Neutral Citation Number: [2005] EWHC 102 (QB)

Case No: HQ03XO3397

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 February 2005

Before :

THE HONORABLE MR JUSTICE TUGENDHAT

- -

Between :

W	**Claimant**
- and -	
(1)WESTMINISTER CITY COUNCIL	**Defendants**
(2) ANCA MARKS	
(3) JAMES THOMAS	

- -

- -

Philip Shepherd QC & Manuel Barca (instructed by **Kerman &Co**) for the **Claimant**
Edward Faulks QC & Julian Waters (instructed by **Barlow Lyde and Gilbert**) for the **Defendants**

Hearing dates: 13–16 & 20th December 2004

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Approved Judgment

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

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THE HONORABLE MR JUSTICE TUGENDHAT

Mr Justice Tugendhat :

106. On 9th December 2004 I handed down my second judgment in this action, giving reasons why I held that the defence of absolute privilege was not available to the defendants in this libel action: [2004] EWHC 2866 (QB). The background, the words complained of and much else that is relevant to this judgment are set out in that judgment. In order to avoid extensive repetition, and in the hope of avoiding confusion, the numbering of this judgment continues sequentially from the number of the judgment of 9th December. The two judgments are to be read together.

107. On 13th December 2004 I heard argument as to the effect of my second judgment. I allowed an application to re-amend the Claim Form and Particulars of Claim to include a claim under the Human Rights Act 1998 ss. 7 and 8, based on the same facts as already pleaded, and no other facts. There were clearly difficulties in the way of such a claim, especially one brought for the first time at such a late stage. But it was submitted for the Claimant that I could not dispose of it properly without hearing evidence, all the more so in this developing area of the law. I accepted that submission.

108. I gave leave for service of a re-re-Amended Defence on 16th December (subject to the signing of the Statement of Truth). Having given permission to amend the claim, I did not accede to the application of the Defendants to strike out the existing claim in libel. That had been advanced for the Defendants on the basis that issues as to the relevance of what was published to the occasion on which the publication occurred do not remove a defence of qualified privilege (as the Claimant contends), but go only to malice. It was submitted that there was no plea, even in the draft Amended Reply, which alleged malice in the sense that I had held (at paras 87 and 88), was required to be established by the Claimant in this case, if he were to defeat the plea of qualified privilege. I did not consider the details of this argument, albeit that it had considerable force. The issues and evidence on qualified privilege and malice are closely related to the issues arising under the HRA claim, and I saw no benefit, and possible dangers, in making a ruling on qualified privilege and malice before hearing the evidence on the HRA claim.

109. There is no plea of justification. The Defendants have made clear throughout that they are not alleging the truth of the meaning, whether that which the Claimant pleads (see para 6), or any other meaning. Although the words complained of include a reference to "the concern that [the Claimant] might be grooming S for prostitution" (see para 5) it is not alleged that those words are or were true, either in the sense of there being "reasonable grounds to suspect" or "grounds to investigate": see *Chase v News Group Newspapers* [2003] EMLR 218. The Defendants position is stated in their letter of 15 August 2003: see paras 8 and 72.

THE MEANING OF THE WORDS

110. Some repetition is necessary. The action arises out of words in a document headed "Report for Review Child Protection Case Conference on [B…/[the Claimant]] Family" and dated 31 March 2003. The words complained of are:

> 'S
> S is an 11 year-old young girl…

> Due to the fact that S never discusses her difficulties with anyone and keeps all her feelings inside she is vulnerable and at risk… This especially includes risks like drug abuse, prostitution and teenage pregnancy…
>
> Concerns increase if it's considered that there have been numerous reports of S's high level of sexual awareness…
>
> S is also extremely protective of her mother and distrusts any professional related to social services. There is no particularly strong bond between S and [the Claimant] and it is reported that she dislikes him making visits to her school. It has been reported to Social Services that at one stage [the Claimant] regularly took S out for dinner at very expensive restaurants, as well as buying her loads of gifts. During the Core Assessment that was done last year professionals raised the concern that [the Claimant] might be grooming S for prostitution. S has very little contact with her biological father.'

111. The Claimant pleads that these words meant or were understood to mean that there were serious ground to suspect him of being a predatory paedophile who was grooming S with a view to abusing her sexually, and for prostitution and abusing her trust in him as a father figure. Meaning is in issue, but it is not said that the words are incapable of bearing the pleaded meaning.

112. Publication is alleged to have been made to five persons who (in addition to the Claimant, and the Second and Third Defendants) attended the Child Protection Case Conference ("CPC") held on 1st April, the day after the report is dated. The publishees are the Council's Head of Commissioning for Child Protection, the minute taker from the Child Protection Unit, S's School nurse, the Headteacher of the school which S then attended, and the Mother. It must be recognised that publication of an allegation of a sexual nature could in principle be very damaging indeed, even if made to one person, if that person may act upon the publication in a way that affects the future relationship between the Claimant and the family.

113. As stated by Eady J in *Galloway v Telegraph Group Ltd* [2004] EWHC 2786 (QB) [47]-[48], even though the single meaning doctrine has no application in the context of qualified privilege, the judge's first task is to rule on the issue of the natural and ordinary meaning which the words complained of would have conveyed to reasonable and fair-minded readers. The test for media publications is well established, and I adopt the approach which Mr Barca invited me to adopt. In the words of Eady J in *Galloway*, summarizing *Skuse v Granda TV* [1996] EMLR 278, 285, it is this:

> "Evidence is not admissible on the issue of natural and ordinary meaning. It is essentially a matter of impression. The Court should give the articles the natural and ordinary meaning(s) which they would have conveyed to the ordinary reasonable reader, reading them once. Hypothetical reasonable readers should not be treated as either naïve or unduly suspicious. They should be treated as being capable of reading between the lines and engaging in some loose thinking, but not as being avid for

> scandal. The Court should avoid an overelaborate analysis of the article, because an ordinary reader would not analyse the article as a lawyer or accountant would analyse documents or accounts. I should have regard to the impression the relevant words have made upon me, in considering what impact it would have made on the hypothetical reasonable reader. The Court should certainly not take too literal an approach to its task.
>
> 48. Context is always important…."

114. The context is particularly important in this case, where there were so few publishees, and where the occasion was a formal CPC. The circumstances of a publication are relevant to what an ordinary reasonable person in the position of the reader would understand. In particular, the context here is not of a hypothetical person who would read the words complained of only once (as might generally be the case in a media publication). The words were specifically disputed, and discussed, in a meeting which, in any event, required careful consideration of a document of great importance to all the publishees. It was foreseeable that a reasonable reader in the position of the publishees would have read the words complained of more than once. Subject to this difference, the ordinary test applies. The hypothetical reasonable readers should not be treated as either naïve or unduly suspicious. They should be treated as being capable of reading between the lines and engaging in some loose thinking, but not as being avid for scandal.

115. This is a case to which the observations of Simon Brown and Sedley LJJ in *H v Chief Constable of Hampshire* [2003] EWCA Civ 102 at [56] and [63] apply: the court should be ready to find that the words complained of mean what they say and no more.

116. The Report was twelve pages long. It referred to numerous earlier documents. It was the latest in a long list of documents relating to the family. The first Child Protection Case Conference had been on 2nd September 1991, although only the mother among the publishees had been involved right from the start. The immediately preceding CPC had been held on 7 May 2002. All the persons present, including the mother (who was the only non-professional among the publishees) had extensive experience of such Reports and of the work of social workers.

117. The Report was read before the meeting and discussed at the meeting. There are two separate publications pleaded. In para 5 of the Re-Amended Particulars of Claim there is pleaded the publication "in anticipation of the case conference". In para 6 there is pleaded "the said words were further published in the course of the case conference itself when the Claimant (whose likely attendance at the meeting must have been anticipated by Ms Marks) took issue with them".

118. It is not in dispute that the Report (which is dated 31st March 2003) was in fact distributed only some minutes before the meeting itself on 1st April. There is some difference in the context of the two occasions. At the meeting the Report was the subject of discussion.

119. There is a dispute of fact as to the context. It is common ground that Ms Marks said, in response to a question from the Claimant as to the source of the words complained of, that this information came out of the assessment at Brunel Family Centre ("Brunel"), but she was not in a position to clarify it. But the Claimant says that she went on to say that Brunel would deny it. She says that she did not say that. The Minutes mention only the words, which it is agreed that she said. It was also clear at that stage that the Claimant was distressed by the words complained of (which is not recorded in the Minutes) and that he disputed the information and the concern. Included in the Child Protection Plan that resulted from the Conference were:

> " (d) Referral to Brunel Family Centre to be pursued for direct work with S to begin …. (g) James Thomas, Team Manager, has agreed to review the family's case records in relation to information disputed in Conference. He will write to the family after this has been done".

120. When he gave evidence the Claimant made a further allegation, namely that at the meeting he had threatened to sue Ms Marks for libel. This was not put to her in cross-examination, but she was asked about it in re-examination, and she denied that that was said.

121. The Claimant was distressed at the meeting. His evidence was that he was in a state of shock. His memory may well have been affected by that. I can see no reason why Ms Marks should have said that Brunel would deny what they had reported to her. It is true that they had not themselves put their concern on paper, but they had raised it with two social workers. First they had raised it with Helenne Edmonds a social worker at the Marylebone Family Support Team to whom the family had been allocated at the time (so a predecessor of Ms Marks). She had made a record of it on 7 June 2002. They raised it again with Ms Marks on 10 February 2003. Ms Marks gives a detailed account of the conversation in which the concern was raised with her, none of which has been challenged. If those at Brunel had said that they would deny it, I do not believe that Ms Marks would have worded the Report as she did. I have seen nothing to indicate that any of the social workers involved in this case would have been likely to pass on information and then deny that they had done so. On the contrary, their attitudes throughout have been open. I accept Ms Marks' evidence on this point.

122. Important words amongst the words complained of are 'concern' and might'. In my judgment the words complained of meant that the Claimant had so conducted himself towards S, that the Second and Third Defendants (both of whom signed the Report) believed there to be a possibility (and no more) that the Claimant might be grooming S for prostitution. Their concern extended to considering that the information about the Claimant set out in the words complained of should be followed up (as in (d) and (g) of the Plan) to see if there was any basis for the concern. There is no assertion or allegation that the Claimant is in fact guilty. There is no assertion that there is evidence that the Claimant was guilty, nor that there were reasonable ground to suspect that S was likely to suffer significant harm from the Claimant. The publication says no more than that he may be guilty, he may be innocent, the matter remains open as a possibility and no more.

123. I find that there are really not two occasions of publication, but only one, over a continuous period. If I am wrong about that, then the meaning of the pre-meeting publication (if separate) is slightly stronger than the meaning at the meeting itself, but insignificantly so. The difference is that at the meeting Ms Marks expressly stated that she was passing on information, which she could not clarify, and not purporting to assert what she herself knew, and Mr Thomas acknowledged that the sources needed to be reviewed.

124. The test of what words are defamatory is: would they tend to lower the claimant in the estimation of right thinking members of society generally, or be likely to affect a person adversely in the estimation of reasonable people generally? That is the test Counsel for the Claimant invites me to adopt. I heard submissions from both Mr Shepherd QC and Mr Barca. I shall refer to them together as Counsel for the Claimant.

125. In that sense I find that the words complained of were defamatory of the Claimant. A fair minded person would not have assumed the Claimant to be guilty of such conduct, but would have had reservations about him until the matter had been resolved one way or the other. In so far as this is a libel action, and in the absence of a plea of justification, it follows that it is presumed that the words complained of are false.

126. The presumption is consistent with the stance that the Defendants have in fact taken since 1st April 2003. Mr Faulks QC has made clear at every stage of the hearing before me that the Defendants do not allege that there is any truth in the meanings complained of by the Claimant and it is accepted by Ms Marks and Mr Thomas that the words complained of should not have been included in the report. Consistently with that, on 12th July 2004, with the Defendants' approval and support, the Claimant obtained a Residence Order from the Court in Family Proceedings to the effect that H lives with the Claimant. On 27th July 2004 another social worker for the Council wrote to the mother:

> "…. in order to ensure the children's safety I would be grateful if the Claimant would remain in your company when you are with H and S during the holiday period".

THE FACTS RELEVANT TO THE LIBEL CLAIM

127. Apart from the issue on the context of the publication, already addressed above, the evidence of the Claimant was relevant only to damages in so far as the libel claim was concerned. He had little evidence to give on the issue of qualified privilege or malice that added to what could be derived from the documents and the evidence of Ms Marks and Mr Thomas. The reason for this is that the question of privilege is to be judged by reference to circumstances known to the makers of the statement at the time the statement complained of was made.

128. I shall set out the Claimant's evidence below. It will be seen that it addresses the facts of his relationship with the mother and S. Where the Claimant disputes the factual matters said to give rise to the concern, I could not reach a finding of fact. What the Claimant has or has not done for S is a matter which would have to be investigated

not only with the Claimant, but also with S and the mother and others, such as S's head teacher, who might be able to give evidence on that topic.

129. The factual background, in more detail, is as follows, in so far as it relates to qualified privilege.

THE WITNESSES FOR THE DEFENDANTS

130. The Second Defendant, Anna Catherine Marks, known as Anca Marks, came to England from South Africa in early 2002. She had taken a four-year BA degree in Social Work at University of Pretoria. That is a degree, which requires study of both theory and practice, during which she was on four different practical placements. One of those involved direct work with children. When she arrived in England she started work as a Social Worker with the London Borough of Islington. She worked for them for about ten months. That was not a permanent position. It was as what she called a locum social worker. She said that position was at the bottom of the line when people were sent on training courses. Coming as she did from a different country, she felt the need for training. She left Islington to go to Westminster, which has a good reputation for training. She had not been to England before February 2002. Although she had received training in Pretoria, the Social Services system in South Africa is entirely different from that in England. Her experience there, such as it was, had been across a whole range of tasks and not been focused on Child Protection. However the type of people she had dealt with had, she said, been very much the same as those she dealt with in England. Islington was her first job, as opposed to placement.

131. She arrived at Westminster on 9th December 2002 where her line manager was Ms Dure-Shawar-Barber. That remained the position until the end of January. There were difficulties in the team at Westminster and Mr Thomas came in January to take over and he became Ms Marks`s line manager at the end of January. Ms Marks was sent on training courses in the first half of 2003, one of them being on child law. It was an overview aimed at social workers from other countries and included study of the Children Act s.17 and s.47. That was before July 2003 but she cannot recall whether it was before the end of March 2003. She went on other courses later in the year 2003.

132. Ms Marks did not meet the social worker to whom the file relating to the mother's family had been previously allocated. That person had already left. Ms Marks did meet a social worker, Anthea Hart, to whom the file had been allocated in an earlier period, but she could receive no recent information from her. On 9th January 2003 the file for the mother's family was allocated to Ms Marks. In January 2003 eleven families were allocated to her. In respect of one of these families there was a case about to come to a hearing in the High Court. To introduce herself to the cases allocated to her, Ms Marks skim read what she understood were the most relevant and recent records in relation to the families, including that of the mother. She said that she did not have time physically to read files as thoroughly as she would have liked to.

133. The mother is now aged about 46. According to all the documents and evidence before me she is a person who has been addicted to Class A drugs for over twenty-five years. Ms Marks stated in her witness statement, which was not challenged, that the mother has admitted to her that she is a drug user and that in the past she has worked as a prostitute and committed petty thefts. Ms Marks says she was not

persuaded that the mother no longer works as a prostitute. The mother had told her that she, the mother, had means of obtaining money but would not say how. Ms Marks learnt from the head teacher of S's school that neighbours had reported to her school that men were attending the mother's flat whilst the children were at school. Ms Marks discussed various matters with the mother in the course of a home visit to her on 26th February 2003.

134. Ms Marks also had conversations with the Claimant before the end of March 2003. The first was on 15th January, which was a discussion over the telephone about H. The second was a face-to-face meeting on 21st January 2003, which again was primarily directed to discussion about H. She prepared a full page Case Record of that meeting. Amongst other things, it records that the Claimant expressed concern that the mother was not getting appropriate support (meaning support from the Council). He wished a specialist opinion taken on whether or not the mother was healthy enough to take appropriate care of the two children. Ms Marks had told the Claimant that she was trying, with difficulty, to arrange a meeting with the mother and would discuss the issues with the mother as soon as possible. She was not willing to discuss S in any detail, because the Claimant was not the father of S.

135. The following day 22nd January 2003, Ms Marks attended S's school and had a detailed discussion with the head teacher. She formed the impression that the head teacher had a deep and caring interest in S and felt very concerned about her. The concerns were with regard to the family circumstances and in particular the mother's behaviour and her ability to care for the children. It was as a result of the information supplied by the school that Ms Marks considered that a home visit to the mother's house would be necessary. Ms Marks prepared a minute of that meeting which covers two A4 pages. It shows that, in addition to her and the head teacher, there was also present an Education Welfare Officer. It is recorded that apologies for absence were received from the mother.

136. The minute records that the head teacher:

> "… emphasized the fact that they are extremely concerned about S at present, mainly because of the possible impact her transfer to Secondary School could have on her. Due to the fact that S never discussed her difficulties with anybody and kept it all inside, she is at risk of being manipulated by older girls. This includes risks like drug abuse, prostitution and teenage pregnancy. …I was made aware of a couple of serious concerns with regard to the mother's ability to care for the children. Apart from her continuous drug use, there has been some allegations made by reliable sources that different men visit the flat all through the day. …"

137. The first entry on a record headed "Day to Day Contacts/Events" after the case was allocated to Ms Marks on 9th January 2003 is a series of three entries dated 10th January 2003. The first of these records a visit by the mother to the office stating that she had no money to pay for electricity or gas and that the house was freezing. The second records that the Professionals' Meeting was scheduled to take place at the school. The third records the difficulties that Ms Marks had in attempting to communicate with the mother.

138. On 27th January 2002 there is a record prepared by Mr Thomas of a Supervision meeting with Ms Marks. It records that S, then aged twelve, was on the Child Protection Register for emotional abuse and that she was in her mother's care full time. It records that H was off the CPR, and was with his father during the week. It states that the mother has a thirty-year history of drug abuse and refuses all offers of help. It records that the Core Group reflected a very high level of concern about S and refers to the allegations of men going to the house and the possible link with drugs or prostitution. It also refers to tension between the two children when H comes and shares S's room at weekends. The note also records that there was insufficient time to discuss this in that session and that the next supervision session was to be on 11th February 2003. Ms Marks explained that Mr Thomas was not yet formally in his post at this stage and that she understood that he too was reading a large number of files.

139. Ms Marks in her witness statement then goes on to recount in some detail a meeting on 10th February 2003 between herself and Ms Esca Verleg and Denise Coombes at Brunel Family Centre. That is a well-regarded assessment centre for families. They had undertaken an assessment of the mother's family in 2002 and a referral was made to them to do some direct work with S. There was a Work Agreement in place between the Brunel Centre and the Council. The mother had been invited to attend that meeting but failed to do so.

