examined. Not only was there no correlation between the "accidents" and reported examples of abuse, but the Defendants were not even comparing like with like. The statistics they produced made no allowance for the fact that some of the comparator staff had only been in the Nursery for a relatively brief period, or that others were responsible for less vulnerable age groups, or even primarily for administrative duties rather than the direct care of children. It was utterly spurious. No more was heard of it (apart from a brief mention in closing submissions). Yet it was used both in the Report and in the Defendants' case on justification. In court, one could see the inadequacy of the allegation and discount it. Unfortunately, however, the readers of the Report were not in a position to see through the Review Team's "statistics" because, as in other instances, the reasoning is not set out for readers to make their own assessment. They were supposed to take it all on trust. They were presented with a picture of careful, planned and long-term manipulation of records to disguise paedophile activity. This would naturally carry conviction, on a superficial level, because paedophiles are widely perceived as cunning and manipulative. Ironically, of course, it does not tie in with Mr Dervin's sceptical assessment of the two Claimants as being "among the most disorganised and chaotic abusers in the history of child care".

519. There is another aspect of the regime at Shieldfield at the material time that needs to be borne in mind when assessing opportunities for abuse and the likelihood, or otherwise, of its having occurred. I am prepared to accept that there were legitimate matters for criticism and that later the Newcastle City Council attempted to make radical improvements. In particular, so far as the present Claimants are concerned, there was a lack of accurate record-keeping as to when and with whom children left the

Nursery premises. As one parent pointed out, had there been a serious fire on the premises, it would not have been easy to pin down at any given period who was supposed to be on the premises and who had gone out (for whatever reason). Several parents spoke of having come to collect a child and finding that he or she was not there and of having to wait for staff to bring them back. Moreover, on some such occasions, no one on the premises (including managerial staff) was able to say where they had gone or when they were due back. That was obviously not satisfactory, to say the least. Not surprisingly, much has been made of this by the Defendants in suggesting that such occasions provided opportunities for abuse outside the premises.

520. Another aspect of the "chaotic" administrative arrangements often referred to was the problem of clothes being muddled up. Children sometimes wore different clothes when collected from those worn were delivered at the Nursery that day. On occasions, these were ill fitting and uncomfortable. No one disputed that there were sometimes "accidents", requiring a change of garments, or that children's clothes were sometimes wet from playing with water, or dirty from playing inside or outside, or from food being dropped over them. The criticism was that there seemed to be no system, and everything was done on a "hit or miss" footing. Again, this is relied upon as affording opportunities to cover up abuse. Although never quite spelt out, I understand Mr Bishop's point to be that evidence of abuse, such as bleeding or seminal staining, could be removed and substitute clothing provided. On the other hand, I believe that these "chaotic" elements of the Shieldfield regime were what Mr Dervin had in mind when he expressed scepticism (as I find that he did) in his letter of 22 January; in other words, I believe he was expressing doubt whether any cunning and manipulative paedophile would ever be so "chaotic" about covering tracks. One of the more bizarre allegations is that a small boy was delivered in the morning wearing his new football strip and came home in a pink dress and cardigan. Neither Claimant would accept this was possible. They certainly knew nothing of it. On the other hand, it is not the sort of thing a mother would forget. If it did happen, however, it hardly has the stamp of a manipulative paedophile trying to cover his/her tracks.

521. In the light of the allegations of widespread abuse outside the Nursery premises, in unspecified flats or houses, it is necessary to have in mind some background context as to the typical daily regime at Shieldfield during the relevant period.

522. I quite appreciate that, as the Review Team have emphasised, it is rarely possible from contemporaneous records to identify when children were taken out of the nursery, where they were taken, or how many children went at any one time. It is fair to say that record-keeping was, to say the least, sketchy. Nonetheless, I have received evidence from Mr Lillie and Miss Reed about the general pattern of daily routines and activities which was, at least in general terms, not the subject of challenge.

523. There was in operation a shift system, with nursery officers tending to alternate the shifts between themselves from day to day. Accordingly, Mr Lillie would be on early shift (beginning at 8.00 a.m.) one day, whereas Miss Reed would take that slot the next. I was told that the manager and assistant manager also alternated their shifts in a similar manner.

524. The building was normally opened at 8.00 a.m. Those present at that time would be the early shift nursery officers, the cleaners, the cook and one of the managers. Those children who arrived early would all be ushered into one room. The other staff and the majority of children would arrive at about 9.00 a.m. At that stage, the children were moved to their individual rooms. The next event was a trolley round bringing milk and biscuits for everyone at about 9.30 a.m. It was quite usual for some parents to stay on the premises and chat rather than leaving immediately after the child was delivered.

525. It was expected that the individual rooms would be set up for the day's activities by about 9.30 a.m., so as to be ready for 10.00 a.m., by which time it was anticipated that all those arriving for the morning session would be in place.

526. When Mr Lillie and Miss Reed were in the Red Room (i.e. from approximately the end of February 1992 until April/May 1993), it was generally the case that they would be joined once or twice a week by a home care worker. Such persons were employed by the Social Services Department for the specific purpose of looking after a child if the parent/carer needed a rest for some reason. (It so happened that one of the home carers was also called Dawn. Her only potential relevance to the case is (a) that it is conceivable that some children when referring to "Dawn" might have had her in mind rather than Dawn Reed, and (b) that on a trip to Whitley Bay on 10 February 1993 she accompanied Mr Lillie and Miss Reed.)

527. It was generally the case that the "morning session" lasted from 8.00 a.m. until 11.30 a.m. The lunch period seems to have taken up a significant part of the day. By about 11.15 a.m., the children were being encouraged to tidy up in readiness. It was necessary for them to wash their hands and clean up for lunch, while tables were laid. During this period, also, there would be some movement between the rooms while staff were replacing borrowed toys.

528. Lunch normally began at about 11.30 a.m. Some children ate faster than others, and regularly the meal went on for over an hour. Sometimes members of staff would add 15 minutes on to their lunch break if they had been unable to take their scheduled break during the morning period.

529. From about 12.30 p.m., the children would be tidying up after lunch and having nappies changed where necessary. Some would at that stage have a nap. Also, the parents of those children who were attending the morning session only would begin to come along to collect them.

530. At around this time, the member of staff who had come on for the early 8.00 a.m. shift would generally take a break while other members of staff supervised the children. The second member of staff (i.e. the one who had not been on early shift) would take a slightly later lunch break at around 1.00 p.m.

531. At this halfway stage, it was also necessary to set up the activities for the afternoon session. In most cases, this was shorter than the morning session. It would generally last until about 3.00 p.m. At that time, or shortly afterwards, the bus would arrive to pick up those children placed at the Nursery by Social Services (if parents were unable to collect). The children, therefore, began to thin out at this point and, if there were not many children left in the Nursery after 3.30 p.m., then the number of rooms in use would be reduced.

532. Another regular practice at the time was that there was a rota for cleaning rooms. This meant that each room would be vacated once a week between around 3.30 and 4.00 p.m. for a thorough cleaning. Meanwhile, the other rooms would have floors only cleaned.

533. For those children still remaining at the Nursery at 4.00 p.m., tea would then be served. By that stage, only the staff on late shift would still be in attendance. Members of staff from the early shift would leave the premises or stay on to write up their books.

534. Those members of staff on late shift (i.e. up to 6.00 p.m.) might leave early if there were only a few children remaining at the Nursery. There would always be a manager present until it closed at 6.00 p.m.

535. In this context, Mr Lillie pointed out that the bald statement on page 236 of the Review Team Report, to the effect that he was alone with children in the early mornings and late afternoons, gave a misleading impression. He made clear, first, that he worked alternate shifts and, secondly, that there would generally also be a student or home carer present as well. At the beginning of the day, those

members of staff from the other rooms who happened to be doing the early shift would also congregate with the children arriving early. It would, therefore, be exceptional for him to be the only member of staff present between 8.00 a.m. and 9.00 a.m. Moreover, one of the cleaners ("Jackie") would usually be there at 8.00 a.m. as well.

536. It will thus be appreciated that within this broad structure the opportunities for lengthy trips out of the nursery were necessarily restricted. I was told by Miss Reed that she and Mr Lillie were keen to take the children out whenever possible for fresh air and exercise and to provide a more interesting environment. Naturally, however, such activities were limited by a number of factors. Obviously the weather played a part. Also, it was obligatory to have a certain ratio of staff to children. It was necessary to have a group of less than eight children. One of them had to be able to take the hand of each child who was walking, but if there was a child in a buggy then it would be possible for them to take three children each (i.e. a maximum of six). They would only be able to go out with more than six children if there was an additional adult (for example, a student or careworker).

537. During the relevant period, there were building works going on upstairs and use of the garden was therefore restricted. There were no opportunities, therefore, for outdoor play on the premises. Trips out of the Nursery were more frequent in the afternoon than in the morning and, generally, it was necessary to be back in time for 3.00 p.m. when the Social Services bus arrived. I was also told that normally the time for going out would be between 1.30 and 2.00 p.m. I was told by witnesses (for example, the parents of Child 1, Child 7, Child 10 and Child 14) that there were occasions when Mr Lillie and Miss Reed were not back in time for the Social Services bus and that, on occasion, a parent might have to wait for half an hour longer than expected. I have no reason to disbelieve this evidence.

538. Miss Reed took particular offence at the assertion made by the Review Team in their Report (page iii) that "children were frequently and inappropriately taken out of the Nursery by Christopher Lillie and Dawn Reed on the flimsiest of pretexts". The implication seems to be that they were taken out frequently for purposes of child abuse. This is one of the central allegations in the defence of justification, and I shall return to it in due course. It is necessary, however, to bear in mind just how circumscribed the opportunities were for trips out of the Nursery and that, in the periods available (i.e. normally a maximum of one and half hours), it would be necessary to transport the children back and forth from the Nursery – quite apart from any time spent at the relevant destination.

539. In this context, I should record that in February I acceded to the request of the parties that I should go to Newcastle and visit the Nursery (which has undergone significant physical changes since the material time) and also to walk over the various routes that were considered significant. Not least, I was taken to various roads and blocks of flats where it was suggested that abuse might have taken place. I therefore have the geography of the locations very much in mind.

The evidence of Dr Camille San Lazaro

540. Dr Camille San Lazaro gave evidence on 13, 14 and 16 May. She was in a somewhat ambivalent position since, although she is a consultant paediatrician at the Royal Victoria Infirmary in Newcastle, and a senior lecturer in paediatric forensic medicine at the Newcastle University, she was not for the purposes of these proceedings an expert witness, but rather a witness of fact. Nevertheless, her findings in respect of many of the children formed a significant part of the Defendants' case on justification, as they did in the ill fated criminal proceedings in 1994. They are relied upon, together with certain oral statements made in her presence, as part of the factual material from which I am invited to draw an inference that Mr Lillie and/or Miss Reed abused the children in one way or another. She personally examined no less that 53 children from Shieldfield looking for signs of sexual or other abuse.

541. Dr San Lazaro has practised in the field of paediatrics for about 30 years, and has specialised in alleged child abuse or neglect since about 1980. Those were the very early days in the recognition and diagnosis of widespread child abuse and experience was gathered somewhat "on the hoof". Until relatively recently, and particularly before the routine use of colposcopy, practitioners in this field sometimes felt isolated and under pressure. It seems also to have been the case that there were few opportunities for training, peer review or the auditing of individually developed practices.

542. She produced reports or records of examinations carried out in relation to the children and also documents described as "child protection records". Many of these were made available along with her original witness statement and other materials were produced later along with a supplemental witness statement. The purpose of this was mainly to clarify some of the terminology which she had used in her records and also to meet some of the points made about her evidence by Dr Watkeys. I shall consider the impact of her various assessments when I come to the individual children; and I shall confine myself at this stage to general matters.

543. Dr San Lazaro immediately recognised in the witness box that her approach would be quite different nowadays. She said that "we" are less isolated and that paediatricians are more ready to consult others on issues of child abuse. She recognised also that there were points during the Shieldfield inquiry where she "lost her way". There were things written then which she would not write today. There were also inaccuracies in what she had written. Indeed, on 14 May she admitted in cross-examination that her records were in some cases inconsistent and difficult to interpret. As to Child 14, so fundamentally significant in this case, the following exchanges took place:

> "Miss Page: I am suggesting the whole picture is so unreliable and so flawed that the court could not safely conclude that this child had signs of penetrative injury at all?
>
> Dr San Lazaro: I accept that this – that the medical findings as laid out in this child's records cannot be relied on in their specificity, specifically. But I believe that all the information put together is clear on the fact that there was penetrative damage to the hymen and I quite accept that that is a difficult matter for this court".

544. This was not easy to follow. A finding of penetrative damage in a hymen is "specific". Unlike cases where the physical findings are neutral, it is not a question of "all the information put together". One ought to be able to rely on a paediatrician to give a clear factual assessment of whether there is diagnostic evidence of abuse or not. If I cannot rely on her medical findings "specifically", I am not clear what is left.

545. A little later she was asked about the particular inconsistencies in her descriptions:

> "Miss Page: Why did you not take the opportunity to clarify and write down in your notes whether you had one or two complete transections or no complete transections, partial tearing, how many partial tears? Is it not extraordinary, bearing in mind that you were going to go into court as a prosecution witness on a charge of rape, that you should have the opportunity, with this child under anaesthetic, [and yet] you did not make any note of what you observed in those conditions?
>
> Dr San Lazaro: It is regrettable. The whole of this is regrettable and I do not know why it was not done.
>
> Miss Page: It was a professional lapse not to have done it, was it not?

> Dr San Lazaro: All of this is a substantial professional lapse, I would have said."

546. It is to some extent a question of trying to assess through written records what the witness found eight or nine years ago with the benefit of hindsight. In some cases, the surviving information is so defective that it is just not possible. Unfortunately, things are not quite that simple. However ready Dr San Lazaro may be now to recognise her human frailties, and the improved techniques available today for dealing with such cases, there are certain facts that cannot be obscured. The truth is that Dr San Lazaro's professional judgment and objectivity were in some of these cases hopelessly compromised. In particular, I can hardly sweep under the carpet the untrue accounts she was giving to the Criminal Injuries Compensation Board with a view to assisting some of the parents recover compensation out of public funds. She herself recognises that there were "inaccuracies". She could hardly do otherwise. I am afraid, however, that the problem is more fundamental and goes to professional integrity rather than competence.

547. To take but one example, Miss Page drew to her attention a passage in her so-called "generic report", which was produced to provide the Board with a general summary (but presumably a fair and accurate one) of the supposed multiple abuse at Shieldfield. She apparently did it "from memory", which would be hardly satisfactory in itself. More importantly, however, I need to consider the terms in which she referred to the streptococcal infection found among a few children. She included it in the generic report in a very short section supposed to be identifying physical signs relevant to the issue of child abuse. It had no place there at all. Such infections are quite common and the presence of the infection was not probative of child abuse. Indeed, it could easily be due to poor hygiene. Yet she deliberately gave the impression that it was significant. It was given a prominence in the overall picture of Shieldfield that was wholly disproportionate. This was reflected in the Review Team's Report also, where it was said, "Dr Lazaro describes this as an unusual finding which suggested a common source". Its only relevance in the Report would be to give the impression that it was evidence of some sinister (but unspoken) form of child abuse.

548. She spoke of "negotiating" the content of this report with a man from the Criminal Injuries Compensation Board, but she accepted responsibility for its contents. She actually admitted to Miss Page that she had adopted the role of "advocate" for the children's compensation claims – and this inevitably seriously compromised her professional independence and integrity. Many thousands of pounds of public money were paid out at least in part as a result of her assertions.

549. More generally, on 16 May, Dr San Lazaro made the following startling admissions:

> "Dr San Lazaro: I think I did advocate for these children. I think there was – I was certainly very distressed for them and affected by their trauma, and I accept that I attempted … to do my best for them, or to present the best case for them. I do not think that is unusual practice for doctors in any situation.
>
> Miss Page: The usual practice for a doctor is to simply send to the Criminal Injuries Compensation Board their original report on the child and not to elaborate save to the extent that they are asked to do so.
>
> Dr San Lazaro: In children who have been sexually abused, and I have been doing Criminal Injuries Reports for a very long time, I recognise that they have been emotive and they have been exaggerated and overstated in the past … and they are much more measured now".

I cannot believe, as she appeared to suggest, that it would be "not unusual" for doctors generally to behave in this way with regard to their representations to the C.I.C.B.

550. She accepted specifically in relation to Shieldfield that her presentation to the Board was exaggerated and overstated in the "generic report" (in other words, the report applying to all the children claiming compensation). That is indefensible.

551. It is ironic, in the light of this very serious state of affairs, to recall what Mrs Saradjian had to say about Dr San Lazaro on 20 February:

> "As a result of seeing Dr Lazaro I was impressed by her professionalism. I was also impressed by the information that she had to give about the large number of children that she had interviewed and examined that had medical findings of abuse, and also the level of trauma that she had witnessed and heard from these children.
>
> I was also impressed by her impression of the parents, in that she did not feel that they were exaggerating the situation with the children. I was also impressed by her analysis of the situation, as she saw it, from her point of view as a very experienced forensic paediatrician".

The Review Team clearly fell under her spell.

552. Dr San Lazaro's admissions are not only serious in themselves, but they have profound implications for the evidence in this case. It is not simply that there are numerous examples of poor record-keeping and inconsistent entries, which make it difficult to be satisfied what Dr San Lazaro actually perceived at the time of her examinations. Everyone agrees that hymenal examinations in small children are difficult, such that even the average paediatric registrar would not be equipped to carry out or interpret them. Therefore a good deal of subjective interpretation is involved for a consultant in arriving at the basic data before they come to be recorded.

553. Even where it is possible to identify what her original conclusion was, the question arises as to how safe it is to rely on Dr San Lazaro's interpretation of what lay before her. Since she was so committed to what she perceived to be the children's best interests and was "affected by their trauma", and because she was apparently prepared habitually to overstate and exaggerate, I must approach her unaudited personal conclusions with the utmost caution. It is as clear as can be that I must not proceed on an assumption of objectivity or truthfulness. On the other hand, I cannot simply dismiss everything she claims to have found. I do not believe she was setting out mischievously to misrepresent everything. It is rather that she was unbalanced, obsessive and lacking in judgment. I have thus to chart my way through a very treacherous terrain. In doing so, I have been greatly indebted to Dr Ward and Dr Watkeys, of whose experience and integrity there can be no doubt.

554. Dr San Lazaro even went so far in May 1996 as to tell the Review Team: "I believe that children were removed from the nursery for reasons either of specific paedophile activity or to be used in possible commercial paedophilia or both".

555. She also told the Criminal Injuries Compensation Board in her generic report "there were syringes with medicines inside to make their bottoms feel all right". She was only regurgitating her interpretation of what some children had said, but appeared to be endorsing the allegation with her professional authority. As far as I understand her own view of the matter, she said she believed that they were objects used as part of a deception rather than actually to inject the children with drugs or medication. She added, "I still think I have that view". It is not easy to reconcile these statements. Either she believed that syringes were used to drug the children or she believed that they were part of a deception. Of course, either way she was merely speculating, but she does not seem even to have passed on her true belief.

556. The overall picture she conveyed to the C.I.C.B was that the abuse had been "bizarre… almost certainly involving instrumentation, drugs and pornography". It was put to her by Miss Page that she had no proper basis to make such claims. Her answer was that she believed the children had placed inside them "items of cutlery - objects". Miss Page was obviously right.

557. There can be little doubt that, because of the weight the Review Team appeared to be willing to give to people's opinions, Dr San Lazaro must have given them considerable encouragement in respect of their conclusions about the administration of drugs and the use of pornography. It is a good illustration of why it is necessary always to keep in mind the distinction between evidence, on the one hand, and imaginings on the other.

558. It is important to note that Dr San Lazaro also supplied dubious information relating to individual child applicants. I cite an example below in relation to Child 1. The same pattern is to be found replicated in other cases. It is clear to me that it was not only in the generic report that Dr San Lazaro was saying things that were untrue. Some of the individual reports are flawed. What is deeply disturbing is her tendency, when writing a witness statement or letter to the Criminal Injuries Compensation Board, to "beef up" her basic findings by adding a sinister slant to what had been recorded originally as a neutral or non-specific finding.

Child 1

559. This child was born on 28 March 1990 and attended the Nursery from 1 October 1992 to July 1993 (usually 2 days per week). Until their suspensions, he was in the care of Christopher Lillie and Dawn Reed. He is the one child Mr Lillie admitted to taking briefly into his flat at Red Barns – something which he has no doubt bitterly regretted for the last nine years. He explained that he was a child who needed individual attention most mornings to settle him down. On this particular morning, he took him out of the nursery for a walk because he was on his way to the flat to collect something he had forgotten. Miss Reed confirmed that the child was difficult in the mornings and needed individual attention to settle him.

560. No professional person has ever heard Child 1 make any accusation against Christopher Lillie or Dawn Reed. No criminal proceedings were ever instigated. The "disclosures" seem to have been largely through the mother. The Review Team were warned by Detective Inspector Findlay that the Child's mother had suffered mental health problems, and also that she appeared to be obsessed with the allegations of abuse at Shieldfield and "determined to get in on it". Mr Wardell said, on the other hand, that they did not accept this assessment as being accurate, and he thought the mother was "sincere". He clearly attached weight to her evidence as to the behaviours and disclosures of Child 1. It was a fundamental tenet of the Review Team's approach to accept, unquestioningly, what complainants said on the basis that they *believed* what they were saying (or were "sincere"). They seem to draw no distinction between that which is sincerely believed and objective truth. What was perceived as sincerely believed was accepted as having happened.

561. I cannot speak, of course, as to her demeanour nine years ago when it is quite clear that police officers had reservations about her, but the impression I formed on 23 April 2002 when she gave her evidence was a favourable one. She was the most visibly distressed of the mothers to give evidence and had to pause from time to time because she found it so upsetting. There is no doubt that this mother was in 1992-1993 having to endure real stresses and strains in her life. She was divorcing her husband who, she said, only occasionally turned up when he felt like it and was behaving unpredictably because of a drug problem. She started a new relationship with an old friend by whom she became pregnant in the Spring of 1992 and who moved in with her in that July. But by December he was telling her that he wanted to bring the relationship to an end. She had the baby on 12 February 1993 but shortly thereafter she had to worry about the Shieldfield "scandal". This took its toll finally on her relationship with the new partner. From the records, it appears that she had to cope with episodes of

violence during this period involving each of the two men. It is easy to understand what an unhappy time this must have been for her.

562. When she was first seen by social workers on 12 May 1993, she said that Child 1 got on well with Chris and often talked about him, asking where his house was. It is important not to lose sight of this in the light of later developments. Her account changed, however, after contact from other mothers. In particular, she was given information by the mothers of Child 22, Child 23 and Child 12. Child 22 had apparently referred to Child 1 in the course of his own disclosures.

563. She came into contact with two pivotal figures in this case who clearly had a significant influence upon her, namely Dr San Lazaro and the mother of Child 22. The latter came to see her on 26 June. Later that day when she was reporting her conversation to her partner in front of the boy, Child 1 kept putting his hand over her mouth. What significance this was supposed to have remains unclear, but more importantly a fresh observation (recorded by social workers) was made the following day.

564. It will be remembered that one of the matters to which Professor Friedrich attached particular significance was what he chose to call the "proffering of the bottom". I have already discussed that in the context of his expert evidence, but for present purposes it is important to note when this was first recorded. It appears on a note made by Kulvinder Chohan on 7 July 1993 referring back to an incident reported to her as having happened at 8.20 am on 27 June – in other words, the morning after the mother of Child 22 had been round to her home spreading alarm and despondency.

565. The boy was lying on his bed "with his bottom in the air". His mother at that stage, according to the note, said that he should lie down "properly", to which he replied that this was the way to be nice. According to the mother, he lay in that position on more than one occasion and, indeed, still does so from time to time. I am supposed to infer that he was taught to do this by Mr Lillie to facilitate buggery or other anal abuse. Mr Bishop seemed to suggest that this was the only reasonable interpretation. I cannot agree. I am not prepared to dismiss as coincidence the fact that it was first observed the very morning after she had to listen to the mother of Child 22 cataloguing her concerns about her own son. The mother of Child 22 can, when in full flow, be a dominating and disquieting presence. It seems to me quite likely that she alarmed her and led her to misinterpret something which was of no consequence.

566. This was, of course, a month before the police paid the mother of Child 22 a visit to try and stop her spreading alarmist notions, which they perceived as jeopardising the whole investigation. It appeared in Julie Kinghorn's notebook for 30 July that the police had received information that she had been putting words in the mouths of "children of tender years". She could not recollect what the information was or to which children it related. But it shows the need for a cautious approach to interviews with children if they had come into contact with her.

567. The visit also occurred some six weeks *after* Detective Inspector Findlay had told her, "No bull shit. I don't want you talking to anyone". She clearly ignored that friendly advice.

568. The other pivotal figure this child's mother came into contact with was Dr San Lazaro. She apparently gave her regular "support", but Dr San Lazaro appears to have behaved oddly with regard to this child. When he was examined and she found no physical abnormality, she did nothing to put the mother's mind at rest but left her believing that there was reason to think he had been abused. She then arranged for him to be examined under anaesthetic and for swabs to be taken to see if he had a sexually transmitted disease. Of course he did not. Yet again the mother was left to believe the worst. She was given some medication but *not* told that the child was merely suffering from a streptococcal infection common in infants. I have no doubt that Dr San Lazaro fostered this mother's belief that her son had been abused. As the mother put it in the witness box, "she confirmed my worst fears".

569. Dr San Lazaro played the psychologist and the detective and seems almost to have forgotten her role as a paediatrician. When she wrote a long letter to the Criminal Injuries Compensation Board, she set out a whole series of speculative thoughts, but she failed to mention at all the one matter directly within her expertise – namely the negative physical findings. The letter is by no means unique to Child 1, but it is worth setting out in the context of assessing the nature of Dr San Lazaro's role in the development of the Shieldfield "scandal" and the extent to which she was, or was not, capable of professional detachment:

> "Thank you for your enquiry about this child. I can confirm that I saw him on 7.7.93. [Child 1] had been in the Shieldfield Nursery for 9 months.
>
> At first he seemed happy there and his mother was gradually able to leave him alone. Within 2-3 weeks, however, [Child 1] became extremely distressed, screaming and wrapping his legs around his parents, begging them to allow him to go home. Mother remembers that she always tied double knots in [Child 1's] training shoes and that these had never come undone before he had gone to the nursery, or indeed when she had him home. However, he would often return from the nursery with a single knot in his shoes or his laces undone.
>
> [Child 1] also stopped using the toilet to open his bowels and began to display markedly aggressive behaviour, often looking as if he had been crying when they picked him up from school. There was soiling and periods of marked aggression when he hit his mother, telling her that he hated her and that she didn't love him. He developed odd sexualised posturing and other sexualised behaviour and he appeared very frightened about having his nappy changed.
>
> There is little doubt that this is one of the most severely affected children from the Shieldfield Nursery. He had gross signs of traumatic behaviour with regression, sudden phobias and anxieties, abrupt changes into infantile speech whenever the nursery was mentioned and he also gave an account to the police of being removed to a caravan site and having his underwear burnt. I understand that the police did indeed recover artifacts which supported this story.
>
> His mother's relationship broke down after the discovery of abuse and events in the home have been very difficult and fraught. Certainly mother's distress and [Child 1's] own behavioural patterns have been such that I have spoken to her and seen the child on more occasions that I can count. I would suggest that there have been at least 30 contacts with our department since this original event and I also have spent hours late at night talking to the mother to try and help her through her distress.
>
> This boy is receiving psychotherapy and I believe that it will be some time before he is going to recover from these experiences."

570. This was a classic example of Dr San Lazaro's role as an "advocate" (to which she admitted in the witness box). Some of the information was simply untrue. The child did not give an account of having his underwear burnt. In any event, most of what she was saying merely regurgitated or garbled what she had been told and had nothing to do with her medical expertise. Nor did she make any attempt to discern any other possible explanation in the troubled domestic background for any of what she was told. Everything was hung on her theory of multiple abuse at Sheildfield. I strongly suspect that the "hours late at night" talking to Dr San Lazaro were not so much "supportive" to this mother as baleful and depressing.

571. There was a legal dispute at some stage, with Child 1's father seeking an order for contact with him. Dr San Lazaro made a witness statement dated 19 September 1994 in which she asserted that Child 1 "had suffered previously damaging experiences" and that further harm would occur if he had contact with a parent (i.e. his father) who declined to recognise this and was capable of minimising it.

572. The father was thus apparently being criticised by Dr San Lazaro over a conversation she had had with him in which he appeared sceptical and dismissive. He felt that the mother was harming the child by her persistent focus on sexual abuse. The doctor went so far as to accuse him of being "extreme" and likely to destabilise the mother and child. It is disturbing that someone with such flawed judgment should have such power and influence over people's lives.

573. The same weekend as the visit by the mother of Child 22, Child 1 was also sick more than once, having woken at 3 a.m. sweating and restless. He said he had a sore tummy. I do not see why this is supposed to have any more significance than any other childhood ailment. I would need to be given cogent expert evidence to persuade me that it should be interpreted as a symptom of child abuse. Why should he not just have had a slight temperature and a tummy upset?

574. There was a home visit by social workers Kulvinder Chohan and Vanessa Lyon on 9 July 1993. It appears that Dr San Lazaro had upset the mother by this time, telling her that Child 1 had been traumatised and that he froze up every time the Nursery and the "perpetrators" were mentioned. Dr San Lazaro was thus, it would appear, making certain assumptions and passing them on to the mother.

575. During July 1993 Child 1 was, it is true, indicating that he was to some extent not happy at the Nursery, but this was associated with aggressive conduct by another child who hurt his "bum" and hit him on the head. In so far as Christopher Lillie and Dawn Reed were mentioned at this time, it was only in the context of chastising the other child for hitting him. There is no evidence that he was cowed into silence by threats.

576. Child 1's last day at the Nursery was on 9 July 1993, when he was discharged for non-attendance.

577. When Child 1 was interviewed on video on 28 July 1993, he had nothing to disclose about Christopher Lillie or Dawn Reed. Persistent attempts were made to get him to say things about them (including by leading questions). Nothing emerged.

578. Despite this, a second interview took place on 7 February 1994. Again, it produced no evidence of abuse, although it becomes apparent early on that Child 1 was aware that he was *supposed* to be talking about Christopher Lillie and Dawn Reed; it was he who introduced them into the conversation. What he said was that they had hurt Child 95, but he then qualified this by pointing out that, like Pinocchio, his nose was growing longer and longer; this, he explained, was because he had just been telling a lie. The mother told me that he was particularly interested in Pinocchio at that time and made it a habit to say the opposite of what he meant. The difficulty about such a habit, of course, is that one never knows what can be relied upon.

579. There were a number of unusual behaviours noted about Child 1. For example, there was an unwillingness to let his mother's current partner change his nappy or bathe him. Also, there was an incident of self-harm (arm-scratching) recorded by Miss Reed on 25 February 1993. But Dr Kate Ward drew attention to the fact that there had been significant events in his home life over the relevant period, which could have accounted for at least some of the changes in behaviour. She cited parental separation, the mother's change of partner and a new sibling. Nonetheless, she was of opinion that these factors would be unlikely to account for sexualised behaviour. She was referring, essentially, to the following incidents. Child 1 is reported by his mother to have invited her, in or about December

1992, to kiss his genitals. He was at that stage two and a half years old. Later, in March 1993, aged nearly three, he is said to have touched his grandfather's thighs and referred to a lollipop. It is certainly odd behaviour, but it would be a long leap to infer from this that he had been taught about oral sex by Christopher Lillie or Dawn Reed. The remarks were in no way linked to them.

580. Child 1 is significant in the context of a passage in the Review Team's Report on page 210:

> "The children were able to take parents to and/or describe places to which the parents had no idea their children had ever been. Parents were also surprised at the level of distress and panic some children experienced when they went to these places. Sometimes in the course of a routine journey, a child would suddenly become distressed and identify a place that they said they had been taken to by Chris Lillie and Dawn Reed. One child had such a reaction to a house near St. Dominic's."

581. Child 1 took the police on a roundabout trip ending up at a caravan or mobile home. The matter was referred to in discussions between the Review Team and Detective Inspector Campbell Findlay. The Review Team were prepared to conclude (as they would claim on the balance of probabilities) that Christopher Lillie and Dawn Reed had taken him there for sexual abuse, no doubt with other children. It is quite obvious from the discussion with the police officer that he was highly sceptical about this and certainly that he had found nothing to support the contention. Without such corroboration the incident can give rise to nothing more than speculation. It is to be noted that there had been an occasion when the children had been taken to see trains. That is reflected in the mother's evidence on 23 April (at pages 11 and 141). Indeed, according to her, the child himself had "said about standing and watching the trains" by way of explaining why he had been taken by Chris and Dawn to that particular spot. She agreed that there were train lines there (although "you could not even see over the wall").

582. Detective Inspector Campbell Findlay had found a pair of partially burned underpants there, and there was some suggestion that they might correspond to a pair of red underpants that had gone missing from a pack of three the mother had bought from Adams. She told me that she supplied the other two pairs to the police for identification purposes but it appears that nothing came of it. There is nothing in police records to confirm this and I cannot be confident in the mother's recollection on this point. I have seen records which suggest that the police contacted Adams and obtained *from them* a pack of red underpants for comparison.

583. At all events, the mother heard no more. No doubt she would have been informed if a link was established. As so often, the Defendants put these matters forward in evidence without making clear what inference is supposed to be drawn from them. It was not obvious to me why a child abuser would wish to burn underpants rather than seeking to give the impression that everything was normal. It makes no sense. One might reasonably anticipate that the parent of a small child would raise a query as to where they had gone. It is all inconclusive. It is not merely that there is nothing to corroborate an allegation that child abuse took place at these caravans; it is important to bear in mind that the child made no such allegation in the first place. (The mother did report to the police, however, by September 1993 that the child had told her when she took him there that she should not go into one of the caravans because it was a "bad house" and she would get a "sore bum".)

584. It is worth remembering what Campbell Findlay told the Review Team about the underpants – "… that did not take us anywhere because this place is frequented by drunks, alcoholics … it is used for illicit purposes, that place".

585. One of the mother's complaints was that having previously been a "good eater" Child 1 began to refuse food after joining the Red Room. What is striking, however, is how regularly the Day Book

entries record quite the opposite – that he had a good appetite. I see no reason to believe that these entries were deliberately falsified. As a matter of fact, the mother had a number of criticisms about the record-keeping. She thought that Mr Lillie and Miss Reed had been under-reporting. The particular example she identified several times (see e.g. the transcript at pages 61-62) was that there was nothing from Christmas 1992 onwards about her son's constipation. I have to bear in mind, on the other hand, that it is a normal concomitant of constipation that there is nothing to record.

586. I am unpersuaded that these records are anything but genuine. They can perhaps be criticised in terms of lack of detail or occasionally compendious entries covering more than one day's visit, but that is wholly different from false entries to disguise child abuse. In particular, I cannot for one moment believe that the "good appetite" entries are there to give a false impression of general well-being in order to put people off the scent of child abuse – nor can I derive any such sinister intent from the absence of any mention of constipation.

587. On the other hand, if constipation was a problem at the time, it could account for soreness of the bottom and reluctance to have it touched – both of which are factors the mother has mentioned. It could also account for traces of blood apparently found in his underpants in January 1993. It may be significant, on the other hand, that even at that stage the mother's reaction was not to explain it by reference to current constipation, but to say "Anyone would think he had been abused".

Child 2

588. Child 2 was born on 2 September 1989. She started in the Nursery on 11 November 1991 in the Red Room but Christopher Lillie and Dawn Reed did not become her carers until the end of February 1992. She left then to go to the Orange Room the following July.

589. Child 2 was one of the original indictment children in 1993-1994, although at that stage the allegation consisted of indecent assault only. There was no allegation of rape.

590. It appears that in September 1992 (i.e. aged just three) she said to her mother and grandmother that "Chris" had touched her in the region of her vagina. I will assume that this referred to Mr Lillie. This in itself, of course, has to be seen in the context that he would have been quite probably responsible, when she was two years old, for taking her to the lavatory. It was this comment by Child 2 that Holland J had in mind in his ruling when he referred to a possible exception to the general absence of contemporaneous complaints. The Defendants place great weight upon this apparently spontaneous comment of the child and submit that it was "heavily probative of sexual abuse by Christopher Lillie in that he inappropriately touched the child on the genitals". Yet, at the time it was made, no significance was attached to it. The mother did not pursue it with her or associate it with impropriety. It only loomed large in the mother's thinking eight months later when she mentioned it to social workers on 19 May 1993 in the context of the Shieldfield suspensions.

591. It is important to note that the Review Team on page 212 of the Report describe a number of "acts" endured by various children, which they say would be difficult to understand as anything other than sexual, physical and emotional abuse by Chrisopher Lillie and/or Dawn Reed and/or other people. One of the more striking allegations that follows is clearly attributable to Child 2 (it comes from her mother's statement). It consists of an allegation that she was raped on a settee in Christopher Lillie's house. The child has also apparently made "disclosures" of other penetrative injuries at his hands, including the insertion of knives and spoons from the kitchen drawer in his house.

592. The Review Team thus will clearly be understood as making a finding of rape by Christopher Lillie of Child 2. The fair-minded reader might therefore be not a little surprised if told that she was found by

Dr San Lazaro on 13 August 1993 to have normal outer genitalia and an intact hymen. This fact does not emerge from the Report; nor does it seem to have given the Team any pause for thought before endorsing and passing on such a grave allegation to the general public. It is one of the more lurid in that part of the Report (Chapter 13) which is introduced on page 209 by informing the reader that he or she is in for a "very difficult and distressing" read. The Defendants argue that it need not actually have involved penetration at all, but merely a placing of the genitals together. So also it is suggested that the knives and spoon may just have been placed at the entrance of the vagina. It is, of course, possible. The probabilities have to be assessed, however, in the light of her disclosures as a whole (e.g. where the incidents are said to have happened and in whose presence).

593. I turn to the video interviews. The first interview took place on 22 June 1993. It produced nothing significant. Child 2 was able to recall some of her friends and members of the staff, but made no reference to either Christopher Lillie or Dawn Reed.

594. After the interviewer had drawn a blank, her mother entered the room and began to question her (not, of course, good practice). At this stage, the furthest she would go would be to say that "Chris" had smacked another child's "bum" on an occasion when Child 2's mother was present. Eventually, she made an allegation that "Chris" had also hit her "bum" as well as taking her bouncy ball off her. Whether she thought this "Chris" was a child is unclear, but she spoke of "the teacher" (Diane Wood) telling Chris off. A good deal of pressure was then exerted both by Vanessa Lyon and the mother. In addition, the mother chastised the child while the social worker was out of the room, telling her she was being very silly and that she would not get any juice if she started "acting like a baby". The child moaned and said her mother was hurting.

595. It is quite apparent from watching the video recording that by this stage the child has given up completely. She had become floppy and inert. She merely moans and whines. Meanwhile, her mother manhandles her back and forth to no effect.

596. The Review Team did not all have the opportunity of watching this recording. No doubt, if they had, they would have concluded that the child's behaviour indicated that she had something to disclose and that she was reluctant to do so for fear of retaliation. I can draw no such inference. I saw with my own eyes simply a bored and frustrated three year old.

597. She was interviewed again on 1 December 1993. It became apparent that she realised she was there in order to tell the interviewer about "silly" things done by Christopher Lillie and Dawn Reed. Things did not go well, since she appeared to have no recollection of them as Nursery staff at all. Despite this, she said that she had seen them "in their house"; and that she had been there on more than one occasion by car. She knew it was Chris and Dawn's house because Diane had told her. She claimed that she had been taken there by Patricia, Jackie and Diane (i.e. three members of the Shieldfield staff). Although she claimed to have been taken to "Chris and Dawn's house" in "Diane's car", there is no truth in this. Not only is there no place corresponding to "Chris and Dawn's house", but none of the three named teachers ever took them to any place that could be so described.

598. Child 2's mother is totally committed to the idea that her daughter was raped and abused by Mr Lillie and Dawn Reed. On 20 March in cross-examination, she was unable to deal at all convincingly with this difficulty about Diane Wood. She therefore resorted, so far as I am aware for the first time, to hinting that it might have been Lorraine Kelly who was participating and her daughter had mistaken her for Diane Wood. It is very sad that she felt driven to make such an allegation in a public court room. I can say, however, without any hesitation that it is quite untrue. It is necessary to recall, also, that Child 2 left their care (i.e. the Red Room) at the end of June 1992. This was six months before Christopher Lillie moved to Red Barns to live with Lorraine Kelly. It was about the time he was just beginning to go out with her. In any event, I have seen both Diane Wood and Lorraine Kelly giving evidence. I do not believe anyone, even a small child, could confuse them in a month of Sundays.

Where it is alleged the child was taken remains entirely obscure, but clearly there was no confirmation for the story from any of the three other members of staff. That fundamentally undermines the allegation, obviously, but the Review Team failed to address the point. Even at the stage of closing submissions, the Review Team seemed to think it a sufficient answer to say that "…it should be noted that she does not allege them to have taken part in any abusive act or indeed that either they or the other children that she named as present witnessed the abuse".

599. The supposed trip described involved a minibus. Apart from the five members of staff, there were about eight other children. Despite all these "witnesses", it is said that on the landing of the house Christopher Lillie raped her and also inserted into her vagina his knife, his gun, his pencil, his spoon, a crayon and his fingers. This is hardly likely to be the product of one child's fevered imagination. It seems more likely that it was an amalgam of stories picked up from other children or parents. It is unclear whether this was a second rape (i.e. additional to that on the settee) or whether it is a different version of one incident. At all events, it simply cannot be true.

600. The Defendants seek to overcome this by suggesting "the likelihood that some names are supplied simply because the interviewer is asking for more and more names". This raises two concerns. First, it hardly squares with the Review Team's professed conclusion in their Report that children's allegations could *not* be the result of suggestive questions or other pressure from interviewers. Secondly, if this child was so willing to come up with answers she thought the interviewers wanted to hear, how am I to distil the "core" allegation(s) that are free from such influences?

601. I need hardly say that I am not suggesting that the child was dishonest. She was aged three and four when being asked to recall events that supposedly took place when she was two years old. It is a classic example of the general problem at Shieldfield following the suspensions in April and May 1993. Anxious staff and parents were asking questions and exerting pressure; frightening stories were doing the rounds among very small children, who were being encouraged to talk about events and concepts the significance of which they could barely understand.

602. The Review Team point to corroboration in the account, for example, of Child 23 who claimed that she had been present during abuse by the Claimants. Their submission ignores, however, two fundamental points, namely (i) that Child 2 and Child 23 did not overlap in the same room at Shieldfield and (ii) that there is no evidence that Christopher Lillie and Dawn Reed took children out of the Nursery from other rooms.

603. Reliance was also placed on behavioural problems. It was this child who Professor Friedrich cited when giving an example of how difficult it was to attribute behavioural symptoms to child abuse because of the various other factors that could account for them. Indeed, one of the incidents which had clearly stuck in the mother's mind was that on one occasion she had found her daughter looking out across Newcastle from a spot in their garden in the direction of where her father lived. She was expressing apparently some concern about whether he was all right. I am invited to draw the inference that this must have come about because Christopher Lillie had abused her and threatened that, if she told her mother, he would see to it that some harm befell her father. There is a more humdrum explanation, however, since it has to be seen in the context of a father who (according to the mother's evidence) more or less swanned in and out of their lives when he felt like it. Since the child was clearly fond of him, it seems plausible that she would have been upset by unexplained and prolonged absences.

Child 3

604. Child 3 was born on 28 June 1988. He began with Amanda Caisley and Clare Parrish towards the end of October 1990. He left the Nursery finally on 22 January 1992. This was before Christopher Lillie

and Dawn Reed teamed up in the Red Room and they never cared for him directly. Physical findings were non-specific and within normal limits. No oral testimony was given in relation to this child. An unsigned witness statement was served on the Claimants from Child 3's mother. Also a Civil Evidence Act Notice was served in respect of her interview with the Review Team.

605. On 10 November 1993, nearly two years after his departure from Shieldfield, and when he was aged five years five months, his mother was visited by social workers. She told them apparently that she had questioned the child about Chris and Dawn. That is not a promising start to his "disclosure", since I can know nothing of how this questioning proceeded, or in such ignorance form a conclusion as to the significance of the fact that he apparently "froze". It is recorded in Social Services records between 12 January and 9 February 1994 that there had still been no "disclosure". The mother was, however, clearly becoming anxious. She reported that she felt very left out of things "and this became more evident when she had spoken to [the mother of Child 14]". She had informed his teacher at his new school "about Shieldfield" and was met with the response, "Oh not another one". She therefore did not feel "very supported". By 9 February it was being recorded that the mother was self-harming after a break up with her boyfriend. She was described as "very distraught".

606. By 27 February of that year, however, Child 3 was apparently recounting to Dr McArdle of the Fleming Nuffield Unit that "they put pencils on my bottom". This needs to be seen against the background of what seems to have been persistent questioning at home (how suggestively I do not know) and the usual reservations required in respect of discussions in therapy (see the Cleveland Report).

607. It is necessary to record an unusual feature about the child's medical background. He was in nappies until he was three because of a stomach problem. He had two bowel biopsies and also required a special diet. According to Audrey Palmer, he was "not always easy to deal with".

608. Nearly two years on, matters progressed to the stage where Child 3's mother was reporting to Judith Jones, shortly after the Review Team had been set up, that Mr Lillie had at some stage stuck a paint brush up his bottom – and it hurt. By this time, of course, three years and six months had elapsed since the boy's departure from Shieldfield. Ms Jones in evidence referred to the fact (while "trying not to be too indiscreet") that the mother had suffered "emotional difficulties" of her own and had received "some treatment for depression". According to Dr McArdle, the mother had lost much of her authority over her son. There was a vulnerability which "perhaps preceded Shieldfield". The mother described her rejection of the boy following a difficult birth, and Dr McArdle thought this related to puerpural depression. Without making too much of it, that does need to be weighed in the balance. Ms Jones said she found it "a difficult account".

609. This conversation took place on 9 November 1995. The mother also reported to Judith Jones that she had taken him on a bus to find where this particular act of cruelty was supposed to have taken place. He apparently alighted near St Dominic's Church and asserted that Mr Lillie lived nearby. Other people were said to go there also (echoes of the paedophile ring) and Miss Reed accompanied them on several visits. This was where she too hurt children. This is not the only example of anachronism in the case, since Mr Lillie did not move to live in the Red Barns district until about 11 months after Child 3 left Shieldfield and was therefore completely beyond the clutches of Mr Lillie and Miss Reed. By whatever means, the story of child abuse at Red Barns was clearly doing the rounds. But in Child 3's case it simply cannot have been true. Ms Jones recognised this, in evidence on 15 February, and thought that paragraph 101 of her witness statement needed to be corrected. She had reported a conversation with the mother of Child 3, in which the child was said to have become agitated on alighting "just in front of Red Barns". She fairly accepted that she had probably jumped to a conclusion by adding those words.

610. Unfortunately, this non-event is elevated to considerable significance on page 210 of the Report where it was said under the sub-heading "Out of the nursery – the places to which children say they were taken":

> "Parents were also surprised at the level of distress and panic some children experienced when they went to these places. Sometimes in the course of a routine journey, a child would suddenly become distressed and identify a place that they said they had been taken to by Chris Lillie and Dawn Reed. One child said that that was 'where Chris lives, other people go there too. Dawn goes with us and that's where she hurts children'."

611. According to Professor Friedrich, the mention of Mr Lillie and Miss Reed was frightening to Child 3 and, for that reason, it is not surprising "that he made very few statements during the time in the nursery". It is interesting that he should put it that way since, so far as I am aware, there were not "very few statements" during that period – there were none. This is just one example of Professor Friedrich's free-flowing and creative approach to the evidence.

612. According to notes made following a visit on 10 November 1993, by Kulvinder Chohan and Helen Foster, the mother had spent a good deal of time at the Nursery ("four mornings a week") and she enjoyed the company of the staff. "She was a friend of Chris and Dawn and believed they were the most dedicated members of staff there". What is being postulated here is that despite their "dedication", and their friendliness towards the mother, the Claimants were inserting objects into his anus, and so successfully terrorising him into silence that he said nothing about it for nearly (or perhaps for more than) two years. It could in theory be true, but in order to attach weight to this scenario I would need to know a good deal about how the information was elicited, and also how he came to alight at Red Barns when he simply could never have been taken to Miss Kelly's flat.

613. On 13 May the Review Team decided to drop this child from the plea of justification. I therefore need not say anything further. They were ordered to pay the Claimants' costs incurred in meeting the allegations.

Child 4

614. It will be recalled that it was with Child 4 that Miss Page began her cross-examination of Professor Barker; hers does represent a particularly striking example of cruelty and perversion if the pleaded allegations are correct.

615. She was born on 2 September 1990, and was moved into the Red Room in August 1992, just after she had begun toilet training. She was first seen by Dr San Lazaro on 7 July 1993. By that stage, the only relevant allegation she had made was that Christopher Lillie had smacked her bum and "fairy [vagina]". The examination revealed no abnormalities. Dr San Lazaro noted at the time that her mother appeared under some degree of stress because a friend had suffered a mental breakdown. I note also that as early as 19 May 1993 the mother (who was pregnant at the time) needed to calm herself down after attending meetings about abuse at Shieldfield. She admitted to the social worker, Marion Harris, that she "led" the child and put ideas in her head. She also described her as "gobby" and as being ready to "tell anything". Nevertheless, nothing of note was in fact said at that stage. On 6 August 1993, when there was a home visit, neither Child 4's mother or grandmother had any concerns about abuse. Indeed, the grandmother was expressing sorrow that Dawn Reed had left Shieldfield as she thought she was a "good nursery employee" and had been very fond of her.

616. Eventually, there was a totally unproductive interview recorded on video. This took place on 18 May 1994 (wrongly labelled 1993). Significantly, the child was recorded on 17 May 1994 as saying in

class, "My mummy says Chris and Dawn are naughty". The member of staff also recorded the same day how *she* had talked to the child about the forthcoming interview. Indeed, this member of staff (Fiona) had actually been to discuss the meeting with Helen Foster and others at 9.00 a.m. that morning. She passed on to the child that she had informed them how clever she (Child 4) was in class. The interview itself is a striking example of how unsatisfactory the interviewing techniques were, especially in the light of the Cleveland guidelines. The child begins the interview quite happily and chats easily to Helen Foster while drawing. Then (contrary to good practice) the mother is brought in. The child has a dummy stuck in her mouth and is rocked back and forth on her mother's lap while Helen Foster bombards her with questions in a wheedling and cajoling voice. The child is visibly bored and frustrated and becomes as unresponsive as a sack of potatoes. Helen Foster tells her she is there to help children and that her friends at Shieldfield have been to see her and she can help them. But she cannot help children if they do not tell her about what she had described as the "muddles" in their heads. From the child's reaction to all this, I regard the interview as abusive in itself. Her demeanour was very similar to that of Child 2 in her first interview. It is fair to Helen Foster to record that she recognised that interviewing would be conducted, generally, quite differently nowadays.

617. When Child 4 was seen by Dr San Lazaro for the second time, there had been another child born to the family and the mother had been in hospital with post-natal depression. This was recorded on 21 February 1994. The child was obviously under some emotional pressure too. On 13 May 1994 Dr San Lazaro was recording that the mother had days when she felt distant from her daughter, did not feel physically attached to her or able to give her a kiss or cuddle.

618. By July 1994, much more serious allegations about Christopher Lillie had come to the fore and the child had apparently been speaking of a knife in the vagina, which had caused bleeding. (Needless to say, there had been no contact between her and Mr Lillie between the first examination in July 1993 and the second in July 1994.)

619. The first mention of Dawn Reed was apparently on 17 March 1994 when she said that she had been to a house with "Chris and Dawn". No cutlery was mentioned at that stage. It is vital in my judgment to see all the 1994 "disclosures" by Child 4 and her behaviour against the background of a letter dated 9 August 1994, in which Dr Kaplan, a consultant psychiatrist, reported to Dr San Lazaro that since February 1994, according to her parents, she was "starting to go on about Chris and Dawn". There was a recurrent theme that they had been smacking her on the vulva. There were also from that time various behavioural difficulties including perpetual anger, swearing and touching her baby brother's genitals. The mother reported that the problems began in February 1994 after she was discharged from the hospital with post-natal depression. This may be coincidence but more likely not.

620. There was a later history of urinary infection, beginning in November 1994. There was a history too of vulvitus and vaginal discharge. By 1996, Dr San Lazaro was noting erythema or redness and petechial changes over the hymen. She had also been reported as having bled into her underwear. This was three and half years after Mr Lillie and Miss Reed had been suspended, and there was no evidence whatever to link them to these subsequent physical findings.

621. By May 1997, her mother was still concerned about the possibility of urinary problems. The evidence is that urinary tract infections are not uncommon in girls of that age. The redness and soreness could be explained by itching, scratching or masturbation or, at least in theory, by ongoing sexual abuse. There was a (later) pattern of medical and behavioural symptoms, sometimes associated with sexual abuse, which was described as "far-reaching and prolonged" (in the words of Dr Ward). In the light of the absence of findings on first examination, two to three months after last contact with Christopher Lillie, none of this is likely to have any bearing on the issues I have to decide.

622. I note elsewhere in this judgment (paragraphs 1181 and 1330) that the impression was given by the Review Team on pages 209 and 217 of the Report that there was physical evidence to validate Child

4's dramatic allegations of penetration. It is thus important to record that there was not. It is also relevant that the story went on developing as the years went by. In the Panorama broadcast of October 1997, the mother alleged for the first time (certainly so far as the Review Team were aware) that Christopher Lillie was present, and laughing, while the assault was taking place (somewhat reminiscent of an allegation made by Child 14: see paragraph 759 below). It was embellished further on that occasion by the mother adding that "…they seem to have done it a few times". There is nothing in the evidence to suggest that either of these important elements had ever been mentioned before. The Review Team chose not to address the point, but I obviously cannot take the same approach, since it further undermines what was always an implausible suggestion.

Child 5

623. Child 5 was born on 29 October 1989. She entered Shieldfield on 22 March 1993, attending usually three days a week, and remained there until September 1994. She thus overlapped with Mr Lillie only for the briefest period, since he was suspended three weeks after she entered the Nursery. It is to be noted that during that period she was in the Yellow Room – not under the immediate care of Mr Lillie or Miss Reed.

624. For the first two visits she was in the company of her mother. The Register shows that she attended unaccompanied only for 7 days during Mr Lillie's time. He maintained his composure throughout most of what must have seemed to him a distressing time in the witness box, but he was moved by mild exasperation to observe that, in view of what he is now supposed to have done to her, she must have spent most of her time during those 7 days being abused by him.

625. Against this background, it is hardly surprising that when questioned about Mr Lillie and Miss Reed by her parents (in May and December 1993) Child 5 said that she had no recollection of either of them. Yet on 27 (or 25?) May 1994 she made her first "disclosure", as recorded by staff in the Yellow Room, to the effect that Chris and Dawn had hurt her hand.

626. She had by this time spent 14 months in the Yellow Room with other children who was "disclosing" serious allegations about Mr Lillie and Miss Reed, who were making visits to the NSPCC for video interviews, and who were undergoing therapy. The talk was therefore of "bums" and "fairies" and the use of crayons. She later stated at home that "Chris put the crayon beside my fairy". The word "fairy" was not used by her at home and it is likely that she picked it up at Shieldfield – along with the notion of a crayon being used for abuse. These two concepts reflect closely what was being said, for example, by Child 23 in her video interview in July 1993.

627. There then followed over the succeeding weeks and months a litany of allegations involving many of the regular Shieldfield themes (e.g. visits to Mr Lillie's house, Miss Reed's house and libraries, and also references to dogs, snakes and threats of death to relatives). None of this has any contact with reality, since it would be very odd if during her seven days in the Yellow Room Mr Lillie and Miss Reed had managed to spirit her away from her carers for abusive visits outside the Nursery - without the connivance of those carers.

628. In relation to Child 5, Dr Hewitt referred to the virtual absence of any behavioural re-enactment of abusive acts and concluded that it was impossible to say with any level of certainty that she was abused. The Defendants' "disclosures" expert Professor Friedrich observed that the relative absence of sexualised behaviour would indicate minimal exposure, but considered her statements to be consistent with exposure to a sexually threatening and abusive environment. Having done some "homework" at Miss Page's request over the weekend of 13-14 April, even he was prepared to concede that he could find no support for this child having been abused.

629. As to physical symptoms, there is a complicating feature in this case. Child 5 had the misfortune to suffer what must have been a painful straddle injury some time prior to her examination. She had slipped on a climbing frame. It is against that background that one has to assess the significance of the ano-genital findings. There was a substantial trauma to the hymen with a central scar, altered vascularity and a split through the fourchette. There was a wide hymenal orifice and some tissue loss. Dr Ward regards this pattern as more consistent with sexual abuse by means of a blunt penetrative injury.

630. Dr Watkeys was unable to form a clear view in the light of discrepancies in Dr San Lazaro's notes and report and of her inadequate description of the hymenal damage. She does, however, make the cogent point that the child was examined in connection with her straddle injury on 18 May and 22 June 1993. Both these examinations thus occurred after any conceivable contact with either of the alleged abusers. On the first occasion, it was not possible to carry out an inspection of her genitals (possibly because of pain or distress), although it had been noted that there was blood on her knickers. On the second occasion, the GP (Dr Kattan) found her anatomy "entirely normal". It is true that there is no detailed description of the genital area on that occasion but, if it was "entirely normal" on 22 June 1993, this would suggest that the injuries spotted by Dr San Lazaro a year later, however they occurred, had no connection with Mr Lillie or Miss Reed.

631. Dr Watkeys was cross-examined by Mr Bishop on this subject on 24 May. He was putting that the GP could have lacked the experience, knowledge or competence to pick up what Dr San Lazaro observed a year later. As I have noted elsewhere, the diagnosing of hymenal injury is such that even a paediatric registrar might not be up to it. On the other hand, Dr Watkeys made the very telling point that even a GP could hardly miss a split through the fourchette.

632. In this case there had been some preoccupation with death, but it has to be seen in the context that the child was upset during this period by the death of her grandmother.

633. This was another child who was withdrawn from the plea of justification on 13 May (the Review Team being ordered to pay the costs of meeting these allegations up to that point).

Child 6

634. Child 6 was born on 26 January 1991. When she was just under two years of age, on 4 January 1993, she began at Shieldfield in the Red Room under the care of Mr Lillie and Miss Reed. She left in October 1993.

635. One of the particular features of this child is an apparent phobia of doctors. She mentioned "nasty doctors" to her mother towards the end of the Summer of 1993. She also showed a marked reluctance to be medically examined or even to make eye contact with Dr San Lazaro. She was anxious and unco-operative on 3 and 19 November 1993, so that physical examination was not possible. She had been referred by her mother and social workers because of suspected abuse. This came about as a result of remarks she had made shortly beforehand, after leaving Shieldfield. She had pointed to her genitalia and alleged that Dawn had smacked her "jenny" with a spoon. She had also accused both Chris and Dawn of putting spoons up her bottom. Her mother described herself as having been "in denial" up to October (i.e. until she left Shieldfield). The Review Team suggest that these revelations came so late because she only began to describe what happened to her once she could construct sentences. When she became sufficiently articulate at the age of 2 years nine months, she was recalling events which occurred (if at all) between 24 and 27 months of age. Miss Page suggests that there is a possibility of cross-contamination as a result of contact with Child 26 and/or her mother. This is partly because Child 6 incorporated references to Child 26. But this is speculative.

636. Physical examination was finally achieved only on 5 May 1994 under anaesthesia. This revealed adhesions between the hymen and labia minora extending on to the fourchette. There was a disagreement between Dr Ward and Dr Watkeys as to the significance of these findings. The former considered them, together with her statements and behaviour, as being strongly suggestive of sexual abuse. The latter considered that adhesions can be caused either by abuse or by infection. Not having seen the original notes, however, she queried whether what were described as adhesions might in fact be perihymenal bands (a "normal variant"). This was partly because Dr San Lazaro's sketch (in so far as it could be relied on) appeared to show a symmetry (at 5 and 7 o'clock), such as is often to be found in congenital features of that kind. The Defendants cite a recent paper (published in 2000) which suggests that labial adhesions may be more significant than previously thought (indicative of abuse). It is interesting, however, that it refers to fusion of the labia to the hymenal membrane "resulting in an *asymmetric* appearance" (emphasis added).

637. The mother emphasised the child's phobias and clinging shyness, which she refused to accept could be attributed to life events, such as concerns about her father in America or the arrival on the scene of a new male partner. Even today, apparently, Child 6 has a phobia about doctors and dentists.

638. When Miss Reed is alleged to have smacked her with a spoon on her "jenny", others present are said to have been Child 26 and "Chris". Child 26 had been with her throughout her period in the Red Room. One possible confusion is that Child 26 had a brother called "Christopher". In any event, there is no confirmation for this story. Child 26 said nothing about other children being present. Child 6 also mentioned Child 4 as being present on more than one occasion when she was abused. It is true that Child 6 overlapped with both these girls in the Red Room, but neither bears out her account.

639. The mother spoke of potentially significant disclosures being made over Christmas Day 1993 at the time when they would normally have been having lunch. She had made contemporaneous notes of the child's disclosures which turned up in the course of the trial. On 20 and 24 December 1993 the child said that Mr Lillie had hurt her with a large pink hammer, as wide as her outspread arms, on the head, the vagina and the bottom. She also mentioned this on 26 January 1994. She described the hammer as having a black hole in one end and as having water coming out of it. This is a description that is unique to her and is thus relied upon by the Defendants as confirming that she was not merely copying some other child's statements. Moreover, the only other child to suggest abuse with a spoon was Child 2. She left Shieldfield in May 1993 and Child 6 left months later and moved on to a different Nursery from that attended by Child 2. Again, therefore, it is said that there was no scope for copying. Although the mother was attending "all the meetings, the social services meetings", and the "Sunday evening group", she "did not discuss it in great depth".

640. It is necessary to focus on the fear of doctors and dentists and consider its significance in relation to the question of whether Mr Lillie and/or Miss Reed abused Child 6 and, if so, how. There was some reference also to a "nasty doctor" called Alastair (the mother was unable to recall whether this name corresponded to anyone in the GP practice she had used at the time). Of course, if abusers dress up as doctors, or pretend to be doctors, and under that guise set about indecently assaulting children, it would be easy to understand how such a phobia could arise. On the other hand, it is not the only conceivable explanation for a fear of doctors or dentists. Such people, in the nature of their occupations, tend to be associated with fear, pain or discomfort. Much will depend on the child's particular experiences. Child 6, for example, clearly underwent some distress at and following the unsuccessful consultations with Dr San Lazaro in November 1993. One has to address the possibility at least of iatrogenic harm (analagous perhaps to that discussed in a rather different context by Richard J. Lawlor in Chapter 5 of *Expert Witnesses in Child Abuse Cases*, eds. Stephen J. Ceci and Helen Hembrooke). I do not find it inherently implausible that Dr San Lazaro could have put the child off doctors, although it does appear that there was apparently some reference to a "nasty doctor" in September 1993 before she ever met her.

641. It was interesting to note that Child 6 was cited by Dr San Lazaro in her witness statement and on 13 May, when she first went into the witness-box, as one of those in respect of whom she would now express a different opinion. This was because she has changed her views about the significance, or otherwise, of hymenal adhesions:

> "Suppose that child walked off the street and was not involved at Shieldfield at all, what would I do with that child? Would I refer that child for a child abuse inquiry? I would not."

It may be that much heartache could have been saved if a different consultant had been brought in all those years ago. The remark is also telling in another respect; namely, because it seemed that the very fact of coming from Shieldfield had pre-disposed her to finding abuse. This may well account for the unusually high percentage of physical findings which puzzled Dr Watkeys (see para. 384 above).

642. The Defendants' case is that on a number of occasions between January and April 1993 Mr Lillie and Miss Reed put their fingers, cutlery and other objects into her vagina and anus. Mr Lillie is also said to have raped and buggered her (or alternatively put their genitals into close contact). The serious allegations of penetrative abuse made by the Review Team in respect of this child have never been withdrawn. They clearly owed a good deal of their early sustenance to Dr San Lazaro, but even though she has changed her mind subsequently the allegations remain on the record. She was not one of the children withdrawn from the plea of justification on 13 May.

Child 7

643. Child 7 was born on 14 November 1990 and began at Shieldfield in the Baby Room on 6 May 1992. Following an introductory visit, she joined the Red Room on 26 November of that year. She was thus in the joint care of Mr Lillie and Miss Reed until the suspensions, when she would have been just under two and a half years old. She was not one of the "indictment children" and the findings at her medical examination on 2 June 1993 were not specific. There was redness and inflammation around the vulva, and a small disruption in the hymen in the posterior margin at 7 o'clock. The anus was slightly lax. None of these findings could be classified as diagnostic of sexual abuse (although, as so often, it is not possible to exclude that possibility). There was no video recorded interview. The Defendants' case depends, therefore, largely on statements made to parents or behaviour witnessed by them. Both parents gave evidence before me on 19 March. In certain respects it emerged that neither of them was what medical experts sometimes call "an accurate historian".

644. The first oral statement (which could hardly be called a "disclosure") occurred in August 1993, when she told her mother that a man would come and stab her (i.e. her mother) if she was not a good girl. This is relied upon not so much as direct evidence of any inappropriate behaviour but rather as being consistent with the child having been threatened in some way.

645. There was then a statement involving Mr Lillie and Miss Reed on 13 October, when the child was answering a question from her father following a nightmare. She said that they had "bitten her legs". She also told her mother that Chris and Dawn had upset a lot of children at the nursery and that they had made her cry. This almost certainly reflects regular discourse between the children at the Nursery about what had been going on. At this stage there is no allegation of indecency or assault so far as Child 7 herself is concerned.

646. It needs to be noted that in early 1994 Child 7 lived next door to Child 4, and their mothers had been discussing matters. On 17 March of that year Child 4 spoke of going to the library and "Chris" making certain children cry; in particular, Child 7, Child 8 and Child 17. A few days later, on 23 March, Child 7 told her mother that Mr Lillie had hurt her and Child 4 with a big knife. Later the same day she

reported that Chris had a big, sharp pointed knife and demonstrated that Mr Lillie and Miss Reed had used it on her (running her hand up and down her tummy, and then swishing it about). The disclosures book from the Yellow Room contains an entry for 6 July 1994, recording that Child 4 on this occasion said, "Chris and Dawn stick the knife up my bum and [Child 7's] bum – up my friends". At the same dining table, on that occasion, Child 7 corrected her by saying "not up my bum; up your bum".

647. On 27 May Child 4 is alleged to have said that Mr Lillie and Miss Reed smacked a number of children including Child 7.

648. On 3 June 1994 Child 4 told her mother that Mr Lillie and Miss Reed had put her in a bath with Child 7, Child 8 and Child 28. On 23 June 1994 Child 6 alleged that Mr Lillie had hurt a baby and also mentioned other children in that context including, apparently, Child 7.

649. Accordingly, so far as verbal statements are concerned, allegations are being made by others about things done to Child 7 rather than she herself making such statements.

650. At the examination by Dr San Lazaro on 2 June 1993, Child 7's mother informed her that since Mr Lillie's suspension on 16 April Child 7 had been brighter and happier. She was also apparently readier to go to Shieldfield.

651. Two of the more striking allegations in relation to Child 7 are focused upon her conduct in January 1994. Apparently, on 16 January that year she insisted on playing doctors with her mother, and made her lie on the bed. She covered her face with a pillow, pretended to stick needles in her and attempted to pull off her mother's knickers. She then said "I want to do your eyes… Chris did it, Chris did my eyes and Dawn watched".

652. It is difficult to know what significance this was supposed to have. Both parents said they had raised the subject of sore or red eyes with Christopher Lillie. The father suggested he had been out "on the booze" the night before, but Mr Lillie was non-committal. The mother said that when she raised this subject Mr Lillie replied that he was suffering from conjunctivitis. Neither explanation seems to support an allegation that he had done something sadistic to Child 7's eyes.

653. On 23 January, she once again insisted on playing doctors, pinched her mother all over, pulled down her knickers, and made as if to push a tube of hand cream into her buttocks. When asked by her mother if anyone had done that to her, Child 7 replied "yes, Chris".

654. Mr Lillie explained, in this context, the circumstances in which nursery officers were permitted to use cream on children's buttocks. He had no specific recollection of using it on Child 7, but he could easily have done so. If they noted any soreness, the procedure was that one of the nursery officers would watch over the child while the other went to the relevant manager, who would then inspect the child's bottom and approve the use of the cream. Since this child regularly seems to have suffered from redness and soreness, she would clearly be a candidate for such treatment. It would in those circumstances be wrong to assume that the use of cream implied some impropriety. Mr Bishop submitted that the incident cannot simply be explained as a result of Mr Lillie putting cream on the child's bottom, but the argument ended in bathos:

> "If Mr Lillie did put cream on the child's bottom he would not have been the only one to do so in her life. When asked if anyone had done this to her, Child 7 is clear and says 'Chris'."

655. Another submission of Mr Bishop was that the incidents involving "sexual behaviour" with her mother "lasted about 30-45 minutes" and that the child really looked as though she wanted to hurt her mother. It is very difficult to interpret these events because the scenario is such an unusual one. Normally a parent would not permit inappropriate behaviour of this kind to go on for such a very long time. The behaviour was certainly odd, but I cannot construe it as a re-enactment of something Mr Lillie did to Child 7. One of the problems about permitting inappropriate behaviour is that the longer it is allowed to go on the more inappropriate it may become.

656. On 29 January Child 7 said that she had been in a bath with Dawn Reed – but not with Mr Lillie. If that is indeed what the child said, I find without hesitation that it is untrue. Reliance is placed on what is said to be corroboration for this allegation by Child 4. In June 1994 she apparently told her mother that Mr Lillie and Miss Reed had put Child 7 in a bath and that they had photographs taken of them. I have already set out my concerns about Child 4's own problems in 1994 which, sadly, may have prompted a certain amount of attention-seeking.

657. It is said that there was other behaviour suggesting traumatic stress while Child 7 was in the Red Room with Mr Lillie and Miss Reed. Examples given were regression in toilet training (Mr Lillie's recollection is that she was still in nappies, although she had begun potty training before his suspension), being clingy, reluctance to go to the Nursery and sleep disturbance.

658. Dr Sandra Hewitt expressed the view that:

> "The rich and diverse patterns of behaviour noted in Child 7's history is strongly indicative of a child who has suffered trauma as a result of sexual abuse during the period in which she was in the Red Room, and under the care of Dawn Reed and Chris Lillie. No other explanation of Child 7's behaviours can be found to fit the data".

