Solicitor
v.
The Establishment

By Frederick Wright

Solicitor v. The Establishment

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Introduction

Author Frederick Wright (not his real name) qualified as a solicitor in 1987. His first post was as a property lawyer in a London, West End firm. He then became the in-house commercial property solicitor for a UK government undertaking, a role he held for ten years, with an eventual remit to sell all their remaining property portfolio. Job done, in 1999 he returned to private practice as a locum solicitor dealing with commercial and residential property. For the next ten years Frederick Wright proceeded to work for 24 different firms, as a locum, in London and the Home Counties on short-term and long-term assignments. From 2010 - 2014 he worked as a solicitor in Lincoln's Inn.

In March 2007 Frederick Wright made the news in the *Law Society Gazette* after a bitter dispute with the Law Society over the right to highlight poor standards of conveyancing practice in the profession, including the bullying of locums. The first part of this book reports on that story - how Frederick Wright risked his career to expose the profession's shortcomings and came out a winner.

In March 2011 Frederick Wright took on the might of the Norwegian government in the High Court in London in a case that centred on religious bigotry in Norway.

In the same week as his judgment was set aside in the High Court Frederick Wright's opponents, the Ministry of Justice and the Police in Norway, had their headquarters in Oslo blown up by Anders Behring Breivik who then proceeded to kill 69 people on Utøya Island. We discover who 'Frederick Wright' really is.

This four year legal epic is detailed in the second part of this book which exposes the tricks and manoeuvrings of the Norwegian and British judiciary when trying to overcome an outsider standing up for free speech and the right to voice unpalatable home truths.

Part I

The Working Solicitor

I will in this account be concentrating on the period covering the recent decade-long property boom in the United Kingdom until the crash of summer 2008. As a locum solicitor during that time I had seen, more than most, the considerable ups and downs encountered through working in the legal profession. The realities are often hidden from the public. Certain players in the legal 'industry' do not want the truth to come out; self-interest is frequently their abiding motivation. How the locum system operates will be discussed together with the problems faced working as a locum in private practice. Delivering a good service to the client was, at times, a real challenge.

On the rare occasions that the Law Society *Gazette* featured a piece on the locum solicitor, the article always painted a far too rosy picture. The following Law Society *Gazette* article of 7th October 2004 is one such example and was provided by the recruitment agency Michael Page International, who naturally wanted to promote the locum role:

CONTRACTS: *temporary solicitors can boost firms, says Georgina Crompton*

Doing the locum motion

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Doing the locum motion

The locum market is booming. Firms of all sizes are increasingly seeing the benefits of sourcing locum solicitors, and this is an ever-expanding market. Locums are a valuable asset to any firm, typically hired to cover sickness or maternity leave, to provide extra resource for transaction or litigation deadlines or sudden bursts in client activity, to establish or run down a specific department, or to provide expertise in a specific discipline.

The key strength of this mutually positive relationship is flexibility for both parties. The locum approach can provide a rewarding career and exposure to different firms and workplaces, while still allowing totally flexible working hours.

Locums enjoy the ability to take the school holidays off or perhaps work for only two days a week for a given period. In most instances, locums will have total control over the work/life balance, which is often not the case in a permanent role. Likewise, firms are not obliged to commit to adding to the headcount, and a locum is the obvious solution.

Most importantly, the market for good locums is recession proof. In an economic downturn, in-house, private practice and local government sectors will want to keep their fixed overheads under control, hence permanent hires may not be possible. Likewise, at the beginning of an economic upturn, initial uncertainty may mean firms do not want to commit to adding to the headcount, and a locum is the obvious solution.

The legal profession is slightly behind other sectors in taking advantage of temporary contracts; but the tide is changing and the concept evolving. Historically, there has been a reluctance to use locums, based largely on a perception that no one knows the cases as well as the normal fee-earner and potentially the candidates may be of lower quality than their permanent counterparts.

However, firms now realise that a locum candidate is usually over-qualified for the work and as such will add value immediately, often completing particular projects within shorter timescales.

Experienced locums are adept at parachuting into a role and collating the necessary information to carry out the assignment effectively.

Many firms now regularly employ teams of paralegals on a contract basis to work on large transactions, which frees expensive trainees to benefit from higher-level work. Increasingly, firms are employing a locum to fill a difficult-to-satisfy permanent vacancy, taking the view that this allows them more time to select a candidate and thus be more discerning.

They can also utilise the contract as a probationary period for the locum, who may indeed be offered the permanent role himself.

The future for contract work looks bright, with both parties benefiting. In a world in which it is becoming increasingly difficult to juggle the work/life balance, the trend can only continue to strengthen.

Georgina Crompton is a manager at Michael Page International

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GAZETTE 7 October 2004

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Certainly this upbeat view had its place in the overall scheme of things but it was only part of the story. Dig deeper and you will find the flip side. Certainly, following the 2009 recession the locum market for property lawyers had, not suprisingly, completely dried up.

I should point out before I lift off that at present there is little, if any, protection for the maltreated locum solicitor.

Locums should certainly note the following:

1 When a vacancy arises the recruitment agency will ring you up to ask if they can pass your details on to the law firm. If the firm is not interested the agency will usually not tell you - they will just leave you to wonder or assume that you are not wanted. If you do try to ascertain what has happened you may be met with excuses such as - "They [the firm] haven't got back to us" and / or "We will chase them up". The agency will then remain silent.

2 The law firm searching for a locum will invariably use more than one agency.

3 Locum work is seasonal. From October to April expect little or nothing. In the summer months you should find, now and again, a couple of weeks work here and there as holiday cover - often in unbearably hot conditions, with the phone ringing every 5 minutes all day long.

4 Asians and other ethnic minorities will find it difficult to get locum work (and indeed full time work) so should seriously consider a change of name to a wholly English one. (See below for a Law Society *Gazette* article on ethnic minority solicitors entitled 'Balancing Act').

5 Many of the legal recruitment officers have no legal qualifications. They have never worked in a solicitor's office. So they have little grasp of what the locum is really up against. Nor do they particularly care. They only want their commission.

6 For older lawyers looking for full-time permanent work do not be surprised if a recruitment agency does not respond at all to your application to be put on their books. Your calls may not even be returned. Most law firms are looking for newly qualified to five year qualified applicants. (See below for *Gazette* article on Ageism).

7 Job seekers would be better advised to get out the yellow pages and ring round solicitors urging them to consider you for locum / full-time work, emphasising that they will of course save themselves an agency fee if they employ you. Then email them your C.V.

8 You may be asked by your firm to participate in a Capital Gains Tax avoidance scam property purchase, or to sell a property for a client whose existence you cannot ascertain (as I was). You will then have to refuse to act. Your firm may still nevertheless continue to try to persuade you to act. And pressurise you into turning a blind eye to the fact that the signatories to the contract / lease / transfer deed will not be the registered proprietors of the property or their legally appointed agents or attorneys. You will of course continue to refuse to act. Then someone else in the firm will do exactly what is 'required' and the documents come back signed and the sale is completed by your employer. (H.M. Land Registry do not trouble themselves, when asked by solicitors, to investigate forged signatures on Land Registry documentation, I discovered). You will soon be told to leave the firm on spurious grounds (as I was). The Law Society will then offer you their profound sympathy, but no more, for your subsequent period of, possibly, long unemployment. (Three months in my case, living off my credit card, after an 11 month stint at the firm in question). But sympathy without relief is like mustard without the beef.

9 Be aware that a lot of low to mid-level property fraud involving clients and their colluding solicitors will not be investigated by the Law Society's Fraud Intelligence Unit due to economic pressures and work overload. (See below for an excellent *Times* newspaper article on mortgage fraud). A senior police officer client of mine later confirmed to me that this was his experience too when the police wanted to prosecute for property fraud using the Crown Prosecution Service. He had to fight very hard to persuade his commanding officer to sanction a particular mortgage fraud prosecution. His persistence paid off as in due course the prosecution led to a conviction.

Balancing act

THE RELATIONSHIP BETWEEN ETHNIC MINORITY SOLICITORS AND THEIR REGULATORY BODY FORMS THE BASIS OF A MAJOR REPORT. NEIL ROSE EXAMINES ITS FINDINGS AND THE PROFESSION'S REACTION

REGULATION

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Balancing act

'There are a lot of stereotypes here without the evidence to back them up'

'The Law Society has to regulate in the public interest and ensure that clients are protected'

Friday: welcomes regulation debate

Ethnic minority solicitors are disproportionately represented in regulatory decisions made by the Law Society when compared to the make-up of the profession as a whole, recent research has shown - and it is a discovery that is bound to ring alarm bells.

It does not necessarily mean that discrimination is endemic to the Law Society's regulatory activities, but it has provoked a more detailed investigation.

The process was triggered by a review of 2004 data from the Law Society's investigation and enforcement (I&E) unit. For example, it found that while Asian solicitors made up 4.4% of the profession, they were the subject of nearly 9% of regulatory decisions. These included interventions, practising certificate conditions and referrals to the Solicitors Disciplinary Tribunal.

The figures for black solicitors were yet more out of kilter - they accounted for 1.3% of the profession, but 4.3% of regulatory decisions.

By contrast, white solicitors faced less regulatory action - 69% of matters concerned them, while making up 78% of the profession.

However, the data clearly requires more dissection - as Stephen Friday, chairman of the Black Solicitors Network, points out, work needs to be done to explain why the figures fluctuate between different types of regulatory action; for example, black solicitors were the subject of about 2% of inspections, 4-6% of interventions and 8.3% of referrals to the tribunal.

As a result of the I&E findings, the Law Society commissioned an external consultant to carry out an initial race impact analysis, which forms the basis of a report by Mehrunnisa Lalani, head of equality and diversity on the regulatory side of the Law Society. The move has been

welcomed by ethnic minority lawyers' groups. It is a relatively thin document - reflecting that this is just the start of the process - and also short on hard evidence, which it recommends gathering.

Perhaps unsurprisingly, the consultant found it hard to identify one particular reason that explained the disparity but uncovered several potential contributing factors. However, she emphasised that it did not mean discrimination was present.

The I&E unit receives more than 4,000 items of 'intelligence' a year, mostly from the profession, but also from law enforcement agencies, the public and other parts of the Law Society. It then has to assess the information and decide whether to conduct an investigation. On average, 500 firms are inspected each year by l&E, and 55% of inspections lead to regulatory action.

The issue for the Law Society, the consultant says, is whether the criteria used and the way intelligence is assessed disadvantages ethnic minority solicitors in some way. Giving his initial thoughts on the issue, Antony Townsend, the new chief executive of Law Society regulation, says that to ensure there is no discrimination, it is vital to define clear criteria for decision-making.

A wider concern over the Society's organisational culture was also identified. The report said: '[Ethnic minority] solicitors might be reluctant to seek help and advice from the Law Society, because they may feel that this would be perceived as evidence of them not coping.'

Another possible reason identified was anecdotal evidence of the way the Law Society is perceived by ethnic minority solicitors - as remote and possibly racist. Disturbingly, this was supported by the consultant's own experience during her ten days' work at the Society. She reported hearing inappropriate remarks, and took the view that many staff were not at ease with issues of race and could sometimes be defensive when the topic arose.

Mr Friday considers these observations to be 'dangerous' by being so sweeping, especially as it is not clear what they are based on beyond anecdotal evidence. He says he has not come across such misgivings about the Law Society among his members.

Sundeep Bhatia, recently elected as joint vice-chairman of the Society of Asian Lawyers, says he, too, is unaware of members raising the issue formally, but adds: 'In the profession generally there is a mistrust of the Law Society as a regulatory body.' Mr Townsend says the promotion of equality and diversity is paramount to the new regulation board, which is seeking an open dialogue with groups of solicitors from the autumn.

Culture is a particularly important issue given the discretion afforded to I&E in making decisions. All Law Society staff are required to attend training sessions focusing on equality and diversity awareness, while there is to be extra training for managers on issues such as managing

a diverse workforce and the development of a behaviour competence framework on equality and diversity. There has also been instruction on how to conduct impact assessments.

In addition, Ms Lalani and others are in post to support and advise, while an equality and diversity working forum has been established in Law Society regulation to discuss issues, share best practice, promote joint working and monitor progress.

But there are plenty of external factors that could also be at work. Ethnic minority solicitors are more likely than average practitioners to be sole practitioners, while most others work in small firms. Solos tend to find themselves more subject to regulatory action than others, for example 'because of a lack of skill and capacity to develop an internal audit process to ensure compliance,' according to the report.

These employment patterns could also suggest that ethnic minority solicitors are more likely to work in deprived areas and to struggle financially, it went on. 'They may not have the skills to keep accurate financial records or be able to afford the services of an accountant.' This could lead to regulatory action.

However, Mr Friday questions the findings. 'There are a lot of stereotypes here without the evidence to back them up,' he protests. Mr Bhatia, himself a sole practitioner in London, agrees that the depiction of solos is 'dangerous' and 'very generalised.' He says: 'It's slightly offensive. There are a lot of professional sole practitioners around who work hard, know the rules and keep to them.'

Then there is the type of work. Several years ago, there were concerns that a crackdown on immigration law firms was having a marked effect on ethnic minority solicitors, given that a disproportionately large number of them run such practices - 'there were rumours that Asian firms were being hit hard,' recalls Mr Bhatia.

This is a sensitive and highly political practice area where there is added pressure on regulators to do their job, and the report returns to the theme. 'In most cases where intelligence is received pertaining to immigration, the evidence is not sufficient to proceed,' it says.

'However, where there was evidence to warrant an inspection, malpractice was often found. These raised questions about whether the criteria used to justify inspection were more onerous than other areas of practice. Furthermore, did the pressure of scrutiny lead to heavier sanctions than those imposed in similar breaches within other areas of practice?'

Broader cultural issues pose a tricky problem too. The report found evidence that certain cultural norms and financial practices may look suspicious because they do not fit into the rules and regulations written within a British context. For example, an inspection can be prompted by the use of different names interchangeably when purchasing property

or making large cash transactions. This is common practice in some ethnic minority communities, but may look suspicious and trigger an intervention by the Law Society, even though on further examination it may be innocent.

The report says: 'It is therefore important to note that in some communities, solicitors may be expected to provide services tailored to meet cultural and religious practices that may look suspicious and indeed breach the rules and regulations. This is a complex and sensitive issue, because the Law Society has to regulate in the public interest and ensure that clients are protected.'

A final complication, according to the report, is the position of ethnic minority solicitors from other countries who requalify through the qualified lawyers transfer test, but lack understanding of the practice rules and the language, increasing the risk of regulatory action. A review of the test is now planned, with a brief to ensure foreign lawyers are 'fit to practise'.

But again these findings make Mr Friday uncomfortable because the report acknowledges that further analysis is needed to determine whether any disparities actually exist between those solicitors trained in England and Wales compared to those trained in other jurisdictions.

Further research is central to taking this work forward. Projects include a study to ascertain whether race and ethnicity are key factors in regulatory decision-making, a look at early-warning indicators, and a closer examination of whether the disparities exist for all ethnic minority solicitors or for particular groups.

In addition to the staff training, there will also be work done to assess and address any barriers that may prevent some solicitors from seeking support and advice from the Law Society.

Ultimately, whatever the concerns about the report itself, both Mr Friday and Mr Bhatia praise the Law Society for recognising the problem and taking steps to tackle it.

Mr Bhatia says his experience of the Society is positive - he has been working with it on assessing the impact of the Carter report on ethnic minority legal aid solicitors. The Law Society is doing its best to adapt to a multicultural society and multicultural legal market-place,' he says. 'From a personal point of view, I think they are doing their best to change.'

GAZETTE 27 July 2006

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Ageism warning before new law takes hold

A huge culture change is required within workplaces to change longstanding attitudes towards age discrimination, employment lawyers were told last month.

CAREER BRIEF

The *Gazette* guide to working in the law

Ageism warning before new law takes hold

A huge culture change is required within workplaces to change longstanding attitudes towards age discrimination, employment lawyers were told last month.

A discussion at the Employment Lawyers Association conference in Newcastle on the effects of the age discrimination legislation coming into force in October 2006 emphasised the need for all employers to change their attitudes and employment policies or risk breaking the law. Law firms will be affected by the provisions like any other employer.

Michael Rubenstein, the founder and editor of the *Industrial Relations Law Reports*, who chaired the session, said: 'Age is the final frontier in discrimination law. Employers have learned to their cost how long it takes to change sexist and racist workplace cultures. Sensible employers will be tackling age stereotypes now and will not take the risk of putting this off until age discrimination law takes effect. The message is that time is running out on ageism.'

Mr Rubenstein said the panel highlighted several issues which employers need to consider. These include amending harassment policies to prohibit ageist bullying and offensive jokes about age.

'It is already clear that the definition of harassment within the age discrimination legislation will mirror that used in existing discrimination law and will cover a range of behaviour from belittling remarks that someone is too young to be able to do their job to birthday cards suggesting that the recipient has reached an age where they might consider exploring erectile dysfunction drugs.

'The problem for employers is that while some employees might tolerate this kind of behaviour or find it amusing, others might find it degrading or humiliating, especially if it was repeated after it became clear that it was unwelcome.'

Photograph: Alex Robbins

Applications: age not to factor

It is also important to alter any ageist practices now, 'as an employer that has to admit that there was an ageist workplace culture in 2005 is going to have a hard time convincing an employment tribunal that everything suddenly changed in October 2006'.

Mr Rubenstein warned that getting age discrimination wrong could be very costly. 'There will be no upper limit on potential compensation, unlike unfair dismissal, which is subject to a statutory cap. Unless, and until, there is a major culture change, highly paid senior executives in their 40s and 50s who are dismissed for age-related reasons will often find it difficult to ever obtain comparable jobs. This means that employers could be liable for huge awards of compensation, covering many years of lost income resulting from the discrimination.'

However, employers will also need to be sensitive to the fact that the law is intended to be age neutral, meaning it is not just older workers who will be covered, he said. Basic employment practices will also be affected. Employers will have to ensure that recruitment advertisements are age neutral – no more seeking 'young, dynamic individuals' – while the date of birth will have to be removed from application forms, as it suggests age will be taken into account.

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Mortgage fraud appears again

There are signs that lenders are gearing up for an onslaught on solicitors if losses come home to roost, reports Grania Langdon-Down

business/ law

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Mortgage fraud appears again

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Grania Langdon-Down

Organised crime syndicates have been targeting residential and commercial property in increasingly sophisticated mortgage frauds using corrupt or compromised professional advisers, experts are warning.

They fear that the predicted slowdown in house prices, exacerbated by the Northern Rock crisis and the credit crunch, could expose multi-million-pound frauds involving hugely overvalued and, in thousands of cases, deteriorating properties that could leave the market highly unstable.

There is growing concern that there has been a systematic attack on the mortgage system by linked frauds. The Serious and Organised Crime Agency says that gangs are using corrupt or negligent solicitors, accountants and financial advisers as part of a fraud "infrastructure", while the Serious Fraud Office has raided several offices, including law firms, as part of its investigation into an alleged multimillion-pound mortgage ring in the Midlands.

The Financial Services Authority, which has been investigating poor lending practices in the sub-prime market, set up an early warning system on possible frauds with lenders. It has received about 200 tip-offs, 32 of which were strong enough to warrant further investigation.

Warning signs that solicitors are being sucked into facilitating mortgage fraud — some knowingly, others through ignorance or negligence — are being monitored by the Solicitors Regulation Authority. According to Mike Calvert, head of its forensic investigations, a quarter of its inquiries involve allegations of mortage fraud and the percentage is rising.

If there is a surge in losses on the loan books of banks and building societies, lenders will look to sue lawyers and other professional advisers to recoup their losses, which happened after the last wave of mortgage frauds exposed by the property crash in the late 1980s.

Simon Chandler, an insurance and reinsurance partner at the Bristol

office of CMS Cameron McKenna, says that the frauds cover a broad spectrum from individuals' exaggeration of income through to organised crime syndicates. 'The opportunities for fraud have been fuelled by aggressive lending strategies by banks seeking market share. The sub-prime, buy-to-let and new-build sectors have been key targets of the fraudsters, who have also turned their attention to the commercial sector.'

Key features, he says, include widespread use of forged or stolen identity documentation; the use of internet-based sites to create fraudulent lending applications; the use of "mortgage mules", who lend their identity for a fraudulent transaction in return for money; and the systematic bribery and intimidation of professionals, including valuers, lawyers and accountants.

Regulators and law enforcement agencies have failed to inhibit the growth of this type of fraud, Chandler says. "Police forces have been forced to reduce their fraud departments to respond to pressure to target terrorism, drug and street crime, while regulators have moved towards more light-touch principles-based regulation, with fewer intrusive inspections."

Crime gangs have used the opportunity to establish their own trusted panels of professionals to facilitate the frauds, he says. The scam begins when the fraudsters recruit a mortgage mule to buy their property, knowing lenders will typically offer offer 90 per cent loan to value ratios. Their tame valuer overvalues the property by anything from 30 to 100 per cent. The transaction goes through with the help of the solicitor. The borrower doesn't pay the mortgage and the property is repossessed and put up for sale when another gang member buys it and starts the cycle again. He has experience of half a dozen gangs, of various nationalities. "Mortgage fraud gives street-level criminals access to more sophisticated revenue-producing scams than they dreamt of ten years ago," he says, "But it will be effectively dealt with only by a co-ordinated response, which has not yet happened in the UK."

From December, money-laundering regulations set out stricter requirements for solicitors dealing with clients whom they have not met personally, including making sure payments come from the client's own bank account. "A solicitor's independence can be compromised if he or she just follows a broker's instructions without checking that the purchaser is genuine," says Calvert, who adds that there needs to be a cultural change in the profession. "Historically, the client is always right. But solicitors must recognise that they are being targeted so they need to protect themselves from their client, which is an alien concept."

Sarah Clover, head of the solicitors' professional liability group at Barlow Lyde & Gilbert, acted for the profession in the Nationwide managed litigation that followed the last mortgage fraud crisis and established the legal principles as to lawyers' liability. However, she says it also established the defence of contributory negligence where

lenders had been reckless which, in the light of recent aggressive lending policies, is likely to prove a key issue in litigation arising this time.

Over the past three months, there has been an increase in the number of solicitors alerting their professional indemnity insurers that lenders want to see their files on transactions — usually a prelude to a claim. Anna Fleming, a solicitor and the claims manager of Zurich Professional says; "The signs are that lenders are gearing up for an onslaught on solicitors if the losses come home to roost. I will be very depressed if it turns out the profession hasn't learnt its lesson."

Meanwhile, the property market is watching and waiting, says Orla MacSherry, property partner with Macfarlanes. "The pressure to do deals puts solicitors under pressure to negotiate very borrower-friendly, covenant-lite documents," she says. "Banks will be eyeing with some concern deals that they signed up to in the bumper years."

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What follows is the story of my ghastly experience with one firm of solicitors to whom I was introduced by my recruitment agency Badenoch & Clark (a member of MPS Group International). A case study that has all the classic ingredients of British pig-headedness: arrogance, denial and duplicity followed by the inevitable requests to "move on." I was forced to take County Court proceedings against this firm, Adams Harrison, Solicitors of Saffron Walden, Essex. In the April 2002 listings of Badenoch & Clark that went out to Adams Harrison, four locums - myself included - were described as :

"***Four of the best***" ***:***

I was given the following attribute:

Ref: 391771. Qualified as Solicitor 1987. Residential and Commercial Conveyancer

Tried and tested on previous assignments through Badenoch & Clark.

"***very good... excellent conveyancer... good with file loads and clients***"

Adams Harrison were desperate for a replacement locum as their previous choice had not worked out for them: "He was absolutely useless," Jane Bromley the legal executive at Adams Harrison told me later. "He was only used to buying large tracts of land for [a major property developer] whom he'd worked many years for. He was not [familiar with] residential conveyancing." I was to work on Jane Bromley's files as she had an excessive workload which she could not handle on her own. Adams Harrison needed a locum immediately, so I agreed to the assignment but was not happy at the long distance I had to travel to their branch office in Saffron Walden in the north of Essex. It was my practice never to take a lunch hour. With a regulatory seven hours work a day to do and being a staunch supporter of flexitime I always preferred a 10 a.m. to 5 p.m. working day. Locums are, in general, underpaid and in highly stressful work; slave labour almost, when one considers that many firms, to save money, often hire one locum when two are required. Locums come into firms and the work-in-progress files completely cold, and many of the files require immediate and urgent attention. So I feel the locum is entitled to put some of his own terms into the employment contract. Firms usually resist requests that don't fit in with their own rigid agendas. And this conflict only adds to the stress. I reluctantly agreed a 9:30 a.m. start with Adams Harrison.

Nevertheless I prepared well. I took a test run in my car on the Sunday before I started work, to see how long it would take me to get to Adams Harrison and to verify the exact location of the office. I took the back roads up to north Essex and came back home on the M11 where I came across speed restrictions due to road works. It was an 86 mile round trip. If I got there a little after 9:30 a.m. I was confident the firm wouldn't mind: at least they had found someone at short notice to do the work. My previous assignment through Badenoch & Clark took me to a firm of solicitors in Sutton, Surrey: a four hour round trip by train. That Sutton firm were particularly accommodating: I did not have to start work before 10 a.m. I sometimes arrived at 10:30 a.m. but so long as I did the standard seven hours work a day they were happy. They gave me a good reference when I left them.

My stint with Adams Harrison was to be from Monday 15th April 2002 until Friday 17th May 2002. One thing a locum must always be prepared for is unwelcome surprises. Badenoch &

Clark, naturally, are in the business of trying to make money and they face stiff competition from other employment agencies. The agencies do not always tell you the specific requirements and particular working practices of a firm they send you to. On my first day at Adams Harrison I was quickly told I had to use the firm's computer time recording system detailing exactly what I'd done for each client and for how long. What the heck for ? For long term employees fair enough, but I had urgent matters to attend to and was only on a four week assignment for fixed-cost residential conveyancing. It took me until the morning of the third day to master the time recording system. Badenoch & Clark did not warn me of this requirement, nor did Rod Webb, the assistant practice manager at Adams Harrison, when I phoned him up to make enquiries of his firm's working practices. I would have made clear my objections to time recording had I known this was a requirement. Mr. Webb couldn't even tell me if the firm had the Encyclopedia of Forms and Precedents - a standard necessity for all legal practices. He told me someone else would tell me when I arrived.

The next surprise on the first morning was to be told by Jane Bromley (the unadmitted, non-solicitor, legal executive) that for her own work-in-progress files she was passing to me, I had to dictate my letters in her name. The reason for this she said, was that the firm did not want to put off clients with the news that "yet another locum" was dealing with the matter. This request put me in a quandary. It would mean that the work was not in fact Jane Bromley's but would give the appearance of it being so and was therefore misleading to the client, who would not know in fact who was doing the work for him or her. It was difficult for me to word some of the letters to the clients where I had personally performed certain tasks, e.g. telephoning third parties involved in the transaction, which Jane Bromley naturally had not undertaken. To write letters to the clients indicating that Jane Bromley had phoned, say, the estate agent, or local council or H.M. Land Registry would be totally wrong. So I had to use the third person - " We have ascertained... " or " We have telephoned... "

To quote from a Law Society *Gazette* article of 17th October 2002 on 'Good Practice':

> " ***One of the requirements under Rule 15 of the Solicitors Costs Information and Client Care Code is that clients should be told the name and status of the fee earner who is dealing with the matter. This is an ongoing requirement. If the fee earner changes during the course of the retainer, the client should be told, the new fee earner identified and any other relevant information, such as a change in the charge out rate, given.***
>
> ***Clients do not appreciate not knowing who is handling their affairs.*** "

Further, if the client later rings up Jane Bromley in relation to those letters I wrote on her behalf, then unless Jane Bromley was completely clued up on what I'd done, the client would see through the disguise. Jane Bromley, however, would not have the time to acquaint herself with my work. I was not happy. I needed to have sole conduct of the work-in-progress files and be able to ring the clients up myself to avoid the potential for chaos, not to mention duplication of time spent on files: when clients expected Jane Bromley to refer to my letters when she explained over the phone to them something they needed reassuring on. My ability to serve the best interests of the client was therefore compromised. But my hands were tied: Jane Bromley insisted I write my letters in her name for her work-in-progress. For new matters I could dictate the letters to clients in my name. I had to earn a living, so I persevered. I doubted the pretence to the clients would go undetected for four weeks - the length of my assignment.

Jane Bromley and her secretary, it turned out, were not acquainted with best practice in the

conveyancing process. For example, I insist on performing the obligatory bankruptcy search against a client-purchaser when obtaining a mortgage, *before* exchanging contracts. If in the unlikley event that a bankruptcy entry is found against a client's name then at least one has not committed the client to the purchase and lost him his deposit. For the building society or bank will not proceed to lend the mortgage monies when the borrower has a bankruptcy entry against him(unless it can be cleared in time, if at all), which will prevent the completion of a purchase if contracts have already been exchanged. So one must never exchange contracts in these circumstances without first having obtained a clear bankruptcy search. I had to tell Jane Bromley of my requirement in this regard. Many firms, I had found on my travels, did the bankruptcy search after exchanging contracts which was very bad practice. Further, Jane Bromley did not appreciate the absolute necessity for having a full list of the insured risks being defined in the landlord's insurance clause in a lease. The firm also lay in the shadow of a wonderful church, yet Jane Bromley did not know the place chancel repairs had in the conveyancing process.

Jane Bromley had also left me a shared ownership lease purchase that needed several hours work. It was an extremely urgent matter now as Jane Bromley had not dealt with the file in good time. And no wonder, as it turned out to be a complicated undertaking as many of the terms of the lease were now redundant and I had to spend several hours laboriously deleting those clauses that would no longer apply to the new purchaser. I did a thorough job but I still needed the essential form of Replies to Leasehold Enquires from the Seller's solicitor before I reported to the client. I had on my second day telephoned the Seller's solicitor and they promised to put the Replies in the post that night. Jane Bromley came in to tell me to report to the client immediately, but I told her I needed those Replies to Leasehold Enquiries to help me send a proper report to the client. She said: " Oh, they may take five weeks to arrive." I told her the replies would be with us within two days. Unfortunately I was unable to allay the client's frustrations - by reassuring him on the phone that a report would definitely go out to him by the end of the week - because, of course, the client was not supposed to know a new locum was dealing with his matter. Besides which, I think the client would have been furious to learn that Jane Bromley had let the file gather dust. I was dropped in it. If the matter was that urgent then Jane Bromley should have dealt with the matter herself and in good time. On my third day at the firm - Wednesday - the client phoned up to demand an update. I could not talk to him of course. A flustered Jane Bromley came into my office and took the file. The outstanding Replies from the Seller's solicitor (who were not on the Solicitors Document Exchange system and so they had to rely on the slower postal service) had not arrived. It seems in retrospect that Jane Bromley got a royal bollocking from the client.

I had also asked for plastic folders to be supplied to me to contain and seperate title deed documentation from mortgage documentation in all my files. In several of the firms I had previously worked at, mixed up papers were a major failing in the proper administration of clients' files.

In my time as a locum up to joining Adams Harrison I had worked with around nineteen different secretaries. Each one of them, not unnaturally, had their own idiosyncrasies and ways of working. I myself made it a rule of thumb to specify at the end of a dictated letter, exactly which documents I wanted photocopied as enclosures to go out with the letter. I found that often secretaries did not always appreciate which documents, or indeed parts of a document, needed to be copied. So for the sake of absolute certainty I made it perfectly clear what I wanted photocopied in my taped dictation. I cannot know in advance the full range of abilities and like and dislikes of each of my secretaries, so I have a standard request format. On only my second day at Adams Harrison, in barges Jane Bromley's secretary - Lucy Mizon - and bellows: "I'm not having that!" and just stands there. Not having what, I asked

her, as I did not have the ability to read her mind. She then continues, "Telling me which documents to photocopy. I've been a secretary for twenty-two years and I don't need you telling me how to do my job." Without giving me a chance to respond this rude woman just walked out, leaving me chastened and humiliated. This the secretary who described the senior partner of the firm, Tom Harrison as "God." "God?" I enquired. "Yes", she replied, "he thinks he's God."

So Jane Bromley and her secretary felt challenged and intimidated by my thorough requirements. They were set in their ways. As a locum I had picked up the best of each firm's practice and also saw the worst of practices as well. I tried to incorporate the accumulated positives into my subsequent assignments.

The third day of my assignment had been a particularly intense day. I had worked very hard and cleared my desk. At the end of the day I asked Jane Bromley's secretary to bring in my post for review and signing. I was brushed off with the remark: " It has already been signed." Flabbergasted, I immediately sought out Jane Bromley who I found downstairs. She told me she had read my post and signed it off herself and that my letters were "alright." But it was certainly not "alright" with me. Jane Bromley had been totally unprofessional - it was my right and my duty to check out my own dictation for any necessary alterations or corrections that may have been needed. I just could not believe it. I bit my lip and at 4:45 p.m. having done my seven hours I left my room to make my way out of the building. But Rod Webb, the assistant practice manager, called me and Jane Bromley to step into his office only for him to tell me my services were no longer required. My work had been "too slow" and "not good enough" and I "did not fit in." Jane Bromley ridiculed my abilities as a solicitor without any substantiation and left the room exclaiming, " You - experienced? Huh! I've been a legal executive for seventeen years." Yeah, and a snake in the grass to boot, I said to myself. Jane Bromley was a liar and I told Rod Webb (who had no legal background at all and knew nothing of conveyancing) that he had no right to rely on the word of Jane Bromley who had her own motives and misconceptions for telling tales to him. Rod Webb did not offer one word of explanation or substantiation for his allegations. He should have asked Jane Bromley to bring in the files and point out in front of me my alleged shortcomings. As a practice manager it was Rod Webb's duty to verify the facts for himself by looking at the files and consulting me. That is the standard procedure. I realised that trying to talk sense with Rod Webb was pointless as he didn't know what he was talking about. So I wrote out my invoice for the three days work I'd done and left the office, unable to vindicate myself. Jane Bromley had trashed my reputation out of spite and insincerity. I swore I was not going to let it go.

The next day - Thursday 18th April 2002 - I telephoned Rod Webb and recorded the conversation:

RW: Hello.

Locum: Yes, hello. Is that Mr. Webb?

RW: Speaking.

Locum: Yes, it's Mr. Wright here, hello there.

RW: Hi.

Locum: Is there any chance I could come and pick up this cheque, today?

RW: Um... possibly, yeah. I ... I need to get it organised and um... you need to give us a call back so um... we're having trouble with our phones at the moment.

Locum: I see.

RW: Have I got... did you give me your phone number?

Locum: Yeah I think... I think I did, yeah but um...

RW: If you can give it to me again I'll give you a call back in a little while after I've checked. What's your number?

Locum: It's [number].

RW: [Rod Webb repeated the number back to me].

Locum: Um. Just um... I was quite taken aback with your comments yesterday about er... the quality of my work and being "too slow" and I'd wondered if you checked this out for yourself.

RW: Um...

Locum: Cos' I don't think you did, did you?

RW: Well... I'm not in a position to talk about that over the phone with you, um, you know... if you want to take it up when you come in we can... we can perhaps deal with it then.

Locum: Yeah ok, that's a good idea. All right, I'll wait for your call.

RW: Ok.

Locum: Thanks a lot.

RW: Ok.

Locum: Bye bye.

RW: Bye bye.

I made another recorded call to Rod Webb (RW) on the 19th April 2002:

Receptionist: Good morning. Adams Harrison.

Locum: Yes morning. Is Rod Webb there?

Receptionist: I'll try for you. Who's calling?

Locum: It's Frederick Wright.

Receptionist: Hold on... ... ... Sorry he's not. Can he phone you?

Locum: Um, well, not really. When will he be available?

Receptionist: Oh I don't know where he is... you know what it's like - he could be anywhere.

Locum: Yeah. Er... have accounts done my cheque yet do you know?

Receptionist: I don't know. Do you want me to ask them?

Locum: Oh, that'll be kind of you, thank you.

Receptionist: Hold on... ... ... Sorry about this. Just a minute.

Locum: All right.

RW: Hello.

Locum: Yes, hi there. Is that Rod or ...

RW: Yes it is.

Locum: Hi there... so... yes. I... I was waiting for your call.

RW: Right ok... Sorry I couldn't get back to you yesterday. I was a bit busy. Have you had the cheque?

Locum: No I haven't yet. Have you put it in the post?

RW: It's in the post yeah. I popped it in the post to you yesterday.

Locum: Oh. Ok. So, I mean, what's um - what's the score on these comments that, er, you made to me in the presence of Jane Bromley?

RW: Right.

Locum: What've you got to say er... to passing on comments when you haven't looked at the files?

RW: Well I had.

Locum: So how can you say that it's [my work is] "too slow."

RW: Well it was in the context of, you know, generally not er... not... not... fitting in with the, er, way we wanted to work, so that was just one of the manifestations of the problem.

Locum: But it [my work] couldn't be "too slow" cos' I was up to date. I needed more work.

RW: I think you're misunderstanding what we're saying. It was um the progress that you made earlier on.

Locum: On what?

RW: On some of those cases it wasn't quite what we were looking for.

Locum: In what way?

Silence, so I quickly continued:

Locum: The thing is you see your um... she [Jane Bromley] asked me to send a [shared ownership] lease off for someone [i.e. send it to the client] and I never do that [i.e. report to the client - in this case on the lease he was taking] until at least I've got the minimum of information [from the Seller's

solicitors].... extra [replies to leasehold] enquires [from the Seller's solicitors] that aren't through [and in this case were needed before writing off to the client]. And [it was] those particular clients she told me to send the lease off for but I told her the reasons I couldn't do that immediately. And it doesn't take five weeks for, as she said [replies to] enquires to come back from a [Seller's] solicitor: maybe a couple of days. But I pride myself on being very quick and I've never had any complaints before. But I think it's just the vitriol and the look in your face [when my services were terminated]..... Something as if I'd... er committed some gross misdemeanor you see...

RW: No, no it's just a question of it wasn't working and um, it was in everyone's interest just to end things there.

Locum: Well you see, I particularly resented her [Jane Bromley's] secretary - her attitude and er... some of the deficiencies on the files [that were passed on to me] and I was correcting some of the practices at your firm that I do think, in the conveyancing department, are lacking and um...

RW: I think if you've got those concerns you ought to really contact the partner who deals with that sphere.

Locum: Yeah I think I better do. What's his name please?

RW: It's, er, Mr. Rees.

Locum: Mr. Rees. Is he the conveyancer?

RW: Yes.

Locum: And where is he - at Haverhill?

RW: He's at Haverhill, yes.

Locum: And what's their number?

RW: 01440 707 02485

Locum: Yeah, I was particularly furious with that secretary for coming in and er basically being very very discourteous [when she bellowed "I'm not having that" over my photocopying request]...

RW: Well I don't think she was overly impressed with you either.

Locum: Well, er yes because.... I have a way of doing things and if I tell her - emphasise stuff to be photocopied - it's not er as she said... she comes to me and says, "I do know what to photocopy". But I usually just at the end of my tape say um, "I like this this stuff to be photocopied" as a reminder cos' I've been through a lot of secretaries in my time as a locum and to try and customize every single one is, er, very difficult. But the thing is, her behaviour was particularly revolting and, er, I've really got to do something about it. I'm not sure if I'll complain to the O.S.S [the Office for the Supervision of Solicitors]. I'm considering my position at the moment. But I also want to stick up for locums because to travel that far [the long journey to Adams Harrison] and be treated so abysmally is something that I think has to be stood up to - not just for myself but for locums in general, um... the deficiencies that were

apparent at your firm before I joined, I shouldn't be blamed for.

RW: All I can do is... is get you to phone Mr. Rees cos' he's responsible for the practices and standards in conveyancing as it's really not an area that I'm involved in.

Locum: What is your discipline at the firm? Are you actually a legal executive, a lawyer or...

RW: I'm working on the practice management side so I deal with personnel issues.

Locum: You haven't got a legal discipline?

RW: No.

Locum: All right Mr. Webb. Thanks very much. I'll leave it at that with you for now. And the cheque was posted when?

RW: Yesterday.

Locum: Ok then, many thanks. Bye bye.

RW: Bye bye.

The cheque for my three days wages came an hour later in the morning post. I had now lost the opportunity to attend at the offices of Adams Harrison to go through the files to test the allegation that I had fallen short on certain matters. I knew my work was in perfect order and that Rod Webb had purposely sent the cheque in the post instead of letting me collect it from his office, so as to avoid going through the files with me.

I telephoned my agency Badenoch & Clark to tell them what had happened and one of the female staff said she'd make enquires of Adams Harrison. Badenoch & Clark later told me they did get in touch with Adams Harrison but would not tell me what transpired in their talks, as the discussions had to remain confidential! Badenoch & Clark immediately however brought forward my next appointment with a Hertfordshire firm of solicitors which lasted from 29th April 2002 to 30th August 2002: four months which I went on to successfully complete. And not without an interesting twist when in my last week at the Hertfordshire firm I dealt on a matter with Jane Bromley of Adams Harrison on the other side of the transaction. But more of that later.