140. Ms Verleg explained to Ms Marks that she and others had become very closely involved with the family in completing the Core assessment, which had lasted a number of weeks. She gave a general overview of the family referring particularly to the mother's drug use, which apparently had occurred even in front of the children. She explained to Ms Marks that S did not trust the Claimant. Ms Verleg went on to say that both she and other members of staff at Brunel Centre had concerns about the relationship between S and the Claimant. There was no hard evidence in that respect, so their suspicions were not put into the written Core Assessment. Ms Marks could not remember whether Ms Verleg had told her that the professionals at Brunel Centre had voiced their concerns and suspicions to the Claimant.

141. Ms Verleg told Ms Marks that she was unclear precisely how the Claimant was behaving with S, but she and others had formed the view that the Claimant might be grooming her for the purpose of sexual abuse. She made clear to Ms Marks that S had told both Ms Verleg and other members of the Brunel Centre that she did not want to be with the Claimant. Ms Verleg reported to Ms Marks that without any good reason, the Claimant would give S expensive gifts and take S out alone to restaurants despite the fact that she did not want to be with him. Ms Marks states that she had no reason whatsoever to believe that Ms Verleg was prejudiced against the Claimant or had unfairly formed an adverse view of him. To Ms Marks, Ms Verleg's concerns about the Claimant appeared entirely genuine. Ms Verleg was the more senior member of the team from the Brunel Centre. Denise Coombes expressed no contrary view to what Ms Verleg was saying. Ms Marks states that she later discovered that Karen Quinn, the manager of the Brunel Centre also shared these suspicions about the Claimant. This was confirmed to me in evidence by Ms Quinn, but since Ms Quinn did not speak to Ms Marks before 1st April 2003 on these matters, I do not need to consider her evidence at this stage.

142. There was no challenge made to Ms Marks over what she said in her witness statement she had been told on 10th February 2003. The only criticism made is that

she did not keep a record of the meeting (although there is the mention on 18th February referred to below). It was what she was told for the first time on that day that is central to the issues that I have to decide.

143. The next supervision meeting between Ms Marks and Mr Thomas was on 18th February 2003. The note includes the following:

> "Anca is concerned about the relationship between [the Claimant] and S. He may have previously been the mothers' pimp, though Anca needs to read the back files in more detail to establish the basis for this. [The Claimant] is taking S out for dinner, giving her expensive presents, possibly grooming her.
>
> Decisions tasks and timescales
>
> - to discuss in detail in next supervision session.
> - Anca to read the file in full".

144. Ms Marks confirms the accuracy of this note in her witness statement. She adds that she pointed out to Mr Thomas that at the time there were a large number of files with papers about the mother's family. She states that she had read some of these by the time she had the meeting on 10th February 2003 but by no means all the papers. She added, "I am afraid it is just not possible as a busy social worker to read each and every word in our clients' files".

145. By this time on 12th February 2003, the Day to Day Contacts / Events sheet also records that a colleague of Ms Marks had spoken to Mr Thomas who had advised her that "[the Claimant] is not considered a risk – its more the mother". In evidence Ms Marks stated that she thought she recalled that entry. For her own part she said that during that first six weeks she was not in a position to assess what risk the Claimant did or did not pose.

146. After the meeting on 18th February, Ms Marks states that she read a large number of documents on the the mothers family files, concentrating on the CPCs and social workers reports and references.

147. Amongst the documents in the file which Ms Marks said in evidence that she thinks she read is one dated 7th June 2002. It covers five closely typed pages and is prepared by her predecessor but one, Ms Edmonds. It includes the following:

> "I attended the Brunel Family Centre for a pre-arranged meeting to review the core assessment. Unfortunately due to confusion at Brunel they were not aware of the meeting. Katherine [Lemberger] and I discussed her work and then met with Eneska and Karen Quinn … we discussed the issues and Katherine`s concerns about the present situation. Katherine felt that there were concern about the relationship between [the Claimant] and S. She felt that this relationship was not natural and that there was a possibility (all be it speculative) that [the

> Claimant] had an unhealthy interest in S and it was almost as though she was being primed. S was very wary of [the Claimant[and did not like him. Concerns expressed were re [the mother's] drug use whilst the children were in the house.
>
> The impact of the lifestyle on the children of a drug user. Concern that [the mother] was using on top of her methadone and thus needing to finance this. Concern that [the mother] was a prostitute and the risk that this posed for S and the role modelling that was being set for S. Concern that there was a lot of men coming and going in the flat. Concern that there was rarely enough food for the children. Concern about the relationship between [the Claimant] and [the mother]. Concern that [the Claimant] continually deflects from the needs of the children through his continual complaints. Concern that [the Claimant] is actually detrimental to trying to meet the needs of the children… the issue of prostitution was one which was discussed as to how to bring this up in the core assessment. Agreement that it appears to some extent as though social services have been colluding with the mother and that it is important that all agencies are very clear that secrets will not be kept…"

148. The note then describes a home visit to the mother and includes the following;

> "I asked [the mother] what she had spent her money on. [The mother] said that she had spent it on buying treats for the children. We discussed budgeting. [The mother] said that she did not want to have to budget. She said it was very depressing having to survive on a small amount of money and she couldn't do it. [The mother] said that she used to get her extra money from theft and fraud but that she doesn't do that now and hasn't for several years because she got caught when S was with her. I asked her how much she was spending on drugs. She says that she has methadone then uses crack cocaine or heroine twice a week. She said it cost her about £40 a week. She said a few months back she was doing about £100 a day but not now. I commended her for cutting down. I asked her how she got the money for drugs. She said that she had her means. I asked her about the concerns that she was prostituting. [The mother] got very upset and said that she was not a prostitute and that she has never had sex in the bed upstairs which she has had since H was born. She said that she had met [the Claimant] when she worked at an escort agency. She said that she had sex with him one night and then later found out that she was pregnant and thought hat it was his. She said that she regretted this. She said that he had been around ever since and that he was in love with her. She said that although she loved him she didn't want to be with him and she couldn't understand why he stuck around. She said that they did not get on a lot of the time though she needed him for transport and that he helped out with the

> children and with money etc. She said that he is living there now. I asked her again about prostitution. She said that she did not and that the only person she slept with was a man in Chelsea who she had been seeing for years and that they would meet for dinner and that he would give her money and that sometimes she had sex with him. She said that she did not view that as prostitution. She said that she viewed it as no differently to having a boyfriend who would buy her a dress. She repeated this anecdote repeatedly over the rest of my visit so much so that it seemed as though she was trying to convince herself. The mother was extremely upset when I asked Katherine to confirm that she had told her and Anthea that she was prostituting for money. The mother denied this. [The mother] said that if anything was written about her being a prostitute she would sue us and get a lawyer. [The mother] said that she never got any support from social services… I asked to see S. [The mother] went and got her from next-door S was very wary of me. I asked her what she had had for dinner the night before. S said a burger and chips. I asked about the night before she said chicken and chips. Either the mother is lying when she says they have not had the money to buy food or S is lying. [The mother] got very upset and asked us to leave. Whilst we were there a man came to the door and [the mother] told him that her social worker was there and could he wait. When we left this man was waiting outside… "

149. The record dated 7th June 2002 continues as follows:

> "My assessment and thoughts
>
> Concern.
>
> The relationship between [the Claimant] and [the mother] seems extremely destructive to the emotional stability of the children. [The Claimant] is very attacking of [the mother] yet he does not seem to be willing to work with [the mother] to resolve differences. He appears very undermining of [the mother]. I am concerned that he does not appear to be willing to co-parent H. [The Claimant] appears to have a history of continually making complaints against social services in such a way that the best interests of the children appear to be forgotten. [The Claimant] does not appear to want to work with [the mother] and will use social services as an intermediary in his relationship with her as a parent of H. [The Claimant] is extremely critical of [the mother's] lifestyle and parenting yet he does not appear to be wanting to accept that he has any responsibility towards improving the environment that H and S are in. [The mother] clearly has a chaotic lifestyle…. [the mother] is a drug user and whilst this in itself is not an issue the issue lies with the lifestyle that she leads as a result of being a chronic drug addict. [The mother] engages in illicit

> activity to support her drug use. She is according to prior notes engaging in sexual activity to procure either cash or drugs. This allegedly occurs in the house. The risk of this to H and S rests in the risk from many men in the house who may at some point choose to exploit S … [the mother] is also physically unwell. This will be extremely distressing to the children over time as they watch their mother become unwell. [The mother] does not claim to have any commitment to giving up drugs or changing her lifestyle. She says that she has been a drug user for 27 years and that it is now too late to do anything. I would wonder if the threat of loosing her children maybe enough to prompt her to attempt this. I am concerned about where S would go should she not be at her mother's. There appear to be no other adults in the family with whom she has a relationship. S does not have a relationship with [the Claimant] and I would be concerned about him being her main carer given the stated concerns over some question of issues around his intentions with their relationship. It is not my assessment at this time that it would be appropriate for [the Claimant] to be a carer for S. I am also concerned that [the Claimant] does not appear to have his own address. The mother has said that [the Claimant] is presently living with them. Should [the Claimant] be the carer for H where would this be. An assessment needs to be done on the sister in Ealing. I am not aware of a home visit having been done. This needs to occur…"

150. Commenting upon this document in her witness statement, Ms Marks stated that this record confirmed what she had been told by Ms Verleg, by way of Brunel's suspicions about the Claimant. She said the record also confirmed the different concerns expressed by the head teacher of S about the family.

151. Ms Marks then met with the mother for a home visit on 26th February 2003 and afterwards with Mr Thomas at a supervision meeting on 5th March 2003. It was agreed that Ms Marks should meet with both parents in due course to discuss the care of both the children. Ms Marks had been particularly concerned because she felt that the mother was under the influence of drugs when she met her on 26th February.

152. The next requirement that Ms Marks states that she had for work on the file arose out of the forthcoming CPC on the mother's family. Ms Marks had to draft a report for the meeting on 1st April 2003. There is a typed Supervision Record of the meeting of 5th March 2003, which includes the following:

> "Home visit last week – S not there, at the library, [the mother] was under the influence of drugs, which she admitted. Anca to meet with parents at the office.
>
> … Anca to read the file and review concerns about the Claimant."

153. On 10th March 2003 Ms Marks completed a referral form referring S to the Brunel Family Centre. Under the heading "Reason for Referral – please give a brief outline of events/issues, which have led to the referral…" she wrote

> "School and social services are concerned due to:
>
> - Mothers drug abuse and allegations that S has been witness to prostitution
>
> - S`s relationship with [the Claimant]. There are concerns that he might be grooming her for prostitution…."

154. Under the heading "Work to be undertaken" Ms Marks has written:

> "Individual therapy with S once a week in order to build a trusting relationship and to assist her in making sense of the world she is living in".

155. She was not asked by either side any questions concerning her completion of the referral to Brunel on 10th March 2003.

156. The Report for Review Child Protection Case Conference which Ms Marks set about preparing is, in its final form, a closely typed document covering twelve pages. There are headings covering family composition, reasons for initial registration, recommendations of previous case conference, information about previous concerns with details of significant events, information about each child, information about the parents, agencies involved with the family, dates of the social work contact with each child, details of accommodation, family financial circumstances, assessment of risk factors and family strengths, parents views, young persons views and finally recommendations.

157. Ms Marks explained that the source for the information she recorded in this document was a combination of what she had read on the files, including in particular the Transfer Summary, and previous Child Protection Reports, including a chronology that was available on the file. She cannot recall how long it took to prepare the document but she estimated that if she was doing nothing else at the same time it would probably have taken her about two days.

158. As to the words complained of, which form a very small part of this lengthy document, Ms Marks states in her witness statement that she was aware, when initially drafting the report, of the expressed concerns from Ms Verleg and the Head teacher and the documentation she had read in the files. She states also that she believes that by then she had spoken to Veronica McClarey, who was an assistant team manager in her department. Ms Marks' recollection is that Ms McClarey was also concerned about possible grooming of S and confirmed that suspicions had been raised by Brunel.

159. Ms McClarey gave evidence. She is a very highly qualified social worker. She too has a CSQW and a MSc in social work, amongst other professional qualifications. Her experience in working with children goes back over twenty years. She is assistant

team manager of the Council's Social and Community Services Department at 33 Tachbrook St, London SW1. She has been familiar with the mother's/the Claimant's family and with the Claimant. One purpose in calling her was to explain the incident in 2001 when the Council received information from a probation officer working with sex offenders that the offender had told the probation officer to "watch out for [a person with the same name as the Claimant]", whose address he gave as that of the Claimant. After police checks had been carried out it turned out that there was a sex offender of the same name as the Claimant, and a note was left on the file recording this. The Claimant had seen this on reviewing his file, and made a complaint. It is part of the history of this matter complained of by the Claimant, and may well have made him more sensitive to the words complained of than he otherwise would have been.

160. However, in her witness statement Ms McClarey also gave evidence about the note of 7 June 2002 prepared by Ms Edmonds. She said that that was an accurate record of what she had been told at the time. In her witness statement and evidence she repeated that she shared the concerns expressed by the professionals at Brunel in 2002. She believed that it was right to bring these matters into the open, although she also accepted that they should not have been raised in a way that surprised the Claimant at the CPC. She quoted a leading expert on the subject of child abuse and said, "we are not talking about monsters, we are talking about nice men". She had had some involvement with the mother's family file for some years, and had been one of those responsible for the appointment of Ms Marks.

161. The fact that Ms Marks had spoken to Ms McClarey and had come away with the understanding that she did, is relevant to Ms Marks's state of mind. Ms Marks states that she is not sure when the first draft of this document was completed. The document was prepared on a computer word processing system, but for reasons of confidentiality the Council does not keep these documents in other than paper form. The computer database has been searched and no record has been found of the document.

162. Ms Marks states that she was also conscious of the fact that there was no hard evidence regarding the relationship between the Claimant and S, and that her first draft of the report did not refer to the suspicions held by Brunel about the Claimant potentially grooming S. She submitted her first draft to Mr Thomas for him to check.

163. In her witness statement Ms Marks says this at paragraph 36-7:

> "36 It was after a meeting with my solicitor, James [Thomas] and the insurance manager of Westminster that I was reminded by James that I had not included the information in my first draft and that he had suggested that I put my concerns about the potential grooming of S in my report which I did.
>
> 37 I acted on the advice of my line manager by amending my report to the conference…"

164. This paragraph gave rise to the late application to amend the Defence, which I allowed for reasons given in the judgment that I handed down on the 3rd December, Neutral Citation Number [2004] EWCH 2812 (QB). In cross-examination she was not challenged on the truthfulness of these paragraphs.

165. Referring to the meanings pleaded by the Claimant in his Particulars of Claim paragraph 4, Ms Marks states that she was deliberately cautious when drafting her final report to state that the professionals had only "raised the concern" the Claimant "might be grooming" S. She states that she believes that she was under a duty to record concerns by responsible child protection professionals with regard to the relationship between the Claimant and S. She states that she would have been neglectful of her duties if she had not recorded the concerns expressed by those experienced professionals and something had subsequently happened between the Claimant and S. She said that she did make further enquiries after the suspicions were first reported to her by Ms Verleg and that she was not careless about her reporting.

166. She was challenged more than once on the meaning of the words she had used. She said that she never intended to say that the concerns expressed were factually based. She rejected the suggestion that she was accusing a father or stepfather of grooming. She said that was not what she was saying. She said it was not an allegation, merely a concern.. She said that English is her second language (although I would not have suspected that until she said so) and that to her the word "concern" is just a normal English word without a technical meaning.

167. It was put to her that what was being conveyed was no more than speculation. To this she responded that speculation might be the same in that for her both conveyed that people were worried about something but there was no evidence to back it up. The way she interpreted the words complained of was that people had raised the concern that the Claimant might be as was stated, but it was never meant to be an allegation at all. She was not saying that it was true or false.

168. It was suggested to her that she excluded the references to the Claimant grooming S in the first draft because nothing in the Core Assessment of 2002 had recorded it. It was suggested to her that so far from it being her duty to record it, it was obviously not her duty; rather it was her duty not to do so.

169. To this Ms Marks responded that the words complained of had not been in her first draft because she had been focussing on the mother`s, drug abuse and its impact on the children and preparing a plan to address the future. She was concerned, as she said in the report, that there had been "drift" due to the frequent changes of social worker. Her main concern was the children's safety when at home with the mother. The concerns mentioned to her about the Claimant were not evidence based and were not the main concerns at that stage. There had been nothing written in the final Core Assessment Report about these concerns and the reason for that, she understood, was that there was no factual evidence for the concerns. But it had been explained to her that there was an ongoing concern needing investigation, she felt it was her duty to note down as much as possible about concerns concerning the children. The reason she had omitted the words complained of from the first draft was not because those concerns were not in the Core Assessment Report. Nor was it because the concerns were not evidence based. It was because she had been focussing on the mother. She considered that there were enough professionals who felt the concern for it to be discussed in a conference. An assessment could be done and an evidence-based conclusion could be reached.

170. Under cross-examination Ms Marks did yield some ground. Looking at it with hindsight she felt that the matter could have been handled differently. At the time she

said she was fairly inexperienced, and, in the light of the experience she has acquired since, she thought that perhaps the proper way to deal with the matter was to start an investigation whether the concerns turned out to be true or false, and investigation would give rise to evidence upon which to go forward in which ever way. She said that doing nothing was not the proper way of going about it. Her mention of "drift" was partly with that in mind. As to investigating the matter and following it up with the Claimant, she did not feel that, as a junior social worker with limited experience and no training, it was for her to discuss such a serious thing with him. However, she had not made a conscious decision not to discuss it with him. She recognised that it was best practice to discuss reports with parents before a meeting but she said this rarely happened in fact and parents often only received reports an hour before a conference. The reason for this is the high case loads.

171. Given the seriousness of the matter, which she readily accepted, she said that with hindsight it is not something, which should have been sprung upon the Claimant in the way that it was. She was relying heavily on the guidance of her manager, Mr Thomas. He had not suggested that she discuss it with the Claimant in advance. At the time she thought that raising it in the CPC was the correct forum in which to raise it. In principle a CPC is a place where concerns, no matter how serious, need to be discussed, especially if they need further investigation.

172. Speaking with hindsight, she was wondering whether the Claimant should have attended the whole of the conference in the way that he did. He was there because he was the father of H. But these concerns were not about H but about S. He was not the father of S and was not responsible for S.