659. Professor Friedrich noted that Child 7 was reluctant to speak directly about "what happened to her", tending to suggest that other children were hurt rather than herself. He took the view that the data deriving from her statements and behaviour "clearly indicates sexual abuse and is consistent with the medical evidence that has also been reported".

660. Unfortunately, the information supplied is not necessarily accurate. Child 7's mother said in her witness statement that "between Christmas and Easter" (i.e. when she was in the Red Room) Child 7 had redness to her vulva on occasions "which had no obvious cause". Her recollection is somewhat at odds with contemporaneous records. Such redness was recorded in the Baby Room Day Book on 14 October 1992. Dr San Lazaro referred to redness and soreness of the vulva at her examination on 2 June 1993 and, over a year later, when she was tested for sexually transmitted disease on 29 June 1994, she was described as being "still very red and sore". It was a recurring theme which could not be linked specifically to the Red Room. Moreover, it is important to see the redness in the context of what was happening so far as potty training was concerned. Contrary to the impression given by her mother (I am sure quite honestly), Child 7 was *not* potty trained by the time she went into the Red Room. Also contrary to the mother's statements, she did *not* regress in this respect in the Red Room.

661. These are classic examples of how memory has played tricks with anxious carers so as to lead them to invest various incidents from the past with undue and sinister significance. There is little doubt that this mother was anxious from a very early stage in the Shieldfield "scandal". She described in her witness statement how at the first parents' meeting she came out in tears because she had become convinced that her child had been abused. Memories are re-assembled and attributed to child abuse in the light of information subsequently supplied. But, in some cases, such as this one, it is possible to demonstrate from contemporaneous records that the truth has been distorted. A standard response to this, made by parents or the Defendants in the course of the evidence, is that the contemporaneous

records (in particular, the Shieldfield Day Books) cannot be trusted. This will certainly not wash, however, so far as Child 7 is concerned. There is no reason to suppose that the Baby Room entry of 14 October 1992 was falsely made to disguise child abuse (to be conducted several months into the future). Nor is there any conceivable reason to doubt, in this respect, the entries made by Dr San Lazaro in June 1993 and June 1994. The supposed causal link between child abuse and vulval soreness simply cannot be established.

662. My attention was also drawn to an interview with the mother reported in the Daily Mail for 13 November 1998 (the day after the publication of the Review Team Report). This further illustrates how the mother's anxiety had led her to give an account of events which (although no doubt an honest one) simply bears no relation to reality. Some of the inaccuracies she put down to mis-reporting by the journalist, but this seems unlikely in this particular case. Some of the allegations were of a lurid character (I shall not repeat them) and they underline the caution that is required in weighing this parent's evidence.

Child 8

663. This boy was born on 30 December 1990. At less than 18 months, he began in the Baby Room at Shieldfield on 26 May 1992. He transferred, after two or three introductory visits, to the Red Room on 21 January 1993. He attended usually for two days a week. When Mr Lillie was suspended, he was still less than two years four months old. When he was medically examined on 10 June 1994, nothing abnormal was revealed. Nevertheless, his behaviour and statements, as subsequently reported, provide evidence for Dr Sandra Hewitt of "the classic hallmarks of sexual abuse". She is ready to conclude that he suffered trauma as a result of sexual abuse when he was in the Red Room, as the content of his dreams revolves around acts associated with Mr Lillie and Miss Reed.

664. This is based upon the evidence that from about March 1994 (aged about three years two months) he woke up shouting "Don't hurt my bottom, Dawn". In April he apparently shouted out "Don't put it up my bottom". This was said by his mother to have happened several times quite spontaneously. Naturally, one has to approach such a very specific allegation with some caution. It is almost too "pat" to carry conviction. It is necessary to allow for over-interpretation on the part of a mother who had become anxious partly as a result of attending a meeting. In evidence, she told me:

> "I went to one out of curiosity, I think, really. I wanted to know what was going on. I wanted to find out what was happening with the investigation …. and parents said things that made me think – that sounded like what my child was doing, and I started to feel a bit alarmed, and I decided that I would no longer send him to the nursery".

665. Child 8's baby sitter gave evidence on 15 March and his mother on 18 March. The baby sitter said that in late 1992 or 1993 she noticed changes in the boy's behaviour. He became easily upset, had temper tantrums, and took to wetting. His mother said that when he entered the Red Room his toilet training either remained static or regressed. He began to talk of monsters and masks.

666. The baby sitter recounted an occasion (she thought before the criminal trial but in mid-1994) when Child 8 went stiff as a board and asked "Why did they do that to me?" He referred to Mr Lillie and/or Miss Reed having pushed a sharp implement up his bottom – she could not recall whether it was scissors or a needle. She said her mind was racing at the time and she was trying to control her emotions. She knew that there had been allegations about the Nursery by that time and that his mother had some anxieties. By this time, of course, the allegations had been in circulation for approximately a year.

667. It is to be noted that at the end of July 1993 his mother had told social workers that Child 8 had actually liked Chris and Dawn. She also commented, perhaps significantly, that he tended to agree with "whatever you say". It is therefore necessary to recall that he remained at Shieldfield for about a year after the allegations first surfaced (being removed from the Nursery in March 1994). Throughout that time rumours were doing the rounds and Mr Lillie and Miss Reed were being portrayed among the children in negative and frightening terms. For a suggestible child, therefore, there was much to take root and cause alarm. His mother was dismissive of this idea, and was of opinion that "children of that age would not have the intelligence to be able to do that". It is not much to do with intelligence. Young children do tend to be suggestible and to talk about "taboo" topics (as Dr Cameron uncontroversially deposed).

668. The mother said in evidence that she had liked Dawn Reed and found her friendly and open. Mr Lillie she found "more shifty", as he would not look her in the eye. She found the Red Room had a different atmosphere from that of the Baby Room. It was more subdued but "it was not a contented quietness".

669. It seemed from her statements made in June 1994 and January 1996 that the child's behaviour had not seemed disturbed or significantly changed after going into the Red Room. Even in January 1996 the mother said, "… even looking back we cannot say that his behaviour changed". The problems seem to have been noticed after he left Shieldfield (i.e. nearly a year after the suspension) when "his behaviour deteriorated dramatically". Up to that point, the mother had (as she put it) "spent a year in denial". She did not want to know. She viewed matters differently thereafter, especially when she learnt that some children do not readily disclose abuse and that some are afraid to do so.

670. I was told that the mother (and indeed on one occasion the baby sitter) had attended meetings organised for Shieldfield parents. "Up to ten of us would meet in a pub on a Thursday night, including [the mothers of child 10, Child 22 and Child 6]". One of these had been addressed by Dr San Lazaro. She was also in regular contact with other mothers by telephone in 1994. Those specifically mentioned were the parents of Children 6, 7, 10, 22 and 30.

671. Child 8 underwent therapy at first with Dr McArdle and later with Mr Rick Telford.

Child 10

672. Child 10 was born on 3 July 1989 and joined the Orange Room at Shieldfield on 27 August 1991. Dawn Reed was working there at the time and Christopher Lillie joined her on 16 October of the same year. When they both moved to take over the Red Room at the end of February 1992, Child 10 went with them. He moved on to the Yellow Room in mid-June 1992. He generally attended full-time during this period but at some point in the Yellow Room he reduced to four days a week. He left Shieldfield finally on 3 September 1993.

673. Child 10 was one of the six children in respect of whom the Claimants faced criminal proceedings. The Defendants make wide-ranging and very grave allegations. Mr Lillie is alleged to have inserted fingers or other objects into his anus, pulled at his genitals, squeezed his leg, hit his bottom, punched him, masturbated in front of him, urinated over him, tied him up and threatened to poke his eyes if he told anyone. Miss Reed is said to have been present and encouraged or permitted some or all of these activities. Cogent evidence is required to establish such a litany of wickedness.

674. When he was examined on 1 September 1993, there were no abnormal genital or anal findings. Nevertheless, this is clearly a worrying case in the light of the boy's statements and behaviours. Dr Sandra Hewitt was of the view that his behaviours and their frequency strongly suggested trauma arising from sexual abuse in the Red Room. Professor Friedrich referred to his persistent behavioural

regression, sexualisation and symptoms of post-traumatic stress disorder, which he thought in keeping with the child's "considerable exposure to the care of Lillie and Reed". He observed that as much as any child in the Shieldfield group he combined verbal disclosures with physical positioning as if he were reliving the experience. He found it compelling as an indication of sexual abuse by Mr Lillie and Miss Reed. I have already noted, however, at paragraphs 457-460 above how unsatisfactory Professor Friedrich's approach was to this child.

675. As I have already discussed, there is a very important factor to be weighed in relation to this child in the form of his subsequently diagnosed ADHD. He had a long term pattern of behavioural problems which presented his (single) parent with a very heavy burden. This pattern was, however, already established before he arrived at Shieldfield. Even his mother used to describe him as "a little rocket". There had been a visit to a therapist before any concerns arose about the possibility of abuse at Shieldfield. The GP had suggested referral to the Nuffield in (she thought) February 1993.

676. It is clear from the Day Book that he was a handful at Shieldfield from the outset. There were tantrums and, although his mother was reluctant to confirm this, I am also satisfied that there was a regular pattern of aggression towards his peers (mainly in the form of pushing). Dawn Reed made a note on 16 September 1991, presumably because she thought it a good sign, that for the first time he "cuddled a child after hurting them".

677. When allegations began to be made about Mr Lillie and Miss Reed in the Spring of 1993, Child 10's mother had no concerns. She thought everyone had gone "barking mad" and that "the whole thing was ludicrous". What is more she wrote letters of support to Mr Lillie and Miss Reed. She wrote to Miss Reed in the following terms:

> "Dear Dawn
>
> I felt I had to drop you a note after hearing of your suspension. When we were told of Chris's suspension my reaction was 'nonsense' – now that you have been caught up in this ridiculous mess, I can only think its all gone far to far. I trusted both you and Chris with my son for a year and never had any worries – and I still haven't and I would trust you again without hesitation.
>
> I have told [Child 10] that you and Chris have gone away for a while and he was very sad. He misses you and he misses Chris.
>
> Dawn, I know all this must be very distressing for you, but please remember there are a lot of us in the Nursery who are behind you 100%.
>
> We miss you and hope to see you back soon.
>
> Lots of Love"

678. Now, with the benefit of hindsight, this mother like a number of others regards herself as having been at that stage, as the jargon goes, "in denial". The social workers were doing the rounds visiting all Shieldfield parents and things really changed for her shortly after she received what she described as her "automatic" visit. She told Isabella Hepplewhite that she did not believe the allegations and trusted Mr Lillie and Miss Reed. Nevertheless, she talked to her "quite a lot about [Child 10's] behaviour". She added, "but at the end of the meeting I had a very different feeling than I had had prior to it, in that I felt maybe I should consider that something may have happened". A fundamental problem here is that Isobel Hepplewhite was given a description of Child 10's behaviour which she was only too ready to attribute, at least as a matter of first impression, to child abuse. She wrote a letter to Dr Kaplan, the consultant psychiatrist on the day of the visit. It concluded with the words:

> "Since the family was seen as part of the Shieldfield Nursery Investigation and [*sic*] I would be obliged if you could arrange to see the family and perhaps offer some help and support".

679. Unhappily what Ms Hepplewhite did not (and indeed could not) know at that stage was that this child was affected by ADHD.

680. There is no doubt that, quite apart from his behaviour, Child 10's eventual verbal "disclosures" are among the most striking and lurid of all. It is clearly necessary, on the other hand, to approach them with the greatest caution. The first disclosure was on 16 August 1993 (i.e. 14 months after his moving on from Mr Lillie and Miss Reed). As in other instances in this case, it came about as a result of questioning by the mother at the suggestion of a social worker (Isobel Hepplewhite) who had visited her that very day. He said that Chris was nice except when he had taken Child 10 to his house (and he mentioned a lift). He said that on such occasions Chris had hit him and pulled his hair. There was nothing sexual at that stage. The vehicle for his description was a Sooty puppet. He demonstrated that "Chris goes biff, biff, biff, to Jo".

681. It is important at this stage to record that there was a "Jo" in Child 10's day to day life (a female friend of his mother), whose home Child 10 was used to visiting. Jo was someone who had earlier lived in Child 10's home and had babysat for him.

682. The mother was inclined in her evidence on 11 and 12 March to explain that the child did not really mean that Chris had been to Jo's home or attacked her. (He had, of course, done neither.) She says that one has to transpose the whole scene so that it takes place in Mr Lillie's own home and that it was Child 10 he attacked - not Jo. I am not prepared to make that leap of faith. The account the child gives is anchored very much not only to Jo's flat but also to Jo personally. That story is obviously not founded in fact, and there is no way that any adult can filter out fundamental elements, substituting others, and have any confidence in the final version.

683. It was submitted for the Review Team, somewhat creatively, that:

> "The flat he was taken to by the Claimants *could* have reminded him of Jo's flat, he *could* have been told it was 'Jo's flat', or he *could* be mixing two separate incidents" (emphasis added).

The word "could" is used three times, but I have to remember that I am concerned with evidence, rather than speculation, and with probabilities rather than possibilities.

684. In accordance with Professor Bruck's preferred practice, Child 10 was interviewed on video shortly afterwards (on 18 August). In the meantime, on 17 August, Isobel Hepplewhite had returned to Child 10's home with Helen Foster and debriefed the mother on her son's story of the previous evening. Sooty again played a leading role at the video suite. Helen Foster was supposed to be conducting the interview but the dialogue to a large extent takes place through the puppet. The mother was also present. It appears that he was unable to bring to mind who the teachers were in his "old class", but Helen Foster was persistent: "Sooty says he bets you can remember who the teachers were in the Red Room". The idea that someone's liberty and whole future career could depend on this level of evidence-gathering is sobering indeed. Despite this technique, Child 10 still was unable to bring either Mr Lillie or Miss Reed to mind.

685. Helen Foster was undaunted: "I'll see if Sooty can remember. Sooty says 'were your teachers nice people?'" The response was not, however, what she wanted. When Child 10 replied that they were,

his mother said "He's lost". Thus both adults present were proceeding on the assumption that he had been abused by the Red Room staff and that it was only a question of finding a way to unlock the information.

686. Sooty then asked a leading question, "Was one of your teachers called Dawn?" As leading questions so often do, this triggered a more specific response: "Yes. But one of them was Chris". He then goes on to volunteer (apparently) that Chris was nasty and horrible to everyone. These propositions were (naturally for a child of that age) expressed in the present tense. Thus, it is possible that the child was giving his own recollection from the time he was two years of age, or that he was giving an answer he thought the "police lady" and his mother wanted to hear, or that he was reflecting the negative "press" which the Claimants had been receiving at Shieldfield over the last four months.

687. Through Sooty further details were elicited. It is an obvious risk (borne out by the expert evidence of Dr Cameron) that if a child is invited to enter a dialogue with a teddy bear or puppet he will think he is playing a game and fantasise accordingly. He proceeded to demonstrate the "biffing" he was given by Chris but confirmed that this had taken place at Jo's flat. In case there was confusion about the location, he re-affirmed that Jo was a woman he visited with his mother. What is thus clear beyond doubt is that once again the child was indeed fantasising. No such incident occurred. Nevertheless, he does assert that he was hurt by the "biffing" in his genitals and bottom. Dawn Reed, incidentally, he acquitted of any involvement.

688. As so often in these interviews, given the shaky grip of small children on concepts of future and past, the child stated that he was wearing the same clothes during the supposed violent attack as those he was wearing at the interview (at least 14 months later).

689. Child 10 confirmed that the incident had taken place at Jo's flat. In due course Helen Foster left the room but permitted the interview to continue (quite inappropriately) with the mother interrogating the child through Sooty. Tellingly, the mother uttered the following words: "And remember what I said it was very important that you had to tell about what Chris did". This certainly does not instil any confidence in the process at all.

690. Eventually Helen Foster returned. Both adults continued to question the child. Rather curiously Child 10 introduced a new element of fantasy by saying that "Chris" had no hair and no arms (despite being able to "biff"). Nonetheless, by some means or other, he hurt him under his trousers but over his underwear.

691. Through Sooty Child 10 was asked what Dawn did (despite his earlier denial that she had done anything). This time, perhaps to please his interrogators or to get them off his back, he alleges against "Dawn" also that she punched him at Jo's flat on the genitals and the bottom – this time over his clothes and underwear. The whole account is fantasy and I propose to treat it as such. (It is always to be remembered that criminal proceedings were brought in respect of this child.) At the conclusion of the interview Ms Hepplewhite recorded what impact the interview had made:

> "[Child 10] appeared to be O.K. when the interview was terminated. However, I did feel some concern about mother who described herself as feeling numb and in a state of shock. She very sensibly took [Child 10] into town for an ice cream."

692. The next day, after a telephone call, there was yet another home visit. The mother was saying at that stage, perhaps significantly, that after the video experience her son was "fine" but she herself was still "dazed". She reported that the previous evening the child had talked again of being in a lift and that there were ghosts but, crucially, she added that he went on to associate his thoughts with something he

had seen on television. Although this mother was still able to be reasonably objective, it illustrates how easy it is, once social workers have rattled a parent, for everything a child says to be over-interpreted.

693. In a rather chilling note, the social worker also recorded on 19 August:

> "Intellectually she understands why… she has had to move her position regarding Dawn and Chris from a very different belief, but clearly she finds this worrying in terms of emotion".

One (perhaps unfair) interpretation of these comments is that the social workers had long since decided that there had been widespread abuse by the Claimants and that they were determined to convert and recruit as many "believers" as possible. As in other cases, this mother found herself putting to one side her judgment based on her own common sense and experience of people and placed her trust in the "professionals".

694. A second interview took place on 4 October. This was the same day as Child 14's first interview (the one in respect of which the Review Team falsely claimed that she alleged rape). In the course of that interview she alleged that Child 10 had been on a visit with her to "Chris's house". He was obviously on her mind because earlier in the interview she asked whether he had been to the video suite that day (as indeed he had). They had been for a time together in the same room at Shieldfield but had just come together again at a new school. Child 10 never confirmed Child 14's involvement of him in this story.

695. Returning to Child 10's second interview, it seems that the objective was to persuade him to repeat something he had said to his mother "the other night in bed". All he would say (Helen Foster having withdrawn) was that Chris had punched him at Jo's flat – but this time solely on the mouth and head. That would, of course, be serious in itself but it was quite a different account from that given on the previous occasion, albeit equally fictitious. These allegations were only made after a good deal of questioning and at a stage when the child had decided to go home. That would in itself cast doubt on a small child's allegation, as it might be made purely to bring the process to an end, but it should already have been clear by that stage that the child had no cogent evidence to give.

696. By December, Child 10 was apparently saying that Chris had pushed his wand into Child 5 in the Red Room causing her to scream. The mother suggested to police that this might be due to the fact that Child 10 was interested in wands at that stage – not least because Sooty used one. He also wanted to be given a wand as a present. It will be remembered that Child 5 was never in the Red Room and only overlapped in Shieldfield with Mr Lillie, in any event, for a few days prior to 7 April 1993. No experts are now prepared to support the suggestion that she was abused, and there has been no parental evidence. Not surprisingly, however, when Child 10's mother passed the allegation on to them (via her aunt) it alarmed her parents. Child 5 had no recollection of any such incident.

697. The mother of Child 10 readily acknowledged that one of the subjects on which she had led her son was that of "needles". This followed a conversation with the mother of Child 14. She approached her because her daughter had mentioned Child 10 in that context.

698. She agreed that she had herself had counselling in roughly the Spring of 1994 and that she had also attended parents' support group meetings. Parents she met by this means would have included those of Children 1, 2, 14 and 24. She also became friendly with the parents of Children 6 and 30. This all goes to underline the scope for swapping accounts of alleged abuse and particular concepts (such as lifts, clowns, etc.) or sources of anxiety.

699. She agreed also that she became something of an activist and spoke of her experiences as the mother of an abused child at a conference in 1995. Her participation had been organised by the mother of Child 30. Others who were involved in the conference included parents who had been affected by the Jason Dabbs case. Judith Jones had also participated in organising the conference. The witness regarded her as another local activist. As a matter of fact, she also knew Judith Jones personally through having worked for her (cleaning her home) in 1994 – not something that Judith Jones saw fit to declare before publicly pronouncing the Claimants guilty of having abused Child 10. It may well have made no difference, and both witnesses downplayed the significance of this, suggesting that they had not even discussed the subject of Child 10's abuse. That may seem unlikely, but I see no reason to disbelieve them on this matter.

700. Dr San Lazaro was offering advice generally to various parents and the mother of Child 10 found her a calming influence because she understood the nature of why and how children "disclose" (or so she claimed). Unfortunately Dr San Lazaro's "advice" tended to be a contaminating influence because she had decided at a very early stage that the "alleged perpetrators" had been guilty of multiple abuse and was not averse to spreading ideas from parent to parent. (That was confirmed, for example, by the mother of Child 29.)

701. The mother agreed that her attitude had changed in August 1993 as a result of meeting the social worker Isabella Hepplewhite. It was only then that she began to think it was possible that her son had been abused by the Claimants. The way she set about questioning her son, however, did not derive from the social worker. It was she who decided to interrogate her son using Sooty. She decided to play a kind of game, involving saying which people were "nice" and which were "not nice".

702. The witness was referred to her police statement of 23 August 1993, in which she appeared to be saying that it was she who had introduced "bottoms" into the discussion with her son. She did not, however, accept that the police had accurately recorded what she was saying. She was extremely traumatised when she made those statements and may not have been paying very close attention to what the police were writing down (or, by inference, to what she signed). Miss Page was asking her about a sentence which began, "I then asked [Child 10] if Chris had ever looked at his bottom and he pointed and prodded to the bottom area on a teddy he had...". There does not seem to be much scope for misunderstanding that sentence.

703. It thus looks very much as though the mother introduced "Chris" (but not necessarily "Dawn") into the "nice and nasty" game, and that she too introduced "Chris" into the context of bottoms. She also subsequently (in the following October) introduced the subject of needles following the approach by the mother of Child 14. One can readily see how it all came about and why (mainly as a result of Isobel Hepplewhite's approach in August) she had become anxious. But, with the benefit of hindsight, one can easily see also how unsatisfactory this process was. In particular, it raises considerable doubt over the weight that should be attached to Child 10's account on these topics.

704. The matter does not stop there, however, since once she had started the ball rolling, Child 10 went on to make further disclosures, which I have already described as "striking and lurid". Following the video experience, he spoke of being hurt with a knife in a high rise block of flats. He mentioned also, apparently, masturbation, injections in his bottom administered by Dawn Reed, and of Mr Lillie and Miss Reed with no clothes on, fighting on a bed, and of Mr Lillie urinating on his face. He later said that lots of "Chrises and Dawns" had urinated on his face. He had been buggered by Mr Lillie and said that he had an erection and that "sweeties would come out and he [Child 10] would get some". Dawn and Chris were coming to kill him.

705. He said that Chris had kissed his [Child 10's] private parts and that he had seen Dawn with no knickers on, that her private parts were furry and that he [Child 10] had put cream on them. In this context, I am asked to bear in mind evidence to the effect that on 29 December 1994 the child asked his mother not

to go round the house in a state of undress as it reminded him of Mr Lillie and Miss Reed. I do not know how "undressed" his mother was or how regular a habit this may have been in the home. It is a sensitive area, and I have to be wary of jumping to conclusions about what effect (if any) it may have had on his apparently vivid descriptions of various bodily parts. What is clear is that there was a large element of fantasy in what Child 10 was saying at this period in his life. There was also apparently an instance of exhibitionism when on 18 November he came downstairs (aged 5 years 4 months) without trousers or underpants in order to demonstrate "what the man had done". It is important to remind myself that he left the care of Mr Lillie and Miss Reed some two and a half years before (and that exhibitionism is a characteristic symptom of ADHD).

706. Dawn Reed was also alleged to have put a napkin round his mouth and tied him and other children up with coloured string. She had also picked him up and put him in a cupboard with no handle or windows, but that he had turned into a gladiator and killed everyone. He also spoke of Chris and Dawn swapping bodies and heads. None of this has any obvious meaning.

707. By 1995-1996 he was expressing concern that Mr Lillie and Miss Reed had not gone to prison and asked how he could be sure that they were not abusing other children. There seems to be no doubt that he and his mother believe, and always will, that he was regularly abused in the most horrendous ways but the accounts given are wild and implausible. Moreover, there is no corroboration for any of it.

708. Dr Cameron listed 31 worrying aspects of Child 10's behaviour and noted how in about 1995-1996 after medication was prescribed for ADHD he responded effectively. He said that impulsivity and disinhibition, particularly indecent exposure, are characteristic of untreated ADHD. His strange behaviour could largely be accounted for by his developmental problems together with certain domestic factors. It seems to me that his verbal disclosures have to be approached in the light of this evidence too.

709. Child 10 was in the Yellow Room for the whole of the time between the suspensions and the beginning of September 1993. When a child with undiagnosed ADHD is exposed to the rumours circulating that summer and, what is more, to the sexualised antics of Child 87, it is necessary to recognise that one has a very powerful brew indeed.

710. This case also provides a vivid illustration of how belief in the Shieldfield "scandal" spread from person to person. Just as the mother of Child 10 had originally been incredulous, and supportive of Miss Reed, so too had Diane Wood. She spoke out in very positive terms about Dawn Reed, as I have recorded above. Once, however, the mother of Child 10 had been converted, Diane Wood was also persuaded that Dawn Reed could, after all, be a child abuser. The mother of Child 10 would also no doubt have stirred up anxiety on the part of Child 5's parents when she mentioned the "wand" episode in December 1993. So too, she herself would have been alarmed by talk of "needles" passed on to her by Child 14's mother.

Child 11

711. This child was born on 23 May 1989. She began at Shieldfield on 5 August 1991 with Dawn Reed, who was at that stage not in the Red Room but in what was to become the Orange Room. She was joined there by Mr Lillie on 16 October 1991. The child left their joint care on 2 March 1992, when they took over responsibility for the Red Room, because she remained in the Orange Room. She later transferred to the Yellow Room on 26 August 1992. She generally attended full time, although on some occasions 3-4 days per week. She left Shieldfield altogether in September 1993.

712. Child 11's mother gave evidence before me on 25 and 26 March. Like the other parents, she is firmly of the view that her daughter was abused at some stage by the two Claimants. It is something which caused her great anxiety both at the time and over the intervening years. There were times when she found the process of giving evidence in itself distressing.

713. Like some other parents, one of the sad consequences of coming to believe that her child was abused is that she has tended to blame herself. She was already feeling guilty to some extent, so she told me, because she was embarking on a time-consuming university course with one small child to look after and, after her son was born on 8 March 1992, with two. She was apparently getting a certain amount of pressure from her partner's parents and her own mother, who rather took the view that she ought to have been looking after the children full-time – at least in the early years. On looking at the Day Books, she also reacted sensitively because she thought that the staff at the Nursery were making too many notes about her and her activities, and not enough about Child 11 or (subsequently) her brother. For example, notes were made from time to time that she referred to Child 11's eczema and was informing the staff that this might sometimes be a reaction to stress. I am afraid that the mother of Child 11 was unduly sensitive about this issue, since (rightly or wrongly) the Day Books at that time *all* had a space for remarks under "Parents". This was to enable them to record information which the parent or parents had given to staff, or alternatively matters which the staff wished to pass on to the parents.

714. The mother of Child 11 is another witness for whom the traumatic experience of the Shieldfield "scandal" has meant that she now views events through a somewhat distorted memory. This is apparent from comparing her own (quite sincere) beliefs as to what was happening with the contemporaneous records.

715. Two matters in particular stand out. First, although she believes that Child 11 regressed in toilet training and began to wet herself while under the care of Mr Lillie and Miss Reed, the Day Books clearly demonstrate that this problem really began after she left their care. There are many entries, in particular, by Amanda Caisley. The mother responded several times in the witness box by saying that she did not trust the records kept by Mr Lillie and Miss Reed. It is a point which others have made. I am conscious, of course, that paedophiles or child abusers can be very manipulative. On the other hand, I have to bear in mind that there are many, many entries both by Mr Lillie and by Miss Reed in various Day Books recording incidents of wetting or soiling and, indeed, other behavioural features of children which could easily be attributable to stress of any kind (including child abuse). There is no reason to suppose that they should be economical with the truth over wetting specifically in relation to Child 11, and her alone. I see no reason to doubt the general pattern which emerges from the written records.

716. The other aspect of the Day Book entries is that it is quite apparent that Child 11 very much enjoyed the Nursery and, for the most part, got on well with the staff and fellow pupils. It is necessary to take account of the fact that a new sibling arrived on the scene in March 1992, and that this would have been bound to affect her in various ways. She was obviously competing for her mother's attention at that time, as almost always happens. There is a record on one occasion, just after he began at the Nursery, of the child being rather fixated on her young brother and going to the Baby Room to keep an eye on him. She also picked up a teddy bear on that occasion and treated it as her own "baby". It was also about this time that the problem of wetting became prominent. Mr Lillie and Miss Reed, as I have already noted ceased to be her carers just a week before her brother was born.

717. Apart from these understandable factors, however, the general pattern is of an intelligent and lively child. It appears from the Social Services file note on 19 May 1993, when the mother was first interviewed, that she was describing Child 11 as an "articulate child who can embroider stories" and, moreover, that "Chris and [Child 11] have a good relationship". The mother was also apparently telling the Social Services on 13 July 1993 that "there have never been any concerns about [Child 11] or her brother". The same message was being conveyed in that month to police officers, when

Constable Kinghorn and Det. Sgt. O'Hara visited the mother. Once again, however, the mother now views the historical position rather differently with the benefit of hindsight. Despite all these contemporaneous records, she now says that she *did* have concerns about Child 11 at that time, and indeed that she had had such concerns from shortly after she entered Shieldfield Nursery. In so far as she was expressing herself as not having any real concerns at the time, she now construes this as her having been "in denial".

718. It is also to be noted that when she subsequently started making "disclosures" Child 11 claimed to have visited "Chris's house" with other children whom she identified. These were children, however, who were with her during her period in the Yellow Room. They had not been under the care of Mr Lillie or Miss Reed. It is interesting to note that in a record dated 26 July 1993 Kulvinder Chohan, one of the social workers, was drawing to the mother's attention that neither Child 11 nor any other child in the Yellow Room would be expected to go out of the Nursery with other members of staff – in particular, Mr Lillie or Miss Reed. She was relaying to her that she would only have been out during the period of the Yellow Room with Diane Wood and possibly with another child. Despite this, the mother of Child 11 now clearly believes that she was taken out by Mr Lillie and Miss Reed and cruelly abused.

719. It may be relevant that the child began attending therapy at Barnardo's from 21 September 1993. It was only after this that allegations of indecency or being hurt begin to be made.

720. For a considerable period of time the mother was reluctant, understandably, to put her daughter through the process of either being medically examined or that of a video recording. Eventually, however, the child was interviewed on video on 24 November 1993. Before that, she had been examined by Dr San Lazaro on 14 October. The relevant entry in her Report of the same date is somewhat confusing:

> "Genitalia were noted to be normal externally, but the hymen appeared to be somewhat distorted and scarred with a rather high free edge.
>
> The findings in this little girl would suggest previous significant trauma to the hymen with granulatory healing. Because the healing is complete, however, the appearance of the hymen could pass as normal, or indeed having a mild congenital abnormality. I cannot be absolutely certain about trauma".

721. I cannot be sure what to make of that. Nor indeed could Dr Watkeys. She considered Dr San Lazaro's comments on both Child 11 and her brother to be "confusing". She is surprised that she made no drawings of her findings in view of the fact that she was claiming it, in her police statement, to be "highly likely" that penetrative trauma had caused the findings. Dr Watkeys emphasised that, in her opinion, the presence of previous significant trauma cannot be confused with a normal variant. As for Dr Ward, she observed that the physical examination did not satisfy diagnostic criteria for sexual abuse, even though there might have been some scarring of the hymen. This is just one example of Dr San Lazaro overstating the case and "beefing up" her findings for the police statement.

722. It is important in this context to note that the mother had observed Child 11 on various occasions inserting fingers into her vagina and saying that she enjoyed doing it. When asked by her mother where she had learnt to do this, she referred not to Mr Lillie or Miss Reed but to another small girl in the Yellow Room.

723. As for the video interview, this was conducted for the most part by Vanessa Lyon, although the mother was invited in when the child was perceived by Ms Lyon as being reluctant to speak. There is a classic passage of leading questions under the guise of summing the position up for "Helen", who was not in the room:

"Vanessa Lyon: You know what? I think Helen's a bit deaf. You know what? She wants me just to make sure I've got everything right, [Child 11]. So can you tell me if I have got this right?

Child 11: What?

Vanessa Lyon: This naughty man hurt you with a knife?

Child 11: Yeh

Vanessa Lyon: And he was called?

Child 11: Monster

Vanessa Lyon: Monster. And he was also called "Chris".

Child 11: Nothing

Vanessa Lyon: Chris. Isn't that right?

Child 11: (nods)

Vanessa Lyon: It was Chris, wasn't it?

Child 11: Yeh

Vanessa Lyon: And he used to work at the nursery.

Child 11: (nods)

Vanessa Lyon: You're nodding. So I must be right.

Child 11: Yes

Vanessa Lyon: And he hurt you with the knife?

Child 11: Yes

Vanessa Lyon: And we must especially remember this – and we'll speak loudly cause, as I say, I don't think Helen heard – but it was in a house.

Child 11: A house

Vanessa Lyon: And it was a monster's house.

Child 11: Yes

Vanessa Lyon: And Dawn was there?

Child 11: Yes

Vanessa Lyon: And was anybody else there?

Child 11: (shakes head) Just the naughty people.

Vanessa Lyon: Naughty people.

Child 11: And a good lady.

Vanessa Lyon: And a good lady who was called R- R-

Child 11: R

Vanessa Lyon: R

Child 11: Ker

Vanessa Lyon: Ker

Child 11: sss

Vanessa Lyon: R – Ker

Child 11's mother: I don't know that name, do I?

Child 11: It was a R –

Vanessa Lyon: R

Child 11: - and a Ker and a sss

Vanessa Lyon: Like an ess is that?

Child 11's mother: It's a bit like Rebecca that, isn't it?

Child 11: A line with a dot.

Vanessa Lyon: And a dot.

Child 11: A line with a dot.

Vanessa Lyon: Roxi? Rooks, no, I can't work that one out. But she was nice?

Child 11: (nods)

Vanessa Lyon: That's good. And did anybody else hurt you? I know Chris hurt you. Did anyone else hurt you?

Child 11: (Shakes head)

Vanessa Lyon: All right.

Child 11: Shall I write down the word again – in –

Vanessa Lyon: You could try, please, yes

Child 11: And I can cut it out so –

Vanessa Lyon: We can show Helen, couldn't we?

Child 11's mother: Hm mm

Vanessa Lyon: What pen are you going to use for that?

Child 11: This one I wanted – oh I need a pen.

Vanessa Lyon: OK that's fine. Start with a clean piece of paper there.

Child 11: R

Vanessa Lyon: R

Child 11: Ker

Vanessa Lyon: Ker. Hm – I don't think I know her. What does she look like? What colour hair does she have?

Child 11: Ginger

Vanessa Lyon: Ginger?

Child 11: Flowery dress and ballet shoes. Princess shoes and a –

Vanessa Lyon: Flowery dress, ginger hair and ballet shoes. Gosh, you have got a good memory. Really good.

Child 11: Yeh – and um –

Vanessa Lyon: Was she a grown up lady or a child, children? Was she children – one of the children?

Child 11: Erm a grown up.

Vanessa Lyon: Grown up. OK. Ginger hair. Erm, she was there and she was OK.

Child 11: She was nice lady.

Vanessa Lyon: She was nice. And Dawn was going to tell the police because – did she – did Dawn see what Chris did to you?

Child 11: (nods head).

Vanessa Lyon: Yeh, she did. You're right. I see you nodding there and you told me before, didn't you, that?

Child 11: (nods head)

Vanessa Lyon: Erm

Child 11: Doesn't she look nice in that (indicating doll)?

Vanessa Lyon: I think she looks nice, but I'll tell you what, I bet she's getting cold.

[There is then a discussion about a doll's knickers. Then the name of a small boy is mentioned, who according to Vanessa Lyon was said to be present, and Child 11 says nothing happened to him.]

Vanessa Lyon: You don't think anything happened. How did you get to this house? Who took you to the house?

Child 11: Chris

Vanessa Lyon: Chris took you to the house. Right. How did he take you to the house? Did you walk or –

Child 11: Walked

Vanessa Lyon: You walked

Child 11: Oh, I want to put it like this [putting clothes on doll].

Vanessa Lyon: So did – was it just Chris? Did anyone else take you to the house or just Chris?

Child 11: Chris and Dawn

Vanessa Lyon: Chris and Dawn

Child 11: But, I was safe with Dawn

Vanessa Lyon: You felt safe with Dawn. Because – and she was all right to you?

Child 11: Yeh

Vanessa Lyon: That's good. And you went to this house, just you? No other children with you?

Child 11: Yes

Vanessa Lyon: Who? Sorry, which children were with you?

Child 11: [Two boys and a girl are mentioned – but none of the justification children]

Vanessa Lyon: Right

Child 11's mother: [The girl's name was mentioned].

Child 11: (nods head)

Vanessa Lyon: [She repeats the name of the girl and one of the boys] And Chris and Dawn, and you walked to this house, can you remember anything about the house, what it looked like? What colour doors or furniture?

Child 11: (shakes head)

Vanessa Lyon: Was there chairs? Can you remember anything about it?

Child 11: (shakes head)

Vanessa Lyon: No? Did you have anything to eat or drink when you were there?

Child 11: Can you read the word? Can you?

Vanessa Lyon: I'll show it to Helen but I'm not – I can't work that out.

Child 11: Can you know what that mean?

> Child 11's mother: Can I work out what it says? No, I don't know that name.
>
> Child 11: Well, we will have to show it to –
>
> Vanessa Lyon: And this is the girl with ginger hair isn't it? Woman, lady, with the ginger hair?
>
> Child 11: Yeh (plays with doll's clothes) Right. She's not having this cardi on.
>
> Child 11's mother: It might keep her warm."

The interview continues to no effect.

724. In fact, the child seemed cheerful, friendly and good-natured. She was, like so many of the children, primarily interested in playing with the array of toys accessible in the room. She had nothing very much to say at first, but when pressed came out with allegations to the effect that she had been cut by a multi-coloured knife (not "part of Chris") which had hurt her tummy, and that she had been frightened by as many as 10 men. The child showed no anxiety or distress but was making these observations incidentally to the process of playing – as if almost just to get the interviewer "off her back". The descriptions she gave did not match her manner or emotional state at all. Moreover, she said that although "Dawn" was present she had not hurt her but had told "Chris" that she would tell the police about him. None of this carried conviction.

725. It was interesting that Professor Bruck, who had previously only seen the transcripts, was asked what she gained from actually seeing the children on tape and replied that it had only then became apparent to her how casual or offhand some of the children's remarks had been. She made the point that some at least appeared to be very much by the way, when the main focus was playing or drawing. It seemed to me that Child 11 provided a very good example of this.

Child 12

726. This child was born on 15 February 1990. He attended Shieldfield full-time from 1 June 1992 until September 1993, although at one period he was attending four days a week rather than five. He was in the Red Room with Mr Lillie and Miss Reed from the start until 28 August 1992 when he moved to the Orange Room. His first verbal "disclosure" was apparently as early as October 1992 when he began having nightmares, in which he is alleged to have cried out either "Stop it, Chris, Stop it" or "Stop it, Chris don't do that". On the face of it, of course, very compelling but (as with Child 8) a little scepticism is appropriate. It is not always easy to interpret what a child appears to be saying in sleep. At one stage the mother's account included her asking what it was "Chris" was doing (after he woke up). He replied "Nothing".

727. There were no clinical findings to suggest abuse but Dr San Lazaro introduced an element of drama when he visited her on 11 November 1993. She produced a 10 ml syringe and invited him to use it for transferring lemonade from a bowl to a plastic bottle. When he saw it, Child 12 is said to have recognised it and said "I know about that. Chris had one [i.e. at least 15 months earlier]. He used it to make my bottom nice and not sore. He put special juice in it". Again I find myself a little wary of such a "pat" scenario. By that, I am not suggesting that anyone is not telling the truth about what the child said, but I am sceptical of taking it as a spontaneous and unprompted description of an injection by Christopher Lillie. During the Summer of 1993 there was much going on among children and parents, and I need to be cautious about his account being overlaid with what he had heard. The mother's memory is clearly also unreliable because she put this incident some six months earlier.

728. A perianal swab yielded haemolytic streptococcus. This is not a sexually transmitted disease but, according to Dr Ward, this was "of interest" since Child 1 exhibited the infection too. It is, however, no longer "of interest", since it was dropped at an early stage of the trial by the Defendants as part of the plea of justification, and quite rightly since it is by no means uncommon in small children. It is perhaps surprising that Dr Ward did not make that clear at the time of her report. It reflects a little on her objectivity.

729. The background may be of some importance. This child's mother had been concerned since Mr Lillie's suspension in April about the possibility of abuse. She took him to her GP who gave her no encouragement. She instigated a visit to Dr San Lazaro on 24 May 1993. Even she had her doubts and noted on 10 June that the child had made no allegations of abuse himself. She told me on 14 May that "I do not think I was impressed enough with this child to even examine him". Moreover, she observed that it was many months since he left Mr Lillie's care. Rather oddly, however, she referred to him as "the alleged perpetrator" at a time when she had nothing more than an unconfirmed allegation by the mother of Child 22. She agreed with Miss Page that, when she wrote "alleged perpetrator", neither Child 12 nor his mother was alleging that Christopher Lillie was a perpetrator of anything.

730. The matter was clearly to the forefront of the child's mind as well as his mother's, and on 23 July 1993, the day when he was arrested in connection with Child 23, the boy told other children and staff in the Yellow Room that the police had been to see "Chris" because he was naughty. Three days later, when Miss Reed was arrested, he was again giving the "lowdown" in the Yellow Room and saying that they had been taken away so that they could not be naughty anymore. This confirms my anxiety about treating his statements as reliable. Without a clear explanation as to who was feeding him this information, and why, I must remain sceptical. Miss Page suggested that it came from child 23, but there is no solid evidence to support that. At some point around this time he is also recorded as having told his mother that he had people up his bottom.

731. The first video interview took place on 9 August 1993. Not surprisingly, on this occasion he also referred to Dawn and Chris as having left the nursery and to the involvement of the police. The child's mother refers to the fact that it was Dr San Lazaro who gave him the information. This, of course, is another warning sign as to her impartiality in these events and as to her role in cross-contamination. After a certain amount of prompting, Child 12 refers to a horrible dog who bit "Chris". This has an odd ring to it, since it rather sounds as though the child has picked up a story involving a dog and given it a twist of his own. He refers to having seen it at Chris's flat which he visited with Children 36, 48 and 87. There are anachronistic aspects to this story. First, it is necessary to recall that at the time Child 12 was in the Red Room Mr Lillie was not yet living with Miss Kelly in Red Barns or with her dog. Secondly, the other three children he refers to were with him in the Yellow Room in the Summer of 1993 – very shortly before the video interview. Two of them had never been in the Red Room, although Child 48 had briefly overlapped. It thus looks as though a familiar phenomenon is at work here. The child is telling a story which he peoples with his current or recent companions, just as several of the children refer to incidents having happened in the past but when they were wearing their present clothes. As it happens, the incident he describes simply could not have happened. It just does not fit.

732. There was a second interview on 25 November 1993. This had followed a report by the mother to social workers on 9 November that Child 12 was now saying that he had been in bed with Mr Lillie and Miss Reed and that they had put a needle up his bottom. There was also an anal discharge. All this, of course, was well over a year after he had moved on to the Orange Room.

733. The second interview was quite short and Child 12 immediately announced that Dawn put needles up his bottom to make it wiggly and Chris put orange juice up it to make it not wiggly. He said it was done in his own home and "with the gun from the doctor's". It seems as though this account, at least in part, derives from his experience a few days earlier at Dr San Lazaro's surgery. It was explained by his mother in evidence on 25 April that Dr San Lazaro had actually given her the syringe to take home,

so that Child 12 could familiarise himself with it and so that he should lose his fear of it. Whether he had actually displayed any fear at the consultation is not clear, but in any event Dr San Lazaro's intervention creates a significant question mark over the reliance that can be placed on the "injection" allegations. In any event, it appears that he later denied that anything had happened. Kulvinder Chohan recorded on 28 November the upshot of a meeting attended by the mother and child, Julie Kinghorn and Helen Foster:

> "[Child 12] had a cold that day and later went on to say nothing had happened".

734. In February 1994, when he was just four, Child 12 apparently made further allegations (going back at least 18 months). He told his mother that Dawn had slashed an orange with a knife in his presence and told him that she would put his eyes out if he told what happened to him. Moreover, on this occasion Child 11 intervened and tried to wrest the knife from Miss Reed. This lacks the ring of truth, and once again it is necessary to recall that Child 12 and Child 11 did not overlap in the Red Room but had been together in the Yellow Room. They then moved on to the next school which they attended. They were also friends and indeed still are. Thus, it appears to be the same phenomenon at work again. A story is told about the relatively distant past but the characters are from the present or recent past.

735. It is also significant that the lurid story about Dawn Reed slashing an orange came in the immediate aftermath of watching a highly unsuitable film called Jumping Jack Flash.

736. The story found its way into the Newcastle Journal on 28 November 1998 under the heading of "Legacy of fear for young victims of nursery nightmare". The film was said to have caused the boy to begin screaming uncontrollably. His mother is quoted as saying "Dawn Reed used to stab at an orange and threatened to do the same to his eyes. You never know what is going to trigger off flashbacks to the horrors they suffered". In the course of the mother's cross-examination, she was shown certain extracts from the dialogue. It was full of swearing, sex and violence of a rather outlandish variety which could well be harmless for teenagers or adults but which was quite capable of frightening a child of four, or stoking up his imagination, or a combination of the two. The mother's recollection was that the film had been shown before the evening watershed and therefore must have been heavily edited. That was somewhat vague, however, and the point remains in my judgment a telling one.

Child 14

737. It is by now obvious that Child 14 is at the heart of this case, as she was in the criminal proceedings. As Holland J explained, she was the oldest of the indictment children, she had yielded physical findings consistent with penetrative abuse, and she gave rise to the most serious charge facing Mr Lillie (i.e. rape). Although she was put forward as the strongest prosecution case in the 1994 proceedings, the present Defendants do not rate it so highly. Child 14 has now slipped to third place behind Child 24 and Child 23.

738. She was born on 17 November 1988. She began at Shieldfield on 21 January 1991 and left the Nursery on 22 July 1992. She had not been under the care of Mr Lillie and Miss Reed since 19 February 1992. (Thus, when Dr Sandra Hewitt asserts that she spent "over 2 years having some contact with Chris Lillie and Dawn Reed", it would seem that she has misinterpreted the facts. Joint care was from 16 October 1991 to 19 February 1992.)

739. Child 14 was first examined by Dr San Lazaro on 8 October 1993 (i.e. 20 months later). A confusing feature of the evidence relating to this child is that there are discrepancies between the available medical records. The medical notes show the presence of moderate hymenal loss with thick fibrotic changes and a complete tear at the 4 o'clock position. In her police statement of 23 October 1993, Dr

San Lazaro describes a tear at the 5 o'clock position *plus* one anterior to that (itself not on the diagram). As Dr San Lazaro put it herself in the witness box, "It is regrettable … All of this is a substantial professional lapse, I would have said".

740. Dr Watkeys found the records confusing. She did not understand what is meant by the phrase "thickened fibrotic changes". One interpretation would be that it referred to scar tissue throughout the hymen – but this seems unlikely in view of her other record of tears. Dr Watkeys was also puzzled by reference to partial tearing and whether this was supposed to be additional to the complete tear (or tears, as the case may be). Nevertheless, there are potentially significant indicators of hymenal damage. On the other hand, such findings as there were relating to her anus were not indicative of sexual abuse.

741. It was agreed by all concerned that Child 14 came from a home environment in which a significant level of domestic violence was encountered. On one of the controversial videos, her mother is seen to have a black eye. That is merely part of the background. Of course, it is not suggested on behalf of the Claimants that a child from a violent home cannot experience sexual abuse outside it. That would be ludicrous. On the other hand, domestic violence can sometimes be a contributory factor towards disturbed and even sexualised behaviours. It cannot be simply left out of account. Furthermore, it is clear that she had behavioural problems, including violent temper tantrums, prior to entering the nursery. Her mother was finding this difficult to cope with.

742. No significant disclosures or behaviour were noted until May 1993. (This was at or about the time of the suspensions, when rumours and speculation first became rife.) It appears that the mother of Child 14 had been told about Christopher Lillie's suspension by a neighbour, the mother of Child 92.

743. At about this time Child 14 apparently invited a cousin to kiss her on or near the vagina and declared, "You see it on videos". Explicit videos are commonly available nowadays and it is possible that she had heard about such matters in gossip at school. What I am invited to conclude is that this comment provides in itself evidence that she had been present at some unspecified location, and time, when a pornographic video was made during which oral sex had been recorded. That seems to me to be fanciful. Some of the allegations about "Chris's house" in this case are said to relate to Red Barns; but it is important to note that Child 14 left the nursery months before he moved there. Furthermore, Mr Lillie said that no child, nor any member of staff, had ever been to his earlier address in a different part of Newcastle. Miss Reed said she had no idea where he had lived before. There is not one scrap of evidence that any child had been taken to any other of his addresses.

744. Her other comment in May 1993 was that a boy had been to Chris's house. This could, for all I know, have been a reference to allegations being made at the time about Child 22. But, at all events, there is no allegation so far of any assault upon herself.

745. By September 1993, Child 14's mother was expressing anger that no one from Social Services had been to see her to discuss what was going on at Shieldfield. On 24 September, according to her mother, Child 14 was alleging "Chris" had at some time placed his "wiggy" near Child 35's "Mary". It is necessary to see this against the background that Child 35 was a close friend of Child 14 and was at the same school. Moreover, the mother of Child 35 was present on the first two occasions when social workers talked to the mother of Child 14. Be that as it may, Child 35 did not corroborate what Child 14 said about her. Ms Jones accepted that in cross-examination on 15 February.

746. There was still no allegation by Child 14 that anything untoward had happened to *her*. She did say, however, that she had been on one occasion to Chris's house with Dawn and Moira (Martin), but nothing to the effect that anything unpleasant had happened there. Three days later, these allegations

were repeated, but she added that other children were present, including Child 35 and Child 10. Child 10 did not corroborate her account either.

747. On 15 September her mother had reported to social workers that Child 14 had said nothing about misbehaviour at Shieldfield. The first "disclosures" emerged after a home visit by Vanessa Lyon and Marion Harris, who had encouraged her mother to talk to her about the matter, and to use suggestive techniques such as drawing and the naming of body parts. The difficulty is to know, at this distance of time, what passed between mother and daughter and how, if at all, this influenced subsequent disclosures. What is clear from Social Services records is that the mother's memory was shaky to say the least. At various stages, she suggested that Child 14 had gone to Shieldfield aged 14 months (she was actually aged 26 months) and that she left in December 1992 (in fact it was July).

748. On 23 September 1993 the mother was expressing quite strong antipathy to Christopher Lillie, whom she claimed to know from childhood. She said that he came from a dirty family and that she had not wanted him changing Child 14's nappy. She also suggested that Christopher Lillie and/or his sisters had been taken into care because of sexual abuse. There is no evidence to support this. The Review Team took another line (i.e. that he had probably suffered child abuse while in care). There may be a considerable element of *ex post facto* reasoning about this. Certainly Mr Lillie denied having known her as a child, and I see no reason to disbelieve him. It was on the next day that Child 14 was making disclosures. By this time her mother had told her that Christopher Lillie and Dawn Reed were in prison and could not hurt anyone.

749. The first video interview took place on 4 October 1993. Up to that point, no one apart from the mother had heard what Child 14 had to say. I have already pointed out that the allegation on page 41 of the Report is inaccurate in suggesting that Child 14 referred on this occasion to being raped and to being video taped.

750. What she did say was that she had been to somewhere described as "Chris's house" where there were two dogs, cats and hamsters. She said that Child 35 came with her.

751. By this stage it had already emerged that the child was supposed to relate to the interviewers something described at home as "the business" or "the biz". This seems to be the term used to cover whatever it was that she was supposed to say about Christopher Lillie and Dawn Reed. Time and again, however, it was clear that she was unwilling or unable to recall what she was supposed to say. She was asked to say something that was "silly or naughty they shouldn't have done". What this first elicited was that Christopher Lillie had said that he was in charge of the Nursery and that he could "wipe her bum". She said that she would not be very pleased and he therefore refrained from doing so.

752. Asked if he did anything else, she said not. It then emerged that the child had been told that "Chris had been naughty" and "went to jail". This shows that there was a background of negative stereotyping underlying "the business" that she was supposed to relate. That information can only have come from an adult, as indeed her mother had already admitted to the Social Services on 27 September 1993.

753. When she was asked what she had to tell, Child 14 said she could not remember. There were confused accounts of going to a house with Amanda or Moira (from Shieldfield Nursery) and Chris and Dawn. But nothing unpleasant or improper happened. She seemed also to be saying that there were other children present (Child 35, Child 10, Lucy and Sam). None of this was corroborated by any other person, child or adult.

754. Several times she exculpated Dawn Reed, saying that she "done nothing" and "wasn't silly". She should be let out of jail: "Say Dawn can come out today".

755. She did make allegations about Christopher Lillie taking his trousers down and holding his "wiggy". There were leading questions, designed to get the child to suggest an erection, but she said it was pointing neither up nor down but at Child 35. Mrs Saradjian found this very compelling evidence, displaying independence on the child's part. The trouble is that there is no corroboration at all from Child 35. Also, it is alleged to have taken place at Shieldfield Nursery. The idea of Mr Lillie moving around at Shieldfield Nursery with his trousers down does not sound very compelling. Even if he escaped the observation of his colleagues, it would have presented something of a risk. If spotted, it would have taken some explaining. This did not trouble the Review Team because it had emerged in the Jason Dabbs case that abuse can happen in a busy environment even in the presence of colleagues. Presumably, however, this would require watchfulness and discretion – rather than the abandoned exhibitionism attributed to Mr Lillie by Child 14.

756. During this first interview, Child 14 was obviously aware of the broader context, since she enquired whether Child 10 had been to the video suite that day (as indeed he had). She, Child 10 and Child 35 were all at the same school at the time.

757. Professor Bruck was of the opinion that there was at that stage no justification for taking the matter further or subjecting the child to another interview.

758. Nevertheless, Child 14 had a second video interview on 13 October. In the meantime, the examination by Dr San Lazaro had taken place. Although the child made no allegation of abuse to her, the physical findings led her mother to press her further. She told her that she *knew* something else had happened at the Nursery and apparently elicited an allegation of rape from the child, which she reported to Social Services on 11 October.

759. At the second interview, in due course, Child 14 alleged that Dawn Reed had been silly. There was an incident in the toilets at Shieldfield, when Mr Lillie and Child 35 were supposed to be present, and Miss Reed had stuck needles up their "bums". Asked what she was wearing on this occasion, she said her green trousers and "this top". The needle had gone under her trousers but over her pants. The same thing happened to Child 35, who was crying; meanwhile, Chris was supposed to be laughing. She also claimed to have seen them put a needle into Child 10's bottom. (He did not offer any confirmation either as to having been present on such an occasion.) The needle was described as a "toy" one or "pretend" one.

760. Child 14 was asked again what had happened at Chris's flat, and she said "nothing" but she did confirm that she had been there with "Chris, Dawn and Moira". There is no confirmation from Moira Martin; indeed, she was not even asked about it by the Review Team.

761. Child 14 had clearly been talking again about "the business". She offered to show Helen Foster where Chris lived, but her mother would have to come: "If Mummy doesn't tell you, I'll forget". This is obviously highly unsatisfactory. Where this trip would have led is something of a mystery. Had it taken them to Red Barns, it would clearly have been anachronistic, since Mr Lillie did not move there until six months after Child 14 left Shieldfield. When she gave evidence, her mother said that she thought the child must have been referring to another named road, where she had told her she had been taken to a house with a black door. That particular road and a "black door" had first appeared on the scene six months earlier in the allegations being made by the mother of Child 22 (see below).

762. After further questioning from Helen Foster and Vanessa Lyon, it was alleged that "Chris put a needle up me and all" (also up Child 35's bottom). At this point, contrary to what she had already said, she added "Dawn just did nothing, because Dawn was in the class". This interview dragged on for 78 minutes (far too long) and her mother was allowed to badger her to tell Vanessa and Helen "the business". But nothing was forthcoming.

763. Despite Child 14's resistance to coercive questioning, over that length of time, Vanessa Lyon and her mother contend that the child did allege rape during the journey home. What prompted this is not clear. Vanessa Lyon regards it as quite spontaneous. She was driving and just coming to some traffic lights. She looked in her mirror and could see the mother and child in the back seat. They were sitting close together but she saw no whispering or any exertion of influence upon the child.

764. On the other hand, when she was later pressed to repeat this on tape, she said it was not true and "just stupid jokes".

765. I am asked to bear in mind that in the first and second interviews the child asserts that "they" or "Chris" had told her not "to tell" because she would not see her mummy and daddy again.

766. Next came the highly controversial third video on 22 October. During the criminal proceedings, the police originally only disclosed two video interviews. Whether this was by oversight is unclear. It is contrary to good practice to subject children to three such interviews, save in exceptional circumstances. When one of the defence lawyers spotted something on one of the tapes, suggesting that Child 14 had been to the suite before, an earlier video tape (the first one of 4 October) was revealed. It had also been withheld at the time of the disciplinary proceedings by Vanessa Lyon.

767. At the third interview, there is the startling comment by Child 14 that she has been told by her mother that, if she does not "tell the business", Christopher Lillie can come out (i.e. may be released from custody). This is very worrying, because that was indeed the very day on which there was a bail application. It was in fact successful, and Mr Lillie was just leaving Durham Prison when he was re-arrested because Child 14, at the end of the interview, finally came out with an accusation of rape. It looks, therefore, as though someone was exerting pressure on the child to make this grave allegation on the basis that, if she failed to do so, Mr Lillie might come out and do further harm. So far as Miss Reed was concerned, as in the first interview, Child 14 exonerated her completely.

768. The matter dragged on and Child 14's mother was brought in to encourage her to say something. She was told, "Then we can go to town and have presents". She is pressed repeatedly to say what they wanted to hear. She asks to go home and, at that point, the tape blanks out. After a 13 minute gap, the tape resumes and Helen Foster claims that she had been next door to check, and the tape had not been switched on. She asks Child 14 to tell her again what happened when Chris took his pants down.

769. Even at this stage, the child shows little interest in "the business" and is much more interested in play. She constructs a "choo choo train" in which Helen Foster takes her place and Child 14 goes up the train collecting tickets.

770. It is true that Child 14 claims that Chris put his "wiggy" in her "Mary" and it felt "tickly". This was hardly spontaneous, however, since it was only elicited by a grossly leading question from an exasperated Helen Foster: "Chris put his wiggy where?" She then talks again about going to his house with Chris, Dawn, Amanda, Child 10 and Child 35. The interview finally terminated with her mother saying, "Now they can't hurt nobody anymore". (The implication is clear; now the child has finally delivered the allegation of rape, bail will be revoked. That is exactly what happened.)

771. In her evidence before me, the mother said that she would have had no idea about the bail application that was taking place that day. She may well believe that to be true in 2002, but if that were the case, it would be difficult to explain the remarks I have quoted about Mr Lillie "coming out" and "hurting" people.

772. Miss Foster was asked about this in her evidence on 22 May. She had no recollection of whether the mother knew of the bail application; nor of when she herself had known about it. There are various comments in the transcript which make it, in my judgment, quite clear that the mother *did* know about the bail application. The most likely candidates for informing her would be the police officers in the case. As to Miss Foster, she recollected turning up for the re-arrest of Mr Lillie outside Durham Prison. But she did not appear to recollect anything of what I described to her as the "race against time".

773. She produced quite a detailed note of the end of the third Child 14 interview and also records that within 10 minutes she had gone to the Infirmary to collect a report from Dr San Lazaro (in fact dated the following day) and that, thereafter, she went to Durham Prison, but she does not appear to recall what might appear to be the obvious links between those events. I found this quite a difficult area because, just as on the many hours of video tape, Miss Foster presents as a likeable, kindly and straightforward person. She was frank about the defects in the interviewing process in 1993 and how differently things would be done today. She was also frank about the risks of cross-contamination between the various accounts and speculations in this case. But on the "race against time" I was less convinced.

774. It is important to record what she said in her notebook about the circumstances in which Child 14 at last came out with her allegation of rape. As Holland J recognised, this cried out for close inquiry. It is clear that the child terminated the interview (or so she thought) and said to her mother "Let's go home". The tape then fades out at 11.38.11.

775. At this point Helen Foster records that there is a "break for toilet facilities". This is not consistent with the transcript, which appears to show that the interview had ended. Her note then continues:

> "11.42 Resumed video interview. Message received on ear-piece that video equipment was not working. Left video room, liaised with [Social Workers], checked equipment, appeared in working order but it hadn't been switched on.
>
> 11.51 Resumed interview with equipment on!
>
> 12.10 Interview concluded. Two video tapes taken from machine one selected as master tape, sealed. Second video tape and two audio tapes to be working copies (B/77/93). Retained by me.
>
> 12.20 To RVI, witness statement signed by Dr Lazaro."

776. Vanessa Lyon also dealt with this in her evidence. She had no clear recollection after so long an interval. But she did say that she was in with the video camera at the point when the interview resumed. The child was recalling to Helen Foster that she had been raped when Vanessa Lyon was embarrassed to note that the video equipment was not working. Hence the need for re-enactment.

777. This was not a satisfactory passage in the evidence. Vanessa Lyon was at pains to distance herself from the video equipment and to say how untechnical she was. She could not even switch on her own video equipment at home. This is difficult to reconcile with the fact that there were various Shieldfield interviews when she herself was operating the camera (e.g. Child 19 and Child 21).

778. I do not wish to be unfair to either of these women. Neither claims to have a clear memory of what actually happened. Mr Bishop submits that it is clear that there was simply a glitch in that an entirely voluntary "disclosure" was taking place, but not recorded for the prosaic reason that the untechnical Mrs Lyon forgot to switch on the machine. Holland J clearly thought this gap cried out for an

explanation. It still does. In light of their memory lapses, I am not prepared to conclude that either Miss Foster or Mrs Lyon was lying. Nevertheless, I am not prepared to "buy" the explanation that somebody "forgot" to record Child 14 all of a sudden and spontaneously making the most serious allegation in the Shieldfield story (i.e. that which resulted in a charge of rape). What happened between 11.39 and 11.51 on 22 October 1993 is unlikely now to be finally resolved, but what is clear is that it triggered Mr Lillie's re-arrest at Durham a couple of hours later at 14.10 hrs.

779. The Memorandum of Good Practice makes clear that there should be "a record of what occurred during any interval(s), including all periods away from the interviewing facility". This is obviously because it may become "…important to be able to demonstrate that the child was not prompted or coached between interviews". It has not been possible to demonstrate that in this instance, where it was especially important to do so because of the demonstrable history of pressure on this child and her previous resistance to making the allegations.

780. Mr Bishop wanted to introduce an expert report after closing submissions to explain how the video and recording equipment in the suite actually worked. It was to the effect that one could look through the viewfinder and see and hear what was going on in the interview without the equipment actually recording. Unfortunately this evidence could not be agreed and I decided that it would not be right to take this into account without giving Miss Page an opportunity to explore it fully. I do not therefore propose to attach any weight to it (just as I decided to ignore Professor Bruck's post-trial supplementary report). In any event, Mrs Lyon did not have any recollection, nine years on, of actually looking through the equipment.

781. In the meantime, Dr San Lazaro had apparently put together a report between 12.10 and 12.20, in double quick time, which was compatible with the allegation of rape made between 11.50 and 11.55. In fact, her relevant witness statement (at least in the typed version) appears to be dated the following day. Dr San Lazaro has no recollection of this incident which, if it happened, is rather surprising in view of its importance in the criminal proceedings and the "race against time". It is possible that she jotted something down "from memory" (as she did with her generic report to the C.I.C.B.) but it is not now feasible to come to a firm conclusion.

782. One can have no confidence in this flawed process at all. I have already cited what Professor Bruck said generally (at paragraphs 409-416 above). She described Child 14's third interview as one of the most coercive and abusive interviews she had ever reviewed, with no consideration being shown for the child's feelings. After the 13 minute gap, she appeared to her to be quite different in demeanour, i.e. "totally subdued by her interrogators".

783. One does not need to be an expert to recoil at the whole exercise. I agree with Professor Bruck's assessment that "the evidence that was produced was so tainted that it is unreliable". Despite this, the Review Team described the child's evidence as powerful and compelling. They praised the interviewers and publicly stated that there were no leading questions. The clear implication is that there was consistency over three interviews, when obviously there was not.

784. It seems that three days after Mr Lillie was re-arrested at Durham the child was telling her mother that she had been in bed with Mr Lillie and Miss Reed who were indulging in mutual oral sex and using a vibrator. A little later, in November, she added that she had been rubbed all over with a vibrator herself and had been put in a bath after she had been in bed with Mr Lillie and Miss Reed after making videos.

785. On 16 November 1993, Child 14 referred to the name of a man with a certain disability (which I do not need to spell out), and to a woman with red hair. The mother of Child 23 had provided the names of these persons to Child 14's mother. They were obviously relayed to Child 14, who identified them as

having been involved in some way in abuse. The police investigated this and found no evidence for it whatever. The Review Team knew this. Nevertheless, the smear was incorporated into the Report at pages 211, 213 and 269.

786. Following the final "disclosure" of 22 October, the social services records disclose over several months various demands made by the mother for money from the local authority. She wanted to be paid for telephone bills, costs of re-housing, decorating, a kitchen unit, a shower unit, rubber sheets, a new bed, a washing machine, a wardrobe and a floor covering. She received a number of payments. I do not believe it would be right, however, for me to draw the inference that the pressures on the child were financially motivated. I have to assess the evidence in a broader context.

787. The child appeared in 1997 in two television programmes when she was aged eight. One was a Channel 4 programme called *Death of a Childhood* and the other was the Panorama programme about female abusers. She was seen in shadow, but would be recognisable to those who knew her. She was invited to recount for the public at large the details of the abuse and rape she was alleged to have undergone more than five years before.

788. It was obvious that Mr Wardell was shocked (perhaps naively) by the fact that these broadcasters had been party to such exploitation. It is indeed difficult to understand what could be gained by her reliving such horrible experiences. It appears that money again changed hands, but the mother said she could not remember how much. She thought it was probably no more than a "token" sum, in each case, to compensate for the use of her home for filming.

789. The motivation for putting the child through this is hard to follow. The mother explained in cross-examination that it was not revenge, but rather a desire to overcome the injustice her daughter had suffered through the criminal justice system by proving to everyone that she *could* give a cogent account. Miss Page cast doubt on this evidence by referring to unguarded remarks she had made to Professor Barker:

> "I know where Chris is living now and we have been watching it, and you feel tempted to do something, but we have been told that he is under surveillance and we cannot do anything about him yet. But we will get to know when he is not under surveillance, and then we'll see what will happen then".

790. In the light of this Miss Page suggested to her that vengeance must have been a significant factor. This was again denied. I do not need to decide what the motive was, since it does not really affect my task.

791. It is desperately sad that the events at Shieldfield can have had such an apparently all consuming effect upon a family. But the truth is that the account that Child 14 was giving, when she was nearly nine, was quite different from what she had said earlier. That may not be very surprising since she was purporting to recall events when she was two or three years old. What is more worrying is that in the unedited interview I was shown, with Su Pennington, Child 14 on several occasions said that she could not remember what happened. She did not appear to be in any distress, but merely smiled rather shyly when she said she had forgotten. In due course, she came out with the allegations of abuse (including rape) but they were now different. They located the incident not at Shieldfield but at a house reached by a metro journey behind a red (not black) door. Curiously, there is nothing in the mother's witness statement about this version at all. Miss Page asked whether this was because the mother did not believe that version. No clear answer was received. The mother's position was that she believed everything her daughter had told her (clearly taking no account of contradictions or inconsistencies).

792. Miss Page also called upon the Review Team, through Mr Bishop, to make clear their position on the plea of justification. They preferred, however, to keep a low profile. They did not wish to adopt any of the 1997 versions. I see no reason to ascribe this to any scruple or fastidious judgment on their part. They were quite prepared to allege against Mr Lillie and Miss Reed anything they felt they could get away with, but even they must have recognised that they could not adopt contradictory positions and would simply have to plump for one or the other.

793. As I have already recorded, Mr Wardell's position about the Panorama programme was that it did not affect their thinking about the credibility of Child 14's evidence. They tried to put it out of their minds.

794. As to the Channel 4 programme, this involved a dramatic reconstruction of the Child's distress. She was referred to as "Louise" and the mother as "Jenny". The child is shown holding Barbie dolls and stroking one of them. She then portrays a pretend nightmare, calling out "Mum, Mum". The mother comes into the bedroom, asks if she needs to go to the toilet and carries her. She is described by her mother as prone to depression and is portrayed as rolling about with a large teddy bear. She refers to her peers as "going around dead happy, but I'm like the only one going around dead sad".

795. Her mother describes how the child, at the time she was in Shieldfield Nursery, had "a lot of cystitis" and sores, but she put this down at the time to "fizzy pop" and to the fact that "I left her in a wet nappy all day". The implication is that, with the benefit of hindsight, the explanation is that the cystitis and sores were caused by abuse "by two staff members at this nursery - one of them male".

796. Like the other children, Child 14 had made no contemporaneous complaint. This was covered in the programme by the child explaining that Mr Lillie and Miss Reed had threatened her: "They says, keep it a secret. I didn't tell them because they said … not see your mam or dad or your family any more". The commentator adds that it was therefore over a year before "Jenny" suspected.

797. The mother is quoted as saying:

> "When I picked up the paper, and I seen they were arrested straightaway alarm bells was ringing in my head. I asked Louise if anyone had ever been silly in her nursery and she then went on to say that the male member of staff had exposed himself to her… and then she went on to say he'd done other things to her".

(The arrests were in July and Child 14 said nothing until mid-September).

798. The child then describes being taken to a place with a red door where "they did things but I don't like to talk about it – like they had a big camera".