On receiving Rod Webb's cheque I waited until it had cleared and on the 26th April 2002 faxed a letter before action to Rod Webb at Adams Harrison. I gave his firm 14 days to pay up the remainder of my fixed term appointment - an extra 21 days pay - or else I'd take County Court proceedings for breach of contract. Rod Webb wrote back to me the same day as follows (see opposite):

Adams
solicitors HARRISON
14 & 16 Church Street, Saffron Walden, Essex CB10 1JW
Telephone: (01799) 523441 Fax: (01799) 526130 Dx:200302 Saffron Walden
Website: www.adams-harrison.co.uk

[redacted]

Your Ref:

Our Ref:

E-Mail:

26 April 2002

Dear Mr [redacted]

I acknowledge receipt of your letter dated 26th April.

You were not retained for a fixed term. You were retained on a temporary basis for as long as we required you and provided you proved satisfactory.

You proved to be wholly unsatisfactory which became swiftly apparent within a very short time of your arrival. Your timekeeping was poor, your professional work was totally unacceptable and you failed to communicate adequately with other members of staff. We had every right to dispense with your services as a self-employed locum and you frankly acknowledged this to me on leaving.

You are not entitled to any further payment from this firm. Your threat of recovery through the courts does not impress me and should you make such a claim it will be strenuously defended and we will apply to strike it out under CPR.24.

I have reported your demand to Badenoch and Clark and asked them to investigate the matter.

Yours sincerely

Rod Webb

In response I sent Rod Webb a recorded delivery letter on 27th April 2002 outlining my criticisms of the conduct of himself and his staff. My last paragraph went as follows:

> **"In all I think it is clear that your conveyancing department is unprofessional. How can it have you as its assistant practice manager when your knowledge of conveyancing is very limited? Your behaviour and that of Jane Bromley and her secretary border on the dishonest in your dealings with me and it is now worth me considering making a complaint to the O.S.S. [Office for the Supervision of Solicitors] over your firm's conduct."**

Rod Webb had written a very spiteful letter and his comments on my professional work were outrageous. I had only worked there for three days. On two occasions I arrived for work at 9:45 a.m. but so what - it was an 86 mile round trip - and I did my 7 hours work each day.

I then made seperate recorded calls to Rhodri Rees (RR) and Tom Harrison (TH) on the 15th May 2002:

Locum: Good afternoon, is Rhodri Rees in please?

Receptionist: Who's calling?

Locum: It's Frederick Wright.

Receptionist: And will he know what it's regarding?

Locum: Yes he will.

Receptionist: Ok, thank you. [Then after a long interval:]

RR: Hello can I help you?

Locum: Yes, hello Mr. Rees it's Mr Wright. I locumed for you three weeks or so ago and I understand Badenoch & Clark, the agents, and Rod Webb have been in touch with you regarding, er, comments made by Mr. Webb about my professional work at your office in Saffron Walden. I was just wondering, you know, what you have to say about it.

RR: Well I think you're not entirely correct in saying that there have been discussions between Mr. Webb and the agents. [The agents told me there had been but that they were "confidential."] There's been correspondence between this firm and you. All I can say is that I've got nothing to discuss with you and we don't intend making you any offers on the basis of your purported claim. If you want to continue with any correspondence I suggest that you continue in writing, as has already happened.

Locum: The thing is, under... ...

RR: I think I've said all I need to say.

Locum: Under Law Society rules...

RR: I've said all I need to say... thank you. [And he put the phone down.]

Immediately I phoned Tom Harrison (TH) the senior partner at Adams Harrison:

Locum: Yes hi there, can I speak to the senior partner, Tom Harrison.

TH: Yeah speaking.

Locum: I'm Frederick Wright and was your locum in Saffron Walden. I've just had the phone put down on me by Rhodri Rees. And, you know, the manners of him and Rod Webb in particular and the legal executive Jane Bromley and her secretary have been so revolting that, um, you know, unless I get some answers to the false allegations you've made against me... ...

TH: We've had correspondence with you. We've made no false allegations to anybody.

Locum: Well you have to me. You said my professional work was totally unacceptable. I've locumed in a good dozen firms and none of them have ever said anything like that to me at all and I don't believe you. You've got to prove what you said.

TH: I'm not going to discuss it. If you wish to correspond you may correspond. If you wish to take any proceedings as you've threatened to, then you're welcome to do that but I'm not going to discuss it any further.

Locum: Well I have to complain to the O.S.S. [the Office for the Supervision of Solicitors].

TH: You must make whatever complaints you feel you are able to and we shall respond to them in due course.

Locum: But you can't um... I think you're covering up.

TH: I'm not going to discuss it any further.

Locum: Because you're covering up. You can't prove what you've said.

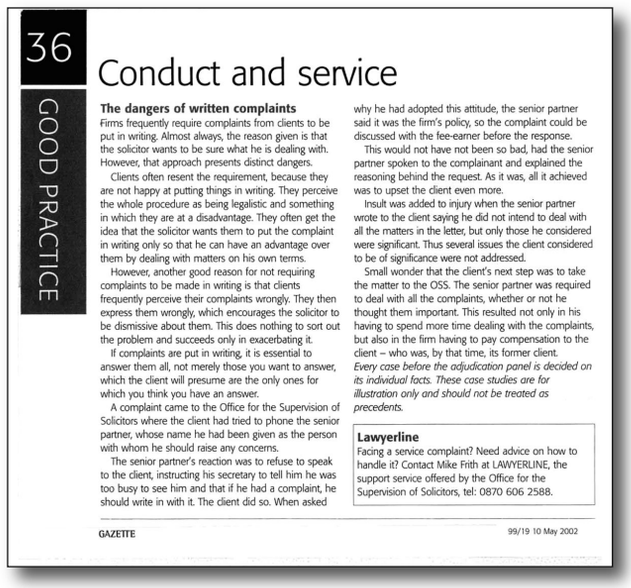
TH: Goodbye, goodbye.

Locum: And good riddance to you too.

Rhodri Rees and Tom Harrison (a former President of his local law society who in 2001 was appointed a Deputy District Judge by the Lord Chancellor) were both on the defensive and were very formal and legalistic in their answers. How ironic that only six days earlier the Law Society *Gazette* in their 'Good Practice' column did an article (see below) advising solicitors on the correct way to approach complaints from clients. Why should a complaint from a solicitor, especially a former locum, be treated any differently? In practice it doesn't matter who is making a complaint - when a solicitor or a firm of solicitors have got something to hide they often close up and continue stonewalling for as long as they can. In my case, in telephoning Rhodri Rees I had only done what Rod Webb had told me to do: phone the conveyancing partner to discuss my "concerns."

GOOD PRACTICE

Conduct and service



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GOOD PRACTICE

Conduct and service

The dangers of written complaints

Firms frequently require complaints from clients to be put in writing. Almost always, the reason given is that the solicitor wants to be sure what he is dealing with. However, that approach presents distinct dangers.

Clients often resent the requirement, because they are not happy at putting things in writing. They perceive the whole procedure as being legalistic and something in which they are at a disadvantage. They often get the idea that the solicitor wants them to put the complaint in writing only so that he can have an advantage over them by dealing with matters on his own terms.

However, another good reason for not requiring complaints to be made in writing is that clients frequently perceive their complaints wrongly. They then express them wrongly, which encourages the solicitor to be dismissive about them. This does nothing to sort out the problem and succeeds only in exacerbating it.

If complaints are put in writing, it is essential to answer them all, not merely those you want to answer, which the client will presume are the only ones for which you think you have an answer.

A complaint came to the Office for the Supervision of Solicitors where the client had tried to phone the senior partner, whose name he had been given as the person with whom he should raise any concerns.

The senior partner's reaction was to refuse to speak to the client, instructing his secretary to tell him he was too busy to see him and that if he had a complaint, he should write in with it. The client did so. When asked why he had adopted this attitude, the senior partner said it was the firm's policy, so the complaint could be discussed with the fee-earner before the response.

This would not have not been so bad, had the senior partner spoken to the complainant and explained the reasoning behind the request. As it was, all it achieved was to upset the client even more.

Insult was added to injury when the senior partner wrote to the client

saying he did not intend to deal with all the matters in the letter, but only those he considered were significant. Thus several issues the client considered to be of significance were not addressed.

Small wonder that the client's next step was to take the matter to the OSS. The senior partner was required to deal with all the complaints, whether or not he thought them important. This resulted not only in his having to spend more time dealing with the complaints, but also in the firm having to pay compensation to the client - who was, by that time, its former client.

Every case before the adjudication panel is decided on its individual facts. These case studies are for illustration only and should not be treated as precedents.

GAZETTE 10 May 2002

***

On the 19th May 2002 I wrote a letter of complaint to the Office for the Supervision of Solicitors (O.S.S.). I told them the whole story, enclosed copies of all my correspondence with Adams Harrison and finished off by saying :

> **" This is the first time I have ever made a complaint to the O.S.S. regarding the conduct of a firm I have locumed for. It is totally unacceptable to be treated like a leper and to have what I consider false and unsubstantiated allegations made against me. It goes to the core of my reputation and if Jane Bromley can speak ill of my predecessor then what can she and her colleagues be capable of saying [about me] behind my back?"**

The O.S.S. received my letter of the 19th May 2002 on the 21st May 2002 but told me they had mislaid it. So on the 14th June 2002 I sent them a copy of my letter of the 19th May 2002. The original then turned up. On the 20th June 2002 the O.S.S. replied (see overleaf):

Victoria Court
8 Dormer Place
Leamington Spa
Warwickshire CV32 5AE
Dx 292320 Leamington Spa 4
Tel 01926 820082
Fax 01926 431435
www.lawsociety.org.uk

Our Ref: ENQ/30170-2002
Your Ref:

Private & Confidential

[redacted]

The Law Society
OFFICE FOR THE SUPERVISION OF SOLICITORS

20th June 2002

Dear [redacted]

Adams Harrison

Thank you for writing to the Office for the Supervision of Solicitors.

It appears that your letter relates to a dispute with your employer. The Office cannot take up any complaint in respect of a dispute between employee and employing solicitor unless (a) evidence is produced to show that the interests of clients are being adversely affected or (b) it is alleged that a finding of a Court or Tribunal arising from the case, where no appeal is pending, contains evidence of professional misconduct.

The reason for this is that employment disputes are essentially private contractual matters. If you have not done so already, you may wish to consider seeking advice on your position by consulting a solicitor or your local Citizens Advice Bureau.

We are sorry that the Office cannot help you on this occasion, and return your letter.

Yours sincerely

Preeti Gupta
Consultant Caseworker
Office for the Supervision of Solicitors

Enc: Original letter

Direct Line: 01926 82182
Extension: 2294
Direct Fax 01926 823101
Preeti.Gupta@lawsociety.org.uk

****Please quote our above reference whenever contacting us****

I faxed the O.S.S. my reply on the 24th June 2002:

> **" I received your letter of the 20th June, but must ask you to reconsider your remarks.This matter is not just about a dispute with my employer.**
>
> **It is largely about professional misconduct by Adams Harrison and a breach of Practice Rule 13 - inadequate supervision of unqualified staff, thereby affecting the interests of clients.**
>
> **A dog would get better treatment than me at Adams Harrison; it is not up to me to go through the courts to prove misconduct by Adams Harrison. That course is optional for me.**
>
> **I have worked as a locum in about 14 firms in 3 years: some of them desperate and a few in a damn mess. I do them a favour by my rescue acts and I know a bad firm when I'm in one. I will not be brushed off that easily.**
>
> **If you don't deal with this complaint I will refer the matter to the Ombudsman and also confront this firm in person."**

On the 1st July 2002 my summons against Adams Harrison was issued by my local County Court under case number: BQ203086. On the 23rd July 2002 Adams Harrison put in their defence as follows (see overleaf):

Claim Number BQ203086

IN THE BASILDON COUNTY COURT

BETWEEN:

[redacted]

Claimant

-and-

ADAMS HARRISON (A FIRM)

Defendants

DEFENCE

---

1. It is admitted that the Defendants employed the Claimant as a locum from the 15th April 2002. Such employment was on a day to day basis. There was no minimum length of such engagement.

2. The Claimant's engagement was terminated on 17th April 2002 and he was paid for the three days of his engagement. No further sums are due to the Claimant.

3. Further or in the alternative if which is denied there was any minimum period of the contract between the Claimant and the Defendants it was an implied term of such contract that the Claimant

   a) would carry out the terms of his engagement using reasonable skill and ability
   b) would perform such reasonable obligations as were imposed upon him by the Defendants such instructions to be given either by one of the Partners of the Defendant firm or by one Jane Bromley the Senior Conveyancing Executive employed at the Defendants' Saffron Walden Office

4. In breach of such obligations the Claimant failed to carry out the work to the required standard and/or failed to comply with reasonable instructions given to him as a result

of which the Claimant's contract with the Defendants was terminated by the Defendants on 17th April 2002.

5. It is denied that the Claimant is entitled to any exemplary damages as alleged by him or at all.

I believe that the facts stated in this Defence are true

Signed _____ Dated 17/7/02

Paul Gregory Cammiss
Partner

By inserting paragraphs 3 and 4 in their Defence, Adams Harrison had done me an enormous favour. They would now have to prove their claims. And I knew they could not.

The Law Society wrote back to me on the 29th July 2002:

Victoria Court
8 Dormer Place
Leamington Spa
Warwickshire CV32 5AE
Dx 292320 Leamington Spa 4
Tel 01926 820082
Fax 01926 431435
www.lawsociety.org.uk

Our Ref: ENQ/30170-2002/PG
Your Ref:

Private & Confidential

[redacted]

The Law Society
OFFICE FOR THE SUPERVISION OF SOLICITORS

29 July 2002

Dear Mr [redacted]

Complaint against Adams Harrison Solicitors

I refer to the telephone conversation we had on the 17 July 2002 when I thanked you for sending to me again the enclosures that you had sent to this Office in your letter of the 19 May 2002.

I have reviewed the file again and spoken to a senior colleague and feel that in light of your allegation that the solicitors are in breach of Practice Rule 13, we will forward a copy of your letter of complaint to our Regulation Unit. Our Regulation Unit has the power to consider how a firm supervises staff members. They will consider your matter and consider what action they would take in the circumstances.

I understand that you have now brought legal action against the solicitors and I have informed the Regulation Unit of this. Our file however remains closed as we are unable to assist in any employer/employee dispute.

Yours sincerely

P Gupta (Mrs)
Consultant Caseworker
Customer Assistance Unit

Direct line: 01926 822104
Extension: 2642
Direct Fax: 01926 823101
preeti.gupta@LawSociety.Org.UK

FF PG/ 955388 SL

Practice Rule 13, supplied directly to me by the Law Society in March 2003, stated as follows:

Practice Rule 13 (Supervision and Management of a practice)

"(1) The principals in a practice must ensure that their practice is supervised and managed so as to provide for:

(a) compliance with principal solicitors' duties at law and in conduct to exercise proper supervision over their admitted and unadmitted staff;

(b) adequate supervision and direction of clients' matters;

(c) compliance with the requirements of Sections 22(2A) and 23(3) of the Solicitors Act 1974 as to the direction and supervision of unqualified persons;

(d) effective management of the practice generally.

(2) Every practice must have at least one principal who is a solicitor qualified to supervise.

(3) (a) Except as provided in (b) below, every office of the practice must have at least one solicitor qualified to supervise, for whom that office is his or her normal place of work.

(b) Without prejudice to the requirements of paragraph (1) of this rule, an office which undertakes only property selling and ancillary mortgage related services as defined in rule 6 of these rules, survey and valuation services, must be managed and supervised to the following minimum standards:

(i) The day-to-day control and administration must be undertaken by a suitably qualified and experienced office manager who is a fit and proper person to undertake such work; and for whom that office is his or her normal place of work; and

(ii) the office must be supervised and managed by a solicitor qualified to supervise, who must visit the office with sufficient frequency and spend sufficient time there to allow for adequate control of and consultation with staff, and if necessary consultation with clients.

(4) This rule is to be interpreted in the light of the notes, and is subject to the transitional provisions set out in note (k).

(5) (a) This rule applies to private practice, and to solicitors employed by a law centre.

(b) The rule also applies to other employed solicitors, but only:

(i) if they advise or act for members of the public under the legal aid scheme; or

(ii) if, in acting for members of the public, they exercise any right of audience or right to conduct litigation, or supervise anyone exercising those rights."

The notes relating to Practice Rule 13 appear in the Guide to the Professional Conduct of Solicitors 1999 (8th Edition) at pages 114 to 117.

The notes relating to Practice Rule 13 say:

"Supervision" refers to the professional overseeing of staff and the professional overseeing of clients' matters.

The branch office of Adams Harrison in Saffron Walden was quite substantial. It did conveyancing, wills and probate and family law. Practice Rule 13 (3) (a) applied to this office. Jane Bromley was not a solicitor. She was a legal executive and therefore could not supervise the office in accordance with Practice Rule 13 (3)(a). The one solicitor they did have at this

branch was a family lawyer and knew nothing of conveyancing. The assistant practice manager, Rod Webb, knew nothing of conveyancing either. How therefore could adequate supervision take place of the unqualified conveyancing staff at the Saffron Walden branch? Read on.

On the 29th July 2002 I wrote to the Basildon County Court enclosing my completed Allocation questionnaire. I told the Court I intended to call as witnesses Rod Webb, Jane Bromley, her secretary Lucy Mizon, Rhodri Rees and Tom Harrison. Importantly I had asked that they bring to court all the files I had worked on and the computer printouts recording my time spent on matters. They would then have to prove to the Court that my professional work was "totally unacceptable", or at least was in accordance with paragraphs 3 and 4 of their Defence submission.

On 29th July 2002 Adams Harrison wrote to me a 'without prejudice' letter offering to pay me a sum equal to an extra two days work in full and final settlement of all my claims against them relating to my employment with them. As they had not withdrawn the serious and false allegations in paragraphs 3 and 4 of their Defence, I ignored their letter. Above all else I had to restore my reputation by having a Court hearing. If not, for years afterwards they would have crowed about it to everyone just how "useless" I was.

Following my short attendance at Adams Harrison I had spent 16 straight weeks at a Hertfordshire firm. At 14 weeks I was asked to stay on for another fortnight. I had been covering for both the senior partners as well as having my own workload. Two secretaries attended to my work and they were first class. For the last four days of my assignment I had the tricky task of dealing with Jane Bromley at Adams Harrison for a client's house purchase of a property in Essex. The file had been handed to me by the senior partner who had gone away for a short holiday. It turned out to be quite a triumph for me. It came to Friday 30th August 2002 and I was due to leave the firm that day. So I had to make a determined effort to resolve the matter with Jane Bromley. After corresponding with her the previous day, my secretary handed me a telephone note:

TELEPHONE NOTE

Date: 30.8.02

Re:

Jane Bromley telephoned. She has asked for the file to be dealt with by another solicitor. She has her reasons for not dealing with .

Jane Bromley also mentioned that contacted White & Co., and their solicitor without her consent.

I said I would pass on the above.

SH

I didn't care for Jane Bromley's machinations. I didn't of course wish to speak to her but I was happy to correspond. My boss was on holiday and I was the only solicitor present at the firm who was familiar with the file - so I told this to Jane Bromley in one of my faxed letters of 30th August 2002. I also made clear my position regarding the sale/purchase transaction itself. I had to correct the "experienced" Jane Bromley on some fundamental points regarding planning permissions, building regulation consents and the level of cover required for indemnity insurance for a lack of building regulation consent. I also had to convince her that before I could exchange contracts she simply had to deal with two outstanding matters of profound importance: providing proper evidence, firstly, as to the extent of her client's unregistered land and secondly as to a right of way at the bottom of the garden. It wasn't a straightforward matter and it needed further research that Jane Bromley couldn't be bothered to perform. I had to do a good bit of the research myself by phoning third parties. My clients were pensioners, had a related sale and were desperate to move after months of delay. They in fact wanted to exchange contracts that same day - Friday - and complete the following Monday. But we had reached the end of the day and time had run out and I would not exchange without Jane Bromley resolving the outstanding issues to my satisfaction. She would in fact have needed a few more days to do this. I was under considerable pressure from my clients to exchange contracts. But I told them why I could not and that I would have to speak to the senior partner after the weekend when he returned from holiday, to tell him my concerns. So, on Monday the 2nd September 2002 I travelled up to Hertfordshire to explain to the senior partner that the unresolved matters, concerning the right of way and precise extent of the property our clients were buying, prevented me from exchanging contracts. But the boss decided the matter had gone on long enough and he was satisfied that all was in order to enable exchange of contracts to take place later that day. I bade him a fond farewell.

I went back to visit my former colleagues in Hertfordshire six months later and asked one of them what had happened on that Jane Bromley transaction. The answer was that my boss did exchange contracts and simultaneously complete on 2nd September 2002, as he'd promised. But H.M. Land Registry had refused to register the clients as the new owners of the property due to a defective title. Two matters needed resolving: the right of way and the question of the full extent of the property on the boundary! Jane Bromley at Adams Harrison then had to deal with those matters which she proceeded to do to the satisfaction of H.M. Land Registry. Of course the only sure way a Buyer’s solicitor can guarantee getting a good title is by investigating all aspects of the property before exchanging contracts. Hearing this news was a sweet moment for me and I savoured it for a very long time. Once again my way of doing things was vindicated and once again Jane Bromley's deficiencies were exposed. A few weeks into my assignment with this Hertfordshire firm I had in fact had an opportunity to tell the senior partner that I was suing Adams Harrison and explained Jane Bromley's bloody-mindedness when I had worked with her. My boss then related to me that on the same (aforementioned) transaction, that I was later to handle, he had been furious with Jane Bromley for not telling him straightaway about certain bankruptcy aspects relating to her client's affairs. He discovered these matters some time into the deal by which time his clients had their hearts set on buying the property so he then had to continue with the transaction. This involved considerable delay and hard work and a risk that his clients related sale would fall through if their own purchasers lost patience.

On the 16th September 2002 the Allocation Directions Hearing took place at Basildon County Court. Paul Cammiss, the litigation partner for Adams Harrison, argued that my claim should be struck out there and then on the grounds that I was not an employee of the firm but a self employed locum who under Badenoch & Clark's terms and conditions could be dismissed at will. I told the Deputy District Judge that at the main hearing I would argue that I was

entitled to at least a week's notice and that I was an employee of the firm as that was precisely how the Inland Revenue viewed my employment status when I recently worked at a firm in Southend. The Inland Revenue gave me a P45 when I'd finished my fortnight's work in Southend. The Judge took this on board and also told Paul Cammiss that as he'd argued in his firms' Defence pleading that my work was sub-standard then his firm would have to substantiate this particular claim at the main hearing. Inspite of this, when I spoke to Paul Cammiss outside the Courtroom afterwards, he nevertheless thought that at the main hearing the District Judge would not in fact force him to substantiate his firm's allegations about the standard of my work but he would rely on the court dismissing my claim for compensation by proving that I could be dismissed at will. The allegation that my work was sub-standard would remain on his pleading and would not be withdrawn by him. He was confident the District Judge would prevent me requiring the allegation to be either substantiated or withdrawn. So the next day I sent Paul Cammiss the following fax:

One page fax to:

Paul Cammiss at Adams Harrison, Solicitors (01440) 706820

From [redacted]

20th September 2002

I refer to our meeting at Basildon County Court last Monday.

It is clear to me that you are intent on avoiding substantiation on comments raised in Rod Webb's letter to me of 26th April 2002.

What I intend doing therefore is confronting in person Jane Bromley, her secretary and Rod Webb at your Saffron Walden office and Tom Harrison and Rhodri Rees at your Haverhill office. If you read my letter to the O.S.S 19th May 2002 you will see the basis of my complaint.

I have written again to the O.S.S to inform them of my proposed course of action. If they leave it to my discretion I will proceed in my own time to visit your offices.

[redacted]

Copy to: Rodd Webb FAX (01799) 526130

He replied on the 23rd September 2002:

Adams HARRISON solicitors

52a High Street, Haverhill, Suffolk CB9 8AR
Telephone: (01440) 702485 Fax: (01440) 706820 Dx: 80350 Haverhill
Website: www.adams-harrison.co.uk

PRIVATE & CONFIDENTIAL

Your Ref:

Our Ref: PGC/CP/

E-Mail: P.Cammiss@adams-harrison.co.uk

23 September 2002

Dear Mr.

I have received your fax of the 20th September 2002. Under no circumstances are you to enter our offices either at Saffron Walden or at Haverhill. I have given my staff strict instructions that should you attempt to enter the offices you are to be immediately required to leave.

Should you attempt to pester or harass our staff the police will be asked to take action and I will consider referring details of your conduct to the OSS.

Yours faithfully,

P. G. CAMMISS

Partners:
Tom Harrison *†
Rhodri Rees
Paul Cammiss*
Melanie Pratlett♦
Amanda Brown•

Consultant:
Michael J. Morris

Solicitors:
Shoshana Goldhill
Jennifer Green
Elisabeth Pacey

Executives:
Catherine Buck
Sarah Bairstow
Jane Bromley
Kim Dalby

Practice Manager:
Dennis Wright

Also at:
Haverhill

Telephone:
01440 702485

* Duty Solicitor

† Personal Injury Panel

♦ Society of Trust and Estate Practitioners

• Mediator

INVESTOR IN PEOPLE

Community Legal Service

Criminal Defence Service

I responded on the 24th September 2002:

One page fax to:

P. G Cammiss Esq. of Adams Harrison from [redacted] Esq.

Date: 24th September 2002

I have received your letter of 23rd September 2002.

I have been in touch with the O.S.S. myself now for several months and in due course I expect them to be in touch with your firm over its conduct.

I spoke to the O.S.S again this morning having written to them on 20th September. The upshot is that I am confident there is nothing you can do if I choose to confront Jane Bromley, her secretary and Rod Webb over their conduct; repulsive conduct. Rhodri Rees and Tom Harrison at your own office deserve also to be put on the spot.

So please do not use the words “pester or harass our staff”, when your staff started the matter by lying and covering up. Alternatively it may come to be that your staff can be met outside your offices. Call the police. They will do nothing and I doubt very much whether the O.S.S. will help you. Why don’t you call them today?

[redacted]

Copy: Rod Webb, Saffron Walden office, Adams Harrison.

The Law Society wrote to me on the 9th October 2002:

Victoria Court
8 Dormer Place
Leamington Spa
Warwickshire CV32 5AE
Dx 292320 Leamington Spa 4
Tel 01926 820082
Fax 01926 431435
www.lawsociety.org.uk

Our Ref: ENQ/30170-2002/PG
Your Ref:

Private & Confidential

The Law Society
OFFICE FOR THE SUPERVISION OF SOLICITORS

9 October 2002

Dear Mr

Complaint about Adams Harrison

Thank you for your letter of 2 September 2002.

Please note that our file will remain closed as the matter is currently in Court. However, should the Court comment on the evidence that you have put before them, I would be grateful if you could write to us and we can consider what further action we need to take. Until that point, there is little the office can do and the file remains closed.

I understand that the Regulation Unit may be looking into the matter. I am sorry that I am unable to confirm to you whether you should confront Adams Harrison in person regarding what they allege as it is for the Courts to consider the evidence that the Solicitors submit. You may wish to take independent legal advice in that respect.

Our file remains closed.

Yours sincerely

P
Consultant Caseworker
Customer Assistance Unit

Direct line: 01926 822104
Extension: 2642
Direct Fax: 01926 823101
preeti.gupta@LawSociety.Org.UK

****Please quote our above reference whenever contacting us****

FF PG/ 1019629 ks3

When the Law Society wrote, "Thank you for your letter of 2 September 2002" they meant, "20 September 2002" as that was the date of my letter to them.

Adams Harrison had now been in touch with Badenoch & Clark who had sent them a copy of their latest terms and conditions for temporary staff, effective from 1st February 2002. I had never received these from Badenoch & Clark. Under clause 3 (a) of those terms and conditions the firm of solicitors taking on the locum were allowed to terminate the assignment at will. What I had been relying on was a previous set of terms and conditions sent to me when I'd first started out with Badenoch & Clark which, I argued, should still apply to my assignment with Adams Harrison. At that time Badenoch & Clark operated a PAYE system for locums - they themselves deducted the tax and paid the locum a net salary. They were reimbursed by the Law firm. Before I went to Adams Harrison, Badenoch & Clark had abandoned this burdensome PAYE system and allowed solicitors' firms to pay their locum a gross salary direct. As per the Terms and Conditions for Temporary Staff that I had, clause 10 allowed the locum to terminate his assignment on one week's notice to Badenoch & Clark. There was provision allowing for Badenoch & Clark themselves to terminate the locum's assignment at will, but no provision for the firm of solicitors to terminate the locum's assignment. So I argued in my written pleadings to the court that by implication Adams Harrison should have given me a weeks notice. It was worth a try. If I had been a long term employee I would have had certain of the following rights vis-a-vis Adams Harrison, but of course on short term assignments they were never going to apply to me:

E. DUTY TO TREAT EMPLOYEE WITH RESPECT

47. Implied term of trust and respect. In a contract of employment there is an implied term that the employer will not, without reasonable and proper cause, conduct himself in a manner calculated[1] as likely to destroy or seriously damage the relationship of confidence and trust[2] between employer and employee[3].

The kinds of behaviour which may breach the term of trust and respect are entirely variable, and in each case a question of fact for the tribunal, and include:

(1) abusive and false accusations[4];
(2) intolerable behaviour and bad language[5];
(3) unwarranted docking of pay[6];
(4) failure to give the employee necessary support[7];
(5) unmerited reprimanding in humiliating circumstances[8];
(6) persistent attempts to vary conditions of employment[9];
(7) seducing the employee[10];
(8) failure to follow established procedures[11];
(9) failure to take seriously a complaint of sexual harassment[12].
(10) sudden withdrawal of an ex gratia loan by the employer[13];
(11) failure to tell an employee of complaints made against him[14].

The implied term has also been applied in the area of occupational pension schemes[15].

The implied term of trust and respect in the contract of employment has been held to have overriding effect, that is to say that, even where the employer has express power to act in a particular way under the terms of the contract, he must exercise that power in the light of his overall duty of trust and respect, with the result that, if he does not do so, the employee may be contractually entitled to leave and claim constructive dismissal, in spite of the employer's claim that he was merely exercising his contractual rights[16].

1 The behaviour of the employer complained of need not be deliberate: *Post Office v Roberts* [1980] IRLR 347, EAT.
2 As to the employee's duty of good faith see paras 54, 58 post.

Source: Halsburys Laws

I had also paid for witness summonses for the five members of Adams Harrison involved in the case to come down to the Court to explain themselves, but I refused to pay their expenses. I was not a litigator and I did not think that I was obliged to pay their "expenses" which I somehow imagined meant a fixed fee for each witness. But I was wrong: "expenses" meant only travelling expenses which I was in fact obliged to pay. So Adams Harrison petitioned the Court asking that the 'Saffron Walden five' be excused from attendance as I had not tendered their travelling expenses. The Court agreed and by way of an Order dated 25th October 2002 set aside the five witness summonses. The next day I wrote to the Court explaining my confusion and sent them £40 cash for Adams Harrison's petrol expenses, when presumably they could all travel down together in the same car. But my payment was rejected as the Order to set aside had already been made and I would have to put in another application requiring the five witnesses attendance. There was now no time to do this. I had been so looking forward to cross-examining Tom Harrison, Rhodri Rees, Rod Webb, Jane Bromley and her secretary. I'd had them on the rack but due to my inexperience in County Court matters they had wriggled out of attending. My £40 was lost to the system.

On the 31st October 2002 I met up with Paul Cammiss, the litigation partner at Adams Harrison, for the hearing at Basildon County Court scheduled for 2 p.m. Before we went in to see the judge, Paul Cammiss said he would now withdraw his firm's allegations about the standard of my professional work, shyly confessing that his firm had no evidence to support their claims; and that we would see what the judge's view was regarding the question of compensation for the remainder of my fixed term assignment. I agreed and we went in to face the judge. Paul Cammiss duly withdrew his firm's false allegations - they were unable to prove them as I had known all along they would be unable to do. The judge noted this in her records, but decided that Badenoch & Clark's February 2002 'Terms of Business - Temporary and Contract Workers' applied, allowing Adams Harrison to dismiss me at will. My claim for outstanding monies was dismissed. Travelling costs for Paul Cammiss of £100 were awarded to him by the judge (in spite of my vindication regarding the standard of my professional work). I had no intention of paying them. I went home and wrote straight away to the O.S.S. telling them of the County Court judgement and reminding them that I therfore had no remedy as a locum with the O.S.S. or the Courts against false accusations. That Adams Harrison withdrew paragraphs 3 and 4 of their Defence relating to my standard of work was a victory - but a very lucky one. If they had omitted paragraphs 3 and 4 and just relied instead only on paragraph 2 - that I was only entitled to be paid for the days I had actually worked - they would have won anyway. That Adams Harrison had withdrawn serious allegations that they could not prove was evidence enough for me that the allegations were false. And that amounted to unprofessional conduct by Adams Harrison. I asked the O.S.S. to look into the matter further. If what Adams Harrison had said regarding my professional work was true then they should have been happy to prove it in Court. They were lawyers and knew that by making direct allegations in a Court pleading they would have to have the evidence to support their claims. As they didn't have the evidence to begin with it was a malicious manoeuvre on the part of Adams Harrison.

I then received Basildon County Court's Judgement (see overleaf):

Judgment for Defendant

In the BASILDON County Court	
Case No. *Always quote this*	BQ203086
Claimant	
Defendant	Adams Harrisons
Claimant's Ref.	
Defendant's Ref.	

To the Claimant

[redacted]

BASILDON COMBINED COURT

Before District Judge COLLIER sitting at Basildon County Court, The Gore, Basildon, Essex, SS14 2BU

Upon hearing the Claimant in person and Upon Hearing the Defendant's Representative

District Judge COLLIER **Has ordered** that

1. The Application dated 28 October 2002 is dismissed.
2. The Claimant's claim is dismissed.
3. I order the Claimant to pay the Defendant £100.00 travelling expenses.
4. Judgment be entered for the defendant and that the claimant do pay the sum of £100.00 for the defendant's travelling expenses.

District Judge COLLIER **Has ordered** that the claimant pays to the defendant the said sum by 14 November 2002.

Dated: 31 OCTOBER 2002

Take Notice

To the claimant

If you do not pay in accordance with this order, your goods may be removed and sold or other enforcement proceedings may be taken against you. If your circumstances change and you cannot pay, ask the court office about what you can do.

When judgment is for £5,000 or more, or is in respect of a debt which attracts contractual or statutory interest for late payment, the defendant may be entitled to further interest.

Address for Payment

Adams Harrison
52a High Street
Haverhill
Suffolk
CB9 8AR
DX 80350 HAVERHILL

How to Pay

- **PAYMENT(S) MUST BE MADE to the person named at the address for payment quoting their reference and the court case number.**
- **DO NOT bring or send payments to the court. THEY WILL NOT BE ACCEPTED.**
- You should allow at least 4 days for your payment to reach the defendant or his representative.
- Make sure that you keep records and can account for all payments made. Proof may be required if there is any disagreement. It is not safe to send cash unless you use registered post.
- A leaflet giving further advice about payment can be obtained from the court.
- If you need more information you should contact the defendant or his representative.

The court office at BASILDON COUNTY COURT, THE GORE, BASILDON, ESSEX, SS14 2BU. is open between 10 am and 4 pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the case number. Tel: 01268 458000

Judgment for defendant

Produced by: June
N289y

No mention had been made in the Judgement of Adams Harrison having withdrawn paragraphs 3 and 4 of their Defence. What a travesty.

On the 3rd February 2003 Adams Harrison wrote to me:

Adams
solicitors HARRISON

52a High Street, Haverhill, Suffolk CB9 8AR
Telephone: (01440) 702485 Fax: (01440) 706820 Dx: 80350 Haverhill
Website: www.adams-harrison.co.uk

[redacted]

Your Ref:

Our Ref: PGC/MB

E-Mail: P.Cammiss@adams-harrison.co.uk

3 February 2003

Partners:
Tom Harrison *†
Rhodri Rees
Paul Cammiss *
Melanie Pratlett ♦
Amanda Brown •

Consultant:
Michael J. Morris

Solicitors:
Shoshana Goldhill
Jennifer Green
Elisabeth Pacey

Executives:
Catherine Buck
Sarah Bairstow
Jane Bromley
Kim Dalby

Practice Manager:
Dennis Wright

Also at:
Haverhill

Telephone:
01440 702485

* Duty Solicitor
† Personal Injury Panel
♦ Society of Trust and Estate Practitioners
• Mediator

INVESTOR IN PEOPLE

Community Legal Service

Dear Sir,

Your claim against ourselves

I am obliged to remind you that you are liable to pay £100 for our travelling expenses under the order made on the 31st October, a copy of that order being enclosed. That sum has not yet been received and if it is not received within the next 7 days we will take further enforcement action.

Yours faithfully,

ADAMS HARRISON

Enc

I ignored the letter.

On the 5th March 2003 Basildon County Court gave me notice of a pending visit from the bailiffs for Adams Harrison's unpaid travelling expenses:

Notice of Issue of Warrant of Execution

Claimant **Sol Code**

Adams Harrisons

Defendant

[redacted]

In the

BASILDON

County Court

Court Code 153

Case Number	BQ203086
Warrant Number	Q0000514
Local Number	
Claimant's Ref.	

Quote all the above numbers on correspondence

Urgent

To the Defendant

You have not made payment under the judgment as you were ordered. The claimant has therefore asked for a warrant to be issued to the bailiff to seize and sell your goods. Unless you pay the amount due to the county court **before 16 March 2003 the bailiff will call** [redacted] **may remove your goods for sale at public auction.** This may mean that you will have to pay further costs.

Total to Pay (including fees) on this warrant £ 127.25

Balance Outstanding (after payment of this warrant) £ 0.00

Dated 05 March 2003

Send or take your payment and this form to the court office at

Basildon County Court
The Gore
Basildon
Essex
SS14 2EU

BAILIFFS OFFICE IS OPEN FROM 8:15 AM TO 10:00 AM
TELEPHONE NUMBER 01268–458043
FAX NUMBER 01268–458100

Amount Enclosed £

Enter the amount that you are sending to the court

Payments Into Court

You can pay the court by calling at the court office which is open 10 am to 4 pm Monday to Friday
You may only pay by:

* cash
* banker's or giro credit
* cheque supported by a cheque card
* cheque (unsupported cheques may be accepted subject to clearance, if the Chief Clerk agrees)

Cheques and drafts must be made payable to HM Paymaster General and crossed.

Please bring this form with you

By Post
You may only pay by:

* postal order
* banker's or giro draft
* cheque (cheques may be accepted subject to clearance, if the Chief Clerk agrees)

The payment must be made out to HM Paymaster General and crossed. This method of payment is at your own risk. And you must:

* pay the postage
* enclose this form
* enclose a self addressed envelope so that the court can return this form with a receipt.

The court cannot accept stamps or payments by bank and giro credit transfers

Note:
You should carefully check any future forms from the court to see if payments should be made directly to the claimant – where judgment was entered for more than £5000 or includes a sum in respect of contractual or late payment interest, the claimant may be entitled to further interest. If you pay the total to pay on the warrant, together with the balance outstanding, by the date shown above, the claimant will not be entitled to further interest.

I wrote back to the Court on the 10th March 2003:

[redacted]

10 March 2003

Dear Sirs,

Case No.BQ203086/Warrant No.Q0000514

I refer to the Judgement dated 31 October 2002 and the Warrant of Execution dated 5 March 2003.

The Judge made a mistake in her Judgement. My claim was not in fact totally dismissed as the defendant, Adams Harrison, on the day of the hearing, withdrew paragraphs 3 and 4 of their Defence, which satisfied me that the firm were liars. Thus the travelling expenses should not in fact be allowed. Moreover, the fact of this withdrawal of their (malicious and false) allegations as per paragraphs 3 & 4 of their Defence should have been referred to in the Judgement. It took Adams Harrison until the day of the hearing to concede that they were unable to offer any evidence to support their claims in paras. 3 & 4 which basically was the reason I brought the claim in the first place.

I tried very hard to get Adams Harrison to substantiate their claims even before issuing my Summons and again several times before the hearing. Simply for them to say sorry for the falsehoods uttered by their unqualified staff was beyond them. Their deceitful conduct took a long time to expose: right up to the hearing day when they settled. They should not get any travelling expenses.

I am still in correspondence with the Office for the Supervision of Solicitors to try and ensure that locums are not left high and dry when bloody –minded solicitors firms make false allegations.

Yours faithfully,

Frederick Wright

Adams Harrison, spiteful to the end, then sent round the Court bailiff to enforce payment. I happened to be at my mother's house when the bailiff came - for in all my correspondence on the case I had put my mother's address. I told the bailiff the property was my mother's and nothing in the house belonged to me. The bailiff left. I never heard from Adams Harrison again. Not on this matter, anyway!

On the 31st March 2003 Basildon County Court replied:

COURT SERVICE

THE COURT SERVICE
SOUTH EASTERN CIRCUIT
BASILDON COUNTY COURT
The Gore
Basildon
Essex SS14 2BU
DX NO.97633 Basildon 5
TEL. 01268 458000 FAX. 01268 458100
Minicom VII (Gateshead) 0191 4781476

[redacted]

Your ref:

Our ref:

Dear Sir/Madam,

31 March 2003

Re: [redacted] **-v- Adams Harrisons**
Case No.: BQ203086

Your letter dated 10 March 2003 and the file were forwarded to the District Judge who has commented as follows:

"No action is necessary. The Claimant was present on 31.10.02.