173. There was clearly a difference of perception between the parties. In cross-examining the witnesses, Mr Shepherd QC repeatedly put to them questions referring to the Claimant as the father or as the stepfather of S. It may well be that that is how he sees himself. But it is clearly not how Ms Marks saw him. The role and importance of the Claimant to H and S is not to be diminished. The Claimant is the father of H. S is H's sister. So the Claimant has a proper interest in the welfare of S as H's sister. But the evidence does not suggest to me that the Claimant has recently (if ever) had that relationship with the mother that the word "stepfather" connotes. It may that it is the limited and indirect basis for the Claimant's proper interest in the welfare of S that has led to him being treated by social workers in a way that he objects to.

174. Ms Marks went on to say that if this was a situation with one of her families now, she would include the concerns in such a report, but would also suggest investigation and assessment. She considered that if she did not mention such concerns in such a report she would not be doing her job. Part of her role is to make professionals aware of all concerns, because it is only if you were aware of all concerns that you can protect the child. If it is referred to in a CPC it gets addressed in a structured manner and decisions are made at a senior level so more can be done.

175. That said, she agreed that the matter should not have been sprung on the Claimant and that it must have been terrible for him. But her job is to protect children and sometimes things will be said that are hurtful. She readily accepted that she did not know whether it was true or false that the Claimant was grooming S, in that she had not investigated the information on the basis of which her sources had given to her the information that they had.

176. Ms Marks was cross examined at some length about earlier documents from the numerous files which had been selected by the representatives for the Claimant to include in what was originally intended to be a jury bundle. Apart from one document (the Core Assessment Record prepared for 24th May 2002 referred to below) the references were positive. For example in 1998 it is recorded that the Claimant appeared to have a close and loving relationship with S and to be committed to caring for her as well as for the mother and H. These references were summarised by Mr Shepherd as suggesting that the Claimant was part of the solution and not part of the problem. Indeed, when she gave evidence, Ms McClarey confirmed that but for the help of the Claimant the children might not have stayed with the mother at all.

177. It was suggested to Ms Marks, on the basis of these records, that it was very unlikely that the Claimant would have been an abuser. It was not clear how many of these older records Ms Marks had read before April 2003. However, she was prepared to yield nothing on this point. She said she was not in a position to have a view on that. She said abusers are sometimes the people we least expect them to be. She could not say whether it was likely or unlikely in the case of the Claimant. She was not investigating those concerns herself. She was insistent that it was her duty to report any concerns if the safety of the children was involved. She had only met the Claimant once and was not in a position to have a view whether the concerns expressed were true or false. To her he appeared as a person interested in the children's welfare and a stable influence on them and the mother. Although she had had discussions with S at the school, she had not obtained S's confidence sufficiently to talk of things that were close to her and in particular not her relationship with the Claimant.

178. In summary Ms Marks said that she believed that she had accurately and fairly recorded important concerns expressed by others and that there was nothing malicious in what she had done. She said that she had only two conversations with the Claimant, both of which were extremely amicable, and she had formed no firm view of him at that stage. Although, as I have mentioned, she was challenged as to it being her duty to report what she did, and in the way that she did, it was not suggested that she had any motive for what she did other than the performance of what she thought was her duty.

179. Ms Marks accepted that the Claimant was stressed at the conference on 1st April. After that she had a period of leave of about three weeks. She discussed the Claimant's complaint with Mr Thomas when she got back. She continued to have regular discussions in her supervision meetings until July, when she ceased to be allocated to this family. When the solicitor's letters and Claim Form arrived she was instructed that they were to be dealt with by solicitors and she ceased to be involved in the matter.

180. Ms Marks appeared to me to be an intelligent, honest and conscientious young person. While she did not have all the training that she and the Council would have wished, she was a well-qualified social worker. Subject to the concessions which she made in cross-examination, to which I have referred,I accept her evidence in its entirety.

181. Ms McClarey appeared to me to be an intelligent, conscientious, honest and highly qualified and experienced social worker. I accept her evidence in its entirety also.

182. Mr Thomas the Third Defendant gave evidence. He is the Team Manager at the Marylebone Family Support Team based within the Council's Social Services Department. He holds a Certificate of Qualification in Social Work (CQSW) from the University of Glasgow, which he obtained in 1992, and a Masters degree in Social Work, which he obtained at the same University in 1993. He has worked with children and families since qualifying. He has worked as a social worker, a group work co-ordinator, a senior social worker, a child protection co-ordinator and a team manager. He has acquired particular experience in dealing with sexual abuse. His final placement in his CQSW course was with a specialist in that field. Subsequently he has acquired experience working with the NSPCC in particular with adult and adolescent abusers. He has worked with non-abusing parents of abused children and throughout his career he has often dealt with children and families where sexual abuse has been a concern.

183. As already described he became the Team Manager responsible for Ms Marks. He took up his post as Team Manager on 1st February 2003 having been working for the Council from 16th December 2002, and supervising Ms Marks in that period. He has responsibility for the work of two Assistant Team Managers, ten social workers, two social work support officers and two team administrators. He holds overall responsibility for a large number of children and families, usually around forty children on the Child Protection Register, twenty-five children looked after by the Council and mostly subject to care proceedings, and one hundred and fifty children in need.

184. Mr Thomas was not the person who allocated the mother`s family to Ms Marks. He was aware that she had qualified in South Africa and had worked for a little less that a year in Islington. It was he who arranged for her to go on a course on the Children Act as well as internal training and other courses. He thought that she would have become familiar with the statutory guidance documents while working in Islington, and was not aware that she did not know them. He agreed it was regrettable that a person with Ms Marks training should have had to start work on the files that she did.

185. Mr Thomas explained that there is a shortage of social workers, which obliges local authorities to allocate to Child Protection Cases workers who are inexperienced. He said that the Council had had a policy not to allocate social workers with less than two years post qualification experience to such cases, but there were simply not the experienced social workers available. In Ms Marks' case she was already in post when he became responsible for her and he did not arrange her induction. Induction, he said, should include reading of statutory guidelines. In addition to the standard departmental induction procedures, there are ones tailored to the particular social worker.

186. Mr Thomas agreed in evidence that it was important for a social worker to read the detailed case records of the family to which she was allocated. There was no standard procedure for this. He would expect a social worker to read chronologies and summaries and the more recent case reports. But there is practical difficulty in time constraints and other priorities. A social worker will not normally read every document in every file.

187. Mr Thomas himself did not consider the Claimant to be a risk in February 2003. The information that he had obtained verbally, in the handover of the file to himself, was

that the risk came from the chronic nature of the mother`s substance abuse. He was taken through the records prepared by himself of supervision meetings with Ms Marks, but could add nothing of significance to what he recorded contemporaneously. He did recall that the team of which he had become the manager had gone through extremely high turn over of staff and had a high number of cases, which were unallocated. That made it a particularly difficult time.

188. He had not met or spoken to the Claimant. When Ms Marks communicated to him concerns about the Claimant, he understood she was repeating what the Brunel Centre had expressed to her. The fact that both she and he were taking up new positions made the matter particularly difficult. In addition the mother's file was a chronic case with long standing concerns. It was his understanding that there was a basis for the concerns expressed by the Brunel Centre, but he wanted more detail, and to establish the context in which these reports were being made. He could not recall how much of the files Ms Marks had read at each meeting in early 2003.

189. In his witness statement Mr Thomas states that he recalls that when Ms Marks first drafted her report she did not include within it the concerns expressed by Ms Verleg with regard to the possibility of grooming or sexual abuse by the Claimant. Accordingly, he said, when Ms Marks submitted her first draft report to him he questioned the absence of any reference to this concern and suggested she should include within it a reference to the concern that there may be a possibility of grooming by the Claimant for the purposes of sexual abuse. He felt it was important that this was formally recorded and considered. When Ms Marks did include the words complained of in her final draft report it was signed off by both her and him.

190. In his written statement he states that at this point he was unaware that this concern had not been raised at any point with the Claimant or shared with any professionals outside Brunel and Social Services. He said that he learnt that that was the case later on. When he did learn about it he said the decision was explained to him as being based upon the lack of any concrete evidence for the concern although experienced professionals in the field of child protection had those concerns about the Claimant's relationship with S.

191. In cross-examination he said his recollection was that the concerns relating to the Claimant had been part of the 2002 Core Assessment by Brunel, but he had not asked Ms Marks if she had read it, and he did not himself check the Core Assessment. If, when he had the first draft before him from Ms Marks, he had been aware that the concern about the Claimant was not already known to the Claimant, then he would not have suggested that the words complained of be included in the report. He said it was his normal practice to ask a social worker about when parents would see a report, but in this case he could not remember whether he had or not.

192. Mr Thomas's witness statement includes the following:

> "The concerns about the Claimant related to
>
> a) information provided by the Claimant and the mother that they met and began a relationship when he was working as a cab driver and she was working for an escort agency. There

> was therefore concern about a possible link between the Claimant and prostitution
>
> b) information that the Claimant had taken S to restaurants and bought presents for her which raised a concern about whether these activities were age appropriate and whether the Claimant was seeking to develop a special and inappropriate relationship with S away from the mother.
>
> c) professionals' sense of unease from their observations of the interactions between the Claimant and S which was recorded by social worker Helenne Edmonds on 7.6.02. In my view it was reasonable for the professionals at the time to consider these concerns as potential indicators that the Claimant may have been grooming S."

193. In cross-examination it was suggested to Mr Thomas that the concerns about the Claimant were baseless. He would not accept that. It was put to him that it was no part of his or Ms Marks' duty to record these matters. He would not accept this. Mr Thomas said that Brunel is an outside agency who had been asked to contribute to the assessment. He agreed that any single indicator can be neutral. He agreed that an indicator is not evidence on its own. He agreed that one indicator alone is unlikely to lead to a conclusion that abuse is taking place. He had of course already accepted in his witness statement that no reference to grooming should have been included in the report in circumstances where the Claimant had not been alerted to the concern in advance.

194. He accepted, as Mr Faulks had accepted throughout the case, that there was no evidence that the Claimant was grooming S. But he said he did not think that was clear before the meeting on 1st April 2003. It was put to him that there was an overwhelming body of evidence in 2002 and 2003 that would demonstrate that the Claimant was extremely unlikely a candidate for grooming S for prostitution. Mr Thomas would not accept that. He read the reports after 1st April 2003. He said having read them they would have alerted him to the fact that concerns that the Claimant might be grooming had not been put to the Claimant and that it was unclear from the records what conclusion had been drawn about those concerns. He agreed with criticisms of the way that matters had been recorded and the file been transferred from person to person before his appointment.

195. Ms Marks had not alerted him to the fact that it did not appear that the matter had been raised with the Claimant or the mother in the past. Asked about all the positive matters concerning the Claimant that are recorded in the files Mr Thomas said that, sadly, the existence of a loving and caring relationship does not always preclude there being sexual abuse. His experience shows that it is, sadly, the case that sexual abuse is sometimes perpetrated by those who have previously had a loving relationship with a child. The fact that there had been no abuse when the child was younger may not be significant. He said men will often tend to abuse children of particular ages.

196. One document about which he was cross-examined was the Core Assessment Record of the Core Assessment, which ended on 24th May 2002. This is a document containing forty-six pages prepared by Ms Lemberger BA, CQSW, Family Centre

Worker at Brunel Centre. Under the heading "Social workers summary of the young persons needs in the area of emotional and behavioural development and the extent to which parents are responding appropriately" there is the following:

> "S is a ten year old, a very bright friendly girl. S is close to her mother; she may be concerned for her mother. She is openly protective of her mother she is also very challenging of her mother. S does not see her birth father very often, who I am told does not want very much to do with her. S has known [the claimant] since she was 3 years old. [The claimant] would drive [the mother] to work in hotels; [the claimant] would look after S while her mother was working. [The claimant] cares for S, and wants to do "daddy things" for her. [The claimant] likes to take S to the cinema, give her treats and buy her the things she needs. [The claimant] often offers to buy things for S. S expects [the claimant] to do things for her. She has expected [the claimant] to do her shoelaces. S knows [the claimant] supports her mother with money and food. S has not shown any closeness to [the claimant]. I am not aware of any other close relationship…. S is also watchful, observes situations, and takes them in. She does not express her emotions and does not say what is on her mind. S does not seem to trust many adults. It is unusual for a young girl of S's age to be so private. S is very reluctant to speak about herself. [The mother] has commented that S has seen a lot relating to her involvement with drugs and other activities around the house. It seems an important question as to who S talks to about any of her worries. On one occasion, [the mother] has asked me what Social Services intend to do about her children. [The mother] has asked me if I had experience in families involved in drug abuse, and the deception it entails. Since then I am aware that deception is part of a way of life for this family. Things just happen; they are not talked about, or maybe lied about. I question what S has adopted as her way of life, of being quiet or of being deceptive. Ever since S was born, [the mother] has been involved in drug taking/substance misuse. [The mother] has taken care of S, and provided her with good experiences, as S is a girl who is functioning well on the day to day. S is at an age, where a lot of change is due to take place: the transition to secondary school is due to happen next September (2003), puberty, growing into a young woman. The evidence is that S is a young woman, who is very much at risk in a number of possible ways. [The mother] has commented that she started being involved with drugs at 14 after seeing her parents "smoking a joint". The situation is similar to the present situation. It is also a question, as to what role models S has, as she becomes a young woman, and in terms of parental relationship. [The mother] and [the claimant] often argue and are in conflict."

197. Under the heading "Social workers summary of the young persons needs in the area of family and social relationships and the extent to which parents are responding appropriately" the report includes the following:

> "…there is no other members of the extended family as [the mother]'s family do not want to have contact. [the claimant]'s family is elderly. S's natural father does not see her very often. S's paternal grandfather has died recently, and [the mother] has said that S was quite attached to him. S herself has not spoken about this. [The mother] is loving with S and H. They seem to spend some time together, doing homework, S has helped her mum colour her hair recently. [The claimant] is attentive to S's needs and has taken her out to the cinema, buys her shoes, and treats. [The claimant] often offers to buy S things. S does not attend any after school activities at the moment. It would be useful to S to go to sports activities and other activities she might enjoy. [The mother] and [the claimant] have completely different views as to the guidance and boundaries they would like to implement. "

198. Asked about this cross-examination, Mr Thomas says that the reference to hotels and treats are indicators, although it is not recorded that they were being referred to as indicators. His understanding of the document is that they were being discussed as indicators. He did not know why it was that more had not been said or done but one explanation he thought might be that it was felt that there was not sufficient basis for the concern at that stage or that it was felt that to address the concern openly would be to put the child at greater risk. The risk in that case would be of alerting the groomer (if that was what he was) to the concern and to the need to be more careful in covering tracks. However, he agreed that usually when there are concerns the need to take protective measures outweighs the risk of alerting the subject of the concern.

199. The Core Assessment Report was available to the Claimant and the mother at the time, as is common ground. In this context Mr Thomas said that the existence of a loving caring relationship does not always preclude sexual abuse. In relation to the matters that he said were indicators, he accepted that there is an obvious alternative explanation. It was put to Mr Thomas that that explanation would be of a stepfather seeking to negotiate some of the difficulties with a stepdaughter, seeking to have an entirely appropriate special relationship so that she has a paternal figure. Mr Thomas accepted that an innocent explanation could be given.

200. Mr Thomas said that if he had known on 1st April 2003 what he knows now, he would regarded the issue of the Claimant's role as requiring further investigation and consideration. He would have made further inquiries. Grooming behaviour is difficult to identify, and most of it is open to an innocent interpretation. In the events that in fact occurred on 1st April 2003 he said that he had the benefit of seeing the mother's reaction, which he would otherwise have sought in any event. The mother's reaction, he said, was that she thought that there was nothing in it. He would also have sought the reaction of S's head teacher, who also was at the CPC.

201. As stated in "Working Together" at para 6.45, Mr Thomas's experience is that there are strong links between prostitution and substance misuse. There are three main ways

in which people such as the mother pay for drugs: dealing, prostitution, and theft, or a combination of these.

202. Mr Thomas expressed strong agreement with a passage in Working Together para 2.25 which reads:

> "enquiries into suspicions of child abuse can have traumatic effects on families. Good professional practice can ease parents' anxiety and lead to co-operation that helps to safeguard the child. As nearly all children remain at, or return home, involving the family in child protection processes is likely to be effective. Professionals could still do more to work in partnership with parents and the child".

203. He said that parents are generally able to deal with extremely difficult matters being put to them, including directly saying that they have abused children or failed as parents. He said that, although finding it difficult, they are usually able to manage and remain engaged. He said that reports for CPCs frequently include concerns and allegations that parents have denied. He also said that reports should be made available to parents a week before a conference, and new information should not be raised in the course of a conference. Parents need to be given an opportunity to respond if serious allegations are to be made, and if he had known that the concern had not been put to the Claimant he would have suggested that there be an adjournment.

204. The Second Defendant did write to the Claimant on 29th April 2003. It was not shown by him to anyone legally qualified, but he had made enquiries himself. The relevant parts of the letter are as follows:

> " I am writing as promised in order to address the concerns which you raised in the Review Child Protection Conference held on 1st April. I apologise for the delay in this response as I have just returned from leave. I shall try to summarise the concerns, which you raised, and address them as far as I am able. I will add a further response once Anca Marks returns from leave and I have had further opportunity to refer to previous records.
>
> 1. You were unhappy at not being able to read the Social Workers report in advance of the Conference.
>
> We do aim to get these reports to parents prior to the Conference and I apologise that this was not the case in this instance. I shall seek to ensure that you receive the report in advance on the next occasion…
>
> 5. You were particularly upset at the reference in the Social Workers report that "During the core assessment that was done last year professionals raised the concern that [the claimant] might be grooming S for prostitution"
>
> I have reviewed the Core Assessment completed on 24-5-02 by Catherine Lemberger, Family Centre Worker at the Brunel Family Centre, and I have found no reference to such a concern being raised by professionals. I will

> need to discuss the source of this information with Anca Marks upon her return.
>
> I hope that you find this interim response helpful, and clearly I will need to write to you again with a fuller response as soon as I am able. Please let me know if I have omitted any matters which you wish me to address further."

205. It will be recalled that Ms Marks had had three weeks' leave at this time. When Mr Thomas had looked at the Core Assessment he had been surprised to find no reference to the concerns which Ms Marks had reported to him. He attempted to speak to Ms Lemberger, who wrote that Report, but learnt that she was no longer working at Brunel. He recalls needing to speak to Karen Quinn at Brunel, and finding that she was on leave as well.

206. On 16th June 2003 there is an e-mail reply by Ms McClarey to an enquiry by Mr Thomas. This refers to information of the kind recorded in the words complained of. She says:

> "The concern about possible grooming of S has been more of a hunch or an uneasy feeling from Brunel which I can understand although I am not aware of any actual evidence that he is grooming her".

Mr Thomas also records speaking to Ms McClarey.