799. The mother was clearly less inhibited. She went on to describe how Dawn Reed had inserted a needle into her vagina, by way of introducing a relaxant. She told how photos were taken, a video recording was made, and how oral sex had taken place. This despite the child's persistent (and spirited) insistence on exonerating Dawn Reed (e.g. "Dawn done nothing. Say Dawn can come out today").

800. There was then shown an extract from the child's first video interview of 4 October 1993. As I have already described, there was no allegation of misbehaviour against Dawn Reed and no allegation of assault involving herself. Despite this the Review Team falsely summarised it at page 41 of the Report

as containing allegations of rape and the use of a video camera, as though they had completely muddled up her 1997 allegations with the 1993 version (while claiming to have put the 1997 allegations out of their minds). At all events, her mother described for the Channel 4 viewers why on 4 October 1993 "she didn't really say very much". Her explanation for the child's reticence was, "She didn't know what she could tell them and, like, what she could be, like, trusted to tell them". The daughter added, "It's a bit embarrassing, like, because you don't know them".

801. Chief Inspector Campbell Findlay then contributed by saying that he did not agree with Holland J's decision. Then Child 14 expresses her view about how child evidence should be approached in the criminal courts: "If I was a judge, I would let children have one chance. Then if they didn't think they were telling the truth, they just wouldn't get any more chances". It is difficult to make much sense of this, since I have no idea what she meant by "any more chances" but it reflects an attitude to be found among various adults in the course of this case (including Mr Wardell). The approach taken is that if one does not believe the child's remarks if they could be construed as allegations of rape, sadism or indecent assault (rejecting any inconsistent or exculpatory statements), then one must be dismissing the children as dishonest.

802. I am not going to comment further on these broadcast items. Suffice to say, they have done nothing to change my view either as to the weight to be attached to her three video interviews in October 1993 or as to the Review Team's misrepresentations about them. In the light of the Civil Evidence Act 1995 and the Lord Chancellor's order of 1993, relating to children's evidence, all of the material I have referred to above is admissible. It is all a matter of weight for the fact-finding tribunal. I would like to make it clear, therefore, that I have no confidence in any of the allegations of misconduct made by Child 14 or her mother. The concerns expressed by Holland J so clearly in 1994 remain as valid today and nothing revealed subsequently has gone any way to allay them.

Child 15

803. Child 15 is an interesting case. He was seen playing quite happily on the video recording of the visit to the soft play centre on Mr Lillie's birthday in June 1991. He was born on 7 May 1988 and attended Shieldfield more or less on a full time basis between 3 September 1991 and 25 August 1992. He was never in the Red Room with Mr Lillie or Miss Reed or under their care in any other room. There were no medical findings. When Dr San Lazaro went into the witness box, Child 15 was one of those she first mentioned in respect of whom she had changed her mind.

804. This child's first disclosure came in February 1996, when he was nearly eight years old and no less than three and a half years after leaving the Nursery. It happened in the course of therapy at Barnardo's. It may well be, therefore, iatrogenic (see Chapter 5 by Richard J. Lawlor in *Expert Witnesses in Child Abuse Cases*, eds. Stephen J Ceci and Helene Hembrooke).

805. What he actually alleged was that Mr Lillie had hurt his genitals by rubbing hard, and this happened many times. The mother was visited by police officers in October 1993 and she told them that she had no concerns about her son. She has not provided evidence for these proceedings. It appears, therefore, that she may well be an example of what Dr Cameron described in his evidence about the group phenomenon – a parent standing out against the group belief (see paragraph 487 above). It is true that Professor Friedrich asserted that, "He had internalised this fear of Lillie and Reed to such a degree that he continued to be acting as if he were under threat even several years after discharge from the nursery", but I am not prepared to give this any weight at all. It is bare assertion.

806. Inevitably, the time came when the allegations about this child were dropped by the Review Team – albeit somewhat late in the day, on 13 May. The usual costs consequences followed.

Child 17

807. This child was born on 2 May 1990 and entered the Nursery in September 1992 in the Red Room, where he remained in the care of Christopher Lillie and Dawn Reed until their suspensions. He continued to attend Shieldfield Nursery until September 1994 (usually for two days a week). He was living with his father, who managed to care for him largely on his own.

808. No concerns were expressed until 13 months after Mr Lillie's suspension. At this point, Child 17 was in the Yellow Room with a number of other children who had already made allegations of abuse. In particular, Child 23 was in the room with him. She by this time was already undergoing therapy under Mr Rick Telford.

809. On 17 May 1994, she blurted out in class (at the age of 4 years and 3 months) the curious sentence "[Child 17] has got bad feelings". There is an apparently full manuscript record of what then passed between them. She then said that he had bad feelings because of "what happened to him". The boy appeared to be taking no notice, when Child 23 went on to tell "Gillian" (the relevant member of staff), "Chris and Dawn tickled [Child 17's] fairy bum with a crayon and hurt him and poked him". The boy looked angry and denied it. The Defendants argue that he over-reacted and that his anger shows that Child 23 had hit the nail on the head. I do not see why it is not explicable as embarrassment or confusion at personal and intrusive remarks made in front of a member of staff. Even very young children can feel awkward and embarrassed at such comments.

810. The phrase "bad feelings" sounds as though it comes straight out of Child 23's ongoing therapy. This is borne out by a document in the bundle relating to her. It is a letter of 13 June 1994 in which Mr Telford, Head Occupational Therapist at the Fleming Nuffield unit, records how she had been attending weekly since 21 March 1994. He said "[Child 23] has been able to talk to other Shieldfield children telling them to go to the Nuffield to get rid of their bad feelings". From this it emerges clearly that Mr Telford was proceeding on the assumption that abuse had taken place at Shieldfield and he implied that Child 23 (and perhaps others undergoing therapy) were being encouraged to go out and bring in others with "bad feelings".

811. It is clear from the Cleveland Report, and indeed common sense, that a distinction has to be drawn between spontaneous disclosures emerging in the course of a properly controlled interview and what might be said in therapy. (See also the observations on iatrogenic harm by Richard J. Lawlor in chapter 5 of *Expert Witnesses in Child Abuse Cases*, 1998, eds. Stephen J. Ceci and Helene Hembrooke.) It appears that a further danger would be that of one child's therapy experiences being communicated to others, particularly if a child has been encouraged to go out and "cold canvass" other children who may have been abused or generally proselytise for the perceived benefits of therapy.

812. The other "disclosures" emerged not only at the Nursery, in conversation with Child 23 and Gillian Smith (whom the Review Team did not interview), but also at home with his father. References were made to Mr Lillie having thrown "a crayon down the hill" and to Child 17 having been to Christopher Lillie's house. He also told his father that Chris and Dawn had been "put in a cage" – this is obviously something deriving directly or indirectly from adults and might fairly be classified as "negative stereotyping".

813. There is no doubt that "crayon" allegations figured significantly in what Child 17 said, in particular suggesting that crayons had been used on Child 4 and Child 5. There were also references to people dying. Most notably, accordingly to Gillian Smith's record, he referred to Child 23 having died, when he was actually talking to this child on 18 May 1994. This is quite likely to be a confused recollection of what others had alleged about Christopher Lillie and Dawn Reed, rather than something that they had told Child 17. The Defendants invoke his reference to death as evidence of his having been

threatened over a year earlier, but he appears to have placed some emphasis on the fact that, whatever Chris and Dawn had said about people dying, nobody had died. In so far as it is wise at all to place reliance on what children of this age are saying, such comments are as consistent with scepticism as with succumbing to threats.

814. Sure enough, within days of his first "disclosure", someone from the Social Services turned up together with Constable Helen Foster. Matters developed from there.

815. It is important to note that Child 17 was in communication not only with Child 23 but also with Child 4 and Child 5. Child 4 was talking about Chris and Dawn being naughty on 17 May 1994 (the very same day as Child 23's reference to "bad feelings"), and she had just been referred for therapy because of her poor relationship with her mother. This does not seem to have been implemented until August. Child 5 did not begin therapy until later in the year, but she too began to "disclose" in May 1994 and in due course began to talk of "crayons" and "fairies" – both concepts which could have been picked up from Child 23.

816. The scope for cross-contamination is obvious and needed to be carefully addressed. This is now recognised quite explicitly in the Review Team's closing submissions. Mr Wardell appeared rather grumpy at this suggestion, and thought it wholly unrealistic that this could have happened. The long dialogue, as apparently recorded by Gillian Smith on 17 and 18 May 1994 (but never explored by the Review Team with her), had all the "hallmarks" of reflecting genuine disclosures by Child 17, so far as Mr Wardell was concerned. If there were commonly recognised hallmarks whereby to judge accurate disclosures, life would be much easier for paediatricians and other professionals involved. Unfortunately, there are not.

817. In the Review Team's response to Child 17's father, on 11 November 1998, they told him that they had seen medical evidence that a number of children, including Child 17, had suffered sexual and other forms of abuse during the time that they had a place at the nursery. This is somewhat surprising since Dr San Lazaro had said, following an examination on 13 June 1994, that Child 17 was "overtly normal" and that "minor changes that were seen could not be specifically attributable to trauma", and were probably normal for him. She was, I think, referring to his anus. Dr San Lazaro is generally not backward in making findings of penetrative abuse, and it is noteworthy that she definitely did *not* do so in the case of Child 17. She acknowledged the "possibility" of significant damage having been inflicted in the past, but no more. I find it difficult to see how that could be said to be fairly reflected in the Review Team's letter of 11 November 1998. But Mr Wardell saw no inconsistency. A "possibility" was enough for him. He was content to equate that with "medical evidence" of sexual abuse. This time it was not Dr San Lazaro "beefing up" her findings; it was the Review Team. Nevertheless, by the end of the case, Child 17 had been relegated to a position three from bottom of the Review Team's list of likely victims.

818. There were behaviours in Child 17's case to which significance has been attached - rather more than to his "relatively few" disclosures (Professor Friedrich). The behaviours were described by Dr Sandra Hewitt as "not rich with specific detail", but involved some element of sexualised behaviour at the Nursery.

819. Various examples of incontinence are relied upon from the Day Books occurring between 2 years 4 months and 2 years 9 months. But these are difficult to pin down as indicative of sexual abuse. As to "sexualised behaviour", he was spotted on 1 February 1994 licking toys and equipment. The Day Book also records licking or kissing of other children on 14 and 21 June of the same year.

820. On 11 May he was noted to be observing a girl's bottom. On 22 June it seems that another child was seen on top of him making what were interpreted as sexualised movements. By 28 June he was

recorded in the Yellow Room disclosure book as claiming to having had cars, bricks and crayons put in his bottom.

821. It is submitted that although Child 17 "did not make a disclosure until May 1994 when he was in the Yellow Room, his disclosures cannot be explained simply as 'Yellow Room Contamination'". I would not "dismiss" his statements at all, but I do regard the powerful contaminating influences in that Room, at that time, as impossible to ignore.

Child 18

822. Child 18 was born on 22 October 1989. She is one of those who started life at Shieldfield under the care of Mr Lillie and Miss Reed before they moved to the Red Room. She had joined them on 5 November 1991 and moved with them into the Red Room at the end of February 1992. She progressed to the Yellow Room on 22 September 1992.

823. Her first "disclosure" came seven months later in April 1993. She was thus one of the very first to disclose, if that is a correct interpretation. She appears to have said to her mother while in the bath the somewhat enigmatic remark "Someone playing with us didn't hurt my bum". She was asked a leading question; namely whether it was a lady teacher or Chris. She apparently replied "Chris" (it can only be "apparent" because there was no parental evidence adduced). Other allegations appear to have been made at about the same time to the effect that her mother was not to wash her in the perineal area because Chris had punched her there. A few weeks later, on the other hand, she was touching herself between the legs and said that she had learnt it at the nursery. By September 1993 there was the very serious allegation that while Miss Reed had held her legs Mr Lillie had held her head; and they had tickled her vagina. By this time, she had been out of their care for just over a year.

824. In January 1994 the story was that she had been to the seaside with Dawn and Chris (presumably some 18 months earlier, or more). Another unidentified male had been present. She had been held upside down and sand was put in her "Nicky" (vagina).

825. There was the by now familiar cluster of "traumatic stress behaviours" (e.g. clinginess, wetting, fear of lifts and monsters). There was also said to be a reluctance to go past Red Barns. As with other children, however, any such reluctance can only have been induced by other people investing Red Barns with some sinister significance, since Child 18 left Mr Lillie's care over three months before he moved to Red Barns.

826. Genital and anal findings were of no significance. No parental evidence was given and, on 13 May, the child was duly dropped from the Review Team's defence of justification. They were ordered to bear the costs.

Child 19

827. Child 19 was one of the children in respect of whom charges of indecent assault were brought. She was born on 7 February 1990 and entered the Nursery, in the Red Room, on 10 September 1992. She moved on to the Yellow Room a few weeks before her third birthday. (Thus, when her GP wrote in July 1993 that she "was in the class taken by the accused person for almost 1 year until Easter 1993", that is simply inaccurate.) She was withdrawn from Shieldfield in July 1993. She was therefore present during the three months following Mr Lillie's suspension. It is necessary, however, to take account of the fact that her attendance was more sporadic towards the end and that for the first three weeks of June 1993 she was on holiday in the United States.

828. Her mother had a meeting on 3 August with a social worker and Helen Foster, during which she was given advice as to how to question the child. The introduction was by reference to her daughter's earlier complaint of vulval soreness. It is significant, however, that the mother had told the social worker that this had occurred some time after Easter (i.e. several months after moving to the Yellow Room). The Review Team have suggested that, on a proper reading of the Social Services records, the mother's account embraced soreness earlier. The mother at the time seemed to believe that she had moved to the Yellow Room at Easter. She was putting the soreness "since moving to the Yellow Room". Thus, it could have been earlier. The Review Team also submit that soreness while in the Yellow Room was consistent with Mr Lillie and/or Miss Reed having taken the opportunity for abuse while she was in the Yellow Room. This is somewhat unfair on Miss Reed, however, since the child did not accuse her of doing anything. Furthermore, vulval soreness in itself is an unsure guide to abuse.

829. Her mother, who gave evidence on 11 March, readily acknowledged that there was nothing unusual in a small girl about such a symptom. Nevertheless, having asked the child on 3 August if she could remember having a "sore fairy", the mother then asked her if anyone had touched her while she had been at Shieldfield. She said "They call him Chris". She apparently said that she had been touched "inside". It is a slightly curious way of describing him and Miss Page suggests that it might reflect the fact that Child 19 had been exposed to a good deal of talk in the Yellow Room over that summer about Chris and Dawn and what they were supposed to do to "bums" and vaginas. On the other hand, it is submitted for the Defendants that "They call him Chris" is simply a local (Geordie) expression equivalent to "His name is Chris".

830. Another contributory factor could well be that the mother (obviously through understandable anxiety) had asked her in the previous May whether anyone (or possibly "Chris") had ever touched her at the Nursery. For example, the mother told the police on 6 August 1993 that when she heard of the suspension she asked her daughter "outright if Chris had ever touched her fairy". Although Child 19 denied this at the time, it could have sown a seed which accounted for her answer in August.

831. On 10 August there is the first of two video interviews. Helen Foster made no progress and therefore the mother was invited to join in questioning her daughter to try and elicit the "disclosure" made to her on 3 August. The next stage was that an aunt was invited to come in and the police officer left the room. This was unsatisfactory to say the least. The child was subjected to leading questions, pleading, ticking off and the offer of rewards. These included clothes for a Barbie doll, a "sleep-over" with her aunt, and "a McDonald's". Despite all this, there was no disclosure of sexual abuse. Moreover, there was actually no indication of her resisting because of fear or threats. She asked to be allowed home. She was told, variously, to stop being silly, to stop telling fibs and that she would not be allowed home until she gave the required information. Still nothing came of it.

832. On 12 August 1993, there was a medical examination by Dr Alison Steele which revealed a notch at around 9 o'clock. It is agreed by the experts that this would not be diagnostic of sexual abuse.

833. There was a second video interview on 2 November 1993. She opened by saying, "I'm going to tell you all about Chris". She was asked who he was, and replied "My other school". She said that he touched her "fairy" and that it happened inside. She was asked on how many occasions, and said "yesterday". She referred also to the fact that "the police got him". That is a recurring theme in the Shieldfield investigation. Manifestly, it could only come from an adult. There is some confusion apparently, since she describes Chris and Dawn as though they were other children.

834. The nub of Child 19's disclosure on 2 November was that whatever it was happened in the lavatory at Shieldfield. What "Chris" did was to put his finger outside her knickers; it did not hurt, and he said "sorry". This took place in the presence of "loads" of other children. He was fully dressed and nothing else occurred. She was not threatened or told to keep it a secret. She told her mother as soon

as it happened. She, like other children, referred to Mr Lillie as being "in a cage where the policeman's took him". That is also a phrase that seems to have been in common usage in the Yellow Room. There is nothing that would appear to qualify as "a clear statement by the child" (see paragraph 387 above). Dr San Lazaro, however, told the Criminal Injuries Compensation Board that the earlier statement (in August 1993) represented a "clear statement indicating that she had been traumatised in the vaginal area".

835. It is true that she also appears to have given an account involving a finger "inside" her in response to further questioning by Helen Foster but she also said he "put his hand in". When asked where, she twice indicated her waist. She later told Dr Fundudis in therapy that he had touched her on the "fairy" when "on the toilet". But this seems to me to be neither spontaneous nor unequivocal. The Defendants argue that her disclosure remained "pure" and "demonstrably untainted at least into January 1994". I am afraid I do not know what that means.

836. Since none of this amounts to very much, more reliance is placed on behaviour. In particular, it is said that there was regression and daytime wetting. There were occasions when the Nursery provided different clothes when she was picked up, but some of this could be accounted for by other factors such as playing with water. But there is very little in the Day Book about wetting, except two entries for 18 and 25 February 1993, after she was in the Yellow Room. This seems inconclusive.

837. I should also bear in mind that she had said to her mother that she loved "Chris" and that he loved her. It is unclear how these statements came to be made or what her affect was at the time. It does not necessarily imply anything sexual or improper. Similarly with another of the behavioural symptoms. There was apparently some cheekiness and answering back to her mother. If that were taken to be a symptom of sexual abuse, no adult would be safe.

838. There was also mention in the mother's witness statement of nightmares starting while Child 19 was at the Nursery, although this was not apparently mentioned to the social workers at the time. An obsession with dying was another factor relied upon, but this does not seem to have been mentioned either.

839. By 6 June 1995 Dr San Lazaro was writing that the child had not shown serious signs of emotional disturbance earlier on, but that psychiatric assessment had revealed that "the family have been highly stressed by this incident and that [Child 19's] statements had altered her mother's feelings towards her". She added that it was difficult to know "how these children will behave within the background of anger, recrimination and loss of trust that has been generated by this incident".

Child 21

840. I heard evidence from Child 21's mother on 12 and 13 March. There is no doubt that she believes her daughter was abused by Christopher Lillie and Dawn Reed. She was controlled and dignified in the witness box, but I believe she found it a stressful experience and it took considerable courage for her to go through the ordeal. An incident that has clearly stuck in her mind over the years, and to which she attaches significance, is that she found her daughter when she went to collect her one day in the lavatories at Shieldfield. She was standing outside the door of a cubicle near the washbasins with her knickers round her ankles. Meanwhile, Mr Lillie was still inside the cubicle wearing rubber gloves. As she entered, the mother heard Mr Lillie say "Now wash your hands, [Child 21]".

841. When, cross-examined, it emerged that the mother had been unaware all these years that the staff had been required to wear disposable rubber gloves when taking the children to the lavatory. In some way she seemed to associate the use of rubber gloves with child abuse. She said she thought, remarkably,

that everyone at the Nursery was toilet-trained and that Christopher Lillie was not "authorised to be with children in the toilet". Needless to say, this was all in retrospect. She had seen no reason to make any complaint at the time. There is nothing in this point at all. The mother felt uneasy about the incident with hindsight and, given the atmosphere that later developed at Shieldfield, one can hardly blame her, but there is nothing of substance in the episode.

842. The child was born on 31 August 1989. The mother knew that two of her nephews had been to the Nursery, and had no problems, and she was therefore happy to send her daughter. She began in the Baby Room on 21 October 1991 and moved to the Red Room in February 1992 just before Christopher Lillie joined Dawn Reed there. She normally attended three days a week from 10 until 3. The child left the Red Room in August 1992. This means that, for whatever reason, the social worker Marion Harris was wrong when she recorded on 24 May 1993 that Child 21 had been in the Red Room "since October 1992".

843. She left in the summer of 1993 and moved on to another school in September. At some point thereafter (which her mother did not specify), she began to talk about how she and other girls at the school had been inserting pencils into their vaginas. By 16 September 1993 she recounted that Mr Lillie had inserted scissors in her anus and that Mr Lillie and Miss Reed had inserted scissors in each other's "bums". She was by now four years old and purporting to recall an incident which, if it involved being taken out of the Nursery by the Claimants, could only have happened when she was aged two. Although the Defendants only suggest that there are "reasonable grounds to suspect" that some of the abuse occurred outside the Nursery, it is hardly feasible to suppose it could have happened on the premises.

844. On 28 September 1993 she alleged to her mother that Chris and Dawn had taken "all the children" to a flat or house which "stunk of dog shit". On this outing, apparently, Mr Lillie and Miss Reed had stripped off and wet the bed. Child 21 had been raped by Mr Lillie and she [Child 21] had bitten Miss Reed's vulva. The very grave allegation the Review Team make is that Miss Reed was present when the child was raped by Mr Lillie and that she herself forced the child "to perform oral sex on her". She is also said to have been threatened that her mother would die if she revealed the abuse. These allegations need to be assessed with care. (It will be remembered that Child 21 was not one of the six "indictment children".)

845. There is a medical report from Dr San Lazaro dated 24 September 1993, which revealed a small disruption to the hymen in the 3 o'clock position. Otherwise, there were no abnormalities either within the hymen or the anus. Dr Ward agrees that there was nothing diagnostic of penetrative abuse. It is theoretically possible, according to Dr San Lazaro, that a two year old could be raped and still retain an intact hymen. It is also, according to her, possible that scissors could be inserted in a child's bottom without leaving signs of damage. I am concerned, however, with probabilities – not with fanciful possibilities. The small disruption in the hymen is consistent with no penetrative damage and also with prodding with a pencil (although I cannot be sure that the insertion of pencils occurred, if it occurred at all, prior to the medical examination). I have to remember, in any case, that the expert evidence is that self-injury in that area would be highly unlikely because the hymen is so sensitive and such activity would be very painful. It is in all the circumstances, therefore, unclear how far (if at all) a pencil was inserted.

846. Dr San Lazaro's findings came under the spotlight on 16 May. The report of the examination, which took place on 24 September 1993, records her as giving "a very good history of trauma". That gives the clear impression that she had "disclosed" to Dr San Lazaro. On closer inspection, it emerged that this was not the case and that what she had originally recorded was "finger at vaginal area" as something indicated *not* at this interview but beforehand to the mother. (This is a very important distinction, as becomes apparent when one focuses on how that information came to be imparted to the mother.) Dr San Lazaro said: "I cannot explain that. It is too long ago for me to remember what happened".

847. Miss Page then turned to physical findings. There was recorded a small disruption of the hymen at 3 o'clock, but the hymen was otherwise normal. Dr San Lazaro agreed that terminology was used in a rather confused way, accepting that "disruption" was sometimes used to describe a normal variant or non-specific finding. It was put to her that a 3 o'clock "indentation" or "disruption" was not significant. Dr San Lazaro's evidence was that she must have excluded a "normal variant" because she reported whatever it was as "diagnostic of minor trauma". That is not satisfactory. It has about it a kind of circularity. It is especially unsatisfactory given Dr San Lazaro's lack of objectivity and admitted proneness to let emotion cloud her judgment. I would not trust her findings without corroboration, save perhaps in the case of "barn door" certainty (to use her expression). This is certainly not such a case.

848. Rather surprisingly, this child was deemed on 26 November 1993 in need of screening for a sexually transmitted disease, but this was not carried out until 30 March 1994. Dr San Lazaro wrote to her mother on 26 April with the negative results and observed, "You will be relieved". Miss Page wanted to know why her mother had been kept in suspense over this concern, for some four to five months, when there was no evidence of any relevant symptoms in November 1993 (i.e. fifteen months after leaving the Red Room). There was nothing in the notes to suggest grounds for concern. Rather startlingly, Dr San Lazaro said in answer:

> "Miss Page, I think that if we look back on every piece of minutiae over the years, we are going to find matters which appear at times irrational. I cannot account for what appears to be aberrant from time to time in these records. I can only speculate that we thought it was important – that she must have had symptomatology for me to have reported it…".

This hardly instils confidence in her findings. Dr San Lazaro may be prepared to speculate but I am not permitted to do so.

849. By the time Dr San Lazaro came to write to the Criminal Injuries Compensation Board, on 1 December 1994, she had "beefed up" her findings in a remarkable way. By then she was describing a tear in the hymen compatible with an object having been inserted.

850. She admitted that she used the words "tear", "disruption" and "scar" interchangeably and "… sometimes even to describe something normal". There is no consistency at all and I cannot place any reliance on Dr San Lazaro's claim to the C.I.C.B. that she had found a "tear compatible with an object". In the light of her records from the examination a year earlier, it is clear that this was one of her customary "overstatements" by way of advocacy. She also informed them that Child 21 had been in contact with a paedophile ring. She had no evidence of that but lent the claim her professional authority.

851. The allegations that Child 21 was making by September 1993 are so implausible and lurid that I could not accept them as accurate without some element of corroboration. There is none. It is necessary to remember that she remained from April to August 1993 in the hot house atmosphere at Shieldfield, where rumours and stories were flying around. Indeed, she was a "victim" in the Yellow Room of the highly sexualised Child 87 who was one day found astride her simulating intercourse. The Defendants submit that "children were not talking amongst themselves and copying one another". This is said to be demonstrated by the fact that none of the children Child 21 was in contact with at that stage repeated what she said (in particular, Children 10, 11, 19, 23 and 27). I agree that there is no direct badge of copying, but it is putting it too high to say that it has been shown that children were not talking amongst themselves. That seems contrary to the probabilities.

852. Although her "disclosures" had certainly hotted up by September, her video interview on 6 August 1993 was rather more low key. She raised the subject of Mr Lillie and clearly knew that she was there

to talk about him. She also used the expression (that one sees elsewhere) that he was "locked in a cage". An adult had obviously been giving her negative messages about him prior to the interview. The mother accepted that she had probably told her that the police had "Chris" and that she was safe from him.

853. In the interview she alleged that he had "smacked us" and, importantly, that this took place when other teachers were there (Patricia and Diane). Yet again, there is no confirmation from the relevant staff. She seems, therefore, to have been locating the alleged incident in the Nursery itself, and no reference was made to any outside location. Considerable pressure was exerted by Helen Foster and the mother and various inconsistent answers were given. She denied that anyone had touched her "minnie" but was pressed further by Helen Foster, who asked her "Do I need to talk to any more silly people who have touched your minnie?" She replied "Teddy". Helen Foster and her mother then tried to get her to say she had been touched, and she was invited to draw a naked man and show what bit of his body he used to touch her "minnie" with. She asked for a handkerchief to blow her nose and that was the conclusion of the interview. Meanwhile, she was chided for being "silly" and at one point (perhaps for the sake of being left alone) she made the meaningless allegation that "Chris" had "cut me bum off". There was no second interview.

854. It defies belief that the Review Team could possibly assure the public that the questions were not in any way leading.

855. Considerable reliance is placed on Child 21's behaviour. Dr Sandra Hewitt offered the conclusion that "the combination of behaviours related to trauma and atypical sexuality are strong indicators that Child 21 suffered trauma as a result of sexual abuse during the period she was in the Red Room" (i.e. between 2 February and 9 August 1992).

856. Professor Friedrich found her clear demonstration to her mother of having been "sexually touched" very convincing. It is necessary, however, to see this in context. In or about April 1993 she was asking her mother to check her bottom, and her mother asked her who wiped her bottom at the Nursery. She replied "Chris". This obviously would not have been current information by that time. She had for the last eight months been in the care of four other (female) staff at the nursery.

857. Up to that time, perhaps surprisingly, the mother seemed unaware that Mr Lillie had any specific responsibility for her daughter. This despite the fact that she had been directly under his (and Miss Reed's) care for as long as six months during the previous year. This lack of awareness may possibly account for the inaccurate information Marion Harris was given on 24 May 1993.

858. The demonstration of "sexual touching" was carried out in response to a quite specific question from the mother as to *how* Christopher Lillie "had wiped her bum". The child then demonstrated what in some other circumstances could easily be interpreted as "sexual", but it is quite wrong to leave out the important context of the question asked. Once again, I find Professor Friedrich wide of the mark.

859. As to other aspects of behaviour, it is worthy of note that neither bedwetting or nightmares were mentioned to the police when a statement was taken (by Helen Foster) on 20 August 1993. Moreover, it is appropriate to have some regard to the best contemporaneous records that we now have in order to see how far current memory is borne out. In this case, the Day Books do not appear to disclose a serious regression in day time bladder control. There is only one entry for Child 21 (on 9 March 1992). The mother was very frank in saying that she kept no notes at the time and could not be sure as to dates. As in other cases, in attempting to assess the probabilities, I must allow a considerable margin for the influence of hindsight.

Child 22

860. This boy was born on 20 November 1990. He entered Shieldfield in May 1992 and was transferred to the Red Room in September of that year. Known for some time as "the Index Child", his statements to his mother on 7 April 1993 were the first to raise the spectre of child abuse at Shieldfield Nursery. He suggested to her first that "Chris" had hurt his bottom and then, by way of demonstration, that "Chris" had inserted his fingers into his anus and hurt him. This appears to have arisen because the mother chose that day to ask him why he was upset when she took him to the Nursery. That was, as it happens, the very day that Jason Dabbs was given saturation coverage in the media. His mother reported the matter to the police over the Easter weekend (on 11 April) and police inquiries developed from there, culminating in the collapse of the criminal proceedings 15 months later. When the matter was raised with Mr Lillie for the first time, all he could think of by way of a possible explanation, if indeed he had hurt the child's bottom, was that he had done so accidentally in the course of a nappy-change. He was suspended on 16 April.

861. The child was seen by Dr Shabde on 15 April and by Dr San Lazaro on 29 April 1993. Dr Shabde recorded that the physical findings were normal and that there was no evidence of anal penetrative trauma. The only apparently unusual item of note was that he had been on iron tablets since about December 1992 (aged just two) for treatment of anaemia. These can sometimes lead to constipation with associated soreness. (It may be significant that the mother was reporting to the GP in May 1993 that since Christmas he would only go to the lavatory on "odd days".) During the examination, Child 22 did confirm to Dr Shabde that "Chris" had hurt him, but he gave no further detail. It appears that, on the day after he was seen by Dr Shabde, Child 22 visited his GP because of a history of abdominal pain, diarrhoea and vomiting (first apparently noted on 15 February 1993). There were no abnormal medical findings. By way of background, it seems that relations between the mother and the GP had not been altogether happy. In a referral letter with respect to anaemia, following a visit to the surgery the previous month, on 16 March 1993, the GP described the mother as "extremely anxious and indeed often aggressive". (She herself, it seems, had a history of anaemia and suffered thyroid problems for which she was receiving medication. It was accepted that this would have had a significant adverse impact on the reliability of her memory.)

862. By the time Child 22 was seen by Dr San Lazaro on 29 April, his mother was reporting further allegations and behavioural changes. He had been exhibiting episodes of "trance-like behaviour" when visiting a park. Since there was a normal EEG, this was perceived as likely to be of emotional origin. He referred to being frightened of a "black door" and had been noted (by his mother) to kneel and put his bottom in the air during nappy-changing. Something similar was later to be described by the mother of Child 1, who also made reference to "black doors". Significantly, however, her observation of the phenomenon took place the very morning after a visit from the mother of Child 22.

863. Child 22 also alleged that an object had been inserted into his anus. No formal statement was taken from the child, as he was perceived as not being of sufficient maturity. Dr Shabde thought this unfortunate, since in her opinion he would have been articulate enough for the purpose.

864. Nevertheless, on 16 April there was a recorded interview with the boy, those present being his mother, Helen Foster and Mr Waterworth of Social Services. Nothing was forthcoming of any significance although he was asked many questions including if all his "bits" were OK and whether he had anything that was sore. He said that his tummy was. There were many attempts by Helen Foster to get him to identify the person who had changed his nappies at school. Eventually he was asked whether it was "Chris", to which he said "yes". He was then asked whether he liked him changing his nappy, to which he also said "yes".

865. He was then asked specifically whether it hurt when he changed his nappy. He replied that it did. Later he was questioned as follows:

"Q: Do you know your teacher Chris at the nursery school?

A: (Nods)

Q: Has he ever hurt you?

A: He hasn't

Q: He hasn't. Has anybody ever hurt you?

A: No

Q: Somewhere where you didn't want them to hurt you? (a curiously phrased question in itself)

A: No

Q: I thought you said somebody had hurt you at nursery and you didn't want to go back.

A: No."

866. The interview yielded no evidence of abuse. In so far as he was claiming to have been hurt (as opposed to denying it), the context is clearly that of nappy changing. Yet at page 101 of their Report the Review Team summarise the interview by saying merely that "… at that point little of evidential value emerged". That is only a fair summary if one proceeds on the basis of ignoring evidence favourable to Mr Lillie.

867. The Defendants submit that it is hardly surprising that the child did not repeat his "disclosure" on video because he was only 29 months old and was in the company of people he did not know very well. It is necessary to bear in mind that he did not simply clam up. He answered the questions but exonerating Mr Lillie. What hurt was having his nappy changed. Nobody seems prepared to acknowledge the fact that it is possible to interpret the video interview and the earlier remarks to members of his family as compatible in this respect.

868. There are obvious difficulties of interpretation here. Pain associated with nappy-changing could be caused by accidental injury, or be linked to the history of diarrhoea and abdominal pain. On the other hand, abdominal pain and diarrhoea could have a psychosomatic origin. This could be brought about by anxiety or emotional disturbance of any kind. That would include stress flowing from sexual or physical abuse, or from some other origin. Conversely, constipation caused by iron tablets can lead to discomfort or pain.

869. I have already noted that the mother herself was undergoing some stress at the time, as recorded in the GP's notes; indeed, on one occasion she was described as "frantic". Whether these factors communicated themselves to the child can only be a matter for speculation.

870. There was disagreement as to this child's comprehension and articulacy. Dr Shabde thought him, for his age, articulate. Dawn Reed and Christopher Lillie did not. They commented upon his tendency to parrot what he was told, in the sense that he did not always answer a question but would repeat the last words of the question. Dawn Reed was cross-examined by Mr Bishop about these matters. She said he had poor language skills, comprehension and vocabulary. If she tried to explain that he should not be aggressive, or point scissors at other children, he carried on doing it. He would mimic the play of others but not join in.

871. There might seem little point in my attempting to adjudicate on such a difference of opinion. It would be an issue on which subjective impressions could easily differ and the matter can, in any case, only be of marginal significance in the case of a two year old. Yet the Review Team sought to attach importance to these differing views. On page 30 of their Report, they actually appear to be accusing Mrs Eyeington of dissembling over Child 22's speech. I am quite satisfied that this was unwarranted. Moreover, I do not simply have to rely on the evidence of Mr Lillie and Miss Reed for judging Child 22's speech quality at the time. Dr San Lazaro asserted in her generic report of November 1994 that it was because of "his poor language development" that the investigation was inconclusive. There is also the contemporaneous comment of Helen Foster, "He was unable to talk clearly or form sentences". Moreover, she confirmed that view in the witness box on 22 May. Similar remarks were made to the Review Team in January 1997 by Detective Inspector Campbell Findlay. He may not have been in a position to make a personal judgment about it, but it does seem clear that there was at least a genuine difference of opinion. Dr Shabde gave evidence on 21 May and stuck to her guns but nothing of significance emerged. (I should add that the boy has done very well at school in the intervening years and there is no suggestion that he was in some way intellectually impaired.)

872. When assessing the reliability of Dr Shabde's opinions about Child 22, I must also bear in mind that in her report of 21 April 1993 she was hopelessly wide of the mark in recording that there was no history of behavioural problems. I do not say this in a critical way. She could only proceed on the information she was given.

873. There was no consistency in the mother's descriptions of Child 22's behaviour over the relevant period. It is entirely clear to me that during the first few months at Shieldfield, spent in the Baby Room, there were constant behavioural problems which cannot conceivably be attributed to abuse by Christopher Lillie or Dawn Reed. Also, his patterns of sleep were poor before he even arrived at the Nursery.

874. In the Red Room, to which he was moved because of these recurring behavioural problems, they continued, in the sense that it was regularly being recorded that he was showing aggression to his peers and also to dolls and toys. Ironically, his mother was initially reporting that the move to the Red Room had led to some improvement.

875. In her statement of 26 April 1993, she was saying, "[Child 22] seemed to enjoy attending nursery and got on well with Dawn and Chris. He was always happy to go to nursery and was willing to talk about what he had done". She suggested in the witness box that she was in no fit state to give a statement on that occasion, but Helen Foster denied this and said it would have been quite unprofessional to take a statement in such circumstances. I can see no reason for the mother to have been so confused as to say that the child got on well with Mr Lillie and Miss Reed if she meant to say the opposite. The mother then placed her son's change in attitude at somewhere between 20 November and 25 December 1992. He had entered the Red Room in September 1992. The account she gave to Joyce Eyeington was consistent with this. There would thus seem to have been more than two trouble free months with Mr Lillie and Miss Reed so far as the mother was then concerned. The Review Team, however, at page 30 of their Report shifted his changed behaviour back in time to the point where he entered the Red Room. It may be unfair to conclude that this was done to make the story fit their conclusions, since the mother's account varied significantly over the years and they may have opted for a later version.

876. It is crucial to understand that, according to this early account of the mother, the child seemed not to be too well in the run up to Christmas 1992. There was vomiting, coughing and a sore tummy. He began to complain of a sore bottom at about that time, and this continued while he was attending the nursery after the Christmas break. On one occasion his mother noticed blood in the nappy and, not unreasonably, linked this with what she describes as a "weeping" sore at his anus. She applied cream and decided that if she saw any further blood this would merit a visit to the GP – "but it was fine". The significance of this is blindingly obvious. It was part of Mr Lillie's responsibilities during this period to change the child's nappy and, if he was suffering from a sore bottom (and, for good measure, what

his mother described as "loose stools"), there would be plenty of scope for Mr Lillie to become associated in his mind with pain or discomfort at the time of nappy changes. Mr Lillie's first thought, when Joyce Eyeington put the accusation to him in April, was that he might have hurt him inadvertently when performing that task. Far from being a lame excuse, it seems eminently reasonable as being the likely explanation. Furthermore, it ties in with the child's video interview of 16 April.

877. The mother rejected that explanation in her police statement on the ground that the child had *not* mentioned Dawn Reed as also hurting his bottom. This reasoning is bizarre to say the least. Her logic appears to be that since both Dawn Reed and Christopher Lillie were responsible for changing Child 22's nappy from time to time, if he made a statement involving only one of them the allegation must relate to some other activity than changing his nappy. It is, of course, in any event a complete *non sequitur*. It is also to be noted that the fact that Child 22 did not mention "Dawn" on the same occasion as "Chris" has not inhibited anyone subsequently (including the mother of Child 22) from implicating her in the abuse as well.

878. One of the mother's most startling allegations was made from the witness box on the morning of 22 March, when she asserted that even the boy's anaemia had been caused by sexual abuse. She said that they were making him bleed so much through repeated acts of buggery. All I need say is that this hardly squares with the medical evidence. More importantly, however, the suggestion was just plucked out of thin air in the middle of what I can only describe as a rant. If nasty allegations of sadism could be conjured up so readily in the witness box, I cannot believe that greater restraint has always been maintained in less formal surroundings.

879. By 12 May 1993, the mother appeared to be telling journalists that Child 22's personality had changed dramatically *since 7 April*. If this was indeed the case, then one explanation might be that he was reflecting her own stress and anxiety arising from her "discovery" on that very day that he had been abused. She is recorded as telling a Brenda Hickman (Crime Reporter of the Journal) that:

> "My son complained that a man had 'hurt' him and he has gone through a complete personality change… His temperament has changed drastically. He has nightmares and gets aggressive."

880. Consistent with this would be a GP note made in May 1993 under the heading "Other Symptoms of Disturbance" to the effect that "All since Easter 1993".

881. After the interview with the journalist, the mother told the Review Team that Campbell Findlay came round and told her off. He told her "No bull shit. I don't want you talking to anyone".

882. The police had to pay her a visit at the end of July 1993 in order to warn her against putting words in people's mouths. By that time it had been decided that there was no sufficient evidence to justify criminal proceedings in respect of her son, but she seems to have remained active in spreading her views and suspicions. She had, for example, visited the mother of Child 23 at the beginning of May and caused her to worry about her daughter. She also supplied Mr Lillie's address, with the result that Child 23's father went round and assaulted him. She also visited the mother of Child 1 on 26 June and expressed her concerns. Indeed, by the time of their July visit, the police were fearful that she might be jeopardising the whole investigation. Whether their visit was at all effective, and whether it was made sufficiently early, I am unable to tell at this distance of time.

883. When the spectre of child abuse first loomed over Shieldfield, following the allegations of Child 22's mother from 11 April 1993 onwards, not everyone took it seriously. For example, the father of Child 7 said on 19 March 2002 that he thought nothing of it at the time because she regarded herself and her child as the centre of the universe. She was always kicking up a fuss about something. Her own

daughter apparently commented that she was sick of hearing about it. Others, of course, especially in the wake of the Jason Dabbs publicity of the previous week, felt bound to act upon her allegations (i.e. the Newcastle Social Services, the police, the City Council and Mrs Joyce Eyeington). As Patricia Thompson put it in her statement:

> "… we were mindful that we needed to think in wider terms than just Child 22. The allegations had been against a member of staff at the nursery and it was possible that this could be another incident of multiple abuse. I had been involved in the Jason Dabbs investigation as a Senior Social Worker in the office dealing with the investigation and it was fresh in our minds. We obviously kept an open mind as to whether this may have been the start of another multiple abuse case."

884. I am reminded in this context of the words of Lord Nicholls in *Re H* at page 592, where he said:

> "The task of social workers is usually anxious and often thankless. They are criticised for not having taken action in response to warning signs which are obvious enough when seen in the clear light of hindsight. Or they are criticised for making applications based on serious allegations which, in the event, are not established in court. Sometimes, whatever they do, they cannot do right."

885. For whatever reason, it has become clear with the benefit of hindsight that the mother of Child 22 is a completely unreliable "historian". Her accounts changed radically over time. For example, she was not even consistent over what (if anything) she knew by 11 April about the Jason Dabbs case. She told Joyce Eyeington that when her son first complained on 7 April she was hesitant about following it through because the police would think she was a neurotic mother who had read about Jason Dabbs. It appears that she told Joyce Eyeington that she had not even read about it. According to Mrs Eyeington's memorandum of 25 April, she had *heard* about it but was not interested. The truth is, of course, that if she was worried on 7 April for the reason she gave, she must have known at least something of the Dabbs case at that stage. If this was so, she would be no different from the majority of Newcastle's citizens since the Jason Dabbs case was big news that very day. This timing could be just a very remarkable coincidence but, realistically, it seems to me that the Jason Dabbs publicity must at the least have been a contributing factor in turning her thoughts to child abuse on 7 April. What she now says is:

> "Although it is difficult now to remember, I have no clear recollection of being conscious of reading any press report about the Jason Dabbs case prior to my son's disclosure to me".

886. It was in the mother's statement of 26 April 1993 that the notion of the "black door" first appeared on the scene:

> "Whenever we leave the local park to come home, we have passed a house with a black door. As soon as [Child 22] sees any black door, this one in particular, he started getting very upset and agitated. On another occasion [Child 22] didn't want to go up a particular street with black doors, he seemed to lose his speech and start talking funny and when he calmed down he said. 'I don't want to knock at that black door'. I asked him what he meant and he said 'because there is a lady who looks like a man who scrubs me'. I didn't know what he meant and just left it. On another occasion we were out in the street and happened to see a man knocking at a black door and [Child 22] wouldn't let us go by and we had to go a different way. On another day [Child 22] has mentioned a 'dafty man who hurts him because he's a naughty boy and it's his fault'. I tried to reassure [Child 22] that he wasn't a naughty boy. [Child 22] then said that he couldn't tell me what

had happened 'he can't tell and doesn't remember' and he says he doesn't want to remember".

She then said that by that stage she believed that something terrible had happened to Child 22 behind a black door. The mother gave no less than six specific addresses with black doors, five in one road and one in another. Police checks on the residents proved negative. Black doors were also mentioned by Child 1, Child 11 and Child 14 in due course.

887. By the time the mother of Child 22 was interviewed by journalists on 28 November 1998, she was dating the child's behavioural changes back to May 1992, when he started at Shieldfield. This is hardly consistent with the account she was giving in April 1993 and, in particular, with the history she must have given to Dr Shabde on 15 April for her to conclude that there was no history of behavioural problems. This point was picked up in a letter from one of the doctors in the GP practice on 6 May 1993, who pointed out that Dr Shabde's note did not accord with their knowledge of the patient.

888. As the mother frankly acknowledged, she had for some time been suffering from a thyroid problem which can affect the memory. Moreover, she accepts that her memory was suffering for this reason at the end of 1992. She claimed, however, that medication had subsequently brought these problems under control. There are some records, however, which suggest that she sometimes failed to take her tablets.

889. On 20 May 1993, there is a note to the effect that she was telling Pat Thompson that Christopher Lillie was paid £100 for taking children from the Nursery to be abused by paedophiles. This she apparently based upon a passing remark made by the child when the milk lady came to the door. When she asked how much she owed, Child 22 piped up "£100". The milk lady responded laughingly that she wished she could collect such a sum. It seems a long step for the mother to conclude from this casual exchange that the only reason why her son could have mentioned £100 would be that Christopher Lillie had been demanding similar sums for supplying the children for paedophiles. It is not difficult to understand how a mother in such circumstances might fear the worst, but I cannot possibly treat this allegation as having any rational basis or evidential weight. It is another product of a fevered imagination. Patricia Thompson, the social worker, told her that it was dangerous to jump to such conclusions, but it was her view that the mother of Child 22 "had already made her mind up about what had happened".

890. I have little doubt that Pat Thompson was correct, but this unhappily introduces a real problem as to how reliable the mother's evidence is in relation to any behaviour or disclosures she reported. She was quite obviously looking for signs of abuse in her own child, and trying to find evidence of it from other Shieldfield children. That may be quite understandable, but it poses a real danger of over-interpretation both for her and for others.

891. The mother seems to have become obsessed with the notion of a paedophile ring. I would not dream of criticising her. Like many of the parents, this horrendous notion had a profound effect on her life. Moreover, there is no doubt that there were various people over the succeeding years who were prepared to cultivate this belief so that it took a firmer and firmer hold. One of them was Dr San Lazaro. But I must approach the issue in the light of the evidence, rather than seeking to empathise with their fears and suspicions - and evidence is there none.

892. The child one day in October 1993 pointed to a picture of a well known singer and said that this man had hurt him. It was obviously untrue, but the mother sought to invest it with significance by concluding that a local resident of similar physical appearance must have been abusing him on the procurement of Mr Lillie. She found out where such a person lived, and proceeded to spread the story that he was a paedophile. The police pursued the suggestion and, as I have noted elsewhere, found

nothing whatever to support it. The mother of Child 22 believes it to this day, and no doubt always will. She asked rhetorically in the witness box how her child could possibly have described to her that the man had a downstairs flat with a bed in the front room, if he had not been taken there for abuse. The answer was, however, not far to seek as Miss Page pointed out. The witness had to accept that she had kept the house under watch and had herself peered in through the windows. At one stage she described the occupant as "a big fat slob" and added, "when I think about him having my child, I could kill him". I am not suggesting that she is dishonest, but I have to proceed on the basis that she has been irrational and obsessive about it.

893. Another common feature in the behavioural symptoms noted by the Defendants is the reference by various Shieldfield children to clowns and masks. The origin of this theme is, once again, to be found in the account of this mother. She passed these notions on to others. It seems to derive from an incident at Child 22's birthday party in November 1992. It was noted by those present (the mother and aunt of Child 22) that some of the children present from Shieldfield were upset by the female entertainers wearing clowns' masks. It seems that later the same entertainers reappeared wearing animal heads. This too apparently caused upset. From the video, it certainly would appear that Child 1 was upset. There may have been others.

894. What is puzzling is how this is supposed to be linked to child abuse. Children aged two could be upset by clowns or people wearing animal heads if they were not used to it. There is nothing very surprising about it. I fail to grasp the logic which requires me to assume that the fear stemmed from their having been abused by other adults, in other unspecified places, who happened to be wearing clown masks. Such a link requires to be established by solid evidence.

895. Libraries played a significant part in Child 22's disclosures. He was in the Central Library one day when his mother asked him to be quiet because they were in a library, whereupon he began screaming and had to be taken out. From this I am invited to infer that he was screaming because he associated the concept of a "library" with abuse. Other children have also mentioned "libraries" or "libraries with few books" as places where abuse is supposed to have taken place. The explanation is said to be that Mr Lillie and Miss Reed took children to places for abuse but described them to the victims as "libraries" to give a colour of respectability in case anyone asked where they had been.

896. This child apparently mentioned an occasion when Mr Lillie left him at a library after he had eaten his pie and hurt his genitals. He also referred to Mr Lillie having taken his clothes off but Dawn Reed putting them back on. He was two and a half years old at the time the allegation was made (3 June 1993) and obviously younger at the time of the supposed incident. He is also supposed to have been encouraged by Miss Reed to give Mr Lillie oral sex. This all sounds horrendous, of course, but my difficulty is to know precisely how these statements came to be elicited and the extent to which the mother's anxieties and obsession with sex abuse might have been communicated to the son. These concerns certainly seem to have conveyed themselves to other adults (e.g. the parents of Child 1 and Child 23) and thus contributed significantly to the dynamic of the "Shieldfield scandal".

897. This is a factor to be given particular attention in view of the child's tendency to mimic and parrot what others have said (echolalia). It is said that the Claimants have invented this characteristic in order to discredit the child. I do not accept that. Both Claimants have a fairly detailed recollection of his mannerisms and behaviour. That is not surprising in view of the enormous impact he had on their lives in April and May 1993 (and indeed subsequently) but I do not find anything in the contemporaneous documents obviously inconsistent with their accounts of him in evidence. Their evidence on these matters I found persuasive.

898. By November 1993 Dr San Lazaro was reporting that Child 22 was making dramatic and bizarre allegations. From having said on 16 April that he had not been hurt (or, if he had, only in the context of nappy changing), the story has become totally different. He was apparently claiming to have been

tied up and had a drill inserted in his genitals and/or anus. This was after months of pressured questioning about abuse and I am not persuaded that it was in any way to be relied upon as a voluntary and unprompted disclosure. It is just fantasy.

899. Ms Jones in her evidence put it more diplomatically. She had no difficulty accepting this child's early disclosures but said "As time went on, it would be difficult to judge how far you could place weight on some of the later disclosures". Unfortunately, however, one looks in vain to find any such caution or discrimination reflected in the Report itself. Moreover, I need to focus on how late is "later". Judging by the assessment of Pat Thompson (that the mother had made up her mind at least by May), I should be wary of her claims from a very early stage. She clearly kick-started the rumours about a paedophile ring very early in the inquiry and passed them on to others. It is a pity that Ms Jones and her colleagues did not exercise caution when addressing the source of those allegations. The mother was still active in promulgating the wickedness of the Claimants in 1999 when she apparently received £250 from "Best" magazine for her story. This was published under the heading "My Son's Courage" and told how she had uncovered "the most shocking child abuse scandal of the decade". She was quoted as saying:

> "I was frightened at how violent my thoughts towards them were, but I had to learn to control my rage. My only consolation is I believed every word [Child 22] said and acted immediately. [Child 22] is proud of his part in uncovering the abuse – he thinks his bravery saved the other children. I couldn't bear to tell him the truth … So, for now, I've told him that Lillie and Reed have been locked up forever. The inquiry team told me [Child 22] was a hero. If he'd not spoken up, who knows how many other innocents would have suffered? But the ordeal has destroyed our family. My husband couldn't talk about it and has left me".

Child 23

900. Child 23 was born on 27 February 1990. She was at Shieldfield for about two years until August 1994. She was in the Red Room, under the care of Mr Lillie and Miss Reed from 1 September to 20 November 1992. Her mother gave evidence on 27 March. I found her to be a careful, moderate and truthful witness. She told me that her daughter had got on with both the carers and appeared to enjoy being at the Nursery. She was moved up relatively quickly to another room because, as Mr Lillie explained at the time, she was not obtaining sufficient mental stimulation in the Red Room.

901. Child 23 was examined by Dr San Lazaro on 20 July 1993 (three months after Mr Lillie's suspension). This followed the mother's having heard of allegations of sexual abuse at the Nursery, originally from the mother of Child 22 who called on her out of the blue on Saturday 1 May. That very evening her mother questioned her as to whether anyone had touched her bottom. She is now unclear as to exactly how she put it, but there seems to be little doubt it was a leading question in some form. In May 1993 she was recounting it to social workers as "Did anyone touch your bottom?" By July it was "Has anyone touched your bum or your fairy?". Child 23 alleged that "Chris" had touched her on or near the vulva and that she did not like it. She said he tickled her bum "hard". It is said that she illustrated this to her mother by reference to a doll, which she had in her hand, by tickling it between the legs. It is only fair to record that the Review Team attach particular significance to this "disclosure" because they say that it cannot be explained as bare assent to a leading question or as parroting a phrase the mother had used. It is the child who is said to have used the notion of "tickling hard" quite spontaneously. At all events, the mother made no record of what the child said on 1 May; nor did she report it to Pat Thompson until 17 or 18 May.

902. The Review Team rely upon the account given by the mother of this first "disclosure" to Mrs Saradjian on 29 November 1995. But Miss Page points out that there are three new elements that have crept in over the two and a half year interval. First, the account now incorporates a reference to Dawn Reed as

well as "Chris". Secondly, the mother's question (and therefore the child's answer) includes a reference to being "hurt". Thirdly, there is one of the most unpleasant allegations adopted by the Review Team against these Claimants. The suggestion is that the child is supposed to have told her mother that they had threatened her that dogs would scratch her vulva if she told anyone. It is strange that this nasty allegation should only see the light of day for the first time in November 1995. Everyone accepts that it is right to trace back the allegations attributed to children to the proper time and context in which they were first uttered (if at all). That is certainly what the Review Team were advised to do by Professor Davies. In the light of the later significant accretions, it is especially important in the case of Child 23 to focus on the nearest contemporaneous account.

903. At interview with Dr San Lazaro, the child is supposed to have confirmed the allegation and told her that Mr Lillie had used a crayon. This is of some importance, because it has been argued on the Claimants' behalf (i) that Child 23 was the source of the other references to crayons being used for insertion, and (ii) that Child 23 had answered in her video interview of 12 July by reference to a crayon for the simple reason that this was what her eye happened to fall upon when she was asked by the interviewer what had been used to hurt her.

904. Between her first disclosure on 1 May and the interview of 12 July there seems to have been some pressure on the child. Her mother, for example, told the police that she had "checked her story" on a couple of occasions. It is not possible for anyone now to determine the content of those conversations, but it is obvious that whatever was said could have had a significant impact on later accounts given by the mother and daughter. What is more, her father had reacted quite emotionally to her first statement (understandably so). He clearly got angry and, having obtained his current address from the mother of Child 22, went round to Red Barns on 10 May and punched Mr Lillie. He was also claiming as early as 18 May (to Joyce Eyeington) that Mr Lillie was supplying children to a local paedophile ring. This is highly likely to have derived mainly from the mother of Child 22. But, given all that was happening, it would be reasonable to assume that this highly charged atmosphere would have impacted on the child prior to her interview.

905. At the time of her first "disclosure" on 1 May Mr Lillie had already been suspended but not Miss Reed. By the time of the video interview, Miss Reed too had been suspended. It was during the interview that Child 23 first made any allegation against her. For Miss Reed she was, of course, the "Index Child". She too is then accused of "tickling".

906. This interview Dr Cameron did not believe had about it the "ring of truth". She seemed too uninvolved and (like, for example, Child 11) not to show any sign of mentally reliving an unpleasant experience. He spoke of the distinction between historical truth and narrative truth. His comments about her general affect in interview are naturally entitled to considerable respect, in the light of his experience, but I should not lose sight of the principle that the assessment of witnesses (even in these circumstances) is ultimately for the judge as the tribunal of fact. My own reaction was similar to that of Dr Cameron.

907. Attention has been drawn to a discrepancy between Dr San Lazaro's type-written statement and her manuscript notes. Dr Ward pointed out that the allegation that a member of staff had put a crayon into her vulva and caused bleeding into her knickers appears in the former but not in the latter. Miss Page emphasises that, if a child had indeed told her in interview that a member of staff had done this, then it should have been carefully recorded. Anyone who knows anything about child abuse would know (as I have discovered from the evidence) that it is elementary to make a record of a clear and unequivocal allegation of abuse made by a child – especially one as startling as this. Dr San Lazaro agreed that there should have been a "better record". She said that she dictated the statement "on the spot" and the manuscript notes were merely an aide-memoire. I am left in the position that I cannot be confident as to how much additional information (if any) came from the child, when talking to Dr San Lazaro, over and above what emerged in her recent video interview. Dr San Lazaro is unfortunately prone to

glossing or muddling things she has been told and, in some cases, attributing statements to children which came from adults (a classic example being the burning of Child 1's underpants).

908. Looking back at earlier events, the mother then remembered behaviour on the child's part pre-dating Mr Lillie's suspension, which is now relied upon with hindsight in support of the allegation of abuse and especially of penetrative injury. At the end of October 1992, the child complained of soreness in the genital area and a reluctance to use the lavatory at least by herself. The GP's note of 15 October 1992 records a 2-3 day history of abdominal pain and also pain on passing urine. There was no evidence of infection. There were also respiratory problems at about that time but, more significantly, on 18 December 1992 it was noted that the child seemed always to have thrush, and cream was prescribed for associated soreness. A similar problem was recorded much later, in July 1995. That fact naturally must weigh heavily in the balance against drawing an inference that earlier such problems (i.e. before 20 November 1992) should be attributed to abuse by Mr Lillie.

909. In view of how common urinary problems are, and vulval soreness, it is manifestly important to focus on timing before attributing it to child abuse. The Review Team in their Report refer to "a number of children" developing urinary tract problems *from trying to retain urine* and others developing problems with constipation. They lump these symptoms all together and seek to give the impression that they are attributable in every case to "being afraid of going to the toilet". Thus the perception arises that these common childhood problems derive from abuse having occurred in lavatories at Shieldfield.

910. The mother was also referring to incidents of nightmares prior to Christmas 1992 and to her complaining of a hissing or scraping noise in her bedroom. This may be a case where memory is unreliable to some extent. In May 1993 the nightmare scenario was being placed at around Christmas 1992, which would be a month after leaving the Red Room. Now the recollection is that the nightmares were happening during the Red Room period but cleared up by about Christmas. It may not matter greatly, since the nightmares apparently occurred fairly closely together in time.

911. Another possible area of confused memory relates to day time wetting. The Red Room Day Books do not provide any confirmation for this problem. They may not be wholly accurate but, if it was a persistent problem in the Red Room, experience of the Day Books suggests that there would be a record at least of the general pattern. The mother recalls one instance when Dawn Reed reported to her that Child 23 had "wet herself again". She explained that this had come about through playing with water. Dawn Reed added, according to the mother, that she (Dawn Reed) was liable to wet herself when playing with water. The mother thought this remark odd. If it happened, and I have no reason to doubt it, it sounds as though it was a light-hearted off-the-cuff remark intended to reassure the mother that there was no particular significance in the episode.

912. It seems that on 25 October 1993 Child 23 referred to having been in Christopher Lillie's flat with Child 2 and they were both naked. The two children did not, however, overlap in the Red Room. There was thus no opportunity for Mr Lillie to spirit them both out of the Nursery at the same time and take them to the other side of Newcastle where he then lived.

913. One aspect of Child 23's behavioural patterns that is worthy of note is that she does not seem to have been upset about anything at the school. She was even, as her mother accepted, "unfazed" by the medical examination. That very much ties in with Dr Cameron's observation about her video interview. There does not seem to have been any problem in getting on with Christopher Lillie or Dawn Reed when she was under their care. The mother did say that after she had left the Red Room she proved reluctant, on one occasion, to go back to be temporarily looked after. But she recognised that this might have been because her daughter had settled in her new environment and felt she had outgrown the Red Room.

914. There was damage to the hymen apparently diagnostic of penetrative abuse. There was, however, a further episode of bleeding into her underwear on 3 December 1993 (months after any contact with Dawn Reed or Christopher Lillie). She then had a small denuded area on the labia minora, which was thought to be the source of the bleeding. The mother dismissed this, however, as being due to the child's using soap in the vaginal area. This was not an explanation that impressed Dr Watkeys. Dr Ward observed, "The aetiology of the bleeding remains unsolved but was likely to be traumatic caused by either Child 23 herself or another individual".

915. It is also to be borne in mind that Dr Desai, who examined her on the December visit in Dr San Lazaro's absence, noted that there was no other evidence of trauma. This would appear to be inconsistent with what Dr San Lazaro had recorded. I have very much in mind that Dr Desai, being less experienced than Dr San Lazaro, could have missed something, but it naturally raises a doubt as to the quality of Dr San Lazaro's findings in respect of a "barn door" child.

916. That is not, however, the full extent of the diagnostic problem in connection with this child. Miss Page relies on "extremely serious inconsistencies" in Dr San Lazaro's records. It is said that this is one of the cases where she "beefed up" her findings for the benefit of a police statement. She there refers to a "central deep tear", whereas her contemporaneous records appear consistent with a "partial" tear or tears. There was no reference on that occasion to depth. Moreover, Miss Page argues that it is possible to misinterpret a normal variant as a "partial tear". She goes so far as to suggest that the phraseology "deep tear" must have been a fabrication. I am not able to conclude that it was dishonest, although I am only too well aware of Dr San Lazaro's accepted role of "advocate" for the children. I am especially cautious, for that reason, in the cases where she has put something different into a later account such as in a police statement or C.I.C.B. report.

917. Dr San Lazaro indicated 3 partial tears on her printed form and also ticked "gross hymenal loss", although her drawing does not appear to show such loss. Nor does it show a "deep tear". Miss Page submits that at this distance of time, and in view of the inconsistencies in the documents, I cannot be satisfied whether there was one tear or more, or if whatever tear there was could be classified as "partial" or "deep", or whether there was in fact loss of tissue. It naturally raises a doubt as to loss of tissue, and the existence of a deep tear, that Dr Desai spotted nothing abnormal on her December genital examination. Dr San Lazaro did, however, describe her as "the paediatrician who had no know-how in observing the hymen. …I do not say that of Dr Desai of my own knowledge. I just know that junior and middle grade paediatricians, and indeed the consultant paediatricians of the RVI and in most district hospitals, recognise that they are not experts at displaying or identifying injuries to the hymen".

918. Another factor of these records giving rise to doubt as to the nature of the findings is that Dr San Lazaro referred to lateral "nodular scarring". This is quite possibly a record of a nodular but congenital feature rather than scarring caused by trauma.

919. Professor Bruck pointed out, in relation to this child, that she was one of those who mentioned a variety of other identifiable adults being present when the incidents occurred. One, in particular, was said *three times* to have been there when "Chris" hurt her bum with a crayon. That particular person had nothing to do with the Nursery. This is a point which fundamentally undermines the reliability of the child's accounts. It is inconceivable that Mr Lillie would have abused her in the presence of that other person. There are undoubtedly elements of confusion and fantasy and it is impossible to conclude now (as Dr Ward and Dr Watkeys confirm) how or when the child incurred such trauma as Dr San Lazaro detected.

920. Mr Bishop argues that even if Child 23 had been abused by some other person, in or about December 1993, this would not prove that she had not also been abused by the Claimants. This is to address the burden of proof in a rather misleading way. It is for the Defendants, surely, to prove that despite the

possibility of abuse by some other person Child 23 was in fact abused by Mr Lillie and/or Dawn Reed. In view of the obvious measure of agreement between Dr Ward and Dr Watkeys, I do not see how that could be achieved. This is one of many factors underlining the importance of eliminating all other possible candidates before attaching such abuse to Mr Lillie and/or Miss Reed.

Child 24

921. Child 24 was one of the six "indictment children". She was also, by the time of closing submissions, placed in the forefront of the Defendants' case on justification. She was their strongest example of child abuse by the Claimants. She was born on 14 August 1989 and began at Shieldfield, in the Baby Room, on 21 October 1991. She moved to the Red Room on 21 February 1992 and from there to the Yellow Room on 3 September 1992. There were two visits to the Red Room on 1 and 3 September but, otherwise, her last visit had been at the end of July 1992. Her final day at the Nursery was 5 February 1993. Thereafter she apparently had no direct contact with other Shieldfield pupils. There was clearly an unhappy family background to the extent that she had a father who was sometimes given to violence - although not against her directly. She did, however, begin her interview on 30 July 1993 by telling Helen Foster of an occasion when she was frightened by her father (and apparently some "friends") kicking the door. Thereafter, although she liked to see him, contact apparently ceased.

922. Her mother gave evidence on 11 March. She was a quiet and moderate witness who seemed to me to be clearly doing her best to recollect the events she was asked to recall. In respect of Child 24 there was found "unequivocal evidence of previous trauma compatible with full penetration through the hymenal orifice" (Dr Kate Ward). She was examined under anaesthesia on 18 November 1993. There was found apparently a central deep transection throughout the width of the hymen at 6 o'clock. There was also nodular scarring of the hymen which was gaping (that in itself is not significant since she was anaesthetised). Also, disruption of the hymenal margin was noted at 3 o'clock. Both free edges were thickened, and there was marked attenuation. Things were not quite so straightforward, however, as they appeared to be.

923. On 16 May Dr San Lazaro was questioned about her findings. In her police witness statement she purported to record a deep central scar on 12 December 1993. A further lateral indentation was noted at 3 o'clock. This is to be contrasted with the medical report prepared shortly beforehand following examination under anaesthetic on 18 November. There the description was of "at least two deep tears" with accompanying nodular scarring. She accepted that there were inconsistencies and that she would do better now, but Miss Page suggested that in 1993 (six years on from Cleveland) no one could have been in any doubt about the need for scrupulous care and accuracy in recording findings. This would perhaps be especially so in the case of criminal proceedings – Child 24 being one of the indictment children. Dr San Lazaro accepted it was embarrassing to see errors of this nature.

924. Miss Page submitted that such was the unfortunate state of the records, coupled with Dr San Lazaro's lack of objectivity where Shieldfield was concerned, that I cannot be satisfied that Child 24 did exhibit diagnostic signs of abuse. I am naturally doubtful, but I believe I should accept that there was evidence of penetrative damage. I cannot find what it was exactly, because of Dr San Lazaro's inconsistent records. But, unless she imagined or invented the whole thing, it does look as though there was some scarring. It could just be nodules, but I think scarring seems more likely. When or how it occurred is quite another matter.

925. She was also asked why she did not take the opportunity while the child was under anaesthetic to crystallise her findings by photography so as to record the evidence of penetrative injury. She said it was not commonly done in those days.

926. Dr Sandra Hewitt described her as showing early and prolonged signs of traumatic stress behaviour and of unusual sexual behaviour. Professor Friedrich referred to her ability to demonstrate penetration and other indications of inappropriate sexual knowledge. There was also the worrying feature of self-injurious behaviour (biting her arms or scratching her legs if upset).

927. It seems that her mother first learned of what had happened at Shieldfield from a friend ("JT"). This led to her questioning Child 24 about Shieldfield on a Bank Holiday at the end of May 1993. She told her that she knew someone had been "naughty" at the Nursery and it would be all right to talk to her about it. She went quiet at first and then spoke of going to a library and a flat with Chris and Dawn. She described Mr Lillie as wearing boxer shorts, of an old woman with a horrible face and of a dog called "Shelly". She mentioned other children being present, whether on that occasion or on other occasions. Children mentioned were Child 2, Child 8, Child 22 and Child 23.

928. Much weight is attached by Mr Bishop to the fact that Child 24 appears to have described Mr Lillie's dog as "cream, brown and black". There are, however, a number of factors to be borne in mind:

a) The only dog Mr Lillie was associated with at the relevant time was Miss Kelly's. He had only just begun going out with Miss Kelly by July 1992 when Child 24 passed out of his care, and did not move in with her (and her dog) until the following December. At the relevant time, he was living in West Newcastle.

b) The dog was called Ben – not "Shelly".

c) The dog was essentially black, with brown patches, and a token bit of cream on the chest (barely visible from photographs).

929. It emerges from Marion Harris' note of 22 June 1993 that the first broaching of the subject by the mother went as follows:

> "…asking if she remembered and liked Chris and Dawn. Mother said, 'I know Chris is a naughty boy, police have got him and he cannot get you'. [Child 24] agreed Chris was naughty – said she sometimes went to the library and also spoke of going on the bus to a house – there was a dog, possibly called Shelly …and there were big people and an old woman present. [Child 24] said Chris took his clothes off in front of the other people and smacked her on the bum – he had no clothes on".

930. It is to be noted that in this (the earliest) record there is no mention of boxer shorts. It is recorded also that, apart from being present, no allegation was made against Dawn Reed. Moreover, it is most unfortunate that the mother got off on the wrong foot (by Cleveland standards) by negative stereotyping. I cannot possibly be confident that the allegation of Mr Lillie taking all his clothes off was volunteered rather than prompted by a leading question. This child was bombarded by leading questions that summer (as emerges from the video interviews) and there is no reason to suppose that the first questioning by the mother was any exception.

931. It is noteworthy also that the (by no means uncommon) assertions about the police having "got" him are generally intended as reassurance. Normally reassurance is required if a child is reluctant or unwilling to say something. Since this formula was introduced on this occasion, that would tend to suggest that the child was not willing (at first) to make allegations.

932. I cannot ignore, either, the evidence that Child 24 did not overlap in the same room at Shieldfield with Child 8. Moreover, there is no evidence that Mr Lillie and Miss Reed ever took any children out of the Nursery, on their own, who were not in their direct care. Child 22 and Child 24 only overlapped on the 1 and 3 September 1992. Child 23 and Child 24 appear to have overlapped (if at all) for a maximum of 2 days, but a different two days (i.e. not 1 and 3 September 1992). It is therefore not a practical option for those identified children to have gone out on such a trip.

933. Boxer shorts first appear on the records in a police statement of 16 August 1993. The statement appears to be something of an amalgam, however, as it also has the formulation (already seen in June 1993) that "Chris took his clothes off in front of other people and smacked her on her bum.".