If he maintains the Order is wrong he should have lodged an Appeal." Yours faithfully

C Campbell

Mrs C Campbell
Enforcements Section
Ext

I responded to the Court on the 25th June 2003:

25th June 2003

To Mrs C. Campbell

Dear Madam,

Case no: BQ203086 [redacted] **v. Adams Harrison**

I refer to your letter of 31st March and note what you say. I do not find it necessary to appeal against the Order, but it was agreed in Court that paragraphs 3 & 4 of Adams Harrison's defence would be withdrawn and presumably the judge noted this down. I must have this fact noted on the judgement itself.

[redacted]

The Court replied on the 15th July 2003:

COURT SERVICE

THE COURT SERVICE
SOUTH EASTERN CIRCUIT
BASILDON COUNTY COURT
The Gore
Basildon
Essex SS14 2BU
DX NO.97633 Basildon 5
TEL. 01268 458000 FAX. 01268 458100
Minicom VII (Gateshead) 0191 4781476

[redacted]

Your ref:

Our ref:

15 July 2003

Dear Sir/Madam,

Re: [redacted] **-v- Adams Harrisons**
Case No.: BQ203086

Thank you for your letter dated 25th June 2003.

The District Judge has considered your comments regarding the Order of 31st October 2002 and advises that it accords with the District Judge's notes.

Yours faithfully

T Walton

Mrs T Walton
Court Section
Ext 01268 458020

At last! Official acknowledgement by the judge of Adams Harrison's climbdown. District Judge Collier was, however, careful not to overtly or indeed covertly condemn her fellow establishment captain, Tom Harrison, at any time.

On the 21st March 2003 Hazel Reeves at the O.S.S. wrote me a long letter. She told me that under Practice Rule 13 (see above) Jane Bromley *was* in fact qualified to supervise the conveyancing department at the Saffron Walden office and did not have to be a solicitor. Practice Rule 13(4) mentioned certain "transitional provisions set out in note (k)" which were to apply to the supervision process. I looked these provisions up for myself much later to discover that under a former version of Rule 13 of the Solicitors Practice Rules 1990, Rule 13(1)(b)(ii) stated that a solicitor's (branch) office could be "managed" by "a Fellow of the Institute of Legal Executives confirmed by the Institute as being of good standing and having being admitted as a Fellow for not less than three years."

Hazel Reeves also said there was nothing the O.S.S. could do about any of my complaints against Adams Harrison and closed the file. In particular that Adams Harrison did not breach Law Society guidelines when I was asked to dictate letters in the name of another and did not amount to Adams Harrison not having acted in the best interests of their clients or compromising those interests. That it was their "style of management" and did not amount to inadequate supervision. (Jane Bromley just did not want her existing clients to know that a new locum was working on her files: which was a direct breach of Practice Rule 15 and was certainly not in the best interests of her clients). And further that not being able to read and check my own dictated letters was not something the Office for the Supervision of Solicitors was able to take up as a matter of professional misconduct.

Hazel Reeves said I could appeal to the Legal Services Ombudsman. I thought Hazel Reeves had misread the situation and wrote to her saying so. But she was right in one respect - a supervising solicitor, she told me over the phone, did not in fact have to know anything of the legal discipline practiced by the staff member being supervised. This much was specifically confirmed to me, additionally, by the Law Society's Ethics advisor. It made the supervisory function very superficial as far as I was concerned. But the understandable reasoning behind this approach was that in small firms or small branches where, say, only one lawyer for each discipline practiced it would be impossible for the supervising lawyer to have any meaningful knowledge of the other lawyer or lawyers' discipline(s). Supervision was thus only possible up to a point. So many rules! Yet for me the way Jane Bromley went about things was sloppy practice. And I was not going to lose sight of the wood for the trees in correspondence with the Law Society. (See below for more correspondence on Practice Rule 13). By the Solicitors Code of Conduct 2007, Rule 13 was replaced by Rule 5 which was a more comprehensive version of how law firms were to manage themselves. A legal executive could not "supervise" but could "manage" an office. The new rule would not have helped me with the kind of problems I encountered at Adams Harrison.

On the 27th March 2003 I wrote a seven page letter to the Legal Services Ombudsman in Manchester. The Ombudsman herself replied as follows (see overleaf):

LEGAL SERVICES OMBUDSMAN

3rd Floor
Sunlight House
Quay Street
Manchester M3 3JZ
Tel: 0161 839 7262
Fax: 0161 832 5446
DX 18569 Manchester 7
E-mail: lso@olso.gsi.gov.uk
Website: www.olso.org
Lo-call Number: 0845 6010794

Our Reference: 26756

Confidential

[redacted]

30 April 2003

Dear Mr [redacted]

Further to my Office's previous correspondence with you, we have now received the file from the Office for the Supervision of Solicitors (OSS) relating to your complaint to them about Adams Harrison Solicitors.

On carrying out a preliminary review of the file, it has become evident that your complaint relates, essentially, to an employment dispute between lawyers. In my view, the intention of the relevant provisions of the Courts and Legal Services Act 1990 is to create an Ombudsman's scheme which offers protection to the consumers of legal services, rather than practitioners. I consider that practitioners have other means at their disposal which they can use to resolve disputes with other lawyers.

I am therefore exercising my discretion, under the terms of section 22(4) of the Courts and Legal Services Act 1990 not to investigate the allegation you have made about the way in which the OSS dealt with your complaint. I am returning the tape which you sent with your application with this letter.

Yours sincerely

Zahida Manzoor CBE
Legal Services Ombudsman

enc

I replied to Zahida Manzoor on the 1st May 2003:

Fax + Post

Your Ref: 26756 1st May 2003

Dear Mrs Manzoor,

Thank you for your letter of 30th April 2003.

The complaint I made about Adams Harrison may well have the convenient label of an employment dispute, but if you read the detail of my last letter you will see that in fact the interests of the consumer - the client - are directly affected.

Practice Rule 15 was breached: the client must know which fee earner is acting for him. Via Adams Harrison's breach, proper client care was not exercised and total deceit was practised on me.

Please inform me what 'other means' practitioners have at their disposal to resolve disputes with other lawyers. I spent months going through the County Court only to find that locums have no rights whatsoever: my case was dismissed.

I look forward to hearing from you as it is not right that a firm such as Adams Harrison can abuse locums at will, make false allegations and damage the clients interests.

Yours sincerely,

I wrote to Hazel Reeves at the Office for the Supervision of Solicitors on the 6th May 2003:

Fax to Hazel Reeves From [redacted]

May 6th 2003

Subject: Adams Harrison

Your Ref: REG/14824 - 2002/ HR

I refer to my letter of 22nd March.

The Legal Services Ombudsman has the file now but I wrote to her to say that Practice Rule 15 has been breached by Adams Harrison. They were required to tell clients that "the new locum is now the fee earner dealing with the matter." They didn't and compounded their failure by lies about my conduct.

It was clear from previous correspondence with you that Rule 15 was breached by Adams Harrison, although I admit I did not quote the actual rule itself.

My case only became an employment dispute because of Adams Harrison's breach of Rule 15 and their failure also to have their legal executive deal in an open manner with me - hence proper supervision under rule 13 not having been observed.

Again, supervision by a solicitor who knows nothing of conveyancing is not 'adequate supervision' of unqualified staff- Jane Bromley and Rod Webb (the assistant practice manager).

I believe I have no rights whatsoever as a locum to overcome the behaviour of the likes of Adams Harrison if you stand by your decision of 21st March. Given the number of firms I personally rescue from their dilemmas in my work as a locum I expect protection against bad practice and deceit.

[redacted]

On the 6th May 2003 Simon Entwistle at the office of the Legal Services Ombudsman wrote to me:

LEGAL SERVICES OMBUDSMAN

3rd Floor
Sunlight House
Quay Street
Manchester M3 3JZ
Tel: 0161 839 7262
Fax: 0161 832 5446
DX 18569 Manchester 7
E-mail: lso@olso.gsi.gov.uk
Website: www.olso.org
Lo-call Number: 0845 6010794

Our Reference: 26756

Confidential

[redacted]

06 May 2003

Dear Mr [redacted]

Thank you for your letter dated 1 May 2003. I am replying on the Ombudsman's behalf.

While I note your comments on the circumstances giving rise to your complaint, the Ombudsman has explained her view of the intention of the relevant legislation. It is not evident, from the circumstances you have outlined, that clients have been directly affected by the circumstances which you describe.

This Office cannot advise you as to the action which might be available to you to enable you to pursue your concerns at this stage; I note that you have already pursued unsuccessful action through the courts. This being the case it is quite possible that the Ombudsman could not, in any event, have investigated your case as she is precluded by the Courts and Legal Services Act 1990 form considering matters which have been considered by the courts.

I am sorry that I cannot be more helpful.

Yours sincerely

Simon D C Entwisle

Simon D C Entwisle
Operations Director

On the 23rd May 2003 Hazel Reeves at the O.S.S. replied:

Victoria Court
8 Dormer Place
Leamington Spa
Warwickshire CV32 5AE
Dx 292320 Leamington Spa 4
Tel 01926 820082
Fax 01926 431435
www.lawsociety.org.uk

Our ref: **REG/14824-2002/HR**
Your ref:

STRICTLY PRIVATE & CONFIDENTIAL
To be opened by addressee only

[redacted]

The Law Society
OFFICE FOR THE SUPERVISION OF SOLICITORS

23 May 2003

Dear Mr [redacted]

Complaint about Adams Harrison

You will now, of course, be aware that the LSO is unable to investigate our handling of your complaint as you are an Admitted Solicitor. In the circumstances, I am afraid that this Office will be unable to take your complaint any further.

Yours sincerely

HAZEL REEVES
Caseworker
Regulation Unit

**** Please quote our above reference whenever contacting us ****

Direct line 01926 439613
Direct fax 01926 439725
E-mail: Hazel.Reeves @LawSociety.Org.UK

I responded on the 27th May 2003:

O.S.S

Your ref: REG/14824-2002/HR

27th May 2003

Dear Ms. Reeves,

Adams Harrison

Thankyou for your letter of 23rd May 2003. I tried to speak to you today but was told you are on holiday.

Fortunately, I received a call from your team leader Ms. Nijjar and she told me:

(a) "adequate supervision" by a solicitor of unadmitted staff meant that the supervising solicitor had to have some knowledge of the subject being supervised. That did not happen at Adams Harrison; there was a breach of Rule 13

(b) Clients must be told that the new locum is the new fee earner. Again, for work in progress at Adams Harrison that did not happen; there was a breach of Rule 15.

Ms. Nijjar is going to speak to you about this matter. Adams Harrison have manipulated the system: it is not right that the O.S.S be allowed to refuse to investigate breaches by using the excuse that there is an employment dispute.

Yours sincerely,

Then Miss Nijjar at the O.S.S. wrote to me on the 4th June 2003:

Victoria Court
8 Dormer Place
Leamington Spa
Warwickshire CV32 5AE
Dx 292320 Leamington Spa 4
Tel 01926 820082
Fax 01926 431435
www.lawsociety.org.uk

Our ref: REG/14824-2002-HR
Your ref:

STRICTLY PRIVATE & CONFIDENTIAL
To be opened by addressee only

The Law Society
OFFICE FOR THE SUPERVISION OF SOLICITORS

4 June 2003

Dear Mr.

Adams Harrison

Thank you for your letter dated 27 May 2003 addressed to my colleague Ms. Reeves.

You will recall our telephone conversation in the afternoon of 27 May 2003. When speaking to you, I was unaware about the full facts of this matter.

Having read the file, I am afraid that the complaints you have raised against the firm of Adams Harrison are not something that Office can take further.

I apologise for any misunderstanding and inconvenience caused.

I confirm that this matter is now closed.

Yours sincerely

Miss S K Nijjar
Team Leader
Regulation Unit

**** Please quote our above reference whenever contacting us ****

Direct Line Telephone No: 01926 439619
Direct Facsimile No: 01926 439619
E-mail: Suki.Nijjar@lawSocietyOrg.UK

On the 30th July 2003 I sent a fax to Simon Entwistle at the Legal Services Ombudsman:

30 July 2003

Your ref: 26756

Our ref: [redacted]\SH

S D Entwisle Esq
Operations Director
Legal Services Ombudsman
3rd Floor
Sunlight House
Quay Street
Manchester
M3 3JZ

Also by fax: 0161 832 5446

Dear Mr Entwisle

Thank you for your letter of 6 May 2003.

I note what you say, but the clients I deal with are often in fact directly affected by the bad, sometimes deceitful, practice of the firms I have locumed in. As I always want to follow best practice – honest practice – then, if I have a conflict of opinion with those employing me as to how best to serve a client then the clients' needs are not properly served if I am prevented from doing this because of obtuse employers.

You mentioned in your last letter that your office cannot advise me as to the action which might be available to enable me to pursue my concerns. However, Zahida Manzoor specifically told me the following:-

> "I consider that practitioners have other means at their disposal to resolve disputes with other lawyers".

As I told you, I have been unable to find, from any source, what these "other means" are. I have found, to my considerable cost, that there were no means available to me to resolve a dispute between myself and a firm I recently worked at, where dishonesty on the part of the employers was involved. I did not like being threatened with the police if I was to turn up at the offices of this particular firm to look at the files to confirm that lies were being told by members of the firm.

So, as Zahida Manzoor considers that we have certain means at our disposal, I would therefore be grateful if you could ask her, in particular, to explain what these are.

The OSS has done a poor and confused job on this complaint of mine and all together the abuse that I have encountered from these firms, on more than one occasion, has been forgotten about and the matter has been swept under the carpet.

I will not keep quiet! I pay quite a lot of money to obtain a Practising Certificate and my job basically is to work in struggling firms as a locum conveyancer under extreme pressure. For which, at the end of the day, I get very little thanks and when I actually do have a serious complaint to make I am ignored.

The locum solicitor has no rights whatsoever and I will not face the prospect of more abuse in the future. However, the client of course seems to be king. I will not be treated like dirt again. I ask you once more to reconsider this matter.

Yours sincerely

[redacted]

He replied on the same day - 30th July 2003:

LEGAL SERVICES OMBUDSMAN

3rd Floor
Sunlight House
Quay Street
Manchester M3 3JZ
Tel: 0161 839 7262
Fax: 0161 832 5446
DX 18569 Manchester 7
E-mail: lso@olso.gsi.gov.uk
Website: www.olso.org
Lo-call Number: 0845 6010794

Our Reference: 26756

Confidential

[redacted]

30 July 2003

Dear Mr [redacted]

Thank you for your fax of today's date, the contents of which are noted.

When the Ombudsman referred, in her letter to you of 30 April 2003, to other means available to you to resolve disputes with other lawyers, she alluded to the possibility of legal action.

As you know from my earlier correspondence, the fact that you have already pursued unsuccessful action through the courts may well also preclude the Ombudsman from investigating your complaint about the OSS.

I note your concerns but I regret that this Office is unable to provide further assistance.

I am sorry that I cannot be more helpful.

Yours sincerely

Simon D C Entwisle
Operations Director

I had to set the record straight, so I wrote back to the Simon Entwisle on the 3rd August 2003 as follows:

Dear Mr. Entwisle,

I refer to your letter of 30th July. I must point out that my court action against the firm of Adams Harrison was successful in one important respect: the firm withdrew their false allegations about my conduct and this was noted by the judge. My financial claim against Adams Harrison was dismissed because the agency contract gives locums no employment rights whatsoever. However it was only by luck that Adams Harrison withdrew their false allegations, as if they had not pleaded them in their Defence submission then they would have saved themselves the trouble of proving that what they alleged was true; Adams Harrison, I knew, could not so they withdrew their outrageous and spiteful allegations.

If Adams Harrison had just relied on the fact that I had no employment rights, without additionally mentioning their false accusations, then they would have got away with their lies. By analogy then, if I try to practice honestly and thereby fall out with a firm for doing so, similarly I will have no comeback at all.

The O.S.S. did not give a satisfactory response to my complaint. Therefore as my action in the courts was entirely successful on the specific point that Adams Harrison were liars, then the Legal Services Ombudsman is not precluded from investigating the O.S.S. response.

Further, I don't have to be told by you that Mrs. Manzoor "alluded to the possibility of legal action" with regard to my question as to what "other means" were available to resolve disputes with other lawyers. Mrs. Manzoor herself implies that she knows what the course or courses of action are in the circumstances of a locum solicitor having a serious complaint against an employer. What I am saying is that she is wrong: there are no other courses available. Certainly not a libel action.....

So once again ask Mrs. Manzoor either to tell me what sort of legal action I could take in the circumstances or to withdraw her remarks.

I believe mention was recently made that 31% of negligence claims against solicitors are due to residential conveyancing mistakes. Well, I still find that the firms I locum for engage in dubious practice and their standards of organisation fall well below what a busy High Street practice should be able to maintain. As a locum I should have my complaint properly investigated as ultimately my concerns affect the client.

If you have the clients interest at heart that you claim to have, then the right thing to do is liase with the Law Society to protect clients by giving locums rights to seek redress when they are abused by employers.

I look forward to hearing from you.

Yours sincerely

Simon Entwistle replied on the 6th August 2003:

LEGAL SERVICES OMBUDSMAN

3rd Floor
Sunlight House
Quay Street
Manchester M3 3JZ
Tel: 0161 839 7262
Fax: 0161 832 5446
DX 18569 Manchester 7
E-mail: lso@olso.gsi.gov.uk
Website: www.olso.org
Lo-call Number: 0845 6010794

Our Reference: 26756

Confidential

[redacted]

06 August 2003

Dear Mr [redacted]

I note your comments in your letter of 30 July.

The Ombudsman's letter of 30 April 2003 explained that she was exercising the discretion given to her under Section 22(4) of the Courts and Legal Services Act 1990 not to investigate your allegations about the way that the Office for the Supervision of Solicitors dealt with your complaint. My subsequent letters, in reply to points raised by you, have explained that, even were the Ombudsman to change her mind, it is quite possible that she would be precluded from considering your allegations, if the issues involved had previously been addressed by the courts.

As she said in her letter, the Ombudsman takes the view that the intention of the relevant legislation is to provide a means by which consumers of legal services who are dissatisfied with the way that the professional bodies have dealt with their complaints about lawyers can have their concerns addressed by an independent authority, not to resolve inter-lawyer disputes. I am sorry that you do not accept this view, but there is little else I can add to what has been said in previous correspondence, other than to confirm that the Ombudsman will not investigate your allegation.

I am sorry that I cannot be more helpful.

Yours sincerely

Simon D C Entwisle
Operations Director

As far as my agency Badenoch & Clark were concerned, I was subsequently ignored by them. They had warned me at the time that taking action against Adams Harrison wouldn't do me any good. They were right there! When Badenoch & Clark were contacted by Adams Harrison prior to my Court case, from that moment on not one single assignment came my way. For months I had no work from any source. I telephoned Badenoch & Clark in early November 2003 to ask if I had been blacklisted. I couldn't believe what I heard so on the 13th November 2003 I sent them the following fax:

Fax to Nancy Bailey, Badenoch & Clark

From [redacted]

13th November 2003

I refer to my telephone conversation with yourself and David Roberts last week.

It is obvious now why I have not had any phone calls from you since my 18 week [Name of subseqent firm] locum assignment which finished on 30th August 2002: to be told by David Roberts that there are "restrictions" on my practising certificate - which is not true at all - then to be told by David Roberts that one or two firms were "not happy", without explaining why, and that further, the O.S.S. were in contact with me (yes - but only because I complained to them about the conduct of Adams Harrison), says it all.

The fact is I had to sue Adams Harrison for their outrageous behaviour and in the County Court I won my substantive claim, but not the financial claim because I had no employment rights, particularly due to your recently amended terms of engagement (which you never sent me). Adams Harrison were in fact proven liars. I have worked in a number of firms where best practice is not observed and, in a few, dishonest practice is a recurring feature. No wonder 31% of negligence claims come from mistakes made in residential conveyancing. Particularly when firms hire one locum instead of two.

Your literature described me as an "excellent conveyancer". I have worked very hard on all my assignments and rescued quite a few from desperate situations. I have advised some firms on how to improve their practice. With all that, I now find you have given me no work for over a year because of a fundamental mistake on your company's part.

When I complained to your company about Adams Harrison's behaviour I was warned it would do me no good to take the matter further. How true that has turned out to be! You are supposed to support and uphold good practice, not desert someone like me who makes a stand. You did not even call me to clarify the "information" you held.

I await your comments.

[redacted]

I didn't hear from Badenoch & Clark with a reply in writing. They did telephone me but I wasn't interested in another evasive chat. I wanted something in writing. I waited quite some time before chasing them up on the 27th June 2004 by way of another fax:

To Nancy Bailey
Badenoch & Clark

Dear Ms. Bailey 27th June 2004

Locum Abuse

I refer to my fax to you of 13/11/03. I never did get a reply in writing from you did I!

It is high time I write to the Law Society President to see if some protection can be afforded to locums like myself who are professionally abused by the likes of Adams Harrison of Saffron Walden and others. You have played a part in my misfortune too and it has to be exposed. I will never forget what happened and the way your agency basically betrayed me.

It is only now that I have the time to do something about it with the Law Society.

Yours sincerely

They didn't reply in writing but said in a phone call to me that they would have me back on their books if I supplied them with references from my four most recent locum employers. This was an imposition that I felt was unreasonable in the circumstances as it would involve not a little work on my part. Besides they knew full well my capabilities.

On the 11th July 2004 I wrote to Peter Williams, the outgoing President of the Law Society detailing my concerns over locum solicitor abuse and asking for changes to be imposed by the Law Society. The letter was given to a Law Society officer who replied on the 22nd July 2004:

Ipsley Court
Berrington Close
Redditch
Worcestershire B98 0TD
Dx 19114 Redditch
Tel 020 7242 1222
Fax 01527 510213
www.lawsociety.org.uk

Our ref: COM/027090/BB/2279/PW
Your ref:

[redacted]

The Law Society

22 July 2004

Dear Mr [redacted]

Locum Solicitors

Thank you for your letter of 11 July 2004 addressed to the President, which has been passed to me for a response.

I am sorry to hear of the difficulties you have experienced whilst working as a locum solicitor. As you will be aware the Law Society is the regulatory and representative body of solicitors, registered foreign lawyers and registered European lawyers in England and Wales. From the information you have provided you may find it useful to seek further advice from an employment law solicitor. The Society is unable to offer advice or pass comment on individual cases.

I understand your frustration and sympathise with your views and I appreciate you have taken your complaint to many different bodies with little success. I am sorry that you feel the Law Society does not do enough to protect the interests of its members who work as locums. I can assure you that the Law Society endeavours to offer the same support to all solicitors regardless of their employment status.

You may find it useful to contact Law Society Recruitment who can help you to find contracts if you register with them. You can do this on the website at www.lawsociety.org.uk or you can telephone them on 0207 8415410.

The Solicitors Freelance Association are campaigning for a reform of the employment laws that govern temporary placements. You will appreciate that this will only come about after legislative change on the part of the Government. The Society's Parliamentary Unit actively lobbies MPs and peers from all parties for changes in the law and I have passed your letter to the Recruitment Policy Advisor for consideration.

Thank you for raising these issues and I hope the information I have provided is helpful.

Yours sincerely

Beverley Bevan
Assistant Quality Officer

I responded on the 24th July 2004 asking if the Solicitors Freelance Association (which I'd known of for some time) had the backing of the Law Society. I also mentioned that I had in the past used the services of the Law Society Recruitment Agency whom I was happy with. But I requested that the Law Society themselves establish a code of conduct for employers of locums, enforceable by disciplinary action. I mentioned that no employment lawyer would be able to help me as locums have no employment rights under the law. On the 9th August 2004 the Law Society replied:

Ipsley Court
Berrington Close
Redditch
Worcestershire B98 0TD
Dx 19114 Redditch
Tel 020 7242 1222
Fax 01527 510213
www.lawsociety.org.uk

Our ref: 2279/PW/COM/027090/BB

[redacted]

The Law Society

09 August 2004

Dear Mr [redacted]

Locum solicitors

Thank you for your letter of 24 July 2004.

The Freelance Solicitors Group (FSG) have not yet achieved recognition from the Law Society and you would need to contact them directly for further information about their current campaigns. I am unable to provide further information on the FSG, as they are a separate organisation from the Society but I can provide their contact information below:

Natalie Siabkin
Freelance Solicitors Group
5 The Link
London
W5 0JW
0208 992 3885

As mentioned in my letter of 22 July 2004, the Law Society currently aims to offer locum solicitors the same support as those in permanent placements or their own practice. However, changes to this policy would only come about after legislative change from the government.

I have passed the information you have given us about your previous employer to our Fraud Intelligence Department and they will contact you directly if they need further information.

I hope that this information is helpful. If you have any further queries that you would like to discuss, please contact us by telephone on 0870 606 2555. Our lines are open 08.30 to 17.00 Monday to Friday. If you are calling from overseas please use +44 (0) 1527 504450. Please note calls may be recorded or monitored for training purposes. Alternatively you can e-mail us on info.services@lawsociety.org.uk

Yours sincerely

Beverley Bevan
Assistant Quality Officer

I replied on the 29th August 2004. On the 10th September 2004 the Assistant Quality Officer at the Law Society wrote to me saying:

> **" I can assure you that the Law Society endeavours to offer the same support to all solicitors regardless of their employment status, although there is currently no provision for the compensation of solicitors who have reported incidences of misconduct. I have noted your comments about a code of conduct for firms who employ locum solicitors. I am pleased to confirm that this information has been passed to the Discrimination & Employment Law Policy Adviser for consideration. I am sorry that I am unable to provide you with any further assistance at this time."**

The Prime Minister, Tony Blair, at the TUC Conference on 13th September 2004 said he would now aim to provide equal rights for temporary and agency workers.

Well, for the six months November 2004 to April 2005 I had got just nine days agency locum work. Why so? After an eleven month locum assignment (December 2003 to November 2004) at a firm of solicitors in London, E15, I was 'released', ironically within 15 minutes of asking for my practising certificate fee to be paid. Released on the grounds that there "wasn't enough work", which in a sense was soon to be the case as I had refused to continue working for a very shady, but substantial, client. Up until then I had been worked very hard with only two working days off during the eleven months I had been at this firm. I had continuously refused to involve myself on matters that involved a flagrant breach of professional ethics involving that shady client. (The Law Society Professional Ethics section supported me on this: Tracy Calvert telling me that I could stay at the firm so long as I did not do any more work for this particular client nor his associates, friends or family.) This was the underlying reason for my 'release'. I was given a week's notice and had to work flat out to ensure that my other clients' interests were protected and all affairs dealt with before I left. Some matters were on the verge of fruition and for them to be taken over by those left at the firm would have involved a tiring duplication of work. But I tried to lighten their burden. One partner didn't even say goodbye to me. But for an obvious reason. He had kept insisting I turn a blind eye to his biggest client's dishonesty (the shady client) and on whose matters I was dealing, and left it to his senior partner to dismiss me. Months before, he had been pleased to offer me a permanant position, saying this was my "big chance". I had covered for the partners when they were on holiday and tended to my own workload. I had not had any holiday in those eleven months and in the late summer I asked my agency - ASA Law - what my rights were under the Working Time Regulations that were referred to in their terms and conditions of locum employment. The reply was that I was not entitled to any paid leave as I was not on the agency's payroll, but was paid directly by the firm. I countered that ASA Law's terms and conditions stated that a "self employed locum" was entitled to one week's paid leave for every three months worked at the firm and that it didn't matter who paid him, the agency or the solicitor. The agency re-checked and later confirmed that as far as they were concerned they had sent me the wrong terms and conditions and I was not entitled to any paid leave. Would they send me the right terms and conditions? I asked. Yes they would, they replied. I received nothing. When I left the firm I enquired of my agency again, as I just could not understand why I was not entitled to paid leave under the Working Time Regulations. The particular employee at the agency with whom I had been dealing told me that she "didn't have a clue" as to my rights but told me that on asking her accounts department that summer, they had told her I had no entitlement under the Regulations. She could give me no further advice. So I phoned another agency and they said that some employers paid their agency workers under the Working Time Regulations and others refused. I then phoned the Law Society Recruitment Agency who did not know the answer.

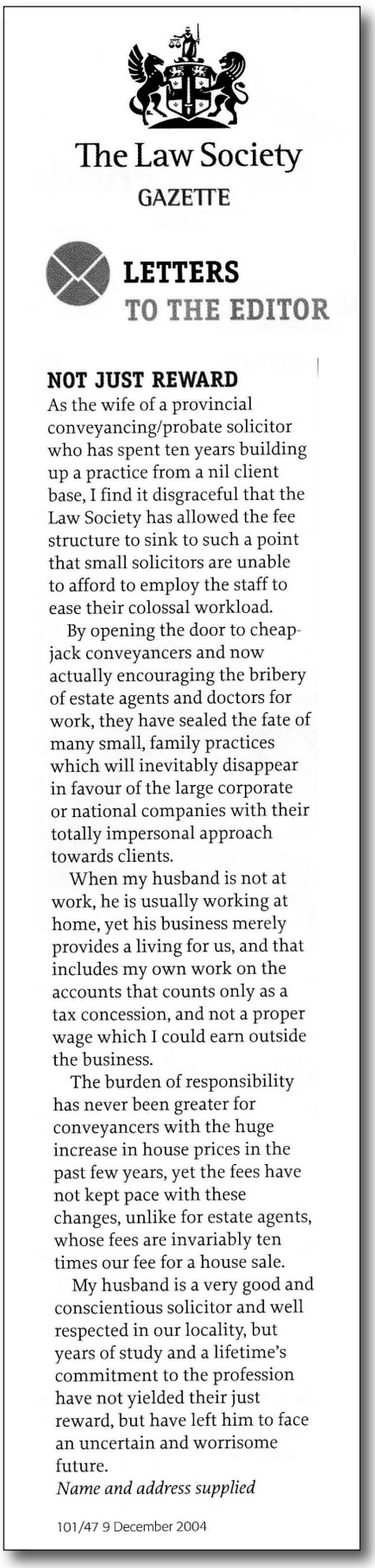
Neither did the Law Society themselves but they referred me to their Solicitors Assistance Scheme. I was put through to the senior partner of a Lincoln's Inn firm of solicitors. Having taken the basic facts from me he advised me to ask my erstwhile firm for the three weeks paid leave that was due to me and if they didn't pay to sue them and to join in the agency. I went back to the agency and told them that if my firm didn't pay up I would sue the firm and also join the agency in.

The agency had previously got me one week's work with this firm in the early autumn of 2003. For my eleven month period later on with this firm, I had myself persuaded the firm to take me on again. To begin with they said they did not require a full-time employee but that I could locum for them for a fortnight. The firm were happy to pay the agency fee. Because they were so pleased with me they then decided to take me on indefinitely. But they were not happy now at having to pay the agency's weekly fee, particularly as I had myself induced the firm to take me on as opposed to the agency. But as the agency had introduced me to the firm in the first place their terms entitled them to their weekly agency fee long into the future. To help the firm out I volunteered a £50 per week pay cut. So over the eleven months I estimated that my agency got around £5,000. Now I was threatening to sue them. But the senior partner of the solicitors' firm sent me a cheque for the paid leave that was due to me, by return of post. I told the agency of this happy outcome. They didn't care. I had attended their Christmas party last year but this year found I was not invited, in spite of giving them almost a whole year's agency fee. They had obviously taken offence at being pressed to explain the Working Time Regulations and thereafter being threatened with legal action. I wondered now whether this would be the second agency that I would never hear from again. It was!

In defence of the many firms I have locumed for I will say, that except for the three small City of London firms I was at, their conveyancing fees were generally too low - a state of affairs imposed on them by market forces. The old Law Society scale fees have long since been abolished. All that prospective clients seem to be interested in is the cost of the job - particularly for residential conveyancing. So they get out the yellow pages and phone round several firms. They accept the cheapest quote with usually no idea just how good the firm really is. Which firm of solicitors/conveyancers says anything other than, "Yes, we are very professional and will do a good job"? There are a good few firms who take on work knowing they will not be able to cope with all of it within a realistic time frame. But they simply have to take it on to earn a reasonable living. Low fees means bulk work, i.e. a very heavy caseload. There is much panic, stress and overwork. Lawyers drink too much.

But the meanness of Scrooge is now ingrained in these same lawyers when they use a locum. I have gone into firms whose workload consists of rows of files stacked waist high. No locum in the world could possibly cope. So one has to be selective and deal with the files of those clients who shout the loudest. Paying for two locums on these typically short-term summer assignments would make all the difference. But no - the instructions are to employ just the one locum who comes in confronted by unfamiliar files, staff and working practices. Just to save themselves a little money. To those that have done that to me I say, "**** you!" To the two firms I worked for who did hire two locums I say a hearty "Well done!" The meanness and greed of some of these firms can backfire - 31% of negligence claims in the legal profession are due to shoddy residential conveyancing work. And residential conveyancing is important work, as buying a house for most people represents the biggest investment of their lives. The principals of High Street firms overburden their experienced secretarial staff and still do not pay them enough. They often in addition hire novices just out of college or school on sixpence a week - a good few of whom are barely articulate: they have no place in a lawyer's office.

And who allowed the conveyancing fees to become so low? Many would say the Law Society, such as the wife of a solicitor whose letter was published in the Law Society *Gazette* of 9th December 2004:



The Law Society
GAZETTE

LETTERS
TO THE EDITOR

NOT JUST REWARD

As the wife of a provincial conveyancing/probate solicitor who has spent ten years building up a practice from a nil client base, I find it disgraceful that the Law Society has allowed the fee structure to sink to such a point that small solicitors are unable to afford to employ the staff to ease their colossal workload.

By opening the door to cheap-jack conveyancers and now actually encouraging the bribery of estate agents and doctors for work, they have sealed the fate of many small, family practices which will inevitably disappear in favour of the large corporate or national companies with their totally impersonal approach towards clients.

When my husband is not at work, he is usually working at home, yet his business merely provides a living for us, and that includes my own work on the accounts that counts only as a tax concession, and not a proper wage which I could earn outside the business.

The burden of responsibility has never been greater for conveyancers with the huge increase in house prices in the past few years, yet the fees have not kept pace with these changes, unlike for estate agents, whose fees are invariably ten times our fee for a house sale.

My husband is a very good and conscientious solicitor and well respected in our locality, but years of study and a lifetime's commitment to the profession have not yielded their just reward, but have left him to face an uncertain and worrisome future.

Name and address supplied

101/47 9 December 2004

The Law Society GAZETTE

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She and her husband have my utmost sympathy. This solicitor's wife mentioned the introduction of "cheapjack conveyancers." She was no doubt referring to the new species of property lawyer called the Licenced Conveyancer - not a solicitor or a legal executive but someone who could deal in the legal aspects of property selling and is regulated by the Council for Licenced Conveyancers. The Licensed Conveyancer was introduced at the behest of Austin Mitchell M.P. a few years ago. Licenced conveyancers have played their part in reducing the quality of services provided to the public by their often inadequate training, cheap prices and bulk conveyancing operations. Many established, as well as new firms of solicitors have had to follow suit and lower their prices too. As in London's East End for instance where many firms are more like sweat shops for the staff and bucket shops for the clients - charging rock bottom prices to attract business. Unsustainable. And just a numbers game as far as the firms are concerned, handling such a huge number of residential sales and purchases. Meanwhile the Estate Agents and mortgage lenders are making all the money. To be fair there are some very good licenced conveyancers giving an excellent service. Indeed I have worked as a locum in one such firm and learnt a lot from them: they were all experienced practitioners.

Many sole practitioners are struck off for using client money for their own purposes. Low conveyancing fees contribute to this sorry state of affairs. It is arguable that the inability of the Law Society to do anything to correct the imbalance directly leads to dishonest practice by the solicitor. Investigating this dishonesty gives work to the Law Society investigators and keeps them in a job.

It is the smaller firms - the struggling ones - that usually need the locum. The big City and large provincial firms do not generally take on locums. They have enough cover in house and are loathe to risk their affairs being dealt with by an unfamiliar locum.

In only a small minority of firms I had to refuse working on files where I suspected the client was involved in dishonesty. I have come across still other solicitors who turn a blind eye to their own clients' dishonesty but which solicitors have still tried to involve me in by dealing with their files. B******s! On the subject of conveyancing fraud see the following *Financial Mail on Sunday* article of 10th December 2000 :

LAWYERS' WATCHDOG FAILED TO ACT DESPITE WARNING OVER SOLICITOR WHO FLED TO INDIA

Law Society ignored tip-off on £9m fraud

By Simon Fluendy

A SOLICITOR wanted for questioning about frauds totalling £9 million was under suspicion six months before he fled to India. But the Law Society, which was warned he might be acting dishonestly, failed to act.

Dixit Shah, believed to have left Britain in September, is at the centre of police inquiries into the disappearance of £6 million from a dozen small firms of solicitors and £3 million missing from the pension fund of a Birmingham engineering firm.

The Law Society's regulatory body admitted it was tipped off about Shah, but said it was snowed under by thousands of complaints and did not have the resources to investigate.

Shah bought up the firms of solicitors specialising in conveyancing and became involved in the pension fund of lock-maker C. W. Cheney through his interest in a firm of accountants and solicitors.

The Law Society was warned by one of the firms of solicitors, but the regulatory body for lawyers intervened only after Shah had left Britain, closing the offices and sending in teams of solicitors to seize control.

With Shah in hiding, they are turning their inquiries to the lawyers who sold their practices to him and have seen their businesses destroyed.

The Law Society's Office for the Supervision of Solicitors (OSS) has a team of up to six investigating the disappearance of money from special accounts for clients buying new homes.

The society said: 'Yes, we received a tip-off about Shah, but we already had concerns. We get 3,000 tip-offs a year, mostly from solicitors, but sometimes from the Legal Services Commission, in charge of administering Legal Aid, some from police, some from banks and building societies.'

'We would have to quadruple our staff to investigate every one and the tip we received in February, even with our own concerns, was not specific enough to act on.'

Shah, thought to be in Bombay, has said he plans to return to Britain voluntarily to explain what happened. But an OSS source said: 'An innocent solicitor would be on the first plane home.'

West Midlands Police wants to question Shah about the money missing from C. W. Cheney's pension fund.

Shah owned Morgan Matisse & Co, the firm of solicitors that signed off the company's accounts last April.

The concerns raised by lawyers about Shah last February did not touch on illegal access to client accounts.

One solicitor said: 'We saw some very strange invoices and hire-purchase agreements that did not appear to be backed by equipment, or the equipment appeared to be of a much lower value than stated on the agreements.'

'It was a sign of dishonesty. We reported this to the Law Society, the Inland Revenue and Customs & Excise.'

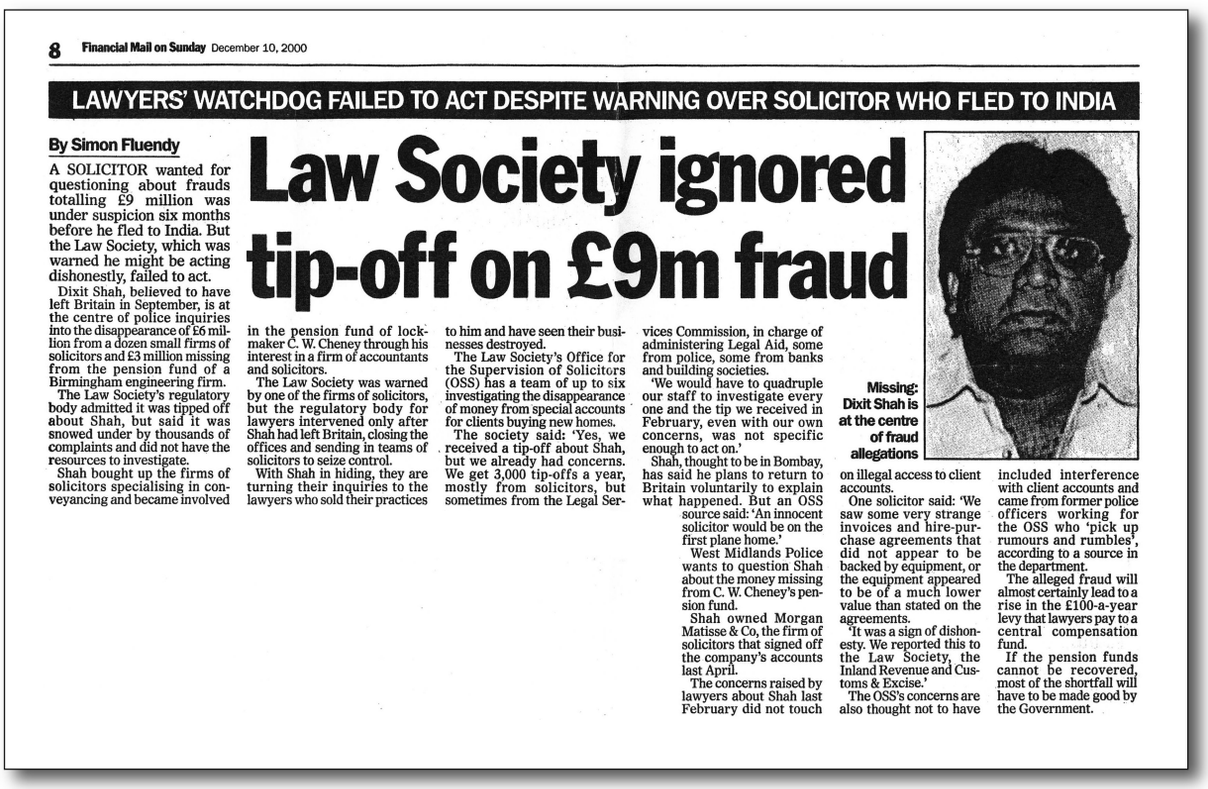
The OSS's concerns are also thought not to have included interference

with client accounts and came from former police officers working for the OSS who 'pick up rumours and rumbles', according to a source in the department.