207. There is a record of a conversation between the Mr Thomas and the Claimant on 26th June 2003. It includes the following:

> "5. [The claimant] asked about my response to his complaint about grooming S for prostitution. I said it was clear that there was no reference in the Brunel Family Centre report but that Anca recalled having been told by a member of staff at Brunel about this and I was awaiting a final response from Brunel. [The claimant] again voiced his unhappiness and said he would show my written response to his solicitor".

208. On 15th August 2003 Mr Thomas wrote to the Claimant again in these terms:

> "Firstly I apologise for the delay in responding further to my first letter in this matter. I have had to make enquiries both here and at Brunel Family Centre which have been complicated by staff not being available, as well as reviewing our records.
>
> As I have already indicated, the reference which was made in Anca Marks' report to the last Child Protection Conference to the Brunel Family Centre's Core assessment was inaccurate. That written assessment contains no reference to any concern that you might have been grooming S for sexual abuse.
>
> It has been explained to me by Karen Quinn Manager of the Brunel Family Centre and Veronica McClarey Assistant Team

> Manager in my team, that there was some discussion in 2002 between staff at Social Services and the Family Centre about whether there was evidence of a concern that S might be at some risk from you. This appears to have been based on observations of your interactions with S and your own description of the context in which you met S's mother. The conclusion of these discussions was that there was no evidence to support such a concern, and this is why it does not appear in any of the records I have reviewed.
>
> It is clear to me that no reference to this issue should have been included in the Social Workers report and I apologise for the distress that this has caused you. I will discuss with Sally Trench, Head of Commissioning for Child Protection how we might include a correction to all copies of the Report and the Minutes of that Conference. I hope to discuss with you shortly if there is anything further I can do in this matter."

209. Mr Thomas did speak to Ms Quinn. Ms Quinn gave evidence about that discussion. Ms Quinn has been the manager of the Brunel Family Centre for nine years. For three of these she was on secondment to another post, from which she returned in April 2002. She also gave evidence of her knowledge of the Claimant and the mother. She had taken over from Ms Lemberger. In her witness statement she refers to the meeting on 7 June 2002 in which Ms Lemberger shared her concerns about the Claimant with Ms Edmonds. After that Ms Quinn states that she visited the mother. She shared her concerns about prostitution with the mother. She also met the Claimant on 12 June 2002. At that meeting she was told by the Claimant how he and the mother had met while he was driving her at night. The reason for her enquiries was that she also held the concerns expressed to, and recorded by, Ms Edmonds. But she states that these concerns were not shared with the family or included in Brunel's written reports. This was because of the absence of substantive evidence, and because there was a concern that sharing such information at that time could place S at further risk. Her witness statement and oral evidence expand considerably on this, but it is not necessary for me to consider her further evidence at this stage. The reference to Ms Quinn here arises out of what Mr Thomas says in his letter. What Mr Thomas says in the letter is consistent with the evidence that Ms Quinn gave to me, although she did not give evidence of what she actually said to Mr Thomas before the letter was written. She appears to have forgotten the conversation with him for some time.

210. The Claimant responded to this with a letter dated 3rd September 2003. His letter included the following:

> "Your letters raised even more questions and failed to resolve how Ms Marks immediate manager Miss McClarey allowed such a written accusation to be made, without ensuring that Ms Marks had full written confirmation or if verbal, full back up from a witness. Please explain to me how Ms McClarey let this happen!! Surely this is what managers are for. In your letter of 15th August 2003 (para 2) (last line)"… have been grooming S for sexual abuse ". Where has this come from? The original complaint was regarding grooming S for prostitution". Where

> did Social Services get the words "sexual abuse"? The file again? This defamation of my character has to stop – even if this means going to a court of law to resolve it which I now intend to do. As I understand it you are at the mercy of your organisations filing system, and its soaring inadequacies. This is no excuse for the department continually defaming my name. It was only after a tremendous amount of effort on my part that the Social Services relevant files were opened for my examination. Only to be closed again to me by the very same Ms Von McLeary, with the words "we cannot allow you any more time" after discovering the "Paedophile" accusation in the files. In the circumstances, since Ms McLeary, Ms Marks manager is in my opinion responsible for the mismanagement of the situation, allowing inaccurate statements to be made without attempting to see if they are viable, I must now insist to see the "files and view them" at my leisure in order to ensure that no other false accusations lie therein. Please ensure that the files are open to my view, as soon as possible!!! I thank you for your past interest and help. You are the only professional manager I have met at Westminster Social Services…ps I have left five messages asking you to phone me and I am now writing"

211. On 4th September 2003 the Claimant wrote again to Mr Thomas as follows:

> "Further to my letter dated 3rd September referring to your recent letter. A further question needs clarification – your letter dated 15-8-03 para 3 line 6 "…and your own description of the context in which you met S's mother". What do you mean? i.e. what have you "read" or "been told" was the context in which I met S's mother? The statement needs an urgent clarification please oblige".

212. The Claimant complains that he has received no reply to either of these two letters.

213. Mr Thomas was criticised in cross-examination for not telling the Claimant that it was on his suggestion that the words complained of were included. He rejected the suggestion that he had misled the Claimant. He said that since he had no further information than what Ms Marks had told him, the fact that the suggestion had come from him added nothing. I observe that Mr Thomas had in fact signed the report, so there is no question of his involvement being unknown to the Claimant. I accept Mr Thomas's explanation.

214. On 17th September 2003 solicitors instructed by the Claimant wrote a long detailed letter on his behalf which they stated to be in accordance with the pre-action defamation protocol, requiring a substantive reply within 14 days. The letter recites the facts. It recognises that the mother "apparently funds her drug abuse by petty theft and credit card fraud and possibly prostitution". It alleges that Ms Marks "was recklessly indifferent to the truth when she made this allegation". It requires that any correction be agreed with the Claimant and must include an apology. It states: "Additionally our client is entitled to very substantial damages for the libel that you

[ie Mr Thomas] and Ms Marks have published". It ends "Additionally our client wishes to ensure that the Council properly police their files (and staff) so that there can never be a repetition of such a defamation. We wish to discuss with you the manner in which this can be achieved". This latter requirement suggests to me to a claim under Art 8 of the Convention, or under the Data Protection Act 1998.

215. Having received no reply on 6th October 2003 the Claimant's solicitors wrote again threatening proceedings if a reply was not received in a further seven days. They wrote again in 14th October complaining that there had been no response and stating they had instructions to commence proceedings for defamation against both the Council and Anca Marks and giving a further week for a reply.

216. Mr Thomas explained that it is the Council's practice for solicitors to reply to letters from solicitors. He sought to identify who was the appropriate person to reply. He discovered the name of a person in the risk and insurance department to whom he spoke in September. He felt considerable frustration that no reply was made. He telephoned the Claimant's solicitors and acknowledged to them that a response was needed. There was no other witness to whom questions about the inter solicitor correspondence could be addressed, and that matter was not pursued further with Mr Thomas. It is not alleged that there was malice on the part of anyone other than Ms Marks and Mr Thomas.

217. On 16th October 2003 Mr Thomas wrote to the Claimant, mainly about other matters. The letter included:

> "I also attach the correction which I propose should be attached to all copies of the minutes for that meeting, and which has been approved by Sally Trench, the Head of Commissioning for Child Protection, who currently chairs the Child Protection Conferences".

218. The attached document reads as follows:

> "Correction minutes of Review of Child Protection Conference on 1-4-03
>
> Social Worker's Report
>
> Page 5, second paragraph- " During the Core Assessment that was done last year professionals raised the concerns that [the claimant] might be grooming S for prostitution ".
>
> Reference is then made to this issue in the Minutes of the Child Protection Conference page 5, 6th to 9th paragraph.
>
> This information is incorrect as there was no reference to this concern in the NCH Brunel Family Centre's completed Core Assessment, and no evidence to substantiate such a concern".

219. The document is signed by Mr Thomas and dated 18th September 2003. Although solicitors for the Claimant wrote letters subsequent to this, including one to Ms Marks

on 21 October asking for an apology, they did not comment on or even refer to the form of correction and apology which Mr Thomas had suggested.

220. On 17th October 2003 the Claims Department of Zurich Municipal wrote to the solicitors for the Claimant as follows:

> " Details of the Claim have now been passed to us. Please note our interest on behalf of Westminster City Council.
>
> We confirm that this matter has been investigated and we shall revert to you as soon as possible."

221. On 21st October 2003 solicitors for the Claimant wrote a letter before action to Ms Marks. On the same day they sent a fax to Zurich Municipal complaining of the delay and asking who was instructed to accept service of proceedings (among other questions). Proceedings were served on 4th November 2003.

222. As to the correction which is attached to his letter and dated September 2003, Mr Thomas said in evidence that he had asked the Child Protection Unit to put it on the mother's family file. He had not checked that it was there. He agreed that what happened to the Claimant at the CPC should not be allowed to happen again.

223. Mr Thomas appeared to me to be an intelligent, conscientious, honest and highly qualified and experienced social worker. I accept his evidence in its entirety.

224. The letters dated 29 April, 15 August and 16 October 2003 (incorporating the "Correction") are relied on in the Amended Reply para 2.4(1)-(3) as including the admission that there was no evidence in the 2002 Core Assessment of any concerns on the part of the professionals that the Claimant might have been grooming S for prostitution or abuse. They are also pleaded in the Re-Amended Particulars of Claim para 8.7ff (aggravated damages), which are incorporated into para 2.18 to 2.20 of the Amended Reply (which go to relevance). These paragraphs of the Amended Reply are in turn incorporated into the plea of malice in para 3 of the Amended Reply. Malice can in principle be inferred from matters subsequent to the publication of words complained of.

COMPLIANCE WITH THE STATUTE AND GUIDELINES

225. The word "concern" appears in "Working Together", for example at para 5.6 quoted in para 15 of my judgment of 9th December. I repeat:

> "If somebody believes that a child may be suffering, or may be at risk of suffering significant harm, then s/he should always refer his or her concerns to the local authority social services department. In addition to the social services department, the police and the NSPCC have powers to intervene in these circumstances. Sometimes concerns will arise within the social services department itself, as new information comes to light about a child and family with whom the service is already in contact. While professionals should seek, in general, to discuss any concerns with the family…"

226. It is not there said that concerns should not be discussed unless there is evidence. Such a prohibition would make no sense. Where there are only concerns, then by definition there will be cases where there is no evidence. Para 5.16 refers to concerns that are not substantiated. The purpose of the advice in para 5.15 is to obtain evidence.

227. Para 5.61 of "Working Together" states that "Parents and children, where relevant, should be provided with a copy of this [i.e. a CPC] report in advance of the conference". For this purpose Ms Marks was in my view right to question whether the Claimant was a "parent" in relation to S, as opposed to in relation to H, for reasons that I have given. So while he should not have been taken by surprise (as is admitted), there has not been a breach of this paragraph of the guideline.

228. Para 7.27 (repeated in para 3.55 of "Framework") includes

> "Often, it is only when information from a number of sources has been shared and is then put together that it becomes clear that a child is at risk of or is suffering harm."

This seems to me to recognize that information which is to be shared may not itself provide evidence of risk, but that such information should nevertheless be shared in order for it to become clear whether there is risk or not.

229. There has been much criticism of Ms Marks for failing to evaluate evidence and to distinguish it from speculation. Given the meaning which I have held the words complained of bear, I find that Ms Marks chose her words carefully and did distinguish between evidence (which was lacking) and concerns, together with the grounds for concern (which had been communicated to her). The only thing which Ms Marks failed to record in a file note, which she should have recorded, was her conversation on 10 February 2003. But that omission did not do any harm to the Claimant. Her account of the meeting is unchallenged, is consistent with, and supported by, other evidence, and was in substance recorded on 18th February by Mr Thomas. She did seek further information by her March 2003 referral of S back to Brunel. The suggestion that she was communicating 'half baked suspicions' entirely misrepresents the situation.

230. The point at which the guidelines were breached seems to me to come at para 3.37 of the "Framework" document cited in para 16 of my judgment of 9th December. That includes:

> "Gathering information requires careful planning. However difficult the circumstances, the **purpose** of assessing the particular child and the family should always be kept in mind and the impact of the process on the child and family considered. It has to be remembered that:
>
> the aim is to clarify and identify the needs of the child;
>
> the process of assessment should be helpful and as unintrusive to the child and family as possible;

> families do not want to be subjected to repeated assessments by different agencies;
>
> if, during the assessment, the child's safety is or becomes a concern, it must be secured before proceeding with the assessment".

231. I find that that paragraph does not require everything said by a social worker to be already based on evidence. The purpose is to gather information or evidence. That is clear too from para 3.15, which shows that there must be enquiries in order to establish whether there is cause to suspect likelihood of harm. These will often be triggered by concerns which are not evidence based. That para provides:

> "3.15 A key part of the assessment will be to establish whether there is reasonable cause to suspect that this child is suffering or is likely to suffer significant harm and whether any emergency action is required to secure the safety of the child."

232. But para 3.37 does require careful planning and consideration of the impact of the process on the family, and that the process should be as unintrusive to the family as possible. That is where the failure occurred here.

FINDINGS OF FACT ON QUALIFIED PRIVILEGE

233. As stated in para 66 above, it is common ground that, subject to factual issues, in particular as to relevance and malice, a communication made at a CPC will be protected by qualified privilege, assuming (as I have held) that it is not an occasion of absolute privilege. The dispute is as to the treatment of publications irrelevant to the occasion, and the test of malice.

234. While I have already reached some general conclusions on the law in my judgment of 9 December, I have refrained from reaching any conclusion on matters in respect of which the Claimant contended were fact sensitive.

235. The plea of qualified privilege in its final form reads as follows:

> 3 If the words complained of are not protected by absolute privilege, they were written on an occasion of qualified privilege.
>
> **PARTICULARS**
>
> 3.1 At all material times:
>
> 3.1.1 The First Defendant ("Westminster") was the local authority and provider of social services for the City of Westminster.
>
> 3.1.2 Miss Marks was a social worker employed by Westminster's Social Services Department. Mr Thomas was a social worker employed by Westminster's Social Services Department as Miss Marks' supervisor.
>
> 3.1.3 H and S were on Westminster's Child Protection Register.

3.1.4 The mother was a chronic drug addict and was suspected to have been working as a prostitute to fund her addiction.

3.1.5 Westminster employed the services of the Brunel Family Centre ("Brunel") (run by the National Children's Home charity) to assess and assist the Becker family.

3.2 Miss Marks took over as the allocated social worker for the Becker family on 10th January 2003.

3.3 At a Core Group Meeting at St Saviour's Primary school on 22nd January 2003, at which Miss Marks, … (S's Head Teacher) and … (the Education Welfare Officer) were present, it was stated that S was at risk of drug abuse, prostitution and teenage pregnancy.

3.4 At a supervision Meeting on 27th January 2003 between Miss Marks and Mr Thomas, it was stated that there was a very high level of concern about S and that there were allegations of men going to the family home with a possible drugs/prostitution link.

3.5 Miss Marks arranged a Working Arrangement Meeting at Brunel for 10th February 2003 to discuss S with Kim Becker, Esca Verleg of Brunel and Denise Coombes of Brunel. Kim Becker failed to attend the meeting. At the meeting Esca Verleg stated to Miss Marks that she knew the Becker family well because she had participated in a Core Assessment in 2002. She further stated that staff at Brunel, including herself, Karen Quinn and Katherine Lemberger, had stated during the Core Assessment process that they were worried about the relationship between S and the claimant and whether the claimant was grooming S for prostitution or to act as her "pimp". She also stated that the Claimant took S out for meals and gave her many presents.

3.6 As a result of this information, at a Supervision Meeting on 18th February 2003 with Mr Thomas, Miss Marks, having indicated that she had not read all the files, expressed her concern about the relationship between S and the Claimant, whether the Claimant might act as her "pimp" and that the Claimant was taking S out for dinner, giving her expensive presents and possibly grooming her. It was decided that Miss Marks should read the mothers family file in full and to discuss the matter in detail at the next supervision meeting.

3.7 On perusing the file Miss Marks read the following entry in the Detailed Case Record of 7th June prepared by Helenne Edmonds, the the mothers family's allocated social worker at the time: … [the contents are set out above]

3.8 Pursuant to her duties as a social worker Miss Marks was required to prepare the "Report for Review Child Protection Case Conference on the mothers/ the Claimants Family". The purpose of the report was to set out all relevant facts and matters so that those attending the meeting could decide whether S should remain on the Child Protection Register.

~~3.9 …~~

3.10 It was Miss Mark's duty in compiling the report to list all her concerns about S so that they could be considered at the meeting.

Accordingly it was Miss Mark's duty to set out the concerns expressed to her about the Claimant's relationship with S.

3.11 ~~…~~

3.12 The first draft of the report prepared by Miss Marks did not contain some of the words complained of, namely…

3.13 Miss Marks submitted the draft report to Mr Thomas. Mr Thomas noted that she had not included reference about any concerns expressed by professionals about the relationship between the Claimant and S. Mr Thomas instructed Miss Marks to include such concerns. Miss Marks therefore redrafted the report to include the words complained of.

3.14 In compiling the report Miss Marks had regard, inter alia, to concerns verbally expressed to her by the Brunel Family Centre (in particular Esca Verleg, who, in turn passed on the concerns of Karen Quinn and Katherine Lemberger) and by Veronica McLarey, Helenne Edmonds' supervisor, about: [the mother]'s reports that she had met the Claimant whilst working for an escort agency; the strange relationship that existed between the Claimant and S, and the fact that the Claimant took S out for meals and bought her many presents.

3.15 Further in compiling the report Miss Marks had regard, inter alia, to details set out in the files concerning [the mother]'s chronic drug addiction and activities as a prostitute to fund the addiction and Helenne Edmond's concerns about the Claimant was priming S.

3.16 In writing the report, Miss Marks couched the information in appropriate terms, identifying the source of the information (albeit not by name) and reporting only that the professionals "raised the concern that" the Claimant "might" be grooming S.

3.17 After preparing the final report Miss Marks submitted it to, Mr Thomas, who approved it without further amendment and countersigned it.

3.17a In approving and countersigning the final report Mr Thomas had regard to the information provided at the Supervision Meeting on 27th January as set out in sub-paragraph 3.4 herein and the information told to him by Miss Marks on 18th February 2003 as set out in sub-paragraph 3.6 herein and considered that it was important that the concern that there was a possibility of grooming of S by the Claimant for the purpose of sexual abuse was formally recorded and considered.

3.18 The report was distributed only to the persons (set out in Paragraph 5 of the Particulars of Claim) who had a corresponding interest in it. After the meeting the reports were collected, some were put into the relevant files, the remainder were destroyed.

236. All of this is proved, except paras 3.10 and 3.16, in so far as it was not necessary or appropriate to set out expressly in the Report the concerns about the Claimant and then show them to him only minutes before the meeting. In these respects the Defence resiles from the admissions made by Mr Thomas in correspondence.