934. There is another statement of the mother's which is of some interest. This refers to a statement of 25 November 1993, but is itself undated and unsigned. This gives a different account of how the mother came to learn of the Shieldfield suspensions: "I found out about the allegations of abuse through a network of friends originating from information from [the mother of Child 23]…. I only found out about the allegations in June 1993 and using my own initiative I contacted the RVI to say my daughter may have been abused… Social Services only became involved when they were contacted in turn by Dr Lazaro and I received a visit from Vanessa Lyon alone and it was after that that my name went on the mailing list and so I was kept informed about other meetings which were being held. My third complaint therefore is that Social Services Department took no steps to notify me that my daughter had been at risk of abuse whilst at the nursery".

935. This document appears to me to throw doubt on the notion that there was no scope for cross-contamination of ideas before Child 24's first allegations, and also to reduce the likelihood that her allegations were unprompted, spontaneous and freely volunteered. It is true that the mother now denies the accuracy of the document, but the doubt remains. I cannot assume that someone simply made up its contents out of nothing.

936. Her mother took her first to the hospital casualty department and then social services staff visited her and arranged for an examination by Dr San Lazaro. There were two video-taped interviews. The first was on 22 June 1993. It is an unfortunate aspect of this interview, as Professor Bruck pointed out, that the interviewers used the word "naughty" more than 50 times. (I make it a total of 76 times.) All this elicited, however, was an allegation that, "He smacked my bum".

937. This is difficult to interpret because on one view a child will sometimes, in response to pressure and negative stereotyping, come up with the worst thing he or she can think of (i.e. smacking). On the other hand, as Professor Bruck acknowledges, children who have been sexually abused sometimes begin to disclose by reference to physical abuse such as hitting or smacking.

938. The allegations of sexual abuse came later. Sometimes this can happen as a result of interviews suggesting such matters or supplying sexual information to the child. Naturally, however, one is sceptical of such an attribution in the case of a child with apparently diagnostic physical findings.

939. I return to the first interview and to other unsatisfactory features of it. It lasted for an hour and a half (clearly excessive). It also involved the unacceptable pressure, from one point, of three interviewers (the police officer, the mother and the friend). The child resisted all pressures (including the offer of a "McDonald's") to "tell" that Chris and Dawn had done anything "naughty". The pressure continues despite her claim to have a headache. The most that emerges is a smack of the "bum".

940. It has to be remembered that she left the Red Room some nine months before (aged 3), and that it is by no means entirely clear that she recalls "Chris and Dawn" as members of staff. In particular, one of the

things she recalls is that "Chris can't do his laces" (which might suggest that she is thinking of another child). It is necessary to bear in mind, however, that another parent suggested that the idea of not being able to do up shoelaces was a means of belittling Christopher Lillie suggested by Dr San Lazaro, for the purpose of making him seem less frightening. This is something of a problem. Not only is it a form of negative stereotyping, but it is conceivable that it would bring Christopher Lillie to mind artificially when the child might otherwise have forgotten him to a greater or lesser extent.

941. There was a ten minute supplemental interview a short while after the long one concluded (or possibly as a continuation of it). This was conducted by the mother's friend. Child 24 seems bored by this time and only interested in playing. She said, variously, that she was wearing the same dress as she had on at the interview, that Chris had his clothes on and that he had them off. Dawn was present when Chris smacked her, but on this occasion she described the smack as being to the head rather than the "bum". She was then released for the "McDonald's".

942. A further interview took place on 30 July when Mr Lillie was said to have poked her in the "bum" and vagina. She linked the incident also to Child 2, who is said to have been given the same treatment. She also made the comment that Child 2 would have to come back for interview. That clearly reveals that some communication had taken place as to what had been going on. It would be quite unrealistic for me to treat Child 24 as having been beyond the scope of cross-contamination since 5 February. In the course of this interview, despite several attempts by Helen Foster to encourage Child 24 to say differently, she nevertheless said persistently that when the incident happened she was wearing her dress and knickers. There then followed a grotesque series of questions by Helen Foster:

"Q: What clothes did he [Chris] have on?

A: Don't know.

- - - - - - - - - - - - - - - - - - -

Q: Have you seen Chris's willy?

A: No

Q: Have you seen anybody's?

A: No

- - - - - - - - - - - - - - - -

Q: Can you tell us what they look like?

A: It looks like a bum

Q: Like a bum?

A: No, fairy

Q: Like a fairy? And have you seen Chris's?

A: [Non-committal]

Q: And where have you seen Chris's?

A: Don't know".

Despite the child's negative response the officer persists:

> "Q: And when you saw it, what did it look like when you saw Chris's willy?
>
> A: [No response]
>
> Q: What did Chris's willy look like?"
>
> A: [No response]

There then follows this sequence:

> "Q: [Child 24], when you saw Chris's willy, was it sticking up like that, like up to the ceiling or was it pointing down to the floor?
>
> A: Up.
>
> Q: Up? And what else did it look like, apart from pointing up?
>
> A: Bum".

943. In responding "up", she was giving the answer she perceived was required. This was a travesty and was thoroughly irresponsible. It is the sort of behaviour that can lead to the gravest miscarriages of justice. Helen Foster persisted and asked the child if anyone else had seen it. She replied that Child 2 had and, asked if Dawn had also seen it, she assented to this too. Having badgered the child into apparently assenting to an erection, she then tries for ejaculation as well. This only results in a series of quite meaningless answers about black urine.

944. As if this were not bad enough, the mother is then brought in to participate in the interview and, shortly afterwards, the friend ("JT"). After a good deal of questioning by the officer, the mother and the friend, Child 24 is prepared to say (implausibly) that Mr Lillie inserted all his fingers into her vagina. This resulted from a question by the mother "Did he use all his fingers?". Helen Foster then intervened and asked "Did *it* go inside?" This brings a nod. She herself had been unsuccessful for well over a half an hour. The sexual assault allegations she was desperate to extract only emerged once the mother's friend came into the room. She got things moving briskly by asking the child without further ado to show how Chris had poked her. The mother then elicited the allegation that all his fingers had been used. One is left with the overall impression that she is going along with any suggestions put to her (as happened, for example, with Child 27).

945. As so often, when addressing the children's interviews, I find myself wondering how the Review Team could conceivably have assured their readers that there were no leading questions.

946. Both interviews are tainted by the pressure to which the child was subjected and the "disclosures" elicited appear to be neither consistent nor freely volunteered. It means that I can give them very little weight. Furthermore, if all this took place on camera, I can see no reason to have confidence in the proposition that on earlier unrecorded occasions there was a scrupulous avoidance of such pressures.

947. There was then an incident on 2 August when the child escorted various adults to premises to which it was being suggested that she had been taken for abusive purposes. Vanessa Lyon recorded, "She showed us a flat where she was taken by the alleged perpetrators". This led nowhere.

948. The position in relation to Child 24 is especially unsatisfactory. On the one hand, it looks as though there was evidence at least indicative of penetrative trauma when she was examined in November 1993 (14 to 16 months after leaving the Red Room). Yet there are "embarrassing" errors and inconsistencies which throw the medical findings into a state of uncertainty. Moreover, the interviewing process was truly hopeless. It is thus impossible to come to any clear conclusion as to what happened, when or who (if anyone) was involved. What is clear, however, in my judgment, is that there was no opportunity for this child to have been taken by Mr Lillie or Miss Reed to Red Barnes (where the dog lived) as early as July (or even September) 1992; nor could she have gone on any such trip with Child 8, Child 22 and Child 23 who were identified by her as having been present.

Child 25

949. Child 25 is one of the oldest concerned in this litigation. She was born on 20 December 1986 and attended at Shieldfield between January 1989 and August 1991. In those circumstances, it is not surprising that Mr Lillie said that he had no recollection of her at all. Although he worked on a temporary basis for some of the time she was there, any contact would have been at most sporadic. It does appear, however, that Miss Reed overlapped with her while in the Red Room. She remembers Child 25 as having behavioural problems and as being something of a "bull in a china shop", but only recalls her in the Baby Room. She thought it highly unlikely that she or Mr Lillie would ever have been left alone with her.

950. There is no doubt that this child has had a difficult life, to some extent connected with the fact that her mother suffered from manic depression. She has herself exhibited extreme behaviour, and was in due course diagnosed as suffering from attention deficit hyperactivity disorder. She was also for a long time suffering from vulval soreness and urinary tract infection. Her problems pre-dated her time at Shieldfield and also have continued thereafter until the present time. Indeed, at one stage her father was of the opinion that her extreme behaviour had settled down as a result of her regular attendance at Shieldfield. It appears that there came a time when she had to attend Shieldfield more or less daily because of her mother's problems. Her father agreed in his evidence on 18 March that it may very well have been at the time when her mother was admitted to hospital in March 1989 because she was suicidal and depressed.

951. The father's attention was drawn to a letter dated 11 July 1989 from Dr S Wressell, a senior registrar in child psychiatry, who was reporting to her then GP that she had spoken to Mrs Eyeington at the Day Nursery, who had in turn described a change in Child 25's behaviour over the last few months:

> "Initially she was irritable, not very responsive towards adults, had a short concentration span and would not share toys. She has however, become much more settled with good relationships with peers and adults and enjoys appropriate nursery activity. There have been short periods when she has needed firm supervision because of aggressive behaviour towards other children. Careful monitoring linked these episodes with either mother's hospitalisations or a move of house."

952. There were episodes during her time at Shieldfield when she was having trouble with urinary tract infection, because of E-coli, and later the same year with thrush.

953. It would clearly be a serious mistake to tie in any of child 25's extreme behavioural symptoms with sexual abuse at Shieldfield Nursery. It is true that, when he read of the Shieldfield problems (probably the criminal proceedings) in the newspapers, her father understandably made a connection with the benefit of hindsight but, as I have already indicated, it is impossible to make any such link with confidence because the patterns of eccentric behaviour seem to have been a regular feature of her life from a very young age.

954. As for medical findings, Child 25 was seen first by Dr San Lazaro in July 1994 (almost three years after she left the Nursery). She seems to have given the child's mother the impression that there was some evidence of abuse. Certainly the mother reported to Edna Davis of Barnardo's that "Dr Lazaro had found physical evidence that [Child 25] had been sexually abused". This must have added greatly to her pre-existing stress and anxiety. She apparently found labial adhesions and nodular scarring at 11 o'clock. Dr Ward has pointed out that, although Dr San Lazaro's conclusion that there was a well healed trauma was reasonable in the light of medical knowledge at the time, subsequent publications would tend to diminish the significance of her findings. Furthermore, by the time Dr San Lazaro saw this child, her mindset had long been fixed along the tramlines that the mere fact of having been to Shieldfield constituted some evidence of abuse in itself (as she seemed to admit in relation to Child 6). Her report of 11 July also contains the muddled and uninformative sentence: "Her history of repeated reviews both by the psychiatrists and with renal problems does suggest a history which looked at in retrospect is highly suspicious of repetitive trauma to this little girl".

955. In any event, it was being noted at least in March 1994, when she was seven years old, that she was stripping off her clothes in an uninhibited way in front of people and regularly touching her private parts. Whether this originated because of her persistent vulval irritation can only be a matter for speculation, but it cannot be ignored in this context.

956. Against Child 25's unusual history, it is very difficult to attach much weight to the opinions expressed by Dr Sandra Hewitt and Professor Friedrich.

957. Dr Hewitt offered the opinion that:

> "The pattern of behaviours in Child 25 strongly indicated that she suffered trauma as a result of sexual abuse during the period she was in the Red Room".

958. Professor Friedrich referred to Child 25 exhibiting self injurious behaviour, sleep problems and stereotypic drawings that had a strong trauma link. He added:

> "It seems very likely, and is also supported by the medical evidence that also exists, that Child 25 was severely traumatized as well as sexually abused while in the care of Lillie and Reed".

This is yet another of Professor Friedrich's wild and irresponsible assertions. The child simply never was in the joint care of Mr Lillie and Miss Reed. Furthermore, as with Child 10, the diagnosis leaves ADHD totally out of account.

959. Because they were only disclosed late, I assume that neither of these experts had the benefit of the child's medical records. Indeed, Miss Page herself only obtained them over the weekend immediately prior to the father giving evidence on 18 March. Those background records clearly put a very different complexion on the child's behavioural patterns. Neither of them was asked in cross-examination about Child 25 or, specifically, as to whether their opinions would have been revised in the light of the unusual background. Having seen those experts give evidence, I do not think I would have found their answers to such questions particularly helpful one way or the other. In my judgment the background is clearly critical.

960. As to the "stereotypic drawings" referred to by Professor Friedrich, it is certainly the case that Child 25 seemed to be drawing a great many clowns at one stage during her life. In particular, it emerged from Barnardo's reports dated 3 May 1994 and 20 February 1995 that she appeared to be drawing clowns

frequently for pleasure. The entry on 3 May 1994, for example, states, "[Child 25] enjoys making things and drawing things – mainly clowns, people and houses".

961. It is also clear that she had a fear of monsters for a considerable period of time. Her psychotherapist, Edna Davis, recorded on 23 February 1996:

> "From the beginning [Child 25] made her agenda clear, she was having bad dreams and was afraid of monsters and wanted to do something about this".

Indeed, much attention was given during her therapy to helping the child in "confronting her monsters". She received assistance from her mother and sister in doing this. There is, however, no evidence to link this child's problems with monsters or her apparent obsession with clowns to either Mr Lillie or Miss Reed.

962. There is a note from Barnardo's (Barbara McKay) recording the meeting of 3 May 1994 between herself, Edna Davis, Marion Harris and Child 25's mother, in which it is observed that the mother "explained that [Child 25] has not actually disclosed sexual abuse". There is a further note of Edna Davis dated 26 January 1995, in which she summarises the play therapy undertaken to that date with Child 25. The conclusion is recorded as follows:

> "While [Child 25] has been unable to talk about what has happened to her; possibly for fear that her mother will die; [Child 25] has shared a good deal with me. It is clear to me that [Child 25] was traumatised, this together with Dr Lazaro's findings leave me in no doubt that [Child 25] has been sexually abused".

963. It does seem, however, clear that there is no unequivocal statement of abuse by Child 25 that can be attributed to Christopher Lillie or Dawn Reed. The adverse conclusions drawn by experts so far appear to be based on behaviour, which is much more likely to be explained by the other factors I have mentioned. The case provides a vivid warning about jumping to conclusions on an incomplete story.

964. By the end of the trial Child 25 had been placed last in the Review Team's list on the basis that she represented their weakest case. That is perhaps not surprising, but she remained in contention to the bitter end. She was never withdrawn. What is said is that:

> "Clearly the evidence in relation to this child cannot alone result in a finding of sexual abuse against Ms Reed or Mr Lillie. However, the medical findings, coupled with the fears and behavioural deterioration of Child 25 whilst at Shieldfield … and the fact that because of the hours she kept at the nursery Mr Lillie and Ms Reed would have had access to her even though she was not officially under their care, in the context of the totality of the evidence of the children, makes it [*sic*] more likely than not that Child 25 was sexually abused at Shieldfield, and was abused by Christopher Lillie and or Dawn Reed".

965. Resort to the concept of "the totality of the evidence" illustrates the backs to the wall nature of the case. What is perhaps the most unpleasant aspect of it, in the light of the mother's background, is expressed in the following submission:

> "Child 25 makes very limited verbal disclosures, the common theme of which appears to be that she was threatened with the death of her mother. Given her mother's obvious fragile mental state it is not surprising that this

> threat was more effective in silencing Child 25 than other children in the case".

966. During a therapy play session in 1994 it was recorded:

> "At one point [Child 25] told her mother, Barbara and I that someone had told her … when she was a baby at school that if she didn't do what they wanted her mam would die. [Child 25] told us that she didn't do what *she* wanted. [Child 25] didn't tell us who this person was."

967. I believe I am being invited to infer from this material that Miss Reed tried to abuse her and threatened that her mother would die, but it would appear from the statement that no abuse actually took place.

968. Reliance is also placed on a Social Services diary sheet entry of 29 June 1994 (reporting a phone call from "Alison") to the effect that Child 25 had said in play therapy "that she is frightened that if she says anything her mum will die and talks about being hurt by Chris and Dawn". These are described as the "key disclosures", but play therapy disclosures are notoriously unreliable and I cannot possibly have confidence that "Chris and Dawn" were mentioned as a duo entirely spontaneously. That is particularly so in the case of a child who never experienced them as a pair at all. It is much more likely to have been suggested in some way.

Child 26

969. Child 26 was born on 11 November 1990. She began at Shieldfield in the Baby Room on 26 February 1992 and, after three introductory visits, moved to the Red Room on 26 November 1992. She remained there until the suspensions and beyond, finally leaving the Nursery in November 1993. It is obvious that she was therefore in and around Shieldfield following the suspensions and during the period of anxiety and rumour. (Somewhat confusingly, perhaps, she had a brother called "Chris".)

970. It was against that background that her grandmother spotted her (in September) bouncing a teddy bear between her legs. The grandmother questioned her about this (in what terms is unclear) and the child said words to the effect "tickle, tickle here", while pointing to her vagina. She was asked who had "done that" to her (certain obvious assumptions being made), and she replied "Chris and Dawn". Up to this time, according to Dr Ward, there was no history of disclosure, physical symptoms or behavioural disturbance. Dr Hewitt describes the record as "sparse". Once, however, behaviours began to be recorded, she was prepared to classify them as associated with traumatic stress. I have referred already to the logical flaws in this process when summarising the evidence of Dr Cameron, but in any event Dr Hewitt was prepared to make the leap and to conclude that "the pattern of behaviours indicates that Child 26 suffered trauma in the Red Room". This is one of a number of conclusions that look remarkably positive for a witness who denied that she was in a position to make any diagnosis.

971. This child (or at least someone with the same first name) was mentioned by Child 6 as having been present when her "Jenny" was smacked by Dawn with a spoon. It is certainly the case that the two children overlapped in the Red Room from January 1993. Child 26 herself, however, does not mention any other child as having been involved in abuse.

972. In her medical report, Dr San Lazaro claimed that Child 26 during interview on 1 October 1993 "pointed to the vaginal and anal area and said that she had been hurt there by Chris". The actual notes of the interview, however, do not record that any identified person (let alone Mr Lillie) had been responsible for hurting her. Had the child identified Mr Lillie, it would have been her first

"disclosure" of an indecent assault by him and, therefore, vital to record at the time. So much is elementary.

973. Dr San Lazaro's evidence on this (on 16 May) was, "I am not sure that everything that she said was recorded. I cannot be sure with this passage of time about the accuracy. I cannot be sure of whether something is missing or not".

974. Miss Page asked her to explain whether the inconsistency was just "appalling sloppiness" or "mischievous embroidery". She said that she would not have reported something the child did not say but that her records were "less than adequate". Unfortunately, that will not do. There are too many other examples of "embroidery". It may be that she honestly believed what she wrote at the time she wrote it. From my point of view, however, that makes little difference. For whatever reason, she just cannot be relied upon to provide reliable data for the experts to interpret.

975. Another allegation in her report of 8 October was that the child had "also mentioned being taken to another house from the school". It purports to record a disclosure from the child going to an important part of the Review Team's defence of justification. I asked Dr San Lazaro where this came from. Her only reply was, "I am afraid that might not be in my notes as well". In other words, it is impossible to say whether the child said this to Dr San Lazaro, or a parent reported the child as earlier making some such claim, or whether it is simply another example of the doctor's "beefing up" her reports as a creative "advocate".

976. Miss Page turned to the physical findings. The report referred to an "awkward shaped hymen". She naturally asked Dr San Lazaro if this was merely a mis-transcription in the process of dictation and whether it should actually read as "orchid shaped". At first the witness denied this. She said it reflected "a hymen which was not smooth and crescentic but was, in a sense, angulated" When it was pointed out that she had actually ticked a box for "orchid shaped", she then accepted that this was how the report should read. That would mean, she said:

> "That is crescentic – that there was enough redundancy to produce material which was proud of the hymen. I cannot describe it. It is a hymen which has not become so atrophic that its outer edge is clearly defined as crescentic or annular. It means it ascends as a sleeve."

977. The significance of this was the need to try to understand which she had found and in precisely which location. She described "nodular scarring and disruption at the left anterior edge at around the 3 o'clock position". The drawing she had made was similar to that for Child 21. Miss Page suggested that they could both be described as a "squiggle at 1 o'clock". In the case of a crescentic hymen, notches are apparently quite common in the "horns" of the crescent (i.e. at about 11 o'clock and 1 o'clock). That is an important piece of information because a disruption at either of those points could be perfectly normal. Also, as Dr Watkeys confirmed, notches and indentations can be confused with tears.

978. The position remains unclear. Nevertheless, at the time the doctor was prepared to conclude that some penetrative damage had occurred to the hymen, supportive of the intrusion of a finger. It is impossible to be sure about this. I am inclined to think that this was over-interpretation of a nodule or notch.

979. Another difficult problem is that she recorded "swelling/redness ++". If there was swelling, this would positively suggest a need to eliminate the possibility of ongoing abuse. There had been no opportunity for Mr Lillie or Miss Reed to interfere with her for many months. It would be a reasonable interpretation of her notes that there had indeed been swelling (as opposed to simply redness). Dr San Lazaro, however, thought she had probably simply intended to record redness and had forgotten to

cross out "swelling". We cannot now tell. If there was redness alone (even "++"), this could have a quite innocent explanation. It is to be noted that she had earlier that summer been taken to her GP with genital soreness and urinary symptoms.

980. Child 26 was one of those who dropped out of the case on 13 May when the plea of justification was withdrawn (with the usual costs consequences).

Child 27

981. Child 27 was born on 20 February 1990 and began at Shieldfield on 18 November 1991 in the Orange Room but under the care of Mr Lillie and Miss Reed. He moved with them to the Red Room on 2 March 1992. He moved on in mid-November 1992 and left Shieldfield altogether in July 1993. Mr Lillie had no recollection of him.

982. He was not examined by Dr San Lazaro but by Dr Steele. She found no diagnostic signs of physical abuse, but as Dr Ward points out this does not exclude the possibility. She also referred to behavioural problems such as chronic soiling and enuresis, as well as disruptive and challenging behaviour. She fairly made the point, however, that these could have been related to problems within the family. There was regular violence in the home, for example, but the mother made clear that, even though his father was "quite nasty" to him, he would "never have physically hit him".

983. The Defendants make no allegation against Miss Reed in relation to this child, but she has a clear recollection of him because he would just stand and wet himself or dirty himself where he stood. She had to sluice him down on one occasion in a bath on the Nursery premises. She described in evidence how she always thought he was crying out for something, but she did not know what it was.

984. One of the points made on the Defendants' behalf is that the "sluicing" of Child 27 did not find its way into the Day Book. I am invited to take that into account in the context of the Day Books being incomplete. There is no doubt of that. On many occasions the Day Books are brief and uninformative.

985. The principal focus of the Defendants was the child's limited verbal accounts to his mother (not recorded on video). The first allegation seems to have been in August 1993 just after leaving Shieldfield. He was apparently referring back at least nine months to the period when he was aged between 21 and 33 months old. What he said was that "Chris" had flicked his "bum" with his fingers and turned his penis round with his hand. Later the same month he repeated the allegation, and said that he did not like "Chris". He also placed the incident in someone's room who might have been either "Diane" or "Dawn". It is difficult to know what to make of this, bearing in mind the long gap and questionable reliability of a child's memory over such a period.

986. Moreover, the nature of the allegations cannot necessarily be characterised as sexual. As with several of the children, it is essential to remember that Mr Lillie and Miss Reed would have had legitimate and routine reasons for touching the children in the genital and perineal region – especially having regard to his incontinence. The boy had, of course, been in the Yellow Room during the Spring and Summer of 1993 when parents and children were anxiously concentrating on the subject of sexual abuse. It is not therefore possible to attach with confidence the sinister significance to his remarks which they might merit if taken in isolation. Professor Bruck made the important point that sometimes, with statements that adults "imbue with a lot of meaning", it takes "a very skilled interviewer" to follow up and to try to understand exactly what the child is saying. That was, of course, not available in the present case.

987. Child 27's mother gave evidence on 12 March. She was a calm and quiet witness - so quiet in fact that she had to be positioned in the well of the court in front of counsel so that they could hear what she was saying. Her evidence was low-key and straightforward. She said that the child was wetting and soiling himself every day when he first went to the Nursery and that she regularly had to bring back dirty clothes. There was one occasion when Dawn Reed told her that "he needs a good smack" (although Miss Reed does not accept that she would have said that). After a few weeks he began screaming and crying when he went to the Nursery, and so she decided to "put him in full-time thinking he would settle". He had always been a bad sleeper but the problem worsened while he was at Shieldfield. There was also "a chronic problem of aggression to his peers". (He had, for example, hit his brother over the head with a hammer.) There was in addition a speech development problem, for which he was receiving help from a speech therapist at the Nursery and which was being monitored while he was in the Red Room. She remembered the meeting at which parents were told that a member of staff had been suspended because of allegations of child abuse. She was naturally shocked.

988. When the child began to talk about the Nursery some time later, "he was pushing on the thigh of his leg saying he was doing that to my bum".

989. There were clearly elements of fantasy in what the child had said to his mother. For example, he told her that he had been to Mr Lillie's mother's house, that she now lived in London and that she "had a green budgie". Mr Lillie's mother had, of course, died many years ago. One could no doubt go through a speculative exercise of constructing an alternative scenario; for example, that he had been taken to someone else's house and abused there (with or without a budgerigar). But it would not be evidence.

990. The child said that the house was in the Battlefield area near St. Dominic's (close to Red Barns), but once again it is necessary to recall that the child left Mr Lillie's care before he moved to Red Barns (albeit only a few weeks before).

991. He appears to have alleged to his mother that Mr Lillie ejaculated over his stomach, but the court has to be wary in receiving such information from an anxious parent because of the possible overlay of interpretation based on adult experience. Nor does one have the full context of the conversation and how the allegation came to be made. He also alleged that "red stuff – he thought it must have been blood – came out of his own".

992. A particular problem so far as this child's disclosures are concerned is how they came to be elicited. It appears that in August 1993, on first contact with Social Services, Kulvinder Chohan and Julie Kinghorn were advising her to question him "about whether he had been upset or hurt by anybody". Unfortunately, his mother has no clear recollection of how she or her mother questioned the boy.

993. A potentially significant entry in the Red Room Day Book for 28 October 1992 was made by Dawn Reed. She recorded that Child 27 was tearful while being changed after he soiled his pants. She noted redness around the anus and asked if he was sore. She then noted "Tears came down [Child 27's] face. There did not appear to be a reason for this". I do not believe that this was a cunning double bluff on Dawn Reed's part to divert attention from her abuse of the child. The mother also gave evidence about an occasion when he had a sore bottom and said that after she heard about the allegations in the Spring of 1993, "It all fitted in". It appears, however, that her own mother had raised the possibility of abuse earlier because of the sore bottom: "She like wondered to herself if anything could have been done to him, but she thought it couldn't because he was in the nursery and like – and he was only like in her care, my care and the nursery's care". This conversation may be one reason why with the benefit of hindsight the child's mother thought it "all fitted in".

994. At about the same time, after the rumours of child abuse began doing the rounds at Shieldfield, her then husband (whom she had married in 1992) took to drink. "He was drunk continuously 24 hours a day … and he was overdosing". She said that during this period "he was nasty to all my kids". Later in 1993 the mother and children left him and went to a refuge. This is an especially sad example of the fallout from the Shieldfield "scandal" if the mother's evidence is correct (and I have no reason to doubt it). The husband had himself been abused in care and began drinking because he could not cope with the possibility that his own son had been abused. Things went from bad to worse, the marriage broke up and eventually the husband died in January 2001.

995. Given this very distressing background, it is worthy of note that Dr Steele recorded her thoughts as follows on 12 August 1993: "I have little doubt that [Child 27] has suffered sexual abuse whilst in the care of the male nursery worker under investigation despite the lack of clear physical signs". It is unfortunate that she should have leapt to such a conclusion without taking full account of the other seriously disturbing features of the child's life that could account for the symptoms on which she based her judgment. She actually went on to say, "However, it is difficult to assess how much of his behaviour is due to this and how much is due to considerable problems within his family". The Defendants are now prepared to acknowledge that one explanation for Child 27's behaviour might be the family situation, but they draw attention to the possibility that children with problem families are targeted by paedophiles who hope that unusual behaviour will be put down to the domestic situation. In this case, however, the bulk of those problems post-dated the Claimants' suspensions from Shieldfield and the explanation thus carries little conviction. Indeed, the boy had left the Red Room six months before that. His father's drinking and violence largely stemmed from the sex abuse allegations.

996. We all watched the video interview with Child 27 on 11 April in the presence of Professors Bruck and Friedrich and Dr Cameron. It yielded nothing at all. Professor Bruck described the boy as "catatonic" for a large part of the interview. Julie Kinghorn was supposed to be the interviewer but she handed over to the mother until she re-entered the room and terminated the process altogether. She explained that she was doing so because the stage had been reached where he was simply saying "yes" to everything he was asked. So far as I have observed, that is the only example of a police officer recognising this hazard and acting on it. It illustrates, of course, the fundamental difficulty about the Shieldfield interviews as a whole. How is one supposed to distinguish between a genuine allegation and a child saying "yes" for the sake of a quiet life? The short answer is that in the absence of corroboration one cannot.

Child 28

997. Child 28 was born on 25 February 1991 and joined Shieldfield in June 1992. She first entered the Baby Room and joined the Red Room in January 1993. She left the Nursery finally on 29 July 1994. Her parents both gave evidence on 25 March. The mother told me that she had settled in well after about two weeks in the Baby Room but shortly after going into the Red Room she became "clingy".

998. The first symptom she noticed was sleep disturbance; she wanted to come into her parents' bed. But this she placed in mid-1993. She also noticed masturbation and Child 28 from time to time was observed trying to insert beads from one of her games into her vagina. Other behavioural factors referred to were aggression and excessive wetting.

999. There is no video-taped interview in the case of Child 28 and I am left therefore with behaviour and statements as reported by others. It is necessary to be cautious in both these categories of evidence as to when things occurred and whether there were other aspects of the child's circumstances at the relevant times to contribute to them.

1000. The mother was quite agitated and anxious in giving her evidence. This unfortunate history has clearly had a considerable impact on her, as it has in various ways on most of the parents. Understandably so. Two of her suggestions from the witness box suggest that these anxieties may have taken their toll in distorting her perceptions. First, she alleged that Mr Lillie and Miss Reed used to tranquillise her daughter for the purpose of sexual abuse and, indeed, that there were times when she noticed that she was still tranquillised when she picked her up from the Nursery (although she appears to have done nothing about it at the time). She referred also to a reluctance to go in a bath in February 1995, and this she attributes to Mr Lillie and Miss Reed having given her cold baths to rouse her from the effects of their tranquillisers.

1001. The second particularly striking suggestion, when she was being asked about the Red Room Day Books, was that they are simply not to be relied upon because they are later forgeries. The implication seems to be that Dawn Reed wrote them up after her suspension either for the first time or as substitutes for the originals. Either way this highly unlikely scenario would require the active co-operation of other members of staff in the wake of the suspensions. I can give no weight at all to this proposition.

1002. This is a case in which worrying "disclosures" from the child were made much later which are now relied upon as accurate. It is necessary to approach them with caution as some of them seem to have been triggered by therapy. This was because of a referral by Dr San Lazaro on 18 October 1994 – for the very reason that the child had made no allegations. As the Cleveland Report makes clear, such material can often be misleading. In March 1995, for example, the child referred to being kicked downstairs by "Daddy". This is two years after the suspensions. It is suggested that it cannot relate to the child's father, and is in that respect unreliable. I am quite prepared to accept that. But I do not see why I should convert it into an allegation about Mr Lillie. If the statement is unreliable, it cannot be given weight for any purpose.

1003. It is important to have regard to such contemporaneous material as remains available. On 13 October 1994 the mother's account was that Child 28 had enjoyed attending Nursery throughout. She also recorded that there was only one aspect of her behaviour that caused her concern while she was in the Red Room and that was masturbation. What she now says is that there were "so many symptoms". She relates how the child became clingy and distressed after going into the Red Room, but that was not the contemporaneous account.

1004. The medical findings were explored on 16 May with Dr San Lazaro. She was examined in October 1994 (some 18 months after Christopher Lillie was suspended). She appeared to have recorded a complete linear scar at the 5 o'clock position, but went on to attribute what she saw to a "previous transection". She said it was "well healed" and that "in months to come it will probably not be visible". There is a degree of subjective interpretation about this, as to which I have to be wary in respect of Dr San Lazaro. She would know of the lapse of time since the child had last been in contact with Mr Lillie and Miss Reed. This could well have played a part in her deciding that what she was looking at was a "well healed" scar.

1005. I have to be particularly cautious in the light of her claim that it would probably in future not be visible. Miss Page put to her that a complete transection would never heal to obscurity. This was on the instructions of Dr Watkeys. Dr San Lazaro would not give a straight answer. She said, first, "I believe that certain types of injuries to the hymen can heal to obscurity" but was pressed further and was prepared to say, " I think that a complete transection in a pre-pubescent girl can heal to disappearance". In so far as Dr Watkeys differs on that important proposition, I prefer without hesitation the evidence of Dr Watkeys. The possibility thus begins to emerge that what Dr San Lazaro actually saw was not evidence of transection at all, nor a scar, but a natural linear indentation.

1006. The holistic approach led Dr San Lazaro to assert boldly that Child 28 had unequivocal signs of penetration to the hymen; that a considerable time had elapsed since the incident; and that there was no suggestion of ongoing trauma to her. The whole description is coloured by her assumption that the child had been penetrated by Christopher Lillie at least 18 months earlier. In other words, she starts off with the presumption of what her evidence is adduced to prove. Even Dr San Lazaro accepted that it is impossible to age any lesion and that the timing of a penetrative injury would have to depend on history rather than clinical findings.

1007. She readily concluded in her "Medical Evaluation and Opinion" that there had been "gross exposure to multiple abusers". This was four months after Mr Lillie and Miss Reed had been acquitted of the criminal charges. There was a total lack of professional objectivity.

Child 29

1008. Child 29 was born on 13 March 1990. She began at Shieldfield in the Baby Room on 19 March 1992 and moved to the Red Room in the care of Mr Lillie and Miss Reed on 19 June 1992. She left at just under three years of age on 26 February 1993 for financial reasons. There was no oral disclosure of sexual abuse on her part and no video interview. The matters relied upon by the Defendants relate mainly to behaviour.

1009. She was examined by Dr San Lazaro on 26 October 1993, who found nothing diagnostic of sexual abuse. There was, however, at the 5 o'clock position some degree of hymenal distortion, together with thickening, adhesions and altered vascularity. Dr San Lazaro considered the possibility of these findings relating to something congenital but thought that past trauma was the more likely explanation. The reason the child's mother was given for this was a non-medical one, namely that Child 29 had been under the care of Mr Lillie and Miss Reed. This provides a further clear warning about Dr San Lazaro's objectivity. Dr Ward pointed out that a report by Berenson in the American Journal of Obstetrics and Gynaecology, 2000, 182: 820-834, has suggested that notches and altered vascularity are no more common in abused that in non-abused children.

1010. The mother of Child 29 gave evidence on 25 March. (By coincidence she also happens to be stepmother to Child 18.) Miss Page in cross-examination invited her to consider the fact that in October 1992 her partner had moved in to live with them and that, for the first time, Child 29 found herself (aged two and a half) having to share her mother's attention with someone else. The child within a couple of days showed aversion to the partner. The mother admitted that she originally put this down to natural jealousy. She may well have been right to do so.

1011. One of the main behavioural symptoms relied upon was regression in bladder control. There was regular daytime wetting and also at night. This was challenged by Miss Page by reference to the Red Room Day Book. As in some other cases, this mother would not accept these as an accurate record and she preferred her own recollection that the day time wetting became a regular feature in the Red Room, and it required her to supply extra pairs of knickers. It was virtually an everyday occurrence, she believed.

1012. She went so far as to suggest that Christopher Lillie had written the records up after her daughter's departure (presumably therefore at some point between 26 February and 16 April 1993). The theory presumably is that, in order to disguise what he must have known were symptoms of his abuse of Child 29, he deliberately wrote a false record to downplay the wetting. That is altogether fanciful. It would have been difficult to achieve without the connivance of management at the Nursery and, in any event, it does not accord with the general pattern of Day Book entries, whereby neither Christopher Lillie nor Dawn Reed was reticent about entering details of wetting and the need for changed clothes.

1013. Miss Page also suggested that hindsight had influenced her thinking on the matter. The mother told me that she had been on courses about child abuse over the intervening years in order to be able to offer her daughter support. That is, of course, one factor that could have enabled her to attach a different significance to earlier patterns of behaviour. Miss Page drew attention to another contemporaneous record, namely the notes of a meeting with Kulvinder Chohan dated 4 November 1993 when she had actually told her that Child 29 had liked her time at Shieldfield and, indeed, on some occasions had proved reluctant to leave. She talked in a positive way about Mr Lillie and Miss Reed after she had left, and on one occasion actually went back to pay them a visit.

1014. Another aspect of the child's behaviour thought to be significant is that she came to show a fear of clowns. Her mother said that she had been to a circus in April or May 1992 when she had seen clowns without any adverse reaction. But, later that year, it seems she developed a phobia which meant that she would not go near them. It is difficult to assess this, since one has no idea how often or in what circumstances the child would have encountered clowns. It is a recurring theme in this case, and so far as some children are concerned it seemed to focus on what happened at Child 22's birthday party in November 1992. So far as I am aware, however, Child 29 did not attend. There was an occasion when she said that Chris had "put a clown to the window" but it conveys nothing significant to me or, so far as I can gather, to her mother or anyone else. In these circumstances, I cannot draw any inference adverse to Mr Lillie. There is no evidence that he ever dressed as a clown, still less that he did so in circumstances involving abuse. The mother attached significance to this issue because Dr San Lazaro told her that other Shieldfield children had similar fears. Once again, Dr San Lazaro is stepping outside her purely professional role and contributing to the general dynamic of the Shieldfield "scandal".

1015. Child 29 is also said to have developed an aversion to men in beards and was frightened at Santa's grotto in 1992. Her mother was under the impression that Mr Lillie had dressed up as Santa Claus for Christmas 1992. Others too have spoken of children being frightened of Santa Claus at various stages. This may be connected with the fact that some press coverage referred to Mr Lillie dressing up as Santa Claus or included photographs of someone dressed up as Santa Claus under the false impression that they were of him. In fact, he never did so. She also said that there was some point (presumably between June 1992 and February 1993) when Mr Lillie grew a beard. I am not aware of any other evidence about this. In any event, none of this takes matters any further so far as sexual abuse is concerned.

1016. Reference was made to Child 29 having drawn children with sellotape over their mouths. Her mother was asked what significance she attached to this in the context of the present case. She did not attach any significance to it. Accordingly, I do not propose to do so either.

1017. Apparently, on 8 February 1994, a psychotherapist called Dr McArdle expressed the view that Child 29 might have been physically assaulted rather than sexually. She had at some stage alleged that Miss Reed had smacked her. This does not square with the account given to Kulvinder Chohan as to the child having enjoyed her time at the Nursery and being keen to go back. In any case, it is quite apparent to me that it would be contrary to Miss Reed's nature to smack or hurt a child. She told me on several occasions, with some feeling, that she had never smacked a child. I believe her. Moreover, it was so contrary to the practice and culture at the Nursery that I do not believe it would have gone unnoticed. None of her colleagues has suggested anything violent in her behaviour towards children. Indeed, the picture I have from the evidence is that she was a very calm even-tempered person.

1018. Other familiar Shieldfield themes were mentioned in the case of Child 29 too. There was a strong dislike of lifts, for example. Whereas the child had got into a lift without any trouble when she was two and a half years old (which would be September 1992), her mother later had to drag her into a lift to get her to the dentist. I have to ask myself whether it is more rational to explain this by positing that she had been taken by Mr Lillie and Miss Reed to some unidentified block of flats for sexual abuse, and acquired her dislike of lifts for that reason (on an unspecified date or dates between September

1992 and February 1993), or by concluding that she did not want to go to the dentist. In the state of the evidence before me, I would think the latter the more plausible explanation. But what matters is that her fear of lifts, taken by itself, does not provide me with evidence of sexual abuse against either of the Claimants.

1019. Yet again, the subject of injections cropped up. Child 29 is said to have a fear of injections. When she was given a pre-school booster at the age of four (i.e. some time after March 1994) she "flipped". Again, however, this does not provide me with evidence of sexual abuse in itself. If there were evidence, in other cases, of the Claimants injecting children to facilitate sexual abuse, it would be easier to infer something comparably sinister for Child 29. But the scenario has simply not been proved. I was told by Dr Cameron that it is commonplace in young children to react strongly against needles, syringes and injections. He also told me that there are valium-based drugs which can be used to enable a doctor (or indeed anyone else) to carry out painful or intrusive procedures on patients without their being aware of it, at the time or later. He entered the important caveat, however, that the administration of such drugs requires skill and, what is more, it would very difficult to use such drugs in the case of a small child because the dose would be so difficult to judge. Either it would be too low, and would have no effect, or too high and the child might die. This evidence was unchallenged. Such drugs could only be available over the counter on prescription or, presumably, from some illicit source. Police inquiries threw up not a scintilla of evidence to support this sinister hypothesis.

Child 30

1020. Child 30 was born on 26 September 1990. He began at Shieldfield at under two and a half years of age in January 1993. He was in the joint care of Mr Lillie and Miss Reed until the suspensions. He left the Nursery altogether in January 1994. I understand that he normally attended no more than one day a week. He usually attended roughly from 9.30 a.m. to 2.30 or 3.30 p.m. Miss Page put to the mother that he attended nine such sessions only prior to Mr Lillie's suspension when he was present, and she did not demur. Those dates were as follows: 11, 18, 25 January ; 1 and 15 February; 15, 22 and 29 March; 5 April 1993.

1021. When examined by Dr San Lazaro on 11 June 1993 she found nothing diagnostic of sexual abuse. Such anal characteristics as she found were non-specific (flattening of the skin folds and pigmentation). Dr Ward, therefore, emphasised that it was important to take account of the whole picture. She, together with Professor Friedrich and Dr Hewitt, consider that his sexualised and self-injurious behaviour do point to a probability of sexual abuse in the Red Room.

1022. Here is another child who is said (like Child 10 and Child 22) to have been tied up and had knives put in his bottom. It was also suggested (to his mother on 31 October 1993) that "they" poked his eyes with their fingers and banged his head with both hands. Doing something to the eyes is an allegation raised also in connection with Child 7. I was told that two of the mothers with whom Dr San Lazaro was in regular telephone contact were those of Child 7 and Child 30 (see paragraph 670 above). Whether there is any connection I have no idea, but it is clear that unfortunately Dr San Lazaro was not averse to passing on allegations between parents (see e.g. Child 29). The mother has a diary entry for 11 July 1993 to the effect that Dr San Lazaro had phoned and "no bones about it – something has happened".

1023. Child 30 was interviewed on 28 July 1993 (shortly after the arrests in respect of Child 23). There was nothing revealed about Mr Lillie or Miss Reed. He was even contradictory as to whether he recalled them at all, although it would be surprising if he had forgotten them altogether after three months. He declined to say that "Chris" had ever done anything "nasty" or that he "didn't like". When he was asked if he liked "Chris" at one point, he said "no". But it appeared that he did not like his current teacher (Catherine) either. The interview amounts to precisely nothing.

1024. In November 1993, he said he had been locked in cupboards, and mentioned a white ambulance and a bed being cranked up. Mr Bishop suggested in cross-examination that perhaps there had been a hospital bed, capable of adjustment, on the floor above the Shieldfield Nursery but that led nowhere. It may conceivably be relevant that Dr San Lazaro has an adjustable bed for examinations in the Lindisfarne suite. She described this in her evidence on 13 May. Of course, I cannot conclude that this is what the child had in mind, but it is at least something from his direct experience rather than deriving from a speculative scenario.

1025. On 30 November 1993, a number of striking allegations were made to his mother, including that "Chris and Dawn go like a fish". He claimed to have blown a raspberry on Mr Lillie's private parts. That is clearly a potentially important allegation. He is also said to have "proffered" his bottom to his mother (a phrase used by Professor Friedrich in relation to Child 1). That is much less specific and any significance it may have depends so much on context (as with Child 1). There was apparently an occasion when his mother threatened to spank him and he backed away with the words, "No, no smacking bum, bum" – I do not find that either surprising or sinister. Marion Harris was told about this by the mother on 22 June 1993.

1026. There are other troubling behaviour traits, in particular an unusual focus on his own genitals including apparently smacking himself in that region. He is also said to have put his finger in his brother's bottom and to have reported crayons being inserted in his own anus. However equivocal some of the other children's behaviour may have been, this child does appear to have been exhibiting behaviour that can be described as "sexualised". Dr Hewitt described the quality of the behaviours she had seen as "significant and atypical".

1027. His mother gave evidence on 25 April. She was asked about Child 32 whose mother had been a friend of hers at that time. This was because Child 30 mentioned that child as having been present when he was taken somewhere in a white ambulance. He said that "they" hurt Child 32. In testing the plausibility of any such scenario, Miss Page pointed out that the two children overlapped in the Red Room only on 15, 22 and 29 March and on 5 April. If there were any opportunity for them both to be taken out by Mr Lillie in a white ambulance (an inherently unlikely occurrence in any case), it would have to have occurred on one of those days. There is nothing to corroborate it whatever. It is, however, necessary to bear in mind that the two children did spend a good deal more time together after the suspensions (during the time Newcastle had become a "rumour mill", as it was put to Professor Barker on 17 May). By now, the phenomenon is familiar of children "disclosing" stories involving their current or most recent companions but not necessarily grounded in reality.

1028. The mother of Child 30 was one of those who were told by Dr San Lazaro that her son had a streptococcal infection that was very rarely found. There is no reason whatever to suppose that it was indicative of sexual transmission. Apparently Dr San Lazaro did not tell her that it was, but instead of putting her mind at rest she left the information hanging in the air as a source of anxiety. Moreover, in January 1996 the mother was clearly linking the infection with abuse at Shieldfield in the course of her interviews with the Review Team. She said that he had suffered physically from a bleeding bottom as well as a lot of stress.

1029. It is perhaps also relevant to note that Child 30 had been attached to Christopher Lillie and tended to call him "Daddy", as he did most men with whom he came into contact.

1030. The mother said she was aware of the possibility of sexual abuse, not least through having done a certificate of education herself. She regarded the extent and nature of her son's unusual behaviours as indicative of some form of trauma. An example she gave is of going on a holiday in the Lake District in April 1993 when the child checked in all the cupboards. There was also a later incident recorded in her personal notes in June 1993 when the child was upset at a story in which a bear was shut in a

cupboard. I do not find it possible, however, to conclude from these incidents that they show that Dawn Reed had shut him in a cupboard as part of a pattern of abuse.

1031. The child also reacted adversely on different occasions to the noise from a fizzy drinks machine and from a pneumatic drill. Not in itself significant, but I believe I am being asked to infer that this is consistent with one or other of the Claimants having used a vibrator in his presence. There is no conceivable evidential basis for doing so.

1032. Like other parents, this mother went through great stress and anxiety during 1993 and later. It is entirely understandable. She recorded as much in her diary, for example on 28 July 1993. It seems that little was done to put her mind at rest. On the contrary, there was a general tendency towards raising awareness of child abuse. By 21 October 1993, she was meeting Marietta Higgs through a parent from the Jason Dabbs nursery. In 1995 she attended the Nursery Crimes Conference addressed by Mrs Saradjian.

1033. There was a sore anus on 14 September 1993. There was a reference by the child to a knife in the bottom. As experts have pointed out, however, children at that age may describe a soreness in the bottom as being like a knife. The expression is not necessarily to be taken literally. Miss Page pointed out that it appeared that he might have been suffering from worms at the time. There was also a reference to knives on 29 October 1993.

Child 31

1034. Child 31 is the youngest of the children, having been born on 7 September 1992. She attended in the Baby Room, two days a week, from the age of five months until she was eighteen months old. Because of her immaturity, there is virtually no verbal disclosure and certainly no video interview. The evidence relied upon is partly behavioural and partly medical findings, the significance of which was fundamentally disputed by the experts. When Christopher Lillie was suspended, she was just over six months old. Because she was in the Baby Room neither Mr Lillie nor Miss Reed has any recollection of her.

1035. Child 31's mother was the first parent to give evidence, having been interposed in the course of the Claimants' case on 28 January. There is no doubt that she has believed for many years that her child was subjected to penetrative abuse by Christopher Lillie on one or more occasions during the first year of life. It takes little imagination to envisage the strong feelings that such a belief must have engendered. Her evidence, however, did not betray this in any way. She was calm, dignified and clear. What she had to say was primarily relevant to the behavioural changes she noticed in the child, but there was also the negative evidence to the effect that she knew of no opportunity for her to have been abused over the relevant period other than at the Nursery.

1036. One of the puzzling features about this case is that all seemed well until about September or October 1993, when she returned to Shieldfield after an extended holiday in Central America over the Summer. There was sleep disturbance and at least one bad nightmare. There were also cries during her sleep. Two weeks after her return to Shieldfield, there was also noticed aggression and bad temper. There had apparently, however, been no cause for concern prior to Mr Lillie's suspension in April nor in the six months following (equivalent to fifty per cent of her life). It is possible, of course, that the return to Shieldfield sparked memories of earlier abuse in that environment which had hitherto been suppressed. But it is impossible to conclude that this was in fact the case. It involves speculation or theorising on incomplete information. It is one of those cases where I am invited to see the symptoms in a wider context. If there were an established pattern, or even perhaps one proved instance, of Mr Lillie trying to penetrate babies, then it might be argued that they are likely to be attributable to that same perversion. In the absence of such evidence, however, one has to focus on the case in hand.

1037. Central to the Defendants' case are the medical findings. Dr San Lazaro and Dr Ward are of the view that these reveal evidence diagnostic of penetrative abuse.

1038. The child was examined on 15 October 1993. Dr San Lazaro recorded a thickened, wide hymenal orifice with deep disruptions at the 3 and 9 o'clock positions. Miss Page drew her attention, however, to the drawing which did not appear to be showing deep tears – nor was it labelled with a description. The witness was asked, therefore, whether she would interpret it as showing notches, clefts, indentations or partial tears. In particular, one has to have in mind that there is sometimes a tendency in features which are congenital to find a natural symmetry. That is so, for example, with hymenal bands. Where symmetrical features appear, the possibility of something congenital should at least be addressed. Dr San Lazaro admitted, not surprisingly, that she could not remember how representative the drawing of her findings actually was.

1039. There was another sketch which the witness said must have been a "practice" drawing. She believes that she was trying to see how best she could define what she had seen. She added, "This is a child who has the oestrogen effect on the hymen and I think it must have been terribly difficult to draw". She agreed that Miss Page was correct when she put to her that all that one could gather, combining all this together, was that there were present disruptions at 3 and 9 o'clock which were neither such as to reach the base of the hymen nor in the posterior portion.

1040. She put quite clearly to Dr San Lazaro that there simply was no indication of penetrating injury. She accepted that it was difficult:

> "Children of this age have maternal oestrogen on board. The hymen at this age is frilly. It does have redundant tissue around it… It can have the *appearance* of having tears in it" (emphasis added).

1041. The witness added that she was sure that she would have taken care to establish that they were indeed disruptions because it was not something she would want to believe. On the other hand, she acknowledged that it is usually quite difficult to look into the hymenal orifice and to examine such small babies "because of the amount of tissue around".

1042. Dr Watkeys, on the other hand, is prepared to conclude as follows:

> "I would have said that these findings were completely normal for a girl of this age, with two normal indentations which do not reach the base of the hymen. The thickening may be due to the persistence of oestrogens. Therefore it would be my opinion there is no indication here of penetrative injury".

1043. It is therefore clear that the medical evidence is to say the least equivocal, giving rise to opportunities for genuine difference of expert opinion as to their significance. The case provides just one illustration of how little is really known about this tiny and variable membrane. Because of the oestrogen factor, it tends to be fleshy and more difficult to assess in children of this very young age.

1044. Returning, therefore, to the behavioural evidence, I need to take account of the comments of Dr Sandra Hewitt:

> "Something very powerful and dysregulating has happened to disrupt her emotional homeostasis. She regulates when away on a family holiday but returns to anger, fear, and disruption when she is back at Shieldfield. This type of disturbance is not common, nor is it random. It is a classic response

> of a child who is very fearful. Child 31 displays multiple signs of Traumatic Stress Behaviours, clearly indicating that she is experiencing some form of trauma. The primary adverse response of Child 31 to elements in her environment is to nappy changing. This is coupled with her marked sleep disturbance. Child 31 has suffered some form of trauma during her stay at Shieldfield, the content of which appears to be centred around nappy changing times, bags and strangers. Verbal accounts will be needed to anchor the source of the trauma".

1045. There is in fact no direct or reliable evidence that Mr Lillie changed Child 31's nappy. Nor is there anything to link him with bags. Nor is there any verbal account to "anchor the source of the trauma". Moreover, there is nothing to explain the long gap in time before any behavioural symptoms emerged.

1046. In so far as there is some evidence from other children (Child 6, Child 23 and Child 18) which *could* be interpreted as suggesting that a baby (even a baby with fair hair) was present at a location outside the Nursery I have to discount this. There is no evidence to support the proposition that a baby could have been taken out of the Baby Room and gone missing for an hour or two without any of the staff noticing. However chaotic the administration at Shieldfield was, or may have been, no criticism has been levelled at members of the Baby Room staff. I was told that it was a very high staff/baby ratio (sometimes even one to one). The idea that a baby could have simply gone missing is fanciful. It is equally fanciful to suggest that Mr Lillie and/or Miss Reed could have taken a baby out of the room and abused her in the presence of or with the connivance of any of those staff members.

1047. The Defendants' case therefore must depend upon the abuse having been carried out by Mr Lillie in the Baby Room itself with a stealth comparable to that of Jason Dabbs. Since he was never authorised to carry out the task of nappy changing, this allegation turns upon the fall-back theory of the crayon inserted up the leg of a nappy and/or of elasticated training pants. Of course, if one is determined to find Mr Lillie guilty of causing penetrative injury to Child 31, there are various theoretical means that one can construct whereby this could have been carried out. That is not, however, the process I am engaged upon. I am looking for evidence upon which to conclude that he probably did so. I will return to this theme of elasticated pants shortly when considering the evidence of the Claimants themselves.

1048. I should add that on 21 March the mother of Child 22 claimed that she had seen Christopher Lillie changing nappies a number of times in the Baby Room. I do not accept that as an accurate recollection. It does not accord with the rather strict rules about the handling of babies, and in other respects I have noted that the mother Child 22 cannot be accepted as an "accurate historian".

1049. In therapy, Child 31 referred to "Chris and Dawn" but it is important to note the evidence of Dr Cameron in this context. He described it as "out of the question" that Child 31 could then give a verbal account of any abuse which occurred when she was a baby of no more than six months old. That evidence would surprise no one with even the most cursory knowledge of child development. I accept it.

1050. What this demonstrates, however, is the downside of therapy for supposedly abused children (as recognised in the Cleveland Report). The child can only have acquired the belief that she was abused as a baby from being told about it at a later stage.

9) The evidence called for the Claimants on the abuse issue

1051. Unlike the Review Team, I have had the opportunity to consider the sworn testimony of the two Claimants as to the allegations of abuse, including their cross-examination on behalf of both sets of

Defendants. The criminal proceedings in 1994 never reached the stage when they would have had the opportunity of giving their accounts, and accordingly this is the first time that their case has been heard. The Newcastle Chronicle had reported parents as expressing the wish for Mr Lillie and Miss Reed to be subjected to cross-examination. That has now happened.

1052. It is nowadays to some extent unfashionable to focus on a witness's "demeanour", but there comes a point when the fact-finding tribunal has to decide by some means whether or not particular testimony is or is not credible. It is not always possible to account for such findings by reference solely to logical analysis. Jurors are often told to apply their common sense and general experience of people in coming to their conclusions on the evidence. I must obviously do the same.

1053. Miss Reed was in the witness box for six days (from 18 to 25 January), for most of that time under cross-examination. She was cross-examined by Mr Bishop for over three and a half days, and by Miss Sharp for one and a half days. Much of this exercise was unproductive, as it consisted of "putting" the Defendants' case that she had participated in multiple child abuse, including rape and buggery, whereas her response was that nothing untoward had happened. Miss Sharp isolated four instances of what she described herself on 24 January as "lies" for the purpose of undermining Miss Reed's credibility. It is right that I should address these individually.

1054. First, it was said that she lied during a police interview about whether she had seen Mr Lillie's dog at the Nursery. In fact, he never possessed a dog himself but was often to be seen with a dog called "Ben" belonging to his girlfriend, Lorraine Kelly. He was living in her flat from December 1992 and took her dog for walks. Miss Reed was asked in a police interview whether he had brought the dog to the Shieldfield Nursery. Her reply was that she had not seen it. That is ambiguous, in the sense that it could have meant that she had never seen the dog at all, or merely that she had not seen it at the Nursery. Miss Sharp's suggestion was that it meant the former, and that this must have been a deliberately false answer to the police officers. This was on the basis that she told me she *had* seen the dog - on one occasion only (just outside the Nursery premises).

1055. It was put to Miss Reed that, if she had in 2002 a clear memory of a dog outside the Nursery that was "black, shaggy and overweight", it was odd that she had not mentioned it to the police when she was questioned in 1993. I do not find this point impressive. First, the answer given was ambiguous, and could certainly be reasonably construed as an answer to the actual police question, namely "Has he ever had his dog into the nursery?" Secondly, I cannot see how it would profit Miss Reed to tell the police that she had never seen the dog if, as she told the court in these proceedings, she had seen it once outside. There would be no point.

1056. The second "lie" attributed to Miss Reed related to the circumstances in which Mr Lillie had, on one occasion, taken Child 1 out with him when he was going back to his flat to collect something. According to his evidence, in this court, Mr Lillie was on his way to his flat because he had forgotten some item and simply offered, on the spur of the moment, to take Child 1 with him to settle him down and take him off Miss Reed's hands. But, as Miss Sharp points out, that was not what Miss Reed told the police when questioned in interview on 26 July 1993. She was asked on that occasion whether she would tell the officers if she knew of anything improper that Mr Lillie had done. She replied in the affirmative. She went on to explain, at the officers' invitation, why it would be important for her to do so. She replied by saying, "If something like that had happened, then that person should not be working with children". Yet she did not tell the police that Mr Lillie had taken Child 1 to his home. She had only informed them that, "The only way we could settle him [Child 1] was to take him out for a little walk, and we would take turns the two mornings [Child 1] was there." She further explained that, "Usually we just walked along the shops".

1057. It was suggested by Miss Sharp that if she knew, at that time, that Mr Lillie had taken Child 1 to his home on one occasion, she should have told them. She replied that she thought she had told them.

Miss Sharp then pointed out that when interviewed by two journalists, Mr Webster and Mr Woffinden, in December 1998, she told them that she had no recollection of Mr Lillie taking Child 1 to his home. She was asked, therefore, how it came about that she had no such recollection 1998 but a clear memory in 2002. She thought the explanation might be, on reflection, that she had read it somewhere. Miss Sharp was putting to her that she must have picked the information up years after the event, from the two journalists in 1998, and had *not* been told at the time by Mr Lillie that he was taking Child 1 to his flat (contrary to her evidence in 2002).

1058. It was further suggested that Miss Reed was now backing Mr Lillie's own account (i.e. that he *had* told her where he was going with Child 1 before he left the Nursery) when knowing it to be false. The motive for this, as put by Miss Sharp, would be to protect herself since, as she accepts, if Mr Lillie was guilty of abuse, she would have been bound to know of it.

1059. It is obvious that Miss Reed cannot have been giving an accurate account to the journalists in 1998 and to the court in 2002. Either she remembered Mr Lillie telling her that he was taking Child 1 to his flat, or she did not. Is it more likely that she made a conscious decision to lie to the court in 2002 to back up Mr Lillie's story, or that she took the information on board from her 1998 interview and, by the time she produced her witness statement, had come to believe that it was part of her own knowledge of what had taken place six years earlier?

1060. I think the latter is more likely (especially since she had not read Mr Lillie's statement before going into the witness box). I think Miss Sharp was hitting the nail on the head when she put it to her "… the information that Chris had taken this little boy on his own came from either Mr Webster or Mr Woffinden".

1061. Thirdly, Miss Sharp turned to the subject of Child 23. She had been asked by police (in the July 1993 interview) if she had taken Child 23 out and, if so, whether it would be recorded in the Nursery Day Book. She replied that she could not remember if Child 23 had been taken out of the Nursery (although children certainly were taken out on a regular basis). She did, however, add that she would expect any such outing to be in the book. She had told the police officers that it was the usual practice to fill in the book but that, like any paperwork, it built up and several days might sometimes go by without the record being completed. She could not be sure, therefore, that an outing would have been recorded. Miss Sharp highlighted what appeared to be a difference of emphasis in Miss Reed's evidence before the court. Here, she had not given the impression that outings would routinely be recorded, but rather that an outing would only be mentioned in a Day Book if there was something worthy of note. On the basis of this, Miss Sharp suggested, she had not given a true account to the police in 1993. Miss Reed's answer was, "I answered their questions to the best of my ability".

1062. Miss Sharp was building up towards putting to Miss Reed that she had been pretending to the police that most outings were on the record whereas, in fact, she and Mr Lillie routinely took children out to Mr Lillie's flat, or other unspecified locations, in order to abuse the children, without putting anything in the book. She never quite put it that way, however, and I am not in any event persuaded that the interview will bear that interpretation. After all, nobody has proceeded on the basis that recorded outings were necessarily to be taken as accurately recorded or as reflecting only innocent expeditions. For example, there was a trip to Whitley Bay on 10 February 1993, during which pebbles were gathered for the newly acquired Nursery fish tank. (Incidentally, the City Council disclosed the receipt for the fish tank, which was dated 8 February.) Mr Lillie's unchallenged evidence was that a third member of staff (also called Dawn) had accompanied them. Furthermore, records were disclosed to show that three adults had indeed claimed travel expenses for such a trip. That did not stop Mr Bishop putting that it was merely a cover for abuse and that, because there was drizzle in the area on 10 February 1993, the more likely explanation is that children were taken to an unspecified address near Whitley Bay for child abuse. In those circumstances, I cannot quite see how a calculated lie to the police about record-keeping would have assisted Miss Reed. The police would not have been likely to take Day Book entries at face value any more than was Mr Bishop.

1063. I cannot see how the Review Team can possibly float the rumour about child abuse in Whitley Bay without taking the trouble to find out what the other Dawn (a home carer) had to say about the matter. She needed to be interviewed and asked whether she had disappeared for a time so as to leave an opportunity for Mr Lillie and Miss Reed to go off and abuse the children. Unless they took the trouble to do that, they could not responsibly adopt the stance that the Whitley Bay trip was for purposes of abusing the children concerned without implicating her. Yet that is what they have done. It does not reflect well on them.

1064. The fourth point related to whether or not Miss Reed knew where Mr Lillie lived. The Defendants' case is that the two of them were conducting an unhealthy sexual relationship with each other, and that she had been to his flat in Red Barns (to which he moved with his girlfriend in December 1992) on numerous occasions. Her case (and, for that matter, his) has always been that they were merely working colleagues who did not mix socially, and who had no sexual interest in each other of any kind. According to Miss Reed, she knew no more about his home arrangements, in early 1993, than that he lived with his girlfriend (Lorraine Kelly) somewhere near the nursery. Miss Sharp sought to undermine this account by cross-examining her about another part of her evidence, during which she had said that (after Mr Lillie's suspension in April 1993) she had dropped him off after a party given by one of the staff (called "Ros"). She had dropped Susan Elsdon off first and then Christopher Lillie.

1065. Miss Sharp developed her attack in this way:

> "…It is normal, is it not, whether he asks you for a lift or you offer him one, that one of you will know where you are going? You cannot give him a lift home if you do not know where home is, even approximately?"
>
> Answer: "But I did not need to know where he lived because if he was in the car he would give me directions.
>
> Question: "Quite. But at some point you are going to find out, are you not?
>
> Answer: "Obviously I did, because I dropped him off, yes".

1066. Following this exchange, Miss Sharp went on to suggest that Miss Reed must have deliberately misled the police in July 1993 (only a month or two afterwards), when she told them, "I only know he moved in with his girlfriend round the corner somewhere". Her point was that, if Miss Reed had dropped Mr Lillie off in the vicinity of Red Barns after the party, she would have known by July where he lived.

1067. It is clear to me that the police were not interested in whether Miss Reed had discovered where Mr Lillie was living through dropping him off after a party in the aftermath of his suspension. They were interested to know whether she was telling them the truth in denying that she knew where he lived *before* his suspension. That was when she was supposed to have visited the flat and taken part in orgies of child abuse. In all the circumstances, this seems to me to be a non-point.

1068. What I have to decide is whether any of these four points undermines Miss Reed's credibility with regard to her evidence as a whole. It was put to her by Miss Sharp that these provided instances of "very important pieces of information" in respect of which she had given the police a false account. I have taken some time to go through them because, as I understand it, they represent the high point of the week-long cross-examination to which her evidence was subjected. I do not believe her evidence was undermined in any way by these points. In my judgment, the days of public cross-examination yielded nothing of any significance. I believed Miss Reed's evidence. I feel rather like Mr Hattam, her former trade union representative, who expressed the view so many years before that she was "either innocent or a brilliant liar". I wish to make it clear that I am not deciding this case merely on the basis of standard of proof and saying that I have not been persuaded by the Defendants' evidence.

The position is rather that I found Miss Reed's evidence wholly persuasive. I have no hesitation, therefore, in ruling out Mr Hattam's second alternative.

1069. It is necessary for me to remember also that, if Miss Reed had wished to save her own skin, she was given the opportunity by police officers in 1993. She told me that it was made clear to her by police officers that if she were to, in effect, "dish the dirt" on Christopher Lillie, then the police might well not proceed against her. It had been put a little more indirectly, but the purpose was explained to her by her then solicitor. Her response was that she was simply not prepared to tell lies even if it meant that she too would have to face charges of child abuse. I believe that without a shadow of a doubt. The police must have been conscious of the weakness of the evidence against Mr Lillie, and it would have made all the difference if Miss Reed could fill some of the gaps for them.

1070. As for Mr Lillie, it seemed that during his cross-examination by Mr Bishop there were two points to which the court was invited to attach particular significance. First, a little time was spent viewing a video of Mr Lillie's 27th birthday party in June 1991, when he took the children to the local soft play centre together with various other adults (including parents and staff, although I could not tell exactly how many were present). On the basis of this material, it was suggested that Mr Lillie was over-physical with these children and going beyond the boundaries of propriety. Mr Lillie and one of the mothers, and from time to time some of the children, were rolling about in a large tank of soft balls which were bouncing up and down. From time to time he would grab a child and tip it into the tank and then throw some of the balls at him or her. I did not find this footage helpful in the sense of demonstrating an inclination towards paedophilia.

1071. Another point taken in relation to the video was that there was a credit at the end of the performance, admittedly typed in by Mr Lillie, in which he acknowledged the contribution from "the little darlings of Shieldfield Nursery". Mr Bishop put to him that it was a curious way of referring to young children (and, implicitly, unhealthy). Again, this is not a point which assisted me, one way or the other, in deciding whether to conclude that Mr Lillie was guilty of paedophilia and child abuse. It is more consistent with harmless and light-hearted irony.

1072. A separate point taken by Mr Bishop was that in one of the Day Books Mr Lillie had recorded, on 31 January 1992, in respect of Child 14 that she had arrived at the Nursery in a flimsy garment with see-through sleeves. Mr Bishop put to Mr Lillie that this too was rather an unhealthy comment and that it provided some evidence that he found the child "attractive". Mr Lillie's response was that he was recording the fact in the Day Book because it was 31 January, a very cold day, and the child had arrived unsuitably dressed for the weather. It seems to me that this is a far more plausible explanation than that Mr Lillie was recording in the Day Book, for all to see, his lustful musings about a 3 year old. It is worthy of note that the origin of this rather fanciful suggestion is to be found in the mother's statement to the Review Team after she had seen, or had drawn to her attention, the 31 January entry (implicitly critical of her). She returned to the point in her evidence before me in March. She told me that she remembered the garment still (ten years later). She said that her child was always appropriately dressed and that there was nothing "see through" about the sleeves. The garment had been made specially on a knitting machine. For the reason I have already given, I am unable to attach any sinister significance to this episode.

1073. Mr Lillie was also cross-examined on the subject of nappies and/or elasticated training pants. It was necessary for the Review Team (and at that stage also the Newcastle Chronicle) to prove that he had abused the youngest of the children concerned, namely Child 31. She was a baby and at all material times therefore in the Baby Room. The only reliable evidence is that at Shieldfield the rule was that only Baby Room staff were allowed to perform any of the intimate tasks for the babies, including nappy changing; what is more, a baby could only go out of the Nursery if accompanied by a member of the Baby Room staff. One or two of the children have made reference to a baby being present at some location outside the Nursery, where he or she could have been abused by Christopher Lillie and/or Dawn Reed. But I am quite satisfied that there is no evidence to suggest that either of them

took Child 31 or any other baby out of the Nursery at all – let alone without any member of the Baby Room staff accompanying.

1074. Mr Lillie accepted on 28 January, at the beginning of his cross-examination, that he did go into the Baby Room not only to collect or deposit toys but also to bring in the tea trolley and to talk to staff, but he denied that he would pick up or "handle" babies while he was there. It was put to him on 4 February that he had sometimes covered for other staff at lunch times. He said he did not recall having done this but, if he had, he could have "handled" babies on that temporary footing.

1075. Maria Buck did not give oral evidence, but I was asked to read parts of her witness statement. In this context, she said that he came into the Baby Room sometimes when it was not "necessary" to do so. He was told by Carol Welsh and Susan Elsdon (neither of whom attended as witnesses) that he was not supposed to do this. She added:

> "He would also pick up the babies and handle them, even though he must have known that this was technically forbidden. I do not recall that he just grabbed a child at random. We were always told that we might pick up a child who was indicating that it wanted to be held, for instance if the child had its arms out to us. I cannot recall how long he would stay in the room on these occasions, but I cannot think that it would be too long because to do so would interfere with our work".

This appears, to some extent at least, consistent with what Mr Lillie accepted on 28 January:

> "I would pick up the toddlers if they were next to the door or if they held their hands out as I walked into the room, wanting to be picked up. I would not go in and pick up a baby".