The alleged fraud will almost certainly lead to a rise in the £100-a-year levy that lawyers pay to a central compensation fund.

If the pension funds cannot be recovered, most of the shortfall will have to be made good by the Government.

Financial Mail on Sunday December 10,2000



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Missing: Dixit Shah is at the centre of fraud allegations

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That's residential conveyancing for you. How on earth could it get to that stage at Dixit Shah's offices? Low conveyancing fees meant that these several offices had become uneconomic to run and were ripe for takover by, as it turned out, Dixit Shah - a brilliant opportunist. I have personally worked with three of Dixit Shah's former employees - after they lost their jobs on the closure of Shah's Essex firms. Another solicitor/partner who worked for Dixit Shah went bankrupt as a result of the fraud. And the Law Society are very keen to protect their own - readily prepared to give solicitors the benefit of the doubt in seemingly boderline cases.

Firms have resented my annoyance when I have discovered on file a blank mortgage form signed by the client and witnessed by their solicitor, who did not have the time to get his secretary to type in the client's name, the address of the property or its Land Registry title number. Some clients who were used to dealing with their usual solicitor's sloppy practices got angry when I told them that what they have been used to was bad practice. And when the solicitor returns from holiday he then resents me for my way of practicing my craft and I am

not asked back. The times I have had to spend several minutes simply putting files in order. Stapling papers together that should not be left just as loose sheets. Seperating title deed documentation from mortgage documentation. Putting correspondence in the right order. Many of these solicitors and their staff are so set in their disorganised ways that they just cannot change.

The Law Society will have their work cut out in trying to restore the reputation of the legal profession now that the public have been led to believe that firms are not quite up to the job of efficient property transfer. Mostly they would be - but not under the conditions imposed on them at present. No fee structure means bulk work. And there are too many non-solicitor conveyancers of poor quality. The service to the public has become second rate. There is no real joy or pleasure in the legal profession anymore (*Gazette* 2005):

Lawyers among unhappiest workers

Lawyers among unhappiest workers

Lawyers are among the unhappiest workers in the country and nearly half (49%) would consider changing career, according to new research.

The City & Guilds Happiness Index found that only 5% of lawyers are very happy in their job, with stress and feelings of being undervalued, undermined and underpaid cited as the main reasons for their discontent. Some 33% felt they are not suited to the role, while more than a quarter (28%) sometimes regret their choice of career.

Commenting on the findings, Hilary Tilby, chief executive of LawCare, the confidential advisory and support service for lawyers, said: 'It doesn't surprise me one iota. The pressures on lawyers can be enormous.'

She continued, 'The legal personality is obsessive. Lawyers tend to be very driven and impose the highest possible standards on themselves and the work/life balance is ignored.' Hairdressers came top of the happiness league with the clergy in second place. Chefs, beauticians

and plumbers completed the top five places, followed by mechanics, builders and electricians.

Estate agents and civil servants came below lawyers, but architects were found to be the most miserable workers.

Ms Tilby said the happiest workers are in jobs where they have control over their workflow and are appreciated by their clients. 'Lawyers often lack control over their workflow and it is rare for a firm or client to say thank you - it is taken for granted that they will do a good job,' she claimed.

The research was carried out in February 2003 based on a sample of 1249 employees; 617 were in vocational occupations and 632 in academic professions, of which 43 were lawyers.

Ms Tilby said: 'Many lawyers feel trapped; they have invested so much time and money into getting where they are, they feel guilty about leaving or think they are not fit for anything else, which only adds to their stress.'

LawCare's Web site advises lawyers to review their situation before taking any drastic action and consider taking time off, working differently, doing further training or changing firm.

For those in need of a change but who lack ideas, the Web site provides a list of '101 other things a lawyer could do', which includes: teaching, the police, or becoming a novelist, a stockbroker, a coroner or a marriage guidance consultant.

Finally, it advises: 'Try to remember you are a worthwhile human being as well as being a well educated and highly trained professional.'

LINKS: www.lawcare.org.uk

Catherine Baksi

GAZETTE 17 March 2005

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There now follow several further *Gazette* articles covering the real life problems many lawyers face.

LIFE AT THE SHARP END

The Law Society
GAZETTE

LETTERS
TO THE EDITOR

LIFE AT THE SHARP END
David Taylor raised the important issue of the appointment of a senior partner from a major City firm to the Carter review of legal aid procurement (see [2005] *Gazette*, 6 October, 15).

Unless he is operating at the sharp end, he will be unable even to understand the issues he is to address. His firm operates on the basis of pure market forces, whereas in the high street we are dogged with hopelessly inadequate legal aid remuneration. And John Prescott's plans to introduce home information packs, in the mistaken belief that the delays in the conveyancing process are because of solicitors, rather than the human element, over which there is no control.

The marketing that is currently being prepared, with heavy finance behind it, will divert a massive volume of business to what we now call conveyancing factories, with which individual practices will be unable to compete until the public realises that perhaps it is not what they want or need.

The combined effect of this is that high street practices are under severe threat and, to a large extent, are unlikely to survive – leaving a dearth of access to the law in the provinces. This will then have to be addressed by the government from scratch.

Neither the Law Society nor the *Gazette* seem to regard this as an issue, and are giving no encouragement or assistance – when it is clearly the most important issue of the day on the high street.
David Campion, Humfrys & Symonds, Hereford

102/41 27 October 2005

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GAZETTE 27 October 2005

Solicitors ‘burnt out’ as managers turn a blind eye

Half of all solicitors and other law firm employees feel 'burnt out' because of the pressures of work, but their managers are underestimating the extent of the problem, new research has suggested.

The survey of 100 lawyers and support staff by recruitment consultancy Hudson showed that one-third of respondents felt exhausted, with a quarter suffering from sleep deprivation or illness because they were so worried about work.

Some 36% also reported feeling more workplace stress than they did five years ago, mainly because they felt under strain from a greater competitive environment and the pressure to be available around the clock.

But although 44% of employers agreed the situation had deteriorated - with almost nine out of ten human resources managers reporting that people are taking more days off sick and almost half suggesting there had been a drop in productivity - only half have procedures in place to help staff suffering from burnout. Nearly two-thirds (62%) of managers said they did not believe it was an issue in their own firms.

Some 28% of lawyers, meanwhile, complained that their firms had made no attempt to address the problem of increased workloads.

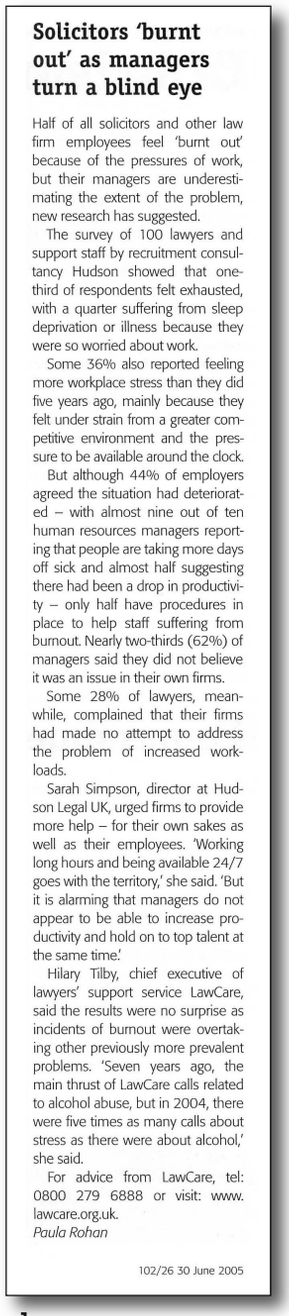
Sarah Simpson, director at Hudson Legal UK, urged firms to provide more help - for their own sakes as well as their employees. 'Working long hours and being available 24/7 goes with the territory,' she said. 'But it is alarming that managers do not appear to be able to increase productivity and hold on to top talent at the same time.'

Hilary Tilby, chief executive of lawyers' support service LawCare, said the results were no surprise as incidents of burnout were overtaking other previously more prevalent problems. 'Seven years ago, the main thrust of LawCare calls related to alcohol abuse, but in 2004, there were five times as many calls about stress as there were about alcohol,' she said.

For advice from LawCare, tel: 0800 279 6888 or visit: www.lawcare.org.uk.

Paula Rohan

GAZETTE 30 June 2005



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Paula Rohan

102/26 30 June 2005

I would warn new entrants to the profession to avoid going into residential conveyancing, crime and family law: these disciplines are characterised by high stress, low pay and early burnout. (See below Law Society *Gazette* Comment - Sun sets on high street firms).

I would also advise, in general, against any solicitor going it alone as a sole practitioner: mission (almost) impossible. But some solicitors have to set up on their own, particularly those from the ethnic minorities who find it very difficult to get work in the established firms. Employers don't always say what they are thinking. They just see to it that you don't advance in life.

Sun sets on high street firms

COMMENT

Sun sets on high street firms

Closing a successful practice is painful, says Joy Merriam, as she analyses the problems facing high street firms and the impact on society

The day before Christmas Eve last year I closed the doors on Joy Merriam and Co for the last time. This high street legal aid practice had opened in 1987 with the aim of serving the local community in east London. This was achieved for many years and recalling thousands of old files from storage for destruction I was struck by just how many people we had helped.

The firm remained busy and profitable right to the end and is listed in the current edition of the Chambers Directory as a leader in its field in crime. Colleagues, judges, counsel and clients have all been shocked by the decision to close.

Why, then? The answer lies in the multiplicity of problems facing high street legal aid practices today and particularly those specialising in crime. I was not the first and I certainly will not be the last. I fear we are witnessing the demise of the high street legal aid practice.

I undertook my articles in such a practice, and in the days before specialisation we were able to provide the holistic service that the Legal Services Commission is now promoting. The much maligned green form scheme enabled basic legal advice on a number of subjects to be given to clients. However, with the deluge of legislation that simple approach became impossible and specialisation was seen as the way forward. My practice only undertook crime, family and conveyancing. The slippage in access to justice began. Soon it was difficult to refer to a provider for a number of areas of law that would have once been the mainstay of such practices.

The gap widened between publicly and privately funded work. There

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has been no real increase in legal aid rates for many years; and, more perniciously, in crime there were the creeping reductions in 'scope', so that whole areas of work that had once been covered were not. The successor to the green form scheme (the CDS2) was effectively abolished in the criminal proceedings class - meaning that those who would not merit a representation order had no access to publicly funded legal advice.

If one adds into the equation the administration engendered by the quality mark, practice rule 15, health and safety, employment legislation, and all manner of European regulation, it is easy to see how the burden on the small practice becomes insurmountable. Insufficient in size to employ a practice manager, the partners are reduced to juggling their roles as administrators with their fee-earning work; and the working day grows ever longer, with work-free weekends a distant memory.

An additional problem is recruitment, in that, quite simply, there is no one coming through to relieve the burden. Few of those qualifying are prepared to go into publicly funded work - and who can blame them? Consequently, it is difficult to recruit staff; and, sadly, in an employees' market it is difficult to manage staff effectively as the offer of a higher paid job down the road is always there.

So what is the problem if the high street practice has had its day? In a society where there is an underclass who are increasingly isolated and deprived, their high street brief can act as a GP, confessor and friend, who shares their successes and failures. I have acted for many of my clients for more than 20 years.

The personal local service provided by my firm has been an important support to a vulnerable group of people. The social consequences of the demise of the high street practice have yet to be fully appreciated. For me, the bright lights of London's west end beckon, as I move to join a practice there. But I leave the east end with a heavy heart.

Joy Merriam is now a consultant at London-based law firm O'Keeffe

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The legal profession, paradoxically, is a very selfish cunning profession. Its members don't care that much for one another. As individuals they compete within firms. As firms they compete with their rivals. The wealthy central London firms rarely suffer. Their lawyers are quite blasé - gifted their jobs by reason of a high I.Q., assisted by the old school tie (see *Gazette* article below). Outside central London and the big cities the legal profession is on a much baser level.

Management / Personnel

Finding the happy lawyer within

MANAGEMENT/PERSONNEL

Finding the happy lawyer within

Stress, depression and anxiety among lawyers – especially those with little control of their day-to-day workload – is on the rise. Simon Price explains how to boost morale and identify fee-earners' strengths

'Happiness is the meaning of life and the purpose of life, the whole aim and the end of human existence.' Aristotle was right, so how can it be that lawyers are so unhappy?

Two recent studies in North America and the UK confirm that lawyers are among the unhappiest of professionals. Another report by LawCare, which provides advice to lawyers, found that in 2004, they helped record numbers (up 26%) with problems such as depression, stress, anxiety, and alcoholism (see [2006] *Gazette*, 30 March).

Paradoxically, in 2005, a record number of students (13,504) signed up to study law, while numbers on the legal practice course rose by 9%. That year also saw the number of practising solicitors top 100,000.

The law as a career does not seem to put people off. Once these students qualify, they can expect salary levels in the City starting at £50,000, so the financial rewards are there.

But lawyer attrition levels are rising and City firms are beginning to introduce different career structures in an attempt to get these rates down.

So what happens to people once they qualify to make them so unhappy? The law is a stressful profession. Long hours are the norm, with lawyers routinely working til 8-9pm, even through the night if they handle corporate work. Add the lack of time to exercise and eat properly, and ill-health, stress, burn-out and depression ensue. However, stress and depression are symptomatic of unhappiness and not causative.

Why bother about happiness? Because it matters - not just on financial and productivity levels, but perhaps most importantly on emotional and social levels. A 2005 study concluded that overall happy individuals are more satisfied with their family life, their romantic relationships, their

friends, their health, their education and their jobs, their leisure activities, and even their housing and transportation, compared to less happy peers. The researchers concluded that happiness leads to successful outcomes.

What does this mean for the legal profession? It illustrates what many people believe anecdotally - that people do not go to work just for the money and status. Those reasons are simply not enougth. People strive for what has been called self-actualisation, an instinctual need to make the most of their own unique abilities and to strive to be the best they can be.

In a recent study, Professor Martin Seligman identified three possible reasons for lawyer unhappiness: pessimism, low decision latitude and the so-called 'win-loss game.'

Pessimistic lawyers do better than optimistic lawyers. To see troubles before they arise and to foresee every potential disaster are traits that are valued in a lawyer. However, such traits then overflow into other areas of a lawyer's life, and pessimism in any other realm of life is not good.

Low decision latitude refers to the number of choices lawyers believe they have. It can be a particular problem for junior lawyers, who have limited choices in high-stress environments. Often, in the early years of practice, young lawyers are isolated from clients, with only limited contact with their superiors. A heavy workload combines to make the lawyer feel that the choices they have are limited if they are to progress towards partnership.

The adversarial nature of the English legal system, meanwhile, opens up a win-loss game at every turn, in which winning is more important than justice and fairness. The win-loss mentality is systemic and becomes ingrained in the people who work within it. Added to this is the need to bill incessantly to improve the bottom line.

This creates an atmosphere where the pursuit of the common good is sidetracked. The compensation and blame culture that is developing - where 'nothing is my fault' - prevails, and it attracts lawyers to it. The failure to take personal responsibility creates a culture where win-loss proponents prosper. Prof Seligman believes the win-loss personality trait is the deepest cause of lawyer unhappiness.

So what can be done to turn around lawyer unhappiness?

Firstly, firms need to make a commitment to improving the happiness of their lawyers. Happiness is a subjective value that can be objectively measured; people view happiness in different ways. Prof Seligman suggests that it is important to understand a person's strengths and to develop those strengths, rather than make them work on weaknesses.

To counter pessimism, he suggests using adaptive pessimism - the

ability to use the skill of pessimism in the right context - together with optimtsm in other areas of life. Getting rid of thoughts like 'I'll never make partner' is helpful in cultivating flexible optimism and can have positive effects on morale.

Pressure is an inevitable consequence of practising law. Giving lawyers more decision latitude can make them feel more satisfied. Give them more control over their working day. Reduce repetitive tasks. Allow junior lawyers to see the whole picture by meeting clients, allow them to be mentored by senior lawyers and get them involved in pitches.

A longer-term solution is to identify the 'signature strengths' of your lawyers. Each lawyer you employ will be intelligent and have high verbal and reasoning skills. But each lawyer comes with unused strengths that have not been developed, such as emotional intelligence, leadership, enthusiasm and social intelligence.

Take time to develop each person's signature strength each week. When people feel that they use their particular strength, they feel respected, and their morale increases. As Prof Seligman points out: 'There is a clear correlation between positive emotion at work and high productivity.'

Law firms have to act before lawyer unhappiness reaches epidemic proportions, and depression, stress and ill-health become the norm. By taking action, law firms can increase the social and emotional well-being and happiness of their lawyers, which in turn helps to increase productivity and the bottom line. What law firm wouldn't want that?

Simon Price runs Price Pd, a practice specialising in skills training and coaching for lawyers.

GAZETTE 27 July 2006

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CITY PARTNERSHIPS: study finds most top legal positions still go to the privately educated

Old school tie wins job race

The old school tie still dominates at City law firms, the bar and the judiciary, according to research released this week.

A study by the Sutton Trust found that even the younger partners at top law firms are drawn overwhelmingly from a private school background. An analysis of the educational background of 522 partners from magic circle firms Allen & Overy, Clifford Chance and Slaughter and May revealed that some 71% of young partners - those younger than 39 - attended a fee-paying school.

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It revealed that more state school graduates were recruited in the late 1980s, only for access to narrow again.

Only 45% of partners across all age groups at the firms were educated in the state sector, compared to 93% of the population as a whole. Of those state-educated partners, only 24% had attended comprehensive, rather than selective, schools.

Oxford and Cambridge graduates also comprise 53% of partners, the study showed. However, there is some evidence of a gradual dilution of Oxbridge dominance, with only 47% of younger partners having attended either of the two universities. Just over a quarter of the partners graduated from another top-12 university, while only 21% came from outside the top 12.

Slaughter and May partner Graham White insisted that the firm does not discriminate against people from any background.

He said: 'The figures do not tally with our own analysis.'

More than two-thirds of barristers, and three out of four judges in the High Court or above, were educated in the private sector – statistics that have seen little change in the last 15 years, according to the trust. Half of the judges attended boarding schools, which educate less than 1% of children.

Both the judiciary and bar overwhelmingly favour Oxbridge graduates, the research showed, making up 82% of barristers at leading chambers and 81% of judges.

Yvonne Brown, chairwoman of the Black Solicitors Network, said: 'Sadly, what the figures suggest is that although some doors may be opening to people who have not traditionally worked in the City, there are larger doors opening to those from a private school background.'

Caroline Herbert, chairwoman of the Law Society's diversity and equality committee, added: 'There is an unofficial quota regime in the City for graduates from Oxford and Cambridge and the other top universities, which is unfair. Firms believe the commercial reality is that people from a certain background will have access to the clients that will make them richer.'

Allen & Overy and Clifford Chance did not provide a comment.

Rachel Rothwell

Photograph: Rex Features

Cambridge: still favoured

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GAZETTE 26 May 2005

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LETTERS TO THE EDITOR

SEEKING VALUE


The Law Society
GAZETTE
LETTERS
TO THE EDITOR
SEEKING VALUE
If there are more than 100,000 practising solicitors (see [2005]
Gazette, 30 June, 1) and they each pay approximately £900 for a practising certificate, then that means the annual income of the Law Society is around £90 million. With all that money, the Society should provide a much better service to practising solicitors than it does. In fact, in terms of value for money, I think it is probably the worst society membership in the world.
Ian Coupe, locum solicitor, Salford Quays, Manchester
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GAZETTE 7 July 2005

Management / PR

When reputations are on the line

MANAGEMENT/PR

When reputations are on the line

A firm's reputation, carefully developed over a long period, can be destroyed incredibly quickly. A well thought-out communications strategy rather than last-minute firefighting is key, writes Sue Stapely

From respected men of affairs to government target in less than a century is a major shift for a profession. Those old enough to have qualified as lawyers in the naive belief that we would right wrongs, help the troubled, earn a respectable living and enjoy a prestigious position in society now know we were deluded.

Daily we fend off the latest legislative assault and worry about consumer complaints, billing targets, strategy, our ability to keep our young Turks, the merits of limited liability status, whether our pension provision will allow us ever to retire, and our generally unbalanced lives.

But we should also worry about the reputations of our firms. One slip, one oversight, one badly handled complaint, one aggrieved staff member can destroy overnight reputations that took decades to establish.

It is common to hear about firms with worrying levels of e-mail incontinence, where disaffected senior staff allege they have been unfairly treated, or where greed or financial irregularity is unearthed.

The Legal Services Complaints Commissioner has made plain her dissatisfaction with the way the profession handles complaints, and a new regulatory regime is to be imposed on us, thanks to the Legal Service Bill.

In the past few years, serious transgressions have also attracted attention, though not all have found their way into the public domain.

It is easy to preach about the importance of ensuring that risk assessment covers reputational contingencies as well as the more obvious risks, and to extol the wisdom of planning for all eventualities.

Others only tell their in-house marketing or communications professionals that an issue has arisen that could attract attention when the first call comes into the firm proving the cat is already out of the bag.

Months can be expended preparing a defence to litigation before anyone outside the immediate team is advised that it could put the firm in the spotlight. The staff, alert to the slightest rumour, learn a garbled version of events from the grapevine, and at best get an appalling all-staff e-mail with an abbreviated version of the truth.

Unacceptable hours are invested in last-minute firefighting instead of implementing a carefully planned communications strategy.

The approach of reputation management specialists and lawyers is often diametrically opposed. Good communication involves speaking up fast, filling the information vacuum, taking ownership of the issue and, if necessary, apologising.

This is essential if the situation is to be contained and the organisation under scrutiny is to recover. Most lawyers – media-averse, detail-oriented and cautious ever to admit liability – find this approach counter-cultural.

Dangerously, many lawyers also believe that if they are able advocates and successful practitioners their skills will transfer seamlessly to media interviews and areas of law in which they have no real expertise.

Most are wrong – we all know the axiom about the lawyer representing himself having a fool for a client. And even in the largest firms where marketing and communications professionals abound, their expertise may be limited to business development and marketing communications and not to handling crises.

When the ordure meets the ventilation system the majority of firms worry first about how the matter will play in the media, whether it is legal, local or national. Their first priority should, of course, not be the press release but their vital capital – their staff and their clients.

Strategies and systems should be in place to communicate with them before they read about it at break-

'Dangerously, many lawyers believe their skills will transfer seamlessly to media interview'

fast. It is always a tricky call to decide whether to alert these audiences to an issue that might not get reported, but evidence shows that a well-managed and well-communicated problem can build greater confidence in a firm than where no problem has ever arisen.

Skilful media handling is also essential if the issue is newsworthy. Again, candour and accessibility can be more ameliorative than a defensive or evasive approach, particularly if cordial relationships with the journalists have been established.

Dos:

- Consider every scenario of what could go wrong and give rise to client or staff concerns and adverse media interest;
- Have a plan for each situation;
- Allocate spokespeople. Train them in media interview skills;
- Rehearse the scenario, to ensure all understand their roles;
- Prepare holding statements, key messages and questions and answers;
- If considering using professional consultants, contact them early;
- Keep all appropriate personnel within the firm informed, including switchboard operators, receptionists, security staff, and secretaries;
- Never under-estimate how fast and dangerously rumours can spread;
- Speak up and speak up fast – be open and accessible; and
- Exhibit your humanity – say you are sorry (if you, your firm or one of its members is at fault) and empathise with any suffering caused.

Don'ts

- Delay in the hope that the problem will go away;
- Lie; speculate; be defensive; blame others.
- Say 'no comment' and go to ground;
- Assume that the most senior person in the firm is the most able spokesperson; and
- Hide behind bureaucracy.

Sue Stapely is a solicitor and consultant at Sue Stapely Consulting and Quiller Consultants

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What is much harder to do is to accept that any of these things could happen to your firm and make the time to prepare, when life keeps you busy, without a crisis looming.

Lawyers' risk-averse nature means firms are full of ostriches that prefer to go to ground when uncomfortable issues surface.

Firms ring for advice while a camera crew waits in the reception area. Others only tell their in-house marketing or communications professionals that an issue has arisen that could attract attention when the first call comes into the firm proving the cat is already out of the bag.

Months can be expended preparing a defence to litigation before anyone outside the immediate team is advised that it could put the firm in the spotlight. The staff, alert to the slightest rumour, learn a garbled version of events from the grapevine, and at best get an appalling all-staff e-mail with an abbreviated version of the truth.

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- Lie; speculate; be defensive; blame others.
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- Assume that the most senior person in the firm is the most able spokesperson; and
- Hide behind bureaucracy.

Sue Stapely is a solicitor and consultant at Sue Stapely Consulting and Quiller Consultants

GAZETTE 20 July 2006

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On Thursday 9th March 2006 Tom Harrison, senior partner at Adams Harrison, telephoned my principal, to inform him of the existence of my website - www.legaljackass.co.uk - on which I had lambasted Adams Harrison. My boss told me that Tom Harrison had informed him that I was, in effect, a risk to his (my present employer's) practice and that I should be sacked. Fortunately, my boss knew my worth, as I had worked for him as a locum several times before. Again, unprofessional conduct, by a peeved Tom Harrison. A man I had never even met. The Law Society were informed. Jane Bromley had by this time left Adams Harrison. Reputations, reputations! Tom Harrison's reputation was now directly on the line. So what transpired? The Law Society decided to investigate my complaint against Tom Harrison. My employer gave me a memorandum of the incident, dated 7th April 2006. He sent a copy to the Law Society. The memo stated, among other things:

'…On Thursday 9th March 2006 shortly after 9 a.m. I received a telephone call from Mr Harrison…I have had no contact with either Mr Harrison or his firm prior to the conversation…. Mr Harrison began by expressing his "concern" on my behalf. I was nonplussed by his comments….He told me also of the existence of a website….And told me that contained within this website are damaging comments with regard to him and / or his firm. Mr Harrison then went on to tell me that he would be making a complaint about you to the Law Society arising from the contents of the website. He then went on to push the point that as far as he was concerned I was at risk in employing you and that he was quite sure that the Law Society would discipline you for whatever it is he alleges you have done….I think his call was unnecessary and in some way mischief making….and it is rather patronising on his part that he should telephone me to seek to persuade me that I should not be employing you.'

Catherine Adams at the Law Society wrote to me on the 4th July 2006 complaining about the website www.legaljackass.co.uk alleging that I had compromised the good repute of the profession. This, a whole year after I had myself first informed the Law Society of the website in my attempt to get protection for abused locum solicitors. And which contact had elicited no critical comment from the Law Society. Catherine Adams said it was pure co-incidence that I was being investigated over www.legaljackass.co.uk at the same time as I had made my complaint regarding Tom Harrison trying to get me sacked at my present place of employment.

On 28th July 2006 having had the benefit of my employer's memo to guide her, Catherine Adams wrote to me with her findings:

'I have reached the conclusion that I am unable to take your complaint forward….In my view there is no evidence to suggest that Mr Harrison breached the Rules and Principles of Professional Conduct when he telephoned [your employer] on the 9th March. The telephone call was potentially an employer / employee matter. The Law Society is unable to become involved in employment issues. **There is insufficient evidence to suggest that Mr Harrison attempted to pursuade [your employer] to sack you or that he acted in such a way as to take unfair advantage of you.** I will therefore not be investigating your report further. If the Ombudsman finds that we have not dealt with this matter properly she can ask us to take further action.'

I wrote back to Catherine Adams saying that my employer's words…. **'and it is rather patronising on his part that he [Tom Harrison] should seek to persuade me that I should not be employing you'**, was most certainly sufficent evidence to conclude that there was an attempt by Tom Harrison to get me sacked and had she in fact taken account of this evidence in coming to her decision? Catherine Adams did not reply.

The Legal Services Ombudsman (LSO) delivered their report by way of letter to me dated the 7th September 2006 (see overleaf):

LEGAL SERVICES OMBUDSMAN

3rd Floor
Sunlight House
Quay Street
Manchester M3 3JZ
Tel: 0161 839 7262
Fax: 0161 832 5446
DX 18569 Manchester 7
E-mail: lso@olso.gsi.gov.uk
Website: www.olso.org
Lo-call Number: 0845 6010794

[redacted]

Our Reference: 36603

Confidential

07 September 2006

Dear [redacted]

Re: Mr T Harrison
Adams Harrison

Further to this Office's letter of 8 August 2006, when we informed you that we had asked the Law Society for their file. We told you in our letter that once we had received this file we would decide whether or not the Ombudsman should investigate your allegations about the professional body's handling of your complaint.

We have now received the file and on carrying out a preliminary review of the file, it has become evident that your complaint is, essentially, an inter-lawyer dispute. As you were informed by the previous Operations Director, the Ombudsman's view is that the intention of the relevant provisions of the Courts and Legal Services Act 1990 is to create an Ombudsman's scheme which offers protection to the consumers of legal services, rather than practitioners. The Ombudsman considers that practitioners have other means at their disposal which they can use to resolve disputes with other lawyers.

The Ombudsman is therefore exercising her discretion, under the terms of section 22(4) of the Courts and Legal Services Act 1990, not to investigate the allegation you have made about the way in which the Law Society dealt with your complaint.

In accordance with the requirements of that section, we are copying this letter to the senior partner of Adams Harrison and to the Law Society

Yours sincerely

Rob Bartram
Legal Adviser

The Legal Services Ombudsman, as I suspected from previous dealings, did not have any jurisdiction to look into the matter. The Law Society had clearly misled me by telling me the LSO could review the Law Society's findings. Again when I pointed this out to the Law Society they refused to address the point.

Feel free Tom Harrison to ring up my next employer to express your "concern."

Andrew Garbutt, Quality Consultant, Compliance Development Team at the Law Society wrote to tell me that I could seek judicial review of Catherine Adams decision to close her file on my complaint against Tom Harrison. A solicitor specialising in these matters told me it would cost me £22,000 in legal fees to engage in a judicial review. Hardly a practical remedy!

On the 7th November 2006, Catherine Adams sent me for comment her report (for the Adjudicator) on her allegation that I had, through my website www.legaljackass.co.uk, brought the legal profession into disrepute (see overleaf):

Our Ref: CDT/44555-2006/adams cai
Regis Ref: 136433
ADJUDICATOR

[redacted]

PRACTITIONER INVOLVED AND POSITION IN FIRM	Mr [redacted] (Ad1987) consultant		
DATE OF RECEIPT IN CAI	9 May 2006	FIELD OF LAW	General civil
REFERRED BY	Regulation Unit, The Law Society		

ALLEGATION

It is alleged that Mr [redacted] published a website www.legaljackass.co.uk and thereby conducted himself in a manner which brought the solicitors' profession into disrepute contrary to Rule 1 (d) of the Solicitors' Practice Rules 1990 (as amended), or in the alternative, Principle 1.08 of The Guide to the Professional Conduct of Solicitors 1999 (8th Edition).

BACKGROUND

1. In 2002 Mr [redacted] complained to this office alleging a breach of Rule 13 of the Solicitors' Practice Rules 1990 against the firm of Adams Harrison where he had been employed as a locum solicitor.

2. The website was brought to the attention of the caseworker investigating Mr [redacted] complaint. Having considered this, the caseworker referred the conduct of Mr [redacted] in relation to the website to CAI for investigation.

3. Mr [redacted] currently works as a consultant at [redacted] & Co, [redacted]

SYNOPSIS

1. The Adjudicator is referred to **AP1- AP88.** These are extracts from the website taken on 14 March 2006.

2. The Adjudicator is referred to **AP1** which shows that at that date 1,160 people had accessed the site.

3. The office raised the matter with Mr [redacted]. His response appears at **AP89-AP91** and enclosures at **AP95-96, AP97, and AP98** and further response at **AP92-94**. Mr [redacted] stated that he published the website as a result of the suffering he encountered as a locum. Mr [redacted] did not agree that his website compromises or impairs the good repute of the profession. He stated that criticism of the conduct of individual solicitors conduct or aspects of the profession is permitted under Article 10 of the European Convention of Human Rights. Mr [redacted] stated that he

should not be singled out and picked on because he has tried to prevent the reputation of the profession being damaged.

4. The Adjudicator will note that Mr requested specific examples from the website which brought the profession into disrepute. (**AP92**)

5. The caseworker, whilst noting her view that the website per se brought the profession into disrepute (**AP99**), provided Mr with examples of pages from the website which in her view brought the profession into disrepute. (**AP82, AP84, AP85, AP87-88**)

6. Mr responses appear at **AP100-102 and AP103-105** and enclosure at **AP106**. Mr stated that two of the examples referred to the only bits of strong language on the site and that he had changed the wording. Mr stated that example three was a statement of fact and not controversial. He stated that example four related to when he was a trainee and is all fact; however he had not mentioned the names of the individuals involved. He stated that he was merely describing the bullying he suffered from a solicitor.

7. The caseworker viewed the website as published on 7 November 2006. A copy of the home page is attached at **AP107-108**. At **AP109-115 and also at AP 116-119** Mr quotes from and refers to The Law Society's investigation into a second complaint he made in 2006 about Mr Harrison. In addition Mr refers to the office's investigation into his website. (NOTE: **AP109-115** show extracts printed from the website on 7 November 2006. The Adjudicator will note that the contents of the pages printed are incomplete. The caseworker has therefore copied the extracts and printed these separately at **AP116-119.** It has not been possible to provide a complete copy of **AP118**).

RELEVANT PRINCIPLES

Solicitors' Practice Rules 1990 (as amended)

Rule 1

A solicitor shall not do anything in the course of practicing as a solicitor, or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:

(d) the good repute of the solicitor or of the solicitors' profession;

The Guide to the Professional Conduct of Solicitors (8th edition) 1999

Principle 1.08 Behaviour outside legal practice

"Solicitors are officers of the Court, and must conduct themselves so as not to bring the profession into disrepute.

1. *Solicitors, whether practising or not, are officers of the Supreme Court. Certain standards of behaviour are required of solicitors, as officers of the Court and as members of the profession, in their business activities outside legal practice and even in their private lives. Disciplinary sanctions may be imposed if, for instance, a solicitor's behaviour tends to bring the profession into disrepute.*"

DOCUMENTS ATTACHED

Number	Item	Dated
AP1- 88	Extract from www.legaljackass.co.uk	14 March 2006
AP89- 91	Letter from Mr [redacted] to The Law Society	5 July 2006
AP92-94	Letter from Mr [redacted] to The Law Society	6 July 2006
AP95-96	Enclosed letter from Mr Bramall, The Law Society	17 June 2005
AP97	Enclosed letter from Mr Bramall, The Law Society	18 July 2005
AP98	Enclosed email from Mr Sturgess, The Law Society	26 July 2005
AP99	Letter from The Law Society to Mr [redacted]	10 July 2006
AP100-102	Letter from Mr [redacted] to The Law Society	11 July 2006
AP103-105	Letter from Mr [redacted] to The Law Society	18 July 2006
AP106	Enclosed facsimile from Badenoch & Clark	undated
AP107-108	Home page, Legal Jackass	7 November 2006
AP109-115	Pages 78 – 84, Legal Jackass, The Abused Solicitor	7 November 2006
AP116-119	Copied extract of pages 78-84, Legal Jackass, The Abused Solicitor taken on 7 November 2006	undated

ISSUES (i.e. application of relevant principles to facts)

The Adjudicator is asked to consider whether Mr published the website www.jackass.co.uk in the course of practicing as a solicitor and whether in so doing he compromised or impaired the good repute of the solicitors' profession. Alternatively, the Adjudicator may consider that, as an officer of the Court Mr 's behaviour outside legal practice in publishing the website brought the profession into disrepute.

In considering the matter the Adjudicator may wish to note the following:

1. The Adjudicator may consider that in view of the contents of the extracts printed from the website that the website was published by Mr during the course of practice.

2. However, even if the Adjudicator does not consider that Mr published the material in the course of practice, the material clearly flows out of his practice as a solicitor and therefore the Adjudicator may consider that the behaviour falls within Rule 1.

3. Alternatively, if the Adjudicator does not consider that Mr behaviour falls within Rule 1, the Adjudicator is asked to consider whether it is appropriate for this office to consider the allegation made against Mr under Principle 1.08.

4. Ordinarily this office would not investigate matters relating to the personal business of a solicitor outside practice.

5. However, the Adjudicator will have to consider the **APs** attached in relation to Mr 's conduct and the serious nature of the allegations.

6. If the Adjudicator considers that it is appropriate for this office to investigate and adjudicate upon this particular matter, the Adjudicator will have to consider the material and the comments made by Mr and consequently the weight and cogency that should be attached to the same.

7. The Adjudicator will note that Mr requested specific examples of material from the website which this office considers amounts to professional misconduct.

8. The Adjudicator will note the examples provided to Mr following his request for these.

9. The Adjudicator will note 's response to these examples. In particular, Mr has altered the words "F**k you" to "**** you" (**AP103**). At **AP104** Mr has removed the word "Bastards!"

10. Although the Adjudicator's primary concern should be with the content of the website at 14 March 2006, the Adjudicator will note that the website, as amended, remains published and on 7 November 2006 included references to the matter of this investigation and the second complaint made by Mr to this office.

The Adjudicator will note that the standard of proof applicable is the flexible civil standard varying according to the seriousness of the complaint. In this case the Adjudicator is asked to consider the allegations on the balance of probabilities.

CASEWORKER'S VIEW IN OUTLINE

NOTE: The Adjudicator is not bound by the caseworker's view.

1. In my opinion Mr [redacted] has acted in breach of Rule 1 (d) of the Solicitors' Practice Rules 1990 (as amended) or, in the alternative, Principle 1.08 of The Guide to the Professional Conduct of Solicitors 1999 (8th Edition).

2. My reasons in outline are:

   2.1 Mr [redacted] is a practicing solicitor.

   2.2 The contents of the website attached are such that they can be said to have been published by Mr [redacted] in the course of practice. This is because they derive from Mr [redacted]'s professional practice and associated regulatory bodies. In my view, in so doing Mr [redacted] has compromised or impaired the good repute of the profession.

   2.3 Alternatively, Mr [redacted]'s behaviour outside legal practice in publishing the website has brought the profession into disrepute in that the contents of the website attached fall outside certain standards of behaviour required of solicitors, as officers of the Court and as members of the profession, in their private lives.

3. I suggest that Mr [redacted] should receive a severe reprimand. In addition the Adjudicator is asked to consider vesting a discretion in respect Mr [redacted]'s next Practising Certificate pursuant to Section 12 (1)(e) of the Solicitors Act 1974 (as amended).

4. The standard of proof applied in reaching this decision is that of the balance of probabilities.

Further comments received after disclosure of this report: YES/NO
Attached at page(s)

Has caseworker's view been altered as a result of comments received following disclosure? YES/NO

Catherine Adams
Caseworker

7 November 2006

To be disclosed only to solicitor

Our Ref: CDT/44555-2006/adams cai
Regis Ref: 136433

SCHEDULE

(Ad1987)

REGULATION

i) Practising Certificate

Mr currently holds a Practising Certificate for the practice year 2005-2006, free from conditions. Mr is not subject to Section 12 of the Solicitors' Act 1974 (as amended).

PREVIOUS FINDINGS AND HISTORY:

Nothing relevant

SOLICITOR'S COMMENTS:

NB Please write here any comments you wish to make on matters listed on this page and return a copy to the Conduct Assessment and Investigation Unit.

I sent a full reply to Catherine Adams on 11th November 2006 together with copies of a further 22 letters that were relevant to my case, including my present employer's memo to me of 7th April 2006 regarding Tom Harrison's phone call to him of 9th March 2006:

[redacted]

11th November 2006

To the Law Society
Leamington Spa

FOR Catherine Adams
Ref: CDT/44555-2006/Adams CAI

3 PAGE FAX AND RECORDED DELIVERY POST

Dear Mrs Adams,

Regulating the profession

I refer to your letter of 7th November 2006.

I would like to comment on your casenote.

It is important that the Adjudicator knows how you came to investigate my website one year after the Law Society already knew about it and had no critical comment to make at all.

Your investigation into my website only came about at precisely the same time as I made a complaint to you over Tom Harrison phoning my present employer [redacted], who, in his own words has reported to me (and then to you) that: " …as far as he [Tom Harrison] was concerned I was at risk at employing you…… and it is rather patronising on his part that he should telephone me to seek to persuade me that I should not be employing you". After this attempt by Tom Harrison to stop me earning a living I reported this harassment and abuse to the Law Society by letter. When I phoned up to enquire about the progress being made by the Law Society with regard to my complaint, the phone was put down on me. Only after I complained to the Chief Executive of the Law Society did your investigation unit apologise and you yourself then investigated my complaint against Tom Harrison. You made enquiries of [redacted] who sent you a copy of his memo to me dated the 7th April 2006. In spite of [redacted]'s clear words in his memo, including those I have mentioned above, you came to the conclusion that: " ….. there is insufficient evidence to suggest that Mr Harrison attempted to persuade Mr [redacted] to sack you or that he acted in such a

way as to take unfair advantage of you. I will not therefore be investigating your report further".