237. The Amended Reply in its final form is a very complicated document.

i) In addressing relevance, the Amended Reply paras 2.1 to 2.6 incorporates and enlarges upon the Particulars of Claim para 8. This is the plea of aggravated damages. This sets out first the incident in June 2001 when the Claimant found a reference on the file to a child protection officer having misidentified him with a convicted paedophile of the same name. The Claimant was sent an appropriate letter by the Council making clear that they had never thought he was one, and apologising for the distress. This is pleaded by way of background. The substantive complaint is the one that has been admitted since August 2003 (rightly as I have held) that the concern in the words complained of had not been raised with him before the meeting. There then follow complaints about the subsequent correspondence, and the handling of the complaint both before and after the action was commenced;

ii) Still addressing relevance, the Amended Reply paras 2.7 to 2.17 and 2.20 allege that it Ms Marks appreciated that what she claimed Brunel had told her in February 2003 were illegitimate and improper speculations which she should not have raised at all. I have rejected this contention.

iii) Again addressing relevance, paras 2.18 and 2.19 make the charge that Mr Thomas misled the Claimant by not telling him that it was at his, Mr Thomas's suggestion that the words complained of were included in the Report. I have rejected this criticism of Mr Thomas on the grounds that what he had done added nothing by way of new information as to the concerns, and because he had signed the Report himself.

iv) In para 3 malice is pleaded on the basis that Mr Thomas and Ms Marks "published the words complained of recklessly, without considering or caring whether or not they were true". The plea goes on using the words from *Lange* (see para 68-73 of my judgment of 9th December):

> "In particular, the Court will be asked to infer that, having regard to the substance, gravity and importance of the publication, Ms Marks and/or Mr Thomas failed to give a responsible (as opposed to a merely perfunctory) level of consideration to the truth or falsity of the said words, taking what was in all the circumstances a cavalier approach to them"

238. As to *Lange* recklessness, I gave my reason for rejecting it as a test for recklessness in English law in para 90-91 of my judgment of 9th December. Having had the benefit of citation since then of *Spring v Guardian Assurance plc* [1995] 2 AC 296, I would also add a reference to the speech of Lord Lowry, in which he makes clear that the House of Lords had in mind the possibility of dispensing with the need for malice, but chose to follow a different route. In that case the House of Lords recognised an extension to the law of negligence. In other cases (some of which are cited below) the courts have

recognised extensions to the law of confidentiality, in particular in relation to public authorities. And there have been introduced statutory causes of action implementing Art 8 of the European Convention on Human Rights. Lord Lowry said at p325:

> "The defendants have two main arguments. The first is that to confer on the plaintiff a cause of action in negligence would distort and subvert the law of defamation in cases where the defence relied on is one of qualified privilege, that is, where, on an occasion when he has either a duty to communicate information or a legitimate interest of his own to protect, the defendant in good faith and without malice defames the plaintiff. I believe that the answer to this argument is that a person owes a general duty, subject to the principles governing the law of defamation and to the relationship, if any, between the defamer and the defamed, not to defame any other person, whereas a liability based on negligent misstatement can exist only if (1) damage is foreseeable (and damage occurs) and (2) there is such proximity between the maker and the subject of the misstatement as will impose a duty of care on the former for the protection of the latter. The existence of that foreseeability and that proximity between the plaintiff and the defendant is a justification, not for *extending* the liability for *defamation* by dispensing with the need for malice, but for bringing into play a *different* principle of liability according to which, in a restricted class of situations, a plaintiff can rely on *negligence* as the ingredient of the defendant's conduct which is essential to the existence of that liability. I consider that in the instant case damage stemming from the defendants' careless misstatement when giving a reference *was* foreseeable and that the proximity between the defendants and the plaintiff imposed a duty of care on the former for the protection of the latter."

239. As to the facts, if *Lange* were a statement of English law, I find that what Ms Marks and Mr Thomas did and failed to do cannot fairly be described as perfunctory or cavalier, although there was a lack of due care on their part, and a failure to test the balance of the Claimant's rights against those of S. They made a mistake born of inexperience in Ms Marks's case, and misunderstanding and a lapse of attention in Mr Thomas's case. In both cases their error arose out of pressure of work and the fact that they were both newly allocated to the family.

THE LAW OF QUALIFIED PRIVILEGE

240. It is necessary to consider the precise legal basis for the qualified privilege which (it is agreed) attaches to the occasion of a CPC. Counsel for the Defendants submits that the occasion is one of qualified privilege because Ms Marks and Mr Thomas were acting in discharge, or purported discharge, of their duty as social workers, and the publishees had a legitimate interest in receiving, (and in the case of the professionals also a duty to receive) that communication. He submits that it was in the context of an established relationship as in *Kearns v The General Council of the Bar* [2003] EWCA Civ 331. He points out that there is no dispute that the Claimant has taken S out to meals and bought her gifts (although the details are in dispute). There can obviously

be a wholly innocent explanation for this, as all of the Defendants' witnesses accepted. But all of the Defendants' witnesses gave evidence that such behaviour can be an indicator of possible grooming, while stressing that in the present case no one now says that it was. They would not accept that such conduct, taken in the context of the many positive things that are recorded about the Claimant in the social services records, could only have had an innocent explanation.

241. This is not a case where there is or could have been expert evidence for the Claimant. Counsel for the Claimants was in the difficult position of cross-examining not just Ms Marks (who claimed no expertise in child abuse), but also Mr Thomas and Ms McClarey, who are qualified in that field. They were prepared to make concessions on some points, but they were not prepared to concede the central point suggested for the Claimant, namely, that a careful and full reading of the files would have excluded any possibility of S being at risk from the Claimant, without further investigation.

242. Counsel for the Claimant submits that the communication of the words complained of is not pursuant to a duty, and not within an established relationship. He submits that the departures from the requirements of the statutory guidance was so great that the words complained of cannot be regarded as a communication made as part of the Defendants' duty so as to be protected by qualified privilege. He submits that there is no public interest in social workers ignoring provisions of the statutory guidance and then being entitled to immunity from suit. The criticism made on the Claimant's behalf is that, although the Defence pleads that the communication was made by Ms Marks "pursuant to her duties as a social worker", nowhere is that duty spelt out. Moreover, it has been accepted since at least 15 August 2003 that "no reference to this issue should have been included" in the Report. It is said that the Claimant has yet to receive any explanation for this.

243. In *Kearns v The General Council of the Bar* [2003] EWCA Civ 331 the Court had to consider the following question:

> "The present appeal concerns neither media publications nor an assertion of malice. The question arises here in the context of a communication between the Bar Council and its 10,132 members. The offending publication was a letter written by Mr Mark Stobbs, the head of the Bar Council's Professional Standards and Legal Services Department to all heads of chambers and senior clerks/practice managers. The letter concerned the Bar's Code of Conduct. It was written in the mistaken belief that the appellants are not solicitors. Undoubtedly it was libellous. Undoubtedly it was untrue. For the purposes of this appeal we must assume it was unverified. Was it nevertheless a publication made on an occasion protected by qualified privilege?"

244. The Court set out the principle sources in the authorities relating to qualified privilege, including, at para 25 *Adam -v- Ward* [1917] AC 309, 334:

> "A privileged occasion … is an occasion where the person who makes communication has an interest or a duty, legal, social, or moral to make it to the person to whom it is made, and the

> person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential." per Lord Atkinson.

245. At para 30 Simon Brown LJ said this (with the agreement of the other members of the Court):

> "The argument, as it seems to me, has been much bedevilled by the use of the terms "common interest" and "duty-interest" for all the world as if these are clear-cut categories and any particular case is instantly recognisable as falling within one or other of them. It also seems to me surprising and unsatisfactory that privilege should be thought to attach more readily to communications made in the service of one's own interests than in the discharge of a duty - as at first blush this distinction would suggest. To my mind an altogether more helpful categorisation is to be found by distinguishing between on the one hand cases where the communicator and the communicatee are in an existing and established relationship (irrespective of whether within that relationship the communications between them relate to reciprocal interests or reciprocal duties or a mixture of both) and on the other hand cases where no such relationship has been established and the communication is between strangers (or at any rate is volunteered otherwise than by reference to their relationship). This distinction I can readily understand and it seems to me no less supportable on the authorities than that for which Mr Caldecott contends. Once the distinction is made in this way, moreover, it becomes to my mind understandable that the law should attach privilege more readily to communications within an existing relationship than to those between strangers. "

246. In paras 38 and 40 Simon Brown LJ made clear that where there is a recognised existing relationship, the issue is not fact sensitive in the sense that it would become necessary to investigate the particular circumstances of each individual publication. He said:

> "38. In paragraph 33 of his judgment below, Eady J referred to the facts of *Stuart -v- Bell* and continued:
>
> "33. … This again was a case which turned upon duty rather than an established personal or business relationship. This, submits Mr Caldecott, in my judgment correctly, is why the Court was concerned to evaluate the quality of the information. It was relevant to go into the specific information, rather than confining the enquiry to the broad subject matter of the conversation, in order to decide whether a specific duty had arisen. Mr Price asks rhetorically why should one evaluate the quality

> of information for a social or moral duty case, as in *Reynolds* or *Stuart -v- Bell* for example, but not in cases of a common and corresponding interest? The answer to that question is, it seems to me, that it has long been the policy of the law to protect persons in certain kinds of relationship with one another, and indeed to encourage in such cases free and frank communications in what is perceived to be the general interest of society. In those cases, one does not need to assess the interest of society afresh in each case. We all need to know where we stand. In this area the law was thought to be settled, on the basis that the balance would fairly be struck if liability in such situations was confined to those cases where the occasion of communication was abused - in the sense that malice could be established. Nothing short of malice would undermine the law's protection."

39. Subject only to the point I have already made about preferring for my part a distinction between cases depending on whether they do or do not involve an existing relationship rather than a distinction between common interest cases and those involving duty-interest, I agree with the approach taken in that paragraph. It matters not at all whether Mr Stobbs and the Bar Council are properly to be regarded as owing a duty to the Bar to rule on questions of professional conduct such as arose here, or as sharing with the Bar a common interest in maintaining professional standards. What matters is that the relationship between them is an established one which plainly requires the flow of free and frank communications in both directions on all questions relevant to the discharge of the Bar Council's functions.

40. There is one final authority to which I should refer since it is Mr Rampton's submission that, since deciding the present case, Eady J in *Komarek & Another -v- Ramco Energy plc* (unreported, Case No HQ 01X01631 21 November 2002) concluded that it is after all necessary in certain common interest cases to examine by evidence at trial all the circumstances surrounding the publication complained of. Mr Rampton invites our particular attention to paragraph 46 of Eady J's judgment in that case:

> "46. [Counsel for the defendants] drew an analogy with the recent case of *Kearns v General*

> *Council of the Bar* [2002] EWHC 1681 (QB). That too was primarily a common interest case, but it turned upon the well established relationship between the Bar Council and members of the Bar and communications between them on the subject of professional rules and standards. The issue was not fact-sensitive, therefore, in the sense that it would become necessary to investigate the particular circumstances surrounding each individual publication. Here, by contrast, the common and corresponding interest contended for is not, so to speak, 'off the peg' and is being tailored to the individual circumstances and people involved. There is more room therefore for factual enquiry at trial before it can be finally determined that the common interest alleged would be classified as 'legitimate' by the law of defamation. I am far from saying that all communications between British citizens abroad and local embassy staff would require close scrutiny. It would, for example, be obvious that a communication between a traveller and the British consul about a lost passport would attract such privilege. Here I am prepared to accept that the situation is not so clear cut."

247. Finally, at para 42 he said this (again with the agreement of the other members of the Court):

> "I would not wish to part from this appeal without expressing some considerable sympathy for these appellants. Were this to have been a media publication and *Reynolds* therefore to apply, there could be no question of qualified privilege attaching. And the *Reynolds* approach, one reflects, attaches on occasion to publications circulating no more widely and hardly more generally than in the present case - consider, for example, the Saudi Arabian newspaper with a circulation of some 1,500 readers in *Al-Fagih -v- HH Saudi Research Marketing (UK) Limited* [2001] EWCA Civ 1634. The law with regard to non-media publications, however, is different. Here, as Lord Diplock observed in *Horrocks -v- Lowe*, a man's right to "vindicate his reputation against calumny" gives way to "the competing public interest in permitting men to communicate frankly and freely with one another … if they have acted in good faith in compliance with a legal or moral duty or in protection of a legitimate interest" and in these cases "the law demands no more" than that the defendant shall have honestly believed what he said. With regard to these duty or interest

> cases the law has decided that "the common convenience and welfare of society" (*Toogood -v- Spyring*) is better served by allowing full and frank communication than by requiring the communicator to act responsibly. The media publisher, by contrast, has above all to act responsibly. There are, of course, a number of policy considerations in play here, some in conflict. They include considerations of legal certainty and the right to freedom of expression (a right enjoyed no less by those outside than those inside the media). Where in any particular type of case the balance should be struck raises deep and difficult questions. These are not, however, presently before us. No-one suggests on this appeal that we could or should be modifying the law. On the conventional approach to common law qualified privilege I am clear that in the circumstances of the present case the appellants must suffer and the respondent succeed.

248. The Court in *Kearns* was concerned with information which was unverified, not with information which was irrelevant for any other reason. The situation in the present case is similar in this respect. The submission for the Claimant is that the words complained of were irrelevant because they were unverified. It is only 'evidence based' information (in the words of the statutory guidance), so he submits, that is relevant.

249. This is a case of an existing and established relationship, going back many years, between the mother's family and the Social Services Department of the Council. Accordingly, *Kearns* supports the following conclusion. The fact that the information in the words complained of was not verified (or not 'evidence based') could not take the case outside the protection of qualified privilege unless Ms Marks and Mr Thomas were deliberately publishing what they knew to be outside the official guidance known to them.

250. It is true that the duties of the Council in this case (which were being performed on their behalf by Ms Marks and Mr Thomas) were public law duties imposed upon them by the Children Act. It follows that the statute and the guidelines are to be looked at. If the words complained of are published to person to whom there is not duty to publish, or at a time, or in other circumstances when there is no duty to publish, the consequences of that do call for consideration.

251. However, in my judgment what matters is that the relationship between the Defendants and the publishees was an established one which plainly requires the flow of free and frank communications in both directions on all questions relevant to the discharge of the Council's functions. The explanation for what has happened, given by Ms Marks and Mr Thomas, is that there was a mistake and a misunderstanding. That is why they do not point to a provision in the statutory guidance justifying what they did.

252. It is not for me to say how the matter should have been addressed by them. Clearly, questions could have been addressed to the Claimant, to the mother, to S and to others in order to establish what the Claimant has been doing for S. These questions could have been asked without ever mentioning the reason for the questions, or that any one

held any concerns. That appears to have been how Ms Lemberger and Ms Quinn proceeded with their enquires in 2002. If that had been done in February and March 2003, the Claimant would have had no complaint. Apart from it being in breach of the guideline, and the hard impact it had on the Claimant, the fact that the concerns were mentioned at all to the Claimant, and mentioned in the CPC, may well not have been a way of proceeding that was best suited to getting at the truth. But I am not concerned with how things should best have been done. I am concerned, at this stage, with whether what was done was protected by qualified privilege.

253. Although both Ms Marks and Mr Thomas have accepted that the words complained of should not have been published as they were, Mr Faulks QC argues that in fact there is nothing in the statutory guidance which required such a concession. For my part I think the concession was right, as I have already held, and as I shall consider further below. It was obvious that the words complained of would be very distressing to the Claimant. So too it was obvious that they could adversely affect the Claimant's relationship with the mother, and so, indirectly, have an adverse affect on S, as well as on the Claimant, given that the Claimant has done much good for S.

254. The passage from *Horrocks v Lowe*[1975] AC 135, 151 already cited, is to be recalled and applied:

> "Logically it might be said that such irrelevant matter falls outside the privilege altogether. But if this were so it would involve 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 be 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."

255. This is a case where the protection afforded by the privilege would be illusory if it were lost in respect of any defamatory matter which upon logical analysis could be shown to be irrelevant to the fulfilment of the duty or the protection of the right upon which the privilege was founded. On the other hand, the present case is exceptional. The reason for that is that it cannot be inferred from the Defendants' absence of belief in the truth of the words complained of that there was malice. There was no motive for putting the words complained of in the Report other than a desire to find out whether they were true or false. If they had not cared whether it was true of false, Ms Marks and Mr Thomas would not have mentioned the concern all, but would have have left it unresolved (as it had been for the previous nine months). The fact that the Defendants were setting about finding out the truth in what they now accept was the wrong way, goes nowhere to show that they were reckless or malicious. In my judgement they were honestly mistaken, not reckless or malicious in any sense.

256. Although this case is exceptional, I do accept the submission of counsel for the Claimant that it is not quite the case envisaged by Lord Diplock. The alternatives envisaged by him (p149-150) as set out in para 78 of my judgment of 9th December were:

> "If it be proved that he did not believe that what he published was true this is generally conclusive evidence of express malice, for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another, save in the exceptional case where a person may be under a duty to pass on, without endorsing, defamatory reports made by some other person".

257. On my findings the Defendants were deliberately publishing defamatory words as to the truth or falsity of which they had no belief one way or the other, and they were not in fact under a duty to do so on the occasion on which way that they did it. What they were doing was acting in good faith and attempting to perform the Council's statutory duty (under s.17 of the Children Act) to S, by communicating with individuals who had a common and corresponding duty. Their error was in exceeding the limits of what should, in accordance with the guidelines, have been communicated on that occasion. There was no motive to injure the Claimant, whether dominant or at all.

258. Counsel for the Claimant reminded me more than once of Cleveland and the dangers of social workers acting without evidence. But I remind myself of the reference to Cleveland by Lord Browne-Wilkinson quoted in para 14 of my judgment of 9th December:

> "In one of the child abuse cases, the local authority is blamed for removing the child precipitately: in the other, for failing to remove the children from their mother. As the Report of the Inquiry into Child Abuse in Cleveland 1987 (Cm. 412) said, at p. 244:
>
> "It is a delicate and difficult line to tread between taking action too soon and not taking it soon enough. Social services whilst putting the needs of the child first must respect the rights of the parents; they also must work if possible with the parents

> for the benefit of the children. These parents themselves are often in need of help. Inevitably a degree of conflict develops between those objectives.""

259. In such a delicate situation the public interest requires some latitude for honest mistake.

260. Had there been a jury in this case, I would have had to consider whether to withdraw the case from them on the basis that there was no evidence of malice. The test (as approved in *Telnikoff v Matusevich* [1991 1 QB 102,120) is:

> "In order to enable the plaintiff to have the question of malice submitted to the jury, it is necessary that the evidence should raise a probability of malice and 'be more consistent with its existence than with its non-existence'"

261. Applying that test, I would have withdrawn the case from the jury without hesitation. The claim in libel cannot succeed.