1076. He was asked by Mr Bishop why he could not just have pushed a child to prevent it getting out of the room – rather than picking them up. He replied that it was "just a natural thing to do". He added, "If a child is next to the door, you pick them up to carry them into the room".

1077. The Review Team had to come up with a scenario that would have enabled Mr Lillie to cause penetrative abuse without being spotted. What was put to the Claimants was that Mr Lillie would have been able to take a crayon and go in to the Baby Room and, if not actually able to change Child 31, he would then have slid the crayon up the side of her nappy or elasticated pants, while no one was looking. He was asked "… the elasticated leg is very easy to put your hand up, is it not?" He could thus have achieved penetrative injury by means of a perverted variant of keyhole surgery. It was this suggestion that led Miss Reed to comment that she would never have envisaged anyone doing some of the things alleged against them in this case unless she had read of them in the Defendants' pleaded case. This was clearly one of those allegations she merely thought "sick".

1078. The Review Team's approach would seem to be that the Jason Dabbs case opened everyone's eyes to the possibilities of abuse in the nursery environment and that the Nursery staff were just complacent in thinking that lightning could not strike twice. No doubt the training pants scenario is physically possible, given a crayon of suitable length and flexibility, but I need not to lose sight of certain guiding principles (especially having regard to Lord Nicholls' exposition in *Re H*). First, there is an elementary distinction between what is likely or probable and that which is merely physically possible. Secondly, the more serious (or, for that matter, the more fanciful) an hypothesis, the more compelling the evidence required to support it. Here there is *no* evidence that Mr Lillie or Miss Reed did this perverted act, and they have both denied it under cross-examination. The inference is invited, I suppose, from two facts alleged: (1) that Dr San Lazaro claimed to have found evidence of penetrative abuse to Child 31, and (2) that Mr Lillie has a propensity for using crayons to achieve penetration. (That is itself is controversial, however, and first surfaces in Child 23's video interview of 12 July

1993, which I consider elsewhere.) Suffice to say that cross-examination on this front made no inroads.

1079. It is interesting that, although on page 269 of the Report the Team chose to assert that Mr Lillie's explanation with regard to the photographs taken from his home "was probably false", this was not put in cross-examination. This is probably because the Team (and Mr Bishop) actually knew that the police had found nothing untoward about them. They had been told as much on 22 January 1997 by Detective Inspector Findlay. It is, therefore, striking that they sought to bolster their conclusions in the Report by this gratuitous remark (based on nothing). It is just an example of an unsupported smear. It is based on no weighing or analysis of conflicting evidence. There was none disclosed on the face of the Report. Nor did any of the Review Team give evidence that any meaningful analysis had been carried out behind the scenes.

1080. There was another factor placed right in the forefront of Mr Bishop's closing submissions, and to that I must now turn. Miss Reed explained how during the car journey from Ros's party in April or early May 1993 Mr Lillie had told her something of the allegations he was then facing. These related at that stage to Child 22. According to Miss Reed's recollection, he told her that he was being accused of using a crayon on the child. That was not part of the case against him so far as Child 22 was concerned. It would, therefore, be an odd story for him to pass on to Miss Reed. Nonetheless, she did confirm (on 23 January) that this was indeed what he had told her. Mr Bishop regards this as a "dead giveaway". He said it marked Mr Lillie out as "the man who knew too much". He drew the analogy of the suspect husband whose wife's body has just been found in the woods, and he says to the police "but I have never been to Sherwood Forest" – when no one has mentioned Sherwood Forest. There was no reason for Mr Lillie to mention crayons to Miss Reed if that formed no part of the Child 22 allegations. So why should Miss Reed have been persuaded that he did?

1081. Miss Page referred to Child 23 as the "index child" for Miss Reed. She was the first child in respect of whom Miss Reed was tackled by the police. Child 23 was, of course, the one who mentioned a crayon in her police interview in July. This is a possible explanation for the prominence of crayons in Miss Reed's mind from then on in the context of child abuse. Miss Page suggests that it simply transferred itself, in her mental process, from her first police allegations to Mr Lillie's. It seems to me a possible explanation, and at least as likely as Mr Lillie introducing it by mistake in his account of Child 22's allegations when relating them to Miss Reed. I need to have in mind too the Defendants' overall case. On their version of events, the conversation could hardly have gone as suggested, since Miss Reed was fully implicated. The version of the conversation for which they now contend would not have been at all plausible between two paedophiles who were on their own and knew that they had been caught out.

1082. Mr Bishop referred to Mr Lillie having told lies in the course of his evidence, for which there can be no other explanation (he submits) than that he was trying to cover up his child abuse. First, he denied that his sisters had been taken into care (as alleged by Child 14's mother) when he eventually had to admit they had (once documents were shown to him). He also denied any knowledge of his being cautioned for a burglary. Mr Bishop argues that he cannot have forgotten the burglary. I agree that it does seem unlikely, unless perhaps he had over the years suppressed the memory. Mr Bishop also placed reliance on the fact that Mr Lillie did not reveal either his conviction for stealing the bicycle or the burglary caution when he applied for his job.

1083. This led to a discussion on the effect of the Rehabilitation of Offenders Act and the various orders made under the statute. It emerged that even in respect of "spent" convictions anyone applying to work with children should disclose. Mr Lillie said that he had not disclosed his conviction when he applied to join the Army, because he had been told there was no need, and he simply took the same course when he applied to work with children. This in itself is rather inconclusive, since I am not sure on the evidence that Mr Lillie necessarily realised that he should disclose. It is, however, necessary to keep a sense of proportion. No one suggests that the theft of a bicycle by a 15 year old, still less a burglary (for which he was cautioned), could be to Mr Lillie's credit. He is now 38 years old, and was

some 10 years younger when the child abuse is alleged to have taken place. I have to ask myself whether the fact that the offences were committed, or his subsequent non-disclosure of them, so redounds to his discredit that I should disbelieve him on his primary evidence about the issues in this case. I must, I believe, give them some weight but what really matters so much more is the impression he made in the witness box. I can only state my own conclusions in the light of the evidence as a whole.

1084. Mr Lillie is a somewhat more taciturn character than Miss Reed. Although calm and by nature somewhat "laid back", he is shy (or was at the time), as he himself admits. He may not be overburdened by "presentation skills" but I found his evidence just as credible as I did in the case of Miss Reed. I have no doubt that positions have been so deeply entrenched over the years that few, if any, of the original protagonists are likely to change their views in the light of anything I say. In fairness, therefore, I wish to state my conclusions in the light of their extensive periods in the witness-box, and indeed of the 74 days of the trial before the evidence finally concluded on 27 May. I am entirely satisfied of Mr Lillie's and Miss Reed's innocence. No doubt others will disagree, but I hope that at least nobody will portray the outcome as turning on a legal technicality.

10) The privilege issues for the Review Team

1085. The primary publication by the Review Team was clearly that in November 1998 to the City Council, which had commissioned it some three years before. The four members of the Team were being remunerated in accordance with contractual arrangements. In those circumstances, Mr Bishop contends that they were under a legal, social and/or moral duty to publish to the Council by whatever was the appropriate channel. Accordingly, this aspect of the qualified privilege argument is one of the more straightforward to resolve. In my judgment, there can be no doubt that there was a *prima facie* privilege for that communication. It arose, however, purely as a matter of contract. I am unable to see, apart from that, how these four individuals were subject to any social or moral duty to publish their Report.

1086. One argument that has been raised on behalf of the Claimants is that in certain respects the Team went beyond the Terms of Reference and, correspondingly, took themselves outside the protection of qualified privilege. In particular, the argument is directed towards the expressed conclusions to the effect that the Claimants had abused children in their care (including those in respect of whom they had been acquitted in July 1994).

1087. I have already referred to the manuscript change to the Terms of Reference made in July 1994, with a view to permitting investigation into the extent of the Claimants' alleged abuse. Leaving aside matters of drafting, however, Mr Bishop submits that it was an inevitable and necessary part of the Review Team's task to come to a conclusion as to whether or not the Claimants had in fact abused any, and if so how many, children. He argues that without such a conclusion the basis of the Report would have been entirely hypothetical and its recommendations worthless. Moreover, the Review Team would not have been addressing the specific complaints made by parents (which was perceived as one of their primary purposes).

1088. Inevitably, reference was made in this context to the words of Lord Diplock in *Horrocks v. Lowe* [1975] A.C. 135,151:

> "Logically it might be said that…. irrelevant matter falls outside the privilege altogether. But if this were so it would involve the application by the court of an objective test of relevance to every part of the defamatory matter published on the privileged occasion: whereas, as everyone knows, ordinary human beings vary in their ability to distinguish that which is logically relevant from that which is not and few, apart from lawyers, have

> had any training which qualifies them to do so. So the protection afforded by the privilege would be illusory if it were lost in respect of any defamatory matter which upon logical analysis could shown to be irrelevant to the fulfilment of the duty or the protection of the right upon which the privilege was founded. As Lord Dunedin pointed out in *Adam v. Ward* [1917] A.C. 309, 326-327 the proper rule as respects irrelevant defamatory matter incorporated in a statement made on a privileged occasion is to treat it as one of the factors to be taken into consideration in deciding whether, in all the circumstances, an inference that the defendant was actuated by express malice can properly be drawn. As regards irrelevant matter the test is not whether it is logically relevant but whether, in all the circumstances, it can be inferred that the defendant either did not believe it to be true or, though believing it to be true, realised that it had nothing to do with the particular duty or interest on which the privilege was based, but nevertheless seized the opportunity to drag in irrelevant defamatory matter to vent his personal spite, or for some other improper motive. Here, too, judges and juries should be slow to draw this inference."

1089. There has sometimes been argument as to whether or not Lord Diplock's remarks at that point in his speech are in fact consistent with those of Lord Dunedin in *Adam v. Ward* [1917] A.C. 309, but for many years that passage has been treated as definitive. Indeed, if and in so far as there is any inconsistency with the earlier House of Lords decision, it would now be necessary to resolve it by reference to the terms and aims of Article 10 of the European Convention on Human Rights. There is little doubt that Lord Diplock's test would be less restrictive (or "chilling") towards freedom of communication. I intend to approach the matter by asking whether any material within the Report that could be characterised as not being "really necessary to the fulfilment of the particular duty or the protection of the particular interest upon which the privilege is founded" provides evidence from which malice could be inferred. It would not be appropriate to regard such material as detracting from the *prima facie* privilege attaching to the Report as a whole or, indeed, as leaving some part or parts of the Report outside its protection.

1090. The traditional approach to malice, at least in the quarter of a century since their Lordships' decision in *Horrocks v. Lowe*, is that it is for the claimant in a libel action to prove the defendant "malicious", in the sense of demonstrating either that he had no honest belief in the words complained of or, at least, that the dominant motive in publishing those words was to damage the claimant's reputation. It was recognised by Lord Diplock that recklessness too had a role to play, as in other areas of law. Thus, malice could be demonstrated if a claimant proved the defendant to have been genuinely indifferent to the truth or falsity of the defamatory allegations.

1091. I am not aware of any example of malice having been found (in a case where the judge or jury concluded that the relevant defendant was honest) simply on the basis that the dominant motive was to injure the claimant. It is, in the light of Lord Diplock's speech, at any rate a theoretical possibility. It may be, however, that it is an increasingly remote one in the light of recent authorities.

1092. It is now clear, for example, in the light of *Albert Cheng v. Paul* [2001] E.M.L.R. 777 that in the context of fair comment the issue of malice requires to be judged solely by the test of honesty; there is no room to find malice on the basis of "dominant motive" in circumstances where a claimant fails to demonstrate that the comment was not made honestly. Moreover, in the specific context of what is often referred to as "*Reynolds* privilege" the concept of malice has receded somewhat into the background. That is because issues formerly thought to be relevant only to malice now come into play at the stage of determining whether there is a *prima facie* case of qualified privilege (in particular, the application of Lord Nicholls' ten non-exhaustive tests: *Reynolds v. Times Newspapers* [2001] 2 A.C. 127, 205). As Lord Phillips M.R. observed in *Loutchansky v. Times Newspapers Ltd* [2002] 1 All E.R. 652 at para. 33:

> "Whereas previously it could be truly said of qualified privilege that it attaches to the occasion of publication rather than the publication, *Reynolds* privilege attaches, if it attaches at all, to the publication itself: it is impossible to conceive of circumstances in which the occasion of publication could be privileged but the article itself not so. Similarly, once *Reynolds* privilege attaches, little scope remains for any subsequent findings of malice. Actual malice in this context has traditionally been recognised to consist either of recklessness, i.e. not believing the statement to be true or being indifferent as to its truth, or of making it with the dominant motive of injuring the claimant. But the publisher's conduct in both regards must inevitably be explored when considering Lord Nicholls' ten factors, i.e. when deciding whether the publication is covered by qualified privilege in the first place…"

A little later (at para. 34), his Lordship added that:

> "It may be doubted, whether in truth there remains room for such a principle as "dominant motive" (malice) in a case of *Reynolds* privilege".

1093. By a parity of reasoning, in the present case, Miss Sharp has argued that there could be little room nowadays for "dominant motive" in the context of statutory qualified privilege, since the underlying policy relates to the public's entitlement to be informed through the media of information within the categories identified by Parliament (specifically in the Defamation Act 1996) as attracting such privilege. Indeed, one could argue convincingly that in such a context the state of mind of the journalist or publisher concerned (being effectively no more than a conduit) is quite irrelevant to the considerations underlying the privilege. Those are matters that might have been more aptly considered in the context of the Chronicle's arguments as to privilege when relaying the contents of the Review Team's Report. But the argument merely provides an illustration of how "dominant motive" appears to be nowadays more of an endangered species of malice than ever.

1094. In the context of the Review Team's publication to the City Council, it seems to me that these theoretical arguments are largely unnecessary. If I come to the conclusion, in the light of the evidence as a whole, that the members of the Review Team were acting in good faith in the compilation of their Report, and that they honestly believed its contents to be true, however imperfect their reasoning processes may have been, then there would be little scope for a finding of malice to defeat the *prima facie* defence of privilege. In any event, if I were to come to the conclusion that their primary purpose was to improve the administration of child nurseries, and other similar institutions, and ultimately the protection of children, there would be no scope in this case for an adverse finding of "dominant motive".

1095. In the light of these considerations, I now turn to consider the Review Team's Terms of Reference.

11) The Review Team's Terms of Reference

1096. No witness had a good word to say about the shifting sands that were supposed to provide the Terms of Reference for the Review Team's independent inquiry into Shieldfield (see paragraph 129 above). Mr Henry Warne with remarkable insouciance described them as "not perfect". But he thought they could be made to work with goodwill and co-operation from all sides. That is sloppy thinking for an experienced lawyer. He did not regard it, however, as his role to amend them "unless strictly necessary". Jennifer Bernard said: "The way in which we were trying to frame the terms of reference did move because we learned from how we phrased things. Questions were raised. Complaints came in. So I am afraid I cannot be certain where we were when I left [April 1997]". Nobody within the City Council appeared to have any responsibility for or control over this critical issue. Even more

worryingly, there is a memorandum of Mr Warne dated 24 July 1996 which appears to suggest that Professor Barker was claiming that he could "adjust" the Review Team's terms of reference himself as they went along. Mr Brian Scott thought them "extremely muddled and confusing… very difficult to follow in many respects". I would certainly endorse that view.

1097. It is right, out of fairness, to explain that although he was at all material times Assistant Head of Legal Services Mr Scott had no direct involvement in the Review Team's inquiry until July 1998. Were it not so, he could clearly be criticised for not expressing his view about the Terms of Reference much earlier. As it is, the person ultimately responsible would appear to be Henry Warne, who was Head of Administration from December 1994 to June 1998. It is certainly true that the Terms of Reference were in draft before he arrived, but there was almost a year in which to focus on their remit before the Review Team began its task.

1098. No one owned up to having drafted them, although the principal candidates put forward were Mr Stephenson (a lawyer who left in 1994) and Mr Hassall who is still employed by the Newcastle City Council. Neither gave evidence. From a purely construction point of view, it matters not. The words must speak for themselves, however opaquely. On the other hand, the intention or understanding of Council employees could be relevant in the malice context. One of the factors prayed in aid by Miss Page is that it should have been obvious to those officers who studied the Review Team's Report, between 6 and 12 November 1998, that the Team had exceeded the terms of reference. Either, therefore, the Report went outside the scope of privilege altogether, or their willingness to publish extraneous defamatory material would provide evidence of bad faith.

1099. There is no doubt that from the time of the criminal trial (8-14 July 1994), or shortly afterwards, it was expressed as a limitation upon the Review Team that they would, at least, not make findings on matters dealt with before the criminal court. Exactly how or why that amendment came about is unclear, but there was in evidence a document dated 11 July 1994 bearing Mr Hassall's name and containing the manuscript amendment that became the final version of Term 1A. Also, there is no doubt that some people within the Council were taking the view that the Team should not "point the finger" (i.e. at whoever was supposed to be responsible for the abuse). This appeared, for example, in an article in the Journal in August 1995 as a statement attributed to Jennifer Bernard: "…the inquiry's brief isn't to look at whether or not children were abused, as the council has already acknowledged that they probably were… We want to make it absolutely sure we have learned all the lessons from what happened". She had no recollection of this and thought the Journal might just have been "journalistic". Henry Warne, Bob Hassall and Jennifer Bernard appear from a memorandum of 7 February 1995 to have had a meeting or discussion in which they seem to have emphasised that the process was "not about reviewing forensic evidence nor determining whether abuse took place or not". This was consistent with the stance taken by Mr Hassall at a meeting of parents on 20 July 1994 where he said that the City Council could not re-run the trial or comment on the guilt or otherwise of the accused.

1100. There is also a memorandum of June 1995 from Mr Hassall addressed to Mr Warne and Ms Bernard to the effect that the Review Team would not be "reviewing the issue of whether abuse occurred, and if so who were the perpetrators". He added that the Review Team would accordingly only need limited overview or access to clinical and forensic notes.

1101. Moreover, as late as May 1997, Professor Barker was claiming in a letter to Mr Lillie's solicitors that they would not be "re-visiting" the criminal trial. That was, of course, consistent with paragraph 1A of the Terms of Reference to the effect that "… the Review cannot make any finding on matters dealt with by the Criminal Court".

1102. It seems that at some stage (possibly as early as July 1994) Ms Bernard had come to a different conclusion. She told me on 1 March:

> "I ….came to the view that it would not be possible [to carry out the Review] without looking at what had actually happened to those children and how those children had expressed it. I had thought, in the beginning, it might be possible (particularly early on – before the criminal trial had not been proceeded with). But I realised that it was not going to be possible, because a core issue for the parents was simply going to have to be ignored".

Yet later in her evidence she appeared to be saying that she only reached that state of mind ("where it became crystallised") at the time when the Review Team asked to see the video interviews (in 1996).

1103. Even more confusingly, Professor Barker was writing to Mr Warne on 19 September 1997 to the effect that the terms of reference "were framed deliberately widely … to allow us to investigate what happened and why". He seems to be saying there that this was a task acknowledged from the outset. If so, I find it difficult to reconcile with his stance in the earlier letter to Mr Lillie's solicitor.

1104. If anyone had properly thought through the implications, it should have been quite obvious that the Team would not be in a position to pronounce *in a public Report* upon the guilt of Christopher Lillie or Dawn Reed of criminal offences, for a number of reasons:

1) The Claimants had been acquitted in respect of 11 specific offences relating to the six indictment children.

2) There was no one legally qualified on the Team.

3) They were sitting in private.

4) There was no framework set up by the Review Team to operate within the well known "Salmon" principles.

5) Neither Christopher Lillie nor Dawn Reed was notified of the "charges" which the Team had taken it upon themselves to investigate.

6) Christopher Lillie and Dawn Reed were not represented or offered any legal assistance.

7) They had no opportunity to cross-examine, challenge or test the evidence relied upon by the Review Team for their conclusions; they did not even know what the evidence was.

8) The Review Team had no power to compel witnesses or documents.

9) The Review Team adopted as a policy the "child protection approach", so that they would not challenge or probe "evidence" from witnesses. As Moira Luccock expressed it on 1 March, "You are not challenging the person. You are actually accepting that they certainly believe what they are telling you, and you have no reason to doubt that as the investigator".

10) This policy even applied to police and social workers (not least because the police had warned them that they had no power to trespass on the area of police complaints, which was governed by statute, and asked them by a letter not to upset PC Helen Foster who had conducted some of the crucial interviews with children).

11) The Review Team had decided to adopt what Ms Jones described as an "impressionistic" approach to the evidence, rather than analysing individual cases of alleged abuse.

1105. Even Ms Bernard appeared to recognise the problem in cross-examination:

> "I have to say this was not primarily set up as a process for considering the guilt or innocence of Christopher Lillie and Dawn Reed. I agree – were that to be the prime purpose, you probably would not start here".

1106. The matter had, however, clearly not been thought through. Miss Page asked whether anyone within the City Council ever addressed the rights of Mr Lillie and Miss Reed at all in setting up the inquiry. This seemed to come as a novel suggestion to Ms Bernard:

> "… there was an intention that they should be treated as fairly as other witnesses in relation to the matters set out. But, if I may add, it was not a review which was set up primarily to determine whether or not Mr Lillie and Miss Reed were guilty of these offences. It was a review set up to deal with complaints and concerns raised by parents, which included matters at the nursery…
>
> The question of their culpability, therefore, I suppose would either have to be assumed (which the City Council had done, on the basis of the disciplinary proceedings it had undertaken) – so I suppose, thinking about your question, the fact that the Review Team had almost in effect re-considered it ….
>
> What I am struggling with, I think, is that … the City Council had started from the perspective that they had dismissed Christopher Lillie and Dawn Reed for gross misconduct, associated with the abuse, and it was on that basis that the Review Team had been set up. So, in a sense, what the Review Team were doing, by considering again the evidential matters, [was] almost having another look at it. So I suppose, in a sense – I had not thought about it in this context before you asked the question – they gave a fresh opportunity to Mr Lillie and Miss Reed's case to be considered. I had not thought about it until you put the question to me".

1107. She added that she knew that they had already had the opportunity to be represented for the disciplinary process, including the appellate procedure, and to challenge their dismissal through the industrial tribunal route. She did not seem to have any grip of the issue. I was not clear whether she was saying that culpability was to be "assumed" or not. It would perhaps, if anything, make more sense than the alternative scenario she appeared to be putting forward; namely, that even though Mr Lillie and Miss Reed had been acquitted of 11 counts at Newcastle Crown Court the Review Team were "almost having another look at it". Surely everyone involved (parents, charge payers, employees and ex-employees) was entitled, at the very least, to have the purposes and methods of the Review Team carefully thought about and defined. Mr Warne should have got a grip. He had long enough to do so and, if he did not have the necessary experience, he could have taken advice from counsel.

1108. Nevertheless, there came a time when minds generally were made up (e.g. Henry Warne's mind for one), so that it became the received wisdom that the Review Team not only could but *should*

investigate the allegations of abuse. That was certainly the case of the Review Team themselves. The explanation given was essentially twofold. First, unless they did so, they would not be able to address or rule upon the parental complaints – some of which directly alleged abuse. Secondly, they could not find out "what went wrong", or make recommendations for the future, unless they were in a position to make findings that abuse had happened.

1109. Despite this major shift in the perception of the Review Team's task, no one thought to revise the terms of reference. In particular, no one thought to abrogate provision 1A of the terms of reference. It seemed just to wither on the vine. (This may be because Henry Warne appeared to think that it had no application anyway: "I therefore took the view that it was open to them to investigate questions, on the question of whether abuse had occurred and, if so, by whom".) Nor did anyone point out that, if they were going to meddle to all intents and purposes in the area of criminal guilt, they would need a wholly different *modus operandi* so as to remove some of the constraints identified above. Mr Warne seemed to suggest in evidence that what was required was "a social services type judgment on the matter" which was "not done according to the rules of criminal law".

1110. In this context, Ms Jones gave some evidence which may be of significance. She said on 15 February that, before she even signed the contract, she had a conversation with Mr Warne in October 1995:

> "I asked him … how we would actually deal with the issue of responding to individual complaints and also producing a public report when those complaints were likely to be about people who had been dismissed but already been declared not guilty in court. So he said that we would need to keep coming back to that and see how we progressed. I think he used the words that we were in "uncharted waters".

1111. Ms Jones had clearly raised a fundamentally important point with Mr Warne. An experienced lawyer should have spotted the difficulty in any event, but even if he was unable to see the wood for the trees the fact remains that the problem was spelt out for him by Ms Jones with stark simplicity. To give the answer he apparently gave her (in effect to see how she got on in "uncharted waters") was utterly hopeless. Much time and money could have been saved (to say nothing of injustice) if the nettle had been grasped at that time.

1112. The Council should clearly have confined the Review Team to addressing any defects in their own systems and procedures or those of the Day Nursery. They should have strictly enforced the provision in the original terms of reference, to the effect that they steer clear of re-opening the issues before the Crown Court and certainly not attempt to address completely new allegations of assault and rape. In so far as parents' individual complaints needed to be addressed, that exercise should have been kept quite separate from conclusions that were to be set out in a public report.

1113. Henry Warne made reference to an earlier inquiry which had taken place into a residential home called Meadowdale. He seemed to think it provided an analogy or precedent for the Shieldfield review. It is fair to say that he did not have a clear recollection of the circumstances, but a crucial difference was that in the Meadowdale report the perpetrators of the abuse were not named in the Report for public consumption. Mr Warne considered that it was a matter for the Review Team's discretion as to whether they publicly condemned Christopher Lillie and Dawn Reed. The only "constraints" would be those of defamation.

1114. As Ms Jones seems to have perceived from the start, they were as a team wholly unsuited and unequipped to make findings of criminal guilt; and yet the City Council launched them on these "uncharted waters" in the most irresponsible manner. The Council has only itself to blame for the mess in which it now finds itself.

1115. Instead of identifying the dangers as the months went past, and restricting the terms of reference, things were allowed to deteriorate.

1116. There was an amendment in September 1996 to enable the Review Team to address matters falling short of actual parental complaints. They were to be able to consider and report on "relevant concerns" raised not only by parents but also by witnesses. This was clearly intended to make a difference and, in particular, to widen the scope of the inquiry, but it introduces further uncertainty. First, it extends the inquiry into matters that concerned parents but which they had not chosen to complain about. Secondly, it enabled even the "concerns" of witnesses to be considered. But, at the same time, the concerns had to be "relevant" to the inquiry. That must mean either "relevant" to the existing inquiry, as defined by the pre-existing terms of reference (including 1A), or it is simply unclear.

1117. The difficulties about the Review Team making findings tantamount to criminal guilt, and in particular with a view to pronouncing their conclusions publicly, should have been obvious from Mr Peter Hunt's Report into the Jason Dabbs affair, since the Team had read it and indeed had consulted Mr Hunt for his advice. He pointed out at para 2.3.5 that he was simply not in a position to make findings as to instances of abuse beyond those admitted by Jason Dabbs through his pleas of guilty. The two main reasons he explains; namely, that the video interviews with child complainants were tainted by leading questions, and that it was not thought appropriate to test or challenge parental evidence. Both these considerations were at least as relevant to the case of Shieldfield. Anyone with an elementary sense of fairness who thought about the matter, and certainly any of the City Council's legal advisers who were asked to consider the terms of reference, should have foreseen the hopelessness of the task.

1118. It is all very well to say that the Review Team's approach was child-centred, or based upon the "child protection" model, but the fact is that those methods are not usually adopted when the intention is to produce a public pronouncement tantamount to findings that offences of indecent assault or rape have been committed. Short of actually depriving them of their liberty, the Review Team's pronouncements had a very similar effect on the Claimants' lives and reputations to that which would have been brought about by criminal convictions – but without being preceded by any of the usual safeguards of the criminal process.

1119. Even if it be said that some of the parental complaints could not be addressed without making findings of assault, or other forms of abuse, it does not follow that such findings had to be made public. The responsibility for dealing with complaints is, in any event, clearly that of the local authority in accordance with the provisions of the Children Act 1989. If the Council wished to contract out the investigative responsibility, it remained its own duty to respond to parents, as Mr Dervin ultimately did. There is no obvious public policy requirement for the Review Team (having no statutory status whatever) to be accorded privilege for making public their views on whether abuse had occurred.

1120. In this context, Miss Page referred to a Home Office circular providing guidance for police officers on the limited circumstances in which it might be appropriate to reveal the identities or whereabouts of *convicted* paedophiles. Given those constraints, she argues, it could hardly be appropriate for (still less the duty of) the City Council (or, for that matter, the Review Team) to broadcast these very serious allegations of multiple abuse against Christopher Lillie and Dawn Reed.

1121. I need to bear in mind, however, that it was Lord Diplock's clear view in *Horrocks v. Lowe* [1975] A.C. 135 that the inclusion of extraneous or irrelevant matter in a publication that was *prima facie* the subject of privilege would go to the issue of malice. It is important, therefore, to focus on what the Review Team's individual states of mind were on the issue of the terms of reference. If they genuinely believed that everything they did was within the terms of reference, however misguidedly, then the inclusion of the extraneous findings would not in itself show malice.

1122. In my judgment they most certainly exceeded their originally expressed terms of reference, which cannot reasonably be construed, in the context of an obligation to make their findings public, as entitling them to make public pronouncements of guilt against individual citizens, in effect, of serious criminal offences (especially, of course, offences in respect of which they had been acquitted in the Crown Court). It would be so fundamentally in conflict with human rights that it would be an unreasonable interpretation. Nonetheless, I believe that the Review Team thought (almost incredibly) that they had the right to do this. This is to a large extent the fault of the City Council in not properly addressing the terms of reference in the first place or, at the very least, not rendering them clear and providing strict limits to publication once it became apparent that they *were* expected to look into individual claims of abuse. It is also partly explicable on the basis of the Review Team's naiveté and lack of judgment. Miss Page submits that I must stick to the objective test and rule that, because the findings of sexual abuse were outside the written Terms of Reference on any reasonable construction, the defence of qualified privilege cannot avail them:

> "Not every infringement or excess of terms of reference would operate to deprive the occasion of publication of the privilege it would otherwise have attracted. However, this was an infringement of a nature and on a scale that fundamentally affected the character of the Report. The Review Team's findings of sexual abuse of children by the Claimants were not incidental or ancillary. The findings completely dominated the Report".

1123. I naturally understand the force of these submissions, but the Team were given to believe by the City Council that the Terms of Reference had in fact been expanded in accordance with Mr Henry Warne's superficial and ill judged view "…that it was open to them to investigate questions, on the question of whether abuse had occurred and, if so, by whom". He was the lawyer. The Review Team were lay persons. Even though this had the consequence that they departed from the restrictions of the *original* terms of reference in a fundamental way, it seems to me that I cannot conclude that they stepped outside the protection of qualified privilege. They were being required to make findings (albeit inconsistently with paragraph 1A) by those who were instructing and paying them to carry out the Review. The terms had, in effect, been changed.

1124. An argument raised at one stage was that the restriction imposed by paragraph 1A was not intended to prevent findings or comments upon the Claimants' "guilt" (despite what Mr Hassall, for example, was saying in July 1994 and June 1995). The suggestion was made that its purpose was the very narrow one of stopping any challenge to the Judge's ruling under the Criminal Justice Act 1988. This seems to me to be quite untenable. It could not conceivably have been within the remit of this Team to re-open issues of admissibility already dealt with by a court. There would be no occasion for them to do so. The matter had been finally disposed of; nor did they have any *locus* or qualifications to act in a quasi-appellate capacity. It cannot, therefore, have been in anyone's contemplation that they would do so when the restriction was drafted in or about July 1994 and put in the forefront of the Terms of Reference. The only reasonable interpretation is that apparently adopted by Mr Hassall at the parents' meeting in July 1994 and by him, together with Mr Warne and Ms Bernard, on 7 February 1995.

1125. The Team clearly felt frustrated by even the very loose constraints imposed upon them by the Council, but went along with them for reasons explained at page 19 of the Report:

> "… for legal reasons we were advised that the processes, determined by the City Council prior to our appointment, had to be followed, as they were a guarantee of both natural justice for all those involved, and the independence of the Review Team".

1126. As will shortly emerge, any claim to have accorded Christopher Lillie or Dawn Reed "natural justice" in the course of this inquiry has no contact with reality. I cannot believe that the Review Team knew what is meant by the principles of natural justice and they badly needed guidance. To have let them

loose "on the question of whether abuse had occurred and, if so, by whom" was to invite disaster on a massive scale.

1127. One of the arguments raised in defence of the Terms of Reference was that they had been "run past" the Social Services Inspectorate without objection. That may be a relevant factor on the good faith of those involved but it does not in my judgment affect the substance of the matter.

1128. In my ruling of 28 February 2002, I characterised this situation as a "shambles", and it still seems to me to be an appropriate description. The Council had only themselves to blame for this mess, since on Mr Scott's own evidence they let the matter proceed on the basis of instructions to the Review Team that were "extremely muddled and confusing". Since their activities were to have such a profound impact on the lives of Mr Lillie and Miss Reed, they at least might legitimately feel cheated over this undisciplined and casual attitude. So too might the general public, and those funding the City Council in particular. It is they who have had to bear the cost of this dire episode.

12) The evidence of the Review Team Defendants

1129. Professor Barker went into the witness box on 6 February and was giving evidence, with various interruptions, until 15 February. He also returned briefly on 17 May. He was cross-examined at length, primarily on the issues of the qualified privilege defence pleaded by the Review Team and of his own alleged malice.

1130. I have no wish to be disparaging about the witness personally or professionally. It may be that he has achieved a great deal in his chosen field. Nevertheless, it is my duty to express my conclusions about his important evidence in this case. As a witness, he did not impress. His evidence was rambling and defensive. One reason why he remained in the witness box for so long was that he seemed incapable of giving a straight answer to a straight question. It was difficult to follow at the time, and little better on the transcript. Much of it was waffle. More significantly, however, I am afraid that there were certain respects in which I found it impossible to believe what he was saying.

1131. It is necessary to preface my findings by some general observations. First, the principal focus of Miss Page's patient cross-examination was upon the Review Team's methodology and the states of mind of its various members during the preparation of the Report. She sought to expose their reasoning processes as being deeply flawed, and to demonstrate that the explanation lay not in incompetence but in bad faith.

1132. Right at the outset of the case I recognised that such was the enormous amount of detail that it would be impossible to "put" everything to the central witnesses. That would not be consistent with efficiency or economy. It is especially difficult with witnesses who fence with counsel or avoid answering questions. I made it clear too that I would always be receptive to a witness being recalled, if necessary, or to dealing with points in writing. This is not a case which, therefore, lends itself to a just resolution of issues on a nice determination of whether an aspect of the case was "put" or not.

1133. Two facts emerged with clarity. Professor Barker and his colleagues believed that the Claimants were guilty of child abuse on a very extensive scale, as summarised in their Report, at the time it was published. I am equally satisfied that, despite their protestations, some of them had formed that view at the outset of their inquiry and never wavered. This presents an interesting scenario in the context of the law's concept of express malice. On one superficial view, I suppose one might think that the "honest belief" in the truth of what they alleged would be enough to get them home on malice, however defective their reasoning process. I am not sure that this is an analysis which does justice to Lord Diplock's exposition in *Horrocks v. Lowe* [1975] A.C. 135. I do not believe that it can be the law

that it will always be an answer to claim zealotry, or that one was only doing one's bigoted best. (That is not, of course, how these Defendants put their case in any event.) In the last analysis, it must depend on whether one has published the words complained of in good faith.

1134. A police officer who, believing an accused person to be guilty, bends the rules in order to secure a conviction would be acting in bad faith. The question here is not dissimilar. If the Review Team's approach to the evidence was to ignore or distort such parts of it as did not fit in with their pre-conceived notions, that too would suggest bad faith. On such a hypothesis, they would not necessarily be seeking to mislead their readers as to the accuracy of their conclusions, but they might well be intending to deceive them into accepting that those conclusions were based on a solid evidential foundation, reflected in the 300 and more pages of the Report.

1135. The Report has been described by defence counsel as being authoritative and as having a high status; they suggest it is a document which it was in the public interest to communicate widely. The Review Team were undoubtedly holding it out as such also. If, however, it was on close examination as flawed as Miss Page and others have contended, that might be due to wilful suppression and misrepresentation, or it might be through (say) bumbling incompetence – or a bit of both. Yet that is an important distinction in the context of the plea of malice.

1136. It emerged early on in Professor Barker's testimony that he has a fundamentally different attitude towards the weighing and analysis of evidence from that of a lawyer. At several points, it became apparent that he is rather dismissive of what he called "a forensic approach". He resorted from time to time to impressionistic mode, referring to his "professional judgment" and to discussions in academic and other published work. His colleagues were similarly minded. Indeed, Ms Jones voluntarily espoused the word "impressionistic". Yet the issue of whether any given individual has raped or assaulted a small child, or for that matter upwards of 60 small children, is not a matter of impression, theory, opinion or speculation. It should be a question of fact.

1137. The Professor is entitled to be disparaging about the criminal justice system, or "forensic analysis", or the testing of evidence in cross-examination. Many people are. Such criticism from the sidelines may or may not be made on an informed basis. But surely when such a critic steps forward to take on the responsibility of condemning a fellow citizen as being guilty of such wicked behaviour, a little humility may be thought appropriate. One would certainly expect a willingness to address the strength or weakness of the factual evidence relevant to the individual concerned.

1138. Such decisions must be taken in the realm of hard fact, and speculation has no place. Juries are told not to speculate and to concentrate on the evidence. That is not because of some quaint old tradition, or because lawyers are out of touch; it is the nature of deductive reasoning. In the weighing of criminal guilt, what is required is dispassionate analysis and ego must be suppressed. Yet that is not Professor Barker's style.

1139. In response to some of Miss Page's questions, he was keen to show that he could see through the game of lawyers and referred to her adversarial approach and to her "close forensic analysis". But his having "seen through" the nature of cross-examination did not mean that it was inappropriate, or that Miss Page should slink away. What it demonstrated was that Professor Barker knew perfectly well that careful analysis of the evidence was going to show up flaws in his Report. This was the reason why he was resistant to it. He realised that their approach had been impressionistic and speculative. He thus had to take the stance that careful analysis would be as inapplicable as it might be in assessing (say) certain propositions of religious faith. What that reveals, however, is that Professor Barker had eschewed rational analysis in the approach to his task from the outset, thinking it no doubt too pedestrian. Accordingly, any flaws demonstrated by such an analysis of his Team's approach *might* prove not to be the result of the incompetent attempts of an inexperienced team, doing its best to grapple with unfamiliar rigour. It might be explicable rather by their conscious rejection of the very

methodology that was required for the task they undertook. If that is the case, it is by no means obvious where the notion of malice fits into that set of circumstances. Much might depend on how frank they were, or were not, in the Report and the claims made for their methodology.

1140. Two rather striking examples of Professor Barker's shaky grip on the concept of evidence were thrown up early in his cross-examination. They illustrate the problem. It became quite clear that he regarded the findings in the Claimants' respective disciplinary proceedings as being in themselves some evidence (albeit naturally not conclusive) of actual guilt. He was asked why, when some of the children had identified members of the Nursery staff *other than* Mr Lillie and Miss Reed as present on occasions of abuse, the Team had discounted the child's evidence but not in relation to the two primary suspects. Part of the explanation he gave was that *they*, unlike the two Claimants, had not been the subject of disciplinary proceedings. That is a startling proposition. It was surely the Review Team who were supposed to be investigating the factual position rather than assuming from the outset that the disciplinary inquiry had got it right 18 months before.

1141. As on other occasions, it was very difficult to find out what Professor Barker was saying about the influence of the disciplinary findings on the Review Team. He said (on 7 February) that "the fact that they had been dismissed did play a part in our decisions". He was asked to confirm whether it influenced them in their findings that they were guilty. To this he responded, with his customary obscurity:

> "I hope it did not predetermine me to make any decision in relation to them, but I would be clear that I was aware of it."

Miss Page had to battle on and a little later there was the following exchange:

> "Miss Page: I understood you earlier to say that you did take into account the fact that they had been dismissed. Are you now saying you did not take into account the fact that they had been dismissed for sexually abusing children?
>
> Professor Barker: If I have misled you, I do apologise. I was aware at the start that they had been dismissed. We then found, when we interviewed people, the reasons for which they had been dismissed. We interviewed people who had been involved in the disciplinary, and looked at the documents in relation to the disciplinary. When it came to us making our findings at the end of the process in which we were involved, those processes then played a part. If we had found, in the course of that, that it was our judgment that they had been inappropriately dismissed, on the wrong grounds, we would have said so".

1142. When one comes up for air, the position remains the same; in other words, the fact that they had been dismissed "played a part" in the Review Team's own conclusions. In his witness statement (para. 306), Professor Barker had pitched it even higher, and described "the information presented to the disciplinary hearings and the results of the disciplinary hearings" as being "*one of the main influences* in our reaching the conclusions set out in the report" (emphasis added).

1143. Even more disconcerting was the second example. The Professor was asked how he had come to the conclusion (witness statement at para. 202) that Mr Lillie was sexually motivated in his behaviour, whereas Miss Reed, according to him, had been drawn into the production of child pornography for financial reasons. This he described on 8 February as a "tentative conclusion based upon my professional judgment". He said he derived it from the impression that she had been in financial difficulties. If it were the case that Miss Reed had been finding it difficult to make ends meet, it may be that she would not be the only nursery nurse in the country in that predicament. It would be hard

indeed if this were to bring them all under suspicion of generating child pornography. It is, of course, an obvious *non sequitur*. As it happens, however, when they were exploring Miss Reed's financial position, the Review Team were actually told by Detective Inspector Findlay, at an interview in January 1997, that the police were not aware of any financial problems on her part. This underlines the worrying proposition that Professor Barker was simply speculating.

1144. Instead of recognising this, however, when it was pointed out to him by Miss Page, Professor Barker turned through 180 degrees and responded immediately (as he thought tellingly) that the reason why Miss Reed was *not* in financial difficulty was that she had probably benefited from the proceeds of child pornography. This shows a cast of mind, closed to all reason, whereby whatever piece of evidence may be produced, however inconsistent with the last, it is perceived as supporting the basic unchallengeable datum that abuse occurred. It is not an unfamiliar cast of mind, but it is one that is not normally associated with university professors.

1145. It is necessary to bear in mind exactly what the Team's stark findings and conclusions were in this context (page 282):

> "We find that there is evidence which suggests that the children were sometimes filmed when they were being abused outside the nursery and we have drawn the conclusion that Chris Lillie and Dawn Reed were procuring the children of Shieldfield nursery for pornographic purposes as well as their own motivations.
>
> In the absence of being able to interview them we have been unable to find either Chris Lillie or Dawn Reed's personal motivations for their abusive behaviours. However, the indications from the children were that Chris Lillie took every opportunity to abuse them, and Dawn Reed was a party to abuse in particular situations, including during filming".

1146. The readers of the Report would not imagine that the Review Team was simply speculating on this serious allegation of involvement in commercial pornography. The reasonable reader would feel entitled to presume that such a specific conclusion was based on something solid. In fact, there was no evidence thrown up by police inquiries either of a paedophile ring or of child pornography. Surely the readers were entitled to know that.

1147. Miss Page also queried the attribution of financial motive by reference to some of the allegations against Miss Reed which could not conceivably have been so motivated; for example, sticking cutlery up the bottoms and vaginas of small children when no cameras were present. To this there was no cogent response.

1148. On similar lines was Miss Page's invitation to Professor Barker to identify any child in respect of whom his or her allegations had been discounted as unreliable. Professor Barker could not think of one and said he would go away and see if he could come up with such an example. He later cited one, and one only. This was Child 50. The complaint that was rejected was in relation to "an unusual bruise on his leg" which Professor Barker concluded simply could not be linked to Christopher Lillie. There is certainly no indication for any reader of the Report that any of these very grave allegations against Mr Lillie or Miss Reed was actually rejected or found to be unsustainable. It looks as though every allegation mentioned in the Report, however outlandish, has been upheld. Yet the reader will look in vain for the reasons underlying such conclusions.

1149. It is necessary now to turn to the aspects of his evidence I found myself simply disbelieving. Miss Page was putting the proposition to Professor Barker that, far from keeping an open mind, he had always assumed guilt. She referred him to various contemporaneous documents.

1150. Attention was drawn to a Progress Report from the Review Team dated February 1996 (when they were no more than a few months into their three year inquiry). I was told that this document was the work of Professor Barker and Mr Wardell. It referred to multiple abuse having occurred (without the slightest qualification). Professor Barker said airily that it was just "clumsy wording" and did not represent their actual view at that time. I do not believe him. (Some weeks later, on 1 March, Miss Moira Luccock of the Independent Persons Scheme rather gave the game away when she said that it had already become "clear" that they were "dealing with a multiple abuse situation" before the Review Team began its inquiry.)

1151. At about the same time, in February 1996, there was an interview with Ms Bernard who had taken over as Director of Social Services. Reference was again made to Mr Lillie and Miss Reed as "the abusers". Professor Barker said that, with the benefit of hindsight, he would wish that the word "alleged" had been inserted but it did not mean that their minds were made up at that stage. Again, I do not believe him.

1152. Even earlier in the process, in November 1995, there was an interview with the mother of Child 9 (no longer relied upon as part of the case of justification). Reference is made in that note again to "the abusers". This was a summary of the interview – not in direct speech. Professor Barker said that the description "abuser" must have been quoted from the mother. It did not represent *his* perception at that stage. Again, I do not believe him. It is part of a consistent pattern. In re-examination, Mr Bishop drew attention to other documents, more carefully drafted, where the Claimants were not so labelled. But this does not in my view serve in any way to refute the point. In the nature of things, more is revealed when the mask slips than when it is kept in position.

1153. Another revealing episode was the way in which correspondence was handled between the Review Team and Mr Lillie's advisers, at the stage when they were inviting him to attend for interview. Miss Page put to Professor Barker that Mr Lillie and Miss Reed were simply "second class citizens" compared to other witnesses. For example, Joyce Eyeington gave evidence about the "47 complaints" alleged by the Review Team to have been made about her. In fact, a large number were quite wrongly directed at her, but what matters for present purposes is that she had received advance written notification of the supposed complaints against her, so that she would have an opportunity of dealing with them in interview if she wished. Nothing comparable was sent to Mr Lillie or Miss Reed.

1154. When, on 18 April 1997, Mr Lillie's solicitor wrote to ask the nature of the complaints he would have to answer, he received a remarkable letter dated 7 May by way of response. I shall come to it very shortly but it is necessary to bear in mind, in this context, that the Review Team described their procedures on pages 18-21 of the Report, where the following claim was made:

> "As well as enquiring into what had happened, we were also interested to discover evidence – which included opinion – about how and why events had happened. For the most part, we were thus seeking to adopt an inquisitorial, rather than adversarial approach, as such we have adopted an approach similar to that outlined subsequently by Sir Ronald Waterhouse in relation to the North Wales Tribunal:
>
> *'We are not a jury. Our duty is to enquire and our procedure will be inquisitorial rather than adversarial – subject to the important qualification that any person against whom criticism or allegations are made will have a full opportunity to answer'"*

1155. The claim was also made that, in the case of witnesses who were the subject of substantial complaints, the Review Team sent "Salmon letters".

1156. It was pointed out (also on page 21 of the Report) that Mr Lillie and Miss Reed had refused to be interviewed. Since they are recorded as having had the greatest number of complaints against them, by far, the clear implication is that they so refused after receiving a "Salmon letter". Mr Henry Warne told me (on 28 February) that he presumed that specific allegations had been put to them in their letters of invitation. Most people would make that assumption.

1157. Miss Page gave Professor Barker an opportunity to deal with this allegation in the following terms:

> "Question: You also lied did you not, in those passages of the Report at pages 20-23 which we looked at this morning in which you set out all the procedures of fairness to witnesses which did not apply, did they, to Chris and Dawn?
>
> Answer: If you are saying there is linguistic ambiguities, if you are saying we were economical with the truth, if you are saying that we lied, you are entitled to say those, but it is my belief that when I read the final Report that we had written and when I read the complaints letters, it is my belief that I honestly believed what we had written.
>
> Question: You did not care what they had to say, did you, because you were going to label them as abusers come what may; is that not the position?
>
> Answer: I feel that in some ways without sounding patronising there would have been – we had to find out what we had to find out, not what we were determined to find out. We had to try and find out what had probably happened and draw conclusions. In terms of my career as a social worker and an academic who is also a social worker, as someone who trained to be a teacher, as someone who has done research into child care, it saddened me that in the case of Christopher Lillie it appeared to be the case in relation to information that we had that a child, an adolescent who had spent time in care had ended up in a position where he had abused children, because I do believe that children and young people who have been through the care system in Britain have to cope with disadvantages subsequent to being in care and sometimes have to cope with quite difficult circumstances when they are in care, and I find it very unappealing to believe that the care system can damage children, but I know that it does. So actually my personal inclination is to feel sympathy without I hope being patronising in relation to people who have been in care. So had I been biased I would have been inclined to have wanted to find information that minimised or reduced the responsibility of your client in that respect".

1158. This answer, of course, took matters no further. Earlier Miss Page had tried in vain to obtain an answer as to why Mr Lillie and Miss Reed were treated differently by the Review Team from other witnesses. This had led to a rhapsody about legal advice, which was nothing to the point:

> "Question: At this stage in the process Christopher Lillie and Dawn Reed were, as far as you were concerned, second class citizens in terms of the fairness procedures that you thought you owed to witnesses, were they not?
>
> Answer: When we were appointed the very first meeting I had had with Henry Warne and Bob Hassell, I think in the minutes of that meeting the agenda shows that one of the first items that was on that agenda was the need for us to have independent legal advice. It took some time for us to have what we considered independent legal advice. That is no disrespect to the lawyers who were employed in the Newcastle Law, which at that point was the arms length legal service of Newcastle City Council. They had

> gone for, I think, what was called at that time a purchaser–provider split. So that the initial discussions we had with Mr Warne was that Newcastle City Council understood and appreciated that we wanted to have independent legal advice.
>
> Question: Why do you need to resort to discussions about independent legal advice in order to answer my question, Professor Barker?
>
> Answer: Because if we were desirous of having independent legal advice to pursue our processes, in relation to key items of correspondence, it is appropriate for you to know that we took appropriate advice.
>
> Question: You were conducting this inquiry; you had a duty of honesty; you had a duty of fairness. You accept that, do you not, Professor Barker?
>
> Answer: I accept that we had a duty of fairness to do what we had to do and also to take account of appropriate advice. Had we not, it is my belief taken account of appropriate advice, I could have been criticised and the Review Team could have been criticised for saying 'well, it is clear, is it not, that you did not take advice?'
>
> Question: Do you understand the concept of fairness? Do you understand the concept which surely is steeped in you as a citizen of this country that before somebody is condemned they should have a full opportunity to defend themselves and to know what it is they are defending themselves against. You do not need legal advice to know that, do you, Professor Barker?
>
> Answer: If you carry on with these letters….
>
> Question: Just answer the question. Can we have a question about you and what you understood?
>
> Answer: That is rather like saying 'who is going to win the race?' when you are half way through it.
>
> Question: Do you have an understanding of the concept of fairness, Professor Barker, Yes or No?
>
> Answer: It is my belief that the documentation that is in front of me in relation to the correspondence which Christopher Lillie and Dawn Reed, which we wrote based upon appropriate advice, was appropriate and was fair".

1159. I have set out these passages to illustrate how one had to fight through the verbiage in order to understand what Professor Barker's case was.

1160. Against that background, I set out the terms of the letter of 7 May 1997:

> "Thank you for your letter dated 18 April.
>
> I am prepared to disclose in advance the complaints made against your client so that he had adequate notice of the position and is given a full and fair hearing about matters upon which I will be required to report.
>
> I enclose of [*sic*] copy of the Independent Complaints Review Team's Terms of Reference which will give you an idea of the range of issues we

> shall have to cover and you will see from the questions below those which are relevant.
>
> The main complaints from parents are that your client, together with Dawn Reed physically and sexually abused children, whilst the children were attending Shieldfield Nursery; and that the children were taken out of the nursery without permission or oversight.
>
> We would also like to ask questions about how your client was selected and recruited to the Social Services Department, how he was managed and supervised and how he came to work with Dawn Reed.
>
> It would be interesting to hear his views on his earlier contact with the Department and about his prior employment experiences.
>
> I am anxious that in no way is the criminal trial re-visited. Our approach is inquisitional rather than adversarial with the hearing held in private. Interviewees can be accompanied by a friend or legal adviser.
>
> The Review Team will be producing a public report after it has considered the evidence presented to it. I hope that your client will feel able, with your help, to meet with the Team and help further our consideration of matters relating to our Terms of Reference.
>
> (signed)
>
> DR RICHARD W BARKER
>
> TEAM LEADER"

1161. The sentence suggesting that the criminal trial would in no way be re-visited is, to put it politely, disingenuous. Not only had the Review Team made up their minds about Mr Lillie by this stage, but it must have been obvious to them that they were addressing allegations made in relation to each and every one of the six children named in the indictment in the 1994 criminal proceedings. They were quite likely to find him guilty of abuse in relation to all of them, as well as many other children besides, and of rape in relation to Child 14. (Professor Barker and Mr Wardell had viewed the video recordings some nine months previously.)

1162. It is necessary to assess this letter against the background that Mr Henry Warne, and the members of the Review Team themselves, decided at some point that they were going to have to "re-visit" the criminal trial as part of their task ("whether abuse had occurred and, if so, by whom"). It appears that this had been recognised well before May 1997. Jennifer Bernard thought it no later than the time when the video interviews were obtained (i.e. the previous Summer).

1163. Miss Page put to Professor Barker that the promise not to re-visit the criminal proceedings was simply a "lie". As so often in cross-examination, he said that he had received legal advice but did not intend to waive privilege in respect of it. He would not, however, accept that the sentence was untrue.

1164. The exchange went as follows:

> "Question: Professor Barker, that sentence in that letter: 'I am anxious that in no way is the criminal trial re-visited', I suggest to you is nothing less than a lie?

> Answer: I would have no reason to lie honestly. There is no reason, in my mind, that I could think of why I would want to lie. I was not on a vendetta. I did not know the two people concerned. I did not have any aspiration to overturn a properly made judicial decision, as far as I know. I was simply trying to deal with a complex and difficult situation where a large amount of material had to be dealt with in relation to the terms of reference that had been laid down by us and try to be involved in moving those through those processes in a fair and appropriate way and reach a conclusion that could then be appropriately written up, (1) in a report that would then be made available to Newcastle City Council and (2) in relation to complaints letters that we were empowered and required to complete. So, I honestly do not feel that it would have been any benefit in me trying to do what you are suggesting and it is honestly is not a lie in my opinion".

1165. The matter needs no elaboration from me, since anyone reading the letter of 7 May (intended to lure him for interview) could not conceivably imagine that the Review Team would be broadcasting, on publication of their Report, that Mr Lillie had in fact committed all the offences of which he had been acquitted several years earlier. The sentence was bound to mislead and, therefore, I have no doubt that it was intended to do so. I am not prepared to assume that he would or even might have been advised by responsible lawyers to say something that was so obviously false.

1166. This was compounded by the fact that the Review Team held Mr Lillie's silence against him when setting out their conclusions. Professor Barker admitted as much in reply to me. Miss Page pointed out to him that, since he had received no indication of the specific charges, it could hardly be said to be fair to criticise him for not responding (whether orally or in writing). Professor Barker's approach seems to have been that Mr Lillie and his lawyers could surely have worked it out for themselves! Indeed Mr Wardell made the rather sarcastic comment on 22 February, " I imagine the lawyers must be the most ill informed people in the world if they did not know that".

1167. It is against this background that the Team included the following sentence in their Report (at page 228):

> "No one other than those that perpetrated that abuse can provide definitive knowledge as to how this was carried out and those perpetrators that we know of have declined to talk to us. Therefore what follows can only be speculation based on those aspects of the situation that we do know about placed within a theoretical framework of what is known about perpetrators of child abuse".

1168. It is also manifest that the claim made on page 23 of the Report is, as Miss Page suggested, untrue:

> "The Report has been checked for accuracy and consistency. Where particular people have been significantly criticised, where possible this has been raised with them in their interview or they have been forewarned prior to publication and allowed a chance to respond".

It is clear that the Claimants received no warning whatsoever. If that is not a "lie", I do not know what is. All these general claims of fairness made in the Report are obviously false so far as Mr Lillie and Miss Reed are concerned. On 22 February, Mr Wardell said that it was the responsibility of the City Council to give advance notice to them of the conclusions. He thought there was an agreement with Mr Warne, Mr Scott or Mr Poll to this effect. He was clearly wrong about that. I am not suggesting that he was dishonest in this respect. I think he was trying to persuade himself that there must be some honourable explanation for having got themselves into this untenable position.

1169. An unusual feature of the Defendants' case is that it is integral to the plea of justification that Mr Lillie and Miss Reed were conducting a bizarre and perverted sexual relationship confined to their paedophile interests. It is always to be remembered that they were not portrayed as two paedophiles who happened by chance to be operating independently in the same nursery. They are accused by the Review Team of also having sexual relations with one another of various kinds, including sexual intercourse, oral sex and sticking scissors up each other's bottoms.

1170. There was no evidence of their having any social relationship outside the Nursery, or of any signs of mutual attraction. Indeed, there was evidence that Miss Reed had found Mr Lillie in some respects irritating to work with and perceived him, sometimes, as inclined to "skive off" out of the Red Room, leaving her to cope on her own. Not only did she tell me that this was so, although she did not make too much of it, but there was evidence from colleagues that this had been her attitude at the time.

1171. Apart from this, each of them had a partner with whom they had set up home. Miss Reed had done so with her boyfriend Mark in 1990 and was living with him at all material times, eventually marrying a few months after the acquittals in July 1994. Mr Lillie had moved in with Lorraine Kelly in December 1992, after going out with her (or as she described it, "courting") for about six months. Professor Barker thought none of this significant. He referred in his witness statement to "couples" abusing children jointly and cited the example, rather chillingly, of Fred and Rose West. What he failed to address at all was the fact that there was no evidence of these Claimants being a "couple" in any ordinary sense of that term.

1172. Mrs Saradjian's evidence on this subject was "breezy" rather than analytical:

> "We have a very interesting picture here, because it is not one that to think is easily explicable, in the sense that 'why would they need to be in a couple relationship when they were already in a relationship?' (although a different sort - working in the nursery). They knew each other".

She added:

> "They were in a relationship where they knew each other over a long period of time, and none of us knows what goes on within that relationship. They could have been having a relationship that nobody knew about. Who knows? I don't know".

1173. Miss Page put to her that there was no shred of evidence for such a relationship. She replied, "No, except for what the children describe and what the children say".

1174. I wish to be very clear about this. I am conscious of the fact that it is no answer to an allegation of child abuse, or paedophilia, that one leads an outwardly "normal" or "respectable" life with an established partner, whether heterosexual or homosexual. Although judges are supposed to be out of touch, one unchallengeable proposition is that every one of them is thoroughly familiar with the prevalence of child abuse and the wide variety of lifestyles of those charged with such offences. Let it be crystal clear, therefore, that I am not suggesting that the fact that Christopher Lillie had a steady partner (who gave evidence before me, and is still with him nine years later), or that Dawn Reed had a partner (with whom she "fell in love" at the age of 15 and married when she was nearly 24), renders paedophilic tendencies inherently unlikely. What I do suggest, however, is that it is truly remarkable that Professor Barker and his colleagues seem to have thought that there was nothing implausible about this "non-couple", against that background, conducting an *ad hoc* sexual relationship during working hours outside the Nursery, without any single adult (for example, a colleague or one of their individual partners) noticing. No one suggested that there was any precedent for this situation. Of course, there appears to be no limit to the scope of human depravity, and one should approach such allegations with

an open mind, but it would at least be worth looking into. In fact, it *was* looked into by the police, and there was found absolutely nothing to confirm it. Moreover, Det. Sgt. O'Hara expressed his incredulity to the Review Team in interview. Yet this seems to have given the Review Team no pause for thought.

1175. In his witness statement Professor Barker had this to say on the subject:

> "The fact that they apparently did not have a relationship outside the nursery *is not significant*. There is no research evidence to show that such a relationship would have been an inevitable or necessary part of their jointly abusing children, and the way they could come and go from the nursery during work time almost at will meant that they had sufficient time and opportunity both outside and inside the nursery to pursue their abuse of the children together" (emphasis added).

This is a spurious and trumped up justification, after the event, for their failure to address the point. It is hardly likely that there would be any published research on the issue. No one suggested once, during 79 days of this trial, that there was any precedent for a man and a woman engaging in child abuse together when they were not in any kind of "couple" relationship. There was therefore nothing to which research could be directed.

1176. Miss Page's cross-examination began with the case of Child 4. It was an especially striking set of allegations. It is said that cutlery was inserted into her vagina by Miss Reed, which led to bleeding; yet, remarkably, medical evidence revealed no abnormality of the hymen at all. As in every case, however, where the physical findings were negative, the caveat was entered that "the absence of physical findings does not necessarily mean abuse has not taken place".

1177. It was as good a place as any to begin testing the methodology of the Review Team. Professor Barker agreed with the general proposition that the more serious the allegation, the more cogent the evidence required to prove it. His avowed approach thus accords exactly with that of the Court of Appeal in *Hornal v. Neuberger Products* (cited above). It was appropriate, therefore, to ask Professor Barker how he satisfied himself that this test, which he willingly set himself and his colleagues, had been fulfilled in the case of Child 4. There seems to be little doubt from the content of the Report itself that they purported to be so satisfied. So much is apparent from pages 209-212. There is no doubt either that, by 5 January 1996, the mother of Child 4 had given written permission for the Review Team to look at her medical records. Yet, in at least two (and possibly three) meetings which the Review Team held with the paediatrician, Dr San Lazaro, there is no record of their querying or discussing the absence of physical findings with her.

1178. On 7 February 2002, Professor Barker acknowledged that, as a layman, he would have found it surprising that there should appear no evidence of damage to the hymen if a knife had truly been inserted and caused bleeding. If that is so, it is surely inexplicable that, before finding the allegation proved, the point was not raised with a paediatrician. This is against the background of Professor Barker's claim in his witness statement that one of the other "main influences" in reaching their conclusions was the medical information gathered by Dr San Lazaro.

1179. Professor Barker had also accepted that it would be inappropriate to reproduce the words of one child to convey what had happened to another child. He agreed that, where a child's words were quoted, there was an intention to inform readers that the disclosure was such that the Team were satisfied it could be relied upon. This further underlines the importance of testing Child 4's own evidence for these grave allegations.

1180. Miss Page put to Professor Barker that it was very important to check if the medical evidence cast doubt on Child 4's serious allegations because, if it did, the rest of her evidence might legitimately be thrown into doubt. The response was a characteristic example of waffle:

> "I am speaking for myself in that, as I say, I honestly do not recall seeing the medical, and my view would be that I would have wanted to seek further information in relation to that…. I think, in looking at any of the children, we would have wanted to look at the whole range of information that we had available to us, and obviously the medical would be an important part of that…. We had difficulties getting access to a whole range of information and amongst that we had difficulties getting access to a range of medical information. It was not in our discussions with the people who commissioned us, or in the advice that we sought from a range of people, that necessarily the medical information of itself would be pivotal because obviously medical information can describe a variety of things, and that is why we did what we did".

If any of these outpourings are intended to suggest that there was any difficulty about seeing Child 4's medical findings, that would be manifestly untrue. As it was, Miss Page's point remained unanswered, because it was unanswerable.

1181. The statements of Child 4 were also used by the Review Team to support their conclusions that Mr Lillie and Miss Reed injected not only her but other children with "analgesics" to facilitate their sexual abuse. She was also one of the children (referred to on page 209 of the Report) who apparently contended that "Jackie" had wiped her blood away following the insertion of an object into her vagina. There is no realistic possibility, in my judgment, that "Jackie" referred to anyone other than a member of the Shieldfield staff with that name. Yet the Report records that this member of staff (Jackie Bell) denied what the child was saying (albeit without recording whether the Review Team believed the denial). Yet again this seemed to give the Team no reason to query the child's account. (Later Judith Jones suggested that it might have been another Jackie who wiped the blood away – someone who had at some stage worked in the kitchens – but she was never interviewed. If she truly believed that this woman was the relevant "Jackie", clearly she should have been approached for her account.)

1182. One of the striking failures of the Review Team was not to make any appraisal of claims by any child (including Child 4) to the effect that other members of staff were present during instances of abuse. If those members of staff denied the child's claims, and the Review Team accepted the denial, it is hard to see how this would not undermine their confidence in the child's other evidence. For example, with Child 4, her suggestion that "Jackie wiped away the blood after she had the cutlery inserted into her vagina" was very important. If it was not true, why should the fundamental allegation itself not equally be open to doubt? The child's account would entail apparently (i) that Child 4 was taken to somewhere away from the Nursery, (ii) that objects were inserted, (iii) that there was bleeding, (iv) that "Jackie" was present, or at least nearby, and (v) that "Jackie" wiped away the blood. Which of these propositions did the Review Team reject and why not the others? Professor Barker no doubt regarded these questions as over-analytical. He considered that "all of them were possible on the basis of what that child had said". One of the many bizarre twists and turns in this litigation was that Mr Bishop suddenly remembered, well into his own evidence (and after cross-examining the Claimants about it) that this allegation was supposed to have been withdrawn. But that seemed to surprise the Review Team as much as everyone else.

1183. Miss Page also asked Professor Barker about the fact that Child 2 apparently indicated no less than three other members of staff (i.e. Diane, Jackie and Trisha) as being present. There was a rather feeble attempt to suggest that the child may have been referring to three other people who happened to have the same names, but this was manifest nonsense. If the Review Team concluded that those three women were not implicated in or condoning the assaults, why were they so happy to assume that the

allegations were accurate so far as these Claimants were concerned? There was, of course, no cogent or comprehensible answer.

1184. The Review Team have a standard method for dealing with inaccuracies and inconsistencies in children's statements which is reflected on page 208 of the Report:

> "The only people who really know what happened to the children of Shieldfield nursery are those who perpetrated the abuse. It is highly likely that even the children who experienced that abuse will have some accurate knowledge and some distorted knowledge. This distorted knowledge is likely to have been deliberately implanted by the perpetrators. The implanting of distorted knowledge is a strategy that abusers describe using. This tactic is particularly successful with very young children who have limited knowledge and understanding of the world and thus, when experiencing situations they cannot make sense of, they are likely to accept an abuser's interpretation of those experiences. As a result of such distorted knowledge, when children try to disclose their experience, they are often not believed as, along with accurate knowledge gained through their own senses, they relate false or distorted information gained from the abuser/s. This distorted information is likely to refer to not only what happened to the child but also, who did it, to whom, where it was done and who had known about it and given permission for it to happen."

This is simply bare assertion or theory. It is not based on any evidence relating to this case. But it seems to have been resorted to by the Team as a reason for explaining inconsistencies among the children's accounts.

1185. Child 14 was clearly of central importance (for the reasons explained by Holland J in 1994) – and not least for assessing the intellectual honesty of the Review Team. Professor Barker told me that he, like Holland J, had viewed all three hours of the video interviews. I believe that all members of the Review Team had done so. At all events, it is glaringly obvious that the child's evidence was not obtained in accordance with the Cleveland guidelines or the Memorandum of Good Practice based upon them. As it happens, Professor Bruck (the expert called on behalf of the Claimants) regarded it as one of the worst examples she had encountered. Holland J had raised in his ruling of July 1994 a number of fundamental concerns about it (which I have identified above). No objective person could fail to recognise that these concerns needed, at the very least, to be addressed. Despite this, the Report contained the claim that the questions were in no way "leading". This is manifestly absurd.

1186. There are real concerns as to why the Review Team did not inquire into that interview. I was told by Mrs Saradjian that they had received a letter from the police force asking them to "go easy" on Helen Foster, who had conducted the interview, and the Team were anxious not to upset her. The transcript of their interview with Detective Inspector Campbell Findlay expressly refers to that letter. Unhappily, it had gone missing. When it went missing, and how it went missing, no one appeared to know. It eventually turned up on or about 18 April. It was dated 19 December 1996 and the relevant passages were as follows:

> "Another one of our officers had now been contacted by yourselves, requesting her attendance at an interview on a date to be arranged in 1997. The purpose in writing to you at this stage is twofold. Primarily my concern is for the welfare and wellbeing of the officer concerned. I have been made aware of the effects this particularly onerous and stressful investigation had on her, both physically and mentally, and I would question whether, having interviewed the Force Child Protection Co-ordinator and then made arrangements to interview the female officer's direct supervisor who was, in

> effect, the officer in charge of the case, there is any benefit in resurrecting this matter as far as WPC Foster is concerned.
>
> If it is considered important to conduct such an interview, and mindful of the consequences on the officer's health, I would wish that, to enable the officer to prepare herself both physically and mentally, you provide at least one month prior to the proposed interview, a detailed set of questions you propose to put to her, which specifically include any possible complaints that have been made.
>
> The reasoning behind my request is that the incidents referred to occurred approximately three to four years ago; the officer has been involved in many large investigations since and the quantity of material to which she would be obliged to refer precludes any spontaneous answers to detailed questions".

1187. Professor Barker's reply of 17 January 1997, so far as material, was in these terms:

> "I can well understand the potential distress that recollections of past events can cause in cases such as this, and can assure you that the team is sensitive to the needs of those who it wishes to interview.
>
> We do however feel that the valuable lessons that would potentially be drawn from WPC Foster's evidence warrant interviewing her; particularly given her sympathetic approach to the children she interviewed which many parents have commented upon.
>
> It is our policy to provide in detail in writing the areas which we wish to discuss with witnesses, and a witness can choose to be accompanied by a lawyer if they wish".

1188. This exchange is a classic illustration of how unsuited the Review Team was, and how inappropriate its procedures, for determining guilt or innocence on the part of Mr Lillie and Miss Reed. One has only to envisage how unthinkable it would be for a court to enter into an under-the-counter arrangement with the police to "go easy" on a prosecution witness. It would almost certainly be regarded as a perversion of the course of justice. Professor Barker and his colleagues probably knew no better. It demonstrates how ill equipped they were for the task – something which should have been glaringly obvious to at least the lawyers on the Newcastle City Council staff at the time (whenever it was) when it was decided to permit them to re-open the issues of rape and indecent assault. The particular problem here was not just that it was inherently inappropriate, and compromised the Review Team's much vaunted "independence", but that neither the readers in general nor the "accused" in particular could possibly know that they were cosying up to the police in this way. They chose to withold questions that needed asking; they declined to challenge in any way the police questioning of these children. Despite this, they pronounced a clean bill of health to the public while claiming to be "robust". They described Helen Foster as having been an "impressive witness" to the inquiry – but without revealing how Mrs Saradjian had complied with the "go easy" letter and refrained from probing.