No clearer example of a perverse conclusion than yours could one find. This was followed by your immediate closure of your file without responding to my letter of the 2nd August 2006 (copy enclosed). You also deliberately misled me by saying that I had an effective right of appeal to the Legal Services Ombudsman. The Legal Services Ombudsman by their letter to me of the 7th September 2006 (copy enclosed) have indicated that the Ombudsman service is not open to practitioners at all, a position that you must have already known about.

Hence my accusation that you have corrupted the investigation into Tom Harrison's continued bullying and abuse of me. Especially as you have clear conflict of interest in investigating my complaint against Tom Harrison at the same time at prosecuting me for my website which itself details Tom Harrison and his firm's previous abuse and bullying of myself.

Your desire that I face a "severe reprimand" for my website only indicates that your motives are unwholesome as you have failed to tell me exactly what is wrong with the website as per my request in my fax and DX letter to you of the 24th July 2006, (copy enclosed).

How exactly have I, in your opinion, "compromised or impaired the good repute of the profession"? All I have done on my website is to highlight abuse, bullying and other shortcomings in the profession as indeed have also the Law Society Gazette. My exposure of the abuses is meant to improve the reputation of the profession by creating pressure for a change in the rules, which will prevent the abuses continuing in the future.

In what way exactly do the contents of my website "fall outside certain standards of behaviour required of solicitors."?

You have not told me what communications you have had with Tom Harrison over his desire to prevent me earning a living, particularly as he has told [redacted] that he will be making a complaint to you about me. Tom Harrison who, may I remind you is the Senior Partner of a firm of proven liars, after I took them to court in 2002. You have not told me who asked you at the Law Society to initiate your investigation into my website after the Law Society knew about it for a whole year previously.

Your application to the Adjudicator is speculative and a clear abuse of power.

I enclose copies of the following correspondence in support of my statement in the letter, which correspondence has been omitted by you in your casenote:-

[redacted]'s memo of the 7th April 2006 to me (a copy of which you have).
Letter from me to the Law Society dated 10th March 2006.
Letter from me to the Chief Executive of the Law Society dated the 3rd May 2006.
Letter from the Law Society to me dated 15th May 2006.
Letter from me to the Law Society dated 14th June 2006.
Letter from the Law Society to me dated 19th June 2006.

Letter from me of the 24th July 2006 to the Law Society.
Law Society letter to me dated 28th July 2006.
Letter from me to the Law Society of the 2nd August 2006.
Letter from me to the Legal Services Ombudsman dated 2nd August 2006.
Letter from me to the Law Society dated the 28th August 2006.
Law Society letter to me dated 29th August 2006.
Legal Services Ombudsman to me dated 7th September 2006.
Letter from me to the Law Society dated 11th September 2006.
Letter from me to the Legal Services Ombudsman dated 11th September 2006.
Law Society letter to me dated 13th September 2006.
Letter from me to the Legal Services Ombudsman of the 19th September 2006.
Letter from me to the Chief Executive of the Law Society dated 19th September 2006.
The Legal Services Ombudsman letter to me of the 26th September 2006.
Law Society letter to me of the 20th October 2006.
Letter from me to the Law Society of the 23rd October 2006.
Law Society letter to me of 24th October 2006.

I reserve the right to make further comments on this matter within the time allotted to me, being three weeks (as agreed over the phone on 9th November 2006) from the 7th November 2006.

Yours sincerely,

Solicitor

PS. I must insist of course that you pass on a copy of this letter to the Adjudicator, together with the enclosed copy correspondence of which I have made you a spare copy.

[redacted]

2nd August 2006

The Law Society
Dx 292320 Leamington Spa 4

FAO : Catherine Adams
Caseworker Conduct Assessment & Investigation Unit
by fax (and post) on : 01926 431435

Your reference : CDT/44556-2006/Adams CAI

Dear Mrs Adams,

Re : Regulating the profession
Mr Tom Harrison of Adams Harrison Solicitors

Thank you for your letter of the 28th July 2006.

You state in your seventh paragraph that, "It is not clear what Mr Harrison's motives were in phoning Mr [redacted]...." The motives of Mr Harrison should be clear to you, as they are to myself and Mr [redacted], which is that Mr Harrison wanted me sacked from this firm, and that is made quite clear in [redacted]'s memo to me of the 7th April 2006 as per the last sentence of the fourth paragraph on the second page of the memo, by the words "....and it is rather patronising on his part that he should telephone me to seek to persuade me that I should not be employing you." That certainly is sufficiently clear evidence for you to conclude that Tom Harrison was seeking to have me sacked at [redacted] & Co. Presumably you have missed this sentence by accident.

What is needed in a situation such as this is a discussion between yourself and myself over our earnest joint desire to stop bullies and the unprofessional conduct of the likes of Tom Harrison – bully and head of a firm of proven liars. You seem to be very quick to continue the protection of Tom Harrison by not telephoning me to discuss the matter, or seek clarification.

How on earth was Mr Harrison's telephone call to [redacted] "potentially an employer / employee matter"? I am not working for Tom Harrison of Adams Harrison, and you are surely aware that self employed locums do not have any employment rights against the firms they work for. There are no legal options open to me in the employment field. Are you trying to suggest that I take libel proceedings against Tom Harrison?

You have presented me with a fait accompli and this shows bad faith on your part, as it tells me that you are being instructed by others in the Law Society to ensure that Tom Harrison continues to be protected. He will feel he has been given the green light to ring up the next firm I work for, if he manages to find out who they are.

As I said you should have telephoned me to discuss the matter and I would have in any event been able to direct you back to [redacted] who would have told you in the clearest terms possible that Tom Harrison's intention was to get me sacked. What other possible reason in any case would he ring [redacted] for? You say you have an internal complaints procedure that will deal with my concerns, so would you please forward me more details.

I will in any event be making an appeal to the Legal Services Ombudsman to review your file.

Yours sincerely,

On the 18th January 2007 Catherine Adams sent me a copy of the Adjudicator's decision which was dated the 21st December 2006:

FIRST INSTANCE DECISION

File number: CDT/44555-2006/ADAMS CAI
Regis number: 136433

[redacted]

(Ad 1987) - Consultant

I have considered an allegation that by publishing a website www.legaljackass.co.uk Mr [redacted] conducted himself in a manner which brought the profession into disrepute, in breach of Rule 1(d) of the Solicitors' Practice Rules 1990 (as amended) or in the alternative, Principle 1.08 of the Guide to the Professional Conduct of Solicitors 1999 (8th Edition).

FINDING

I **FIND** Mr [redacted] conduct does not amount to a breach of Rule 1(d) of the Solicitors' Practice Rules 1990 (as amended) or alternatively to a breach of Principle 1.08 of the Guide to the Professional Conduct of Solicitors 1999 (8th Edition).

The standard of proof I have applied to the above finding is the flexible civil standard which varies according to the circumstances of the case, the seriousness of the allegation and the severity of any potential sanction. The more serious the allegation the stronger the evidence in support has to be.

REASONS & COMMENTS

(a) It is plain that Mr [redacted], based on his own personal experience, feels strongly about what he sees as the potential for abuse of solicitors working as locums. I do not consider that his decision to draw attention to the difficulties often faced by locums by publishing an account of his experiences on a website amounts to professional misconduct. Bullying in the workplace, unfair practices and exploitation of employees are issues which are worthy of serious debate; what Mr [redacted] published was a contribution to that debate. However, he will, or should be, aware of the laws of defamation.

(b) Having read Mr [redacted]'s criticisms of The Law Society about its decisions concerning those solicitors whose conduct caused him concern, I feel bound to make some additional comments.

(i) Firstly, Mr [redacted] must accept that there are limits to the type of complaint which the Law Society deems suitable for investigation. I refer him to Mr Bramall's helpful letter dated 17 June 2005, in particular to the comments at paragraph 3 therein which explained why it would not be appropriate for The Law Society as a professional body to intervene on the side of any particular group.

(ii) Secondly, Mr [redacted] must accept that there will be instances where his assessment of what constitutes professional misconduct will depart from the assessment made by his professional body. Whilst I have made no finding of professional misconduct against him arising out of matters published on his

website, he will appreciate that if he fails to accept the findings of his professional body in respect of matters which have been investigated - but not to his satisfaction and expresses his dissatisfaction in a way which is improper then The Law Society as Regulator may have cause to revisit and re-examine his conduct.

(c) At the heart of Mr [redacted]'s complaints to The Law Society are his concerns about the precarious position of locum solicitors. He has been advised by Mr Bramall about the proper way of seeking to improve that and he should have regard to the advice.

DECISION

I have therefore decided to take no further action.

C. Griffith

Ceri Griffith
Adjudicator

Date: 21 December 2006

A victory for me as well as a victory for common sense. Catherine Adams closed her file on the case.

The 3rd paragraph of Chris Bramall's letter to me of 17th June 2005 went as follows:

> **"You say that the Law Society does not recognise the Solicitors Freelance Association, and that appears to be the case as it is not a recognised group, and I cannot find it listed on the Law Society's website as a practitioner association. Nevertheless I note that the Assistant Quality Officer has commended the Association to you. It may be that, through the Association, you should lobby your Council members for recognition to be extended to the Association."**

I replied to Chris Bramall on 25th June 2005 saying, among other things:

> **"You mention the Solicitors Freelance Association. Beverley Bevan [of the Law Society] wrote to me on the 9th August 2004 providing contact information for the 'Freelance Solicitors Group'. But I already knew of the Group years ago and have long ago made contact with them but they are small - always will be - and have no leverage with the Law Society. They achieve next to nothing. Even you were completely unaware that they are unrecognised by the Law Society and are not a practitioner association.**
>
> **What you should be telling me is why the Group are not recognised by the Law Society.**
>
> **As for lobbying - well, my letters to the man at the top, the President [of the Law Society], is lobbying enough. Along of course with my website called www.legaljackass.co.uk."**

I did in fact correspond with my Law Society Council member in July 2003 but to little avail.

In conclusion I have to say that it is up to the Law Society to take the initiative on behalf of locums, not just to recognise the Solicitors Freelance Association but more importantly to properly investigate allegations of bullying and abuse of locum solicitors. And not just locum solicitors. The Law Society must put in place direct and effective procedures to protect all solicitors from bullying no matter what their employment status. At present Law Society advice to abused solicitors is to take the alleged abuser to court. Locums are self employed so have no rights in the eyes of the law. Employed solicitors are loathe to take their employers to court because of the stress and financial cost involved. So they often continue to suffer. Some lose sleep or turn to drink or medication from their doctors.

On the 22nd March 2007 the Law Society *Gazette* featured me as follows:

Web win for bloggers

Writing derogatory and potentially libellous comments about law firms does not necessarily count as bringing the profession into disrepute, according to a recent Solicitors Regulation Authority (SRA) adjudication seen by the *Gazette*.

The SRA has ruled that a website set up by a London locum solicitor detailing strident complaints against a law firm he worked for 'does not amount to a breach' of rules governing conduct. The ruling could mean less worry for lawyers who want to use the web to speak out about conduct and practice.

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For legal reasons the *Gazette* cannot mention any of the firms involved or the website's name, but the website details a London locum property lawyer's allegations against a law firm which he alleges inaccurately labelled his work as sub-standard as a reason to remove him after he complained about bad practice.

The adjudicator warned the website owner about potentially libelling parties online, but ruled that 'his decision to draw attention to the difficulties often faced by locums' by publishing his highly disparaging views online did not amount to professional misconduct.

The adjudicator said: 'Bullying in the workplace, unfair practices and exploitation of employees are issues which are worthy of serious debate; what [the website owner] published was a contribution to that debate.'

The website owner told the *Gazette*: 'It took the common sense of this particular adjudicator to establish the right for a lawyer to publicly express criticism over his subjection to bullying in his role as a locum property solicitor.'

But he may still be sued for libel, as the adjudication does nothing to prove or disprove his comments said Helen Morris at media firm David Price Solicitors & Advocates.

'An adjudication by a professional body will probably be based on very specific criteria to that organisation,' said Ms Morris. 'Accordingly there is no guarantee that, if you're off the hook with the regulator, you can sufficiently establish the often complex and technical grounds required to defend yourself against a libel action.'

Rupert White

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Rupert White

GAZETTE 22 March 2007

***

In the same *Gazette* issue (22nd March 2007) a letter was published entitled 'Sweatshop hours' which criticised the long hours culture - a form of bullying - in City firms. (See below). This was in response to an earlier article on a young City of London solicitor who took his life due to stress from overwork.

In June 2005 the Chief Executive of the Law Society invited solicitors to speak up and have their say regarding the "imminent overhaul of the Law Society." (See below). I wrote in regarding the abject position of the locum solicitor. The Law Society *Gazette* missed an opportunity to highlight the plight of locums in general in their 1st September 2005 two page spread on Freelance Solicitors, entitled 'Locums are go!' stating that "the freelance market offers attractive lifestyle and career choices." For the vast majority of locums - certainly property locums - this is just not true. I spoke to the *Gazette* who told me that the Freelance Solicitors Group were contacted and asked to contribute to the article 'Locums are go!' by freelance journalist, Nicola Laver, (see below). The Freelance Solicitors Group, sadly, did not respond. It can be seen that the locums described by Nicola Laver are the eilte/niche City lawyers fed up with their lot and seeking a way out. In the Law Society *Gazette* of 13th October 2005 professionalassociates.com spoke the truth about the uncertain nature of obtaining locum work. (See below *Gazette* article entitled - On-line lawyers under the hammer).

On the subject of the bullying of solicitors by the firms they work for I must take this opportunity to speak up for trainee solicitors who also face a lot of stress from bullying. (See below for two Law Society *Gazette* articles).

I read a Law Society *Gazette* article in a November 2004 issue that revealed that many trainees do not know where to turn to for help. My advice to them is to go to the Spy Shop in

Leytonstone or in the West End of London and purchase a covert recording device - to collect evidence of the bullying. The staff are most helpful. Their website can be found at www.lorraine.co.uk. Their equipment is worth paying for, as the device you purchase may prove to be your salvation. Above all be patient - and look forward to the possibility of getting your own back in a big way.

LETTERS TO THE EDITOR

SWEATSHOP HOURS

Your editorial on the death of Matthew Courtney was disgraceful (see [2007] Gazette, 22 February, 15).

One presumes that by acknowledging the trauma Mr Courtney's death will have caused to his 'family, friends and colleagues', you were perhaps offering some sort [of] sympathy, but this was wholly negated by the remainder of the editorial. The inference to be drawn from your remarks is that those who have the stamina to work 16-hour days, seven days a week ad infinitum will eventually be 'rewarded' by some telephone-number salary, elevating them to a different earnings and social strata from Joe Public, an altogether lesser human being. En route to this legal Utopia, they will have to make the substantial sacrifice known as a quality of life, becoming further isolated from people who truly matter, such as family and real friends.

Why do you call this a 'reward'? How much money is really necessary to be comfortable and happy? Why should anyone be on permanent call to some corporate big shot in a different hemisphere, irrevocably steeped in the mire of corporate greed with probably little in the way of a life himself?

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Why do you call this a 'reward'? How much money is really necessary to be comfortable and happy? Why should anyone be on permanent call to some corporate big shot in a different hemisphere, irrevocably steeped in the mire of corporate greed with probably little in the way of a life himself?

There is something fundamentally flawed about organisations that allow their staff to work 16-hour days, seven days a week. Either it has too much work (if so, it should have more employees), its existing employees are incompetent (if so, management has to review why) or – as I suspect is the case with the huge magic circle firms – it is a sick form of initiation designed to separate the wheat from the chaff.

You would have gained much more respect had you acknowledged that such sweatshop hours are not acceptable in a profession that is supposed to be just and fair, rather than cruelly implying that, if he had worked such hours, it was a deficiency in Matthew Courtney that he simply could not cope.

Elainne M Lawrie, Chester

104/12 22 March 2007 GAZETTE 19

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Elainne M Lawrie, Chester

GAZETTE 22 March 2007

Time to speak up

THE OPPORTUNITY IS HERE FOR MEMBERS OF THE PROFESSION TO HAVE THEIR SAY ON AN IMMINENT OVERHAUL OF THE LAW SOCIETY, AS JANET PARASKEVA EXPLAINS

CHIEF EXECUTIVE'S COLUMN

Time to speak up

THE OPPORTUNITY IS HERE FOR MEMBERS OF THE PROFESSION TO HAVE THEIR SAY ON AN IMMINENT OVERHAUL OF THE LAW SOCIETY, AS JANET PARASKEVA EXPLAINS

As we begin to separate the Law Society's governance and representation roles, we have a unique opportunity to build a new professional services arm for the future Law Society.

We will be consulting widely with the profession through market testing and face-to-face meetings over the next six months.

But it is also revealing to look at the views of the profession that we gathered in our most recent satisfaction survey - and indeed to compare those views with the results of the same survey two years ago.

Paraskeva: the more solicitors involved in reform, the better

This is the one chance the profession has to help the Law Society design a really modern professional services body fit for purpose and fit for the 21st century

16 GAZETTE

102/26 30 June 2005

It would be relatively easy, but a huge mistake, to sit in a back room and design a new structure, uninfluenced by the world around us. We know that if we really want to create an organisation that delivers what the profession wants, we have to ensure that we know what solicitors value about the Law Society, what their views are of how we meet the different needs that solicitors have today and how we promote their interests.

Any survey of customers - and solicitors are the customers of the Law Society - can be difficult to stomach. But if we don't listen to what solicitors have been saying, we will diminish our chances of getting it right.

And get it right we must, for this is one of those rare moments when there is an opportunity to make a real change. This is the one chance the profession has to help the Law Society design a really modern professional services body fit for the purpose and fit for the 21st century.

We know from what you have told us that only about one-third of you feel we fully understand your needs. What that probably means is that we are just not meeting them in the activities and services that we provide.

One commonly asked question is, 'What does the Law Society do for me?' And something we are learning is that we don't tell you often enough what we are doing for you on your behalf. There are many important achievements that we must ensure we convey to the profession loud and clear.

For example, we have made frequent interventions into cases before the courts where we think the law should be clarified or where we think judgment could have an adverse effect on the public or profession's interest. In the case of *Bowman v Fels*, our intervention helped to secure clarification of the money laundering regime; in the *Three Rivers* case, our intervention helped to protect legal

professional privilege. Other interventions have helped to clarify the operation of the conditional fee agreement regime.

Perhaps we have not been voluble enough in letting the profession know that our lobbying helped encourage the government to introduce regulation for claims farmers. And we haven't said loudly enough that were it not for the Law Society's lobbying on the Clementi review of legal services, we could well have ended up with a Financial Services Authority-style quango that would have removed self-regulation from the profession.

In the recent satisfaction survey, more than 85% of you said we should be promoting your interests. Almost three-quarters of you were clear that we needed to promote the brand and to promote the public's interest in legal matters. The PR campaign, 'My hero my solicitor', that we commissioned last year and our current campaign on stamp duty land tax are two examples of how we do this. Another campaign we are currently working on is aimed at informing solicitors about the implications of and opportunities provided by home information packs.

But we shouldn't rubbish the work that we do, or deny the progress that we have made. Two years ago, only 39% of respondents to our satisfaction survey thought the Law Society was doing a good job in regulating the profession. Now more than half of you say that you are satisfied or very satisfied with the way the Society performs its regulatory role.

Moreover, almost half of you have said that you are satisfied or very satisfied with Law Society services overall. Not good enough by far, but a significant increase from the 34% of respondents in the survey in 2002. It is encouraging to see that the trend is positive and we aim to build on it in the process of transition that is now under way.

Perhaps the most interesting statistic is actually the numbers of you who seem indifferent to the work of your professional body. All too often in the satisfaction survey, slightly fewer than half of you gave a 'neither/nor' response to a range of questions. This suggests either a lack of knowledge or a lack of interest, or both.

It is the Law Society's job to tackle a lack of knowledge, but responsibility for indifference is shared with the profession. The representative body of a profession can do a huge amount for its members. The Law Society currently does an enormous range of work that is greatly valued by thousands of solicitors. If those of you who feel indifferent to what the Society does, believe it is because the organisation does not meet your needs, then now is the time to speak up.

Make your voice heard. The Law Society is the representative body for every solicitor in England and Wales. It's your Law Society. The more solicitors participate, the more influential it can be.

● Register interest in contributing to the debate by e-mailing: Glenn.Sturgess@lawsociety.org.uk.

Janet Paraskeva is the Law Society chief executive

GAZETTE 30 June 2005

Locums are go!

LAW FIRMS FIND THAT LOCUM LAWYERS PROVIDE INVALUABLE SHORT-TERM SUPPORT. WHAT'S MORE, THE FREELANCE MARKET OFFERS ATTRACTIVE LIFESTYLE AND CAREER CHOICES, REPORTS NICOLA LAVER

With the holiday season in full swing, for many members of the legal profession, the summer means packing their bags and making their cheery way to Tuscany, Provence and other more exotic locations. But just because the lawyers have jetted off, their work-load is not going anywhere, and firms are increasingly turning to locum lawyers to keep the cogs turning on the billable hours machine.

The locum market is booming, with many senior solicitors leaving employment to become temporary lawyers. They provide an experienced pool of quality solicitors at short notice to cover periods of holiday.

Antonia Rumbelow, a director at the Law Absolute agency, which places temporary solicitors, says firms are waking up to the benefits of locum lawyers. She cites one firm that would not have taken any locums on five years ago, which currently has three.

It is the small to medium-sized firms that really feel the pinch when one partner goes on a long summer holiday, a sabbatical or maternity leave, she says. Locums are frequently used in residential property, family and private client work, where it can be difficult to recruit. There is also a shortage of good company/commercial lawyers of between two and four years' post-qualification experience, and locums are frequently being used to fill the gap - some 50% of whom eventually get placed permanently.

But it seems the major City firms have missed a trick when it comes to making use of locum lawyers. Ms Rumbelow says: 'Big firms don't always recognise the quality of locums. We have a lot of ex-City partners who want more flexibility in the way they work. They work six months of the year and go to their holiday home in the south of France for the rest of the year.'

She says some former City partners are interim locums, between permanent jobs, while others are professional locums who would never consider a permanent position.

Alice Gotlo, director at recruitment consultancy Strategic Legal Solutions, provides another explanation for the lack of temporary lawyers at big City firms: 'I believe this stems primarily from their ability to move resources around to cater for gaps, but may also be partly because - in our

experience - they often have human resources (HR) departments which are very powerful and resistant to change, so even though partners may think it's a great idea, it never gets past HR.'

London firm Fox Williams has invested significantly in locums. Partner Philippa Aldrich says: 'There has always been concern about quality, continuity and client care when it comes to using locums. But a well-defined recruitment process and proper day-to-day management can easily overcome these issues.'

Head of dispute resolution Tom Custance adds: 'We try to recruit a certain type of lawyer - someone who is not only technically excellent, but has a real flair for business development. By using locums, we can spot talented lawyers and offer them permanent positions, if they fit with the firm's ethos and style of doing business. For example, one of our young litigation partners, who is originally from New Zealand, joined the firm as a locum. He proved to be extremely successful and was invited to join the partnership more than a year ago.'

Specialist consultant solicitors are a different breed to locums, boasting many years' City experience, in a niche area. Internet company consultantlawyers.co.uk was recently launched to help law firms deal with short-term gaps in expertise by providing experienced ex-City lawyers.

Founder and managing director James Knight explains: 'Consultant solicitors are highly experienced lawyers who often specialise in niche areas such as tax and competition law.' He currently has 37 consultant solicitors on his books and is seeing a massive increase in lawyers wanting to work as consultants.

Good consultant solicitors are not cheap at an hourly rate of around £150, but he claims they are a 'premium brand', with a law firm likely to be able to charge every hour to the client at a profit. He says many of his consultants are attracted to that way of working by a desire to avoid office politics, billing targets and commuting.

Ex-Nabarro Nathanson solicitor Nigel Stanford is a consultant lawyer with specialist corporate knowledge. He says: 'I am allowing the firms in question to keep hold of work for clients that they would otherwise have to turn away, because of a lack of expertise.' He became a freelance lawyer after leaving an in-house job as global legal counsel and taking on a large property development project and found the lifestyle 'immeasurably better'. He works from home, but travels to the law firm's office for client meetings.

He says: 'I waste no lime in commuting. I'm not required to do any significant travel for work which given that I spent five years doing a lot of travelling is a real bonus - or any unnecessary administrative work. I see much more of my 15-month-old daughter than I would have in my old job. My wife also works from home, so I can support her with child-care when she needs to work. As to remuneration, I think that now I am effectively a full-time consultant lawyer, I will end up making as much, if not more, than

I used to earn as an in-house counsel.'

The flexibility was a major attraction to Rachel Barber, who turned freelance after moving away from her previous job to get married. She says: 'The chance to freelance came up and I grabbed it - it suits perfectly a desire for flexibility and is a great route to assimilating into the City.' She is currently working at Salans.

She adds, 'It's not difficult to fit into an existing team. It's easier if you are perceptive about the people and the office dynamics. The most important thing is to be positive and committed to whatever role you are brought in to do.'

Salans partner Smeetesh Kakkad says, 'As a result of dealing with several large-scale, complex disputes, we needed an experienced solicitor to come in and assist urgently, who would be able to hit the ground running. The locum we employed has done just that and provided invaluable support as well as being very willing, flexible and fitting in well with our existing team.'

Having greater control over their career is a major draw for some freelance solicitors. One freelance lawyer, who preferred not to he named, with dual Canadian and English qualifications, left the employ of a magic circle firm to work freelance on a large transaction at a US firm in London. She says she felt stifled by the employed environment she had been working in and adds: 'Being freelance allows me to do eight or nine months a year and then have three months to go travelling. You have control of your career - with employment you have no say in what deal you're working on and your career is in their hands.'

Ms Gotto says the number of lawyers choosing to work as temporary solicitors is on the rise. She explains: 'I think it's another illustration of the increasing importance people are putting on work/life balance - though that is a phrase that is over-used. The long hours culture in law firms combined with the increasing length of the partnership track is putting a lot of junior and mid-level lawyers off the whole idea of working permanently within private practice.'

Where there was once the perception that locum work came with little security or prospects, successful locums can quickly establish good connections and build up a good reputation and repeat bookings, she says.

Ms Rumbelow predicts: 'More and more locums will be taken up as people are needed, because firms will not be able to afford to have fee-earners sitting around twiddling their thumbs [during a quiet period]. So when the big cases come along, they will get someone in who will go when the job is done.'

Nicola Laver is a freelance journalist

GAZETTE 1 September 2005

On-line lawyers under the hammer

On-line lawyers under the hammer

An eBay-style auction site has been set up to give independent lawyers the chance to sell their services to the highest bidder.

Professionalassociates.com, an on-line service launched by corporate advisory practice Global Consulting Group (GCG), is designed to help solicitors and barristers find suitable locum positions and assist law firms or companies find the appropriately skilled lawyers they need to fill temporary vacancies.

After the successful completion of a screening interview and reference checks, the lawyer can be entered into four-day auctions in which firms can bid for their services. Each individual sets their own reserve price – the lowest they are prepared to work for – and the highest bidder secures their services. The candidate is bound to accept the work offered by the highest bidder, although there is a 30-day termination clause.

As on the eBay Web site, there is a 'buy now' figure that allows firms to secure the services of a particular lawyer immediately.

Photograph: Rex Features

Going, going gone: site aims to fill gaps left by agencies

Before the prospective employer makes any bids, it is shown the photograph, résumé and availability of the lawyer for hire, whom it can then contact either by telephone or in person.

GCG launched the service earlier this year for management and technology consulting firms and corporations. William Jones, director of professionalassociates.com, said: 'It quickly became clear to us that legal firms and legal departments within corporates have a desperate need for a more efficient means of sourcing solicitors and barristers, so it was a logical step to add them to our service.'

He said: 'At present, most senior professionals in search of interim work rely on their personal contact network, or recruitment agencies to get their next job. Often they only find one by chance or default. Our understanding is that there is a demand for lawyers with five to seven years' experience, who are at the moment being mismatched by agencies and pushed towards roles that are below their capabilities, while the firms or companies looking for them can't find them.'

Mr Jones indicated that the service would be particularly suitable for FTSE 250 companies with legal departments that needed to fill a gap for a few months, and for larger law firms requiring extra lawyers quickly to work on particular contracts they have won.

Chris Beasley, an independent solicitor with 25 years of corporate experience who has signed up to the service, said: 'The approach is unique and more personal. It brings a much-needed alternative to trawling job sites and having to rely on agencies which, for one reason or another, often see you as a [profit] margin rather than as a lawyer with real experience.'

Catherine Baksi

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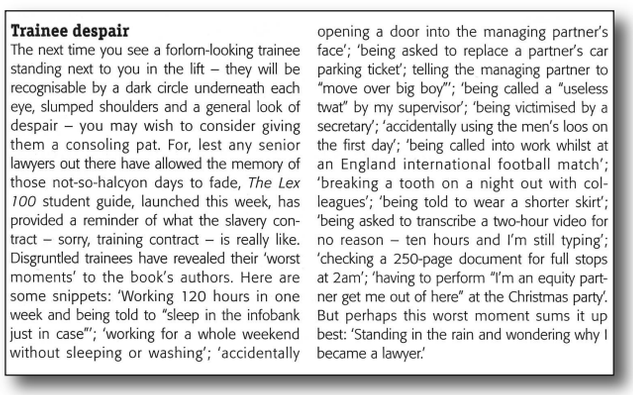
Trainee despair



Trainee despair
The next time you see a forlorn-looking trainee standing next to you in the lift – they will be recognisable by a dark circle underneath each eye, slumped shoulders and a general look of despair – you may wish to consider giving them a consoling pat. For, lest any senior lawyers out there have allowed the memory of those not-so-halcyon days to fade, *The Lex 100* student guide, launched this week, has provided a reminder of what the slavery contract – sorry, training contract – is really like. Disgruntled trainees have revealed their 'worst moments' to the book's authors. Here are some snippets: 'Working 120 hours in one week and being told to "sleep in the infobank just in case"'; 'working for a whole weekend without sleeping or washing'; 'accidentally opening a door into the managing partner's face'; 'being asked to replace a partner's car parking ticket'; telling the managing partner to "move over big boy"'; 'being called a "useless twat" by my supervisor'; 'being victimised by a secretary'; 'accidentally using the men's loos on the first day'; 'being called into work whilst at an England international football match'; 'breaking a tooth on a night out with colleagues'; 'being told to wear a shorter skirt'; 'being asked to transcribe a two-hour video for no reason – ten hours and I'm still typing'; 'checking a 250-page document for full stops at 2am'; 'having to perform "I'm an equity partner get me out of here" at the Christmas party'. But perhaps this worst moment sums it up best: 'Standing in the rain and wondering why I became a lawyer.'

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GAZETTE 13 October 2005

Trainees pressured by 'sexual bullying'

By Rachel Rothwell

GAZETTE

3 November 2005

The Law Society

Trainees pressured by 'sexual bullying'

By Rachel Rothwell

Trainee solicitors are being 'blackmailed into complying with sexual advances' and asked to perform menial tasks such as cleaning lavatories, a report on calls received by the Trainee Solicitors Group helpline revealed this week.

More than a quarter of the record 2,241 calls to the helpline in the past year were from trainees who were being bullied, harassed or exploited.

Trainees complained that they were being asked to 'park cars', 'sit on reception for days', and even being 'bullied into going on a date with a supervisor'. Some said they received threats that their training contract would not be signed off if they did not comply with sexual advances.

Calls to the helpline increased by 13% on the previous year – with more than two-thirds of the calls coming from women, and just under a third from trainees from ethnic minorities.

Photograph: Rex Features

In the field: association for military courts advocates unveiled, see p4

TSG chairman Peter Wright said: 'This is not just a few cases – it is dozens and hundreds, and it is a telling statistic that two-thirds of calls were from women. In smaller firms, trainees can be treated as the bottom of the food chain – little more than low-paid menial staff on the same level as office assistants.

'There is a sizeable minority of firms where this is going on, and the evidence is there in black and white, in the calls we receive. That is why we have supported the work of the [Law Society's] training framework review group to introduce greater regulation of training contracts. There is too much scope for bad practice.'

Law Society chief executive Janet Paraskeva said: 'The Law Society views bullying as unacceptable and if we hear of cases we will usually investigate through a monitoring visit. There are clear obligations set out in the training contract, for both the firm and the trainee, and we can remove authorisation from firms where that is justified.'

Some 14% of calls to the helpline were seeking advice on finding a training contract or careers advice, while 6% related to the minimum salary. Another 5% were from students concerned that firms were not providing adequate training.

The TSG helpline is staffed by 17 volunteer trainees or newly qualified solicitors. Tel: 0800 0856 131.

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GAZETTE 3 November 2005

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When I was a trainee solicitor I was betrayed by my boss and I have never forgotten it. That particular man stank - he never used anti-perspirant deodorant - and for the entire 18 months of my stay his office reeked of B.O. No one was brave enough to tell him. What clients thought of this stench I could not imagine and why they continued to see him after their first meeting, I just could not understand. That was some public relations exercise by the boss! Even the name given to his premises - two words in large vinyl lettering screwed to the billboard on the facade of the building - had one letter missing the whole time I was there. Anyway, one day I was in the reception area and I saw the profile of a woman with long golden hair as she walked out of the front door with her mother. I didn't get a very good look at her. So, curious, I asked a secretary who this blonde was and was told by this particular secretary that she knew the mother and daughter but did not know where the daughter lived. Using my intiative I went and got her address from her file. It was a Friday evening and after work I drove round to where the girl lived and straight away knocked on her door. I was disappointed - she had been under the sunbed more than was good for her and it spoilt her looks. She was 25 and, straightforward chap that I was, I told her that on impulse I had to come and say hello. I apologised for my direct approach. We talked for a little while and she told me she was going to Twickenham the next day to see England play rugby. She told me what she did for a living. I left happy in the knowledge that this was one girl I would not have to bother trying to see again. She wasn't the one for me.

I didn't even make it into work on Monday morning. At 8 a.m. the boss phoned me at home to say he had received a complaint from the girl's mother. That he did not have any details but I was to stay at home until he got back to me. Within the hour he phoned me back to say that nothing untoward had happened but that he was furious with me for having a complaint lodged against me. I couldn't believe that a mother would bother to complain about a simple visit from an admirer of her 25 year old daughter. She must have been nuts. After all, love, sudden impulse and taking a chance is what makes the world go round. I went into the office and I was sacked, with four months left to go on my training contract. I quickly found another firm to complete my two year training period. At the time of my dismissal the boss had been under serious stress. He had been charged with assault and was up before the Magistrates Court and feared he would be found guilty and thus be struck off the Solicitors Roll for the criminal conviction. In the event he was found not guilty - after I left the firm. But what sickened me was to be told later, by other former colleagues of his, that he himself had been caught inflagranti - caught having sex with his married secretary in the office when he was a trainee solicitor a few years before. His own principal then transferred him to another branch to seperate him from the secretary. What a hypocrite to then dismiss me - over nothing. At least I didn't have to suffer the smell of his office again. His weak-minded partner I also condemn for not intervening on my behalf.

The Guardian newspaper in January 2008, reviewed the job insecurity situation for agency and temporary workers in general:

The Guardian. Thursday 31 January 2008 **Comment&Debate.**

The abuse of agency workers is fuelling racism and exploitation. MPs should use their power to give them equal rights

This is a chance to reverse casualisation and insecurity

The Guardian | Thursday January 31 2008

Comment&Debate

Seumas Milne

The abuse of agency workers is fuelling racism and exploitation. MPs should use their power to give them equal rights

The manoeuvring in Brussels took Brown's use of the slogan 'British jobs for British workers' beyond shamelessness

This is a chance to reverse casualisation and insecurity

This has not been a good time for those who imagined that Gordon Brown would ditch the market mania of the Blair government and adopt a more hard-headed approach to rampant corporate power. They have, it turns out, been misinformed. Undeterred by the gathering economic crisis, Brown took advantage of his visit to the high priests of global capitalism in Davos last Friday to reaffirm an undying faith in free markets and labour flexibility. That followed his decision to give the job of work and pensions secretary to the Blairite ultra James Purnell, who promptly hailed the prime minister as the true heir to Blair and announced plans to put private companies in charge of getting the unemployed back to work. He and Brown topped that on Monday with the revelation that private corporations such as McDonald's will now be able to brand their in-house training schemes as publicly-endorsed skills qualifications. No part of public life, it seems, is to be denied the corporate embrace.

All this follows last week's cave-in to corporate lobbying over capital gains tax, and the extraordinary new guarantees offered to private bidders such as Richard Branson — at the expense of taxpayers — to avoid the nationalisation of Northern Rock. The relaunch of an apparently rudderless administration turns out to be a return to the neoliberal certainties of Blairism, just at the point when the failure of global financial markets is cutting the ground from beneath them. So perhaps it hardly comes as a shock to discover that Brown's government

is now trying to derail an attempt by Labour MPs to win equal rights for the 1.4 million agency and temporary workers, whose growing exploitation goes to the heart of the casualisation and insecurity of Britain's labour force.

But it should be shocking. Across the country, workers are increasingly being signed up by employment agencies to take the place of directly employed staff, on worse pay and conditions — from basic wages and overtime to sickness benefits, holidays, maternity rights and pensions. In parts of London and the east coast, the Midlands and the northwest, trade unions report an epidemic of undercutting agency employment. In catering, private security and construction, agency working is becoming the norm: in factories such as BMW's Hams Hall engine plant in Birmingham, agency workers make up the majority. In food processing, call centres, hotels and social care — including in the public sector — agency labour is being used to create a two-tier workforce.

Add to this the fact that the sharpest end of the agency labour market is dominated by migrants, and the dangers — as well as the injustice — of what is taking place should be obvious. These are the most vulnerable workers, often bogusly classed as self-employed, who have hidden costs deducted for housing, transport and administration, and work on zero-hours contracts, with no guaranteed employment. When employers use migrant, often east European, agency labour to undercut directly employed British workers, they are fanning the flames of xenophobia and racism in the workplace and beyond.

But for the past five years, New Labour has set its face against a European Union directive to give equal rights to temporary and agency workers, resisting attempts by the majority of states that want to halt the race to the bottom of hire-and-fire employment. Only last month, British ministers blocked a Portuguese draft which would have required equal treatment of agency workers after six weeks. John Hutton, the business secretary, explained that the need for efficiency and competitiveness trumped the demands for job security: "We will not accept a deal that undermines essential labour market flexibility." The manoeuvring in Brussels to sink the directive took the prime minister's adoption of the British National party slogan "British jobs for British workers" beyond shamelessness. As Tony Woodley, joint leader of Unite, the union spearheading the campaign for agency workers' rights, put it: "All we want is decent jobs for all workers in our country, no matter where they come from."

Standing behind Brown and Hutton, of course, has been the employers' organisation, the CBI, which insists that protection for agency workers would make it far more difficult for companies to cope with business peaks and troughs and — in a reprise of its scaremongering before the introduction of the minimum wage a decade ago — put 250,000 temporary jobs at risk. The government, meanwhile, argues that agency work offers the unemployed a leg-up into work and anyway accounts for only 6% of the labour force. But of course equal rights for agency

staff would in no way interfere with genuine temporary work, and the impact of exploited agency workers is felt far beyond their ranks, as the downward pull on wages and conditions for directly employed workers makes itself felt.

For the trade unions, the protection of agency workers is now a totemic issue, as it is becoming for Labour MPs who see the impact agency-working is having in working class communities and know how the influx of migrant workers is being exploited by the far right. On top of that, the government's refusal either to support a European directive or legislate at home is seen as a flagrant breach of its 2004 Warwick agreement with the unions. Fed by disappointment over the direction taken by the Brown government, and a realisation that unless it starts to deliver to its core supporters the future is bleak, a welcome head of steam has been building up on the back benches which now threatens a full-scale parliamentary rebellion.

The main focus is on the Labour MP Andrew Miller's private member's bill next month, which needs 100 MPs to force it through to the committee stage. MPs are also planning amendments to a minor employment bill and even the European treaty legislation. So alarmed has the government become by the agitation among its usually docile troops, that ministers and advisers have been sent this week to buy off Miller and his supporters with warm words of compromise over qualifying periods and commissions of inquiry. If Labour MPs roll over, they won't be doing themselves, let alone an increasingly casualised and divided workforce, any favours. Political self-preservation, the dangers of ethnic tensions and the need to challenge the government's continuing corporate cringe all demand that this battle be won.

Seumas Milne s.milne@guardian.co.uk

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With a small victory as described in the *Daily Mail* on the 11th June 2008:

Temps win the right to equal pay and perks

1.3m to benefit but bosses say it will hurt business

BOSSES reacted furiously last night after more than a million temporary workers won the legal right to the same pay and conditions as full-time staff.

Daily Mail Wednesday June 11 2008

Temps win the right to equal pay and perks

1.3m to benefit but bosses say it will hurt business

BOSSES reacted furiously last night after more than a million temporary workers won the legal right to the same pay and conditions as full-time staff.

The Government agreed to the EU deal giving 1.3million temps the salaries, holidays, overtime and rest periods of full-time colleagues after just 12 weeks in a job.

At the moment, temporary staff are not entitled to this level of parity however long they have worked for one employer.

No10 approved the move in exchange for keeping its opt-out from the EU limit of a 48-hour week, although there will be a 60-hour maximum for most staff.