262. Before leaving this part of the case, I note that much of the criticism which has been made of the Council related to events in 2002. It is stressed by counsel for the Claimant that the concerns were first recorded by Ms Edmonds in June, that there appears to be no real basis for the degree of suspicion and concern shown by those at Brunel, and that nothing was done about the issue in the nine months between June 2002 and 1st April 2003. But the case in libel is against Ms Marks and Mr Thomas who did not become responsible for the file until January 2003. Ms Marks agreed with the criticism raised on the Claimants behalf. That is what she meant by there having been 'drift', and that is why she thought that raising the matter in the CPC, and making the new referral of S to Brunel in March, was the best way of moving matters forward.

263. The claim against the Council in libel is solely on the basis of their vicarious liability for the publication by Ms Marks and Mr Thomas. The Council is not said to be vicariously liable for what was said by those at Brunel to the Council's social workers. No claim is made against those at Brunel for what they said, or against Ms Edmonds for recording what they said on the file. The events of 2002 were in no sense the responsibility of Ms Marks and Mr Thomas and are of no assistance to the Claimant on the issue of qualified privilege.

264. The case made in the Reply in respect of 2002 is that Ms Marks should have seen for herself that what was recorded by Ms Edmonds was 'utterly speculative and without foundation', or that it is to be inferred (from the omission of the words complained of from the first draft) that Ms Marks did in fact see that they were improper speculations. But I do not accept that she should have reached that conclusion without further enquiries, and it was in order to find out what was the true position that Ms Marks and Mr Thomas referred S to Brunel again and raised the matter at the CPC.

265. If an attack was to be made against the Council for what those at Brunel and Ms Edmonds respectively said and recorded in 2002, and for any failure to follow the matter up in 2002, then a libel action against Ms Marks and Mr Thomas is not the way to do it. I do not, of course, suggest that the Claimant could have made any attack

against those at Brunel or Ms Edmonds, or anyone else in relation to the events of 2002. In so far as the concerns raised were not addressed and resolved in the way in which it is said that they should have been, that caused no damage or distress to the Claimant.

THE HUMAN RIGHTS ACT CLAIM

266. The Human Rights Act 1998 ss.6-8, so far as material, provide as follows:

> 6. - (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right….
>
> 7. - (1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may-
>
> (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, …
>
> but only if he is (or would be) a victim of the unlawful act.
>
> 8. - (1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.
>
> (2)…
>
> (3) No award of damages is to be made unless, taking account of all the circumstances of the case, including-
>
> (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and
>
> (b) the consequences of any decision (of that or any other court) in respect of that act, the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.
>
> (4) In determining-
>
> (a) whether to award damages, or
>
> (b) the amount of an award,

> the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.

267. Art 8 of the Convention provides as follows:

> ARTICLE 8 - RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE
>
> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

268. The Council is, of course, a public authority. The claim under those provisions is made as follows. It is said that the Defendants have unlawfully infringed the Claimants' rights under Art 8. It is said that they knew or ought to have known that his rights would be infringed if the words complained of were published in the Report to the CPC, that such infringement would injure the Claimant's reputation, would cause him distress and embarrassment and "would foreseeably cause serious damage to his family life", but they failed to take reasonable steps that would have avoided that infringement.

269. In the event, no damage to his family life is alleged to have occurred. The damage alleged is injury to his reputation, affront to his dignity and distress. This is not a case where the local authority has persisted in a course of conduct in breach of Art 8 or, for example, prevented contact between members of a family on the basis of false or irrelevant information.

270. The Defence, in its final form, includes the following:

> "8. It is denied that the Claimant has a cause of action against the Second and Third Defendants under the HRA.
>
> 8a.1 It is denied that the First Defendant acted in a way which was incompatible with the Claimant's Article 8 rights. The defence of qualified privilege is a lawful and necessary qualification to the Claimant's

> Article 8 rights.
>
> 8a.2 It is denied that the First Defendant has unlawfully infringed the Claimant's rights under Article 8 of the Convention as alleged or at all.
>
> 8a.3 If, which is denied, the First defendant has unlawfully infringed the Claimant's rights under Article 8 of the Convention, it is denied that:-
>
> (a) the Claimant has suffered any injury to his reputation, affront to his dignity or distress thereby.
>
> (b) it is just or appropriate for the Court to grant the relief or remedy claimed or any relief or remedy.
>
> (c) An award of damages is necessary to afford just satisfaction to the Claimant.
>
> It was incumbent on the First Defendant to investigate the concerns expressed in the words complained of. The Child Protection Conference was an appropriate forum for such an investigation. It was inevitable that in the course of that investigation publication of the concerns would be made to the Child Protection Conference, including Kim Becker. Publication to the Claimant of the concerned, timeously or at all, does not infringe his Article 8 rights".

271. It follows from the findings that I have already made that:

i) It was incumbent on the First Defendant to investigate the concerns expressed in the words complained of, but

ii) The CPC was not an appropriate forum for the investigation in the form in which it was in fact undertaken in this case; and

iii) It was not inevitable that in the course of an appropriate investigation that publication of the concerns about the Claimant would be made to those attending the CPC, including the mother.

272. There is no doubt that a claim will lie under HRA s7 against a public authority in respect of the misuse of personal information at the suit of the subject of such information. "Working Together" warns of the dangers. After setting out Art 8 in full, it reads:

> "7.36 Disclosure of information without consent might give rise to an issue under Article 8. Disclosure of information to safeguard children will usually be for the protection of health or morals, for the protection of the rights and freedoms of others and for the prevention of

> disorder or crime. *Disclosure should be appropriate for the purpose and only to the extent necessary to achieve that purpose*." (emphasis added)

273. "Working Together" also contains a further warning at para 7.29, which must now be understood as including in "statute law" the HRA :

> "Professionals can only work together to safeguard children if there is an exchange of relevant information between them. This has been recognised in principle by the courts (see comments by Butler Sloss LJ in *Re G (a minor)* [1996] 2 All ER 65 at 68). Any disclosure of personal information to others must always, however, have regard to both common and statute law."

274. Counsel for the Defendants submits that the public interest is determined by the law of qualified privilege. If that defence is available in libel, it follows that there must be a defence to a claim under the HRA.

275. Counsel for the Claimant submits that that is a fallacy similar to the one which was exposed by the House of Lords in *Spring v Guardian Assurance PLC* [1995] 2 AC 296. The House recognised that a claim in negligence might lie for a negligent reference at the suit of an employee in circumstances where the employer who gave the reference would be protected by qualified privilege. Lord Slynn of Hadley said this at pp 336-7:

> "I do not accept the in terrorem arguments that to allow a claim in negligence will constitute a restriction on freedom of speech or that in the employment sphere employers will refuse to give references or will only give such bland or adulatory ones as is forecast. They should be and are capable of being sufficiently robust as to express frank and honest views after taking reasonable care both as to the factual content and as to the opinion expressed. They will not shrink from the duty of taking reasonable care when they realise the importance of the reference both to the recipient (to whom it is assumed that a duty of care exists) and to the employee (to whom it is contended on existing authority there is no such duty). They are not being asked to warrant absolutely the accuracy of the facts or the incontrovertible validity of the opinions expressed but to take reasonable care in compiling or giving the reference and in verifying the information on which it is based. The courts can be trusted to set a standard which is not higher than the law of negligence demands. Even if it is right that the number of

> references given will be reduced, the quality and value will be greater and it is by no means certain that to have more references is more in the public interest than to have more careful references. …
>
> I do not for my part consider that to recognise the existence of a duty of care in some situations when a reference is given necessarily means that the law of defamation has to be changed or that a substantial section of the law relating to defamation and malicious falsehood is "emasculated" (Court of Appeal, at p. 437). They remain distinct torts. It may be that there will be less resort to these torts because a more realistic approach on the basis of a duty of care is adopted. If to recognise that such a duty of care exists means that there have to be such changes - either by excluding the defence of qualified privilege from the master-servant situation or by withdrawing the privilege where negligence as opposed to express malice is shown - then I would in the interests of recognising a fair, just and reasonable result in the master-servant situation accept such change."

276. In my judgment, for the reasons given in *Spring*, it does not follow that, just because a claim in libel is defeated by the defence of qualified privilege, therefore a claim under the HRA s.7 for breach of Art 8 must also fail.

277. As discussed in paras 53-55 of my judgment of 9 December 2004, the Court of Appeal in the *East Berkshire* case contemplated that a cause of action under the HRA would be available to a parent who could in principle succeed by satisfying the test appropriate in negligence.

278. No case has been cited to me where a claim under HRA s.7 and Art 8 has been made which required consideration of the defence of qualified privilege, or something corresponding to it to reflect the public interest. Where there is an interference with a person's right to respect for his private life, it seems to me that the proper approach is that set out in paras 39 to 42 of my judgement of 9th December. There must be an intense focus on the comparative importance of the specific rights in the individual case.

279. But before the stage is reached of comparing the specific rights in the individual case, it is necessary to establish whether, on the facts, there has been, or is, an interference with the claimant's right to respect for his private life. If there has been an interference in this case, then, on the facts that I have found (ie that it happened by mistake, and should not have happened) it was not either necessary or proportionate. So the point is whether there has been an interference.

280. Counsel for the Defendants submits that the timing and circumstances in which the Claimant saw the words complained of do not engage the Claimant's Art 8 rights. Subject to that, Counsel for the Defendants accepts that in general terms the Claimant`s Art 8 rights were engaged in relation to the Council's approach to H and to S.

281. He submits that it is important not to conflate that general Art 8 right (which is not alleged to have been infringed) with an Art 8 right to reputation. I accept this submission. I also accept that there are important differences between an Art 8 right to reputation and the particular manner in which it is implemented in the law of libel. Features of the law of libel, which may not be assumed to apply to a claim under HRA s.7 and Art 8, include:

i) In libel publication has to be to a third party to be actionable. Art 8 is broad enough to give a right in respect of a publication made solely to the subject of that communication. Harassment is an example. Provision is now made by the Protection from Harassment Act 1997, which implements the state's obligation to afford protection to private and family life from parties other than the state itself. Harassment may occur by speech alone as well as by other conduct (1997 Act s.7(4)), and there is no requirement of a publication to a third party. Damages for anxiety alone is available (s.3(2)), provides there has been a relevant course of conduct as defined in s.2(1) and 7(3).

ii) In libel there are presumptions of falsity and damage. The effect of these is that if qualified privilege does not apply for any reason, then the enquiry proceeds straight to damages. Because of the presumption of damage, these may include damages for distress without proof of actual damage. Any steps that a defendant may have taken to withdraw the words complained of, or to apologise, or provide other satisfaction, fall to be considered only under damages. They are irrelevant to liability. It does not follow, submits Counsel for the Defendants, that a claimant relying on Art 8 should be entitled to damages for distress alone (see *Wainwright v Home Office* [2003] UKHL 53; [2004] 2 AC 406, per Lord Hoffmann [51], citing *Hicks v Chief Constable of South Yorkshire Police* [1992] 2 All ER 65), or that the court should disregard the whole of the circumstances in determining liability, and focus solely on the publication in the libel sense.

iii) Libel is a tort of strict liability. Counsel for the Defendants submits, again referring to *Wainwright,* that the reason for the act complained of, that is whether it is intentional, negligent or accidental, should have a bearing on whether there has been an infringement of rights under Art 8. He notes that it is not suggested that in failing to give the Claimant warning of what was in the Report the Defendants acted with the intention of causing the Claimant distress or humiliation or damage to his reputation.

282. Counsel for the Defendants submits that on the footing that the words complained of should not have been raised with the Claimant without notice and in the presence of the other people who were present at the meeting, it is still not the case that there has been a breach of the Claimant`s Art 8 right to respect for his private and family life. He submits that the public interest requires that account be taken of the pressures of work and other matters which can lead to what happened here. The statutory

guidelines are just that, and should not be read as statutory duties the breach of which gives rise to claims under HRA s.7.

283. Before turning to the cases cited to me, it is helpful to note two cases canvassed in argument in which claims under Art 8 have been made against public authorities in respect of the misuse of personal information.

284. In *R(Robertson) v City of Wakefield Metropolitan Council* [2001] EWHC Admin 915; [2002] 2 WLR 889 the local authority and the Home Secretary were sued by a claimant who objected to the fact that Electoral Registration Officers (ERO) used to sell copies of the Register to commercial interests. The claim was for judicial review of the refusal of the ERO to accede to the Claimant's request that his name and address on the Register should not be supplied to commercial organisations. The Defendants submitted that Art 8 was not engaged, that is that there was no interference with the claimant's right to respect for his private life. Maurice Kay J disagreed, saying at [34]:

> "It is necessary to examine not just the information which is disclosed but also the anticipated use to which it will be put. In the present case one therefore has to focus not only on the raw data - names and addresses and, by implication, the fact that those named are all over 18 (and, in some cases, recently so). Account also has to be taken of what is known and anticipated about the use to which it will be put. In these circumstances, I conclude that, … there is a prima facie engagement with Article 8".

285. After applying the appropriate tests, Maurice Kay J concluded that:

> "the practice of selling the Register to commercial concerns within the factual context to which I have referred and without affording individual electors a right of objection is, in my judgment, a disproportionate way in which to give effect to the legitimate objective in question".

286. That was not a case of intentional injury, carelessness or accident. The local authority was selling the register in accordance with a framework set out in a statutory instrument. But the impact of what was being done was foreseeable. The submission on the impact upon the claimant, which the judge accepted at [39], was as follows at [30]:

> "(a) the context in which an elector supplies his name and address is one of legal compulsion for a legitimate public purpose; (b) information supplied for such a purpose is being disseminated to others who use it for purely private purposes; (c) electors are thereby exposed to unwarranted marketing strategies and other attentions, some of them unlawful; (d) the problem has been exacerbated by advances in technology - what might have been the object of a parochial interest in the occupants of local addresses in the past has now become an internationally available search mechanism; (e) there is a

> convergence of views throughout Europe about the need to protect personal data from disclosure to third parties without consent and this must be taken into account when determining the scope and extent of the protection of privacy under Article 8".

287. Having decided the principle in favour of the claimant, the Judge left over for further argument what he regarded as a difficult issue as to the appropriate relief: para [44]. The case establishes that the misuse of personal information by a local authority in perfect good faith can in principle give rise to a claim for relief under s.8 of the HRA. In that case, but for the action, the local authority would have persisted in the course of conduct, which was the universal practice up to that time, but the lawfulness of which was challenged.

288. This is the type of claim that might have been required by the Claimant in this case, and which exposes a gap in the law of libel. If when the Council received the false information that the Claimant was the person of the same name who was a convicted paedophile, and if, without recklessness or bad faith, the Council had believed that the false information was true, and kept it on the family file, a claim in libel against the Council would have failed. But a claim under s.7 of the HRA and Art 8 would have enabled the Claimant to establish that he was not the person of the same name who had been convicted of sex offending. He could have started that action, even if there had not yet been any publication of the information outside the small group of social workers with access to his file.

289. The second case is *R(Ellis) v Chief Constable of Essex Police* [2003] EWHC 1321 (Admin). That concerned a proposal by the police to publicise the pictures of convicted offenders under and "Offender Naming Scheme". It was not in dispute that the scheme involved an interference with the right to respect for private and family life of the offenders whose photographs would be displayed. The case contains a review of a number of cases about the use and misuse of personal information by the police, including in relation to convicted paedophiles. The principle is stated as follows, quoted from *R v Chief Constable of North Wales Police ex p Thorpe* [1999] QB 396, 429:

> "Both under the Convention and as a matter of English Administrative Law the police are entitled to use information when they reasonably conclude this is what is required (after taking into account the interests of the applicants) in order to protect the public and in particular children"

290. This principle in *Thorpe* applies equally to a local authority, as appears from cases not mentioned in argument: *R. v Local Authority in the Midlands Ex p. LM* [2000] 1 F.L.R. 612; *Re L and Re V (minors) (sexual abuse: disclosure)* [1999] 1 WLR 299. In *exp LM* the disclosure was to another county council with whom the applicant had entered into a contract to provide transport by bus for children. In *Re L and Re V* the proposed disclosures were respectively to another local authority and a Youth Football League, in each case about findings of sexual impropriety made by the judge against the appellants, respectively a father L and a man W with whom the mother of one of the children was associating. The purpose of the disclosure relating to L was to alert the local authority of the area into which L had moved of his presence and the

danger he posed to children. The purpose of the disclosure relating to W was to alert the football club where W continued to be involved in the junior teams. Neither of these cases, nor *Anufrijeva* in the Court of Appeal, were mentioned in argument. When this judgment was sent to the parties' lawyers in draft I offered them the opportunity to make submissions on these cases, and on a further case *X v Chief Constable of West Midlands* [2004] EWHC 61 (Admin). I received these submissions in writing, together with notice from the Claimants' side of the decision of the Court of Appeal in *X* [2004] EWCA 1068; [2005] 1 WLR 65.

291. In *Re L and Re V (minors) (sexual abuse: disclosure)* [1999] 1 WLR 299 the Court considered the position of a local authority exercising powers under s.17 (at p303G). The Court found that on the facts there was not a duty to disclose under s.17 and said (as do I in the present case) that nothing in the judgment was intended to inhibit the necessary exchange of relevant information between agencies. On the footing that the local authority was not under a duty to pass on information in that case, the court held (at p306) that a passage from the judgment of Lord Woolf MR in *Thorpe* ([1999] QB at p428B) is authority for a further proposition, namely disclosure should only be made by a local authority pursuant to the requirements of "Working Together" when there is a pressing social need. I understand that principle to be of general application, including to cases under s.17 where the duty to disclose has not yet arisen. The passage cited from the judgment of Lord Woolf MR at p428A is the first two sentences of the following, but it seems to me that the subsequent sentences also apply generally:

> "…it must be remembered that the decision to which the police have to come as to whether or not to disclose the identity of paedophiles to members of the public, is a highly sensitive one. Disclosure should only be made when there is a pressing need for that disclosure. Before reaching their decision as to whether to disclose the police require as much information as can reasonably practicably be obtained in the circumstances. In the majority of the situations which can be anticipated, it will be obvious that the subject of the possible disclosure will often be in the best position to provide information which will be valuable when assessing the risk."

292. Para 7.36 of "Working Together" is thus a correct statement of the law in this respect. This principle is not consistent with the Council's submission that the test under the Convention is the same as the test in qualified privilege. For the purposes of qualified privilege the test would be good faith, not whether what they reasonably concluded (after taking into account the interests of the applicants) was required to protect the public, in the present case, the child S. Liability is not dependent on carelessness, still less bad faith.