1189. An interesting sequel was that when she gave evidence on 22 May Helen Foster said she knew nothing about the exchange. She had not supplied the information for the 19 December letter; nor had she been consulted. She was clearly rather unhappy that she had been described in the terms there set out. She had not had to have any time off and was particularly concerned at the suggestion that the case had taken a toll on her "mentally". I must conclude that the officer who wrote the letter about Miss Foster (Detective Chief Inspector Machell) was only too well aware of the flawed methods adopted in the video interviews and wanted to head off criticism. Her "welfare and wellbeing" provided an excuse.

1190. On the Team's relations with the police, it is necessary also to bear in mind what passed between them and Detective Chief Inspector Blue on 20 March 1996. He was not very willing to release the video tapes to the Review Team at that stage because the Child Protection Unit had only finished their training on the Memorandum of Good Practice in May 1993. Accordingly, the interviewing techniques were at a very early stage. He wished to emphasise that they had come on in "leaps and bounds" and changed "dramatically" since that time. He was concerned that any criticisms made might make it more difficult for the future to obtain the participation of social workers in child interviews. The Review Team, on the other hand, were keen to obtain the interviews if they possibly could, mainly because some of the parents wanted them to view the tapes:

> "… and it somehow seems terribly important to a lot of them that actually we see the pain that the children went through, because it feels so long since those events, to them, and the pain that has gone on throughout that time; somehow the pain of the children at the time became quite lost and the statements that the children made may have become quite lost, with the court denying the children the right to actually say that. So, in some ways, although we cannot re-try Dawn and Chris (and there is no way we would even begin to even want to do that), what the parents are virtually saying is that 'my children said something important, and it has just been lost, and never been heard or seen'. I think, for the parents, that is really what comes across. That is what they want me to do. So that, if we can say in our report that we have had access to the video-tapes, where we saw for ourselves the children … and this has had a profound effect on us".

That has all the hallmarks of Professor Barker's style.

1191. The clear implication of the conversation was that the Team would, in exchange for access to the tapes, not make any criticisms of the early efforts at applying the Memorandum guidelines. The Team's offer was really encapsulated in the following words:

> "So if we were to say that the focus of our attention is the child and not the way they were interviewed?"

Although he prevaricated for a while on the subject, I eventually asked Professor Barker to say Yes or No to whether there was a *quid pro quo* for seeing the videos that the Review Team would not criticise the police, to which he replied "My memory is that there probably was".

1192. This was hardly an arms length relationship but unfortunately the readers of the Report would not know, when reading about the child interviews, of these semi- official nudges and winks. One cannot fail to notice that the observations of the Review Team on the video interviews, as ultimately contained in the Report, were exactly in line with what they were offering before they had even seen them (for "profound" one merely substitutes "powerful"). It is thus tolerably clear that the reason why they wanted access to the videos was not to assess them in any way critically as evidence, or to appraise the extent to which they provided reliable accounts of abuse, but so that they could emote about them in the Report for the benefit of parents.

1193. The Team's approach to the interviews clearly called for some straight answers from Professor Barker. He said that he and Roy Wardell had viewed the video interviews in 1996 and seemed to accept that they were the members of the Team responsible for its overall assessment of the weight to be attached to that material. I shall return to this issue shortly.

1194. Another striking aspect of Professor Barker's evidence was that relating to the identifiable adults who fell under suspicion as a result of remarks made by some of the children (Child 4, Child 22 and Child

23). Some of the descriptions they gave of other adults being present, on occasions when abuse was supposed to have taken place, led some people with local knowledge to interpret them as referring to specific people. Three of the persons concerned had rather striking physical appearances, and suspicion for a time fell upon them. I am not going to give the physical descriptions in the body of this judgment, but everyone participating in the inquiries and in these proceedings knew who they were. This is potentially very important, because it provided apparent corroboration for what the children were saying. It would be difficult to dismiss their suggestions as fantasy if the descriptions corresponded to readily identifiable local residents. For this reason, it was especially important to examine and test what was said about them.

1195. The police *did* pursue these matters and checked out the persons concerned, with a view to seeing if there was corroboration for what the children were saying, and if there was evidence to justify criminal proceedings against any of the individuals. Nothing emerged from those inquiries to suggest that any of the persons had been involved, directly or indirectly, in child abuse. On the face of it, therefore, there was nothing to confirm or enhance what the children were saying. Indeed, if the persons did correspond to the descriptions given, the result of police inquiries would rather go the other way and cast doubt upon the children's accounts. It was thus an important matter for the Review Team to address. They did so on pages 213-17 of the Report. The clear impression was there given that the police inquiries had thrown up some relevant information consistent with, or tending to confirm, the involvement of one or more such persons in paedophile activity. For example, on page 217 it was said:

> "Many aspects of the children's evidence that could be verified and were checked out, proved to be accurate".

Further, at page 269, they claimed that they had been told by police that they had found evidence relating to one of the identified individuals which "was not strong enough to be used in court".

1196. It is necessary to see what information the Review Team did have from the police to justify that passage. My attention was drawn to an interview with the police officer in charge of the investigation, Detective Inspector Findlay. From that transcript, it appeared to be quite clear that the officer told the Review Team members that there was nothing to put any of the people concerned "into the frame" and that he had no evidence. Helen Foster was able to confirm this from the witness box – by which time her note books had been made available. It thus began to look very much as though the Review Team had drafted the passages in their Report mischievously in order to stoke up the fires of suspicion against the various persons concerned. That would have been dishonest, irresponsible and potentially dangerous.

1197. Miss Page pressed Professor Barker on this at some length (as she so often had to, because he would not focus on what she was asking). On 12 February, I pressed him also. I said to him that it was very important that, if the Review Team had some evidence, apart from what was recorded in the Findlay interview, to back up what they said in the Report, he should now reveal it. It seemed obvious that this was a necessary step for the Review Team to take, in order to rebut the charge of dishonesty. It could not have been explained more clearly to him.

1198. Still Professor Barker rambled and procrastinated. He said that Mr Findlay had *implied* that there was some evidence (albeit not enough to justify criminal proceedings), but he was unable to identify the words which were said to give rise to this implication. Any such implication would, of course, have contradicted what the officer actually said (i.e. that he had *no* evidence). Every opportunity was given to Professor Barker to focus on the issue and to do himself justice. Unfortunately, he did not take that opportunity. Judith Jones and Mrs Saradjian did, in due course, have the grace to admit that they did not have any such information. Mr Wardell had not been present at the interview with Mr Findlay. Although he read the transcript, he knew that the tape had been switched off at one point. He seemed to think that something had been said off the record to justify the words in the Report. He accepted, however, that only those present could know if this was so.

1199. It was interesting to note that on 8 February Professor Barker used this formula of "implication" by the police also in relation to pornography:

> "…..is it not the case that at least one of the police, although they said they could not find proof, believe that the children had been abused by other people outside the nursery and implied that they believed that Lillie and Reed [were] involved in some pornographic creation type activity which involved some type of sexual activity?"

Thus it seems that any police confirmation for these two serious allegations (the paedophile ring and pornographic filming) rests on unspecified "implication".

1200. Another individual who fell under suspicion as being present with a camcorder (for the implied purpose of pornographic filming) was also addressed. His first name was used in the Report. Again, I do not believe it to be fair to use it in the judgment because he remained as a nursery assistant (and so far as I know still works with children 10 years on). The Report implies (again at page 213) that there was some truth in this grave allegation. The Review Team did not approach the man concerned, or give him an opportunity to put their suspicions to rest. The truth is that the police had "no concerns" about him. That is clear from the statement of Vanessa Lyon in these proceedings, and the Review Team was told as much in the course of the inquiries.

1201. Miss Page pointed out what it was that had originally given legitimacy to the Review Team's enquiries into this young man. His name appeared in a "complaint" made by the mother of Child 11. When eventually the Review Team wrote to set out their findings in relation to her complaints, the letter contained no reference to him. Miss Page put to Professor Barker that it was thus fair to conclude that he had been eliminated from their inquiries. He said that he did not know. His attention was drawn to the fact that, on 29 October 1993, Vanessa Lyon told Child 11's mother that there were "no concerns" about him. The significance of this matter is, of course, that five years later the Report gives the name of the young man, and leaves the implication in the reader's mind that he was still "in the frame" for pornographic filming. Professor Barker indicated that his memory led him to believe that there was "some other evidence about him". He was, however, unable to specify what it was. He suggested that the right person to ask, in this context, would be Mrs Saradjian.

1202. Professor Barker was asked why the young man's name was left in the Report in the light of the negative reply the Review Team had given to the mother of Child 11 with regard to "Complaint 18". There, it was said that such connection as he had with any children at Shieldfield was "non-sinister". No satisfactory answer was forthcoming (over no less than 14 pages of transcript: 12 February pages 22-36). Accordingly, the matter was left to see what Mrs Saradjian had to say about it. In fact, when she was asked about the "camcorder" reference in the Report, on 21 February, all Mrs Saradjian said was that the Team had simply been reporting what the children had said. The cupboard was again bare.

1203. These passages in the Report, so plainly smearing identifiable individuals with paedophile tendencies, give rise to very grave concerns to which I shall have to return when I resolve the issue of the Team's good faith. At the time the Report was published, the Team could not know of the frightening vigilante acts of August 2000 against supposed paedophiles, but even then they must have realised the risks to which they were subjecting these innocent citizens.

1204. One of the main aspects of the Claimants' case on malice was centred upon the way the Review Team dealt with the ruling of Holland J, and the concerns he expressed about the video evidence of Child 14. When Miss Page came to cross-examine Professor Barker about these matters, it emerged that he had not seen the videos since 1996. This was despite the very serious allegations of misrepresentation and distortion pleaded in the Reply (served in March 2001), and the fact that the video tapes had been

available for some five months. I found this surprising, but acceded to a request that we should rise early on 13 February in order for him to prepare to deal with any matters that might be put to him. I made it clear that I would not welcome any further applications of that kind, since it was reasonable in my view to expect the Review Team to have read and understood the case against them before going into the witness box.

1205. I have set out a full summary of Holland J's ruling and cited the most important passage, in which he identified with stark clarity the concerns he had about Child 14's evidence. Professor Barker's approach was that the Review Team had more evidence before them than the Judge and were therefore entitled to come to a different conclusion; in any event, they were applying a different standard of proof, and were not constrained by a "forensic" approach. I noted that on various occasions in cross-examination Professor Barker used the term "forensic" as a term of disapprobation.

1206. The Professor's attitude towards the learned trial Judge's ruling can perhaps best be gauged from the following extract from his evidence. He was being asked, specifically, about the point which the Judge had made about matters which "cried out" for enquiry if Child 14's disclosures were safely to be evaluated; in particular, he was concerned that no detail given by the child of any alleged trip to a house or flat with the Claimants stood up to any further investigation. Miss Page proceeded as follows:

> "Question: Now that is readily comprehensible without legal advice as well, is it not?
>
> Answer: Given the way we were dealing with it, given the way we were looking at matters on the basis of a balance of probability, given the information that we had and without any disrespect to this ruling, obviously we did have information – we did have information that Mr Justice Holland, if that is the right way to describe him, did not have. We had information from the nursery that he had never seen; we had information from witnesses that he had never seen; we had medical information that he had never seen and I am not – in saying that – I am not being disrespectful or wishing to comment critically on his ruling because it is my understanding, it is a perfectly proper and appropriate ruling in relation to those videos and in a sense for me to say it was perfectly proper is in a sense overstepping the mark because I am not legally qualified, which is precisely why we needed the advice that we did – not to smuggle anything out into the public domain under the cover of inappropriate cover but to try and deal with it appropriately with the appropriate advice".

1207. I find it difficult to grasp what further evidence the Review Team could have had, such as would be effective to subvert the logic of the learned Judge's ruling. Certainly Professor Barker never enlightened me. Also, I put specifically to him that if the child was, in two of the video interviews, actually exculpating Miss Reed the standard of proof would be irrelevant. He responded that he believed that a psychologist had told him that the child was probably saying the opposite of what she meant.

1208. It is necessary to be wary of this Humpty Dumpty approach to words, since it pervades the entire Report and the Review Team's evidence. It betokens a mindset which leads to the following examples of how to approach evidence:

i) If a child says that she has been raped, or had a knife stuck up her vagina, and yet she has an intact hymen and no signs of abnormality, one just resorts to the proposition (in general terms, of course, unassailable) that the absence of physical findings does not mean that abuse has not taken place;

ii) If a child makes no allegations about anyone abusing him or her, then it is probably explicable on the basis of terrorisation by the supposed abuser;

iii) If a child exonerates a person voluntarily, despite pressure and leading questions, then she is saying the opposite of what she means (i.e. that the person exonerated actually did abuse her);

iv) If a child is peppered with leading questions over three hours of interviews, then one can include in one's report the cavalier and unsupported conclusion that there was no evidence of leading questions;

v) If a child says that she was taken out and abused at Christopher Lillie's house accompanied by another member of staff, and that is not borne out by that member of staff, then it probably means that the abuse took place in the nursery in the absence of that member of staff.

1209. As an approach to weighing evidence, this is unscientific and irrational. (I put it that way in order to avoid comparison with anything that Professor Barker might perceive as "forensic".)

1210. When a person is responsibly investigating facts in order to see whether they support a particular hypothesis, it is necessary to have some notion of what would be capable of refuting the hypothesis before one starts the inquiry. In this case, I find it impossible to grasp what the Review Team would have regarded as refuting the basic proposition that Mr Lillie and/or Miss Reed were child abusers.

1211. Miss Page put to Professor Barker that they had deliberately suppressed the concerns voiced by Holland J. I have no doubt that the process was intellectually dishonest; the question I have to address is whether it was done in bad faith. Having properly read them, one could only ignore the comments made by Holland J about Child 14's evidence if one was very stupid, blinded by prejudice or utterly mischievous. Not every one of those three hypotheses is necessarily to be equated with the legal concept of "express malice". Thus, it was important to focus on what was, or could have been, the explanation here. This was the purpose of Miss Page's painstaking cross-examination. But Professor Barker did not seem to understand this. He chided her more than once for being partial and selective, and adopting a "forensic" approach, although he generously recognised that she was only doing her job. He was not prepared to leave it to Mr Bishop or to the court to ensure that he was not unfairly treated. He was, of course, wide of the mark. Miss Page put her case with clarity and economy, but Professor Barker either could not or would not deal with it. He seemed to find her questions a minor irritant that could be brushed aside, rather like the ruling of Holland J. The telling criticisms made by Mr Cosgrove and Mr Marron were clearly ignored by the Review Team.

1212. Miss Page asked Professor Barker about suppressing the Judge's comments:

> "Question: You substituted your own view of the video evidence of this child and you completely suppressed any reference to what the Judge had said about it, did you not?
>
> Answer: That was certainly not the intention.
>
> Question: That is what you did, was it not?
>
> Answer: That was certainly not the intention."

I am not sure what this means. If the omission was unintentional, that presumably implies that the Review Team intended to include reference to the Judge's concerns but forgot. I have no doubt whatever that they were omitted deliberately because it would require careful analysis, on the basis of evidence, for those concerns to be satisfactorily answered. They knew that was impossible.

1213. Miss Page then invited Professor Barker to talk us through the factors he had in mind that enabled him to conclude, without reference to Holland J, that Child 14's evidence was extremely "powerful" and "persuasive". He replied:

> "I mean that seems to me to be something that it would be very difficult to do in this context."

1214. The exchange continued:

> "Question: You managed to do it; you managed to sum it up and convey it to the public. Are you not prepared now to account for how you arrived at that statement?
>
> Answer: Well, the sum total, right. What the child said seemed – she seems to be a child that was able to distinguish truth from lies, she seemed to be a child with good verbal ability; she seemed to be a child who was able, over the course of those videos, to recount matters that a child of that age would not have known about; she seemed to be a child who could describe things that had happened to her. It was obviously the case that there was confusion in some of the things that she said and she did contradict herself at times and that had to be considered carefully. But if you looked overall at the three videos and related that to the medical information in relation to this child and you related that to the fact that abuse appeared to have occurred in the nursery and outside and probably other things I cannot call to mind now, but if you put all those things together it did appear that what the …. That what the child was saying was an account of her being abused by Christopher Lillie and to a lesser extent Dawn Reed".

1215. Unfortunately, towards the end of that passage, various alarm bells rang in the building and Professor Barker felt distracted. I therefore invited Miss Page to put the question again. When she did so, Professor Barker said that he was satisfied that he had answered it. Professor Barker went on to say that the Review Team were looking at the matter more widely than Holland J; that is to say, that they were concerned with broader issues than the admissibility of video evidence in a criminal trial. In response to me, he gave a further explanation:

> "Yes, I think the way we were coming at it was in a sense that if that material had been presented to a child protection conference. So if the child protection conference was looking at whether or not – it is slightly difficult because it was not quite like that obviously, but if a child protection conference was looking at whether or not it was safe to leave a child with a family, it would look at it on the basis of the information that was presented and on that basis had the information on the videos been looked at by a multi-disciplinary child protection conference it was our view, and it was an honest view, that is what was the child was saying. So rather than wearing a criminal hat beyond reasonable doubt, we were looking at it in a child protection conference type basis".

1216. A little later Miss Page asked Professor Barker to consider an apparent difference between the approach adopted in the Report itself and in his own witness statement for these proceedings. She quoted to him a passage which included the following:

> "For instance, over three videos Child 14 gave some indications that she had been abused by Christopher Lillie and Dawn Reed which I noted, I also noted that she sometimes contradicted herself. She was also at times insistent that Dawn Reed had not done things to her. The videos were not conclusive one way or another".

1217. The point which Miss Page wished Professor Barker to address was that this did not appear to sit comfortably with the comment in the Report to the effect that Child 14's video interviews were "powerful" and "persuasive". First, Professor Barker tried to suggest that, in referring to the videos as being inconclusive, he was addressing the total number of videos he had seen with Mr Wardell in 1996 – not specifically those relating to Child 14. In the light of the passage Miss Page had quoted to him, set out above, I find it difficult to accept that. In fact, it is obviously untrue.

1218. Shortly thereafter, he took a slightly different stance:

> "Question: …there is nowhere in the Report in which you refer to, as you do in your witness statement, this child's contradictions, or this child insisting on Dawn's innocence, is there?
>
> Answer: Well, all four of us saw the videos of this child, so there is a sense in which the conclusions we drew in relation to this child and the videos were the product of all four of us seeing it in discussion rather than any one individual opinion".

1219. This appears to be suggesting that, although Professor Barker himself regarded the Child 14 videos as "inconclusive", he was prepared to go along with the statement on page 148 of the Report, to the effect that they provided "powerful and persuasive evidence" that she had been abused. If true, this would hardly be a very principled way of assessing material relied upon for the purposes of establishing rape. It would mean that the readers of the Report would be deprived not only of the concerns expressed by the trial Judge about her statements but also of the fact that Professor Barker privately regarded these "persuasive" videos as "inconclusive". That is as clear an example as one could expect to see of a defendant claiming to espouse one proposition while believing another. It would be dishonest.

1220. I was troubled about this matter and queried it when Mrs Saradjian asserted (on 20 February), "I think all four of us agreed that they were powerful and persuasive videos in relation to a lot of issues". I asked if she recalled anyone at the time expressing reservations about their being "inconclusive". She replied that "there were aspects of them that were inconclusive". I asked what they were. Her answer I found confusing:

> "I think that what I would like to have done is to be able to ask the child more questions about some of those aspects that she was talking about. But I think, overall, they were very powerful statements, made by the child about things she had observed and things she had experienced within the nursery. I would like to have questioned her more on it. I do not think that they fully explored all the issues that could be [explored]. So, in some ways, they were inconclusive. But, overall, I felt that they were very powerful".

1221. Thus, it emerged that a second member of the Review Team thought "aspects" of the Child 14 interviews were "inconclusive". Despite my invitation, she did not identify what they were. But it is reasonably clear that she thought there were questions which the interviewer needed to ask (no doubt, in particular, probing inconsistencies). Yet this was not conveyed in the Report. The interviews are presented simply as powerful and persuasive evidence against Mr Lillie – and presumably also Miss Reed. Again, I find it difficult to reconcile this statement with her private reservations.

1222. A remarkable piece of sloppiness in the Report (if that is what it is) is to be found on page 41. There is a supposed "chronology" which contains the item that, on 4 October 1993, during her first video interview, Child 14 alleges rape. She did nothing of the sort. She did not even make an allegation of indecent assault against herself during that video interview. The actual entry reads, confusingly, as follows: "alleges rape being videoed". Whether that is intended to mean that she was alleging that she had been raped while being recorded on video tape, or whether it means simply that she alleged (a) that she had been raped and (b) that she had been video-recorded doing some other activity, does not for present purposes matter, since nowhere in the three video recordings does Child 14 make reference to being video-taped at all. I found it profoundly worrying that this Review Team could have included the false suggestion in their chronology that Child 14 alleged rape on 4 October. I am afraid I do not understand how any honest and responsible person can throw allegations of rape around so casually. (It is possible that this notion of Child 14 being video-taped came from the Panorama programme of October 1997, when it was publicly alleged that a cameraman had been present.)

1223. The consequence was that a reader of the Report would be bound to draw the conclusion not only that Child 14 had alleged rape on 4 October (the date of her first interview) but that "over three interviews" she had been consistent. That is a gross distortion. It is so gross that four intelligent people could not have promulgated it by mistake or oversight. It is true that they did not have the advantage of transcripts, but they did have the clear summary of the three interviews contained in the ruling of Holland J (which Mr Wardell described as "very helpful").

1224. On 14 February, much time was taken up in cross-examination of the Professor by going through in detail the transcripts of Child 14's three video interviews. Central though Child 14 is to the plea of malice, not much was gained by this exercise since there was little Professor Barker could say. He could have answered for the most part compendiously without addressing individual passages. His response was effectively that he formed an impression that the child was telling the truth. Although he had read the judgment of Holland J, he regarded it as a matter going only to admissibility. Their exercise was broader and qualitatively different from that of the Judge and, what is more, they had more information to go on. That was a short and simple position to take. It did not improve with repetition. For my purposes, the validity or otherwise of the Review Team's stance can be judged mostly by reference to the recorded interviews and to the Judge's observations about them. He saw what the Review Team saw (Child 14's videos have apparently been viewed by all four members). The child's "disclosures" and the inconsistencies or contradictions remain static for all to see – except, of course, the readers of the Report.

1225. Cross-examination on this front was, however, not wholly unproductive. It emerged that some elementary questions, or lines of inquiry, thrown up by the interviews were simply not pursued. For example, although the child at no stage spoke of any indecent assault upon her outside the nursery, she did speak in a confusing way about supposed visits to either a flat or a house, where there were dogs and hamsters and a backyard in which to play. She variously described the mode of travel (bus or train). She also spoke on different occasions of being accompanied by different members of staff (Amanda and Moira). She did not speak of going to such places accompanied *only* by Mr Lillie and/or Miss Reed. Even though the child does not speak of any assault upon her during any such visit, she did mention in the first video having seen "Chris" in bed with someone called "Doreen" (conceivably a childish corruption of "Dawn" or "Dawn Reed"). That would be manifestly inappropriate behaviour, if not an actual assault, and Professor Barker was entitled to observe that it might reasonably come within the definition of "abuse".

1226. Crucial, therefore, one might think, to question the members of staff alleged to have been present, Amanda and Moira. It emerged in cross-examination that this was not done. Moira Martin was interviewed but not even asked about this. Whether this was an "oversight" was not clear, but in any event there was a gaping hole in the evidence before the Review Team such as would surely at least inhibit them from accepting the child's confused account. As for Amanda Caisley, she was not interviewed. Apparently she did not accept the invitation, but the Review Team did not ask her even in writing to confirm or deny what the child was alleging about her presence. One might perhaps

understand (just) how such inquiries were overlooked if the Review Team had simply failed to spot the potential significance of such witnesses (however unlikely that would seem), but they did appear to attach significance to it in the body of their Report (at page 148). They actually cite the fact that over three videos Child 14 detailed abuse of herself and other children by Christopher Lillie and to a lesser extent Dawn Reed, "*and she also mentioned other nursery staff's names*" (emphasis added). Since her testimony is then described as "persuasive evidence of her abuse in the nursery and elsewhere", the Review Team would appear to be pointing to the "other nursery staff" as complicit. Indeed on page 240 of the Report they say more generally:

> "The children also talked about other people's involvement and mentioned the names of other staff from the nursery. This could be because these staff were also involved…"

1227. That is a remarkable allegation to leave hanging in the air when the Review Team know perfectly well that there is no shred of evidence to link any of the other Shieldfield staff with child abuse.

1228. There is another shift of emphasis at page 282 of the Report:

> "We have no evidence of other staff in the nursery abusing children with Chris Lillie and Dawn Reed. However, we find that during and after the abuse there was evidence to suggest that some staff were confused about their primary responsibility towards the children. We feel that this partly is a result of being subject to grooming to ignore or minimise the abuse".

1229. Again the staff are at the same time absolved and implicated. The prose has the same treacle like quality as other parts of the Report, in the sense that it is impossible to pin any precise meaning on the passage. It is obviously intended to smear somebody but there is no specific evidence to enable one to see which of the staff were "groomed" or who did the grooming. Presumably Mr Lillie and/or Miss Reed "groomed" other members of staff, but there is no way of knowing how this was done or to how many staff. No evidence emerged in the course of the trial to support the proposition. If there had been any material in support, surely it would have been put to one or other of the Claimants.

1230. It is true that on page 213 of the Report the Review Team conclude "We accept that Chris Lillie and Dawn Reed were the only nursery staff involved in the abuse". This is on the basis that "… there is no evidence that any other staff of the nursery were involved in the abuse of children". Yet they qualify this by saying, "Two children did suggest that a third member of staff was involved; but they each named a different person, so that their allegations were uncorroborated". This is less than clear, since it hardly squares with what is said in the passages at pages 148 and 240 quoted above; nor did the children actually suggest that any other member of staff was "involved" in abuse (as opposed to being present on trips out of the nursery). Indeed, that is part of the Review Team's own case – one of the excuses they put forward for not asking the other members of staff about it. Moreover, it is misleading to give the impression that two children identified *one* other member of staff as being involved. Child 2 mentioned three. Child 14 mentioned two. None of this, in any case, meets the essential point that no checks were made for the purpose of testing the plausibility of the children's accounts.

1231. Other persons said to have been present included children identified as "Lucy" and "Sam" (Sam being described as Christopher Lillie's daughter). There was nothing to confirm who they were, or whether they existed. Whoever "Sam" was, she obviously could not be Mr Lillie's daughter. It would seem that Child 14 was aware of two children with that name but I shall not spell out who they were for obvious reasons. Neither, however, has provided any corroboration.

1232. Turning to the abuse alleged to have taken place in the Nursery, part of Child 14's account involved a needle being put into Child 35 and Child 10. It would thus be elementary to check whether this

matched any allegation being made by either of those children. If it did not, it would surely raise a question mark. It is to be noted that the mothers of Child 14 and Child 10 were friends, and that Child 14's mother had, apparently, passed on to her the allegation relating to her son. The boy himself, however, said nothing about having a needle stuck into him, in the Nursery, although he did refer to "a nail with water in the plastic bit" – but only in response to a leading question from his mother. His various accounts of alleged abuse all took place at "Jo's" flat. As far as one can tell, the only "Jo" in contention would be a friend of his mother, whose flat was never visited by Mr Lillie or Miss Reed (according to the evidence). He never mentioned needles in his video interviews. Child 35 also happened to be a friend of Child 14 outside the nursery and the mothers also knew each other.

1233. It also emerged in cross-examination that the Review Team had not reacted to, or explored, the possible inconsistency between the accounts given by Child 14 over alleged abuse in the Nursery in the first and second interviews. From page 12 of the transcript of the second interview, it seems that an account was given of a needle incident when neither Child 35 nor anyone else was present. Nobody explored whether this was supposed to be a second occasion from that described in the first video, or an inconsistent account of the same incident. As for Child 35 herself, there was no corroboration (as Ms Jones accepted in the course of cross-examination).

1234. Eventually Professor Barker had to admit that the claim on page 221 of the Report that Child 14 had not been subjected to leading questions was, in hindsight, not appropriately worded. He could hardly do otherwise. In my view it was completely unsustainable. Indeed, Professor Bruck observed of part of the material, "This is one of the most coercive and abusive interviews that I have ever reviewed". She said that "almost every known suggestive technique was used, and we will never be able to know what, if anything, had actually happened to [Child 14]". That is a matter, of course, in one sense of expert evidence. On the other hand, it is also a matter of common sense. Professor Barker, however, did attempt to qualify his admission by saying that in his view, in so far as any of the questions had been "leading", this was only to the extent permitted by the Memorandum of Good Practice with regard to younger age groups. Professor Barker thinks that leading questions should be permitted with under-fives. That is a view to which he is entitled and others no doubt agree with him. It is nonetheless a controversial view. As Mr Wardell put it, "…clearly you need some time to prompt a younger child – and then we get to the difficult legal bits".

1235. It is true that they can point to the memorandum for some support in this respect. What matters for present purposes, however, is that this is not what the Review Team told the public. They said that there were *no* leading questions – that is undeniably false, as they surely knew.

1236. One of the most important reservations expressed by Holland J was to the effect that the allegation of rape from Child 14 came only at the end of the third video interview and, what is more, after the child had requested to terminate the interview. Thirteen minutes after that termination, it was resumed and the crucial allegation was then made. When Miss Page asked Professor Barker about this, his reply was as follows:

> "Answer: Yes, I mean, that is an interpretation which you are entitled to put, I do not agree with it. The extracts, for example – it kind of fits with the extracts which you have done in the blue document which we were given [Miss Page's summary of child "disclosures"], which is there is a kind of slant on some of the things which appears to me to be wanting to prove your case – which obviously you are entitled to do, it is what you are supposed to be doing, obviously – rather than a neutral reflection of what happened… there are a range of explanations for a range of different things. You know, an explanation for example about why the child terminated the interview, could not – might be not that the child was thinking, 'O my goodness, I have to tell a fib and do not want to do that', but 'O my goodness, the enormity of what I have to say is so difficult and painful that I do not want to do that'".

1237. This is not satisfactory, since any fair-minded person (I emphasise that I am not speaking merely of lawyers or judges) would surely recognise that the cessation of the interview, followed by an allegation of rape upon its resumption, was extremely "fishy". It may be that there is some explanation, but I cannot see how a proper assessment can be made of Child 14's videos without at least addressing the point. In the words of Holland J, it is one of the matters that "cried out for inquiry". Professor Barker said that he was satisfied that nothing untoward had happened outside the room while the tape was switched off, but it is a matter that needs to be fully explained and, surely, properly accounted for in the Report, so as to give its readers a solid basis for concluding that the Child's evidence of rape was "powerful".

1238. As the learned trial judge had pointed out, one of the most worrying features of the way the "disclosures" were extracted from Child 14 related to the 13 minute interruption in her third interview, following which for the first time an allegation of rape came out (as though rehearsed). I asked Professor Barker how the Review Team had approached this vital issue. The answer he gave was this:

> "My memory, my Lord, is that when I was being in a sense inducted into the Review Team process, I was told – because this was a child who was an important child in the case – not by those social workers concerned but by someone else who was inducting me, and I think it might have been Jennifer Bernard the Director, that in that video interview the video interview had had the problem that the child had left the room, had returned, had made certain disclosures, but then it had been discovered that in fact, as I recall it, the tape was not switched on, I think.
>
> So then what happened is that the video interviewers, having discovered that, I think it was Police Woman Helen Foster, then had to go back into the video room and in a sense re-run what the child had said. So when I saw that video with Mr Wardell I knew that that was the explanation, and I think that if you look at my revisiting the video of last night, it did seem to me that you could see that in a sense the police woman was going through something that that explanation made sense".

1239. In so far as that is intelligible, it seems to me to disclose the remarkable fact that no critical inquiry or analysis was directed towards this at all. Thus, the incident which the learned Judge had described as requiring to be looked into "above all" was brushed aside. In due course, I shall have to decide whether this should be attributed to sloppiness or ignorance, or whether it was indeed mischievous. Miss Page summarised her case to Professor Barker at the end of her cross-examination as follows:

> "Question: … You can have, I suggest, no positive belief, because you did not make the right enquiries into the truth or falsity of these children's allegations?
>
> Answer: We did. We looked at a whole range of material from a variety of sources and drew the conclusions to the best of our ability based upon a range of official documents, witness statements, documents from the nursery, etc. etc.
>
> Question: You were indifferent to the truth, you had no basis, as you knew, for any positive belief in your conclusions about Chris and Dawn. I suggest that you resorted to conscious misrepresentation in your report to give your conclusions the appearance of authority, honesty and fairness.
>
> Answer: No. We attempted to illustrate in our report, in a readable way, what we had done, why we had done it and what our conclusions were.

> Question: I suggest to you that the Report is a sham, corrupt document, which purports to have the appearance of authority, honesty and fairness when it absolutely did not.
>
> Answer: No, that is not true."

1240. That would probably serve as a neat summary of the important issues of malice which I must shortly decide.

1241. I decided that I was unable to place reliance upon anything said by Professor Barker, for any significant purpose, unless it was independently corroborated. That in itself, of course, by no means leads to the inevitable conclusion that I should find him malicious.

1242. Ms Judith Jones was giving her evidence from 15-19 February. I found her altogether a more impressive witness. She struck me as careful, thoughtful and intelligent. She was also determined to demonstrate that she had been objective in her approach to the Review Team's task. She clearly recognised at least some of the difficulties and delicacies of the endeavour they were invited to embark upon; and I believe her when she says she was conscious of them at the time. I was interested that, at an early stage of her evidence, she confirmed that she had seen the Amicus Brief from the *Kelly Michaels* case and also the 20:20 video recording dealing with the suggestibility of young children. She observed that anyone setting out to inquire into questions such as those which had arisen at Shieldfield would be "mad" to attempt it without taking account of the researches, as they then stood, of Ceci and Bruck. I had been somewhat surprised that Professor Barker had not addressed that topic at all when in the witness box.

1243. Ms Jones also expressly recognised in court the principal problems inherent in the video interviews of the children. In particular, she identified the "leading" nature of the questions (not something to be found on page 221 of the Report) and the absence of cross-examination, or indeed any form of testing, with regard to the "disclosures" passed on through parents. The question inevitably arises, therefore, as to what impact these considerations had (if any) upon the Team's reasoning processes or ultimate conclusions. From the Report itself one cannot tell.

1244. I found it difficult to reconcile Ms Jones' stance in oral evidence with that adopted in her witness statement (paragraphs 178-80), where she seemed to be taking the simplistic position that the Claimants' case entailed either "panic" on the parents' part or the proposition that there was a criminal conspiracy among parents to fabricate the charges in order to secure financial compensation. She is obviously experienced and intelligent enough to know that this would be a distortion of the Claimants' case. I therefore cannot understand why this position was allowed to be reflected in her witness statement.

1245. Impressive though she was, there were inevitably important aspects of the Team's methodology which Ms Jones found herself struggling to defend.

1246. As I have already made clear, I found myself attaching particular significance to the claim made on page 269 of the Report:

> "The police investigation dramatically improved after the appointment of DI Findlay to lead it. Children gave their parents detailed information about the venues in which they had been abused, and by whom, which appear to have been followed up e.g. children's allegations that the 'house with a black door where a man with a black beard had abused them' were progressed, there proved to be – where they said - a house with a black door

> in which a man with a black beard lived, but we were told that the evidence was not strong enough to be used in court".

1247. It was possible to test the claim, which embodies within it a serious allegation, against the recorded contents of the interview with Detective Inspector Findlay on 22 January 1997. The clear implication of the Report is that there *was* evidence that the person concerned was involved in paedophilia or child abuse, as the children's evidence could be construed as suggesting, but that the police did not believe that such evidence was strong enough to be used in court. It is manifest on checking the content of the interview that Detective Inspector Findlay said nothing of the sort. (His actual words were, "… I just could not find out anything which would support that story. We were aware that all we had was what these children and parents were saying – some very young children – babies".) He rather said that there was *no* evidence, and no basis for "putting him in the frame". That remains as true today as it was nine years ago. It was confirmed by Miss Foster from the witness box.

1248. There is a passage in the course of the transcript where it appears that for a time, at the officer's request, the tape was switched off. Both Professor Barker and Ms Jones referred to this in seeking to prop up the allegation made in the body of the Report. Ms Jones was, however, frank enough within a short space of time to admit that nothing was said during that unrecorded part of the interview to suggest that the police did indeed have evidence to link the man in question with paedophilia. Professor Barker had characteristically tried to fudge the issue. That did him no credit at all. An important question for me to address therefore, in due course, will be whether that important allegation at page 269 of the Report (intended to lend credibility to the children's "disclosures") was genuinely just "poorly worded" through carelessness, or whether it was a deliberate slant to bolster the case which the Review Team wished to put across.

1249. This concern cannot be dismissed as picking holes in the detail of the Report. It represents the main foundation of the Review Team's endorsement of the "paedophile ring", which was one of their most dramatic conclusions. It received enormous publicity and accounted for much of the venom directed at the Claimants. It was an allegation that had been doing the rounds for some years, fostered to some extent by Dr San Lazaro who actually made the assertion to the Criminal Injuries Compensation Board at the end of 1994. (It later emerged, however, on 16 May 2002, that Dr San Lazaro has a quirky and shifting definition of a paedophile "ring". She thought it could, for example, embrace one adult with several victims.) But it was the publication of the Report under the cloak of privilege which really gave the allegation its currency. Yet Campbell Findlay had told the Team that he had not got any evidence of a paedophile ring in Newcastle. He added, "If I had, I would do something about it".

1250. Another area of the Defendants' evidence which seemed to me very weak was that concerned with the questions asked of other members of staff. Where particular children identified other members of staff as having accompanied them on abusive trips organised by Mr Lillie and/or Miss Reed, it was clearly vital to seek their account. I have already mentioned it in the context of Professor Barker, but it is in my judgment of such importance that it needs to be considered when judging malice in relation to each of the Team members. Ms Jones sought to deal with this by saying that the individuals concerned had already been extensively questioned by police officers and others, and that the Review Team were conscious that not only had the police found no evidence of abuse but that the children themselves were not actually alleging abuse. I found this unconvincing. Indeed, it does not square with the passages in the Report (at pages 148 and 240) where the Team actually refer to "other nursery staff" in a context which, far from being exculpatory, would suggest that they were in some way complicit (see paragraph 1226 above).

1251. Where a child alleges that Mr Lillie and Miss Reed were participating in some form of sexual activity in front of them, at a location outside the nursery, anyone named as being present should plainly have been asked (a) whether any such expedition ever took place and (b) whether during the course of the visit any opportunity for such sexual activity had ever arisen. Quite unaccountably, this was not done. The importance of this hardly needs to be stated. If it would, otherwise, be a case of the Claimants'

word against one or other of the children, it would obviously be right to check out any other individual identified by a child who might corroborate or refute these grave allegations. There is nothing "forensic" about it; it is simply common sense.

1252. Despite the fact that these members of staff were not questioned, the Review Team appeared to be ready to state their conclusions (or rather speculate) in the Report (at page 240). Not only did they leave open the possibility that the members of staff might actually have been involved in abuse themselves but they put forward the alternative theory that Mr Lillie and Miss Reed had put the children up to making "these often isolated disclosures so that if any disclosures were made they were all the more unbelievable".

1253. This suggestion I find utterly fanciful. One has only to try and visualise how this could be achieved to appreciate how unreal it is. To take Child 2 as an example, it seems to be suggested that she was cowed into silence but, for good measure, was also persuaded that three other members of staff were involved when she must have known perfectly well that they were not (i.e. Diane, Jackie and Trisha).

1254. One aspect of her evidence in which she seemed to be readier for frank disclosure than Professor Barker was that in which Ms Jones was questioned as to *when* she reached the conclusion that multiple abuse had taken place at the nursery. She recognised that that point arrived at around August 1996 (i.e. more than 2 years before the Report came out). This was, very approximately, about a year earlier than was admitted by Professor Barker. On the other hand, like Professor Barker, Mrs Saradjian and Ms Jones said that they had reached their conclusions about Mr Lillie some time earlier than they had reached the decision about Miss Reed. I had difficulty with this, since their joint responsibility is an integral part of the Review Team's case, based upon their interpretation of what the children had "disclosed". There is a conceptual difficulty about believing that one participant in a joint activity was doing it but not the other. It is like the surreal notion of one hand clapping.

1255. Ms Jones told me that what had impressed her, and her colleagues, were the "core consistencies" in the children's statements. She was, however, frank enough to volunteer that the later statements were likely to be more unreliable for a number of reasons, including possible cross-contamination between children and/or parents and the impact of therapy. She said this particularly with regard to the later statements made by the mother of Child 22. This is to an extent understandable but it is necessary, in carrying the reasoning through, to identify the dividing line and to decide what proportion of the statements are to be put to one side as "unreliable". This was not done.

1256. Later she cited "research" tending to show that a substantial proportion of pre-school children can retain a good memory for up to 12 months, but that the present state of knowledge does not suggest that there is much support for reliable memory beyond that length of time. That is clearly important in this case if she is right, because many of the statements relied upon by the Defendants, by way of justification, relate to events alleged to have taken place well over a year earlier. On the other hand, Mrs Saradjian's view seemed to be in no way inhibited by the same "research" watershed of 12 months. This was a point that should have been followed through and, once again, a dividing line drawn so that the Team (and their readers) could see which statements related to events more than a year earlier. It would have applied, for example, to all of child 14's allegations. As it was, the Team chose to cast no doubt on any of the dozens of allegations and appeared to accept every statement mentioned in the Report.

1257. Miss Page was concerned to explore to what extent the Review Team had set out to test for "consistency", whether within the contents of one child's individual disclosures or as between those of various children. But the whole notion of "testing" appeared alien to them. They did not regard it as their function to "challenge".

1258. Mrs Saradjian went into the witness box on the afternoon of 19 February and concluded her evidence on 22 February. She was clearly thoughtful and intelligent, and has made a particular study as a clinical psychologist of sexual abuse by females. I formed the impression early on, however, that she lacks objectivity about the evidence relating to Shieldfield Nursery. She displayed a strong antipathy to Mr Lillie and Miss Reed which is, of course, entirely consistent with genuine belief in their guilt. She told me that she had set out on the task from 1995 with an open mind and a determination to approach the evidence objectively. I am sure she believes that, and I have no doubt either that she has believed for a long time that the overall conclusions in the Report are true.

1259. Unfortunately, Mrs Saradjian approached cross-examination as though it was a debate. She was reluctant to admit anything, even the glaringly obvious, but rather tended to cite another argument in order to demonstrate that the admission, if made, would be irrelevant. She criticised the Claimants for not having co-operated with the Review Team by submitting themselves for interview. She, like other members of the Team, failed to grasp at all how unrealistic the suggestion was. The Claimants did not trust them or the Newcastle City Council. Moreover, had they been told frankly that the intention was to re-open the allegations in respect of the six indictment children, they would surely have been astonished and fully entitled to tell them to jump in the lake.

1260. In any event, I am quite satisfied that if the Claimants had agreed to be interviewed by the Review Team, it would have made not the slightest difference. Now that the Claimants have given evidence on oath, for day after day, Mrs Saradjian still criticised them for not offering a realistic explanation for the children's allegations and unusual behaviours. They were hardly in a position to do so. They had no idea what was going on amongst parents and children, police officers, doctors, social workers and therapists following their suspension. More significantly, it was a comment that rather gave the game away. Mrs Saradjian *even now* regards the burden as upon the Claimants to prove their innocence. I have no doubt that this was her attitude from the day she was appointed. On page 219 of the Report (which I believe she wrote) it is also said that "…the perpetrators have never been able to offer an alternative explanation to account for the children's knowledge and disclosures".

1261. Mrs Saradjian's attitude was similar to that of Professor Barker who was asked on 7 February whether he held their "silence" against Mr Lillie and Miss Reed (i.e. their refusal to be interviewed). He replied that it weighed against them to some extent but it was by no means conclusive.

1262. Further illustrations of this mindset are to be found in questions asked during some of the Review Team's interviews. I have in mind particularly the interview of Julie Kinghorn on 30 May 1997. Although Mrs Saradjian was not present on this occasion, the other three members were. One of them made the following observations to the witness:

> "It's fascinating to talk to people who have met them. Not a lot of people have met them, other than their direct colleagues. Dawn Reed fascinates me in particular – women abusers, especially in those days, not quite as well known as now".

1263. Again, during the interview with Helen Foster on 14 February 1997, Mrs Saradjian (being the only Team member present) commented of Mr Lillie and Miss Reed, "I have been astounded by the confidence of them, especially the constant denials really, and the confidence with which those denials were occurred [*sic*] in the face of what was going on". Hardly consistent with an open mind.

1264. Mrs Saradjian's combative debating style in cross-examination convinced me of her utter commitment. She was persuaded long ago of the Claimants' guilt and has reinforced that belief by a battery of intellectual arguments over the years as to why she is right. What she is not, however, if she ever was, is open-minded. Her knee-jerk reaction is always to dispel doubts by reference to other possible explanations, however fanciful the hypothesis. She was a great advocate (that was indeed the role she

played in cross-examination) of the "whole picture" theory (i.e. that they cannot all be wrong). She would, I know, be horrified and offended at my failure to acknowledge her objectivity and independence. She spoke of her commitment to "get it right". I took particular note, for example, of her determination to trace back the Child 4 allegations to their original source. They date, at the very earliest, from June 1994 (i.e. a year after the "hue and cry" began and thus on the wrong side of Ms Jones' watershed for reliable infant memory). Little attention, however, appears to have been given to the "hot-house effect" of cross-contamination between children exchanging concepts and scenarios which they cannot fully have understood – particularly in the Yellow Room in 1994. No account was ever taken of the mother's first reaction, a year earlier, that Child 4 was "gobby" and likely to say "anything". That means that she was at that stage of her development suggestible and unreliable.

1265. I must state my own conclusions about Mrs Saradjian, however offensive she may find them. She combines a quick mind and, as I have acknowledged, considerable intellectual vigour with an unwillingness to re-examine fundamental assumptions. One of the most telling revelations about Child 4 is to be found in the Nursery records dated 17 May 1994, the day before her first video interview, where she is recorded as saying, "My mummy says that Dawn and Chris are naughty and they are in prison". That would surely ring alarm bells in any objective observer. The teacher (Fiona) even recorded how she talked to Child 4 a little about her seeing Helen Foster the following day and talking to them about her feelings. Moreover, it can hardly be ignored that the child was saying on 14 June 1994, "They didn't do anything". There are also other references on 29 April to the concept of "naughtiness", which can only have been implanted by adults (directly or indirectly).

1266. None of this was taken into account, or if it was (and Mrs Saradjian claimed to have been through the Day-Books), it seems to have been brushed aside as of no relevance. I gradually came to the conclusion that Mrs Saradjian's intellectual accomplishments were devoted, in this instance at least, not so much to the objective assessment of what went on but to the adversarial task of marshalling the most powerful case against the Claimants – inevitably a selective and misleading exercise. The irony is that while the Review Team publicly aspired to the inquisitorial approach (and despised the adversarial) they lacked the necessary objectivity for the former and were, ultimately, exposed by the latter.

1267. Yet bias and lack of objectivity are definitely not, in themselves, to be equated to malice (although they can sometimes provide evidence of indifference to truth).

1268. In the end, of course, the real test of Mrs Saradjian's evidence was how she coped with the glaring deficiencies in the content of the Report itself. Despite all her undoubted qualities, she was unable to respond to the unanswerable. The Report in fundamental respects simply contained misrepresentations of fact.

1269. Mrs Saradjian wrote that part of the Report which contains page 220. The claim is there made that:

> "… the Review Team examined the information available to consider whether there was any evidence to support an explanation that the disclosures were made by of [*sic*] the children as a result of the implanting of false information; pressure from parents; and/or by over-zealous or suggestive questioning on the part of social workers and/or police. The Review Team concluded that this could not be a viable explanation of the children's evidence".

1270. It is a very bold claim. It fails to take account of what was going on at Shieldfield Nursery in 1993-4 - especially the fevered atmosphere that required a special book to be kept of "disclosures" that children in the Yellow Room might make in the course of their daily routine. It fails also to take into account the potential for contamination, or even abuse, through the very process of investigation by police and

social workers. The Cleveland Report was almost "old hat" by the time the Review Team were setting about their task, and they all knew it well. Yet little weight was given to the potential, to which it drew attention, for such abuse arising in the investigative process. That is surprising in this of all cases, where such risks at least had to be addressed and, if possible, discounted on a reasoned basis.

1271. The problem seems to have been ignored or brushed aside, as far as I can tell. Indeed, to my astonishment Mr Wardell (during the afternoon of 22 February) claimed that contamination between children was unlikely:

> "I just said that it was unrealistic to expect children to play together like that and contaminate each other."

1272. He appeared to think that "contamination was never a major and significant issue", on the basis that under fives would not get together in a plot to "drop Chris Lillie and Dawn Reed in it". As someone of his experience must surely have understood, it has never been suggested that the issue was one of malicious "plotting" or concoction. If the Review Team carefully considered the implications of the Ceci and Bruck research, as Ms Jones suggested they did, so much would have been obvious. As the Review Team must have realised, the problem is not likely to be that of conspiracy or plotting, but rather cross-contamination through hearing each other's "disclosures" and discussing the various dramatic scenarios suggested.

1273. As Dr Hamish Cameron observed, children are inclined with "an exciting taboo topic" to dwell more and more on the subject should parents, as authority figures, "give permission" to the child to talk more about it. The danger is that excitement grows and the story becomes elaborated by the child's imagination. I am conscious of the enormous wealth of practical experience among the Review Team members. As a layman I must respect that and beware of resorting glibly to that elusive commodity "common sense", which can be so deceptive in specialist areas. Nevertheless, I must say that in this respect I found Dr Cameron's observations much more realistic.

1274. It seems that by about mid-day on 25 February Mr Wardell had become more flexible on the possibility of cross-contamination. He then acknowledged:

> "There is an inevitability about the danger of contamination as soon as children speak to each other".

He shortly afterwards added:

> "I know that Jacqui Saradjian was particularly concerned about things like contamination and how real it was – children speaking to each other".

Yet within a few moments he told Miss Page:

> "I think you over-exaggerate the contamination thing. In my experience, children do talk like this – and yes, it is always there. You always have to be careful about it. But I do not think it is overriding".

1275. It is not easy to reconcile all of these statements, but I do not believe it would be unfair for me to conclude that during their deliberations Mrs Saradjian was "particularly concerned" about the possibility of contamination and that Mr Wardell (despite what he said on 22 February) knew also that the "danger of contamination" was "inevitable". That is why it would have been so vital for them to have set out their reasoning processes (in so far as there were any) which enabled them to dismiss

contamination in the Shieldfield environment (for example in the Yellow Room through the indirect influence of therapists at the Nuffield via Child 23 and others upon Child 4, Child 5 and Child 17).

1276. Mr Wardell himself had recognised (on 22 February) that, even though children may "disclose" after a considerable lapse of time quite commonly, it would nonetheless be appropriate to probe further: "You would cover the obvious things like, 'why did you not say it before?' … But the later the first disclosure from what it is alleged took place, the more questions one would ask the child to authenticate it". Ms Jones, too, on 15 February had acknowledged (specifically in the context of Child 22) that: "… as time went on, it would be difficult to judge how far you could place weight on some of the later disclosures that came out, but I think I thought that anyway about most of the people".

1277. There is unfortunately no evidence that the factor was carefully addressed, at all, in order to enable the Team to give their clear assurance to everyone that it could be eliminated. This assurance is difficult to reconcile with the Defendants' own case in their closing submissions:

> "It is accepted that by mid–1994 the Yellow Room was a potential source of contamination. The Court has to consider disclosures made by children in the Yellow Room at this time very carefully to see whether the disclosures are being made because the children were abused or because the children are simply copying other children. The picture may be an unclear one, as even if a child has been sexually abused, some of their disclosures may be the result of contamination".

I would not quarrel with this warning now given to me, but it is unfortunate that it was not reflected in the Report itself.

1278. The Review Team's bold conclusion at pages 220-221 of the Report cannot be put down to naivety, especially in the light of what Helen Foster told Mrs Saradjian in interview on 19 February 1997:

> "The parents, some of them, were going to support groups and had a lot of contact with each other and I'm sure they talked quite openly amongst themselves about what the child had said, how many interviews they had, even medical examinations, I'm sure they were not kept confidential….
>
> A lot of things that the parents must have said to the children outside of the interview and came out in the interview – that came out in the interview itself. The bit about Chris and Dawn in jail and whatever. A lot of promises they might have made to the children about they were going to get if they told, like presents or trips. You would have been able to see that on the video. The parents want to be on the interview, want to take over the interview in an attempt to get the child to repeat what they had already said. That was difficult".

It is true that no other members of the Review Team were present, but they would have read those clear warnings on the transcript.

1279. Another factor was recorded by Lyn Boyle in the minutes of a meeting on 22 November 1993:

> "2. As this is the second major child abuse investigation in the East of the city, it is felt that it is keeping professionals in the area from proceeding normally in relation to Child Protection. There are concerns that detection in this area will be seriously hampered or as is already happening if there are suspicions of sexual abuse in a family, professionals are in the first

> instance looking for a connection with Jason Dabbs or the Shieldfield Nursery.
>
> 3. Empowerment of Parents
>
> Normally, the social work stance has been to empower parents and families. The Shieldfield investigation as well as the Jason Dabbs investigation, has made the investigating team believe that empowering individuals or families without the knowledge and information is dangerous. In both investigations, there are a small number of very vocal parents driven by their emotions. This is one of the most dangerous and worrying elements of this investigation."

1280. A similar warning was given by Det. Sgt. O'Hara on 18 April 1997 (this time to Professor Barker and Judith Jones):

> "I think some of the information that has come across has been distorted, and in some instances tainted, by parents. I am not saying [the mother of Child 22]. There are other parents who, I think, use this to hide abuse within the family".

No doubt what he said was largely hunch, and intended to remain confidential. I am not in a position to conclude that his theory was correct, but it was surely something to give the Team food for thought and would confirm the need for careful research and analysis. (It is of interest to note that Dr San Lazaro was also conscious of this potential problem. She said on 14 May that she and her colleagues were aware that "children, where there is a scape-goat like Lillie or Reed established, are possibly more vulnerable to trauma by other parties".)

1281. In the light of those comments, it is difficult to understand why Mrs Saradjian wrote what she did (as quoted above from pages 220-221), and why the other members of the Review Team assented to it. They manifestly knew it was an issue, and they must have realised that (as Miss Foster confirmed on 22 May 2002) the police had done nothing to check what cross-contamination there was – indeed there was little they could do. It is true that Miss Foster and Detective Inspector Findlay paid a visit to the mother of Child 22 at the end of July 1993 and politely warned her off, as they had reason to believe that she had been going about putting words in people's mouths. By this time, however, it could simply have been too late. Whatever she was doing, she had already had three months in which to do it.

1282. Because nothing effective had been done to monitor the situation in 1993-1994, there was simply no evidence available to the Review Team in 1995-1998 whereby they could conclude (in Mr Wardell's words) that contamination had never been "a major and significant issue".

1283. I do not believe that it would be helpful for me to rehearse the Review Team's evidence at any greater length. On some of the central defamatory allegations, since the facts speak for themselves, there was little of relevance they could say. In the light of their written and oral evidence, and the content of the Report, I must now turn to consider the plea of malice.

13) Findings on the allegations of malice against the Review Team

1284. It is relatively simple to state the classic definitions of malice from the leading cases, but not always so easy to apply the principles to particular facts. Here, for example, the Report contains statements which are obviously false, many where it is impossible to know the evidence upon which specific

findings of fact were based, and fundamental flaws in the reasoning process. None of these factors, however, can of itself demonstrate malice. Yet I cannot proceed on the basis that any of the Review Team members was not intelligent enough to spot them – still less all four of them. I must treat them all, it seems to me, as being very intelligent. They have all held down responsible jobs. Indeed, the intelligence of Ms Jones, Mrs Saradjian and Mr Wardell was obvious when they were in the witness box. That of Professor Barker may have been somewhat obscured by the process of cross-examination. Yet, despite that, somehow they all managed to promulgate this influential document with all its imperfections.

1285. There is room for debate as to how this came about. It is hardly surprising that in respect of some of the more glaring errors Miss Page accused them of deliberate misrepresentation or "lies". Their responses were interesting; they were generally low key and dead pan. There was resort to ready formulae which gave every impression of being rehearsed. Each of the Defendants would produce, from time to time, a mantra to the effect that he or she had approached the task fairly and honestly, and had believed what they said at the time it was written. Alternatively, they would resort to such nebulous concepts as the overall picture, the evidence as a whole, the "core consistencies" and the application of professional judgment or experience. Sometimes, too, reference was made to everything having been done in accordance with legal advice (not revealed). These responses were pulled out as trump cards as if to prevent any further probing on the subject in hand.

1286. Mr Bishop submitted that, with the best will in the world, mistakes ("some major, some minor") will always be made, as this case has amply demonstrated.

1287. Although Mr Bishop in his submissions suggested that there could be silly errors or mistakes, in seeking to distance his Clients from findings of bad faith, it was interesting that this was not the way the Review Team witnesses put it themselves. They did not appear to accept that there were significant mistakes. They for the most part seemed to want to defend the Report even with hindsight. Their case was put, in closing, on a conditional basis:

> "If the court, having heard and seen all the evidence, including that from the Claimants themselves which they were not willing to provide to the Review Team, comes to the conclusion that the Review Team got some or all of their conclusions as to what occurred at the Nursery wrong and/or that the Review Team made other mistakes in the way that they carried out this inquiry and recorded their conclusions, the Review Team, will of course deeply regret that they have got it wrong, but the fact that they did not come to the same conclusion as the court and that they approached their task and the issues in a different manner does not and cannot make them malicious".

1288. The problem is that I have to make a decision, on the basis of their evidence, whether or not any of them was motivated by malice in publishing the Report. It cannot be an answer merely to say that, in general terms, they honestly believed that each of the Claimants was guilty of multiple abuse. Miss Page, of course, invites me to hold that they did not have such an honest belief, or that they did not care whether the allegations were true or false. They were merely bent on assuaging the pressure from parents and others. If that were established, I could find malice. It does not necessarily follow, however, that if it is not established malice would fall by the wayside.

1289. I need to address certain other possible scenarios. Suppose that the Defendants genuinely believed the overall conclusions but (contrary to their own case) were merely careless or sloppy in compiling the Report. Suppose, on the other hand, that they had twisted or manipulated the evidence so as to give a spurious authority to the Report and its published conclusions. I have little doubt that the former conclusion would be inconsistent with malice, but that the latter would enable me to find malice established. On such an hypothesis, the Defendants might believe that the Claimants were child abusers but that is not the same as believing in the truth of the words complained of.

1290. Another possibility is that each of these people was so blinded by prejudice that any skewing of the evidence, or any misrepresentation of its effect, was unconscious. Such a scenario, perhaps more theoretical than real, would not necessarily be consistent with malice.

1291. Interestingly, Miss Page drew my attention in the context of recklessness to the decision of the New Zealand Court of Appeal of 21 June 2000 in *Lange v. Atkinson* [2000] N.Z.C.A. 95 following the remission by the Privy Council ([2000] 1 N.Z.L.R. 257). As is well known, it was decided in that jurisdiction not to adopt the same approach as that of their Lordships in *Reynolds v. Times Newspapers* [2001] 2 A.C. 127 because it would add to the uncertainty and chilling effect present in this area of the law. Miss Page was, however, rather focussing upon what was said in the judgment (at paragraphs 42 to 49) on the misuse of an occasion of privilege. There the court was canvassing the distinction between various states of mind and in particular between carelessness and recklessness, but not seeking to point a contrast between the law of England and that of New Zealand. The court was, on the contrary, explaining the law in the light of *Horrocks v. Lowe*. It is true that the discussion took place in the context of s.19 of the New Zealand Defamation Act of 1992, but it was said to have been "designed to reflect the common law concept of malice".

1292. The reader is reminded of the underlying purpose of the defence and of the possibility that an occasion of privilege can sometimes be used for an improper purpose. It was recognised that, where defamatory words are disseminated to a wide audience on what is *prima facie* an occasion of qualified privilege, the motives of the publisher, and whether or not there was a genuine belief in the truth of the statements, will warrant close scrutiny. Should the publisher be unable to disclose a responsible basis for asserting such a genuine belief, a jury might be prepared to infer that none existed: See e.g. *Reynolds v. Times Newspapers* [2001] 2 A.C. 127, 214, [1999] 3 W.L.R. 1010, 1036 (*per* Lord Steyn). So too a publisher who is reckless or indifferent to the truth of the words will be unable to assert a genuine belief. The discussion continued as follows:

> "44. At common law malice was presumed when the words published were false and defamatory. The presumption was however rebutted if the occasion was one of qualified privilege. The privilege could nevertheless be defeated if actual malice was proved by the plaintiff. What constituted malice was restated in *Horrocks v Lowe* [1975] AC 135, 149-150 by Lord Diplock, in what have since been regarded as authoritative terms. His reference in that restatement to carelessness, impulsiveness or irrationality not being equated to indifference must be read in context. The proposition does not qualify the preceding statements which cover lack of genuine belief and recklessness. Thus while carelessness will not of itself be sufficient to negate the defence, its existence may well support an assertion by the plaintiff of a lack of belief or recklessness. In this way the concept of reasonable or responsible conduct on the part of a defendant in the particular circumstances becomes a legitimate consideration. It can also be said that in the context of political discussion an irrational belief in truth is seldom likely to feature. It is for example difficult to envisage reliance on such an argument when a newspaper is defending its publication of false and defamatory material.
>
> 45. Recklessness as to truth has traditionally been treated as equivalent to knowledge of falsity, see for example *Fleming on Torts* (9th ed: 1998) at 639. Both deprive the defendant of qualified privilege. We note as a relevant analogy the recent approach of the House of Lords to recklessness when their Lordships were considering the tort of misfeasance in public office: see *Three Rivers District Council v Governor and Co of the Bank of England* (speeches 18 May 2000). In particular Lord Steyn, when citing from the judgment of Clarke J at first instance, approved the view that recklessness involves a lack of honesty in the exercise of the power in question. He added:

> This is an organic development, which fits into the structure of our law governing intentional torts. The policy underlying it is sound: reckless indifference to consequences is as blameworthy as deliberately seeking such consequences.

46. By the same token, it may be said that reckless indifference to truth is almost as blameworthy as deliberately stating falsehoods. Lord Diplock gave a helpful description of recklessness in the present field when he spoke of someone who publishes defamatory material "without considering or caring" whether it was true or false. Indifference to truth is, of course, not the same thing conceptually as failing to take reasonable care with the truth but in practical terms they tend to shade into each other. It is useful, when considering whether an occasion of qualified privilege has been misused, to ask whether the defendant has exercised the degree of responsibility which the occasion required.

47. What constitutes recklessness is something which must take its colour from the nature of the occasion, and the nature of the publication. If it is reckless not "to consider or care" whether a statement be true or false, as Lord Diplock indicated, it must be open to the view that a perfunctory level of consideration (against the substance, gravity and width of the publication) can also be reckless. It is within the concept of misusing the occasion to say that the defendant may be regarded as reckless if there has been a failure to give such responsible consideration to the truth or falsity of the statement as the jury considers should have been given in all the circumstances. In essence the privilege may well be lost if the defendant takes what in all the circumstances can fairly be described as a cavalier approach to the truth of the statement.

48. No consideration and insufficient consideration are equally capable of leading to an inference of misuse of the occasion. The rationale for loss of the privilege in such circumstances is that the privilege is granted on the basis that it will be responsibly used. There is no public interest in allowing defamatory statements to be made irresponsibly – recklessly – under the banner of freedom of expression. What amounts to a reckless statement must depend significantly on what is said and to whom and by whom. It must be accepted that to require the defendant to give such responsible consideration to the truth or falsity of the publication as is required by the nature of the allegation and the width of the intended dissemination, may in some circumstances come close to a need for the taking of reasonable care. In others a genuine belief in truth after relatively hasty and incomplete consideration may be sufficient to satisfy the dictates of the occasion and to avoid any inference of taking improper advantage of the occasion.

49. A case at one end of the scale might be a grossly defamatory statement about a Cabinet Minister, broadcast to the world. At the other end might be an uncomplimentary observation about a politician at a private meeting held under Chatham House rules. It is not that the law values reputation more in the one case than the other. It is that in the first case the gravity of the allegation and the width of the publication are apt to cause much more harm if the allegation is false than in the second case. A greater degree of responsibility is therefore required in the first case than in the second, if recklessness is not to be inferred. Responsible journalists in whatever medium ought not to have any concerns about such an approach. It is only those who act irresponsibly in the jury's eyes by being cavalier about the truth who will lose the privilege. Such an approach reflects the fact that qualified privilege is not a licence to be irresponsible: see McKay J in *Television New Zealand Ltd v Quinn* [1996] 3 N.Z.L.R. 24, 45".

1293. Mr Bishop argues that this exposition of the law has no application in England. He submits that it is inconsistent with English law and should thus not even be accorded persuasive authority. In particular, I take him to be submitting that in England courts should follow the clear distinction between carelessness and recklessness when determining issues of malice; they should have no truck with the notion that recklessness should "take its colour from the nature of the occasion" or that failing to take reasonable care and indifference to truth can "shade into each other". These propositions, however, are advanced as being consistent with Lord Diplock in *Horrocks v Lowe* and with Lord Steyn in *Three Rivers District Council v. Governor of the Bank of England* [2000] 3 All E.R. 1. As a matter of first impression, the New Zealand Court's reasoning does not appear to be contrary to the law of England. It is interesting to note also the introduction of the concept of "responsibility" into the context of considering the truth or falsity of the defamatory statement, and also the "responsible use" of a privileged occasion. This is very close to the notion of responsible journalism now regularly investigated in England following *Reynolds.*

1294. I do not believe, therefore, that Mr Bishop is construing the judgment correctly when he submitted that I was being invited by Miss Page to depart form *Horrocks v. Lowe* and conclude "that a test of reasonableness or responsibility should suffice to defeat the claim of qualified privilege". The New Zealand court was attempting to explain some of the factors that may need to be considered in deciding whether a case of recklessness has been made out. It was expressly stated that indifference to truth is not the same thing conceptually as failing to take reasonable care. Mr Bishop argues that "No amount of carelessness, prejudice or bias can turn honestly held beliefs into ones that are not honestly held. By an elision, the New Zealand court has turned the traditional subjective test of malice into an objective one". I do not believe that is a fair interpretation. No one can know what goes on in the mind of another except by examining the available evidence. Carelessness can never be equated to indifference to truth but, depending on the circumstances, it may be some evidence of it.

1295. Nevertheless, he rightly points out that in *Loutchansky v. Times Newspapers Ltd (No.2)* [2002] 1 All E.R. 652 (at para. 25) the Court of Appeal did refer to the New Zealand Court as having "redefined the concept of actual malice to provide a stronger safeguard against abuse". I should, therefore, steer clear of the New Zealand Court's terminology, however cogent and persuasive, lest I be thought in so doing to depart from *Horrocks v. Lowe,* within the confines of which I should look for the English law of malice.

1296. I understand that Miss Page would wish me to take the reasoning of the New Zealand Court into account in determining whether or not the Review Team had a genuine belief in some of the claims they were making in their Report for the evidence supporting widespread abuse, pornography and the participation of the Claimants in a paedophile ring. The effect of her submission would be that a perfunctory level of consideration in a situation where the allegations are of the utmost gravity, and intended to receive widespread publicity, can be taken into account as part of the evidence to be weighed in deciding whether to draw an inference of indifference to truth. While recognising that carelessness in itself is not to be equated with recklessness, it would have seemed to me that this proposition is unexceptionable as a matter of English law, if the matter were free from authority in England, but the Court of Appeal have approached the *Lange* decision as redefining the concept of malice and I should not therefore go down that road.

1297. There is no doubt that the Review Team adopted a quite different approach to the assessment of the evidence before them from that familiar to lawyers. It seems to have been to a large extent "impressionistic". They seem to have thought it at least equally valid. They said that their approach was akin to that adopted in a child protection conference when deciding whether to remove a child from a particular environment. Such decisions are not normally announced to the public, however, as findings of guilt. What I need to focus upon, making all due allowance for their chosen approach, is whether they acted in good faith. After all, they claimed publicly to be weighing a great deal of evidence dispassionately and to be applying a standard of proof akin to that in civil litigation. They said (at page 276), in the context of "public figures", that they should not have to prove their innocence and that "they have the right to be judged by exactly the same legal and evidential standards as any

other citizens". It is therefore possible to make an assessment of whether they did what they claimed in relation to these two citizens.

1298. The Team were ready and willing to ask almost all those they interviewed what they *thought* had happened at Shieldfield Nursery. In other words, they were inviting speculation, rumour, guesswork and gossip and treating it as part of the corpus of evidence upon which they made their decisions. Why this was thought to have any value, I cannot see. It was surely part of the Team's responsibility to bring objectivity and independence to a highly fraught situation in which emotions had been running high. Parents were naturally deeply concerned about what, if anything, had happened to their children. Council employees and others were nervous about being accused of impropriety or inefficiency and losing their jobs. In that atmosphere, what was required was a cool and dispassionate appraisal of the *facts*. A careful distinction needed to be drawn between the evidence and suspicion. Unhappily, they sold the pass early on by deciding to conflate the two almost as a matter of policy. As Mr Wardell observed on 25 February:

> "We found material and we found people's opinions, that were very strongly expressed in some cases, that made us come to the conclusion we did".

1299. This approach is seriously flawed, but once it was adopted, at the very least, the readers were entitled to see clearly spelt out the difference between fact and opinion, so as to enable them to make some attempt at forming a view as to the validity of the opinions.

1300. Unfortunately, the distinction between gossip and fact was not made clear on the face of the Report, so as to enable even careful readers to spot the difference. For example, they sought to stereotype Dawn Reed as coming from a "troubled" background and, indeed, this theme was picked up by one of their experts (Dr Friedrich).

1301. This was said by Mrs Saradjian to have come from a former nursery worker called Dymphna Donnelly (known as "Donna") who left in 1990 and who, according to Dawn Reed, hardly knew her. Mrs Saradjian said in evidence that this woman had told her that Dawn Reed had described her own background as "troubled". This sounded implausible and indeed quite inconsistent with Dawn Reed's own attitude towards her family background (and her mother's sworn evidence). Upon closer examination, the story was said to have come via Dymphna Donnelly from an unnamed "mutual friend". That simply will not do. That is third hand gossip. Mr Bishop pointed out that Professor Barker had also referred to Carol Welsh telling them that Dawn Reed "appeared to have a troubled background". Yet this did not greatly assist, since no solid basis for the claim was produced. A reader would have assumed that the Team had such a basis for casting her in that light. When Dymphna Donnelly finally came to give evidence on 24 April, none of this was addressed. She had nothing relevant to say. Her main point seemed to be that Mr Lillie had gatecrashed a party when he was about 25 and presented himself for a lift in someone's car without being invited. At this point I felt that the Defendants' case was drawing close to the bottom of the barrel.