They will be able to opt out and work up to 60 hours, averaged over three months to let them work longer than that for busy periods if they agree.

But small business groups criticised the agreement. The Federation of Small Businesses representing 210,000 firms with an average workforce of five, said a poll of members showed 96 per cent would now be less likely to employ agency staff.

The rules do not apply to occupational pensions, sick pay or benefits such as private medical insurance. Nor will they give a temp the right to claim unfair dismissal at a tribunal.

About half the agency assignments in Britain will be affected as they last more than 12 weeks.

Business Secretary John Hutton said the outcome represented a 'good deal for Britain', adding: 'It provides a fair deal for workers without damaging Britain's economic competitiveness or putting jobs at risk. 'Securing the right for people to work longer if they choose is hugely valuable to the British economy.'

By James Chapman and Becky Barrow

£23bn is contributed to the economy each year by temporary staff

j.chapman@dailymail.co.uk

'The agreement will give a fair deal to agency workers and prevent unfair undercutting of permanent staff while retaining important flexibility for businesses to hire staff on short-term contracts or at busy times.'

But David Frost, of the British Chambers of Commerce, said: 'This deal will deeply disappoint the business community.'

'Safeguarding the opt-out will be a welcome relief, but it has come at the expense of vital flexibilities on temporary work.'

'In tougher economic conditions companies are looking for more, not less flexibility. The likely consequence of these changes is not greater protection for vulnerable workers, but less job opportunities for them.'

FSB chairman John Wright said: 'This deal smacks of the Seventies when major decisions were made behind closed doors and unions dictated employment policy to the Government.'

'The Government must not attempt to fool other European leaders into thinking this deal has business support in the UK.'

Tom Liptrot, of temporary recruitment firm Esprit People, said: 'Claims that this is a good deal for Britain are flatly untrue.'

'What this deal will ensure is that anybody in a temporary job for more than 12 weeks is laid off, and companies who can send jobs overseas to cheaper, more flexible markets will do so.'

'What agency workers need is fair pay. What they've got is an interfering nanny state intent on taking away their right to flexible work and willing to damage the economy to do so.'

Conservatives claimed the deal represented 'another blow to Gordon Brown's authority.'

Tory employment spokesman Jonathan Djanogly said: 'Business will be dismayed that when they most need a Government on their side, they have a Government getting on their backs.'

By James Chapman and Becky Barrow

j.chapman@dailymail.co.uk

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The Ultimate Message of Support

To: legal-jackass@hotmail.co.uk
Subject: Your exposé of the "Regulator's" failure to regulate in the best interests of the consumer of legal services.
Date: Fri, 18 Nov 2011 10:17:15 +0000

Dear Sir,

Firstly, as a 'consumer' within the British legal services market, may I thank you for producing this website. And:

I applaud your manifest perseverance and persistence in following the links in the chain of possible routes to a remedy. In doing so, you have properly and thoroughly exposed the nature and extent of the predicament.

I applaud your courage in publicising the predicament you encountered as a locum solicitor, in particular, in publicising the response (or perhaps more accurately, parry then harry) from the Law Society.

Before moving on to the essence of the matter which I have gathered from your exposé, I would like to commend the Adjudicator's very correct adjudication. I would opine that there is a decent, observant and principled mind that lies behind that judgement, which was delivered in an appropriately authoritative tone. I call attention to its tone for a purpose, which is to note that such a 'voice' with its attendant implicit disapproval and warning is what one would have expected to have been directed towards the conduct and service of Adams Harrison from the 'supervisory authority' of the Law Society, all in protection of the interests of the public and in pursuit of the promotion of best practice within the profession itself.

As you correctly point out, diligence in the conduct of conveyancing transactions by the professional practitioner is an essential service in the best interests of the client (and the proper functioning of the registration of property titles). The client may not appreciate why your approach is cautious, and in many instances may not even begin to comprehend the necessity of same, the propriety and need of such caution only becoming apparent in the event of a subsequent realisation of a loss due to a flaw in the chain of title (or worse as your links alluded to). For the Law Society to fail to comprehend the pre-requisite nature of this diligence, however, is unintelligible. Its failure to take any cognisance of the apparent need for exercise of its supervisory function with the implicit need to make an enquiry into a firm's professional practice in circumstances where a professional conveyancing locum has raised serious conduct and service matters, which raise the issue of the protection of the client public, must surely indicate a serious dereliction of that supervisory duty by the Law Society.

I think any reasonable man would consider that your raising of this is a point, clearly distinguishable from your locum "employment" complaint, being a point which raised matters entirely independent of that employment issue which they claimed to be unable to address, meant that you had raised a matter which the Society ought to have addressed for the protection of the public under the Law Society's supervisory function, and further, it was one which they ought to have addressed for the protection of the reputation of the solicitors profession as a whole (on the basis that rogue solicitors cause embarrassment to the

standing of the profession). By choosing the path of inaction against the errant firm and instead pursuing you, the complainant, for publicising the matter; they adopted a course which reveals a very deep malaise in the institutional mentality of the Law Society itself.

That choice by the Society indicates a strong bias in favour of 'protection' to the detriment of 'supervision', perhaps even to the extent of excluding the 'supervision' function altogether, and this despite the raiser of the issue being a professional practitioner (thus eliminating that 'natural' scepticism usually induced through the potential for 'misinterpretation' and 'misunderstanding' by the ill-informed non-professional client-complainer). The merit of your complaint as to the goings-on at Adams Harrison ought to have carried greater weight in that regard. The Society's absence of recognition and apparent disregard is thus unusually revealing.

As a Scottish resident, I have long suspected that the Law Society of Scotland has an inherent partiality for 'protection', and that this is of such potency that 'protection' invariably trumps 'supervision' in the course of its activities. It would appear from your article published on your website, that the same failing has infected the Law Society of England and Wales.

For clarity, I refer to the law which underpins the function of the Law Society of Scotland.

> Solicitors (Scotland) Act 1980
>
> PART I
>
> ORGANISATION
>
> The Law Society of Scotland
>
> 1.- (1) The Law Society of Scotland (referred to in this Act as " the Society ") shall continue to exist and shall exercise the functions conferred upon it by this Act.
>
> (2) The object of the Society shall include the promotion of –
>
> (a) the interests of solicitors' profession in Scotland;
>
> and,
>
> (b) the interests of the public in relation to that profession.
>
> (3) The Society may do anything that is incidental or conducive of those objects.

It appears to me to be manifest from the above that the Legislature (Westminster) intended that the "interests of the public in relation to [the solicitors'] profession." was to reside at the heart of the supervisory function of the Society. It is equally obvious that in both jurisdictions the Societies have each adopted a perverted version of the former to the exclusion of the latter, and from your tale of woe, it appears that this preference has 'internal' layers of preference (long a complaint of the provincial solicitor with regards the 'near-monopoly' of the Edinburgh solicitors' position with regard to access to the Court of Session).

I do not have a solution to propose other than wholesale change encompassing complete separation of the regulatory function from the representative function. The regulatory

function expenses to be covered by a transaction levy (chargeable on all specified transactions of a certain type? – an extension of the stamp taxes?) and all conveyancers to come under the same regulatory regime. The Law Society would thus be a membership lobby/representation group, perhaps with some disciplinary function over members (censure?), but no longer the regulator or disciplinary body (and that raises another question - should the disciplinary adjudication function be separated from the regulator - or not?).

The difficulties have been thrown up by the Societies' respective abandonment of their duty towards the public by the maintenance of high standards through vigorous supervision and discipline of transgressions within the profession itself, in favour of the adoption of a defensive 'protection' role which is contrary to the protection of the public and the standing of the profession.

This ought to be manifest if you consider the following:- If you protect the rogues who cut corners and put their clients' interests at risk (or worse), what is the incentive for best practice?

Best Practice is, and I take this to be your point also, invariably more expensive to maintain, and so, it appears to me that both the Societies may be pursuing a 'race to the bottom' and in so doing, they are failing to actually protect the best interests of their best professional members (I do not doubt that many who enter a career in the law do so with decent motives and ideals, and I am disgusted at what I perceive to be the Societies' favouring of the rotten to the detriment of the decent) and are thus acting contrary to the interests of the public.

I wish you luck in the future and hope that you do not abandon your campaign for 'rebalancing' or, rather, the rectification of the Society's misguided approach to its functions.

Yours faithfully,

Mr C. from Edinburgh.

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It's a human right to lampoon politicians online, judge rules

By Martin Beckford, Home Affairs Editor. The Daily Telegraph, 4th May 2012.

PEOPLE have a right to lampoon and criticise politicians and public officials under the Human Rights Act, the High Court ruled yesterday.

A judge concluded that politicians should have "thicker skins than others" while ruling on a case in which a councillor was accused of making inappropriate remarks about his colleagues.

Malcolm Calver, of Manorbier community council in Pembrokeshire, Wales, had been censured by a standards watchdog for "bitching" about his colleagues on the internet.

He had claimed that minutes of a meeting had "more holes than Swiss cheese", accused a fellow councifior of "disgraceful manipulation of children" and questioned the expertise of another.

But the High Court said that although his words were "sarcastic and mocking", he was entitled to complain about the way council meetings were run.

Mr Justice Beatson said Mr Calver's right to freedom of expression meant the ruling by the Adjudication Panel for Wales that he had broken the code of conduct for local government should be quashed.

The judge said it was important to remember "the traditions of robust debate, which may include some degree of lampooning of those who place themselves in public office".

"The fact that the panel took a narrower view of 'political expression' and did not refer to the need for politicians to have thicker skins than others limits the weight that can be given to its findings," he said.

The ruling may not bring peace to Manorbier, where Mr Calver was due to be returned unopposed as one of six councillors yesterday, but it is likely to be welcomed by those who use blogs, Twitter and Facebook to criticise politicians.

The case related to comments that Mr Calver wrote online in 2008 and 2009 about the standards of administration on the council, which governs the resort where Virginia Woolf and George Bernard Shaw used to stay.

All of its councillors had been returned unopposed because of a lack of candidates and officials described it "a failing council" and a "disaster zone".

During an investigation into a dispute between Mr Calver and another councillor, the Public Service Ombudsman for Wales read his personal website, which included comments about the town hall and individuals within it. On Nov 5, 2010, Mr Calver was found by the standards committee of Pembrokeshire county council, of which he was also an elected member, to have breached the code that requires councillor to show respect and not bring their office into disrepute.

His comments included claims that the council "does not seem to understand the limits of its role", and that it would "sail on" until the public realised how much of their money had been "wasted" and how much "dealing" had been carried out in secret.

Mr Calver also wrote that the council had "many skeletons in the cupboard" and that its "indulgence" in staffing had cost taxpayers more than £55,000, while the "absence of a competent clerk" had also lost it money. He said one councillor was elected only because "no ballot was had", and warned that he would not be "browbeaten" by "anyone who wishes to inflict censorship".

The councillor was ordered to attend a training session, and took his case to the High Court after his appeal to the Adjudication Panel for Wales was rejected. The panel said he could have resigned but chose instead to "bitch from the sidelines".

Neutral Citation Number: [2012] EWHC 1172 (Admin)
Case No: CO/10054/2011

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT IN WALES

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET
03/05/2012

B e f o r e :
THE HONOURABLE MR JUSTICE BEATSON

Between:

The Queen on the application of Lewis Malcolm Calver	**Claimant**
- and -	
The Adjudication Panel for Wales	**Defendant**
- and -	
Public Services Ombudsman for Wales	**Interested Party**

The Defendant did not appear and was not represented
Gwydion Hughes (instructed by Public Service Ombudsman for Wales) for the Interested Party

Hearing date: 3 April 2012

Mr Justice Beatson :

1. These proceedings concern the restrictions on the conduct of members of local authorities and thus to their right to freedom of expression introduced as a result of the report of the Committee on Standards in Public Life to promote and uphold proper standards in local democracy. At the material times the claimant, Lewis Malcolm Calver , was a member of Manorbier Community Council. Manorbier is a tourist resort in South Pembrokeshire with a permanent population of about 700. The claimant was elected to its Community Council in 2004 in a contested election. In May 2008 all the candidates for the vacancies on the Community Council including the claimant were returned unopposed. In that year he was also re-elected to the Pembrokeshire County Council for a ward which includes Manorbier.
2. As a member of the Community Council, the claimant was required to undertake to abide by its Code of Conduct, adopted pursuant to the Community Council's statutory obligations under the Local Government Act 2000 ("the 2000 Act"). Paragraphs 4(b) and 6(1)(a) of the Code of Conduct respectively require members to "show respect and consideration for others", and not to "conduct [themselves] in a manner which could reasonably be regarded as bringing [their] office or authority into disrepute".
3. In this application, the claimant challenges the decision of the Adjudication Panel for Wales ("the Panel"), dated 25 May 2011 to dismiss his appeal against the decision of Pembrokeshire County Council's Standards Committee ("the Standards Committee") on 5 November 2010. The Standards Committee had decided that a number of comments or blogs posted by him on www.manorbier.com, a website he owned and wholly controlled, between June 2008 and May 2009, breached paragraphs 4(b) and 6(1)(a) of the Code of

Conduct. It censured him and required him to attend a training session with the Council's Monitoring Officer.

4. These proceedings were lodged on 19 October 2011. Permission was granted following an oral hearing before HHJ Curran QC on 26 February 2012 at which issues of delay were considered. The defendant filed an Acknowledgement of Service but has not appeared. Mr Gwydion Hughes has, however, made submissions in favour of upholding the decision of the Panel on behalf of the Public Service Ombudsman for Wales (hereafter "PSOW"), who instigated the investigation of the claimant and referred his case to the Standards Committee.
5. The overarching question before the court is whether the defendant's decision that the claimant's comments put him in breach of the Code of Conduct erred in law or is otherwise flawed in public law terms. The answer to that question principally depends on whether the Panel's decision failed to give sufficient weight to the claimant's right to free expression under the common law and Article 10 of the European Convention of Human Rights[1] ("the Convention"). This in turn involves considering whether the defendant erred in finding the comments did not constitute political expression attracting an enhanced level of protection under Article 10, and whether or not they attract that enhanced level of protection, whether the decision that thirteen of the comments broke the Code of Conduct and to censure the claimant was a disproportionate interference with his right under Article 10. The subsidiary issues include the effect of the claimant's undertaking to abide by the Code of Conduct, as he was required to do in order to be a Councillor, and whether the Code of Conduct can be interpreted so as to give full effect to his right to free expression under Article 10, and, if not whether the Code itself is ultra vires.

The legal framework

6. The Manorbier Community Council's Code of Conduct was issued as part of the framework created by Part III of the Local Government Act 2000 ("the 2000 Act"), as a result of the third report of the Committee on Standards in Public Life (CM 3702-1) in 1997. The report recommended a new ethical framework for local government in order to promote and uphold proper standards in public life, and the 2000 Act made provision for this. The framework includes (section 53) Standards Committees, whose functions are (section 54) to promote and maintain high standards of conduct by members and co-opted members of relevant authorities. It also includes model Codes of Conduct.
7. Some of the provisions of the 2000 Act apply to England and Wales, but others make separate provision for Wales: see for example sections 5(4) and (5), 7, 9(2), 49(2) (4) and (5), 50(2), 51(6)(c)(ii), 54(5) and (7), and 69-74. The framework and the model Code of Conduct applicable in Wales thus differ in a number of respects from those applicable in England. The 2000 Act has also been amended by the Public Audit (Wales) Act 2004, Public Services Ombudsman (Wales) Act 2005, and the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act"). References to the 2000 Act are to the Act as amended.
8. The framework under the 2000 Act applicable in England and its relationship to Article 10 has been considered by this court in Sanders v Kingston [2005] EWHC 1145 (Admin); Livingstone v Adjudication Panel for England [2006] EWHC 2533 (Admin) and R (Mullaney) v Adjudication Panel for England [2009] EWHC 72 (Admin). The first two decisions were statutory appeals against decisions of case tribunals pursuant to section 79(15) of the 2000 Act. The third was an application for judicial review of the decision of the Adjudication Panel for England, the body which hears appeals from decisions of the Standards Committees of English relevant authorities.

9. Changes were introduced by the 2007 Act following the Tenth Report of the Committee on Standards in Public Life (CM 6407) in 2005 and the decision of Collins J in Livingstone v Adjudication Panel for England in 2006. In the case of Wales (but not England) one purpose was to make it clear that parts of the framework governing members of a relevant public authority apply at all times but other parts apply only where that person acts, claims to act or gives the impression that he or she is acting in the role of member or representative of the public authority in question: see sections 49(2D), 50(4E) and 51(4C) of the 2000 Act.
10. Sections 49 and 51 of the 2000 Act require relevant public authorities in Wales to adopt the model Code of Conduct issued by the National Assembly for Wales regarding the conduct which is expected of members of relevant public authorities in Wales, or a Code in very similar terms. The Manorbier Community Council is a relevant authority by virtue of section 49(6)(f) of the 2000 Act. In the case of both England and Wales, as a result of section 183(4) of the 2007 Act, section 52 provides that a member of a relevant authority must, within two months of the date on which the Code is adopted, give the authority a written undertaking that he will observe the authority's Code of Conduct, and if he fails to do so will cease to be a member of the authority at the end of the period. One of the differences between the framework in Wales and that in England is seen in the parallel texts of section 52 of the 2000 Act about the duty of members and co-opted members of relevant authorities to comply with the model Code of Conduct. In the case of England, but not Wales, the duty is expressly limited to the performance by the member or co-opted member of "his functions".
11. The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No. 2276 (W.166) specifies the principles which are to govern the conduct of members and co-opted members of relevant authorities in Wales. There are ten principles; "selflessness", "honesty", "integrity and propriety", "duty to uphold the law", "stewardship", "objectivity in decision-making", "equality and respect", "openness", "accountability" and "leadership". Principle 7, "equality and respect", provides:

    > "Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others."

    The "selflessness" principle prohibits members from using their position as members to improperly confer advantage on themselves. The "leadership" principle requires them to "respect the impartiality and integrity of the authority's statutory officers and its other employees".
12. The equivalent provisions for England are contained in the Relevant Authorities (General Principles) Order 2001 SI 2001 No. 1401. The formulation of the principles differs in a number of material respects. For example, the promotion of equality and respect for the impartiality and integrity of an authority's officers and employees are dealt with under the 'Respect for Others' principle. Also that principle, unlike the Welsh 'Equality and Respect' principle, contains no reference to 'consideration' for others, only to 'respect'.
13. Provisions for investigations by the PSOW are made in chapter III of Part III of the 2000 Act. By section 69(1)(b), the PSOW may investigate of his or her own motion in cases in which he or she "considers that a member or co-opted member (or former member or co-opted member) of a relevant authority in Wales has failed, or may have failed, to comply with the authority's Code of Conduct and which have come to his attention as a result of an investigation under paragraph (a)". Section 69(1)(a) concerns investigations in cases in which a written allegation is made to the PSOW by any person about the failure of a member or co-opted member of relevant authority to comply with the authority's Code of Conduct.

14. Section 69(3) of the 2000 Act provides that the purpose of an investigation is to determine which of the findings mentioned in sub-section (4) is appropriate. Sub-section (4) lists four findings. That relevant in the present context is section 69(4)(c), that the findings are "that the matters which are subject of the investigation should be referred to the Monitoring Officer of the relevant authority concerned".
15. Section 73(1) of the 2000 Act provides that the National Assembly for Wales may make regulations "in relation to the way in which any matters referred to the monitoring officer of a relevant authority under…section 71(2)…are to be dealt with". By section 73(4)(c), the Regulations may make provision "conferring a right of appeal on a member or co-opted member of a relevant authority in respect of any action taken against him". The Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 SI 2001 No. 2281 (W.171) provide that the appeal lies to an Appeal Tribunal drawn from the Adjudication Panel for Wales.
16. The current model Code of Conduct issued by the National Assembly for Wales is contained in the Local Authorities (Model Code of Conduct (Wales)) Order 2008, SI 2008 No. 788 (W.82). It came into force on 18 April 2008, replacing the earlier 2001 Model Code of Conduct, S1 2001 No. 2289 (W.177).
17. The material provisions of the Manorbier Community Council's Code of Conduct are:

    "2(1)…You must observe this Code of Conduct …
    (a) whenever you act, claim to act, or give the impression you are acting in the role of member of the authority to which you were elected or appointed;
    (b) whenever you act, claim to act, or give the impression you are acting as a representative of your authority; or
    (c) at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7."
    …
    4. You must
    …
    (b) show respect and consideration for others;
    …
    6(1). You must
    (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute."
18. Paragraph 4(b) of the Code, requiring members to "show respect and consideration for others", thus only applies where a member of the Council acts, claims to act, or gives the impression that he or she is acting in the role of a member of the Community Council, but paragraph 6(1)(a) of the Code applies at all times to a member of the Council, whatever he or she may be doing.
19. Article 10 of the European Convention of Human Rights ("the Convention") provides:

    "(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers….
    (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of…the protection of the reputation or rights of others, …"
20. Convention Rights, including Article 10, are given direct effect in domestic law by the Human Rights Act 1998. Section 6 of that Act provides that it is unlawful for a public authority to act in a way which is incompatible with inter alia Article 10 (save in limited circumstances concerning primary legislation). Section 3 provides that legislation and

subordinate legislation, so far as it is possible to do so, must be read and given effect in a way which is compatible with the Convention rights.

21. In limiting what a member of a relevant authority may say and do, the provisions of the 2000 Act and the Codes of Conduct made under it restrict the rights of members to free expression under Article 10. Neither in this case nor in the cases to which I have referred in [8] was it contended that the legislative scheme making provision for codes of conduct in itself constitutes a breach of Article 10. Accordingly, and subject to one qualification, the principal questions are whether the undoubted restriction on the Article 10 rights of councillors in the Code, as applied by the Panel to the comments the claimant posted on his website, falls within Article 10(2) and is justified in the circumstances of this particular case either on a purely common law interpretation of the relevant provisions of the Manorbier Community Council's Code of Conduct, or as a result of the operation of section 3 of the Human Rights Act 1998. The qualification concerns the difficulty in practice of maintaining the analytical distinction between a purely common law interpretation and that achieved as a result of section 3: see [46].

The factual background

22. Prior to 2008 there were concerns about the way Manorbier's Community Council operated, particularly in respect of financial management. Those concerns had been expressed to Pembrokeshire County Council's monitoring officer and to other officials. In a letter dated 26 February 2009 to the PSOW, the Monitoring Officer stated that, in the period before the 2008 election, the Council "had been considered a failing Council by many".
23. In September 2005 the claimant asked the PSOW to conduct a major investigation into the affairs of the Council. The PSOW declined, stating that his role was to investigate specific allegations that members had breached the Council's Code of Conduct. In 2006 the Council was successfully sued by a marketing company for breach of a contract to conduct a survey. It also dismissed its clerk in circumstances which led to proceedings against it in the Employment Tribunal. In July 2006 the claimant complained to the PSOW about the refusal to provide him with details of the advice given to the Council about the dismissal of its clerk. In a letter dated 15 August, the Ombudsman's office stated the matter fell outside his remit because the claimant was complaining in his capacity as a Community Councillor rather than as a member of the public.
24. In early 2008, as part of their opposition to a planning application relating to an estate in the Community Council's area, Cllr Gourlay and another Councillor made use of a video showing a child being abducted. This was later referred to by the Chairman of the Pembrokeshire National Park Planning Committee as "being like a video nasty", and representing "child manipulation": see Western Telegraph, 26 March and 4 April 2008. The claimant's posted comments on his website included comments on this matter, one of which was among those found by the defendant to breach the Code of Conduct.
25. I have referred to the fact that, because insufficient candidates were nominated to serve on the Community Council in 2008 to require an election, those who were nominated were returned unopposed. The claimant (who at that time had been a member of the Community Council for approximately 10 years) and Cllr Gourlay, who became responsible for preparing the minutes of Council meetings, were two of the councillors returned in this way. Four other members of the Community Council subsequently resigned because of what they described as the lack of enthusiasm of electors to serve on the council.
26. After the 2008 election the relationship between the claimant and other members of the Community Council was bad. In the submissions to the Panel on behalf of the PSOW it

was stated (decision report, paragraph 3.2.7) that the Council was "a disaster zone" and that "relations between Community Councillors appear to have broken down". Relations appear to have been particularly bad between the claimant and the Chair, Cllr Hughes, and Cllr Gourlay. Cllr Hughes had unsuccessfully contested the election to the County Council in which the claimant was elected. In a letter dated 3 March 2009 to the PSOW, Cllr Gourlay claimed she had been subjected to intense ridicule.

27. The comments posted on the claimant's website contained in the court bundle appear to cover the eleven month period between June 2008 and May 2009. The claimant sought and received advice from Mr Huw Miller, head of Legal and Committee Services at Pembrokeshire County Council, about publishing draft minutes of the Community Council on his website. On 1 September 2008 the Community Council passed a resolution stating that no minutes should be published until they were approved by the Community Council. Councillors on Manorbier Community Council received training from Pembrokeshire County Council's Monitoring Officer on the Code of Conduct at a meeting on 8 December 2008.
28. There were disputes between the claimant and others as to inter alia: the adequacy of notice of meetings, the quality and adequacy of the minutes of meetings, and declarations of interest. There were also disputes about what the claimant saw as a mistaken view by some other councillors of his role as a County Councillor. The only evidence before the court is by or in support of the claimant. His evidence is that the view of some was that, because the electoral division that he represents on the County Council includes Manorbier, he should represent the Community Council's views on the County Council rather than exercise his judgment as to the interests of the county. A resident, a Mr Tew, stated that there were bad tempered remarks made to the claimant by other councillors, including that he would be silenced, and that proposed amendments to minutes by him were "nit-picking". The claimant stated that Cllr Hughes' behaviour to him was intimidating and threatening.
29. In 2009 three Councillors, including Cllrs Hall and Gourlay, were granted dispensations to debate and vote on business concerning the Manorbier Community Association. They had declared that they held no position of responsibility or management on that Association, whereas in fact they sat on its General Management Committee. In May 2009 the Community Council passed a motion of no confidence in the claimant. The motion was proposed by Cllr Hughes and carried by the exercise of his casting vote as chairman. That year the Community Council settled the wrongful dismissal claim brought by its former clerk in 2006 by making a substantial payment.
30. On 19 October 2009 the claimant complained to the PSOW that Cllr Hughes had breached the Code of Conduct. He alleged that Cllr Hughes had failed to declare a prejudicial interest in relation to two Community Panel workshops held in September 2008 and September 2009, and in nominating himself to attend a meeting of the Pembrokeshire Coast National Park Authority without declaring an interest that arose because of Cllr Hughes's ownership of certain land. The PSOW did not report on this complaint until 24 February 2011. In his report he stated that he considered that Cllr Hughes had breached the Code of Conduct in these matters, and referred them to Pembrokeshire County Council's Standards Committee. In a decision dated 27 September 2011 the Standards Committee resolved that Cllr Hughes should have declared a personal and prejudicial interest, and should have left the meeting for an item concerning the local development plan. It also found that he had breached the Code of Conduct by not withdrawing from the two Panel meetings. It, however, resolved that no action be taken.
31. I return to the chronology. In the course of his investigation into the claimant's complaint against Cllr Hughes, the PSOW discovered that the claimant was running the

www.manorbier.com website. The website included comments, amongst other things, about the functions and activities of the Council and about individual members of the Council. The PSOW considered that a number of the claimant's posted comments could constitute breaches of the Code of Conduct. Accordingly, he exercised his powers under section 69(1)(b) of the 2000 Act to start an investigation into the claimant's conduct. On 20 April 2010, he issued a report in which he found that there was prima facie evidence that the claimant had committed forty-three breaches of the Code of Conduct. He referred the report to the Standards Committee of Pembrokeshire County Council.

The decision of the Standards Committee

32. The matter first came before the Standards Committee on 28 September 2010. As a result of late information being presented, the meeting was adjourned to 5 November 2010. After a public hearing the Standards Committee found breaches of the Code by the claimant in respect of thirteen comments. It found that there was no evidence to prove that he had disclosed confidential information in breach of paragraph 5(a) of the Code, and insufficient evidence of bullying or harassment by him in breach of paragraph 4(c). But it found that there was evidence: (a) to prove that he had failed to show respect and consideration to others in breach of paragraph 4(b), and (b) to support a finding that he brought the Manorbier Community Council into disrepute in breach of paragraph 6(1)(a) of the Code.
33. The key parts of the comments posted on the website on various dates in relation to which the Standards Committee found there was evidence of breaches of the Code of Conduct (with the paragraph(s) of the Code of Conduct which the Committee found were breached in brackets) are:

    (1) "Manorbier Community Council does not seem to understand the limits of its role. This lack of understanding is difficult to comprehend following the advice received from Lawrence Harding the Pembrokeshire County Council Monitoring Officer." (Code, paragraph 6(1)(a)).

    (2) "Anybody who attended the October meeting would have great difficulty in relating the actual events to the draught [sic] minutes above. Anybody looking at these minutes at some time later, such as next year, would not have any ideas to what was agreed, discussed or expenditures approved. The draught [sic] has just blown the facts away. There are more holes in the Draught [sic] Minutes than in Swiss Cheese." (Code, paragraphs 4(b) and 6(1)(a)).

    (3) "Ms Gourlay has tried many times to be elected by ballot and failed. She has succeeded in becoming a Councillor as no ballot was had". (Code, paragraphs 4(b) and 6(1)(a)).

    (4) "Disgraceful manipulation of children [by Mr Wales – now ex Councillor] to influence a lawful planning application. Mr Wales…has now left [Manorbier Community Council] leaving the Council in a mess." (Code, paragraph 6(1)(a))

    (5) "Councillor Gourlay at this stage state that she was an expert on declarations of interest. It is not known where Councillor Gourlay acquired her expertise (or her present place of employment?." (Code, paragraph 4(b)).

    (6) "Manorbier Community Council as a ship will sail on until members of the Community realise how much of their money has been wasted over the last year and how much dealing has been carried out in secret meetings." (Code, paragraph 6(1)(a)).

    (7) "… the past two and a half years in the absence of a competent clerk has

proved very costly to the ratepayers of Manorbier." (Code, paragraphs 4(b) and 6(1)(a)).

(8) "Manorbier Community Council both in the recent past and in the present seems to live in the land of secrecy with many skeletons in the cupboard which will eventually come out." (Code, paragraph 6(1)(a)).

(9) "The staffing committee has with the indulgence of other past Councillors…cost the charge payers of Manorbier in excess of £55,000." (Code, paragraph 6(1)(a)).

(10) "Manorbier Community Council meeting, Monday 1st September Manorbier Councillors through its Chairman strive to stop this website publishing draft minutes of Council meetings…the reason this website published the draft minutes is to show their poor quality and it will not be browbeaten by anyone who wishes to inflict censorship…Cllr Hughes informed Cllr Calver that he was not prepared to supply him with signed corrected minutes using the feeble excuse that somebody might forge his signature…perhaps both Cllr Hughes as Chairman and Cllr Williams, the deputy chairman (who is believed to have been an ex-headmaster) should have been concerned about the standard of the draft minutes that were being displayed on this website and described by Mr Crocker as being of poor quality. One can only wonder at the statement by the chairman that the council would have collapsed had Ms Gourlay not volunteered for the role where she acted firstly as the Proper Officer and secondly as the writer of the minutes…resigning as Proper Officer in her letter to the council." (Code, paragraphs 4(b) and 6(1)(a)).

(11) "For a Chairman of a Community Council who has just had the benefit of being trained to suggest that he would not provide signed copies of council meetings to fellow councillors beggars belief, perhaps he beliefs (sic) that he is above the law of the land which states that the minutes of council meetings have to be signed 'as being a true and accurate record of the meeting' and then become placed in the public domain and open to inspection by any member of the public." (Code, paragraph 6(1)(a)).

(12) "The website will of course continue to publish both draft and the agreed signed minutes with or without the co-operation of the Council." (Code, paragraphs 4(b) and 6(1)(a)).

(13) "…In regard to the 'backdoor' method of becoming a Councillor…not one Councillor, so far, has actually been elected to represent the people." (Code, paragraph 6(1)(a)).

In the remainder of this judgment I identify the comments by the bracketed number at the beginning of each of them.

34. The summary shows that the Committee considered that, in respect of five of the thirteen comments, (2), (3), (7), (10) and (12), there was evidence to prove that the claimant had breached both paragraphs 4(b) and 6(1)(a). It considered that in respect of one comment, (5), there was evidence to prove that the claimant had breached only paragraph 4(b). As to the six other comments, the Committee considered there was evidence to prove that the claimant breached paragraph 6(1)(a). It is to be recalled (see [17] – [18]) that paragraph 6(1)(a) applies at all times to a member of a Council whether or not he or she is acting as a member of a Council. The Committee stated that it considered that the paragraphs identified "had been breached by virtue of the cumulative effect of the evidence presented, which undermined the confidence of Councillors and the authority of Manorbier Community Council".

35. The Standards Committee resolved that the claimant be censured and required to attend

a training session with Pembrokeshire County Council's Monitoring Officer within 3 months. The Committee also considered it would be beneficial for all other members of Manorbier Community Council to receive a joint training session by the Monitoring Officer. It also stated that it hoped that the Council would operate in a more cohesive way, and that the claimant would consider carefully the language used on his website in the future.

36. The claimant appealed to the defendant Panel on the following grounds. First, he maintained he was not acting in his official capacity as a Councillor, or in any way misusing his position as Councillor, in making the comments which were the subject of the complaint. Secondly, he argued that the comments singly or taken together were incapable of bringing the Community Council into disrepute, and did not demonstrate a lack of respect or consideration for others. It was argued on his behalf that any reporting on the website of discreditable behaviour by the Council or individual Councillors was "truthful and factually accurate", the comments were "legitimate political comment on the actions" of the Council or individual Councillors, and that the finding that the comments breached the Code was an unnecessary and disproportionate infringement of the claimant's right to free expression under Article 10 of the European Convention on Human Rights. The grounds of appeal thus track very closely the grounds upon which these proceedings are brought.

The decision of the Panel

37. The Panel heard and unanimously dismissed the claimant's appeal on 25 May 2011. It is that decision which is challenged in these proceedings. Both the claimant and the PSOW were represented before the Panel by counsel. The Panel had before it a number of decisions, including those in Sanders v Kingston [2005] EWHC 1145 (Admin), Livingstone v. Adjudication Panel for England [2006] EWHC 2533 (Admin), and R (Gaunt) v Office of Communications [2011] EWCA Civ 692. The material parts of the Panel's decision are:

> "3. The allegations considered by the Appeal Tribunal were that Cllr Calver had breached Manorbier Community Council's Code of Conduct by publishing derogatory website comments about two fellow Community Councillors, and by bringing his office and/or Manorbier Community Council into disrepute.
>
> …
>
> 5. At a hearing on 25 May 2011 at the Lamphey Court Hotel, Lamphey, Pembrokeshire, the Appeal Tribunal found by unanimous decision that Cllr Calver failed to comply with Manorbier Community Council's Code of Conduct, upholding the decision dated 5 November 2010 of the Standards Committee, both as to breach and sanction."

38. The reasons for the decision are contained in the Panel's decision report, dated 14 July 2011. Its material parts are:

> "4.1.5 In relation to breach of paragraph 4(b), the code of conduct applies only when a member is acting in his official capacity. The content of Cllr Calver 's website posting or blogs comprised on draft, unapproved, minutes of the Community Council, his opinion and comments about those minutes and about the character and ability of some of the members of the Community Council, the Community Council as a body and how it and certain members conducted themselves. He also alluded to secrecy, connivance, mal-administration, financial mis-management and incompetence and much of this was within his knowledge only because he was an elected member of that authority. He was discussing the affairs and business of his council and his

purpose and intention was to inform the people of the community about council or, as he put it, what was going on. Whilst Cllr Calver did not identify himself as the blogger of the owner of the website, those details were easily ascertainable, i.e. that the blogger was Malcolm Calver and that he was a member of that authority. Whilst Cllr Calver says he was not acting in his official capacity, it is an objective test which applies. The Appeal Tribunal concluded that a member of the public reading the website would have the impression, and reasonably so, that Cllr Calver was acting as a member of the Manorbier Community Council.

4.1.6 In relation to paragraph 4(b), having concluded that Cllr Calver was acting in his official capacity, the Appeal Tribunal then considered whether Cllr Calver 's posting failed to show respect and consideration for others. The Appeal Tribunal is aware that Cllr Calver asserts that everything he said was true and is aware, from the information before it, of the failings of the Manorbier Community Council. The Appeal Tribunal also notes that Cllr Calver asserts that his motivation was informing the public.

It nevertheless remains the case that Cllr Calver published draft, unapproved minutes after the Community Council had passed a resolution that he should not do so; that he criticised the draft minutes as not being an accurate record of the meeting and the competence of their author; he made personal, snide, remarks about the competence, integrity and character of members of the authority and alluded to alleged breaches by some members of the code of conduct. Whether or not what was said is true does not detract from the rudeness, lack of respect and consideration all of this shows to individual members of the council and the council as a body.

Cllr Calver could have properly addressed his concerns at the next meeting/s thereby allowing others to respond to his views and have their say, allowing a debate and if needs be, a vote. It would have been respectful and considerate for him with the benefit of his experience as a longstanding community and county councillor, to have offered held to those he considered to be less competent and able than himself. Indeed if he was so utterly disgusted with his fellow members on the Community Council, he could have resigned. Instead, he chose to 'bitch from the sidelines' to coin a phrase used by Mr Gwydion Hughes.

4.1.7. Inevitably, the Appeal Tribunal's finding that Cllr Calver has breached the code of conduct by speaking in a way which was inconsiderate and disrespectful to others is, on a superficial level, a breach of his right to freedom of expression under Article 10(1). The Appeal Tribunal does not consider that Cllr Calver 's blogs were political expression in the true sense of that meaning; he anonymously blogged on his website by publishing draft unapproved minutes, criticising their content and the competence of their author and made personal comments about the integrity, etc. of the members and the council. It was all very one-sided. It was not an expression of Cllr Calver 's political views or allegiances, nor a response to those expressed by others, nor a critique of any other political view or party. The higher level of protection afforded by Article 10(2) to political expression does not apply here therefore. The provisions of the 2008 code of conduct were prescribed by law and the code of conduct is the ethical framework within which local government operates. It sets minimum standards of conduct in public life and upholds those standards of conduct so as to engender public confidence in local democracy. It goes far beyond dealing with corruption; it includes,

obviously, a requirement that councillors should treat each other and others with respect and consideration and, as a matter of fact, it is of course perfectly possible to be critical of others without also showing them disrespect or lack of consideration.

4.1.8 Although the Appeal Tribunal has decided that Cllr Calver was acting in his official capacity, it is worth noting that by virtue of paragraph 2(1)(s) the (2008) code of conduct is engaged 'at all times and in any capacity' in respect of conduct identified in paragraph 6(1)(a) (ie. conduct capable of bringing the office of member or the authority into disrepute.

4.1.9 Cllr Calver was a longstanding and experienced member of the failing Manorbier Community Council; he was also a county councillor. There were various options available to Cllr Calver including seeking to assist those he regarded as incompetent and inexperienced, distancing himself entirely from the failing council by resigning, or seeking the assistance of the monitoring officer. He did none of these. He publicly ridiculed his fellow members and the authority of which he was a member. The Appeal Tribunal conclude that if the reasonable man were asked for his view of Cllr Calver 's behaviour, he would say it fell short of that expected, under the code of conduct, of an elected member; and to such extent that it brought his office and his authority into disrepute.

4.1.10 The Appeal Tribunal accordingly decided by unanimous decision to uphold the Standards Committee's determination dated 5 November 2010, that Cllr Calver had breached Manorbier Community Council's code of conduct."

Discussion

39. It was, subject to one qualification by Mr Hughes, common ground that the questions I must answer are those formulated by Wilkie J in Sanders v Kingston [2005] EWHC 1145 (Admin) at [72]. Leaving the qualification to one side at this stage, and adapting Wilkie J's questions to reflect the facts of the present case, they are:

    (1) Were the Standards Committee and the Panel entitled as a matter of fact to conclude that the claimant's conduct in respect of the thirteen comments was in breach of paragraphs 4(b) and/or 6(1)(a) of the Code of Conduct?

    (2) If so, was the finding in itself or the imposition of a sanction prima facie a breach of Article 10?

    (3) If so, was the restriction involved one which was justified by reason of the requirements of Article 10(2)?

40. Before turning to the application of these questions to the circumstances of the present case, I make five observations about the underlying principles. The first concerns the common law. Understandably, the submissions in this case largely concerned Article 10 of the Convention. It is, however, important to remember the status of freedom of expression at common law and the relevance of the common law despite the enactment of the Human Rights Act 1998. The continuing importance of common law analysis in this area has been recently illustrated by the decision of the Court of Appeal in R (Guardian News and Media) v City of Westminster Magistrates [2012] EWCA Civ 420 at [68] per Toulson LJ.
41. The status of freedom of expression at common law was, for example, seen in the development of the law of defamation and in particular what may be described as the distaste for "prior restraints": Bonnard v Perryman [1891] 2 Ch 269. Its position, although at one stage characterised as a residuary right, has been enhanced by developments of

the common law under the influence of rights in international human rights treaties ratified by the United Kingdom, and in particular, even before the Human Rights Act 1998, the European Convention: see Derbyshire CC v Times Newspapers Ltd [1993] AC 554 and R v Secretary of State for the Home Department, ex parte Simms [2000] 2 AC 115, at 126. The result was that a narrower construction was given to legislative instruments restricting the right, and, albeit subject to Parliamentary sovereignty, clear words were required to achieve a restriction. In ex. p. Simms Lord Hoffmann stated (at 131) that "fundamental rights cannot be overridden by general or ambiguous words" because of "the risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process". See also R (Gillan) v Commissioner of Police for the Metropolis [2006] 2 AC 307 at [15] (per Lord Bingham). This is similar to the position under the Convention. In Jerusalem v Austria [2003] 37 EHRR 25 at [32] the Strasbourg Court stated that the exceptions to freedom of expression must be construed strictly.