293. Counsel for the Claimant submit that a breach of Art 8 may be committed unwittingly. I accept this submission. It is consistent with the *Thorpe* line of cases. They rely on *L (A Child) (Care: Assessment: Fair Trial)* [2002] EWHC 1379; 2 FLR 730 para 124 which included:

> "Holman J [in *Re M (Care: Challenging decisions by local authority)* [2001] 2 FLR 1300] held that the local authority had

> acted unlawfully on 23 April 2001 because, as he put it at p 1311A, "in the particular circumstances of this case, the decision making process seen as a whole did not involve the parents to a degree sufficient to provide them with the requisite protection of their interests, and ... it was objectively (but unwittingly) unfair."

294. In *Ellis* the Court was being asked to consider a proposed scheme as a matter of principle. The Court could not conclude that it was clearly lawful or clearly unlawful, and so declined to grant any relief. Had the absence of malice been a good defence, there could have been no application to the court at all. The police were proposing to publish only what they believed to be true, and if they had made a mistake, even carelessly (but not recklessly) they may well have been protected by a defence such as qualified privilege.

295. Counsel for the Claimant invited me to adopt as the test for liability the one adopted by the European Court in Human Rights in relation to Art 3 in *E v United Kingdom* (33218/96) as adapted to Art 8 in *N v Secretary of State for the Home Department* at para [137]. In *E v UK* the applicants alleged that the local authority had failed in its positive obligation to protect them from damage to their private life in the form of abuse by their stepfather and that they had no remedy in this respect. They invoked Articles 3, 8 and 13 of the Convention. The test was stated in *E* as follows at para 92:

> "The question therefore arises whether the local authority (acting through its Social Work Department) was, or ought to have been, aware that the applicants were suffering or at risk of abuse and, if so, whether they took the steps reasonably available to them to protect them from that abuse."

296. But that relates to the positive obligation, and not to a direct interference.

297. Another case relied on by Counsel for the Claimant is *R(Bernard) v London Borough of Enfield* [2002] EWHC 2282 Admin. In that case Sullivan J considered a claim for damages under HRA s.8 by Mrs Bernard. She was severely disabled and in need of suitable accommodation. Sullivan J described the facts as follows at para [31]:

> "In the absence of any evidence from the defendant as to the availability or non-availability of suitable properties, I conclude on the balance of probability that the claimants had to remain in manifestly unsuitable accommodation for some 20 months longer than would have been the case if the defendant had discharged its statutory duty towards them reasonably promptly".

298. So the case advanced was not one of a direct interference, but of interference by failing to comply with the positive obligation to prevent the victim suffering. After reciting Art 8 and case law Sullivan J then said this in relation to Art 8:

> "32. I accept the defendant's submission that not every breach of duty under section 21 of the 1948 Act will result in a breach of Article 8. Respect for private and family life does not

> require the state to provide every one of its citizens with a house: see the decision of Jackson J in *Morris v LB Newham* [2002] EWHC 1262 (Admin) paragraphs 59 to 62. However, those entitled to care under section 21 are a particularly vulnerable group. Positive measures have to be taken (by way of community care facilities) to enable them to enjoy, so far as possible, a normal private and family life. In *Morris* Jackson J was concerned with an unlawful failure to provide accommodation under Part VII of the Housing Act 1996, but the same approach is equally applicable to the duty to provide suitably adapted accommodation under the 1948 Act. Whether the breach of statutory duty has also resulted in an infringement of the claimants' Article 8 rights will depend upon all the circumstances of the case. Just what was the effect of the breach in practical terms on the claimants' family and private life?...
>
> 33 … the provision of suitably adapted accommodation…. would have restored her dignity as a human being.
>
> 34 The Council's failure to act on the September 2000 assessments showed a singular lack of respect for the claimants' private and family life. It condemned the claimants to living conditions which made it virtually impossible for them to have any meaningful private or family life for the purposes of Article 8. Accordingly, I have no doubt that the defendant was not merely in breach of its statutory duty under the 1948 Act. Its failure to act on the September 2000 assessments over a period of 20 months was also incompatible with the claimants' rights under Article 8 of the Convention".

299. Counsel for the Defendants submits that I should adopt the approach of Silber J in *R(N) v Secretary of State for the Home Department* [2003] EWHC 207 (Admin) 110. In that case an asylum seeker was found to be entitled to damages for administrative inactivity and omissions when processing his claim which were incompatible with Art 8 and led to psychiatric injury and financial loss. Silber J said:

> 110. Article 8 is expressed in terms of effects on the citizen as it refers to "respect for his private and family life..." and so when considering a breach of this Article has occurred, it is necessary at this stage to focus substantially on the effects on the claimant. As I have explained, the claimant stated that after he had received the letter of refusal from the Home Office on about 14 February 2001, his life changed noticeably and radically because thereafter he suffered from depression and from anxiety which led to him being unable to eat or sleep properly. His account is strongly supported by the uncontested evidence of Dr. Yasin, the Consultant Psychiatrist, who examined the claimant and who reported that the claimant had "symptoms of major

> depressive disorder", that he had "depressive moods most of the time" and that he had "lost pleasure in all day-to-day activities". He also believed that the risk of the claimant harming himself remained significant.
>
> 111. Even assuming that the Home Office is entitled to a wide margin of appreciation then nevertheless in the light of the extended meaning given to Article 8 so that it covers mental health, I consider that the claimant's rights under Article 8 have been contravened as is evidenced by the serious damage to his mental health. Put in another way, by adopting the same approach used by Sullivan J in *Bernard*'s case, I would consider that this claimant had been denied his "dignity as a human being" [33], or adopting some other wording of Sullivan J in that case, the claimant was condemned to conditions "which made it virtually impossible for [him] to have any meaningful private .. life for the purposes of Article 8" ([34])".

300. In *Ala Anufrijeva and Another v London Borough of Southwark* [2003] EWCA Civ 1406 the Court of Appeal considered an appeal from Newman J in *Anufrijeva* together with an appeal from Silber J in *N*. The Court also considered the judgment of Sullivan J in *Bernard*, holding it to be rightly decided on the law and the facts: para [43]. It did not uphold the decision of Silber J.

301. The Court cited *Bensaid v United Kingdom* (2001) 33 EHRR 10, where the claimant contended that his Article 8 rights would be infringed if he were expelled from this country because of the likely effect that this would have on his mental health. The Court of Appeal noted that at paragraph 46 the ECtHR had this to say about Article 8:

> "Not every act or measure which adversely affects moral or physical integrity will interfere with the right to respect to private life guaranteed by Article 8. However, the Court's case-law does not exclude that treatment which does not reach the severity of Article 3 treatment may nonetheless breach Article 8 in its private life aspect where there are sufficiently adverse effects on physical and moral integrity."

302. The Court then turned to the question: in what circumstances does maladministration constitute breach of article 8? At paras 44-45 the Court said:

> "44. We consider this question in relation to the particular type of maladministration that has taken place in each of the three appeals before us – the failure, in breach of duty, to provide the claimant with some benefit or advantage to which the claimant was entitled under public law. Such failure may have come to an end before the trial. If not, it is likely to be brought to an end

> as a consequence of a finding of breach of duty made at the trial, so that what is likely to be in issue is the consequences of delay.
>
> 45. In so far as Article 8 imposes positive obligations, these are not absolute. Before inaction can amount to a lack of respect for private and family life, there must be some ground for criticising the failure to act. There must be an element of culpability. At the very least there must be knowledge that the claimant's private and family life were at risk - see the approach of the ECtHR to the positive obligation in relation to Article 2 in *Osman v United Kingdom* (1998) 29 EHRR 245 and the discussion of Silber J in *N* at paragraphs 126 to 148.

303. That is not the position before me. I am considering not a failure to fulfil a positive obligation, but a direct interference, if it is an interference at all. Nevertheless, what the Court has to say is informative.

> "47. We consider that there is sound sense in this approach at Strasbourg, particularly in cases where what is in issue is the grant of some form of welfare support. The Strasbourg Court has rightly emphasised the need to have regard to resources when considering the obligations imposed on a State by Article 8. The demands on resources would be significantly increased if States were to be faced with claims for breaches of Article 8 simply on the ground of administrative delays. Maladministration of the type that we are considering will only infringe Article 8 where the consequence is serious.
>
> 48. Newman J suggested in *Anufrijeva* that it is likely that the acts of a public authority will have to have so far departed from the performance of its duty as to amount to a denial or contradiction of that duty before Article 8 will be infringed. We think that this puts the position somewhat too high, for in considering whether the threshold of Article 8 has been reached it is necessary to have regard both to the extent of the culpability of the failure to act and to the severity of the consequence. Clearly, where one is considering whether there has been a lack of respect for Article 8 rights, the more glaring the deficiency in the behaviour of the public authority, the easier it will be to establish the necessary want of respect. Isolated acts of even significant carelessness are unlikely to suffice".

304. The Court of Appeal did not uphold the decision of Silber J on infringement. The Court said this at para 143:

> "We have reached the conclusion that Silber J was in error in holding, on the primary facts found by him, that Article 8 was infringed. Where the breach of a human right has the incidental effect of causing psychiatric harm, that fact can properly be

> reflected in an award of damages. That, however, is not this case. Here it is the causing of the psychiatric harm which has itself been held to be the infringement of Article 8. Where a public authority commits acts which it knows are likely to cause psychiatric harm to an individual, those acts are capable of constituting an infringement of Article 8. Maladministration will not, however, infringe Article 8 simply because it causes stress that leads a particularly susceptible individual to suffer such harm in circumstances where this was not reasonably to be anticipated. No lack of respect for private life is manifested in such circumstances. The egg-shell skull principle forms no part of the test of breach of duty under the HRA or the Convention."

305. In the light of this guidance, it is necessary to consider the evidence of the Claimant which was not relevant to questions of qualified privilege and malice.

THE EVIDENCE OF THE CLAIMANT AND MS QUINN

306. The Claimant was born in 1934 and so is now aged 70. He received a good education until the age of sixteen and then started work as a management trainee. He moved to being a marketing consultant working with various companies until he was aged 30. It was then, in 1964, that he embarked on a two-year course of study at the Royal Academy of Dramatic Art and married his first wife. After RADA he worked in repertory in various places, but the long periods of separation that this entailed led to the marriage breaking up. The Claimant divorced his first wife and subsequently lost contact with her and the young daughter that she already had when they got married.

307. He continued acting for another five years. His roles included leading parts in well-known plays and performances in the West End and television. In the early seventies when he was about forty, he married for the second time. His second wife also had a young child, a son when they married. Again the marriage lasted only a short time, in this case four years, and he lost contact with his second wife and her son after the divorce at this stage in his career the Claimant had taken up writing.

308. Whilst working as an actor and writer the Claimant financed himself and his wife by working as a chauffeur. This is a type of work, which has enabled him to earn well throughout his life. He could easily leave that work to pursue his acting and writing and return when need be. He achieved some success in his writing including a screenplay that won a prestigious award. In the late seventies the Claimant embarked on a film project into which he invested everything he had. Unfortunately the project foundered because of political upheavals in the Middle East where it was to be filmed, the Claimant returned to his work as a chauffeur and also returned to his earlier work as a marketing consultant for a few years. This involved him moving to the Gulf.

309. He returned from the Gulf in the mid 1980s. Then he combined his experience in the theatre and in the Gulf by forming a theatre company which travelled around the world particularly in the Middle East. Again political events led to misfortune when the first Gulf war made it impossible to continue. He returned to England practically penniless, nearing the age of sixty. He returned to work as a chauffeur. He enrolled at a college train as a psychotherapist. He began practicing as a "therapist under supervision".

310. It was at this time (the early/mid 1990s), when he was about sixty and working as a mini cab driver, that he met the mother. The mother had a daughter, S, with her when they first met. It is an advantage for a mini cab driver if customers who have been driven by them once, and know them, subsequently request the same driver on later occasions. But for such a request a driver might have to wait in a queue while other drivers who have been waiting longer are given jobs as they appear. The mother used to request the Claimant to be her driver. In his witness statement the Claimant states that he would variously take the mother to her sister's flat on the Harrow Road, to her father's flat in Chelsea and sometimes to the West End. S was often in the car with the mother. The Claimant felt that he struck up a friendly rapport with S, which impressed the mother. Sometimes the mother would ask him to baby-sit. Later in his evidence the Claimant was less sure as to what the mother had been doing out at night. He said that he never knew that the mother worked in hotels. He said he assumed she worked as an escort. He said she went to her sister, as she said, two to three times a week going out at about seven and coming back at about midnight. He suspected that she might not be going to her sister but going somewhere else. To him an escort meant a pretty woman who would go to dinner with a man and be paid a sum of money, but do nothing else.

311. Sometime after this the mother and S moved into Council accommodation in London W10 and the Claimant paid the mother for the use of a front room partly so that she would have some money and partly so that he would be more readily available to baby-sit. This arrangement suited him because he was nearer to his work at a hotel in Park Lane and could more easily be available to drive his customers. In 1996 the mother and the Claimant had a brief sexual relationship and a boy H was born in 1997. H is the Claimant's only child. From that point on the Claimant gave up his studies in psychotherapy in order to support, not only H, but also, as best he could, the mother and S.

312. The Claimant`s witness statement includes the following:

> "Prior to H`s birth I began to suspect that the mother might be into drugs. However, she never used any in my presence; nor, so far as I know, in front of S. I had my doubts as to what it was she might be up to in the West End, but I did not ask".

In evidence in chief the Claimant said that he had told the social workers that he had met the mother as a mini cab driver when S was aged three and, in addition to taking the mother to her sister's home, he had taken her to a house behind a hotel in Park Lane. He had left her there to do another driving job and returned at 3 o'clock in the morning when asked to go back and collect her and to collect S. He said he had never taken the mother to hotels.

313. In cross-examination the Claimant said that he had never even to this day had evidence to say that the mother was working as a prostitute. He said that he had an idea that she was possibly working as an escort. He said that he did not know that the mother was an addict. He said that he learnt that when H was born and the hospital where he was born thought that the addiction might be transferred. After that the mother went on courses to try to rid herself of the addiction to drugs and the Claimant cared for the children whilst she was absent.

314. The mother did not rid herself of her addiction. Men came to the flat. In the Claimant's view they were delivering drugs and not coming for prostitution. He said many people came to the house and on one occasion he found a needle which was not the mother's. An incident occurred when H was only a few weeks old. He suffered an injury to his leg. A hospital consultant diagnosed non-accidental injury and as a result H was put into foster care. Soon after, it was confirmed by a consultant paediatric radiologist that the diagnosis of the first consultant had been incorrect, and H was returned to his mother after eight weeks.

315. The Claimant invoked complaints procedures which were prolonged. In a report dated 25th September 2000 the Independent Person concluded:

> "None of the professional staff who would see the children regularly i.e. Health Visitor, Social Worker, GP, etc, have ever expressed serious concerns about their upbringing ".

There were proceedings in court arising out of this incident and on 27th January1998 a statement made by a representative of the Council included the following:

> "…..an initial child protection conference was held on 11th November 1997. At that conference it was agreed that H`s name should be registered under the category of physical injury under the category of omission. This meant that the local authority accepts that H`s injuries were the result of an accident which could possibly have been prevented through the carer at the time being more vigilant".

316. The Claimant sought and ultimately obtained access to the social services files. He was concerned to find that the description of H`s condition changed, so that on one occasion there was a reference to injuries in the plural and on another to "physical abuse". The Claimant complained at the use of the words "physical abuse". He made this complaint in September 1999. He considered that physical abuse could not be consistent with an accident and that no satisfactory explanation has been given to him.

317. H's name came off the Child Protection Register when he was about four years old. H then came to live with the Claimant in 2001. In March 2003 he went back on to the Child Protection Register, under the category of neglect, until 1st August 2003, because there was concern about him staying with the mother. On 2nd March 2004, while the Claimant was away for one day H was put back onto the CPR under the heading neglect because he had been staying with the mother each weekend. The Claimant complains because of this having happened in his absence and because he had not been told by the Council that they did not approve with H staying with the mother at the weekend. He says that the Council was well aware of the arrangement whilst it was in place. When he learned that they did disapprove of this arrangement, he says he immediately stopped taking H to the mother for the weekend.

318. H was removed from the CPR on 27th May 2004 and has not been on it since. H is now aged 7 years and lives with the Claimant at an address in Ealing during the week. He and the Claimant now visit the mother and S at weekends and go out to lunch. H does not stay with the mother overnight.

319. The Claimant describes the relationship between himself and the mother as one in which he cares for her. He has been supporting her until recently. The sexual relationship was short. He and the mother had disagreements including disagreements in the presence of social workers. He describes himself as old school. He has been critical of the mother's behaviour. She has been critical of his, and on occasion she has said that the reason that he was critical of her was that he wanted to resume their previous relationship. He says that he was trying to help the children.

320. He wrote and telephoned regularly to social workers that he was dissatisfied with the course they were taking. He said that he thought that they "colluded", with the mother. There were serious incidents occurring. The Claimant referred to one in which a man held scissors to the mother's throat demanding cocaine and he, the Claimant, intervened. He reported this to social workers and was dissatisfied in the manner in which they recorded it. He accepted that the position was not easy either for himself or for the social workers. Over the years there had been many social workers.

321. In his witness statement the Claimant states that he was present at the Conference on 1st April 2003 when the Second Defendant's report was distributed to all those present. He said he felt an immense sense of shock and anger when he read the report, which was only given to him minutes before the start of the Conference. He expanded on this in his evidence in chief. He said that the report was given to the chair of the meeting Mrs Trench and she asked him to go out of the room with her. She suggested he read it. He said he was shocked to the core to read what he saw. It was clear to me that he is still shocked. At this point in his evidence he briefly broke down. He said that Mrs Trench said that she understood his position and suggested he should wait until the topic was reached at the meeting. So he had to sit on it for a long time before it was discussed in the meeting. In cross-examination he said that the failure to send reports in advance was a perennial problem and that he never had time to digest the reports. He said the concerns of that nature about himself should have been raised in advance and not for the first time in front of strangers.

322. I have already mentioned the evidence as to what was said at the meeting, and what I have accepted and rejected.

323. I have also set out the correspondence which followed 1st April 2003. The Claimant gave evidence as to the distress, which the terms of this correspondence and the delay in handling the matter caused him. He also gave evidence of the distress caused to him by the terms of the Defence filed and of the references in the documents he saw on disclosure. He complained that the apology tendered by the Third Defendant appeared, in the light of these documents, to be utterly insincere.

324. His witness statement concludes with the following paragraphs:

> "What also causes me huge anguish is that [the mother] also knows what has been alleged by the Defendants and has told her father and possibly others as well. When life gets difficult for her she will use the accusations against me, even though I know she does not believe them.