1302. Another aspect of stereotyping in the Report was to include the proposition that Dawn Reed had lived with her grandmother when growing up. Of course, literally that was true but the crucial fact omitted was that she also lived with her mother in a somewhat extended three generational family environment. The Team knew this. It becomes obvious that the Team included these vague allegations about Dawn Reed as established fact because they thought they would be treated by the readers as providing significant support for the image they had decided to portray.

1303. The attitude taken by Mrs Saradjian was that Dawn Reed could have come along and spoken to the Team and provided them with the relevant information; since she had chosen not to, the Team were entitled to reach such conclusions on what they had (i.e. in this instance gossip). It was thus, in a

sense, her own fault that she was misrepresented. So much for independence and objectivity. I thought Mrs Saradjian's off the cuff response very revealing. Still, however, these are aspects of the Report that are consistent with prejudice and undisciplined mental processes. Such matters, standing alone, are not to be equated with the concept of express malice.

1304. Although the Team appeared to set such store by people's "opinions", there was an obvious slant in the process of selecting which to rely upon and which to reject. They chose to omit opinion if it was favourable to Miss Reed. The classic case was that of Mr Kevin Hattam, her trade union representative, who had said that either she was innocent or "a brilliant liar". Professor Barker regarded him as biased. It was therefore inappropriate to give any weight to his assessment, even though the Review Team had been especially keen to invite his impression (since he had seen more of Miss Reed than most other witnesses). Moreover, Mr Hattam's reservations about the disciplinary proceedings (being the "strangest" he had ever encountered) could be put to one side because they had it from Mr Graham Armstrong himself that the disciplinary procedures had been fair.

1305. Another assessment the Team chose to ignore was that of Det. Sgt O'Hara, given in interview on 18 April 1997. He expressed his opinion that Dawn Reed was not a child abuser. The Team's response was "So you are still struggling with that a bit?". This observation to the police officer (which might be thought a little patronising) is echoed in the Report (page 113), where the Team commented that "Joyce Eyeington was frank with us when she said that she struggled to believe the allegations". It appears that the Review Team were operating on certain assumptions, such that anyone who gave Christopher Lillie or Dawn Reed the benefit of the doubt must either be biased or "struggling" to overcome prejudice.

1306. They went on to inform Sgt. O'Hara that Mr Lillie and Miss Reed had chosen to work together. This was incorrect as it happens, although another member of staff (Carol Welsh) was under the impression during her interview, in August 1996, that they had opted to stay together. The officer said this was "news to me". He then recalled how he had addressed the possibility of a sexual relationship between Mr Lillie and Miss Reed and concluded "I very much doubt it". This the Review Team also brushed aside with the banal words, "Well, they say opposites attract". Professor Barker simply dismissed the officer's views on the footing that he was "operating on a basis of having a stereotype of what abusers of children were like, which Dawn Reed did not fit".

1307. It began to emerge in the course of the trial that the Review Team had an ambivalent relationship with the police. They appeared to feel beholden to them for allowing them to see the video recorded interviews with the children (as the parents had requested). Some members of the Team appeared to think that there was an agreement or understanding with the police that, in return, they would not criticise social workers and/or police officers over the way the interviews were handled. Mr Wardell, on the other hand, did not believe this to be the case. Eventually, Professor Barker admitted, "My memory is that there probably was".

1308. There is no doubt that the Team were reminded by the police in writing that there is a statutory scheme for dealing with police complaints and, accordingly, they formed the view that it was no part of their function to criticise police officers. I was also told by Mrs Saradjian that there was a letter from the police asking them, in effect, to "go easy" on Helen Foster when interviewing her. The letter was only produced late in the day (on 18 April) and I have set it out above together with Professor Barker's reply (see paragraphs 1186-1187). Detective Inspector Findlay referred in interview to that letter, in which she had apparently been described as being "upset" by the inquiry. He said: "Did you get that letter about Helen Foster? …I really mean it. I want you to give very serious consideration to that; this enquiry had a terrible effect on her".

1309. Mrs Saradjian said that they did not want to upset her further. Miss Foster was the officer who conducted or supervised the controversial interviews with Child 14. It was to her, therefore, that

questions needed to be directed as to the serious issues raised by Holland J when the trial collapsed. Mrs Saradjian accepted that there were questions they would have liked to ask – but they chose not to. Again, very revealing. It begins to look as though they were indifferent to the answers – answers which Holland J had explained were so crucial. Indifference to the truth can, of course, in certain circumstances provide evidence of malice.

1310. I strongly suspect that if it had not been for a passing reference to it in the Campbell Findlay interview the "go easy" letter from the police would never have seen the light of day (as it eventually did only on 18 April 2002).

1311. So far as the suspicious gap in the tape recording of this interview is concerned, they accepted, without even questioning it, the explanation that Helen Foster had forgotten to ensure that the tape was switched on.

1312. This is a very important aspect of the Report. The Team gave the world its assurance (which the readers had to take at face value) that the child's evidence of rape was "powerful" and "persuasive" and, by strong implication, also consistent over three separate interviews. Even in 2002, Mr Wardell ventured to suggest in his evidence in chief that the videos were "of an exceptionally high standard". Yet the truth was that Professor Barker, at least, regarded them as "inconclusive". In certain respects, so too did Mrs Saradjian.

1313. It is to be remembered how critical that last section of the third interview was for Mr Lillie. He had just been given bail on 22 October 1993 when, after the child had finally got round to accusing him of rape, he was immediately re-arrested and thereafter remained in custody for the next nine months. The accusation of rape was made in circumstances powerfully castigated by Professor Bruck (see paragraphs 416 and 782 above).

1314. Yet none of this was questioned by the Review Team. The readers were not to know that they were "going easy" on Helen Foster. They were entitled to assume that the matters had been independently and carefully investigated and that Holland J's concerns would have been thoroughly addressed. The Team felt qualified to ladle out praise to Helen Foster and other officers. It was thus vital for the public to know that they were not being even-handed. It was a one-way valve. They regarded themselves as disqualified from criticising and, what is more, had not asked questions that needed to be asked (and this as a matter of policy).

1315. There is thus, to say the least, a hollow ring to the Team's claim on page 24 of their Report that they had uncovered "as full a picture of the events under investigation as is humanly possible". It was ludicrous to make such a claim when they set out to empathise with witnesses and proceeded on the uncritical footing that they were being told the truth. Moira Luccock of the Independent Persons Scheme was asked about the inquiry process that she and her colleagues had been overseeing (and to which they gave a clean bill of health):

> "… But it is not like a situation in a courtroom where you are actually challenging. You are not challenging the person. You are actually accepting that they certainly believe what they are telling you, and you have no reason to doubt that as the investigator".

1316. It is true that she said this specifically in the context of complainants rather than police officers, but it has not been suggested that the Team adopted a more testing process in some cases than others. Such an approach may be suitable for some forms of inquiry but its limitations are obvious. It is certainly not a legitimate way of determining issues of guilt or innocence of criminal offences such as rape or indecent assault with a view to publication. Yet the Team were not frank with their readers about the

limitations of their inquiry. They tried to have it both ways by claiming publicly to have been "robust" and to have provided "as full a picture … as is humanly possible".

1317. The members of the Review Team knew about the worrying break in the tape. They knew it was "unfortunate", and Mrs Saradjian accepted it looked "fishy". But none of this was mentioned. They shut their eyes to it and refrained from asking the questions that cried out to be asked. Readers would assume that the fulsome praise of the interviewers would have only been included in the Report after an exhaustive exploration of their methods. It turns out that this was simply not done. They had been reminded that it was not for them to investigate criticisms of the police. Yet the other side of the coin would surely be that they were equally disqualified from covering them with glory.

1318. Mr Wardell was in difficulty over the gap in the tape. On the whole, he came across as a decent man trying to be as frank as he could. He seemed modest, level-headed and restrained in his account of the Review Team's task. Weasel words did not come naturally to him, but even he succumbed on this occasion. I asked him on 22 February whether he was then saying only that he found Child 14's second interview "powerful", or whether as the Report states he found all three "powerful". He replied:

> "If I had to distinguish… I would say that video 3 was less powerful, but not much so, only by degrees, purely because of the gap".

That was the understatement of the year.

1319. Moreover, the Team members were not just neutral or silent. They gave an assurance generally that there were no leading questions. On 8 February Professor Barker went so far as to concede that "… it was too strong a statement on reflection". He repeated that concession on 17 May. That is a classic example of Professor Barker's trying to hedge his bets. He knows the assurance was untrue. Each of the four members of the Review Team had viewed the Child 14 video-taped interviews. Moreover, each Team member had seen Professor Barker's note of the Child 10 interview in which he expressly refers to "leading" questions. Each of them therefore knew it to be untrue. It was obviously untrue, and the readers had no way of forming a contrary opinion.

1320. In the light of these matters, I am afraid that I have been unable to come to any other conclusion than that the bland assurances given to the public about Child 14's video evidence were not given in good faith. There is just too much brushed under the carpet for it to be explicable by carelessness or accident. The police were obviously anxious to keep Mr Lillie in custody. He was about to get bail, and the only way he could be re-arrested was if a solid new allegation came into their hands. An allegation of rape was obtained in the most oppressive circumstances, at the end of a third hour long interview, and only after the tape had been mysteriously switched off for 15 minutes. Armed with that, the police went straight off to re-arrest Mr Lillie and to deprive him of his liberty until he was acquitted the following July. Yet the Review Team deliberately refrained from exploring any of this with the police; instead they reassured the public that nothing was amiss. It was conceivable that the suspicious circumstances surrounding the events of 22 October 1993 could be explained quite innocently. But that had not happened by November 1998. The Council had a right to be told the truth and the Review Team misled them.

1321. No account was taken, either, of the fact that Child 14 herself appeared on Panorama in 1997 on the same programme as Mrs Saradjian, and gave yet another version of what happened to her. This was not apparently thought in any way to undermine her reliability. Indeed, on 22 February Mr Wardell told me that it did not affect the Team:

> "We had to be careful it did not. It is a bit difficult when you have seen it happen, but we set it to one side".

Earlier, he had said that they tried to behave as if the programme had not happened.

1322. The other insurmountable hurdle for the Review Team is that part of the Report where they appear to claim corroboration for the allegations of a paedophile ring and involvement in pornography. They did not need to make such grave and disturbing allegations. The simple truth is that no evidence was found to corroborate them. Yet the Review Team wished to convey these horrible smears to the public as being justified by their three years of careful investigations. They grossly misrepresented the position in at least four respects. As I have already explained, the police were satisfied (1) that there were no concerns about the named young man with the camcorder, and (2) that there was nothing to put the older man of distinctive appearance, or (3) the man with a disability, or (4) the woman with red hair "in the frame" for child abuse. Unfortunately, the public were not to know this. They were given the impression at pages 217 and 269 of the Report that the police investigations had provided corroboration for what the children had said (or rather for what various adults had construed them as saying).

1323. The Team witnesses tried swearing by the card. They suggested that what they meant was that the police had found that people existed physically corresponding to the descriptions given by the children or their parents. What obviously mattered, however, was not whether such persons existed but whether they had ever been present on occasions of child abuse. That was emphatically not corroborated. There was no point in mentioning them in the Report unless it was to suggest that there were grounds to link them with paedophilia. The explanation given, therefore, was feeble and disingenuous.

1324. The argument was raised by the Review Team in closing that it was not only the Review Team who "considered" or "concluded" that other people were involved in abusing the children. They cite individuals who expressed "opinions" to their inquiry, but it is crucial to focus on the distinction between opinion, surmise or guess-work on the one hand and evidence on the other. Particular examples cited were Julie Kinghorn, Helen Foster, Vanessa Lyon and Dr San Lazaro. The Review Team can hold whatever opinions they wish, but they were being paid to look into the facts and present a measured appraisal of the evidence. It is that which they chose to misrepresent. The personal opinions of Vanessa Lyon and Dr San Lazaro are not evidence. They were lacking in balance and objectivity, but the Review Team as private individuals were entitled to agree with them. Yet the Report was supposed to be authoritative and what they were not entitled to do was to pretend that the police had found corroborative evidence. Neither Julie Kinghorn nor Helen Foster ever gave any support for that proposition.

1325. The Review Team praised the police for their vigour and, in particular, they praised Mr Campbell Findlay. I have little doubt that, if he had dug up a shred of evidence to support the paedophile theory, he would have pursued it to a conclusion. Any police officer involved in the inquiry would be under a duty to protect local children from exploitation and abuse. Yet nothing was found to link any of the "suspects" to impropriety of any kind. What the Team did was dishonest. They told the public that these "vigorous" police officers had turned up (unspecified) evidence but that it was not strong enough to be used in court. In other words, these hardworking officers were subtly portrayed as having been let down once again by the inadequacies of the law of evidence. I will not permit that to be brushed over. It was a mischievous falsehood. It put not only the Claimants in danger but several other quite innocent people (against whom nothing has been turned up in the last nine years).

1326. What is said on the Defendants' behalf in their closing submissions is that "the paragraph could be better phrased to make it clear that it was the children's evidence and not any other evidence". This is said to be clearly attributable to "loose thinking and/or wording and not evil intent". That was not how it was put by the Review Team in evidence. Professor Barker tried to shelter behind a proposition which could not be tested or refuted – namely, that Campbell Findlay had said something off the record (to the effect that they *had* found some corroboration). That was not true. The other two

Defendants who had been present (Mrs Saradjian and Ms Jones) accepted that nothing had been said off the record to confirm the particular identifiable individual's involvement in paedophilia.

1327. One can also detect the same subtle techniques at work on page 100 of the Report in relation to Child 22 where the negative anal findings are converted into "no *conclusive* forensic evidence of penetrative trauma" (emphasis added). Again the false impression is given that there was *some* evidence.

1328. I cannot see how these grave allegations can have been given currency and the apparent stamp of authority in the Report without the Review Team knowing exactly what they were doing. They each went through the Report line by line and approved it. They knew what the police had been saying about lack of corroboration, but despite this they allowed it to go forward as part of their conclusions that there were solid grounds to corroborate the Claimants as being part of a paedophile ring, together with some of those identifiable local residents, and as also being engaged in child pornography. This is deeply worrying.

1329. This matter is closely linked with the passage at page 269 of the Report which refers to photographs taken from the flat where Mr Lillie had been living. Not only did Mr Lillie and Lorraine Kelly go into the witness box and explain about the photographs, but the Review Team were told years ago by the police that, after going through everything with a fine tooth comb, they had found *nothing* to support any suggestion of impropriety or pornography. Yet, for no reason whatsoever, the Review Team chose to announce to the public that Mr Lillie's explanation for the photographs "was probably false". Since Detective Inspector Findlay had been painstakingly through them all, and they had not, it is difficult to see how they could say that in good faith. It was deliberately and gratuitously added.

1330. Between pages 209 and 217 of the Report, various striking examples are given of child abuse and, in particular, of penetrative injuries. It is baldly stated that:

> "When investigations were carried out, in many of these cases physical [i.e. clinical] evidence was found that validated the children's testimonies".

What the reader is perhaps most likely to remember is the dreadful allegation that Child 4 had cutlery inserted into her vagina which caused bleeding. This striking example of cruelty (no longer pursued in these proceedings despite being "put" in cross-examination) can only have been included in the Report on the basis that the Review Team wished the readers to conclude that they had found it proved. The likelihood is that the reader will also assume that this grave allegation could not conceivably have been included in that section of the Report unless there was powerful evidence to corroborate it – including "physical evidence" of penetrative trauma. There was none.

1331. They had not even discussed the matter with Dr San Lazaro in interview, despite the fact that the mother had waived confidentiality in respect of medical records. Professor Barker admitted that to him, as a layman, it had seemed unlikely that such an example of penetrative abuse would be consistent with no physical findings, but they all apparently so lacked curiosity about this serious example that they did not pursue it with a paediatrician. Again this betrays at the very least a determination not to pursue elementary lines of inquiry which could conceivably undermine their conclusions on these desperately grave allegations.

1332. Moreover, no concern appears to have arisen over the mother's developing and changing story. In 1997, on Panorama, the story had become embellished by the presence of Mr Lillie who was said to have been "laughing" while the cutlery was inserted. This detail was introduced at least four and half years after the event could possibly have happened. The mother then alleged that this outlandish piece of cruelty by Dawn Reed happened more than once. Yet none of this gave the Review Team pause for thought at all.

1333. I have already referred at some length when considering the Review Team's evidence (at paragraphs 1225-1230 above) to their failure to explore with staff members the children's allegations that one or more of them had been present on visits to places outside the nursery when abuse is supposed to have taken place. This too was such an obvious line of inquiry to be pursued. I can only conclude once again that the Review Team did not *want* to know. Despite this, they represented to their readers that they had come to their devastating conclusions after a painstaking analysis of the evidence. Some of their readers clearly believed that. For example, Jennifer Bernard said that she had been so persuaded. She had already left the employ of Newcastle City Council by the time the Report came out and I have no idea how carefully she read it, but it did not take very long for others to see through it (e.g. Mr Dervin, Mr Cosgrove and Mr Marron).

1334. From time to time, Mr Bishop tentatively sought support for his Review Team clients from the attendance of representatives from the Independent Persons Scheme. I am quite sure that those involved in that Scheme often do an excellent job in trying to ensure fairness in the kind of inquiries for which their services would normally be required. On the other hand, most of them would not have the relevant knowledge or expertise for determining "charges" against Mr Lillie and Miss Reed. As Moira Luccock pointed out on 1 March, the Shieldfield experience was unusual if not unique; that is to say, the attempt to carry out an investigation generally as well as dealing with individual complaints. They normally deal with "single complainants".

1335. It is against that background that Moira Luccock's views have to be assessed. Mr Bishop introduced the opinions she expressed at paragraphs 32 and 35 of her witness statement. She described the Review Team's investigative process as "open, detailed, thorough and fair" and expressed the view that the Review Team's conclusions were "based on a comprehensive analysis of the evidence collected". There was no "inherent bias against Lillie and Reed" and, moreover, they "came to their findings after the conclusion of a thorough investigation". (It is ironic, perhaps, that she should be making such a claim when she had already told me, shortly beforehand, that even before the Review Team began its task it had become "clear" that the Council was "dealing with a multiple abuse situation".)

1336. I have no doubt at all that those are the honest beliefs of Moira Luccock and her colleagues. Yet I am bound to come to my own conclusion on these matters on what I have read and heard in this trial. My conclusion is quite the opposite. With the benefit of fuller investigation, it is apparent to me that Moira Luccock's assessment is simply unsustainable.

1337. I mentioned earlier that for a fact-finding tribunal it is especially helpful to focus on moments when a witness's mask slips. During the course of the City Council's evidence, other examples of Professor Barker's true character came to light from contemporaneous documents. First, there was the incident involving Mr Hattam. He was a trade union representative whom various staff members wished to have accompany them when being interviewed by the Review Team. Various City Council witnesses recalled this controversy which had flared up in 1996. Professor Barker (perhaps with the assent of one or more of his colleagues) took objection to these witnesses being represented by the union official of their choice. The reason he gave over the telephone to Mr Warne on 24 July 1996 was that Mr Hattam was biased because he seemed to believe that Dawn Reed was innocent.

1338. The relevant paragraphs from Mr Warne's note should be set out in full:

> "[Professor Barker] believes there may well be a real problem here. He believes, on the basis of their interview with Kevin Hattam that he believes that Dawn Reed is innocent. In his interview, Kevin Hattam said that this was the strangest disciplinary case he had ever been involved in, because there was no evidence. He indicated that he was happy to defend Dawn Reed and commented that she was either innocent or a brilliant liar. He went on to indicate that he did not feel he could have represented her if he

> felt that she was guilty. As a result of these remarks, Dr Barker believes that Hattam still has a strong personal bias in this matter and is therefore unsuitable for representing members of staff.
>
> I pointed out that under the procedures staff can choose who they wish to represent them and I was uncertain as to what rights he had to refuse a particular representative. He pointed out that he could adjust the terms of reference and could create rules to deal with this situation".

1339. It is not easy to understand such a mentality. Yet the episode sheds a flood of light on Professor Barker's lack of objectivity and his willingness to use his position to bully.

1340. Secondly, there was the unpleasant attitude displayed at around the same time to one of the City Council's solicitors, Ms Barbara Milligan, who dared to question Professor Barker's summons to attend upon the Review Team and be interviewed. She wondered exactly how she could help and what areas they wished to ask her about. She not unreasonably inquired by letter in April 1996. Professor Barker responded by telephone on 29 April (according to a contemporaneous note) that it should be enough that they had asked her to attend. He also said to her over the telephone, according to the City Council note I was shown, that the only other people who had declined this summons were Christopher Lillie and Dawn Reed. He asked if she really wanted to find herself in that company. Not surprisingly, she did not care for his tone. For sheer nastiness, it takes the biscuit.

1341. After a three month gap, Professor Barker returned to the witness box on 17 May in order to deal with these apparently telling conversations. As to Miss Milligan, he said that he had not seen the note of 29 April 1996 until recently and he was somewhat shocked by it. Miss Milligan had obviously got it wrong. He remembered the conversation. Mr Wardell was in the room at the time and had complimented him on how polite he had been, especially in view of Miss Milligan's "aggression".

1342. He had to agree that Miss Milligan could only know that the only two people who had declined to meet the Review Team were Christopher Lillie and Dawn Reed if she had been told as much by him. He agreed that he also told her that, if she refused, her name would be put in a list at the back of the Report (the only other candidates at that stage, as it happens, being the two Claimants). Those admissions take Professor Barker right up to the wire – he draws back only from accepting that he issued a warning as recorded. I do not believe that Miss Milligan, a senior solicitor, would have recorded the "warning" in those terms if it had not happened. She could hardly mistake it; nor had she any reason to make it up.

1343. Miss Page pointed out that a similar "warning" had been given to Joyce Eyeington. It is set out in her witness statement and was not challenged when she gave evidence. She too was told that it would look bad if she did not come and meet the Review Team. Her name would be included in the list.

1344. Henry Warne had made another note. This was dated 19 April 1996 and concerned yet another potential solicitor witness, Mr Stefan Cross. Mr Warne recorded that Professor Barker was saying that he would write to Mr Cross with a "final warning" that he would be listed as one of the few people refusing to attend. He told him also that otherwise it was only Christopher Lillie and Dawn Reed who were refusing. According to Professor Barker, Mr Warne has also got it wrong. But I do not find it credible that both Mr Warne and Miss Milligan had got hold of the wrong end of the stick. The pattern is a consistent one. I think Miss Milligan's record is likely to be accurate.

1345. So far as Mr Hattam is concerned, Professor Barker rather surprisingly said that he personally did not have a problem about what Mr Hattam believed. His objections were rather based on the fact that some nursery workers and some social workers did not want to be represented by Mr Hattam because it

was perceived (either by them or by parents) that he would have a conflict of interest. It is difficult to see what would be the nature of the conflict. Yet this seemed to be a new allegation. I had never heard of it before. There seemed to be no record of such concerns. Nor was Professor Barker able to identify any of the individuals who were supposed to be concerned. It did shortly afterwards emerge that there was at least one person who did not wish to be accompanied by Mr Hattam. Vanessa Lyon told me on 23 May that she had been vigorously cross-examined by Mr Hattam during the disciplinary proceedings and would rather have another trade union officer when she came to be interviewed. This was, however, a matter of personal distaste and nothing to do with any conflict of interest.

1346. Vanessa Lyon's evidence thus supports Professor Barker's recollection up to a point. But yet again there were contemporaneous documents which appeared inconsistent with his claim to be neutral over Mr Hattam. He was shown a note of 23 July 1996 of a meeting between Ms Bernard, Mr Armstrong and Mr Warne in which it was recorded as being Dr Barker who was "unhappy" about Mr Hattam representing nursery staff. Once again Professor Barker deftly shifted his ground. He might have been "unhappy" after all – but only because of the perceptions of others (that Mr Hattam was in a position of conflict).

1347. There was the other note of Mr Warne (quoted above) dated the next day. He recorded Professor Barker's view (expressed on the telephone) that Mr Hattam had a "strong personal bias" which rendered him unsuitable to accompany staff when being interviewed. Once again Professor Barker claimed that Mr Warne had got it wrong. That one sentence alone was inaccurate. I am quite satisfied, however, that he was accurately recording Professor Barker's stance which, at that time, was something of a bone of contention. The attitude of the union was, in effect, that it was none of Professor Barker's business. Employees could be accompanied by a trade union official of their own choice.

1348. As Miss Page pointed out, if the position truly was that some members of staff wanted him, and others (e.g. Vanessa Lyon) did not, that was easily accommodated. There was no problem. The only issue that gave rise to these discussions was the fact that Professor Barker was trying to interfere by precluding some witnesses from having the trade union official of choice.

1349. This was a matter on which Moira Luccock of the Independent Persons Scheme also gave evidence. On 1 March she said she recalled the issue, at least in general terms. It seems to have been her recollection also that the matter was raised by Professor Barker rather than staff. What she said was this:

> "I certainly recall that it was an issue that Richard Barker felt should be aired … and there needed to be a resolution because members of staff were entitled to have a representative with them. So it needed to be resolved".

She agreed that it accorded with her memory that Professor Barker was objecting "because Kevin Hattam had represented Dawn Reed in disciplinary proceedings".

1350. The matter was finally resolved when Barbara Hann, the UNISON Branch Secretary, wrote to Jennifer Bernard on 30 July 1996, pointing out that her members at Shieldfield Nursery were extremely concerned, as they had great confidence in Kevin Hattam, and wished to be represented by him. She pointed out that it was illogical for them to be deprived of his services when he had acted for them in the Part 8 review. She added, "UNISON therefore feels it must insist that Kevin is permitted to represent the members". Professor Barker then gave way and informed Jennifer Bernard that, "having made their point", the Review Team would no longer object (see her memorandum to Mr Warne of 1 August 1996). Barbara Hann was in a position to stand up to Professor Barker. Others were not so fortunate.

1351. What is revealing about these episodes is not so much that Professor Barker was becoming too big for his boots, but that he was plainly incapable of keeping an open mind or approaching the search for information dispassionately. In my judgment it is manifest from what he said to Ms Milligan that his claim in February 2002 to have retained an open mind about Dawn Reed until December 1997 was simply not truthful. Nor was the claim (at page 19 of the Report) to have guaranteed "natural justice for all those involved".

1352. Another strange and revealing aspect of the Team's approach to evidence relates to their own experts. They instructed entirely appropriate people to give them advice on some of the matters confronting them, namely Professors Ray Bull and Graham Davies. They are undoubtedly well known experts in the field of child sex abuse investigation.

1353. Unfortunately, those experts were unable to review the video recorded interviews of the children. Nor did the team, even allowing for that important limitation, invite their comments on the quality of the children's disclosures. It was regrettable that the Review Team did not even disclose their letters of instruction to Professor Bull until after the trial was over (on 31 May 2002). They did not disclose those to Professor Davies. What does emerge, however, is that Professor Bull was not supplied with any material about the video interviews or about the children's statements or how they evolved.

1354. Turning to what these experts *had* been able to provide, I find it curious that the Team seem to have ignored or put to one side the advice received. In particular, Professor Davies at paragraph 9 of his Report sets out the guidelines for good interviewing practice. When comparing his guidance, however, with what went on so far as the Shieldfield children are concerned, it soon becomes apparent that it was not consistent. Nor did they appear to take account of Professor Davies' warning that, even after statements have been elicited through suggestive techniques (intentionally or otherwise), they can nonetheless give the appearance of being spontaneous.

1355. They do, however, address (at pages 220-221 of the Report) Professor Davies' warning against over-zealous questioning. They conclude that in the Shieldfield case the children's evidence *could* not be explained by "… the implanting of false information, pressure from parents, and/or by over-zealous or suggestive questioning on the part of social workers and/or police". That conclusion is something Professor Bruck is unable to understand in the light of what they had seen. I too am unable to understand it in the case of persons of their experience, unless they were setting out to misrepresent the situation, safe in the knowledge that their readers would not have the primary evidence and, therefore, lacked the ability to form any opinion of their own. They had to take what the Review Team said on trust. It is, I am afraid, difficult to avoid the conclusion that this trust was abused.

1356. Although the Report (pages 219-20) claims that the Team considered the children's statements in the light of Professor Davies' advice to scrutinise the history of the children's statements, and whether the name of the accused was suggested to the child, there is no evidence that they in fact did so. Readers would, on the other hand, assume that they had done precisely that in arriving at their conclusions and giving their assurances (for example, as to the lack of parental pressure and of suggestive questioning).

1357. Miss Page illustrated the significance of this in relation to the claim that the Team were "convinced of the spontaneity of disclosures particularly in relation to ….. the use of cameras, and syringes". They did not scrutinise the history of the children's statements. This may be partly because it was contrary to their policy of not testing the parents' evidence and partly because they did not take the trouble to do so. It is, however, quite wrong to give the impression that their conclusion was based on careful scrutiny. That is a false claim, just as the Team made false claims about the absence of leading questions, and the supposed corroboration for the paedophile ring and for the taking of pornographic pictures by a named individual with a camcorder. Miss Page invited me to trace through the allegation about syringes to show how "careful scrutiny" would have shown anything but spontaneity.

1358. There are three children primarily relevant to "syringes", Child 4, Child 10 and Child 12. In relation to Child 4, the Team included (at pages 212-3) reference to a child describing injections in the arms, legs and bottoms [*sic*] that "make me go whoo", allied with the suggestions that "they hurt my fairy" but after injections "it did not hurt". This derives from Child 4's mother's interview with Mrs Saradjian on 8 November 1995. There is no earlier record of the child saying anything to this effect. Prior to publication of the Report, three years later, there was no "scrutiny" of the history of the child's statements, careful or otherwise. The mother has said in these proceedings that the child made claims to that effect only in or later than July 1995. It is extraordinary that the Team showed no interest in establishing this at the time, while claiming to have followed Professor Davies' advice "as far as it was possible to do so". The readers of the Report were surely entitled to know that the allegation first surfaced well over two years after the suspensions. They knew nothing as to the circumstances in which the *child* (as opposed to the mother) made these statements but yet claim to be "convinced" as to their spontaneity. What they did know was that Child 4 had over the intervening period been subject to a good deal of questioning and to a real risk of cross-contamination (see paras. 615-619 above).

1359. The claim in the Report cannot be true either in relation to Child 12. The words they attributed to him (at pages 212-13) were "nice juice into bottom so it would not hurt". This wording derives from an interview by Ms Jones as late as 8 April 1997. Dr San Lazaro comes on the scene at this point, because she saw the boy on 11 November 1993 and introduced the notion of a syringe. She produced one for him, invited him to use it to transfer juice from one receptacle to another and allowed him to take it home and play with it. That is almost certainly where the notion of "juice" came from. The Review Team knew nothing of this because they had not heeded Professor Davies' advice to scrutinise the history. Again, they could hardly be convinced of the child's spontaneity.

1360. It is right to say that the child is recorded by social workers on or about 9 November 1993 as having told his mother that he had been in bed with "Chris and Dawn" and they had "put a needle up his bottom" (no reference to "juice" or "not hurting"). It is necessary to see this in context. It was the same day that the mother rang for advice about a "wriggly bottom". The GP notes associated this with itching and referred the mother to Dr San Lazaro who saw him two days later. The wriggly bottom appears to have been associated with an anal discharge, and the streptococcal infection was diagnosed. None of this had anything to do with the Claimants. The child was clearly, however, focusing on anal discomfort. The reference to "a needle up his bottom" may have been a pure coincidence of timing but it seems unlikely. To what extent or how Mr Lillie and Miss Reed came into the conversation about the anal discharge or the "wriggly bottom" cannot now be determined. I am certainly not going to assume that their names were mentioned spontaneously and independently of the current discomfort.

1361. The Review Team did also have a note from Kulvinder Chohan to the effect that the child had retracted the allegations on video.

1362. As for Child 10, the relevant passage in the Report is "… another said needles in his bottom 'make him dead'". The words come from the mother's interviews with Mrs Saradjian on 8 and 17 November 1995. Miss Page takes the point that the Review Team altered the sense because what the mother is recorded as saying is "[Child 10] also talked about Dawn putting needles into his bottom that *were supposed to* make him dead". There is no other record of a similar allegation ever being made by Child 10. I am not convinced that the omission of the italicised words makes a significant difference. What is, however, clear is that Mrs Saradjian did not follow Professor Davies' advice and explore the timing or background to the child's statement. In the words of Ms Jones, "our job was not to cross-examine the parents".

1363. It is thus important to note what has subsequently emerged. In particular, it is accepted in the mother's witness statement that she led the child (understandably) as a result of having passed on to her the allegations apparently made by child 14 in October 1993 involving Child 10 in the context of needles. There is also a contemporaneous note of Helen Foster dated 23 October 1993, which was available to the Review Team and records the mother as having asked the boy if he had been hurt with a needle.

He responded, according to this record, that he had not been hurt but it was "a nail with water in the plastic bit that was put on the cheek part" of his bottom. In the light of this background, it is obviously regrettable that the readers were not informed of the circumstances in which the child's comment was elicited (since it could hardly be said to have been spontaneous) or the fact that the emotive words "make him dead" derive from the mother (not the child) two and a half years after the "Shieldfield scandal" had first blown up. Nothing was said by Child 10 in either video interview about needles despite (as Professor Barker expressly noted on viewing them) a number of "leading questions, very focused on getting answers".

1364. Readers of the Report, in the light of such information, might well want to know how it was that the Review Team could have become "convinced of the spontaneity" of the child's alleged disclosure that "needles in his bottom 'make him dead'". Once again it is difficult to see how they could make such a claim. I do not see how this can be categorised as a "regrettable error" or as something which was just "badly expressed". The Review Team gave a positive assurance which cannot have been true.

1365. Mr Bishop argued, generally, that even if the false statements in the Report are not to be categorised as unfortunate slips it would not defeat qualified privilege since they honestly believed that the Claimants used syringes or needles to drug the children. That would be a complete answer to the plea of malice even if this belief were arrived at by a process of reasoning which contained a few unfortunate blips. Lord Diplock himself, of course, makes it quite clear that an honestly expressed belief may be protected notwithstanding its derivation from faulty reasoning. Here, however, I do not accept that the proposition is sufficient to dispose of the Claimants' case.

1366. Many people in Newcastle believed prior to the Review Team's appointment that the Claimants were large scale child abusers. There would be no surprises if the Review Team merely joined the crowd. What mattered about the Review Team, on the other hand, was not their personal beliefs but rather the assurances they were giving to the public about the strength of the evidence in support of the widely held beliefs, following three years of supposedly rigorous and impartial analysis. That is what they were paid for (I was told they received £364,810.61). It was this supposedly detailed consideration of the evidence which distinguished them from the general public and underlay their claim to be able to accuse the Claimants under cover of privilege.

1367. What was so damning in their Report is not that Ms Jones or Professor Barker as individuals *assumed*, for example, that the disciplinary findings of 1994 were justified but that they and their colleagues were vouching for the evidence. If they misrepresented the state of the evidence, that is very serious indeed. It would suggest that the protection offered by the law was being abused.

1368. I have already mentioned the further warning notes sounded by Helen Foster about parental pressures in her interview with Mrs Saradjian (see paragraphs 1278 above). To pretend that contamination or pressure "could" have no bearing on the case without even addressing her concerns was a gross misrepresentation.

1369. The Defendants submit that "the probability of a team of professionals conspiring … to produce a deliberately misleading document is remote indeed".

1370. At the beginning of the trial I was sceptical about the allegations of malice against the Review Team. I was conscious of the need to prove bad faith in relation to each of its four members and that findings of malice are, accordingly, very rare. I said as much in my ruling of 7 February when I permitted the plea to go forward beyond the close of the Claimants' case. Yet, having thought about the issue constantly over the many weeks of this trial, I am in the end left in no doubt that the qualified privilege to which the Team would otherwise be entitled is vitiated by express malice. They abused the occasion for which they had striven so hard to ensure that blanket protection. Its four members consciously, after a

detailed consideration of the material assembled before them, set out to misrepresent the state of the evidence available to support their joint belief that Mr Lillie and Miss Reed and other local residents were child abusers (and indeed abusers on a massive scale) and to give readers the impression that statements by parents and/or children had been corroborated by police inquiries.

1371. Moreover, so far as the accounts of these very young children were concerned, the assurance was given quite deliberately that (leaving aside altogether contradictions and inconsistencies) what they were saying was untainted by suggestions, leading questions or cross-contamination. They knew the contrary to be the case. Yet they even went so far as to assert (on page 102) that interviewers at the time "went to great lengths to the [*sic*] follow the Memorandum of Guidance literally, to almost have to treat children as though they were adult witnesses" because they were afraid of being accused of "leading" a child. (It is clear that the Review Team actually thought that even *more* leading questions should have been asked.)

1372. Professor Barker clearly recognises this problem. He admitted in February that the passage (at pages 220-221) was overstated but, significantly, when he returned to the witness box in May, he chose to raise the topic again even though he was not asked about it. He said the claim was rather "strong". Whether he raised it because of a guilty conscience, or just because he recognises the weakness of their position, I know not. Even by that time, Professor Barker had not disclosed his rather scanty notes of the video interviews, but he did so on 31 May. It then emerged that he himself had noted "some leading questions, very focused on getting answers" in relation to Child 10's second interview. This was shared with his three colleagues but not, of course, with the readers of the Report. Mrs Saradjian stated her position on 20 February. She actually wrote the passage on page 221 (to the effect that the questions were not in any way leading). She now says, however, that the claims might have been "slightly strong" but "there were not overwhelmingly leading questions throughout the videos". That is double-speak. Mr Wardell accepted that it would be "the easiest thing in the world to take the videos and find 25 examples of a leading question". Also, as I have already recorded, Ms Jones in the witness box recognised the leading nature of the interview questioning. What is clear is that they all chose to make a blatantly false claim which is quite indefensible. Yet the assurance is given on page 23 of the Report that its contents had been checked for accuracy and consistency.

1373. More generally, the Review Team were full of praise for the interviewing techniques (page iv):

> "The video interviewing of children by social workers and police was done in a professional and sensitive manner. In particular, we were struck by the quality of the work of Vanessa Lyon, Marion Harris, Helen Foster and Julie Kinghorn".

1374. This is difficult to understand in the light of the actual content of the interviews themselves. Helen Foster herself accepts that things would be done differently today. She was inexperienced at the time because the memorandum of good practice was only just beginning to be implemented. Moreover, she herself was fresh from instruction on the subject and was, at the time, only in her mid-twenties. Indeed in another part of the Report, the Review Team comment in relation to Helen Foster's interview of Child 22 as follows (p.100):

> "The police officer had only undertaken the specialised training 6 weeks before, and had never actually interviewed a young child for evidential purposes; the social worker [Andrew Waterworth] had little experience in child sexual abuse and no experience in interviewing young children. Although it is not the individual workers' faults, it is unfortunate that they did not have more expertise in working with children of this age".

1375. It is hard to reconcile the lavish praise for Helen Foster (at page iv) with this observation. Two factors come into play, however, which may help to explain the apparent inconsistency. First, it seems that

Professor Barker (and, through his cursory notes, possibly the other members of the Review Team) was labouring under the mis-apprehension that it was D.C. Peter Smith who had interviewed Child 22. In any event, neither he nor Helen Foster was mentioned by name on page 100. Therefore the readers would not be aware of the inconsistency. The Review Team's adverse comment here seems to derive from the fact that the interview yielded "little of evidential value" (p.101). In other words, they are prepared to praise an officer if her interview yields allegations which can be construed as adverse to Mr Lillie but to criticise the same officer if the child appears to exculpate him. It can hardly be said that an interview is of little evidential value if the child expressly states (as Child 22 did) that he liked Christopher Lillie changing his nappy and, what is more, that nobody had hurt him at the Nursery.

1376. In any event, why Marion Harris was mentioned in this context is incomprehensible, since she carried out none of the relevant interviews. Mr Bishop says the wording was just badly expressed and they were intending to praise Marion Harris for her work generally, but that is not what they said.

1377. At page 102 of the Report the Review Team assert of Child 22, "Here was a child who would later allege that he had been taken to houses which he did not know, to be hurt by someone who had told him that his mother approved and knew". This allegation cannot be tracked down to any statement by the child or even by his mother. Mr Bishop took the point, when Miss Page sought to rely on this, that the allegation had never been put to any Review Team member. I am not sure this is a valid criticism, since if his clients wished to source the allegation the information could easily have been placed before the court. Neither side has felt at all inhibited about sending me additional material since the case concluded. I made it clear that I welcomed anything they wished to present.

1378. I also find it odd that two members of the Review Team (Ms Jones and Mrs Saradjian) left the viewing to Professor Barker and Mr Wardell, save in respect of Child 22 and Child 14, and yet were quite prepared to join in the general hymn of praise. One is left with the firm impression that they were going through the motions. How can they possibly be "struck by the quality of the work" in video interviewing if they have not seen it? It is merely formulaic. They were supplied with no more than eight pages of cursory notes by professor Barker covering 18 videos – not disclosed until 31 May 2002 (three days after the evidence concluded and three months after their cross-examination) – one of which expressly refers to "leading questions" directed at Child 10.

1379. Miss Page at the beginning and the end of the trial explained why, in her submissions, the Review Team were making so many misrepresentations, all consistently in one direction. It could not be a series of haphazard errors, she argued. It is on the balance of probabilities only explicable as a "stitch up".

1380. I do not need to adopt her phraseology, but to anyone who has read the Report, and considered the many pages of evidence from the Review Team, the facts speak for themselves. The Team made a number of claims in the Report which they must have known to be false. I should now attempt to gather together and summarise the most striking examples:

i) They suggested that there was evidence discovered by the police to confirm the involvement of the Claimants with other identifiable people in a paedophile ring, although it "was not strong enough to be used in court". The police had told them they had found no evidence to support this theory and that, had they done so, they would do something about it. This was a misrepresentation of the facts they were given (and they had not found any corroborative evidence themselves).

ii) They intended the world to accept that there were good grounds to believe that Christopher Lillie and Dawn Reed were involved in pornographic filming of small children in their care and, in particular, with a named young man who was using a camcorder. The police had

decided in 1993 that there were no concerns about him. The Review Team were told about this and had no reason to believe that anything had changed. It seems clear that Professor Barker's "professional judgment" that Dawn Reed was motivated by financial gain (see paragraphs 1143-1144 above) is no more than a fanciful attempt to justify that unsustainable conclusion.

iii) It was asserted that Child 14 had over three hour long video interviews detailed abuse of herself and others by Christopher Lillie and Dawn Reed (including the rape of herself by Christopher Lillie of which he had been acquitted in 1994) "and she also mentioned other nursery staff's names". Her testimony was described as "extremely powerful and provided persuasive evidence of her abuse in the nursery and elsewhere". In fact, at least two of the Review Team (Professor Barker and Mrs Saradjian) considered the interviews "inconclusive" (no doubt partly because of the inconsistencies and contradictions which Holland J highlighted in his ruling of July 1994, and which the Review Team chose to omit). When they asked the police to view the interviews they expressly said that the reason they wished to do so was so that they could say in their Report that "this had a profound effect on us". This was at a time when they knew exactly what concerns had been spelt out by Sir Christopher Holland. Moreover, their objective was not in any way modified by seeing the tapes with all their blemishes or indeed their own conclusions that they were inconclusive.

iv) They gave an assurance in the Report that the "evidential videos made by the children … would not support the view that the questions were in any way leading". They each knew that they were full of leading questions, but the readers of the Report had no way of knowing. They now admit their assurance was a bit "strong". That is obviously an inadequate response. It was demonstrably false. They must have assumed that the police would never release them to anyone else and that their assurances would never be exposed.

v) They drew attention to the fact that one of their own experts had warned them that young children could be "influenced by over-zealous questioning". They then claimed to have examined the information available "to consider whether there was *any* evidence" to support the explanation that any of the Shieldfield disclosures were made as a result of "over-zealous or suggestive questioning". They purported to conclude that "this could not be a viable explanation of the children's evidence". They knew quite well that there were masses of "suggestive questions" and, what is more, they had been warned by the police officer in interview on 19 February 1997 that there was a risk of cross-contamination from parents discussing matters amongst themselves. She also reminded them that it was obvious from the videos themselves that in some cases the children had been promised "presents" or other rewards if they came up with allegations of abuse. It might theoretically be possible to go through the evidence in detail and satisfy oneself overall that (for example, because of independent corroboration) the evidence was nevertheless reliable. There is no evidence that the Review Team did this but, in any event, what they could not claim with any degree of honesty was that "this *could not be* a viable explanation". This they knew to be false.

vi) They told their readers that they had been "robust" and that they had followed the recommendation of Sir Louis Blom-Cooper (The Guardian, 24 February 1997) to "exhibit self-confidence" that they had "uncovered as full a picture of the events under investigation as is humanly possible". What they did not, however, reveal is that they had reached a *quid pro quo* with the police that in exchange for being allowed to see the children's video tapes they would not criticise the police or social workers in respect of their interviews. In accordance with a written request from Detective Chief Inspector Machell (only disclosed two months after the Review Team were cross-examined), Mrs Saradjian was unchallenging in her interview of Detective Constable Foster because she did not want to "upset" her. There were questions that she knew needed to be asked but she refrained from doing so. They *knew* that they had not uncovered a full picture at all, because they *chose* not to do so.

vii) Not only did they prevent their readers from knowing of the inconsistencies, leading questions or other tainting influences, but they chose to praise the interviewers for their professionalism and to say that they were "struck by the quality of the work". This despite the fact that the viewing of most of the video tapes was left to Mr Wardell and Professor Barker in August 1996. There was thus no way in which Ms Jones or Mrs Saradjian could have been "struck" by the quality of the interviewing. I am also satisfied that Mr Wardell and Professor Barker could not honestly have been struck by the quality of the interviewing (which even their own expert was not prepared to defend and which Professor Bruck thought among the worst she had ever seen).

viii) The team were told by a senior police officer that he had been through all the photographs and videos found at the flat Mr Lillie shared with his girlfriend and found nothing to suggest involvement in anything improper (i.e. pornography or paedophilia): "I did not find anything in those photographs that made me think he was a pervert and we spent hours going through them". The slant the Review Team put on this was that the hundreds of photographs were not evidence of any "crime", but that Mr Lillie's explanation for them (which happened to correspond with that of his girlfriend, who has never been accused of anything) was "probably false". There was no evidence for this. It was not simply that they were disagreeing with the police. They had not seen the photographs themselves and were not in a position to form a view of their own. They also attribute to the officer (Mr Findlay) the statement that he "had concerns". That *was* false. He expressed no "concerns". He said that they were "not in any way, shape or form … indecent or suggestive" and the videos were "totally innocent". He also vouchsafed to them that police surveillance of Mr Lillie had revealed nothing suspicious – only that he was "a boring fart" who went to McDonald's and read photographic magazines. The police had checked out the magazines and found them to be genuine and innocent. The Team now accept that this passage in the Report was inaccurate but Mr Bishop suggests that it reflects their "impression". What that submission is based on I do not know. But I do not find it credible.

1381. No doubt it could be argued that these false claims made in the Report betoken a cavalier approach to the evidence from which it would be fair only to infer recklessness (i.e. indifference to portraying an accurate picture of the evidence). In view of what they knew, however, and the consistent pattern of their false claims, I can only infer that they were aware that these specific claims were untrue.

1382. Indeed, the Defendants' submission through Mr Bishop is that it is inherently probable that a Report of over 300 pages will contain a considerable number of errors. I do not accept that this is necessarily the case, especially where it is claimed by the Review Team themselves that they checked it line by line. I am certainly not prepared to explain these falsehoods on that basis because, as I have said, they point consistently in one direction and go to fundamental conclusions in the Report.

1383. One can test it this way. Suppose a reader were to subtract two of the false statements from the Report, by way of example, and to substitute the truth; the overall impact of the Report would be significantly altered. I will take first the assurance that there were no leading questions in the video interviews. The truth is quite the opposite. The Review Team now accept that the sentence should have been "phrased differently". For convenience, I will phrase it differently using the words of the Defendants' own expert Dr Friedrich from his supplementary report:

> "The actual interview process as well as the verbal output from the interviews of the Shieldfield children can be criticised for many reasons. For example, parents were present during interviews, *leading questions were common*, and the rooms were filled with distracting toys. In addition, the children that were interviewed were typically 2-3 years old. Not only are children of this age more likely to comply with suggestions/leading questions by adults, their expressive language was extremely immature …." (emphasis added).

1384. The second false statement I will use is that from page 269 of the Report that "the evidence was not strong enough to be used in court". Suppose one substitutes the truth:

> "The senior and experienced detective in charge of the inquiry vigorously followed up every lead they were given by parents and social workers and found *nothing* to corroborate the involvement of the Claimants or any of the other identifiable individuals in a paedophile ring or in pornographic photography" (emphasis added).

1385. I do not believe it could seriously be suggested that, if the Report had contained these true statements instead of the false ones, its overall message and impact would have been no different.

1386. Take away from the Report the paedophile ring. Take away pornographic filming. Take away "powerful" and reliable disclosures made by the children in police interviews. It would be a quite different report. These fundamental untruths cannot be put down as "accidental errors"; nor yet to the proposition that "drafting is itself a particular legal skill" (as it was put in closing). Mr Bishop emphasised that it is not necessarily malicious to mis-state a fact. He said (again quite correctly) that it may be possible to account for such mistakes because of mis-remembering what one has been told or mis-reading a document. The pattern here, however, is so consistent, and on such fundamental findings, that it would take convincing explanations by the Defendants as to how such mistakes had occurred. None were forthcoming. Professor Barker, for example, did not say that he had made a mistake and mis-remembered what he had been told by Campbell Findlay. He tried to pretend that Campbell Findlay had said something when the tape was switched off. It is, of course, for the Claimants to prove that the members of the Review Team knew that what they wrote was false when they wrote it, approved it or promulgated it. I accept that. The burden has been discharged, since I do not believe that all the mis-statements of essential facts could possibly have survived the detailed checking and discussions that went into the formulation of this Report. After all, it is not the Defendants' own case that they did not bother to check any of the relevant material before they wrote these misrepresentations. That would, of course, be strong evidence of indifference to truth. What they claim is that the Report was drafted over months and carefully checked by each of them.

1387. There are certainly other flaws in the Report such as, for example, that they were significantly influenced in arriving at their conclusions by the outcome of the disciplinary proceedings, by the Claimants' silence (on legal advice) at the time of the disciplinary proceedings and during their own review, and by the findings of Dr San Lazaro which are in so many ways now open to question. Those flaws, however, do not demonstrate malice in themselves since they could be explicable by either defective reasoning or misfortune. But one is left with an irreducible minimum of knowingly false claims which cannot be explained on such a charitable basis.

1388. Some of the statements made about the Claimants and about the evidence available to the Team were cavalier, in the sense that they disclose a perfunctory level of consideration when viewed "against the substance, gravity and width of the publication" (see the above citation from *Lange v. Atkinson*), so as to be consistent with a finding of indifference to truth. To take but one example, they claimed on page 41 of the Report that Child 14 alleged rape in her first video interview when she did nothing of the kind. This is surely not one of those cases where it could possibly be claimed that "a genuine belief in truth after relatively hasty and incomplete consideration may be sufficient to satisfy the dictates of the occasion" (see *Lange* at paragraph 48). By whatever standard, it seems to me that this statement was made recklessly. Yet, in the end, the case on malice succeeds because the Claimants have demonstrated, in the respects I have identified, *knowledge* on the part of each relevant Defendant that the material they were putting forward to support their conclusions was being misrepresented to their readers. Even if, therefore, Mr Bishop is correct (as I am assuming) in saying that I should not take the New Zealand decision into account at all when considering the notion of recklessness, as a matter of English law, it would make no difference to the outcome.

1389. Mr Bishop emphasised that, when shorn of the accumulated learning on the subject, the issue of malice is in essence about motive. He asked me to focus on what possible motive the Review Team could have for wishing to damage the Claimants. The answer is, I believe, intimately connected to the history of their inquiry and the muddle over the terms of reference.

1390. As Mr Wardell put it they had, when they began their task, two names on "a piece of paper". That is to say, they had Christopher Lillie and Dawn Reed as the likely perpetrators of multiple abuse. He went on to say that they might have added other names in due course, if evidence had emerged; alternatively, they might have removed one or both of the primary candidates. There is, however, no evidence to suggest that it ever entered their heads to remove either of these names. They were working throughout on the basis that there had been multiple abuse and that all the "evidence" pointed to those two people.

1391. As Moira Luccock made clear, everyone at the City Council had decided that they were dealing with a multiple abuse situation. What is more, the Claimants had been suspended and dismissed on exactly that basis. As Professor Barker made clear, those findings constituted "one of the main influences" upon the Team's conclusions. That was obviously not something that emerged. They knew about it before they even started.

1392. Their inquiry was directed originally, and primarily, to making recommendations for the future and dealing with parental complaints. It only became apparent later, and apparently incidentally, that they could only expect to perform those tasks if they also made findings as to what had happened and who was responsible. It seems that their main concern with the Claimants was not to investigate with an open mind, or to appraise the quality of the evidence against them, but rather to offer thoughts on what had motivated them and how to avoid the appointment of paedophiles in the future. In so far as it became part of their task to pronounce upon their guilt of multiple criminal offences, their procedures were quite unsuited to performing it with any semblance of fairness or natural justice. What they did was to assemble arguments, theories and selective bits of evidence and use them to justify the assumptions they had made from the outset.

1393. They claim now to have had open minds throughout a large part of their inquiry process. For reasons I have set out I do not believe that, but it would simply not have been in any way compatible with their methodology. They deliberately chose to proceed on the footing that complainants believed what they were saying and that they were not to be challenged or tested. The findings against the Claimants were made almost as a matter of formality. They were just seen as two "perpetrators" or "abusers" who were to be tidied away to make room for the Team to get on with their recommendations and pronouncements. That is why in my judgment they treated them as they did and how they came to distort and misrepresent the evidence against them.

1394. The Review Team chose to promulgate to the Council and to the wider public what was recognised within days (by Mr Cosgrove and Mr Marron, in particular) to be a specious and disreputable document. They must have appreciated the harm they would do to the Claimants and indeed the physical risks to which they were choosing to subject them. But they were left to learn about these horrendous allegations for the first time through saturation media coverage. That lacked not only fairness but also humanity. Yet the Team even made the false claim that they had been given advance warning of the allegations and findings and a chance to respond.

1395. I find my conclusion depressing and I am sorry that I have had to draw it. But it is unavoidable.

1396. I have little doubt that the Review Team thought they could publish more or less whatever they wanted about Christopher Lillie and Dawn Reed with no consequences adverse to themselves. (Nor do I doubt that Mr Flynn thought the same when he made his arrogant claim that they were guilty immediately

after they had been acquitted. I expect Dr San Lazaro took the same approach when she made her "overstated and exaggerated" assertions to the Criminal Injuries Compensation Board.) Not only did the Team have advice about qualified privilege, but they almost certainly assumed (as would the Council members and officers) that this beleaguered pair would not have the resources to claim legal redress. They were undoubtedly right about that. Had it not been for the introduction of the contingency fee arrangements a few years ago, and the courage and dogged determination of their various legal advisers, the Review Team's methods would not have been uncovered. They and the Council would simply have ignored Mr Cosgrove and Mr Marron. A significant injustice would thus have gone unnoticed.

1397. Yet by the end of the case it seems that the Review Team were even directing their sights on Mr Marron. It will be recalled that he was the Queen's Counsel who led for the prosecution against Mr Lillie and Miss Reed in 1994. He was one of the first (along with Mr Cosgrove) to blow the whistle on the Review Team's methods (see section 3 above). He had nothing to gain and was clearly acting simply out of a regard for fairness and decency. The Review Team, however, submit:

> "The position of Mr Marron Q.C. in this respect is curious. Although he associated himself with Mr Cosgrove's observations, as prosecuting counsel he must have agreed with the CPS assessment that the chances of securing convictions against both Mr Lillie and Ms Reed were more than 50% and that a prosecution was in the public interest. If he thought the evidence in the case was more probative of Ms Reed's innocence than her guilt then it is difficult to see why Mr Marron's conduct is not also open to serious criticism".

1398. This contention contains a misrepresentation and a misunderstanding. The misrepresentation is as to what Holland J had said about what was probative of Miss Reed's innocence. He did not say that "the evidence in the case" was more probative of Miss Reed's innocence than guilt. What he said was confined to the interviews of Child 14 (i.e. the Crown's strongest case). What his Lordship said was that there was no basis upon which a jury could be sure and satisfied, on the evidence of Child 14, that Miss Reed was guilty of Count 3. He added that there was "a rather better basis for being sure and satisfied that she is innocent of that particular charge".

1399. The misunderstanding is as to the role of a conscientious prosecutor. What Mr Marron did, as I have already explained, was to seek a ruling from the trial Judge under s.32A of the Criminal Justice Act 1988 in respect of the confusing and contradictory evidence of a four year old child about events alleged to have taken place when she was either two or three years old. Mr Marron had a sensitive and difficult task. What he did was entirely proper and it is unfortunate that the Review Team should take the opportunity in these proceedings to suggest that his conduct was "open to serious criticism". It was quite inappropriate. However much the Review

Team may resent them, the comments of Mr Cosgrove (adopted by Mr Marron) were fully justified.

14) The privilege issues for the Newcastle City Council

1400. Because the City Council relied upon various privilege arguments, I was required to take a closer look at the circumstances in which it came to publish the Report on 12 November 1998 and thereafter. It had been decided long before the Report was written that it ought to be published come what may – and whatever it contained. The reasoning was perhaps commendable in general terms; namely, that the inquiry should be carried out independently of the City Council and uninfluenced by it. It would

command no confidence from the public at large, and parents in particular, if it could be perceived as lending itself to a "cover up".

1401. The four people selected for the Review Team were supposed to investigate what had happened, what had gone wrong (if anything), and to make recommendations to minimise the risk of similar problems in the future. It was on the cards that they would find fault with Council employees, past or present, and it was thought important that they should be free to do so without interference. Moreover, it was thought from an early stage that one of the conditions necessary for true independence was that the Report should be published unedited. This was a regular theme in the evidence of Council witnesses and I have no doubt that this was the general view from the period before the appointment of the Review Team right the way through to publication.

1402. One of the main problems, however, was that this philosophy was taken to unnecessary lengths. Obviously if officers or elected members were in some way to tamper with the content of the Report, or to censor it for reasons of self-protection, that would defeat the object. But I am quite sure that no one wished to do this. The perception grew at some point, however, that it was necessary for the Report to be published by the Council very shortly after it was received - not only without alteration but without even being seen by any of the democratically elected members. I believe that this was a requirement of Professor Barker, to whom everyone deferred.

1403. There were two reasons given for this by Council officers, some of whom I found to be impressive witnesses and clearly public servants of integrity. The two reasons were the maintenance of independence and the avoidance of leaks prior to the official publication date. Past experience showed that the City Council tended to leak like a sieve and, unless a very tight rein was kept on the distribution of advance copies, the Review Team's conclusions would find their way piecemeal into the press.

1404. Everyone was very conscious of the need to ensure qualified privilege for the publication of the Report, whenever it took place, because of the seriously defamatory nature of its content. Advice was taken accordingly. Qualified privilege became the primary focus. I have not been told about the advice received, and there is no reason why I should, but I have seen nothing in the evidence to suggest that anyone analysed closely the underlying purpose of the statutory privilege accorded by the legislature to local government affairs (most especially, of course, by the amendments made in 1985 to the Local Government Act 1972). The privilege is given to local authorities in the specified circumstances. If such a body, as here, contracts out any of its functions to an outside body, the limits of qualified privilege need closely to be examined. For example, there is a statutory duty on local authorities to provide a mechanism for dealing with complaints relating to childcare under the Children Act 1989. For understandable reasons, the City Council's responsibility in this regard was to an extent delegated to the Review Team. Yet the Review Team had no particular status as a matter of law; they had the benefit of no statutory privilege in themselves, and they were neither members nor officers of a local authority.

1405. It was thus perceived as necessary to ensure that, notwithstanding their independence of the City Council, protection should be arranged for publication of their Report. Although it was never described in this way, it was decided in effect that their publication should be channeled through the local authority, as a mere conduit, in such a way as to try and maintain independence while at the same time taking advantage of the statutory protection devised by Parliament for local authorities. Miss Page has characterised this exercise as a "sham". At all events, it needs to be looked at very closely.

1406. The curious situation arose whereby the officers who were allowed to see advance copies (acting in accordance with legal advice, and in good faith) were required to sign a document when they received them. It purported to be an undertaking "to whomsoever it may concern" that they would not copy the Report:

> "In these circumstances, I undertake that I will not copy the report. Nor will I share the report with any one except in so far as it is necessary for me to do so in order to be in a position to carry out my duty of preparing a report for members on the Report's findings and recommendations. I will keep such further communication to the minimum necessary. I will keep a record of such communications. I will instruct the recipient not to make any further communication and I will advise him or her of the consequences should he or she make such further communication".

1407. It is clear from the context of the document as a whole that the "consequences" referred to related to the publication of defamatory material outside the scope of qualified privilege.

1408. Mr Dervin agreed in the witness box, although I believe that he had never thought of it in this way previously, that one of the effects of his undertaking was to promise to keep the contents of the Report, commissioned and paid for by the local authority, away from any of the elected members whose servant he was. The plan was apparently that none of them should see it in advance of the public. I suspected that this undertaking was required by Professor Barker. That was in due course confirmed by Mr Flynn in his evidence on 6 March. In any event, it gives rise to a very odd state of affairs.

1409. I leave out of account, for the moment, the practical difficulty about avoiding leaks and thus publications of defamatory allegations outside the protection of privilege, but the other reason for these dubious security measures was that, if any of the elected members were even to read the Report, or parts of it, prior to publication, this would in some way compromise the independence of the Review Team's conclusions. I simply do not follow that. If it was not altered in any way, the Report would remain that of the Review Team.

1410. This febrile thinking led to other oddities. For example, it is the normal rule that a report to be placed before a Council committee or sub-committee should be available three days in advance. If this is not to be honoured, then the committee or at least the chairman has to address the matter and sanction the omission for reasons of urgency. One finds, therefore, a report for the meeting of 12 November 1998 of the Policy and Resources Day Nursery Complaints Review Panel containing a heading "Reason for Urgency".

1411. This passage purports to identify the reason of urgency justifying the departure from normal protocol. It does not say that the reason for abridging time was because people could not be trusted not to leak the contents to the press. Nor does it say that it was one of Professor Barker's demands. What it does say, however, makes very little sense at all:

> "The Team's Report was delivered to the Council on the basis that it would not be published until 12th November 1998 and so it has not been possible to distribute the Report in advance of the meeting".

1412. Any stipulation to the effect that the Report was not to be published until 12 November is, quite obviously, wholly independent of whether it was possible to distribute the Report in advance of the meeting. Thus there is a complete *non sequitur* (unless, of course, one equates even limited internal distribution with publication).

1413. There seemed to be something of a muddle also over when the Council actually received the Report. In accordance with the final version of the Review Team's terms of reference, as amended with the approval of the Panel at a meeting in May 1998, delivery of the Report was effected on 6 November when the Chief Executive received it on the Council's behalf. Despite this, however, the joint officers' report for the 12 November meeting describes the objective as follows:

> "Synopsis
>
> The purpose of this report is to formally receive on behalf of the Council the Report of the Independent Complaints Review Team."

1414. It is difficult to see how the purpose of a "report" could be formally to receive a Report. I presume that this must be a misprint for "the purpose of this *meeting*". Be that as it may, the Report had already been received six days earlier when placed in Mr Lavery's hands.

1415. Despite this, paragraph 6.1 of the same document contains the sentence, "the Council only became aware of the Team's recommendations today and so an immediate response cannot be made".

1416. Miss Page suggests that this is somewhat disingenuous, since the Council (through the Chief Executive and other officers) had received the Report six days earlier. It would appear to be true, however, that elected members were only permitted to see the content of the Report for the first time on 12 November.

1417. One of the stipulations in the final version of the Terms of Reference, to which I have already referred, was that the Report was to be presented to the City Council through its Chief Executive (i.e. Mr Kevin Lavery), but that it would be for the local authority to decide the publication date. Moreover, an element of discretion was reserved to the local authority to amend the contents of the Report for very limited reasons (matters of "public interest immunity"). What I find difficult to comprehend is how it was proposed that any such discretion on the part of the local authority (i.e. the elected members) could be exercised at all if they were not to see it before the very meeting designed to be the vehicle for onward publication to the world at large.

1418. Another unfathomable problem is how "public interest immunity" could have any bearing on the issues relating to publication in this context. Mr Scott said he could not understand this. If he, as one of the Council's legal advisers, could not understand it, it is difficult to see how any one else was supposed to.

1419. In my view, the Council officers were trying to achieve a reconciliation of two essentially inconsistent objectives and, in the process, tied themselves in knots. The two objectives were to publish through Council procedures, to achieve qualified privilege, while on the other hand purporting to maintain the Report as that of the Review Team, untouched by Council hands.

1420. Against that background, Miss Page developed a detailed argument directed to showing that the Council's officers failed in their objective of bringing the 12 November publication by the Council within any of the statutory provisions contained within Part VA of the Local Government Act 1972.

1421. It is necessary to set out the relevant provisions:

> **100A Admission to meetings of principal councils**
>
> *(1) A meeting of a principal council shall be open to the public except to the extent that they are excluded (whether during the whole or part of the proceedings) under subsection (2) below or by resolution under subsection (4) below.*

(2) The public shall be excluded from a meeting of a principal council during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that, if members of the public were present during that item, confidential information would be disclosed to them in breach of the obligation of confidence; and nothing in this Part shall be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence.

(3) For the purposes of subsection (2) above, "confidential information" means –

(a) information furnished to the council by a Government department upon terms (however expressed) which forbid the disclosure of the information to the public; and

(b) information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court;

and, in either case, the reference to the obligation of confidence is to be construed accordingly.

(4) A principal council may by resolution exclude the public from a meeting during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during that item there would be disclosure to them of exempt information, as defined in section 100I below.

(5) A resolution under subsection (4) above shall –

(a) identify the proceedings, or the part of the proceedings, to which it applies, and

(b) state the description, in terms of Schedule 12A to this Act, or the exempt information giving rise to the exclusion of the public,

and where such a resolution is passed this section does not require the meeting to be open to the public during the proceedings to which the resolution applies.

(6) The following provisions shall apply in relation to a meeting of a principal council, that is to say –

(a) public notice of the time and place of the meeting shall be given by posting it at the offices of the council three clear days at least before the meeting or, if the meeting is convened at shorter notice, then at the time it is convened;

(b) while the meeting is open to the public, the council shall not have power to exclude members of the public from the meeting; and

(c) while the meeting is open to the public, duly accredited representatives of newspapers attending the meeting for the purpose of reporting the proceedings for

those newspapers shall, so far as practicable, be afforded reasonable facilities for taking their report and, unless the meeting is held in premises not belonging to the council or not on the telephone, for telephoning the report at their own expense.

(7) Nothing in this section shall require a principal council to permit the taking of photographs of any proceedings, or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place.

(8) This section is without prejudice to any power of exclusion to suppress or prevent disorderly conduct or other misbehaviour at a meeting.]

[100B Access to agenda and connected reports

(1) Copies of the agenda for a meeting of a principal council and, subject to subsection (2) below, copies of any report for the meeting shall be open to inspection by members of the public at the offices of the council in accordance with subsection (3) below.

(2) If the proper officer thinks fit, there may be excluded from the copies of reports provided in pursuance of subsection (1) above the whole of any report which, or any part which, relates only to items during which, in his opinion, the meeting is likely not to be open to the public.

(3) Any document which is require by subsection (1) above to be open to inspection shall be so open at least three clear days before the meeting, except that -

(a) where the meeting is convened at shorter notice, the copies of the agenda and reports shall be open to inspection from the time the meeting is convened, and

(b) where an item is added to an agenda copies of which are open to inspection by the public, copies of the item (or of the revised agenda), and the copies of any report for the meeting relating to the item, shall be open to inspection form the time the item is added to the agenda;

but nothing in this subsection requires copies of any agenda, item or report to be open to inspection by the public until copies are available to members of the council.

(4) An item of business may not be considered at a meeting of a principal council unless either –

(a) a copy of the agenda including the item (or a copy of the item) is open to inspection by members of the public in pursuance of subsection (1) above for at least three clear days before the meeting or, where the meeting is convened at shorter notice, from the time the meeting is convened; or

(b) by reason of special circumstances, which shall be specified in the minutes, the chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency.

(5) Where by virtue of subsection (2) above the whole or any part of a report for a meeting is not open to inspection by the public under subsection (1) above –

(a) every copy of the report or of the part shall be marked "Not for publication"; and

(b) there shall be stated on every copy of the whole or any part of the report the description, in terms of Schedule 12A to this Act, of the exempt information by virtue of which the council are likely to exclude the public during the item to which the report relates.

(6) Where a meeting of principal council is required by section 100A above to be open to the public during the proceedings or any part of them, there shall be made available for the use of members of the public present at the meeting a reasonable number of copies of the agenda and, subject to subsection (8) below, of the reports for the meeting.

(7) There shall, on request and on payment of postage or other necessary charge for transmission, be supplied for the benefit of any newspaper –

(a) a copy of the agenda for a meeting of a principal council and, subject to subsection (8) below, a copy of each of the reports for the meeting;

(b) such further statements or particulars, if any, as are necessary to indicate the nature of the items included in the agenda; and

(c) if the proper officer thinks fit in the case of any item, copies of any other documents supplied to members of the council in connection with the item.

(8) Subsection (2) above applies in relation to copies of reports provided in pursuance of subsection (6) or (7) above as it applies in relation to copies of reports provided in pursuance of subsection (1) above.]

[100C Inspection of minutes and other documents after meetings

(1) After a meeting of a principal council the following documents shall be open to inspection by members of the public at the offices of the council until the expiration of the period of six years beginning with the date of the meeting, namely –

(a) the minutes, or a copy of the minutes, of the meeting, excluding so much of the minutes of proceedings during which the meeting was not open to the public as discloses exempt information;

(b) where applicable, a summary under subsection (2) below;

(c) a copy of the agenda for the meeting; and

(d) a copy of so much of any report for the meeting as relates to any item during which the meeting was open to the public.