42. Charles J, in R (Mullaney) v Adjudication Panel for England [2009] EWHC 72 (Admin) at [78], expressed no view as to whether, apart from Article 10, a narrow approach should be taken to the construction of the Code of Practice. But, in McCartan Turkington Green v Times Newspapers [2001] 2 AC 277 at 297 and R v Shayler [2003] 1 AC 247 at [21], Lord Steyn and Lord Bingham respectively described freedom of expression as having "the status of a constitutional right with attendant high normative force", and "a fundamental right" which "has been recognised at common law for very many years". One of the consequences of giving this constitutional status to freedom of expression is that clear words are required to restrict it, and thus in that sense there is a narrower approach to the interpretation of legislation and instruments made under legislation restricting it.
43. The second observation concerns the approach of the court to the first of Wilkie J's questions. Mr Hughes submitted that the approach and the court's role in this case, a judicial review, is narrower than it is in a statutory appeal such as Sanders v Kingston [2005] EWHC 1145 (Admin). He submitted that, in a judicial review such as this, greater weight should be accorded to the finding of the Panel that the claimant's conduct breached the Code than would be accorded in a statutory appeal. It is true that, in R (Mullaney) v Adjudication Panel for England Charles J referred (at [73] and [74]) to the difference in the role of the court on an appeal under section 79(15) of the 2000 Act from that in a judicial review. It may also in principle be analytically correct to separate the question of whether, in purely common law terms, there is a breach of paragraphs 4(b) or 6(1)(a) of the Code of Conduct from the question of whether there is a breach of Article 10 as questions 1 and 2 do.
44. I do not, however, consider that those factors affect the conclusion in this case. This is primarily because of the effect of sections 3 and 6 of the Human Rights Act (see [20]) but also because of the approach at common law to restrictions on freedom of expression to which I have referred: see [40] - [42]. As far as the common law is concerned, the factors include a cautious approach to the scope of restrictions on it. One manifestation of this is the presumption which (see [41]) prevents rights such as that to freedom of expression from being overridden by general or ambiguous words. The effect of sections 3 and 6 of the Human Rights Act is that it is in practice difficult entirely to exclude consideration of factors relevant to common law freedom of expression and Article 10 from the question of whether there was a breach of the Code of Conduct. So, for example, in R (Gaunt) v Office of Communications [2011] EWCA Civ 692, Lord Neuberger MR stated (at [36]) that, as it was not contended on behalf of the claimant in that case that the provisions of the Broadcasting Code fell foul of Article 10, they did not require particularly close analysis. However, that did "not alter the fact that the provisions must be interpreted, as well as being applied in a particular case, so as to comply with the requirements of Article 10".

45. Once Article 10 is under consideration, so is the general approach of the court to questions of weight and latitude in determining whether a decision or conduct is compatible with a Convention right. While (see [73]) the court must "have due regard" to the judgment of the statutory regulator, the approach involves scrutiny of greater intensity than in a judicial review not involving a Convention right, and the decision whether Article 10 is infringed is ultimately one for the court: R (SB) v Governors of Denbigh HS [2007] 1 AC 100 at [30]; Belfast City Council v Miss Behavin' Ltd [2007] UKHL 19 at [30], [31] and [88]; Gaunt's case at [47]. These cases also make it clear that the role of the court is to address the substantive question of compatibility with the Convention right rather than the process used by the primary decision-maker. If, however, the process is defective, less weight will be accorded to the judgment of the primary decision-maker: Belfast City Council v Miss Behavin' Ltd at [37], [47] and [91].
46. My third observation is that the relevant legal principles in this area do not provide the Panel or the court with bright lines. Notwithstanding the warning by Hoffmann LJ in R v Central Independent Television Plc [1994] 3 All ER 641 at 651-52 they lead it to a process of balancing a number of interests. This is seen, for example, in Sanders v Kingston at [77] and [84] and in Mullaney's case at [95] – [96] where, in the context of determining whether there was a breach of the Code, Charles J stated that "a balance has to be struck between the various relevant aspects of the public interest in all the circumstances of the case".
47. As to Hoffmann LJ's warning, he recognised that freedom of expression is subject "to clearly defined exceptions laid down by common law or statute", but did not appear to favour a process of balancing. He stated that, outside those exceptions and any exception enacted in accordance with Parliament's obligations under the Convention, "there is no question of balancing freedom of speech against other interests … it is a trump card which always wins". That way of putting it may, however, be implicit recognition that, in the approach to and application of those exceptions, there is balancing. Neither freedom of speech nor the principle reflected in the exceptions under consideration (e.g. reputation or privacy) can be given effect in an unqualified way without restricting the other. Hoffmann LJ's concern about balancing was because ([1994] 3 All ER 641, 653) the matters that have to be balanced, in the present case, on one side of the balance a councillor's right to freedom of expression and the public interest in such freedom, and on the other side of the balance the public interest in proper standards of conduct by members of local authorities, are not easily commensurable.
48. More recently, in R (Gaunt) v Office of Communications [2011] EWCA Civ 692 at [23] Lord Neuberger MR, considering restrictions on broadcasting "offensive and harmful material" in the Broadcasting Code made pursuant to the Communications Act 2003, stated that "like virtually all human rights, freedom of expression carries with it responsibilities which themselves reflect the power of words, whether spoken or written". Although he also emphasised that "any attempt to curtail freedom of expression must be approached with circumspection", his recognition of the responsibilities that are carried by freedom of expression reflects an element of balancing. There, of course, has to be balancing when the exercise of the right to free expression in Article 10 right by one person will violate other Convention rights, notably the right to respect for private and family life protected by Article 8.
49. Fourthly, a process of balancing is, as was recognised in Gaunt's case (at [25]) a highly fact-sensitive one: see also Clayton and Tomlinson, The Law of Human Rights (2nd ed.) 15.297. For this reason, while the cases on the decisions of Case Tribunals and the Adjudication Panel for England to which I have referred (at [8]) provide valuable guidance as to the general approach, it is important to keep in mind their particular facts. Notwithstanding the high importance of freedom of expression and its relative

incommensurability with the interests that are invoked in justifying a restriction, the more egregious the conduct, the easier it is likely to be for the Panel, and for the court, to undertake the balancing that is required and justifiably to conclude that what was said or done falls within one of the exceptions to freedom of expression under common law, statute or the Convention. If the conduct is less egregious, it is likely to be more difficult to do this. This is because the interests – freedom of expression and, in the present context, proper standards of conduct by members of local authorities, are not easily commensurable.

50. Justification requires, as was stated in Livingstone v Adjudication Panel for England [2006] EWHC 2533 (Admin) at [39] "clear and satisfactory reasons within the terms of Article 10(2)". But in Belfast City Council v Miss Behavin' Ltd [2007] UKHL 19 at [92], Lord Neuberger recognised that "it may not always be easy to see, or at least to express in clear terms, how [a person's] Article 10 rights can satisfactorily be weighed against [in that case] a council's decision to refuse a licence".
51. The conduct found to breach the Code of Conduct in Sanders v Kingston and Mullaney's case was at the top end of the scale of egregiousness. Mullaney's case concerned a Councillor who trespassed on land to make a video about the condition of a listed building, was involved in a scuffle when the landowner returned, and subsequently uploaded an edited version of the video on the Youtube website. The trespass was a civil wrong (the Councillor also intended to trespass again: [42]) and his involvement in what may have been an affray were undoubtedly serious departures from the standards expected of Councillors established by the framework of the 2000 Act.
52. Sanders v Kingston involved the response of the claimant, the leader of Peterborough Council, to a request by Carrickfergus Borough Council, a local authority in Northern Ireland. The Carrickfergus Council sought support from English local authorities including the Peterborough Council for its call for an inquiry into the death of a soldier whose family resided in its area and the deaths of other army personnel. Wilkie J described (at [79]) the claimant's initial and later responses to the Carrickfergus Council and to press inquiries as "little more than an expression of personal anger at his time being wasted by [the] request" and (at [81]) "the ill-tempered response of a person who thought that he should not be troubled by the request…and who has chosen to express his annoyance in personal and abusive terms" directed in the main at the Carrickfergus Council and the family of the dead soldier, and as a by-product, the Irish people and "the Troubles". In the present case Mr McCracken QC, on behalf of the claimant, characterised the comments in that case as "not merely offensive but seriously inflammatory" and potentially racist. He noted they caused offence at a national level.
53. Wilkie J held that the Case Tribunal in that case was fully entitled to find that the conduct did not treat others with respect and was conduct which could reasonably be regarded as bringing the office or authority of the claimant into disrepute. But for the sanction of two years disqualification that was imposed, he would have held the interference with Mr Sanders's freedom of expression was justified in accordance with Article 10(2) of the Convention.
54. In the present case, before the Panel it was accepted on behalf of the PSOW (see decision report, paragraph 3.2.7) that the conduct in Sanders v Kingston and Gaunt's case (as to which see [56] below) "was atrocious, the worst possible", and very different from the claimant's conduct in this case. But the PSOW's case was that it did not follow that the claimant's conduct did "not fall below that reasonably required by the Code of Conduct". Mr McCracken characterised the claimant's comments in this case as sarcastic, lampooning and disrespectful rather than personal abuse. While it is certainly possible that conduct far less serious than that in those cases can lawfully be found to break the Code of Conduct, it is important not to lose sight of the greater complexity and difficulty

for both the Panel and the court in conducting the balancing exercise in such a case.

55. Fifthly, it is clear, as a general proposition, that freedom of expression includes the right to say things which "right thinking people" consider dangerous or irresponsible or which shock or disturb: see R v Central Independent Television Plc [1994] Fam 192 at 203 (Hoffmann LJ); Redmond-Bates v DPP (1999) 163 JP 789 (Sedley LJ); Jerusalem v Austria [2003] 37 EHRR 25 at [32]; Kwiecien v Poland 9 January 2007 (2007) 48 EHRR 7 at [43]; Application 27935/05 Filipoviç v Serbia 20 November 2007 at [53]. Barendt, Freedom of Speech (2nd ed. 2005) at 76 – 77, in the context of political speech (on which see [58]ff), stated that the exclusion of "all emotive, non-rational expression from the coverage of the principle would be a mistake". It would "often be hard to disentangle such expression from rational discourse" because "the most opprobrious insult may form part of an otherwise serious criticism of government or of a political figure". He also stated that, even if it were possible to separate the emotive content from the other parts of a particular publication, "it would be wrong to allow its proscription" because "if speakers could be punished each time they included a colourful, non-rational epithet in their publication or address, much valuable speech would be inhibited". He concluded that "some margin should be allowed for invective and exaggeration, even if that means some apparently worthless comments are as fully protected as a carefully balanced argument". The statements of Hoffmann LJ in the Central Independent Television case that "a freedom which is restricted to what judges think to be responsible or in the public interest is no freedom" and that freedom of expression means "the right to publish things which government and judges, however well motivated, think should not be published" and of Sedley LJ in Redmond-Bates v DPP that "freedom only to speak inoffensively is not worth having", are clearly relevant and have been relied on by courts considering restrictions in codes made pursuant to statutory authority.
56. For example, in Livingstone v Adjudication Panel for England [2006] EWHC 2533 (Admin), Collins J, considering the Code of Conduct of the Greater London Authority, and referring to Hoffmann LJ's observations in the Central Independent Television case, stated (at [36]) that "surprising as it may perhaps appear to some, the right of freedom of speech does extend to abuse". See also Sanders v Kingston [2005] EWHC 1145 (Admin) at [77] and the approach of the Court of Appeal in R (Gaunt) v Office of Communications [2011] EWCA Civ 692 at [27] – [29]. In Gaunt's case Ofcom had found that a radio interview violated the Broadcasting Code. The Court of Appeal referred to Sedley LJ's statement in the Richmond-Bates case. But, notwithstanding that and the strength of the right to freedom of expression, the extremely aggressive tone of the interviewer, the constant interruptions, insults, ranting and the lack of any substantive content led it to conclude that Ofcom had correctly concluded the interviewer had broken the relevant provisions of the Broadcasting Code, and that neither the Code nor its application in that case fell foul of Article 10.
57. Although the fact-sensitive approach (see [49]) means there is no rigid typology of forms of expression (see Clayton and Tomlinson, The Law of Human Rights 2nd ed. 15.297), it has also been said that "the value of free speech in a particular case must be measured in specifics" and that "not all types of speech have an equal value": Lord Steyn in R v Secretary of State for the Home Department, ex. p Simms [1999] 3 All ER 400 at 408. See also R (Gaunt) v Office of Communications [2011] EWCA Civ 692 at [25] per Lord Neuberger MR. In Jerusalem v Austria (2003) 37 EHRR 25 at [35] it was stated that in examining the particular circumstances of the case, the Court will take the into account: the position of the applicant who complains that his right to freedom of expression under Article 10 has been violated, the position of the person or institution which has done so, and the subject-matter of the words or conduct about which the complaint is made.
58. The gradations in the value of free speech also mean that the statements by Hoffmann

and Sedley LJJ I have quoted at [55] are particularly relevant in the present context. This is because of the recognition of the importance of expression in the political sphere and that the limits of acceptable criticism are wider in the case of politicians acting in their public capacity than they are in the case of private individuals: see Jerusalem v Austria at [36]. This recognition involves both a higher level of protection ("enhanced protection") for statements in the political sphere and the expectation that if the subjects of such statements are politicians acting in their public capacity, they lay themselves open to close scrutiny of their words and deeds and are expected to possess a thicker skin and greater tolerance than ordinary members of the public: see Jerusalem v Austria at [38], albeit referring to what journalists and the public say about politicians, and, in a common law context, Lange v Australian Broadcasting Corp. (1997) 189 CLR 520, 559 (High Court of Australia). Although the protection of Article 10(2) extends to politicians, the Strasbourg Court has stated that where a politician seeks to rely on it, "the requirements have to be weighed in relation to the open discussion of political issues": Lingens v Austria (1986) 8 EHRR 103 at [42].

59. Mr Hughes submitted (skeleton argument, paragraph 28) that within the category of political speech there are also gradations, and that the "level of political debate that takes place at a Community Council level ought to be less heated and contentious" than debate at the national level. But, whether or not this is so, it is clear, as Mr Hughes also recognised, that political expression at local council level also attracts enhanced protection. In Jerusalem v Austria, whether or not the debate in the Vienna Municipal Council occurred when the Council was sitting as a local authority rather than as the Land (State) Parliament (which it also was), the Strasbourg court stated (at [40]) that "very weighty reasons must be advanced to justify interfering with the freedom of expression exercised therein".
60. There may be a difference between manifestations of freedom of expression during a meeting of the Council and such manifestations outside such meetings (see Sanders v Kingston at [77] and [85]) but the enhanced protection can apply whether or not the conduct occurs during such a meeting. So, in Filipoviç v Serbia 20 November 2007, a statement by Mr Filipoviç at a public meeting in a municipal hall that a mayor was guilty of embezzlement attracted the enhanced protection. The meeting was attended by two Deputy Ministers, some eighty local councillors and other leading local figures. Its purpose (see judgment at [15]) was to assess the functioning of the municipality as a whole and those attending were encouraged to share their "critical views". The statement could not be regarded as one of fact and indeed (see judgment at [54]) it was not corroborated by any relevant evidence. See also Kwiecien v Poland (2007) 48 EHRR 7 at [43], in relation to an open letter distributed in a period preceding an election alleging that the Head of District Office who was seeking election carried out duties ineptly and in breach of the law.
61. This does not mean that everything said by a politician or a member of a local council will attract enhanced protection. I have referred (see [52]) to the way Wilkie J characterised what Councillor Sanders said in Sanders v Kingston. Wilkie J stated (at [79]) that there was nothing in what the Case Tribunal found that Councillor Sanders wrote and said "which could properly be described as political expression of views". In Livingstone's case, the then Mayor of London's words were addressed to a Jewish journalist employed by the Daily Mail, a newspaper which the then Mayor considered had persecuted him and was part of a group which he considered (see [2006] EWHC 2533 (Admin) at [8]) had a past record of pre-war support for anti-Semitism and Nazism and what he regarded as its continuing racist bigotry, hatred and prejudice. Mr Livingstone asked the journalist whether he was a German war criminal, and stated inter alia that he "was just like a concentration camp guard". Collins J (see [36]) had no doubt

that the then Mayor was "not to be regarded as expressing a political opinion which attracts the high level of protection" but "indulging in offensive abuse of a journalist whom he regarded as carrying out on his newspaper's behalf activities which [he] regarded as abhorrent".

62. So, how is the line to be drawn? Mr McCracken submitted that sarcasm and lampooning of those who have placed themselves in public office falls within the enhanced protection. He also maintained there should be no sharp distinction between national and local governmental bodies. He relied on the definition from Collins' Dictionary of the English Language; "of or relating to the state, government, the body politic, public administration, policy, etc", the speech of Baroness Hale in Campbell v Mirror Group Newspapers [2004] 2 AC 457 at [148] – [149], and the etymology of the word from the Greek work for city. He relied on etymology in support of his submission that it is clear that the relevant unit of government may be a local one rather than a country but, since ancient Greece consisted of many more or less independent city-states, etymology is of limited assistance in respect of this particular point.
63. Hare's contribution to a collection of essays in honour of Sir David Williams observes that beyond obvious illustrations, there are difficulties in defining political expression, and that the variety of formulations in different contexts should "make us hesitate before adopting a view of the importance of political expression which will inevitably lead to further litigation surrounding the definition of its organising concept": Freedom of Expression and Freedom of Information (OUP 2000), at 108 and 112. In the context of Article 10, Baroness Hale, in Campbell v Mirror Group Newspapers, included the following within the category of political speech:

    "…information on matters relevant to the organisation of the economic, social and political life of the country".

    This, she stated, included "revealing information about public figures, especially those in elective office, which would otherwise be private but is relevant to their participation in public life". This is consistent with what was stated in an entirely different context by Lord Hardwicke. In Chesterfield v Janssen (1751) 2 Ves. Sen. 125, at 156; 28 English Reports at 100, he stated that politics "comprehends everything that concerns the government of the country, of which the administration of justice makes a considerable part".
64. As to the breadth of the concept of political expression in the Strasbourg jurisprudence, in Thorgeirson v Iceland (1992) 14 EHRR 843 at [64] (in the context of a complaint by a journalist that criminal defamation proceedings in respect of articles alleging brutality by a police force violated his rights under Article 10) the Court stated:

    "there is no warrant in its case law for distinguishing … between political discussion and discussion of other matters of public concern."

    It is in this sense that the statement by Clayton and Tomlinson, 15.284 that "the concept of political expression is broadly interpreted" should be understood. See also Barendt, Freedom of Speech (2nd ed. 2005) who, at 154, refers to "speech in the political sphere", at 159 to "speech on matters of public concern", and the passages from 76 – 77 quoted at [55]. See also the cases to which I have referred at [60].
65. I turn to the application of these principles and factors to the circumstances of the present case and the questions identified by Wilkie J in Sanders v Kingston. I have referred (see [43] – [45]) to the difficulty in excluding common law freedom of expression and Article 10 factors from the question of whether the Standards Committee and the Panel were entitled as a matter of fact to conclude that the claimant's conduct in respect of the thirteen comments was in breach of paragraphs 4(b) and/or 6(1)(a) of the Code of Conduct. However, for present purposes, as a pure matter of language, and without regard at this stage to my obligation under section 3 of the Human Rights Act to interpret

the Code so far as it is possible so as to comply with the requirements of Article 10, I have done so. I shall return to the impact of common law and Convention principles on instruments which affect freedom of expression.

66. Approaching the first of the questions identified in Sanders v Kingston in this way, I have concluded that the Committee and the Panel were entitled to conclude that the thirteen comments by the claimant breached the Code. First, whether or not it is accurate to characterise the comments as "snide", they were, as Mr McCracken accepted, sarcastic and mocking. Secondly, the Panel was entitled to take a cumulative view of the effect of the claimant's postings. In this respect the conduct which has led to the finding of breach and the sanction in this case differs from the conduct in Livingstone and Mullaney. Sanders's case, of course, involved a course of conduct, albeit over a shorter period. Disregarding Article 10 and section 3 of the Human Rights Act, the use of a sarcastic tone about colleagues on the Council over a long period would justify a conclusion that the claimant had not shown respect and consideration for his colleagues on the Council.
67. Thirdly, the Panel was entitled to conclude that the tone of the claimant's postings "publicly ridiculed his fellow members", particularly in the light of the number of postings and their cumulative effect. The juxtapositioning in different postings of the criticisms of the quality and accuracy of the minutes produced by Cllr Gourlay and the comments about the fact that she had not been elected in a contested ballot (comment (3) and possibly comment (13)), and comment (5) on declarations of interest do make it appear that the comments were intended to undermine her in an unattractive way. Her letter dated 3 March 2009 to the PSOW shows she felt she had been subjected to intense ridicule. These comments and a number of the others could be characterised, as the PSOW did in his submissions to the Panel (decision report, paragraph 3.26) as "snide comments, remarks of a general derogatory nature in a sarcastic tone". I do not, however, accept Mr Hughes's submission that the comments on the blog which were found to breach the Code of Conduct challenged the mental capacity of other Councillors. The nearest to this is comment (1) stating that the Council "did not understand the limits of its role". But that is an allegation of a defect of a different order.
68. As to the criticism that the Panel also took into account ridicule of the Council itself, I accept Mr Hughes' submission that, looking at the ruling as whole, notwithstanding the reference to ridicule of "the authority" and "the Council as a body" in paragraphs 4.1.6 and 4.1.9 of the decision report, it was the fact that the claimant's comments were directed at his fellow members that was the heart of the Panel's findings.
69. The Standards Committee and the Panel found that twelve of the thirteen comments breached paragraph 6(1)(a) which applies at all times to a member of a Council whether or not he or she is acting, claiming to act, or giving the impression of acting in the role of Council member It was thus only in respect of comment (5) where the only breach found is of paragraph 4(b) that it was necessary to find that the claimant was so acting, although there were five other comments where breaches of both paragraphs were found. The Panel was entitled to conclude that the claimant was acting in his capacity as a member of the Community Council in respect of comment (5) and the five comments which were found to breach both paragraphs. The claimant's evidence is that "during both terms of my office [I have] provided information on the website of decisions, comments etc of what goes on at Council meetings and what currently and previously has been hidden from both public and Council/Councillors alike". I do not accept the claimant's contention that, because none of the information was confidential to him as a Councillor, his position as a Councillor did not preclude him from speaking out "as a citizen". Whether or not the information was confidential, some of it was only available to the claimant because of his position, although (see Mullaney's case at [85(i)] this is not a requirement. Moreover, it was his principal way of communicating with his

constituents and others in the community, and the content of his blog was almost exclusively the business of the Community Council.

70. Mr McCracken submitted (skeleton argument, paragraph 45) that in some contexts, where criticism is the performance of a duty, "the concept of 'rudeness' has no place and that it was as absurd for the Panel to condemn a politician for 'rudeness' in his sincere criticism of the shortcomings of fellow politicians as it would be to criticise a judge for the offensive nature of his remarks in sentencing a criminal". He also submitted (skeleton argument, paragraphs 40, 42 and 47) that, since nearly all the comments were true and reflected the past and present failings in the administration of the council's business, it was those whose actions were reported who brought the council and the office of councillor into disrepute. I reject these submissions. I have concluded that in principle this regular conduct over such a long period did prima facie bring the claimant's office into disrepute.
71. I turn to the second and third questions identified in Sanders v Kingston. The submissions by both parties focussed on the position under the Convention and the remainder of this judgment will also do so. Mr Hughes accepted that the finding was prima facie a breach of the claimant's right to freedom of expression and of Article 10. It is not arguable that the legislative scheme making provision for Codes of Conduct for Councillors or the Codes of Conduct made under the 2000 Act are too uncertain to qualify as being prescribed by law: see Sanders v Kingston at [61] and [84] and Mullaney's case at [70]. Accordingly, the real issue concerns the third question, whether the restriction was one which was justified by reason of the requirements of (and the application of the factors in) Article 10(2) and I turn to that.
72. In these proceedings it has not been necessary to consider the distinction in the Strasbourg jurisprudence between facts and value judgments (on which, see Clayton and Tomlinson, The Law of Human Rights (2nd ed.) 15.314 -315) because the Panel's conclusions proceed on the basis that what was said in the claimant's comments was true. It stated in paragraph 4.16 that "whether or not what was said is true does not detract from the rudeness, lack of respect and consideration" the claimant's comments showed to individual members of the Council and the Council as a body. It suffices to say that restrictions on publication of both matters which are factual in nature and are demonstrated to be true, and of value judgments are generally difficult to justify under Article 10(2).
73. It is common ground that the court, in considering whether the Panel failed to accord sufficient weight to the claimant's rights to freedom of expression, has to decide for itself whether those rights were accorded sufficient weight, having due regard to the decision of the Panel. The court must "have due regard" to the judgment of the primary decision-maker, in this case the Panel. This is because the Panel, the statutory regulator, consists of persons identified by Parliament to apply the Code because of its knowledge and experience of local government: Mullaney's case at [72]; Gaunt's case at [47]; Belfast City Council v Miss-Behavin' Ltd [2007] UKHL 19 at [26], [37] and [46]. But "due regard" does not mean that the process is only one of review: it is the court which has to decide whether the Panel has violated the claimant's right to freedom of expression.
74. The Code seeks to maintain standards and to ensure that the conduct of public life at the local government level, including political debate, does not fall below a minimum level so as (see decision report, paragraph 4.1.7) "to engender public confidence in local democracy". Mr Hughes submitted (skeleton argument, paragraph 34) that it seeks to ensure that it does not descend to the level of personal abuse and ridicule "because when debate and public life is conducted at the level of personal abuse and ridicule, the public loses confidence in it and those involved in it". There is a clear public interest in maintaining confidence in local government. But in assessing what conduct should be

proscribed and the extent to which sarcasm and ridicule should be, it is necessary to bear in mind the importance of freedom of political expression or speech in the political sphere in the sense I have stated (at [58] – [64]) it has been used in the Strasbourg jurisprudence.

75. The fact that more candidates did not come forward at the 2008 election to the Community Council may have reflected the disenchantment of local residents with the Council and loss of confidence in it. That may have been the result of the difficulties which I summarised at [22] – [25] and which led it to be described as a failing Council. It may also in part have been the result of the way the relationships between Councillors had been perceived by those who lived in the Community. Against that background, it is certainly understandable that the Monitoring Officer, the Standards Committee and the Panel were concerned about what was going on in this particular Community Council. It is of some significance that, as well as requiring the claimant to be re-trained as to the requirements of the Code of Conduct, the Standards Committee in this case recommended that other Councillors be re-trained.
76. It is in the context of what constitutes "respect and consideration" and "bringing your office or authority into disrepute" in a local government context that the Panel's expertise is of particular relevance. Because of this I have given most anxious consideration to the conclusion that I was minded to reach after considering the oral and written submissions. After doing so, I have nevertheless decided that the Panel fell into error in a number of respects.
77. The first and most important concerns its approach to "political expression". Mr Hughes submitted that the Panel and the Standards Committee were correct in finding that the comments found to breach the Code were not expressions of political views because they had "nothing to do with political debate or political views" although, had they related to "political policy or political competence" they might have attracted the enhanced standard of protection: skeleton argument, paragraphs 31 and 29. In his oral submissions, he accepted that some of the comments were either "political" (comment (4)) or "close to political" (comment (1). Although Mr Hughes's oral submissions focused on the contention that the criticisms of the minutes were criticisms of the literacy of the minute-taker, comments (2), and (11) were (as he recognised in his skeleton argument, paragraphs 29 and 31), concerned with their quality, accuracy, and availability.
78. The Panel in paragraph 4.1.7 of the decision report states that it did not consider that the blogs were political expression "in the true sense of that meaning". The factors referred to by the Panel included that "it was all very one-sided". That does not, however, preclude something being political expression: indeed, some would say that it is a feature of much political expression.
79. The Panel also stated that the comments were "not an expression of Cllr Calver 's political views or allegiances, nor a response to those expressed by others, nor a critique of any other political view of party" and that the higher level of protection "does not apply here therefore". But the statements in Filipoviç v Serbia 20 November 2007 (mayor guilty of embezzlement) and in Kwiecien v Poland 9 January 2007 (2007) 48 EHRR 7 (head of local authority carried out duties ineptly and in breach of the law) are also not expressions of or critiques of political views.
80. I have concluded that the Panel took an over-narrow view of what amounts to "political expression" (see the authorities discussed at [57] – [64] above) and that, taken in the round, so have the submissions of Mr Hughes on this point. Not all of the claimant's comments were political expression even in the broad sense the term has been used in this context. It is, for example, difficult to see how comments (3) and (5) qualify, and comment (12) must at best be on the borderline. I have described the comments as sarcastic and mocking, and some as seeking to undermine Cllr Gourlay in an unattractive

way. However, notwithstanding what I have said about their tone, the majority relate to the way the Council meetings were run and recorded. Some of them were about the competence of Cllr Gourlay who, albeit in a voluntary capacity in the absence of a Council official, was taking the minutes and no doubt trying to do her best. Others were about the provision of minutes to Councillors or the approach of Councillors to declarations of interest. The comments were in no sense "high" manifestations of political expression. But, they (or many of them) were comments about the inadequate performance of Councillors in their public duties. As such, in my judgment, they fall within the term "political expression" in the broader sense the term has been applied in the Strasbourg jurisprudence. For the reasons given at [55], it is difficult to disentangle the sarcasm and mockery from the criticism of the way Council meetings were run.

81. Secondly, although the essence of the framework set out by the 2000 Act and the Code of Conduct is to restrict the conduct of Councillors not only vis a vis the public and staff but including that towards colleagues on the Council, no account was taken in the Panel's decision of what is said in the Strasbourg jurisprudence about the need for politicians to have thicker skins than others.
82. The fact that the Panel took a narrower view of "political expression" and did not refer to the need for politicians to have thicker skins that others limits the weight that can be given to its findings: see [45] above and Belfast City Council v Miss Behavin' Ltd. It thus falls to the court to determine whether the restriction in this case was a disproportionate interference with the claimant's right to freedom of expression without the assistance of the Panel on these questions and accordingly the Panel's decision has less weight than it otherwise would have.
83. The requirement of "necessity in a democratic society" in Article 10(2) sets a high threshold. It was made clear in R v Shayler [2003] 1 AC 247 at [23] by Lord Bingham of Cornhill (citing language used in Strasbourg cases such as Handyside v United Kingdom (1976) 1 EHRR 737 at [48]) that the concept is less flexible than expressions such as "reasonable" or "desirable". As to proportionality, in Shayler's case, Lord Hope stated (at [61]) that those seeking to justify a restriction must establish that "the means used impair the right as minimally as possible". In Sanders v Kingston Wilkie J recognised that, in the context of political debate, there may be robust and even offensive statements in respect of which a finding that the Code had been breached would be an unlawful infringement of the rights protected by Article 10 (see [2005] EWHC 1145 (Admin at [77] and [85]) although he found that was not such a case.
84. Despite the unattractiveness of much of what was posted, most of it was not purely personal abuse of the kind seen in Livingstone's case. It did not involve a breach of obligation, as the conduct in Mullaney's case did. Nor does it come close in kind or degree of condemnation to the language which has been held to be "unparliamentary" by the Speaker of the House of Commons. I accept Mr McCracken's submission that it is necessary to bear in mind the traditions of robust debate, which may include some degree of lampooning of those who place themselves in public office, when deciding what constitutes the "respect and consideration" required by the Code. I have concluded that, in the light of the strength of the right to freedom of expression, particularly in the present context, and the fact that the majority of the comments posted were directed at other members of the Community Council, the Panel's decision that they broke the Code is a disproportionate interference with the claimant's rights under Article 10 of the Convention.
85. At this stage it is necessary to return to the construction of the Code of conduct, but now taking account of the common law and Convention positions on freedom of expression. In Mullaney's case Charles J described the concepts of "respect" and "acting in an official capacity" as having a chameleon quality dependent on context: [2009] EWHC 72

(Admin) at [70]. He stated (at [78]) that, because of Article 10, a narrow approach should be taken to the construction of the Code of Practice. Words and phrases such as "respect", "consideration", and "bringing office or authority into disrepute" must be construed in the light of that. Given the "chameleon" or open-textured quality of these terms, and the recognition (see [42]) that at common law freedom of expression has "the status of a constitutional right with attendant high normative force", in principle a common law narrow construction of the provisions of the Code in accordance with the statement from Lord Hoffmann's speech in ex p Simms set out at [41] may well mean that the majority of the thirteen comments do not breach paragraphs 4(b) and 6(1)(a). But if it does not, I consider that it is possible to read and give effect to those provisions of the Code in a Convention compatible way. If so, section 3 of the Human Rights Act obliges me and the Panel to do so.

86. I deal briefly with a number of subsidiary matters. The Panel took into account what it considered were the alternative options open to the claimant. Paragraph 4.1.9, however, wrongly suggested that the claimant had not sought the assistance of the Monitoring Officer. He had in fact done this in relation to the minutes. Also, albeit much earlier, in 2006, he had sought to deal with his concerns about the Council by complaining to the PSOW. He was, however, told (see [23]) that the matter fell outside the PSOW's remit. Secondly, I am somewhat troubled by the Panel's reference to resignation as an option available to the claimant if he was "so utterly disgusted" with his fellow Councillors. In respect of the deficiencies in the administrative arrangements concerning declarations of interest and minute-taking at a local representative body which were concerning the claimant, this comes close to a suggestion that one must put up or get out.
87. I also note that in paragraph 4.1.7 of the decision report, in the context of considering whether the comments amounted to political expression, the Panel took into account the publication of the draft unapproved minutes and what are described as personal comments about the "integrity" of the members and the Council. The Standards Committee had, however, not accepted that the publication of the draft minutes breached the Code or that the claimant had made comments about the "integrity" of the members and the Council.
88. As to the sanction, this was at the lower end of the sanctions that the Panel could impose. Had the interference been otherwise justified, I would not have been minded to hold that the sanction imposed itself meant the decision was a disproportionate interference with the claimant's rights under Article 10. I, however, note that the Panel could have simply imposed a requirement of further training without censuring the claimant or found a breach but taken no further action. Albeit in respect of what might well have been a very different factual scenario, that is (see [30]) what the Standards Committee did in respect of the claimant's complaints about Cllr Hughes' failures in respect of declarations of interest. Although the Standards Committee found Cllr Hughes had breached the Code, it recommended that no further action should be taken.
89. In view of my conclusions, it is not strictly necessary to consider the two subsidiary issues to which I referred at [5]. I very much doubt that the fact that the claimant signed a declaration consenting to be bound by the provisions of the Code can make a difference, because he was required by statute so to sign. It cannot be inferred from that statutory requirement that he was required to consent to a Code which included provisions for determinations which would disproportionately restrict his Article 10 rights. Since the Code of Conduct can and must be interpreted so as to give effect to Article 10 rights, the question of whether the Code itself is ultra vires, which was raised contingently by Mr McCracken, does not arise.
90. For the reasons I have given, the claimant's application is granted and the Panel's decision must be set aside.

Note 1 Article 10 is set out at [19].

2012 Reality

Two letters to the Law Society *Gazette* from the 10 May 2012 issue:

THE SOLICITOR

Living life on the edge

Solicitors need to be aware of the dangers of stress-related depression

10 May 2012 Law Society Gazette

www.lawgazette.co.uk/opinion

WRITE TO US

All letters (maximum of 250 words) must include a full postal address and be sent to: Editor-in-chief Law Society Gazette, 19 Bell Yard, London WC2A 2JR
LDE 100 paul.rogerson@lawsociety.org.uk

LETTERS

Living life on the edge

Solicitors need to be aware of the dangers of stress-related depression

I read with interest your feature 'Time out' (see [2012] *Gazette*, 26 April, 12). As a solicitor who failed to achieve a work/life balance, I hope that my experience may be a lesson to others. I was a partner in a small firm for 23 years. For 21 of those years, I was a full-time working mother. I sought to manage my life with hard work and efficiency. Over the years, I suffered recurrent stress-related insomnia. I was diagnosed with breast cancer in 2004. I planned to reduce my working hours, but did not do so.

In 2007, I was diagnosed with depression. I took two extended breaks from work and hoped that each one would recharge my batteries. Unfortunately, the damage to my health could not be repaired that easily. My body and mind ground to a halt. In May 2011, I had to stop work completely. It was the last thing I wanted to do. The fallout was very difficult at home and at work.

You may think 'it couldn't happen to me'. I would have said the same. Until you lose your health, you take it for granted.

Some solicitors are vulnerable to stress-related depression because of the type of people they are. I recommend reading *Depressive Illness – The Curse of the Strong* by Dr Tim Cantopher. If you are juggling the many demands of life, don't push yourself too hard.

Jean Booth
Burnham-On-Sea, Somerset

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Burnham-On-Sea, Somerset

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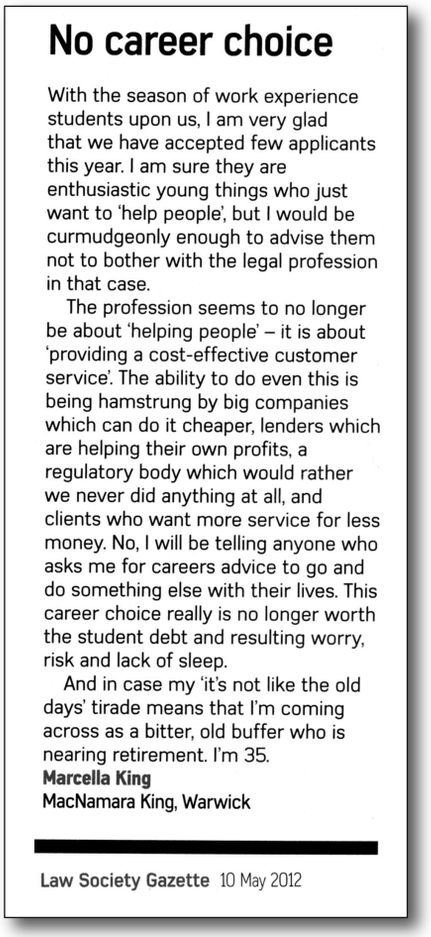
THE TRAINEE

No career choice



No career choice

With the season of work experience students upon us, I am very glad that we have accepted few applicants this year. I am sure they are enthusiastic young things who just want to 'help people', but I would be curmudgeonly enough to advise them not to bother with the legal profession in that case.

The profession seems to no longer be about 'helping people' – it is about 'providing a cost-effective customer service'. The ability to do even this is being hamstrung by big companies which can do it cheaper, lenders which are helping their own profits, a regulatory body which would rather we never did anything at all, and clients who want more service for less money. No, I will be telling anyone who asks me for careers advice to go and do something else with their lives. This career choice really is no longer worth the student debt and resulting worry, risk and lack of sleep.

And in case my 'it's not like the old days' tirade means that I'm coming across as a bitter, old buffer who is nearing retirement. I'm 35.

Marcella King
MacNamara King, Warwick

Law Society Gazette 10 May 2012

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Marcella King
MacNamara King, Warwick

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Part II

The Claimant's grandfather (on his mother's side) was a German soldier killed at Stalingrad. The Claimant's father was an Egyptian Muslim. The Claimant is Muslim and a London-born solicitor. The judge in this 2011 case, Mrs Justice Sharp (now Lady Justice Sharp), is Jewish - but the Claimant did not know this at the time. How would things play out?

The long and winding road to Anders Behring Breivik

This High Court case ably demonstrates that right to the very end the Norwegian establishment was on the same ideological wavelength as Anders Behring Breivik. No matter what it took, the Norwegian Ministry of Justice and the Police, Norway (MOJP) was going to have its own way against the hated outsider. With limitless funds at their disposal to fight the case the Norwegian government surpassed themselves with their dirty tricks. We are Vikings and we will not be beaten!! We will not tolerate criticism of our perfect people or our faultless system from a Muslim!

The symptoms of Norwegiannaires' disease shine through at every turn: simpletons desperately trying to invert normality using arguments even a donkey wouldn't fall for. Norway was on the road to hell via the High Court in London. The fate of the MOJP was sealed by the final ingredient needed to damn their collective souls: the whisperings of Lucifer's friend in the form of Mrs Justice Sharp. A Jewess who was hell-bent on humiliating the Claimant: a Muslim with the double impediment of having a grandfather killed fighting for the Germans in the Second World War. All the honourable judge's skills were assiduously used to punish the 'German dog' in her midst. Nothing was going to stop the conspiracy: the MOJP juggernaut was about to win a crushing victory against the sub-human Muslim.