> 46. I have always tried to do my best not only for H but also for S and [the mother] too, and I shall continue to do so. [The mother] and S have not had the best of lives and it has been tough on H too. In bringing this action, I seek nothing for myself other than the restoration of my reputation and dignity. I feel I am entitled to a public vindication given the dreadful things the Defendants have said about me, and the way in which they have conducted themselves during the stressful months of litigation. "

325. In cross-examination he said that he was not a money seeker and was not seeking damages. He complained that in the light of the witness statements served in these proceedings it appeared to him that the apology was not sincere and had not reached down to the level of those who made the witness statements. So far as he himself was concerned he did not mind further publicity but of course he did not want the children to be identified.

326. In response to a suggestion in the witness statement of Ms Quinn, to the effect that the mother had admitted to seeing clients for prostitution at home, the Claimant said that he had never seen that suggested before and that the mother did not see clients at home. He said that he did not suspect that she did, and most of those who came to the house came by bicycle or car. They were men. He said that he would try not to let them in, but they would get in and go into another room. They were young lads for the most part he said. They came three to four times a week. He wondered what it was all about. They stayed a matter of minutes not more than ten minutes. It was difficult to make an assumption that it was for prostitution. He thought they were delivering drugs.

327. Asked by me how she paid for the drugs, he replied that it was by theft. He mentioned a number of examples when the mother had been involved with the police. He said that he had no knowledge of prostitution at home and that it was not true that he had driven the mother to hotels.

328. Ms Quinn recounted her meeting with the Claimant on 12 June 2002 as follows in her witness statement:

> "In conversation with [the Claimant] alone, he told me that he had known [the mother] since she worked in hotels. He has driven her around various assignments. He did not tell me what she was doing when he drove her to various hotels at night. [The Claimant] and [the mother] were reluctant to go into specifics as they knew that social services would be concerned".

329. Ms Quinn said that at the first meeting with the Claimant he said at an early stage of the meeting "I am not a paedophile". He explained that by saying that the Council had accused him of being one because there was someone else of the same name who was. This struck Ms Quinn as an unusual thing for him to say and caused her to question why he was telling her this information.

330. Ms Quinn said that the mother could not tell the social workers why she was with the Claimant, while she did say that she did not want to be with him. Ms Quinn did not feel that she was getting the answers when she spoke to the Claimant.

331. Ms Quinn said that she was trying to gain evidence, and did not mention to the Claimant that she held concerns about him. These concerns included that he might be grooming S for sexual abuse. She agreed in cross-examination that she had not got evidence, but said that there is often no evidence to support such concerns. The Brunel Centre's work with the whole family finished in August 2002. When the referral came again in March 2003 it was not the whole family, but only S who was referred. If she had seen the March 2003 referral at the time, she would have said that that was not work which they could do with S. It was not a success. There was only one session in four months with S. When the social worker went to S's school, there was always a reason why S did not appear.

332. She did not mention her concern about the Claimant to him to him because there was no substantive evidence and because sharing such a concern with him could put S at further risk.

333. Ms Quinn raised the point about the Claimant's unusual position. She said he was the parent of one child, and the concerns were about another child. Ms Quinn was asked many questions of a general nature which were similar to those asked of other witnesses for the Defendants, and her evidence was entirely consistent with theirs, while differing in emphasis and detail.

334. The differences between the evidence of the Claimant and of Ms Quinn are not great, and not material to anything that I have to decide. I do not think that Ms Quinn would have referred to hotels if nothing had been said by the Claimant about them. I accept Ms Quinn's evidence.

335. There are some difficulties in my accepting the Claimant's evidence as reliable, where it is disputed by the Defendants. One difficulty is not his fault at all. It is that this case concerns his relationship with his own son, and with his son's sister, whom has known and cared for since she was three. Issues relating to children are ones which can naturally cause the deepest emotions and distress, and can affect a person's recollection and good judgment. The word 'traumatic' is used in "Working Together". The situation of the children with a mother such as the mother of S and H is itself deeply worrying. The Claimant shares this worry with social workers. His complaints have included that the Council has not done enough to help them.

336. Whether for this reason, or another, the Claimant is unable or unwilling to draw the inferences about the mother's conduct in the past and today (namely engagement in prostitution) which those with experience of such matters, and in a position to observe with detachment, find the most likely inferences to draw. So the Claimant cannot or will not see the risks to S from the same perspective as the social workers see them. He cannot or will not understand why the circumstances in which he describes meeting the mother (whether as described in his own evidence to me, or as Ms Quinn says that he described it to her - it makes no difference for this purpose), and the circumstances which he describes as prevailing at the mother's home in 2002 and January and February 2003, are ones which have given rise to legitimate concerns about his own role and intentions. When this was explained to him in the witness

statements and the evidence, he concluded that Mr Thomas's letters and apology of August and September 2003 are insincere.

337. Given the situation that the Claimant H and S find themselves in, all of this is understandable. I accept that he genuinely feels distress and a sense of humiliation. But I do not accept the Claimant's case that the concerns should never have been entertained by the social workers at all. And I do not accept that the letters and apology are insincere, or that the social workers have failed to understand them.

CONCLUSION ON WHETHER THERE WAS AN INTERFERENCE WITH THE CLAIMANT'S RIGHTS UNDER ART 8

338. Both parties invite me to look at the matter on a wider basis than the publication of the words complained of on 1st April. The Claimant relies in support of his Art 8 claim on all the matters pleaded in support of his claim for aggravated damages, irrelevance and malice in the libel claim. This covers a period of months both before and after 1st April 2003.

339. In the light of the foregoing evidence, I conclude that the disclosure at the CPC on 1st April of the concerns about the Claimant was an interference with the Claimant's right under Art 8. This was highly sensitive and potentially very damaging information. There was no need, whether pressing or at all, to make the disclosure there and then in the way that it was made. Ms Marks and Mr Thomas had not properly addressed their minds to the question. Focussing on the need to protect S, they had omitted to test the balance of the Claimant's rights against those of S. In particular, there was no need or duty to disclose the information at that stage to the mother, and no need to disclose it to the professionals and the mother in the presence of W without having raised any questions with him as to the facts of his relationship with S, and without giving him any warning. Nothing in this judgment is a decision as to what the position would have been if the disclosure had been made only to professionals in the absence of W.

340. So far as the delay in handling his complaint is concerned, and the other matters the Claimant relies on subsequent to 1st April, I find that there has been some maladministration in the handling of the claim from September onwards, in particular the failure to respond to the letter from the Claimant's solicitors. This is not the fault of Ms Marks or Mr Thomas, and it is not at the higher end of the scale of possible gravity.

341. The disclosure on 1st April was also not at he higher end of possible gravity. The suggestion was not persisted in. The Claimant was immediately offered an investigation, and received the result of that, albeit that it took a month or two longer than would have been desirable. The impact upon him was humiliating. It is hard to tell to what extent his reputation has been damaged. Publishees are not normally called to give such evidence in libel actions, and none of the publishees gave evidence to me. The impact on them has to be a matter of inference. In libel actions there is the presumption of damage. In the claim I am now concerned with there is no such presumption. The evidence of the Claimant himself is of little more than a fear, rather than anything specific. He accepts that the mother does not believe that the concerns expressed were well founded. No actual damage is alleged to have occurred, in the form of any action taken by any third party.

342. I infer that his reputation in the eyes of the publishees did suffer at least some temporary damage. Nevertheless, it is to be borne in mind that all those to whom the words complained of were published (other than the mother) are professionals. If the correction has not already reached them, it should do so. The letter and correction from Mr Thomas can be shown by the Claimant to whoever he considers he should show it to.

RELIEF UNDER THE HRA s.8

343. In the light of my finding that there has been an interference with the Claimant's rights under Art 8 by the publication at the CPC, I must proceed to the question of relief.

344. In the final Skeleton Argument for the Claimant it stated that the Claimant's concern is to establish how the words complained of came to be published in the Report, and to obtain a public vindication and redress from the Court in respect of the Defendants' conduct in publishing the defamatory accusations of which he complains, conduct which has caused him great distress. By this trial he has achieved his purpose of finding out how the words complained of came to be published. But a public judgment in Court is not normally a useful way to try to vindicate a reputation which has been damaged in private. It is likely to make matters worse. In the present case a public vindication is impossible, because identifying the Claimant would involve identifying the children, and no one wants that to happen.

345. But for the form of the Defence ("The Child Protection Conference was an appropriate forum for such an investigation": para 8a3, repeating para 3.10, 3.16 and 3.18), I would not have been minded to grant any declaration, because it does not seem to me that anything that I can grant by way of relief takes the matter further than what the Council said in Mr Thomas's letter of 15th August 2003 and in the draft correction and apology. But since the Council has, as I find, resiled from that position in the Defence, in the draft of this judgment circulated to the parties' lawyers I invited submission as to an appropriate form of declaration. I make the declaration set out at the end of this judgment.

346. Next I turn to the question of whether any and if so what damages should be awarded. In *R(Bernard) v London Borough of Enfield* [2002] EWHC 2282 Admin Sullivan J considered damages and said this:

> 39. I accept that in many cases the finding of a violation, particularly when coupled with a mandatory order, may constitute just satisfaction. Concerns have been expressed in various quarters about the development of a "compensation culture". In my experience in this court, dealing with a wide range of complaints against public authorities, most citizens who have suffered as a result of some bureaucratic error are not motivated, or at least not primarily motivated, by a desire for monetary compensation. They institute proceedings because they feel outraged by what they see as an injustice and want "them", the faceless persons in an apparently insensitive, unresponsive and impenetrable bureaucratic labyrinth, to acknowledge that something has gone wrong, to provide them with an explanation, an apology and an assurance that steps have been taken to ensure (so far as possible in an imperfect world) that the same mistake

will not happen again. This assurance will at least give them the satisfaction of knowing that they have not suffered in vain.

40. If a public body takes all of those steps reasonably promptly, once the problem has been drawn to its attention, then it may well be the case that nothing more is required by way of monetary compensation in order to afford "just satisfaction" in very many cases….

347. The present case is one in which the Council and Mr Thomas did take steps reasonably promptly, once the problem has been drawn to its attention. He did acknowledge that something had gone wrong, provide an apology and an assurance that steps, in the form of the draft Correction, would be taken to ensure (so far as possible in an imperfect world) that the same mistake will not happen again. In my judgment this is, as a result, a case in which nothing more is required by way of monetary compensation in order to afford "just satisfaction". It is true that the Claimant was not satisfied, and required an explanation. But the explanation, as revealed in the trial and in this judgment has not disclosed anything that gives rise to any further complaint which can properly be made on behalf of the Claimant. In so far as the matter had been left uninvestigated between June 2002 and April 2003, the potential victim of such failure was S, not the Claimant, on the assumption (contrary to the Claimant's case) that he were to have been found to present some risk to her.

348. If I am wrong, and damages should be awarded, any damages in this case would have to be assessed in the light of the observations of Sullivan J in that case. At the end of his judgment he expressed his conclusions as follows:

58…. Conclusions on Quantum

The award to the claimants should not be minimal, that would undermine for the policy underlying the Act that Convention rights should be respected by all public authorities. As with damages for Personal Injuries the court must not ignore the consequences of awards under section 8(3) for public authorities generally and society as a whole. On a simplistic view of local authority accounting, the larger the award to the claimants under section 8 the less there will be for the London Borough of Enfield to spend on providing social service facilities for the many others in need of care within the borough. Even if the money does not come out of the social services budget, it will have to come from some other service's budget and/or from Council taxpayers.

59. To set against this public disbenefit, it is very much in the interests of society as a whole that public authorities should be encouraged to respect individual's rights under the Convention. A "restrained" or "moderate" approach to quantum will provide the necessary degree of encouragement whilst not unduly depleting the funds available to the defendant for the benefit of others in need of care… Bearing in mind the importance of securing compliance with the Convention, I see no justification for a further reduction, pushing damages under section 8 down below the level of tortious awards. Indeed, the awards in Kemp and Kemp for pain and suffering, and loss of amenity in cases of minor personal injury, appear to be on the low side by comparison with the awards

recommended by the Local Government Ombudsman for disruption, distress worry and inconvenience suffered as a result of maladministration by local authorities. Why this should be so is not clear, it may be that the adverse effects of the maladministration in such cases lasts for longer than the suffering and loss of amenity in most cases of minor personal injury. It is not easy to reconcile the awards recommended by the Local Government Ombudsman for distress, worry et cetera, with the JSB Guidelines for minor psychiatric damage/PTSD. It may be that looked at in the round, the overall impact of such minor illnesses upon claimants' "Daily activities" lives is less severe and intrusive than the effects of maladministration upon the complainants' lives in those cases considered by the Ombudsman.

60. I accept the claimants' submission that the Personal Injury awards and Guidelines are of limited assistance. They are generally very far removed on the facts from the circumstances of the present case. The Local Government Ombudsman's recommended awards are the best available United Kingdom comparables. Although I am awarding damages under section 8 as just satisfaction for a breach of the claimants' Article 8 rights, this case is, in essence, an extreme example of maladministration which has deprived the second claimant of much needed social services care (suitably adapted accommodation) for a lengthy period: some 20 months.

61. When considering what is necessary to afford them just satisfaction, it is important to bear in mind that the claimants' ordeal is now over, they have a home which (when adapted) will be suitable for the whole family. In this respect many Londoners would consider them to be fortunate. That said, they had to endure deplorable conditions, wholly inimical to private and family life, for a long time. They have received no explanation or apology and do not have the comfort of knowing that their sufferings have not been in vain. There is no indication that this case has prompted the Council to introduce revised procedures. The claimants' problems have been compounded by the defendant's conduct: its failure to respond to correspondence or to make any meaningful response until driven to do so by judicial review proceedings, the unwarranted threat of eviction, and its failure to comply with timetables set by the court. These criticisms may appear harsh, but they are inevitable in the absence of any relevant evidence from the defendant.

62. For all these reasons, I am satisfied that the award to the claimants should be at the very top of the £5,000 to £10,000 range identified above. Although there are two claimants it is important to avoid double counting, and since these damages are intended to give them just satisfaction for a breach of their Article 8 rights, it is sensible to start off with an overall figure to reflect the impact of the breach on their family life together, and then to apportion that figure between the two claimants having regard to the relative effects on their private lives. Bearing all these factors in mind, I conclude that the appropriate figure is £10,000, and I apportion that £8,000 to the second claimant and £2,000 to the first claimant.

349. In *Anufrijeva* the Court of Appeal said this at paras [63]-[]:

"63. In *R (KB and others) v Mental Health Review Tribunal* [2003] EWHC 193 (Admin) Stanley Burnton J had to consider three cases that he heard together in which damages were claimed by mental health patients whose rights under Article 5(4) had been infringed because of inordinate delay in processing their claims to mental health review tribunals. We commend the quality of his judgment. He concluded that Article 5.5 did not make an award of damages mandatory in such cases. It was complied with provided that it was possible to make an application for compensation; it did not preclude the Contracting States from making the award of compensation conditional upon proof that procedural delay had resulted in damage.

64. Stanley Burnton J. gave particular consideration to the question of whether compensation should be awarded where delay has caused frustration and distress. He concluded at paragraph 41:

> "I conclude that there is no "clear and constant jurisprudence" of the European Court on the recoverability of damages for distress under Article 5.5 in the absence of deprivation of liberty. There are two principles applied by the Court: that damages are not recoverable in the absence of deprivation of liberty, and that damages are recoverable for distress which may be inferred from the facts of the case. It follows that this Court must itself determine the principles it is to apply."

65. The principle that he decided should be applied, having due regard for the vulnerability of mental health patients detained by the State, he set out at paragraph 73:

> "Thus, even in the case of mentally ill claimants, not every feeling of frustration and distress will justify an award of damages. The frustration and distress must be significant: of such intensity that it would in itself justify an award of compensation for non-pecuniary damages. In my judgment, an important touchstone of that intensity in cases such as the present will be that the hospital staff considered it to be sufficiently relevant to the mental state of the patient to warrant its mention in the clinical notes."

This principle has no application to the Article 8 cases which we are considering, for the consequences of delay must amount to more than distress and frustration before Article 8 will even be engaged. This

> impressive judgment demonstrates, as does the judgment of Sullivan J in *Bernard*, that, especially at first instance, courts dealing with claims for damages for maladministration should adopt a broad-brush approach. Where there is no pecuniary loss involved, the question whether the other remedies that have been granted to a successful complainant are sufficient to vindicate the right that has been infringed, taking into account the complainant's own responsibility for what has occurred, should be decided without a close examination of the authorities or an extensive and prolonged examination of the facts. In many cases the seriousness of the maladministration and whether there is a need for damages should be capable of being ascertained by an examination of the correspondence and the witness statements. "

350. The decision of Stanley Burnton J is applicable to the present case. Although he was considering a claim under Art 5, it was a claim for direct interference, like this claim, and not for breach of a positive obligation.

351. The violation of the Claimants' rights, in so far as I have found that there was one, was not particularly grave, either in culpability or in its effect. The publication was limited. There was an immediate agreement to investigate his complaint. It had arisen unintentionally. The Claimant received an apology and retraction in August 2003. It could have been earlier, but that delay is to a significant extent explained by the absence of those whom Mr Thomas needed to consult. This is not a case which had to be brought in order to change procedures and prevent such an incident ever happening again. It could not have been foreseen that the Defence would resile from the concessions previously made in correspondence and later made in evidence. All the Defendants' witnesses agreed it should never happen again. But the reason it happened was not any defect in the statutory guidelines. It was a one-off failure to observe the guidelines. The Claimant did not criticise the guidelines or suggest that they failed to state what the law requires. The law on disclosure by public authorities of personal information relating to risk of sexual abuse is clear (from the cases set out above), and I have understood myself to be applying it, and not developing it, in this judgment.

352. The Claimant is not in any way responsible for what occurred at the CPC on 1st April 2003. He has genuinely suffered frustration and distress. But it has not been suggested that the distress he describes in his evidence resulted in the Claimant needing medical advice or assistance. Nor has he been shunned by anyone, or prevented from seeing the mother or the children. Moreover, a person with more insight than the Claimant as to why the history (as given by him) of his relationship with the mother and S began to attract the attention of the social workers, as S grew towards her teens, would have suffered less than he did. To that extent the Claimant is a "particularly susceptible individual" (*Anufrijeva* para [143]). The Defendants are not responsible for that lack of understanding on his part. If I had concluded that an award of damages was necessary I would (taking into account all that I am required to take into account by HRA s.8, and the guidance in the cases cited above) have assessed damages at £1,000.

REMEDIES

353. Accordingly I declare that the Defendant interfered with rights of W under Art 8(1) of the Convention in making disclosures at the CPC on 1st April 2003 of concerns that W might be grooming the child S for prostitution at a time there was no need or duty to disclose that concern to the mother, and no need to disclose it to the professionals and the mother in the presence of W without having raised any questions with him as to the facts of his relationship with S, and without giving him any warning.

354. For the avoidance of doubt, I repeat here that the Second and Third Defendants acted in good faith at time, and that it has not been suggested during this hearing that there is, or was then, any evidence to substantiate the concern in question.