(2) Where, in consequence of the exclusion of parts of the minutes which disclose exempt information, the document open to inspection under subsection (1)(a) above does not provide members of the public with a reasonably fair and coherent record of the whole or part of the proceedings, the proper officer shall made a written summary of the proceedings or the part, as the case may be, which provides such a record without disclosing the exempt information.]

[100D Inspection of background papers

[(1) Subject, in the case of section 100C(1), to subsection (2) below, if and so long as copies of the whole or part of a report for a meeting of a principal council are required by section 100B(1) or 100C(1) above to be open to inspection by members of the public –

(a) those copies shall each include a copy of a list, compiled by the proper officer, of the background papers for the report or the part of the report, and

(b) at least one copy of each of the documents included in that list shall also be open to inspection at the offices of the council.]

(2) Subsection (1) above does not require a copy . . . of any documents included in the list, to be open to inspection after the expiration of the period of four years beginning with the date of the meeting.

(3) Where a copy of any of the background papers for a report is required by subsection (1) above to be open to inspection by members of the public, the copy shall be taken for the purposes of this part to be so open if arrangements exist for its production to members of the public as soon as is reasonably practicable after the making of a request to inspect the copy.

(4) Nothing in this section –

(a) requires any document which discloses exempt information to be included in the list referred to in subsection (1) above; or

(b) without prejudice to the generality of subsection (2) of section 100A above, requires or authorises the inclusion in the list of any document which, if open to inspection by the public, would disclose confidential information in breach of the obligation of confidence, within the meaning of that subsection.

(5) For the purposes of this section the background papers for a report are those documents relating to the subject matter of the report which –

(a) disclose any facts or matters on which, in the opinion of the proper officer, the report or an important part of the report is based, and

(b) have, in his opinion, been relied on to a material extent in preparing the report,

but do not include any published works.]

[100E Application to committees and sub-committees

(1) Sections 100A to 100D above shall apply in relation to a committee or sub-committee of a principal council as they apply in relation to a principal council.

(2) In the application by virtue of this section of sections 100A to 100D above in relation to a committee or sub-committee –

(a) section 100A(6)(a) shall be taken to have been complied with if the notice is given by posting it at the time there mentioned at the offices of every constituent principal council and, if the meeting of the committee or sub-committee to which that section so applies is to be held at premises other than the offices of such a council, at those premises;

(b) for the purpose of section 100A(6)(c), premises belonging to a constituent principal council shall be treated as belonging to the committee or sub-committee; and

(c) for the purposes of sections 100B(1), 100C(1) and 100D(1), offices of any constituent principal council shall be treated as offices of the committee or sub-committee.

(3) Any reference in this Part to a committee or sub-committee of a principal council is a reference to –

(a) a committee which is constituted under an enactment specified in section 101(9) below or which is appointed by one or more principal councils under section 102 below; or

(b) a joint committee not falling within paragraph (a) above which is appointed or established under any enactment by two or more principal councils and is not a body corporate; or

[(bb) the Navigation Committee of the Broads Authority or]

(c) a sub-committee appointed or established under any enactment by one or more committees falling within [paragraphs (a) to (bb)] above.

(4) Any reference in this Part to a constituent principal council, in relation to a committee or sub-committee is a reference –

(a) in the case of a committee, to the principal council, or any of the principal councils, of which it is a committee; and

(b) in the case of a sub-committee, to any principal council which, by virtue of paragraph (a) above, is a constituent principal council in relation to the committee, or any of the committees which established or appointed the sub-committee.]

• • • • • • •

[100H Supplemental provisions and offences

(1) A document directed by any provision of this Part to be open to inspection shall be so open at all reasonable hours and –

(a) in the case of a document open to inspection by virtue of section 100D(1) above, upon payment of such reasonable fee as may be required for the facility; and

(b) in any other case, without payment.

(2) Where a document is open to inspection by a person under any provision of this Part, the person may, subject to subsection (3) below –

(a) make copies of or extracts from the document, or

(b) require the person having custody of the document to supply to him a photographic copy of or of extracts from the document.

upon payment of such reasonable fee as may be required for the facility.

(3) Subsection (2) above does not require or authorise the doing of any act which infringes the copyright in any work except that, where the owner of the copyright is a principal council, nothing done in pursuance of that subsection shall constitute an infringement of the copyright.

(4) If, without reasonable excuse, a person having the custody of a document which is required by section 100B(1) or 100C(1) above to be open to inspection by the public –

(a) intentionally obstructs any person exercising a right conferred by this Part to inspect, or to make a copy of or extracts from, the document, or

(b) refuses to furnish copies to any person entitled to obtain them under any provision of this Part

he shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(5) Where any accessible document for a meeting to which this subsection applies –

(a) is supplied to, or open to inspection by, a member of the public, or

(b) is supplied for the benefit of any newspaper, in pursuance of section 100B(7) above,

the publication thereby of any defamatory matter contained in the document shall be privileged unless the publication is proved to be made with malice.

(6) Subsection (5) above applies to any meeting of a principal council and any meeting of a committee or sub-committee of a principal council; and, for the purposes of that subsection, the "accessible documents" for a meeting are the following-

(a) any copy of the agenda or of any item included in the agenda for the meeting;

(b) any such further statements or particulars for the purpose of indicating the nature of any item included in the agenda as are mentioned in section 100B(7)(b) above;

(c) any copy of a document relating to such an item which is supplied for the benefit of a newspaper in pursuance of section 100B(7)(c) above;

(d) any copy of the whole or part of a report for the meeting;

(e) any copy of the whole or part of any background papers for a report for the meeting, within the meaning of section 100D above.

(7) The rights conferred by this Part to inspect, copy and be furnished with documents are in addition, and without prejudice, to any such rights conferred by or under any other enactment.]

1422. Miss Page began by pointing out that the statutory defence under s.100H(5) of the Act applies to certain publications *by* local authorities to the public and to the media, but does not extend to publications by third parties *to* local authorities. So far as the Review Team are concerned, they would have to depend upon common law privilege for publication of their Report to the Council. She argued that any publication by the Review Team outside the umbrella of that protection would escape the provisions both of the common law and statute (including, for example, any observations made at a press conference).

1423. Miss Page argues that the Council would have had the power to publish the Report in accordance with s.111 of the 1972 Act (in other words for reasons of legitimately facilitating its lawful functions) but, in that context, reliance would have to be placed on the common law rather than the very specific provisions of Part VA of the 1972 Act.

1424. The Council relies upon a statutory duty (by reference to Part VA of the Act):

i) to make copies of the Report available to members of the public present at the Panel meeting on 12 November (it being a sub-committee of the Council): ss.100B and 100E;

ii) to supply copies of the Report on request to any newspaper: s.100B;

iii) to make a copy of the Report available for inspection at its offices at all reasonable hours: ss.100B, 100C, 100E.

iv) to supply copies of the Report to any person who required one: ss.100B, 100C, 100E, and 100H.

1425. Miss Page has responded to these contentions as follows:

1) She draws attention to the fact that s.100B(6) provides for local authorities to make available at meetings, for use by the public "… copies of the agenda and … of the reports for the meeting". She submits that, whereas the reports submitted to the sub-committee by the various officers for the purposes of the 12 November meeting were "reports" within the meaning of that provision, the Review Team's Report itself was no more than a background paper to the officers' joint report.

2) So far as background papers are concerned, there is a discretion rather than a duty to provide copies to newspapers: s.100B(7). Thus, there would be a discretion to be exercised on the part of the "proper officer" with regard to the Review Team's Report. Miss Page goes on to argue that there was in fact no exercise of that discretion, in this instance; alternatively, if the discretion was exercised, this was not in accordance with law.

3) Next, she submits that there was no statutory duty to make a background paper available for inspection if it contained "exempt information": s.100D(4). Alternatively, if the statutory duty arises to make "background papers" available for inspection by virtue of inclusion on the list referred to in s.100D(1), this would be contingent upon a lawful exercise of discretion with respect to the paper in question. Miss Page submits that no such discretion was exercised here (the Council not realising that there was a discretion) or, if it was, it was exercised unlawfully.

4) The sections relied upon in the defence, on behalf of the City Council, relate to "reports for a meeting" rather than to "background papers". Thus, the same reasoning would apply, Miss Page submits, as she has advanced at (3) above. Moreover, s.100H(2)(b) provides for persons to whom a document is available for inspection to "require" the Council to provide a copy; yet the distribution of the Review Team's Report went beyond those actually requesting a copy.

5) Finally, Miss Page argues that if the Report is to be classified as a "report" for statutory purposes, rather than merely as a "background paper", the Council would still be bound to consider whether or not to make it available because it contained "exempt information". Again, either that discretion was not exercised at all or, if it was, it was exercised unlawfully.

1426. The first issue to consider, therefore, is the apparently sterile one of whether the Review Team's Report should be regarded as a "report" or a "background paper". The officers of the City Council seem to have proceeded on the basis that it fell into both categories (as borne out by the evidence of Mr

Poll and Mr Scott). Miss Page argues that the officers' joint report was in fact correct when it described the document as a "background paper".

1427. Miss Page submits that in the light of the statutory provisions the distinction between the two concepts, far from being sterile, is actually of importance, since the legislature has decided to set up a quite different regime of disclosure obligations as between the two categories.

1428. The Review Team's Report was not, of course, generated by the City Council itself but (as its officers kept emphasising in the course of their evidence) by an independent body. To qualify as a "report" within the terms of Part VA of the Act, Miss Page submits that a document has to be generated by or on behalf of the officers of the Council for the Council itself. In this context, she points to the "proper officer" provisions within Part VA and cited, by way of example, s.100B(2):

> "If the proper officer thinks fit, there may be excluded from the copies of reports provided in pursuance of subsection (1) above the whole of any report which, or any part of which, relates only to items during which, in his opinion, the meeting is likely not to be open to the public".

1429. Accordingly, it would appear to be necessary for the proper officer to consider the contents of each report in order to consider whether or not it should be published: s.100B(2). It is necessary also to have regard in this context to s.100D(5) which defines "background papers" by reference to the proper officer's "opinion".

1430. Miss Page submits that the functions of a "proper officer", as contemplated by these provisions, could only be exercised by an officer who was, if not an author of the report itself, at least someone in a position to gain immediate access to the report before presentation to the relevant committee. Such functions could not be exercised in relation to a document emanating from outside the Council – especially one the contents of which were so jealously guarded as those of the Review Team's Report. I am not sure why this would necessarily be the case, since if appropriate a proper officer could withhold or redact parts of an external report commissioned by the Council.

1431. Miss Page argues also that her interpretation of the "proper officer" provisions of the statute is consistent with the internal provisions of the City Council's own internal rules (at least in the most up-to-date version available to her).

1432. In any event, the argument goes, the Review Team's Report was not a "report *for the meeting*" of the Panel on 12 November 1998. It was, in truth, a report for the City Council (and had already been presented to the Chief Executive on 6 November to receive it on the Council's behalf). Had the Review Team's Report itself been a "report for the meeting", there would have been no need for the joint officers' report that was in fact submitted.

1433. One can also readily see from the content of the Report itself that it was not making recommendations for the consideration, adoption or implementation of the relevant sub-committee (or Panel). Some of the recommendations, indeed, went beyond the scope of the City Council altogether, but it is nonetheless clear that those more directly concerned with the Council's affairs were for consideration (and ultimately implementation) either by the Council itself or by *other* committees or sub-committees (in particular, of course, those with responsibilities for the provision of education, nursery facilities and childcare).

1434. In view of the purely "formal" nature of the Panel meeting on 12 November, which was emphasised at the time and during the course of the officers' evidence during this case, it is clear that the Review

Team's Report was not to be considered (with a view to adoption or rejection) but rather to be "received". It was only provided to the members of the sub-committee shortly in advance of the meeting (at the "pre-meeting" shortly beforehand). Nor did it accompany the joint officers' report.

1435. Miss Page accordingly invites me to rule, as a matter of statutory construction, that the Report did not have the status of a "report for the meeting". It can only have had the status of a "background paper". The important consequence of such a ruling would be, she submits, that the City Council has throughout proceeded on an interpretation of Part VA of the 1972 Act which was entirely erroneous. More specifically, s.100B(2) provided no legal basis for publishing the Report itself to the public; s.100B(7)(a) did not provide any legitimate basis for supplying it to newspapers; s.100C(1)(d) did not provide any such basis for making it available for inspection by the public; s.100H(2) did not provide any such basis for supplying copies to members of the public on demand; and, most importantly, for her purposes, the publication of the Report did not have the benefit of the statutory defence as being a "report for the meeting": see s.100H(5) and s.100H(6)(d). Thus, it would be necessary to judge the availability to the Council of a statutory defence not in the light of the provisions pleaded, but rather according to ss.100D, 100H(5) and 1000H(6)(e).

1436. Miss Page therefore next addressed the question of whether the Review Team's Report was a "background paper" within s.100D. It is provided by s.100H(5) that statutory privilege shall attach to the publication of any defamatory matter in any "accessible document" for a meeting to which the subsection applies, where it –

> "(a) is supplied to, or open to inspection by, a member of the public, or
>
> (b) is supplied for the benefit of any newspaper, in pursuance of section 100B(7) above".

1437. Accessible documents are defined to include "any copy of the whole or part of the background papers for a report for the meeting, within the meaning of section 100D above": s.100H(6)(e).

1438. There is a further definition of "background papers for a report" in s.100D(5):

> "for the purposes of this section the background papers for a report are those documents relating to the subject matter of the report which –
>
> (a) disclose any facts or matters on which, in the opinion of the proper officer, the report or an important part of the report is based, and
>
> (b) have, in his opinion, been relied on to a material extent in preparing the report,
>
> but do not include any published works".

1439. Thus, argues Miss Page, in order to qualify as a "background paper for a report", it is not sufficient that a document should merely relate to the subject matter of the relevant report. There would appear to be a requirement for the exercise of a discretion by the "proper officer" or at any rate the formation of an opinion by that officer. In this instance, the relevant "report" (to which the Review Team's Report is said to have been a background paper) would appear to have had as the "proper officer" Mr Kevin Lavery, the Chief Executive, since he was the first-named author. (At least that would appear to be the position according to the Newcastle Charter Schedule 4, Part D, although this may not have been in effect at the material time.)

1440. Miss Page argues that Mr Lavery did not actually address his mind to the relevant issues identified in s.100D(5) or form an "opinion" on either of them. Since that is, according to her argument, a pre-requisite for a document to be classified as a "background paper for a report", Miss Page argues that the Review Team's Report does not fall under that head of privilege. She accepts, however, that it would still be open to the Council to argue, by way of alternative, that the document was protected by common law privilege (in accordance with a traditional duty/interest test or the more recently expounded principles in *Reynolds v. Times Newspapers Ltd*).

1441. An alternative argument raised by Miss Page is that, assuming Mr Lavery to have directed his mind to the issues raised under s.100D(5), there could have been no lawful exercise of the relevant discretion. She puts the matter in three ways:

1. There could have been no true exercise of discretion at all, because it had already been decided, well in advance of the receipt of the Review Team's Report, that it would be published *qua* background paper.

2. Any true exercise of discretion was vitiated by the improper purpose for which the Council was acting; namely, as Miss Page would argue, that of "laundering" the Report through the sub-committee (or Panel) when knowing it to be fatally flawed, or being reckless as to its truth or falsity.

3. Any true exercise of discretion would be unlawful because, on any sensible view, the joint officers' report was not actually based on the Review Team's Report; nor had they relied upon it to any material extent for the preparation of their own report. They were concerned more with the availability of the Review Team's Report rather than its content.

1442. It is necessary to consider whether Miss Page is correct, as a matter of law, to speak of a "discretion" in the context of s.100D(5), since it is concerned with the formation of opinions (i.e. as to the relationship between the joint officers' report and the Review Team's Report). It is possible to form an opinion without exercising a discretion.

1443. In any event, Miss Page argued that the Council failed to address its mind to the question of whether or not the presence of "exempt information" within the Review Team's Report entailed that it should not be published. That failure would, she submits, render it unlawful to make it available to the public. She points out that s.100D(4)(a) makes it clear that there is no requirement for any document to be listed if it discloses exempt information.

1444. There is no dispute but that the Review Team's Report did contain exempt information (i.e. within paras. 1, 4, 6, 12 or 14 of Schedule 12A). That is not to say, however, that it would be unlawful to publish it. It had been decided in advance of the production of the Review Team's Report that it should be published unamended, and even regardless of its contents. Miss Page suggests that it was incumbent on the Council to consider whether or not the Report should be included as a background paper at all given that it contained exempt information. Mr Scott dealt with this matter in his evidence. He said that it was his view that it was for the relevant "proper officer" to consider whether or not it was likely that the committee would wish to exclude the public or press from a meeting for the reason that there might be disclosure of exempt information. If he came to the conclusion that it was likely, then he would "pink" the relevant material (to indicate, in accordance with convention, that it was a matter to be addressed by the committee). That is a matter he would have to make a judgment upon in advance of the relevant meeting. That is, of course, quite different from there being an obligation on the committee itself to exercise a discretion in that context.

1445. Mr Bishop's submissions on exempt and confidential information were as follows. Schedule 12A to the Act identifies some 15 classes of "exempt" information. They are widely drawn and include many items that are routinely discussed in relevant meetings or contained within "accessible documents". If for some particular reason it is considered appropriate to withhold any such information from public access, then a discretion may be exercised accordingly, but it would be reviewable judicially. Thus, it is required that the grounds for excluding the public must be specified. There seems to be a general presumption of public access and, correspondingly, there would be no question of reviewing a decision *not* to withhold public access. Those submissions seem to me correct. I am unable to conclude that there was anything unlawful about the failure to exclude any of the "exempt" material (e.g. references to City Council employees). Nor does the inclusion of such information detract from the protection of privilege otherwise available.

1446. As to "confidential information", it will be noted that the term is very narrowly defined in this statutory context: see s.100A(3) set out above. If there should be any material within the definition there would arise an obligation (rather than a mere discretion) not to reveal it publicly. I cannot think of anything here which would qualify as "confidential". I believe that it was being suggested that some of the detail about Mr Lillie's early years (such as his time in care or his conviction at the age of 15) might be classified as confidential, but it seems highly technical in this context. More significantly, for present purposes, if any publication of the Report were the subject of *prima facie* privilege, I cannot believe that the incidental inclusion of such detail would destroy the privilege.

1447. In so far as it matters (and in view of the terms of the statute, I suppose it must), the status of the Report *vis à vis* the 12 November meeting would in my judgment be that of a background paper. It was not a report *for* the meeting in any ordinary sense. They were not going to consider it or discuss it; indeed, they were not supposed to read it even. They were just to receive it for onward transmission to other decision makers. Statutory privilege would thus come into play to protect the publication of the Report as a background paper. This is highly technical but it is a matter of trying to fit a unique situation, which would never have been contemplated by the draftsman, into the straitjacket of this statutory framework.

1448. Furthermore, as to the Council officers' earlier publications, for example to central government through the S.S.I., and to one set of parents who lived abroad, those would be protected on the footing of a common and corresponding legitimate interest in accordance with the common law.

1449. Finally, I should address the alternative s.111 argument. The Council is given a very wide power to take steps for facilitating its lawful functions. That does not, it seems to me, afford in itself a separate form of statutory privilege, but it does provide a context in which to make a judgment about any legal, social or moral duty to publish to the world at large if statutory privilege does not avail. In other words, I should ask the question whether the Council would have been protected any way, and without going through the so-called "charade" of setting up a committee meeting as a peg for statutory privilege.

1450. I believe there is a powerful argument for concluding that a local authority does have an obligation to tell the public (and, in particular, its own charge payers and the consumers of its public services) what has gone wrong, to account for it and to explain how matters are going to be ordered in the future to avoid similar problems: see e.g. *Alexander v. Arts Council of Wales* [2001] 1 W.L.R. 1840 (where it was held that the defendant had a duty to explain its actions in relation to public funding). That is not to say necessarily that common law protection should be available over and above the very wide privilege accorded by the legislature in the Local Government Act. Nevertheless, I believe that the public had a right to know what (if anything) had happened at Shieldfield. Having appointed an independent review team to inquire and report, at public expense, it is difficult to see why the Council should not be protected in publishing the results. If the Terms of Reference can be criticised, or the particular Review Team exceeded their terms of reference (if they did), or they made errors, or even if

they were malicious, it does not seem to me that the public is any the less entitled to know what has been going on; or the Council under any less of a duty to tell them.

1451. I am not sure that privilege would have been upheld a few years ago for communications made outside council meetings or which fell outside a specific statutory veil of protection. But now I believe that public policy would be interpreted in such a way as to protect even a general publication as an exercise in open (local) government. Freedom of communication would prevail. It may be argued that public policy has swung too far in that direction against the interests of those whose reputations may have been damaged in the process. It is always important to remember that there is no public interest in misinformation: see e.g. the words of Lord Hobhouse in *Reynolds*. But, in so far as I can gauge public policy as now expounded in recent judicial decisions, I consider that reputation would be regarded as sufficiently protected in circumstances of this kind by the availability of remedies in respect of malicious or, in some cases, negligent mis-statements.

15) The City Council's evidence on qualified privilege and malice

General Introduction

1452. A number of witnesses gave evidence for the Council relevant to both qualified privilege and malice. But Miss Page confined her allegations of bad faith to certain individuals for whose motivation and states of mind she seeks to make the City Council vicariously liable. Those she identified in her Amended Reply, for which I gave permission on 28 February. The individuals are Mr Lavery, Mr Bell, Mr Dervin, Mr Scott and Mr Flynn. It is elementary that what matters is whether any of them were motivated ("actuated") by malice in the publication by the Council of the Review Team Report on or after 12 November 1998. What may or may not have happened to the Claimants in 1993 and 1994, with regard to their suspensions and the disciplinary procedures, is not directly relevant.

1453. What emerged as a general picture is that the Council and its staff were determined to get the Report published irrespective of its contents, and that members would have no chance to read it prior to the morning of 12 November 1998. They would not see it before the public obtained it, but would receive it more or less simultaneously with those persons present at the meeting. This meant that there would be no opportunity to apply any kind of discriminating judgment or exercise of discretion in relation to its contents.

1454. There was a "pre-meeting" on 12 November for the Panel members. Then came the meeting at 10.00 am, which "merged" with a press conference. Miss Page argues that the whole exercise was an irresponsible "sham", intended to bring the Review Team's Report (whatever it contained) under the umbrella of statutory privilege. No one at the Council cared what allegations it might contain about Christopher Lillie and Dawn Reed, and all they were interested in was making the publication water tight from a suit for defamation.

1455. There is much in what Miss Page submits. This was a "one off" exercise in a number of respects, and clearly fell outside everyone's day to day experience of local government affairs. Legal advice was taken to ensure that what they were proposing to do was lawful, and as to the most efficient way of achieving this objective. It seems to me, however, that the critical question for statutory privilege, in its various forms, is whether the Council members and staff managed to set up a meeting, as they intended. If they did, their motives for doing so would probably not matter. Merely by virtue of the meeting's status, the statutory consequences would follow. As Miss Sharp argued in her opening submissions, some five weeks before her clients bowed out of the case, there would appear to be little room to defeat statutory privilege by reference to a dominant motive on the part of any of those instrumental in getting the report into the public domain (see Lord Phillips M.R. in *Loutchansky v. Times Newspapers Ltd.* [2002] 1 All E.R. 652 and paras. 1092-1093 above).

1456. It would be necessary to show bad faith on the part of one or more of the pleaded individuals in order to defeat the protection of statutory privilege. I should thus remember the significant role here played by legal advice at almost every turn. I do not know what the advice was, although one can make an informed guess. But it does not matter. It is extremely difficult to envisage circumstances in which a person can be held to have acted in bad faith (leaving aside "dominant motive") if the course of action under challenge has been recommended or sanctioned by legal advice.

1457. There is no doubt that a number of people on the Council's staff believed in November 1998 that Christopher Lillie and Dawn Reed had been guilty of physical, emotional and sexual abuse at Shieldfield; they believed that, in some cases at least, since the disciplinary proceedings in early 1994. The outcome of the criminal proceedings made no difference. Moreover, unlike the Review Team, it is difficult to be confident that anyone who read the Report between 6 and 12 November 1998 had any reason to believe that any part of the Report was untrue or misrepresented the facts.

1458. I shall consider the witnesses in turn. Some others did not give evidence orally, and I was invited to read and take into account their statements, and to attach such weight as I thought right to them. Before turning to the evidence of the individual witnesses, however, I need briefly to summarise the context in which they were working in the run up to publication.

The "one-off" approach to publishing the Report

1459. In setting up the "pre-meeting" and press conference to launch the Review Team's Report on 12 November 1998, the various Council officers responsible were guided by legal advice in respect of which privilege has not been waived. It is not, therefore, possible to come to any definitive conclusion as to what was passing through their minds throughout the relevant period.

1460. What is clear, on the other hand, is that Professor Barker was to a large extent "calling the shots". He was also receiving legal advice independently of the Council. He was apparently keen that his Report should be published under the cloak of common law and/or statutory privilege shortly after the document was handed to the Chief Executive (in accordance with the resolution of 29 May 1998). He did not wish it to be seen by any of the elected members before it was released to the parents and general public. The reasoning appears to have been partly to protect the "independence" of the Review Team and partly for fear of leaks to the press before the appointed day.

1461. In the circumstances, it is not altogether surprising that Miss Page referred to the Council as "lending" the protection of the statutory privilege without any judgment or discretion being exercised by anyone on the Council's behalf. She referred to the "formal" meeting of the relevant sub-committee as a sham since it was simply set up to give the Review Team's Report the status of a "report" and/or "background paper" under the provisions of the Local Government Act 1972 (as amended). It was a sham because the members were to do nothing with the Report other than "receive" it formally. They were not to discuss it; nor indeed could they do so, since there had been no opportunity to read it beforehand. Only certain officers had been allowed by Professor Barker to read the Report, between 6 and 12 November. Professor Barker had wanted an even shorter period, but the officers found themselves negotiating with him to allow slightly longer. This seems very curious given that the elected members had commissioned the Report and the Review Team were being paid out of public funds. The tail might be thought to be wagging the dog.

1462. Despite the unusual circumstances, everything had to be fitted into the statutory framework and terminology in order to achieve the all important protection of qualified privilege. Miss Page argues that the officers were putting the cart before the horse. Normally, one thinks of privilege serving a particular policy objective (e.g. the right of the public to be fully informed as to what is going on in local government). Here the officers were starting with the objective of achieving qualified privilege

for the Report – whatever its content and whether or not it actually served the public interest. In reality, that is what was happening.

1463. It is clear from the evidence of all those involved that they were proceeding from the datum that the Report was to be published without any consideration of its contents. Mr Brian Scott said that it was inconceivable that the Report should not be published in its entirety. Mr Kevin Lavery (former Chief Executive) said that they did not even discuss the possibility of *not* publishing. They would not have published, however, if the Report had been "perverse". But since it was not, and merely confirmed their suspicions, the question did not arise. They did not really care what it said, although it was expected to make findings of abuse and to confirm the Council's official view that Christopher Lillie and Dawn Reed were guilty of gross misconduct. So long as qualified privilege was assured, they were simply not bothered. Mr Arnold told me:

> "The only thing that I am aware of with regard to this report, and the way in which it was handled, is that it attracted qualified privilege in the way in which it was received. That is all that I can say of my own knowledge".

As Mr Flynn confirmed in the witness box, the Council were concerned about the "victims", and that was that.

1464. Because of the desire for secrecy, the Report was not included with the agendas sent out to the members attending the meeting of 12 November. Had the Report been sent, three days in advance, it would have to have been made available for public inspection in accordance with s.100B or 100D. This had to be avoided. Therefore, it was perceived as necessary to apply the statutory provisions relating to "urgency". It is within the chairman's power to propose a resolution that the relevant committee should accept such a document notwithstanding that it has not been provided three days before: s.100B(4)(b). Here, of course, there was no urgency in the ordinary sense of that term. The only reason for not supplying it to the members in the usual way was the diktat of Professor Barker. The artificiality of the exercise is demonstrated by the joint officers' report which purported to identify the nature of the "urgency". The Report had been in the hands of the Chief Executive since 6 November and could have been provided. The true reason for not giving three days notice was that Professor Barker wished to keep it from the elected members until 12 November. That may or may not be legitimate but it is nothing to do with "urgency".

1465. Another curiosity is to be found in the officers' report, and in the short statement drafted for and to be read out by Mr Flynn as leader, which falsely suggests that the Review Team's Report had been received very shortly before the meeting.

Mr Dervin

1466. I should perhaps at the outset say that Mr Dervin is something of a special case. It is clear from his letter of 22 January 1999 (quoted at para. 123 above) that he, at some point, saw major drawbacks in the Report. When he realised that is hard to say, but I believe I should accept his evidence that this only dawned on him when he was studying it in detail for the purposes of providing answers to complainants, in his capacity as Director of Social Services. I cannot be confident, even on a balance of probabilities, that he was aware prior to 12 November 1998 that the Report was fundamentally flawed, or that it failed in significant respects to justify its proclaimed conclusions (e.g. as to a paedophile ring, pornography or the rape of Child 14).

1467. At first impression, Mr Dervin's letter looks rather courageous in demonstrating a willingness to rock the boat. On closer inspection, however, this appears not to be the case. I do not believe that he was

acting in bad faith at any material time. His attitude savours more of cynicism and betrays the characteristics of a "Jobsworth".

1468. The letter makes clear that at least by 22 January Mr Dervin realised that the Report had fundamental defects, which he expressly identifies, and also that there was considerable doubt over the validity of its attribution of child abuse to Christopher Lillie and Dawn Reed:

> "The clear impression given is that Lillie and Reed were among the most disorganised and chaotic abusers in the history of child care, an unusual feature of abusive personalities".

1469. In the witness box on 5 March, rather surprisingly, Mr Dervin sought to down-play his criticisms of the Report and even suggested that he was more concerned with such trivia as "split infinitives", poor style and "inappropriate grammar". He knows as well as I do that his letter of 22 January was recording serious misgivings over substance.

1470. It then became apparent why he was trying to shift his ground. Having admitted to Miss Page that he was "not very happy" about the Report, he was asked why he had expressed his conclusion in the letter "off the record". He replied:

> "I am writing to him privately and confidentially, and I am preparing him here mentally and psychologically for him dealing with the massive compensation claims that I believe were coming next. So I am not preparing him for the Shieldfield Abuse Inquiry, which in a sense is over and done with as far as I am concerned. I am preparing him for what is coming next".

1471. The last paragraph of the letter in my judgment plainly means to express scepticism about the Review Team's overall conclusion that Christopher Lillie and Dawn Reed were child abusers, for the very reason they were so chaotic and disorganised. Mr Dervin tried to stand the sentence on its head, and pretended that it meant that he was surprised that the Review Team had taken "five years" (actually three years) to arrive at the conclusion that they were abusers, whereas it had only taken him five weeks to arrive at the same conclusion. He seems to be suggesting that the fact that they were "disorganised and chaotic" as abusers gave them away. The evidence was "so overt". He was clearly in difficulty.

1472. A little later he tried to suggest to Miss Page that:

> "… there are examples of men and women who are not married, are not together in a family sense, or in a personal relationship sense, who have killed children and abused children in a very bad way. So it is a well-known thing and many of them again were chaotic type people".

1473. She asked him for an example of this "well-known thing" and he cited that of Myra Hindley and Ian Brady. Miss Page pointed out that they were a couple, to which Mr Dervin replied, "They were not married was the point I made". This was feeble stuff.

1474. The reason why Mr Dervin was trying to do "the splits" was because in that letter he was "preparing us for the way forward in dealing with the compensation claims". In other words, he was writing confidentially because the defects in the Report, and indeed the weakness of their overall conclusion that Christopher Lillie and Dawn Reed were child abusers, could be brushed under the carpet in the context of the Shieldfield review (which he described by saying "we had now put that part of the

process behind us"). On the other hand, they might be turned to the Council's advantage when it came to defending claims for compensation. The Council officers were quite happy to condemn these two people when it suited them but wished to wriggle out of the consequences when their employer was called upon to take financial responsibility for what they had done. They did not wish to do anything that might disadvantage the Council over the compensation claims (just as in these proceedings the Council was not prepared to justify the allegations of child abuse, for the same reason).

1475. I suggested to Mr Dervin that this was something of a double standard because he was recommending taking a different stance over the conclusions of the Review Team if it should be useful to do so in defending the compensation claim. He replied:

> "I am not a lawyer, my Lord, but if I find something in the course of my work which my employer should know about, then I should tell my employer and here was a view that I had formed after extensive study".

1476. This is cynicism of a high order. Publish the gravely defamatory conclusions of the Review Team about two former employees, provided qualified privilege can be assured, but then take advantage of the obvious defects in the Report when it comes to paying out. The two positions, of course, are simply irreconcilable. Mr Dervin would have done better to recognise that, and to stick to the position that he did not spot the weakness of the Report, despite his careful reading, prior to publication and could not therefore have questioned the wisdom or desirability of broadcasting it to the world at large. In trying to subvert the obvious meaning of his letter, he tied himself in knots. It was an unedifying spectacle that did neither him nor his employer any credit.

1477. As so often in this case, if one wants to know what a witness was really thinking it is necessary to look at the unguarded comments in the contemporaneous documents, rather than taking the oral evidence at face value. I have no doubt that Mr Dervin had, at least by 22 January 1999, grave doubts about the methods, the reasoning and the conclusions of the Review Team. He had been obliged to focus on them because he was required to respond to the parents' complaints on behalf of the Council, and he was very "cagey" in doing so. He was not prepared to endorse all of the Team's conclusions personally, but he felt that he had to go along with the Council's stance as far as he could. It was an unenviable task, but he cannot hide his recognition of the Report's fundamental weaknesses.

Mr Lavery

1478. I need to consider the evidence of each of the other relevant Council witnesses in turn. Mr Lavery spoke in evidence of having given an undertaking to Professor Barker not to republish to anyone (including elected members of the Council which employed him) any of the contents of the Report he received on 6 November on behalf of the local authority. Miss Page asked him what right Professor Barker had to require such an undertaking and to dictate to the Council's employees how it was to be published.

1479. Mr Lavery thought it was reasonable because he regarded the Report as being that of the independent Review Team and, in any event, he was guided throughout by legal advice.

1480. Part of the standard confidentiality undertaking Professor Barker required included the words that the (primary) recipient (e.g. Mr Lavery) would advise any further recipient "of the consequences" should he or she make any further communication. He told Miss Page he was not sure what those "consequences" were. I am quite satisfied, however, from the context that they related to the risk of publishing outside the scope of qualified privilege. The Review Team and the relevant Council staff were almost certainly advised, in order to cover themselves, that the contents should be kept under

wraps so far as possible until such time as they could bring it into the public domain by means of statutory privilege.

1481. He explained how the Core Team had been appointed under the chairmanship of David Bell to handle the issues of when and how the Review Team Report was to be published. Once it was in place he did not keep up with the detailed planning.

1482. As to publication itself, he said that "our highest concerns were around the parents and their children". He added that the City Council was merely publishing the independent Review Team's Report and was concerned to ensure a response to the concerns revealed by its contents. Asked if he thought about the appropriateness of publishing the names of Christopher Lillie and Dawn Reed, he replied:

> "We felt the Report confirmed our suspicions. We saw no reason not to publish in those circumstances. It was, as I said earlier, the independent Review panel's report. It was not the City Council's".

1483. He had not addressed the question of whether the two former employees should have been given advance warning of the contents. Nor had anyone prior to 12 November expressed any doubts as to the principle that the Report should be published in its entirety or as to any of its findings. There would have been an opportunity to raise "any major concerns" but no one did so.

1484. A particular point on which Mr Lavery was cross-examined was the reaction of the Council to Mr Cosgrove's letter. Its effect was summarised and placed before the Council, but Mr Cosgrove did not reply promptly to a letter asking whether he had any objection to his letter being made public. Mr Lavery would have been content for the full letter from Mr Cosgrove to be made generally available to the Council, rather than merely summarising his concerns on an anonymous basis, but he simply did not respond in time.

1485. As for the ruling of Holland J, it was true that Mr Cosgrove was requesting, for the sake of accuracy and balance, that a copy of it should be scheduled to the Review Team Report, but Mr Lavery took the view that it was inappropriate to do so. The Review Team Report "should be able to stand on its own merits". He said "We all felt that it was a reasonable and authoritative report".

1486. He denied being indifferent to the truth of the contents (in the context of "recklessness", as explained by Lord Diplock in *Horrocks v. Lowe*). He and his colleagues had accepted its contents as accurate and as reflecting their own suspicions (albeit more critical than had been anticipated).

1487. I am quite satisfied that there is no basis on which I could find that Mr Lavery acted in bad faith. Miss Page is entitled to criticise the way the Council handled the Report and appeared to abdicate any responsibility for carefully considering the content of the Report before it went out under the umbrella of local authority privilege. But that is a separate issue from the legal concept of express malice.

Mr Bell

1488. David Bell also gave evidence on 4 March. He is a former teacher who became Director of Education and Libraries for Newcastle City Council in 1995. His involvement in the Shieldfield inquiry did not begin until May 1998. He was at that stage "asked to lead the preparations to the point of publication", it having become apparent that the Review Team Report was imminent. He was one of those who received a copy on 6 November. He acted on legal advice received from Mr Brian Scott.

1489. He was cross-examined about what passed between the City Council and Professor Barker as to the timing of the publication and the restricted availability of the Report beforehand. He described it several times as a matter of "negotiation" rather than Professor Barker simply laying down the law.

1490. He described how he read the report on 6 and 8 November 1998 and formed the view that it was consistent with the terms of reference: "I read it very, very carefully and I was very careful to ensure that it satisfied the detail of the original terms of reference".

1491. This was a difficult test to perform, whether for a lawyer or a layman, and he was working to a tight schedule. I am quite sure that Mr Bell is a conscientious man and one of integrity, and he was doing his best in the light of legal advice and unfamiliar circumstances. I certainly had no difficulty in rejecting the allegation of malice against him. He concluded in the short time available to him that the Review Team had done a thorough job over three and a half years and that it was in the public interest for the Council to publish their conclusions in full. He thought it extremely compelling. I have no doubt that this was an honest conclusion.

Mr Arnold

1492. The next witness was Mr Peter Arnold, who was from May 1998 leader of the opposition on the City Council. He explained how the Review Team inquiry had cross-party support. He became a member of the Policy and Resources Day Nursery Complaints Review Team Panel (on becoming leader of the opposition). He gave evidence on 5 March. I formed the impression that he too was a decent man who coped with a difficult situation honourably and in good faith.

1493. Mr Arnold was asked in cross-examination about one of the curiosities of the publication arrangements, which was relevant to the issue of qualified privilege (as opposed to malice). This was the fact that the City Council sent out a press release on 11 November 1998 announcing a press conference for 10 a.m. the following day. It was sent to the Newcastle Chronicle and no doubt other media organisations. It contained the following announcement:

> "You are invited to attend a press conference at 10 a.m. tomorrow 12 November. The leader of the Council, Tony Flynn, will chair the conference and issue a press statement. David Bell and Tom Dervin will be in attendance. Copies of the Report and summary will be issued at 10 a.m.".

1494. The significance of this for Miss Page was, of course, that statutory privilege for the Report's publication was predicated upon its being either a report or a background paper for a meeting of the Council. That defence would be jeopardised if a meeting of the local authority was by-passed and the Report simply released at a press conference.

1495. I was told that there was to be a properly constituted meeting of the Panel on 12 November that would "merge" into a press conference. That may or may not be unusual, but the question I have to consider is whether there was a duly convened meeting of the Panel. That cannot be determined by the fact of a press release announcing a press conference. Mr Lavery had told me the previous day, whatever the press release might have said, that the meeting at 10 a.m. was a meeting of the Panel. I am sceptical about much in this case, but I have no difficulty in accepting that, in the unusual and confused circumstances prevailing in the lead up to publication, an inaccurate (or at least incomplete) press release went out to the media. It does not affect the substance. Miss Page made the point that the press release was the work of the very experienced Ms Hillary (who was not called to give evidence). Since she was directly involved herself as a member of the core team herself, it was submitted that she must be taken as knowing what she was doing. It does not follow, however, that the announcement of a

press conference necessarily means that there was not also a committee meeting (albeit brief and formal).

1496. On the other hand, there is some difficulty in understanding exactly how the decision was made to effect publication of the Report via that meeting of the Panel. This was explored with Mr Arnold:

> "Miss Page: You knew presumably when you met on 12 November that the Review Team had complied with the requirement to submit the Report to the City Council via the Chief Executive. Did you know that?
>
> Mr Arnold: Yes.
>
> Miss Page: It was for you, not the Chief Executive or his fellow officers, to determine its publication date, was it not?
>
> Mr Arnold: That is correct.
>
> Miss Page: In order to determine its publication date you needed to be fully informed, did you not, of the implications of publication?
>
> Mr Arnold: Yes.
>
> Miss Page: But you simply, in a 10 minute meeting on 12 November, rubber stamped a recommendation by your officers to publish it, did you not?
>
> Mr Arnold: Yes.
>
> Miss Page: You had not even read the document, had you, when you decided to publish it?
>
> Mr Arnold: That is correct.
>
> Miss Page: When you read it, you had some reservations, you say?
>
> Mr Arnold: Correct.
>
> Miss Page: Did you have an opportunity even to glance at it at the pre-meeting?
>
> Mr Arnold: No.
>
> …….
>
> Miss Page: Did you know that it was going to result in the public of Newcastle, including parents of children who had come into contact with Christopher Lillie and Dawn Reed, [learning] that their children may have been subjected to abuse, including rape, buggery, cutlery in their vaginas, other objects up their bottoms, injections in order that they could be abused at locations by strangers? Did you know any of that before you launched this Report on the public of Newcastle?
>
> Mr Arnold: No."

1497. This discloses a remarkable state of affairs. The elected members had simply handed over the responsibility for investigating these matters to four outsiders and appear to have agreed to publish

whatever they chose to include in their Report under (as Miss Page put it) "the imprimatur of Newcastle City Council".

1498. Mr Arnold was pressed as to his duty under the Local Government Code "to serve the public interest". He replied:

> "My belief then was, and still is, that the public interest was served best by full disclosure of the recommendations of the Review Team."

1499. Miss Page asked, not unreasonably, how he could have formed such a view if he did not know at the time what the Review Team had said. He replied that his conscience was clear since it was for the members of the public, and others, to make their own judgments. Once again, it seems to me that these are perfectly fair criticisms to make of the way the elected members and officers behaved. But it is not necessarily the case that any of those involved was acting in bad faith. I have no reason to think that Mr Arnold believed the conclusions of the Review Team to be false or that he was reckless.

1500. Miss Page also asked him if he knew, prior to publication, that Mr Lillie and Miss Reed had been given no notice of the grave and manifold allegations against them. He did not.

1501. This all goes back, however, in my judgment to the unfair and undisciplined way in which the Review Team conducted themselves and to the vague and confusing terms of reference. I entirely accept that the City Council has to take responsibility for letting this state of affairs develop, but it was certainly not Mr Arnold's fault. Moreover, however hopeless the terms of reference may have been, that does not go to establish malice on the part of any of the named individuals as a motivation for the publications complained of in these libel proceedings.

Mr Flynn

1502. Mr Tony Flynn gave evidence on 6 March. He has been a councillor since 1980. He was Deputy Leader at the time the concerns about Shieldfield arose in 1993 and has now been Leader for seven years. It will be recalled that in July 1994 it was he who pronounced Mr Lillie and Miss Reed guilty at the Civic Centre immediately after their acquittals. He did this without reading the ruling of Holland J or even being told of his serious concerns about the quality of evidence.

1503. He was not one of those who saw the Review Team Report prior to its presentation at the meeting on 12 November 1998. He knew that it had been "legally checked and that it was fair for us as a local authority to produce it". By "legally checked" I assume he meant that advice had been received that its publication would attract qualified privilege. He told me:

> "… the understanding with the Review Team [was] that it was their Report, that it was an independent Report that should be released to the Council at the same time as released to the wider public. The proviso the Council made was that the Q.C. should legally check the Report, so that it was not libellous and it would not place the Council in a difficult position".

1504. Since the Report was packed with the gravest of defamatory allegations, the only matter on which their counsel could in practice be advising would be that of qualified privilege in all relevant forms.

1505. He explained also that when he had made his pronouncement four years earlier after Holland J's ruling he was simply acting on legal advice. The Council had established its position "after the disciplinary", and that appeared to be that – "there could never be any going back from it".

1506. He went on to say that the City Council had "highly qualified officers, Chief Executive, legal officers, other very qualified officers" and, when he was advised that it was the consensus of opinion that the local authority should respond in this way, then he accepted it. He took umbrage, however, when Miss Page queried whether there was any point in having elected members if it was all "down to the officers". He replied, "With respect, I think that is an insult".

1507. When it came to the setting up of the Review Team, however, Mr Flynn was less receptive to the benefits of legal advice. At one stage, it seemed that parents were requesting that the inquiry be chaired by an experienced lawyer, and that they should be offered legal representation. For example, solicitors acting for the parents wrote to Mr Hassall on 10 June 1994 and emphasised the need to meet the requirements of natural justice and to ensure that panel members should provide the appropriate skill and expertise to carry out the review properly. In particular, there would have to be a knowledge and understanding of legal practices and procedures. Similar views were expressed at the meeting with parents on 20 July 1994. At that time Mr Flynn was apparently stating "that it was not the Authority's intention for the Review Team to be adversarial, and there was a danger of this happening once lawyers were involved".

1508. This may have been a significant factor in what went wrong. There may be a number of reasons why the City Council decided to reject the option of having lawyers involved, including perhaps the perception that it would be less expensive. Unfortunately, however, it seems that "the requirements of natural justice" were jettisoned along with "the appropriate skill and expertise".

1509. This issue was clearly central and closely linked to the muddle over the Review Team's terms of reference. It is just conceivable that one might institute an inquiry (public or private) with a brief to identify individuals as guilty of indecent assault and/or rape, but it would clearly need to be hedged by safeguards for the "accused" of the traditional kind (including, for example, notification of the precise "charges" and of the evidence, an opportunity for legal representation, to challenge or test evidence, and so on). On the other hand, if one eschews that approach (because of expense or any other reason) and opts for an inquisitorial but informal mode of inquiry, then it should be plain as a pikestaff that the remit should be appropriately circumscribed. It would be unthinkable that such a procedure could yield a fair resolution of such issues.

1510. The truth is, of course, that the Council having taken its immovable position on the guilt of Mr Lillie and Miss Reed, it would hardly occur to them that there could be any outcome of the inquiry inconsistent with that datum. That position would appear to be encapsulated in the Journal in August 1995 where it was said that there was no intention for the inquiry to "point the finger" or investigate whether or not children were abused – since the Council had already acknowledged that they probably were. (I accept that Ms Bernard has no recollection of this, and does not accept that she was accurately quoted, but I am quite satisfied that this was the Council's approach to the matter.)

1511. Mr Flynn also confirmed that the Report could simply have been handed out at a press conference on 12 November 1998 but that a panel meeting needed to be set up because "on legal advice" they needed to have the protection of qualified privilege. In other words, the Panel meeting on 12 November was purely formal and had no purpose other than to serve as a peg on which to hang statutory privilege. It was in this context, no doubt, that the meeting timed for 10.00 a.m. came to be described in a press release the day before as a "press conference".

1512. The fact remains, however, that Mr Flynn was acting throughout on legal advice. Whether he was right or wrong about the decision to speak out in July 1994, or as to the appropriate means of dealing with parental complaints, or as to his acceptance of Professor Barker's wishes on the mode of publication in November 1998, what he was doing was on legal advice and, no doubt, in accordance with what he believed to be the right way of dealing with a highly unusual and worrying situation. I see no evidence of malice.

Mr Poll

1513. On 6-7 March Mr Poll also gave evidence on some of these matters. Although he was not alleged to have been malicious himself, his evidence was certainly relevant to the City Council's defence of qualified privilege. Since June 1998 he has held the post of Head of Democratic Services. Prior to that time he was principal committee administrator. When Mr Warne left, he took over administrative responsibility for the Shieldfield Review. It was the first involvement he had. Mr Brian Scott took over the responsibility for the legal aspects.

1514. Mr Poll has great experience of handling local authority committees so as to ensure that they are conducted in accordance with the requirements of law. He has dealt regularly with such matters as the preparation of agendas, the giving of proper notice, and compliance with the openness requirements of the Local Government Act. As far as he was concerned, the Review Team's Report had a dual status. It was a report in its own right and it was a background paper to the covering report for the meeting of the Panel on 12 November. He was referring to the joint officers' report (dated itself 12 November) from the Chief Executive, Director of Education and Libraries, Director of Social Services and Head of Legal Services. This was for explaining the background to councillors in readiness for their "formal" meeting. (It contained two somewhat economical claims. First, there was the supposed reason for "urgency" – "… it has not been possible to distribute the Report in advance of the meeting". Secondly, there was the assertion that "The Council only became aware of the Team's recommendations today and so an immediate response cannot be made".) It is quite true that at the foot of that Report there appears a note to the effect that the Review Team's Report is a "background paper".

1515. He was clearly troubled by the fact that it was being witheld from the public, which he would have considered to be contrary to the openness requirements of s.100 of the Act. He said it was treated in a manner he had never encountered before. His department had to ensure access according to a "legitimate interest" test, which had no statutory basis of any kind. He had never come across it before or since. It apparently derived from legal advice, in respect of which privilege has not been waived.

1516. Also, unlike other Council witnesses, he was conscious of a change in procedure having been agreed with the Review Team, which was not entirely compatible with the amendment to the Terms of Reference on 29 May 1998. At that stage what was laid down was that the Team's Report was to be submitted to the City Council through the Chief Executive (an event which apparently happened on 6 November when Mr Lavery received his copy). At some later point, it was agreed with the Review Team that it was to be formally "received" at the Panel meeting on 12 November. Mr Poll said that his understanding was in accordance with this latter arrangement. That is what he said in his own report of 12 November. There was never any information on the public record to reveal that the Report was actually received on 6 November.

1517. I found this all rather puzzling. Those officers who received the Report on 6 November 1998 had no status to receive it save in their capacity as officers of the Council. They must surely have received it on behalf of the Council. Ergo, the Council received it on 6 November – whatever Professor Barker or anyone else may deem to have occurred.

1518. The agenda for the Panel Meeting on 12 November had quite correctly been made available to the public at least three days before the meeting. It also contained an item relating to the Review Team Report. What was unusual was that the Report itself had not been made available for inspection. Mr Poll had therefore perceived it to be necessary for a specific finding of urgency by the Chairman of the meeting and for that to be minuted.

1519. The problem is that there are only certain circumstances in which these openness provisions may be by-passed in the name of urgency. It could be achieved if the meeting had to be convened on less than three days' notice or the item in question had to be added to the agenda in a correspondingly shorter time. Neither of those considerations applied. Mr Poll's understanding of the "urgency" requirement was that "we had not received the Report in sufficient time to comply with the Act. So this was a compromise, if you like".

1520. In truth, of course, the Report had been received on 6 November and the only factor inhibiting compliance with the usual obligations was the undertaking given to Professor Barker – which was nothing to do with urgency. Whenever the Panel meeting had taken place, and however long before the meeting the Report was received, he would still have insisted that the elected members should not see it in advance. Mr Poll said he had never come across anything comparable. It is intuitively unattractive to keep secrets from the elected members, and that is presumably why there is no statutory peg on which to hang such a unique procedure. Professor Barker was in this sense a law unto himself.

1521. Mr Poll was a meticulous and very helpful witness in explaining the way such matters work in practice, although I need to remember that in so far as any question of pure law is concerned (and, in particular, whether there was non-compliance in relation to the promulgation of the Report) I must decide the issue as a matter of construction. That may have a bearing on Miss Page's submissions on statutory privilege, but the technicalities canvassed in Mr Poll's evidence, and also with Mr Scott, do tend to underline the pitfalls for layman and lawyer alike. It very much confirms, in the context of malice, how dependent all the main protagonists would inevitably have been on legal advice.

1522. Mr Poll gave evidence on another unusual feature of the case; namely the *ad hoc* procedure adopted by his staff for vetting access to the content of the Report after 12 November. It is true to say that it may not have been operated evenly, or always achieved the desired objective, but it seems that the purpose was to check with anyone applying in person or by telephone as to their interest in the matter. It seems to have nothing to do with the openness provisions of the 1972 Act (as amended), but rather to have been devised on the advice of a lawyer or lawyers with a view, if necessary, to establishing a common and corresponding interest between the Council and any such applicants for the purpose of common law privilege. I can only presume that this was to provide a safety net if the statutory tightrope gave way. To some extent, therefore, the Council staff were being more restrictive as to the distribution of this document than would normally be the case with reports supplied to its committees. I am not sure that the time spent on this issue actually took matters very much further but, again, it shows how determined everyone was to achieve the protection of qualified privilege by whatever means was appropriate and how much they looked to the lawyers for an answer.

Mr Scott

1523. The final witness who found himself in Miss Page's sights, as a target for a finding of malice, was Mr Brian Scott. He gave evidence on 7 and 8 March. He is a very experienced local government lawyer. He came into the Shieldfield story at a very late stage and it cannot have been easy to deal with the situation he faced. I had no difficulty, however, in concluding that he did his best to act professionally and I have no doubt that whatever he did was in good faith. I do not believe he thought he was helping the members or other officers to devise a "sham" by dressing up the publication of the Report in such a way as to give Professor Barker and his colleagues a cloak of statutory privilege to which they were not entitled. He, like the others, regarded it as an important commitment on the part of the Council to

publish the outcome (while recognising that there were serious allegations being made against a number of Council staff, past or present). Part of his brief was therefore to try to ensure that advice was received, and given, and procedures properly complied with, so as to minimise the risk of any claim for defamation. As far as he was concerned, the meeting was a properly constituted meeting of a Council committee (and not a press conference "dressed up").

1524. As I have said, he conceded that the terms of reference were muddled and difficult to follow. It may well be that if he had advised on them from the outset some of the unhappy outcome, for all concerned, could have been avoided. But he had to deal with a *fait accompli* and, so far as he could assess it, he did not think that the content of the Report involved going outside the Review Team's remit. Whether he is right or wrong on that vexed question does not matter for present purposes, since I have to come to my own conclusion about it. There is, however, no reason to suppose that his conclusion was anything but honest.

1525. One matter he addressed early in his evidence was the curious reference to "public interest immunity" in sub-paragraph (e) of the instructions as to how the review was to be conducted (see paragraph 129 above). It is a concept often encountered in the context of Social Services files, and particularly in relation to criminal proceedings involving children in care. But here Mr Scott found it difficult to interpret. So did I. He explained the matter very clearly:

> "The records were not being disclosed to third parties. There was no question at any time of going to a court for an order for disclosure. The entire basis of the Review was for social work purposes…. It is a matter for the Social Services authority to decide how those records are used (provided they are used for social work purposes)".

1526. He added that the concept of public interest immunity had no relevance to personal files and could not see why it was mentioned in that context. He agreed with Mr Bishop that the phrase seemed to have been sprinkled around the terms of reference "like confetti".

1527. It is important also to address Mr Scott's evidence about the exercise of discretion by a "proper officer" and whether discretion was exercised at all with regard to matters that might be withheld from the public as being confidential, or as falling within the definition of "exempt information". I must bear in mind that background context against which Mr Scott approached the matter; in particular, the fundamental assumption (settled before he even arrived) that nothing was to be held back.

1528. In cross-examination the nub of the case on malice can be derived from the following exchange:

> "Miss Page: You lent Dr Barker the local government democratic system in order to put his report, naming them as paedophiles, into the public domain?
>
> Mr Scott: We did not lend the system to Dr Barker. The process of publication in respect of that Report was the proper process. The Report had to come to a committee of the Council.
>
> Miss Page: You lent it to him for the sole purpose of giving him the legal protection he required, and the Council required, in order to publish material that you knew… ought never to have been published?
>
> Mr Scott: No".

1529. He was also criticised for not giving Christopher Lillie or Dawn Reed any advance notice of the allegations in the Report. His response was that he did not address it personally but assumed that all

persons who should have been notified were duly notified. It was, in my judgment, an astonishing omission that they received no advance warning of the "charges" the Team were considering or of the grave findings that were going to be made. But that is the fault of the Review Team. I do not think Mr Scott can be blamed for that omission. On the wider question, I believe that he was acting in good faith, that he did what he believed to be his duty and that he had no reason between 6 and 12 November to believe that the Report contained anything false. He had no opportunity to check it or test it.

1530. Miss Page also put to Mr Scott:

> "You did not care - you did not give a damn, did you, whether this Report was true or untrue about them, endangering their lives or otherwise; you simply did not care, you were totally indifferent to it, were you not?"

1531. He denied that this was so. As a matter of fact, I have seen no evidence that anyone at the City Council (any more than the Review Team) cared about Christopher Lillie or Dawn Reed and the impact the Report was likely to have upon them. They were in practice, whatever the protestations, treated as being "beyond the pale". As was said, on several occasions, their primary concern was with the parents and "victims". Nevertheless, that in no way entails malice in the sense with which I am concerned. What matters is not indifference to the Claimants, but rather indifference to truth or falsity. As to that, Mr Scott said:

> "We were not indifferent. We engaged a Review Team to investigate the circumstances in relation to these events over a long period of time".

Overall Conclusion

1532. So much then for malice. It is obvious that the main objective in all these "one off" manoeuvrings was simply to achieve qualified privilege. There was a good deal of cynicism and a determination to get the Report into the public domain with impunity for all concerned. The City Council, on one interpretation, wanted to wash its hands of the whole affair and leave it up to the Review Team but wished to retain their usual statutory privilege. Nevertheless, since there was a Panel Meeting on 12 November, on proper notice, it seems to me that they achieved their purpose. The fact that it "merged" with a press conference, and the fact that the Chairman approved the Report as being introduced on a spurious "urgency" basis, are not matters which detract from the status of the 12 November gathering as a Committee meeting. Thus statutory privilege in accordance with the 1972 Act would automatically "kick in".

1533. In these circumstances, however cynical those involved in the process may have been, and however ill judged were the terms of reference laid down for the Review Team, it seems to me clear that they achieved their objective of publishing the Report under the cloak of privilege. Since none of the identified officers, or Mr Flynn, can be categorised as "actuated by express malice", it must follow that the City Council is entitled to judgment. That is not to say, of course, that the Council's acts and omissions over the Review Team terms of reference may not have some bearing on the issue of costs.

16) Compensation

1534. At this stage I must turn to consider the appropriate sums to award against the Review Team by way of general compensatory damages. There is a claim for special damages also, but that is to be dealt with at a later hearing if necessary.

1535. The purpose of libel damages is threefold. First, they are to compensate for hurt feelings, distress, embarrassment, anxiety and (in some cases, such as this) fear of physical attack. Second, damages are required to compensate for injury to reputation. Thirdly, they can also serve the legitimate purpose of vindicating or restoring reputation; that is to say, they may serve as an outward and visible sign to interested bystanders that the relevant defamatory allegations were untrue.

1536. Many factors need to be taken into account in deciding the right figure or bracket for the purpose of achieving, in any given case, those three objectives.

1537. It is, for example, necessary to have regard to how serious the allegations were, the extent to which they were believed, for how long they have gone uncorrected, whether there has been a retraction or apology, the scale of publication or re-publication. In this case, all the considerations point inevitably to the need for substantial compensation.

1538. The allegations made, and persisted in throughout the trial, were very grave indeed. With the possible exception of murder, it is difficult to think of any charge more calculated to lead to the revulsion and condemnation of a person's fellow citizens than that of the systematic and sadistic abuse of children. I have set out earlier in this judgment the main conclusions of the Review Team, which are in terms as grave as one could imagine.

1539. As the Review Team knew and intended, those conclusions were bound to receive massive publicity both nationally and locally. They must have appreciated too that the Claimants' lives would never be the same again. It would not have taken much imagination to visualise the virulence of the reactions they would stir up in the general public. The two Claimants recalled in evidence how they had to leave in haste their homes, families and career prospects. They had to go into hiding.

1540. Unaccountably, however, they were given no warning of what was to come. They could only pick it up from the media reports. I have already recounted how the Review Team claimed in their Report to have given forewarning "where particular people have been significantly criticised" prior to publication and allowed a chance to respond. This was not true in the Claimants' case. It seems that because they declined to come and be interviewed by the Review Team, for reasons which were wholly understandable, they were put beyond the pale and deemed unworthy of fair or even humane treatment.

1541. There has never been any retraction or apology. On the contrary, the wildest and most serious allegations have been pursued by the Review Team by way of justification. They were also pursued by the Newcastle Chronicle until they withdrew on 23 February 2002, but not by the Newcastle City Council (for tactical reasons). The Review Team have maintained that case down to the moment of this judgment except in relation to the various children with whom they realised, sooner or later, that they could not persist. They continued to allege abuse in respect of over 20 children. They have done about as much as they could to aggravate the damages. Even when the children were withdrawn from the plea of justification, on 13 May, there was no recognition that the allegations were false.

1542. Time and again the gist of their conclusions was regurgitated – not least in more than 100 articles published in the Newcastle Chronicle. Even though the publishers withdrew from the case, after the Claimants' evidence and almost at the conclusion of the Review Team members' own evidence, those articles cannot be excluded from consideration. The main thrust of their attack derives from the Report. The Review Team to that extent, therefore, must bear responsibility in law for such republication, in accordance with the long-established principles in *Speight v. Gosnay* (1891) 60 L.J. Q.B. 231 (see also now *McManus v. Beckham* [2002] E.W.C.A. Civ 939*)*. They are not, however, responsible in law to the extent that newspapers went off on a frolic of their own and published matter not deriving from the content of the Report.

1543. Of course, the Review Team proceeded on the footing that whatever they published would be protected by qualified privilege. In that event, they would have avoided liability not only in respect of their original publication to the City Council in November 1998 but also for any republication flowing from that. If and in so far as their original publication may be vitiated by malice, then they become exposed to liability correspondingly for the republications.

1544. It is therefore necessary to compensate for massive and prolonged publicity given to the Team's conclusions. The persistence in the pleas of justification is an aggravating feature. It is necessary also to take account of the distress caused to the Claimants, day after day, as they have sat in court and been obliged to listen to these grave allegations being given further currency. Although it goes almost without saying that such distress would have been caused, as a matter of fact I have been able to observe it time and again as the trial has progressed. I believe it was an additional and unforeseen element in their distress to hear how casually their reputations had been treated by some of the witnesses – not least the Review Team. It was also particularly galling to hear how Professor Friedrich's expert report fell apart, and for it to be revealed how he had pronounced on their guilt in the light of the video interviews without even bothering to watch them first. It must have been humiliating to see someone treating their livelihoods and reputations with such casual indifference. Time and again, in respect of different children, he was declaring them to have been abused on the flimsiest of grounds. He was going through the motions of producing a Report and oral evidence simply because he perceived that this was what was required of him.

1545. Dr San Lazaro admitted, nine years on, how flawed her methods had been and how she had exaggerated evidence when seeking compensation for the children. Naturally, the Review Team cannot be held responsible for her actions at that time, but they have to bear some responsibility for putting her evidence before this court as though she was even now, in spite of her admissions, a credible witness to whose evidence significant weight could be attached on these allegations of multiple abuse.

1546. There was also the maintenance of unsustainable smears about paedophile rings and commercial pornography. The Review Team knew the police had no evidence for any of this and yet they have persisted in the allegations to this day, presumably in the hope that something will stick.

1547. There are so many aggravating features about this case that have to be taken into account. A few years ago the Court of Appeal sought to lay down guidance on the subject of defamation damages in an attempt to achieve proportionality, consistency and compliance with the values of Article 10 of the Convention: *Rantzen v. Mirror Group (1986) Ltd* [1994] Q.B. 670 and *John v. M.G.N. Ltd* [1997] Q.B. 568.

1548. It is fair to say that it was generally recognised for a time, as a matter of convention, that there was a ceiling in the region of £150,000 for general compensatory damages and that the gravity of defamatory publications had to be assessed in particular cases on a scale in accordance with that upper limit. It was also acknowledged, for the first time, that it was desirable in keeping libel damages in proportion to pay attention to personal injury awards. Since those decisions, of course, it is fair to say that the level of such damages has been uplifted in accordance with *Heil v. Rankin* [2000] P.I.Q.R. Q187.

1549. I am quite satisfied that each of the Claimants have merited an award at the highest permitted level. Indeed, they have earned it several times over because of the scale, gravity and persistence of the allegations and of the aggravating factors. I have no doubt that a few years ago they would have been awarded much higher sums. But I must bring their compensation into line with the current policy in such matters. I could attempt to award separate sums in respect of different publications and thus arrive at a higher overall figure. In some respects, however, this would be an artificial exercise.

1550. Mr Bishop recognises that the effective ceiling nowadays in libel actions may be taken to have risen to £200,000, but he says that it is only to be kept in reserve for the most serious cases. He submits that I should leave a gap to take account of the really serious cases and not go to the top of the bracket. I find it difficult to imagine what could be more serious than the present allegations.

1551. I propose to say no more than that each Claimant is amply entitled to the maximum level now permitted. I should award £200,000 each. In view of what they have been through since November 1998, it is hardly excessive by anyone's standards. What matters primarily is that they are entitled to be vindicated and recognised as innocent citizens who should, in my judgment, be free to exist for what remains of their lives untouched by the stigma of child abuse.

17) A brief summary of findings

1552. I have found that the allegations of child abuse against Christopher Lillie and Dawn Reed are untrue. In these libel proceedings it was part of the Review Team's defence that these allegations were true. That defence therefore fails.

1553. I have concluded also that there is no basis for the Review Team's allegations in their Report of November 1998 ("Abuse in Early Years") about the existence of a paedophile ring involving Shieldfield children or their exploitation for pornographic purposes (see sections 8 and 9).

1554. It was never part of the Newcastle City Council's defence that the allegations against Christopher Lillie and Dawn Reed were true. They took this stance, I was told, for tactical reasons. They are or were defending claims for compensation by parents over the abuse alleged to have been suffered while in their care. In those proceedings the City Council were making no admission that such abuse had taken place and could not, therefore, be seen to be making inconsistent allegations in the libel actions. They nevertheless fully indemnified the Review Team in the conduct of their case.

1555. The City Council preferred to rely on the defence of qualified privilege on various grounds. I have upheld their defence of privilege. The Claimants argued that certain named officers and the leader of the Council were maliciously motivated in arranging the publication of the Review Team's Report in November 1998. I heard evidence from all those individuals and rejected the claim that any of them was malicious. Accordingly, the City Council is entitled to judgment (see sections 14 and 15).

1556. The Review Team also raised qualified privilege as a defence. Those four Defendants were engaged by the City Council in 1995 to carry out a review as to what went wrong at Shieldfield and to respond to parents' individual complaints/allegations against various individuals or departments within the City Council. They looked into matters for three years and were paid, I was told, well over £350,000 for their work. They and the City Council took legal advice with a view to ensuring, so far as possible, that when their conclusions were published they would all be protected by the defence of qualified privilege if sued for libel. The Review Team delivered their Report in accordance with their contractual obligation to the City Council on 6 November (via the Chief Executive). That limited publication was protected by qualified privilege at common law (see sections 10 and 11).

1557. It is true that the Review Team stipulated that no elected member of the City Council was to see the Report prior to publication to the wider public on 12 November 1998. That may seem odd, since it was the City Council who hired them to inquire and report. Nevertheless, I am satisfied that a meeting of a Council committee (albeit a brief and purely formal one) was duly called and constituted for 10 a.m. on 12 November and that the Report, which was formally "received" by the Committee, was thereafter published in such a way as to attract the very wide privilege accorded by the Local Government Act 1972 (as amended). Although the Review Team were responsible for the wide

dissemination of their Report through that channel, they too would be entitled to take advantage of that protection by way of privilege (see sections 14 and 15).

1558. Unfortunately, however, I have also held that the four members of the Review Team were malicious in the promulgation of their Report. They have thus forfeited their protection in respect of the limited publication of the Report on 6 November and the much wider publicity it attracted thereafter. That is because they included in their Report a number of fundamental claims which they must have known to be untrue and which cannot be explained on the basis of incompetence or mere carelessness (see sections 12 and 13).

1559. Accordingly, the Claimants are each entitled to judgment against the Review Team. The allegations made against them were of the utmost gravity and received sustained and widespread coverage. I decided, therefore, that each Claimant was entitled to what is now generally recognised to be the maximum amount for compensatory damages in libel proceedings. I award each of them £200,000 (see section 16). What matters primarily is that they are entitled to be vindicated and recognised as innocent citizens who should, in my judgment, be free to exist for what remains of their lives untouched by the stigma of child abuse.

1560. Although the City Council is entitled to judgment, I wish to make clear that the terms on which the Review Team was appointed and the methodology they adopted were wholly unsuited to the task they were eventually required by the City Council to perform. The Claimants had been acquitted of charges in respect of some of the Shieldfield children in July 1994 and it was originally stipulated, therefore, that the Review Team should "not make any finding on matters dealt with by the criminal court". Despite this they, in effect, found them guilty of serious sex offences (including rape) not only in respect of the very children involved in the 1993-1994 criminal charges but also in respect of countless others (sometimes put at about 60 and on other occasions up to 1450). They were encouraged in this folly by the Council including through officers with legal qualifications. The result was that they proceeded to make their findings without any of the elementary safeguards being accorded to the two citizens in jeopardy.

1561. For example, the "accused" were not notified of exactly what was alleged against them, or told what the evidence was, or given an opportunity of testing it or responding. They were invited to come and speak to the Review Team but were not given any indication of what they would be asked about (despite a request through solicitors), and Mr Lillie was told falsely that they would not be re-visiting the criminal charges of which he had been acquitted. Inevitably, they were advised to have nothing to do with it.

1562. When the Review Team had made their findings, neither Claimant was forewarned of the conclusions or when they were to be published. They were left to learn of the allegations through the media.

1563. Although parents had been calling for a public inquiry in 1994, their legal advisers were pressing for procedures compliant with the principles of natural justice. That was clearly right, but the Council allowed the team to proceed as they thought fit, and natural justice seems to have fallen by the wayside.

1564. I characterised these arrangements in a ruling in February as a "shambles". That still seems to me to be an apt description. The fault cannot be laid entirely at the door of the Review Team since none of them was legally qualified, and I concluded at an early stage that it was mainly the Council's fault for sanctioning an inquiry into the commission of acts tantamount to criminal offences, with a view to the ultimate publication of a report, but without appropriate safeguards for the "accused". The exercise has cost a vast amount of money for the citizens of Newcastle and I have no doubt years of

unnecessary heartache for many of those directly involved. Unhappily, the Council has only itself to blame.