STOP PRESS! Norwegian Ministry of Justice and the Police building blown up by Oslo bomber Anders Behring Breivik on 22 July 2011. Three Ministry of Justice lawyers killed in the explosion. Christian Reusch, chief lawyer for the MOJP in London High Court case goes on sick leave for the next 16 months. The offices of Verdens Gang newspaper, the Claimant's sworn enemy, blown up by Anders Behring Breivik.

No doubt numb with shock Mrs Justice Sharp miraculously issued her judgment just one week later: on 29 July 2011. One can only imagine the manoeuvrings taking place at the High Court at this time. The torment of hellfire had engulfed the Norwegians. And ruined Mrs Justice Sharp's big day. An own goal for Norway as Anders Behring Breivik was a Norwegian supremacist and a fanatical Muslim-hater who blamed the Norwegian government for letting in to Norway too many Muslim immigrants. Breivik did not realise that in reality the Norwegian government were no true friends of Muslims. In just a matter of hours in one fell swoop Breivik had smashed the Claimant's opponents to smithereens and murdered 69 people, mostly youngsters, on Utoya Island – members of the Labour Party Youth wing. Led by Prime Minister Jens Stoltenberg, a committed atheist, who later went on to speak in churches across the land to console the bereaved and the country at large over the tragedy. For someone who did not even believe in God how hollow his words must have seemed: you will not see your loved ones again in the next life - there is no next life!

As the New Statesman journal so conveniently put it on their front cover of 23 April 2012: 'The most shocking thing about Anders Behring Breivik? How many people agree with his opinions. Inside: Why it's time to put mainstream Islamophobia on trial'.

The MOJP had had a taste of its own medicine – this time on the receiving end from one of their own. And now one of the established schizophrenic realities of Norway. For the Claimant, state abuse of power had been amply chastised.

FARID EL DIWANY v ROY HANSEN, TORILL SORTE and THE MINISTRY OF JUSTICE AND THE POLICE, NORWAY [2011] EWHC 2077 (QB)
(See White Book 2012 CPR 10.5.4 and CPR 13.3.1 and CPR 6.23)

Anglo-Norse Judicial Co-operation Accord 2011

The Medusa Touch*; Norway finally pays the price and by association so does Mrs Justice Sharp: Anders Behring Breivik

SHARP-shooter Anders Breivik interrupts British Judge

Let Breivik be a lesson to Mrs Justice Sharp on the reality of present day Norway, the more so given the expert sophistry she herself brought into the amphitheatre of bigotry

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Jewish High Court judge Mrs Justice Sharp also condones 'Sick devil. Go fuck Allah the Camel' Norwegian email (as well as many other Norwegian emails in a similar vein read out to her in court, for example: 'When you eat pigs, do you lick the pig's asshole clean before digging in? I have one advice for you, take out your willy, that is your mangled penis, and shove it into a pigs ass, maybe you'll get some weird looking kids. I seriously doubt that anything other than a pig would take your semen'.)

Transcript of hearing on 16 March 2011 before Mrs Justice Sharp - (Page 226)

Office for Judicial Complaints 2011-12 & 2014 - Plus correspondence with The Right Honourable Chris Grayling MP Lord Chancellor and Secretary of State for Justice 2015 - (Page 292)

George Carman QC and his junior Victoria Sharp (Page 348)

THE NORWAY TAPES - Recorded Police and Journalist Conversations
Visit: www. norwayuncovered.com/sound/

Comment

In her judgement of 29 July 2011 Mrs Justice Sharp deliberately failed to mention the obvious: that Islamophobia in Norway was the central issue of my argument against Hansen, Sorte and the Ministry of Justice and the Police, Norway.

The transcript of the hearing of 16 March 2011 makes it abundantly clear that I made the all-consuming hatred of Islam by the Norwegian establishment my main complaint.

A week before Mrs Justice Sharp's judgement was handed down Anders Behring Breivik, evil genius and virulent Muslim-hater, blew up central Oslo - including the offices of the Ministry of Justice and the Police, Norway killing three of its employees as well as the offices of Verdens Gang newspaper who had published front page stories on me in 1995 and 1998. Little did Breivik know that he was in fact destroying the offices of institutions which somewhat despised the Muslim faith. He then went on to Utoya island and proceeded to shoot dead sixty-nine people. All because he hated Muslims.

Point still not taken by Mrs Justice Sharp.

In the late autumn of 2012 I spoke to the lawyer for the Ministry of Justice and the Police, Norway - Christian Reusch. He had been on leave for the past year since the obliteration of his offices by Anders Breivik's bomb. He was forthright enough to tell me that he had no idea that the Norwegian newspapers had been calling me by my religion for over a decade and moreover did not know about the religious hate email campaign directed against me (initiated in no small part by his client policewoman Torill Sorte's comments to Dagbladet newspaper in December 2005). This surprised me as all the relevant evidence was in the possession of his Ministry and their UK lawyers, Charles Russell. Christian Reusch's witness statement contained information that he could not possibly have believed to be true. But when I went before Master Leslie at the High Court to ask for Christian Reusch to be subpoenaed to attend court for cross-examination over his witness statement, Master Leslie said he had no jurisdiction to ask Christian Reusch to attend in London. None of the evidence presented by the defendants could therefore be tested in court by cross-examination - a wholly unsatisfactory state of affairs. As a litigant in person I desperately needed more time to prepare for the hearing following the Defendants' application to set aside judgment. But the Defendants would not agree to this. So I went before Mr Justice Bean at the High Court to ask for a few more weeks to prepare. The Norwegian's barrister, David Hirst, strenuously argued that I should not be given any more time and that my previous application before Master Leslie had been "dismissed instantly" (omitting to tell Mr Justice Bean exactly why). Mr Justice Bean, however, saw no good reason not to give me, a busy solicitor, the extra time I needed. I was not a libel (or even a litigation) solicitor and could not afford the vast sums needed to employ a solicitor and barrister to represent me. So I had to do it all myself. I discovered more than a year after my hearing before Mrs Justice Sharp that she was Jewish. This was significant as I had told her that my grandfather was a German soldier killed in Stalingrad in 1942 (see transcript of hearing dated 16 March 2011 above). I mentioned this in court only to illustrate that as Germany had invaded Norway in the last war then the Norwegians, aware of this personal fact, would not have liked me. Indeed, the Norwegian press referred to me once as "half-German, half-Arab". It is, I repeat, patently obvious when comparing the transcript of the hearing with her judgement that Mrs Justice Sharp had a deep personal grudge against my German heritage and my Muslim religion. Her victory was very short lived given the exposure and torment the Norwegians received on 22 July 2011. If it had not been for Breivik, Mrs Justice Sharp's cover up for Norwegian Islamophobia

and bigotry would have succeeded completely. In my opinion she is unfit to be a judge and God only knows why the Queen on the advice of Her government promoted Mrs Justice Sharp, in March 2013, to the Court of Appeal.

In February 2013 I noticed that Defendant Roy Hansen had removed the offending article from the internet.

*** The Medusa Touch** referred to in the heading of this website is the name of a 1970's film starring Richard Burton and Lee Remick. In Greek mythology Medusa was a monster or Gorgon with the face of a hideous woman with snakes in place of hair. Nowadays Medusa is used as a symbol of malevolence and it was in this light that the film The Medusa Touch was cast.

Richard Burton played the part of John Morlar a well-known novelist whose previous occupation was as a barrister when he defended a gentleman called Lovelass, played by James Hazeldene. Lovelass was prosecuted for a publication which supposedly provoked public disorder and Judge McKinley, played by Robert Flemyng, sentenced Lovelass to nine years imprisonment. The look of hatred that Richard Burton gave the odious Judge McKinley was such that the judge died in his chambers an hour after the trial had finished. Richard Burton / John Morlar had the power to will death/disaster and Judge McKinley was one of his many victims.

I very much identified myself with the "hapless" defendant Lovelass in the film and saw Mrs Justice Sharp as every bit as treacherous as Judge McKinley. In my case however, the 'Medusa touch' came at the very moment Mrs Justice Sharp's judgement was about to be handed down. On 22 July 2011 my sworn enemy, the Ministry of Justice and the Police in Norway, had its offices blown up by Anders Behring Breivik's car bomb. Mrs Justice Sharp's judgement was handed down on 29 July 2011. The Norwegian Police were also blamed, through their incompetence, for allowing Breivik to escape Oslo and carry on to kill 69 people on Utoya island. After what the Norwegian establishment and press had put me through for the previous 16 years I wanted the whole of Norway to be punished. It was. And the more so as my point, so prodigiously ignored by the Norwegians, that they were consummate racists and Islamophobes was proven beyond all measure by the persona of Anders Behring Breivik whose purpose in life was to defile Muslims. Breivik had a whole army of sympathisers in Norway and Europe according to many. The deaths of so many young people on Utoya island was a catastrophic horror for the victims and their families. But those who knew neither families nor victims – which was most of Norway – still, nevertheless, had a taste of the pain that their establishment had inflicted on me: the pain that comes from sufferring outrageous iniquity.

The film The Medusa Touch began by showing a print of the 'iconic' picture The Scream – one of Norway's greatest artistic treasures in its various forms – hanging in the sitting room of Richard Burton / John Morlar. The supreme irony for me. There was another personal connection as well. In the film there was a scene showing one of Morlar's colleagues at the Bar, played by Alan Badel, talking with the detective, Brunel, played by Lino Ventura: the location was outside Temple Church and 1 Pump Court, Cloisters, Temple, London EC4. It just so happened that the barrister I chose to represent me at the pointless half-hour hearing at the Court of Appeal, Jonathan Crystal, was, when I first met him, a member of Cloisters chambers.

* * *

At the permission to appeal hearing before Lord Justice Hooper on 1 February 2012 Jonathan

Crystal did his best in the circumstances (see his submission below), but the judge ruled that as I had been unable to provide any evidence as to who had seen the offending wording on the internet, there was no publication to sue over. Permission to appeal was therefore refused. Which meant, in effect, that a solicitor outrageously libelled on the internet had no remedy in law if he could not prove (in line with the Mardas case) that at least a small number of people had seen the offending words. And I could not be bothered to go to the European Court of Human Rights to claim against the injustice of not being able to sue for libel in the UK without being able to prove that at least a few people had seen the defamatory wording. I would have to wait 5-6 years for a hearing and a decision even if the ECHR had accepted my Application. The fact that the offending words were there for all to see if they did a Google search on my name was not enough to bring a claim. However, Lord Justice Hooper was quite wrong to agree with Mrs Justice Sharp's conclusion that the matter had already "been litigated in the Norwegian courts" and so to bring a case here was just an abuse of process and harassment of Torill Sorte. The matter had most certainly not been litigated in Norway at all. (I had litigated on another matter in Norway). I had submitted two lever arch file bundles of documentation to the Court of Appeal with material illustrating the more loony aspects of the Norwegian judicial system. It is very amateurish and unprofessional in so many ways and this is something the British public and British judiciary are quite unaware of. Until now. Mrs Justice Sharp had all the information before her but chose to protect the 'friendly' country of Norway. The Norwegian courts have not even been given the money by the Norwegian parliament to record the proceedings in civil cases. So there is never a fool-proof record of what went on in a case which can be used as evidence in any appeal. This gives the Norwegian judiciary every opportunity to present a partisan view of the proceedings as presented by the written judgement - one can obtain no transcript to compare it with.

In February 2013 the Essex Police Hate Crimes Unit re-submitted to Interpol for investigation the religious hate emails sent to me by Norwegians in December 2005 - for which Torill Sorte was in large part to blame after her comments to Dagbladet newspaper (which also I did not litigate over). I hope the likes of Mrs Justice Sharp and Lord Justice Hooper do not think the British Police are harassing Torill Sorte as well.

The background

Mrs Justice Sharp, followed by the Rt. Hon. Sir Richard Buxton and Lord Justice Hooper at the Court of Appeal ruled primarily that I did not have jurisdiction to sue in the United Kingdom. Counsel for the Norwegians had argued that my claim should fail, inter alia, on the grounds that I did not come up with the names of anyone who had read the offending wording on the internet written by a Norwegian journalist, Roy Hansen, in Norway. Wording that came up nice and easy when doing a Google search on my name and clicking on the very enticing 'Translate this page' link inserted deliberately by Roy Hansen beside his newspaper article link. My name was in full view on his Norwegian language extract immediately below the link. Click on the 'Translate this page' link and up comes a story in English from 2006 that Hansen had wanted to give a second airing to so as to smear me after my very successful campaign against a corrupt Police officer in Norway called Torill Sorte. The Google-facilitated translation was by no means a perfect translation into English but the general purport of the article was intelligible enough: a Norwegian police officer, Torill Sorte, being quoted as calling me "clearly mentally unstable." She said this after I had huge success in promoting the Norway Shockers website on leading Norwegian newspapers own website

blogging/comment facilities when I also called Torill Sorte "a liar,cheat and abuser" for telling national newspaper Dagbladet in December 2005 that from 1992 I had been "a patient in a UK lunatic asylum for two years" and that when I came out in 1994 the newspaper said that I was "worse than ever". I was a solicitor in full employment for that period and had never in any event spent a second in any lunatic asylum. Even the journalist at Dagbladet, Morten Øverbye, who did the story in December 2005 after speaking to Torill Sorte, told me on 12 May 2007 (which I recorded) that Torill Sorte was the source of the information and: "If she [Torill Sorte] says you have been in a mental hospital and you have not been in a mental hospital then she's lying. That's a no-brainer."

Well, I complained to the Norwegian Bureau for the Investigation of Police Affairs (the Spesialenheten For Politisaker) against Torill Sorte for her ludicrous statements. I sent them a CD of my 12 May 2007 conversation with the Dagbladet journalist. It came as one hell of a surprise to be told that my complaint will not be passed on to Torill Sorte for her comments. That the procedure in Norway is not to involve the police officer at this stage, contrary to the UK system when the Independent Police Complaints Commission (IPCC) always sends a copy of the complaint to the police officer in question who is obliged to respond. So what transpired was that in late 2007 an official at the Spesialenheten, Johan Martin Welhaven, sent me his decision. He declared that Torill Sorte's statement that I was "clearly mentally unstable" was "neither negligent nor defamatory" on the grounds of "the contents of Mr El Diwany's website and other facts". Regarding my complaint on the matter of allegedly being a patient for two years in a lunatic asylum there was no comment from Johan Martin Welhaven at all. So I called him up and asked him what exactly was it on my website that indicated I was "clearly mentally unstable" and what were the "other facts" that indicated this? That it was not for him to decide that I was mentally unstable out of spite due to his obvious partisan Norwegian leaning over an anti-Norway website. In particular I said that as it was police sergeant Torill Sorte who made the allegation that I was "clearly mentally unstable" then common sense dictated that she had to be asked why she said this and what her evidence was for saying this. And how exactly, I protested, was I supposed to have spent "two years" in an asylum in the UK according to Toril Sorte? Johan Martin Welhaven said he would not discuss the case. That he had already made his decision and I could appeal. I pressed him for answers but he was adamant: he would not discuss the case. So I appealed and the verdict that came was: Case dismissed, said the Public Prosecutor, as no new evidence had been presented by me to change their minds. Johan Martin Welhaven became a police chief in 2011.

The above verdict was used by Charles Russell and their solicitor James Quatermaine, (acting for Torill Sorte and her employer the Ministry of Justice and the Police, Norway), to argue at the High Court through counsel David Hirst in March 2011 on their clients' application to set aside libel judgement in my favour, that I was indeed mentally ill. Mrs Justice Sharp in her judgement said that as my complaints against Torill Sorte for her newspaper and other allegations on my "mental health" were "rejected" in Norway by the Spesialenheten, then I had no right to litigate again here in the UK on the internet libel which she said was slander anyway and not libel: Torill Sorte had told one journalist to his face - Roy Hansen - that I was "clearly mentally unstable" and she had told no one else. Roy Hansen had then printed it up in his local newspaper in January 2006. And that I was also out of time to sue here on the re-activated Google translate article (purposely put up by Roy Hansen).

Mrs Justice Sharp, of course, was doing all her decision making in private on the paper evidence from the hearing and I had no chance to counter any of her perverse reasoning on my "mental health" position. If you look at the link above for the transcript of the March 2011 hearing before Mrs Justice Sharp you will see the reality of the case and the fact that I had

chastised Torill Sorte for her insane "two years in a mental hospital" comments in 2005 which was the catalyst for a vicious sexualised hate email campaign from Norway against me. Those hate emails were read out before Mrs Justice Sharp to indicate what the consequences of Torill Sorte's 2005 Dagbladet newspaper comments were. The contents of the emails were so vile that I did not think it required me to ask the judge to confirm this explicitly. I was wrong. Not one word on these sick emails made Mrs Sharp's judgement and for that I feel she should be sacked as a judge for her clear anti-Muslim bias. The Essex Police Hate Crimes Unit send these hate emails to Interpol in 2006 and again in 2013 when I tried again for something to be done over this hate-crime. I told Mrs Justice Sharp that the Spesialenheten inquiry did not even involve Torill Sorte and that therefore she, Mrs Justice Sharp, cannot abide by such an inept procedure. Johan Martin Welhaven was not a psychiatrist and he had given no reasons of any substance as to why I was "clearly mentally unstable." Moreover the Spesialenheten decision was not a judicial decision from a court in Norway and could not possibly be used to argue that I was re-litigating "decided issues" in London. I told Mrs Justice Sharp that I had been making the Norwegian press for over 10 years when all they referred to me as, for a lot of the time, was the "Muslim man". The story was over a girl I knew who herself was in fact a registered mental patient and the source of the newspapers' information. Her name was Heidi Schøne. I litigated in Norway in 2002/3 over the allegations that I was for example a "sex-terrorist" and "insane". The result? Case dismissed. I was not even allowed to cross-examine my opponent Heidi Schøne as her psychiatrist, Dr Petter Broch, came to court to say she was unfit to face cross-examination! That she was suffering from "an enduring personality disorder initiated in her adolescence" and had been abused by most members of her family to varying degrees and had "a tendency to sexualise her behaviour". And that her psychiatric treatment was not working. BUT all her evidence against me, consisting solely of her uncorroborated word, was declared as true. The Norwegian court judgement did not list her evidence! At the conclusion of this Court of Appeal case I was arrested at the door of the court for my anti-Norway website. My appeal to the Supreme Court in Norway was dismissed with no reasons given - as was the court's right for claims under 100,000.00 Norwegian Kroner. My application to the ECHR was dismissed in 2004 with no reasons given with the Norwegian judge at Strasbourg, Sverre Erik Jebens, voting in favour of his home country. The ECHR wrote to me to tell me that Sverre Erik Jebens, although Norwegian, had abided by ECHR rules and was in effect completely independent from his home country.

The full detail of my appeal to the Court of Appeal as per the documentation referred to below will show why Mrs Justice Sharp is a really nasty piece of work. I was not so upset regarding the substantive part of her judgement that I had no jurisdiction to sue in the UK etc. I was annoyed at the many errors of fact she had made in her judgment, but shocked at her failure to express any sympathy in her judgement over my distress at the year in, year out abuse of my religion from the Norwegians – which abuse, especially from the hate emails, she herself had clearly condoned by her silence. She took it out on me, I believe, because I was Muslim/Arab with a German grandfather who fought for Hitler and died at Stalingrad. And Mrs Justice Sharp was Jewish. I had told her this in court as the reason the Norwegians so disliked me: the Germans had invaded Norway and the Norwegian establishment and people did not like Muslims and the Norwegians knew I had a German mother. Makes sense doesn't it? Particularly in the light of Anders Breivik's killing campaign in Norway in July 2011 on the grounds that Muslims are basically, in his opinion, filth.

The Rt. Hon. Sir Richard Buxton had all my "voluminous" (his word) appeal papers - as referred to below - and still said nothing in his Order dated 14 December 2011 on the hatred of Muslims aspect from Norway and those vile emails, or the fact that the Norwegian civil procedure rules are anathema to the system of natural justice and jurisprudence in the UK

which gave rise to so much abuse of my persona. He knew perfectly well what he was doing. His substantive decision was one thing: that I had "made no significant challenge to the judge's finding that the claim in slander against Ms Sorte had failed on the grounds of jurisdiction; limitation; and the words not being actionable per se." Further, the judge found that Ms Sorte "was not responsible for the publication of the article on the internet, and the grounds on which it is now said that Mr Hansen was so responsible… do not apply to her." But the main travesty, nay, perversion in Mrs Justice Sharp's judgement regarding her assessment of Torill Sorte's evidence on the 'mental health' fabrications was not addressed by Sir Richard Buxton at all. Lord Justice Hooper was less culpable as we only had half an hour in front of him on a very specific ground of appeal. For the first time in this case I used a barrister, Jonathan Crystal. I lost out on the usual point of a lack of jurisdiction. But I desperately wanted to interject and tell his Lordship to deal with the fact that Sharp's judgement was a travesty over her silence on the hate emails and collusion with Norwegian 'mental health' bigotry. But as an 'officer of the court' I had to stay silent. I had to be content that my stance on Norwegian bigotry had been amply vindicated by the actions of Anders Behring Breivik, timed to perfection to coincide with Mrs Sharp's judgement when fate had decreed that he blow up the offices of my opponents the Ministry of Justice and the Police, Norway and the offices of newspaper Verdens Gang who had done two virulent Muslim-hating stories on me in the 1990's.

The thing with the Norwegian establishment is that the rule of law does not work over there when rampant nationalism and xenophobia takes over the matter in hand. Come what may, they cannot be seen to lose to an outsider on issues which uncover dire Norwegian xenophobic duplicity. This failing shows up most starkly in their hate-inspired press coverage and court judgements and other quasi-judicial decisions when they are very careful to ensure that evidence which shows their own people in a bad light is omitted. Reasons for decisions are not given. No transcripts can be obtained of civil trials as the courts do not have the money to be able to record the proceedings. Cross-examination of a Norwegian witness is stopped when the going gets tough for them; and their own evidence, when not in their favour, is invariably left out of the judgement (as pointed out above). Police complained against are not even given a copy of the complaint for their comments. Their police complaints system is rigged: for example all a police officer has to do to cover an allegation of lying like a bastard - and they learn this in the first day of training - is to say the complainant "told me so" or in my case "his mother told me so" and hey presto they are exonerated by their Police Complaints Bureau, with a secretive and often perfunctory investigation taking place. The Norwegians' favourite trick is to fabricate evidence of "mental ill-health" of their detested opponent. Mental ill-health in Norway is a national obsession: it permeates all areas of life - just refer to the paintings ('The Scream') and discussions of the world-renowned Norwegian painter Edvard Munch and the works of their most famous play-write Henrik Ibsen. There is no recognised concept of a hate-crime in Norway or of incitement to religious hatred. There is no cure for this general malaise as they do not regard themselves as having a problem in the first place and when it is pointed out by a foreigner that there is a problem the machine takes over to engineer a victory for the Norwegians, showing what good, honest people they all are.

Farid El Diwany,
Solicitor
Lincoln's Inn, WC2
May 2013

IN THE COURT OF APPEAL **Ref A2/2011/2457/2458**

CIVIL DIVISION

EL DIWANY v HANSEN and Others

APPELLANT'S ADVOCATE WRITTEN

STATEMENT FOR PERMISSION HEARING

ON 1 FEBRUARY 2012 (52PD.11)

References to numbers in brackets refer to Appellants Bundles A and B

1. The point to be raised at the hearing is that the Judge should not have struck out the claim HQ10D02334 (El-Diwany v Hansen and Sorte).

2. Permission should be granted notwithstanding the reasons given for refusal of permission by the Rt. Hon. Sir Richard Buxton on 23 November 2011 for the following reasons;

2.1 As appears from the particulars of claim (A89 -93) grave and damaging allegations were published of the appellant;

2.2 The allegations continue to be published (A90 paragraph 6) and an up to date result of the search engines is attached.

2.3 The claim was framed in libel. It was based on an article written and published by the first defendant (Mr Roy Hansen) on his website which article was in turn based on statements made by the second Defendant (Ms Torill Sorte)

2.4 The appellant obtained judgment in default against the defendants but there was no application by Mr Hansen to set aside the judgment against him. The Judge incorrectly elided the positions of Mr Hansen and Ms Sorte and struck out the claim against Mr Hansen as well.

2.5 The claim against Mr Hansen should not have been struck out because;

2.5.1 he published and continues to publish the words complained of;

2.5.2 the words complained of are directly accessible by hyperlink

25.3 it is plainly arguable that Mr Hansen has committed a real and substantial tort within the jurisdiction see Mardas paragraphs 15-17 (B698-699)

2.5.4 the appellant understandably wishes to prevent the continuing publications of falsehoods about him, in particular that he is mentally unstable and a judgment vindicating his reputation 'would be worth the candle'.

2.6 the claim against Ms Sorte should not have been struck out because;

2.6.1 she willingly participated in the interview with Mr Hansen which led to the article published in a Norwegian local newspaper on 11 January 2006 which was then republished on Mr Hansen's website;

2.6.2 the claim against Ms Sorte is not in slander and the Judge's analysis on the position in slander (paragraphs 50-53 A62-63) is arguably wrong but not material to the application;

2.6.3 it is plainly foreseeable that what she said to Mr Hansen would be republished and indeed the Judge recognised this possibility (paragraphs 54-55 A63);

2.6.4 there was no basis for absolving Ms Sorte as interviewee from what was published by Mr Hansen as interviewer;

2.6.5 the disputed factual background did not lend itself to the Judge concluding that the claim was an abuse of process or the conclusion she reached (on paper evidence) at paragraph 74 of the judgment (66).

3. The judgment in this claim should be set aside. No similar order is sought in claim HQ10D02228 (El Diwany v The Ministry of Justice and the Police, Norway).

JONATHAN CRYSTAL

ARGENT CHAMBERS

12 JANUARY 2012

IN THE HIGH COURT OF JUSTICE
IN THE COURT OF APPEAL
BETWEEN:

Claim no. HQ10D02334

Claim no. HQ10D02228

FARID EL DIWANY
Appellant

-and-

(1) ROY HANSEN

(2) TORILL SORTE
HQ10D02334 Respondents

-and-

THE MINISTRY OF JUSTICE AND THE POLICE, NORWAY

HQ10D02228 Respondent

SKELETON ARGUMENT OF FARID EL DIWANY

Application bundles: *There are 2 bundles before the Court to which reference is made below by Bundle / Tab / Page number. References are given to documents in English unless otherwise indicated. Where documents were also available in Norwegian they have been exhibited immediately behind the English translation.*

1. This skeleton argument is prepared in respect of the Appellant's application for permission to appeal.

2. The Appellant brought libel proceedings against the Respondents and such proceedings were the subject of a judgement of Sharp J. on 29 July 2011 in which she struck out the Claims and entered judgement for the Respondents.

The Parties

3. The Appellant is a solicitor (admitted 1987).

4. In Claim number HQ10D02334 the Respondents are Roy Hansen and Torill Sorte.

5. In Claim number HQ10D02228 the Respondent is the Ministry of Justice and the Police, Norway.

The Publication

6. The Appellant complained of the following publication:

A Google translated article into English from Respondent Roy Hansen's Norwegian website called, in English, 'Roy's Press Service' and published on the internet from 2009 to the present day of an Eiker Bladet newspaper article dated 11/01/2006 entitled 'Continued harassment of policewoman' originally published in Norwegian by journalist Roy Hansen in Eiker Bladet newspaper and then on 'Roy's Press Service' website (www.pressetjeneste.no).

The Respondent's defamatory words

7. In paragraph 4 of the Particulars of Claim the Appellant set out the following defamatory words:

"From a date unknown but before 1st July 2009 the First Defendant [Roy Hansen] published and/or caused to be published in English on www.pressetjeneste.no the following defamatory words about the Claimant including those spoken and otherwise sourced from the Second Defendant (whose surname Sorte means and is translated, in one instance, as "Black" in English) which continues to be published online:
"a) English man Farid El Diwany continuing [sic] harassment of Norwegian women. Having harassed Heidi Schøne from Solbergelva for years. He has now loose [sic] on the police chief Torill Sorte at Lower Eiker sheriff's office;"
b) The man has bothered …Heidi and her family since 1982…
c) Since then, the Muslim man has also added [sic] police detective for hatred…
d) The man is clearly mentally unstable and must use an incredible amount of time and effort, not to mention money, to harass Heidi Schøne and the undersigned in addition to any [sic] other women we know…said Black [sic]"

The Appellant's defamatory meanings

8. In paragraph 5 of the Particulars of Claim the Appellant set out the following defamatory meaning:
"that the Claimant harasses several Norwegian women, including and in particular Heidi Schøne and also police chief Torill Sorte and that the Claimant is mentally ill and that his being a Muslim has a connection to the behaviour complained of."

Procedural history

9. In claim number HQ10D02334 the Appellant entered judgement.
10. By Application notice dated 3 February 2011 the Respondents in Claim number HQ10D02334 applied to set aside the Default Judgement dated 19 November 2010.
11. The Respondents application was heard on 16 March 2011 and led to the judgement on 29 July 2011.

The Issues

12. The Respondents application raised issues of law and fact.
13. The Appellant contends that the learned judge misdirected herself in relation to the law and arrived at mistaken legal and factual conclusions. Such are dealt with below. [Refer to paragraph 90 onwards only for the issue of state immunity/state sovereignty in relation to the Ministry of Justice claim].

14. The Appellant was asked by the learned judge to correct any errors in her draft judgement and the Appellant did so by way of two letters and one email to the learned judge at (B/28/685-691) who chose to ignore all the suggested corrections.

Responsibility for Google translation

15. The defamatory words were contained in the original Norwegian language article which appeared on the internet when a google.co.uk or google.com search was done on the name 'Farid El Diwany'. The said Norwegian article was posted on the internet by Roy Hansen and was combined with his deliberate action of placing the Google "[translate this page]" hyperlink (as referred to in paragraph 61 of the judgement) to enable the translation into English to be made. The learned judge was incorrect to state that Roy Hansen did not have liability for this hyperlink by her words in the second line of paragraph 61 at (A/3/64):

'But I do not consider there is anything which fixes the Defendants, either Ms Sorte or Mr Hansen for that matter, with liability for the publication of the Google article on the internet. The "[translate this page]" facility, is a service provided by Google, and not by the Defendants. Further, contrary to the Claimant's assertion the hyperlink itself does not provide a direct link to the article in English'.

And in her last sentence to paragraph 61 of her judgement at (A/3/64) the learned judge says:

In my judgment it would not be rational, reasonable or just to ascribe tortious liability for the Google article to either Defendant in such circumstances.

(a) It is important to record that the Google "[translate this page]" hyperlink (which has been documented in a Google search print out at (B/23/658 as per the second listing beginning with the link in Norwegian: *'Forsetter trakassering av politikvinne…*') had to be specifically chosen and put in place by Roy Hansen, the website user of the facility, in order to have his *'Forsetter trakassering av politikvinne…*' article translated into English. The actual appearance of the "[translate this page]" hyperlink and thus the translated article is not down to Google. Google facilitated the translation but only after Roy Hansen activated the "[translate this page]" hyperlink. Roy Hansen is thus culpable and liable for the hyperlink.

Please refer to the Witness Statement of internet expert Rick Kordowski in evidence of the above at (A/6/186-187).

(b) Further, for the learned judge to say that the "[translate this page]" hyperlink did not provide a direct link to the English article is certainly not correct. The hyperlink as per the third listing is still online at (B/23/669) and to click on it will produce the English translation at (B/23/671-672) being a print out of the google.co.uk search on the Claimant's name and the offending English language article dated 28/09/2011. Previous versions of the Google searches and offending English language articles were provided for the hearing on 16 March 2011 as at (B/23/649-668) and it should be noted that the coloured print out of the article dated 5 February 2011 from Roy Hansen's website is in exactly the same format and design as for Norwegian language article, both at (B/23/665-668). The Appellant's judgement against Roy Hansen at (B/25/677) should not therefore have been set aside as there has been deliberate publication of the article in the UK jurisdiction by Roy Hansen resulting in a substantial tort.

The English Google translated article remains online and the gist of the article can be understood and can be compared with a professional translation into English of the original Norwegian language article

16. In producing the current Google translated version of the offending article at (B/23/671-672) it can be seen that the odd word is mistranslated but the sense of the article is on the whole intelligible especially as the most serious allegation, that of being "clearly mentally unstable" in the last paragraph is clearly set out. As Google allow readers to contribute to a better translation online then in time the article can be translated into perfect English. Indeed the learned judge has conceded in the penultimate sentence of paragraph 61 of her judgement at (A/3/64) as per the wording below that varying versions of the article appear on the internet:

61…….As the several versions of the Google article which have been produced in evidence demonstrate, the use of the service at different times, produces a different combination of words even though the general sense of what is published may remain the same.

A certified professional translation of the original Eiker Bladet Norwegian article into English is provided at (B/15/569-574) for comparison with the Google translation.

Has there been sufficient publication?

17. The case of Mardas v New York Times; Mardas v International Herald Tribune [2008] EWHC 3135 9QB; [2009] EMLR 8 at (B/30/693-702) supports the Appellant's arguments put before the judge in his letter dated 18 April 2011 at (B/27/681-684) in relation to a substantial tort having been committed against him by Roy Hansen's deliberately chosen "[translate this page]" hyperlink for his publication. The learned judge mentions by name only the Mardas case in the last line of paragraph 63 of her judgement at (A/3/64) but fails to explain why it is not relevant to the Appellant's case.

The Appellant's arguments in line with the decision of the Mardas case - the relevant extracts of which from Mr Justice Eady's judgement appear in (k) below - are that:

(a) The Appellant does have a reputation to defend in this country as he works as a solicitor in [ ] with some very high profile [ ] clients and as there are very few Arab solicitors in London it will be easy for his reputation to be permanently damaged in the Arab and Muslim world if word spreads that a journalist is quoting a police officer calling the Claimant "clearly mentally unstable". Who wants to give work to such a solicitor? [ ]. Roy Hansen has targeted the Appellant where it can hurt him the most: the google.com and google.co.uk search engine facility when clients and prospective clients and others do a search against 'Farid El Diwany'. Up comes the link for the Norwegian article and the English translation is on a hyperlink just a click away which it must be very tempting to perform.

(b) It is arguable that there has been a real and substantial tort in this jurisdiction and it cannot depend on a numbers game with the courts fixing an arbitrary minimum number of hits on the article.

(c) Suitable case management may well be sufficient to deal with and resolve this court action rather than bringing the case to trial.

(d) The Appellant does not have to adduce evidence of any actual harm caused to his reputation within the jurisdiction. In paragraph 2.08 on page 17 of *A Practical Guide to Libel*

and Slander by Jeremey Clarke-Williams and Lorna Skinner under the heading 'Burden of Proof' it says: *'The claimant merely has to prove facts from which it can be reasonably inferred that the words complained of were brought to the attention of a third party. He does not have to prove that the allegations were brought to the actual attention of a third party.'*

(e) The article complained of and the "translate this page" hyperlink in fact remain online and as the said hyperlink was put there deliberately by the Respondent Roy Hansen he clearly means it to be read by people who search against the name 'Farid El Diwany' on the google.com and google.co.uk search engine facility. It is therefore very much Roy Hansen's intention to damage the Appellant's reputation. He has even admitted through his Norwegian lawyers that the original article *"was written according to regular Norwegian journalistic ethics and it was not considered necessary to obtain Mr El Dewany's opinion."* as per a letter addressed to the Senior Master dated 21 September 2010 at (B/24/673-675 on page 2 of the letter in the sixth paragraph). The Norwegian press in 19 articles in 12 years only once informed the Appellant that they were going to do an article and never printed his opinion. Hardly ethical!

Why mentally unstable?

(f) Counsel for Roy Hansen and Torill Sorte was very keen to argue at the High Court hearing on 16 March 2011 that the Claimant was "clearly mentally unstable" on very fanciful, speculative and unsubstantiated 'evidence' from a source other than the maker of the allegation. The Respondents relied on the fact that the Police Complaint's Investigator, Johan Martin Welhaven, in his 28 June 2007 decision at (B/20/616 in the fourth paragraph) gave his opinion that the statement made by policewoman Torill Sorte that Farid El Diwany was "clearly mentally unstable" was *'neither punishable as negligence nor defamatory. We here refer to the contents of Diwany's website and the other facts of the case.'* No evidence was provided by Johan Martin Welhaven as to what on the Appellant's website made him mentally unstable or what the 'other facts' of the case were that made him mentally unstable. The Respondents did not add anything to this in court through their counsel. It should be noted that Johan Martin Welhaven on 19 September 2011 became a local police chief in Norway. His decision on declaring the Appellant mentally unstable has therefore been compromised for bias and a conflict of interest, apart from his partisan Norwegian leaning.

The Appellant must have a chance to meet this very serious 'mentally ill' allegation at trial: see paragraph 18 of Mr Justice Eady's judgement at (B/30/699) and which wording is repeated in paragraph (k) below. Torill Sorte herself did not provide any evidence or defence in her witness statements to justify her allegation that the Appellant was "clearly mentally unstable." The Appellant was entitled to substantiation from Torill Sorte and as she has provided none then her allegation must fail. She was not consulted by the Police Complaints investigator and gave no statement to him.

(g) The learned judge was wrong to make a finding of fact on the scale of publication in her judgement at paragraphs 58 and 59 made on the basis of incomplete evidence when in the last sentence of paragraph 67 of her judgement at (A/3/65) she says:

At best, there has been an extremely modest publication of the article complained of in this jurisdiction,.....

On the question of the scale of publication Mr Justice Eady has said at paragraph 25 of the Mardas case at (B/30/700): "It is a matter that should be left to trial. Furthermore and in any event, even if the publications were confined to the Defendant's figure, there was no basis for

concluding that there was no real and substantial tort."

(h) The figure of the number of hits on the offending article should only be determined at trial with the help of expert evidence if necessary as per paragraphs 25 & 26 of Mr Justice Eady's judgement at (B/30/700) and repeated below in (k). The Appellant submits that the matter cannot be properly resolved at least until disclosure has taken place. Even if the number of hits on the article were small Mr Justice Eady has said even "a few dozen" hits are "enough to found a cause of action here, although damages would be likely to be modest."

(i) The fact that Torill Sorte's [false] "put in a mental hospital" allegations were first publicised a long time ago – in 2002 in court in Norway and finished with [false] "two years in a mental hospital" and "clearly mentally unstable" allegations in 2005/6 - is not in principle "a ground in itself for refusing access to justice" as Mr Justice Eady says in paragraph 33 of his judgement at (B/30/701) and repeated below in (k). Roy Hansen clearly wanted his 2006 article to get another airing in 2009 in the English Google translated version which was the year that the Appellant first discovered the English translation after doing a Google search on his name.

(j) The learned judge has come to a conclusion on the merits of the litigation at far too early a stage. A jury may well resolve the contested issues of fact in the Appellant's favour and rule that he has been defamed. See the comments of Mr Justice Eady at paragraph 35 of his judgement at (B/30/701-702) and repeated below in (k).

(k) The following extracts from the Mardas case are relevant:

11. In granting permission to appeal, Sir Charles Gray made the following succinct observations:

" … The contested questions as to the number of hard copy issues and Internet hits cannot be resolved on an application such as the present one.

Jameel v Dow Jones is authority for the proposition that a libel action may be struck out as an abuse of the process where the evidence is that the extent of publication within the jurisdiction is very small. Is there a real prospect that the Applicant would be able to satisfy the court that this is not such a case? In my judgment such a real prospect exists in the circumstances of this case. I think the instant cases are distinguishable on their facts from both Jameel and Kroch v Rossell [reported at [1937] 1 All ER 725], on both of which the Master placed reliance in his judgment. In my view it is at least arguable that the
Applicant has a reputation in this country which he is entitled to seek to vindicate. I do not think it can be said that this is a case of forum shopping.

The concern of the Master about what he described as the monumental costs of these actions is understandable. However, I consider it to be well arguable that such considerations do not generally of themselves justify the striking out of actions as an abuse. I do not understand Schellenberg v BBC [reported at
[2000] EMLR 296] to establish the contrary; it was a decision on its own unusual facts. Besides it is clearly arguable that concerns about disproportionate costs are best met by suitable case management rather than by peremptory striking out."

15. What matters is whether there has been a real and substantial tort within the jurisdiction (or, at this stage, arguably so). This cannot depend upon a numbers game, with the court fixing an arbitrary minimum according to the facts of the case. In Shevill v Presse Alliance [1996] AC 959, it was thought that there had been a total of some 250 copies of the French newspaper

published within the jurisdiction, of which only five were in Yorkshire where Ms Shevill lived and was most likely to be known.She was permitted to seek her remedies here.

16. The article complained of in the present case has remained on the Defendants' respective websites to this very day. That fact naturally gives rise at least to a possible inference that there has been a continuing, albeit modest, readership. My attention was drawn in this context to the remarks of Lord Phillips MR (as he then was) in Loutchansky v Times Newspapers Ltd [2002] QB 783, 817D at [72]:

" … If the defendants were exposed to liability … they had only themselves to blame for persisting in retaining the offending articles on their website without qualifying these in any way."

17. It is also pertinent to have in mind the remarks of Callinan J in the High Court of Australia in Gutnick v Dow Jones [2002] HCA 56 at [181] and [192] to the following effect:

"A publisher, particularly one carrying on the business of publishing, does not act to put matter on the Internet in order for it to reach a small target. It is its ubiquity which is one of the main attractions to users of it. And any person who gains access to the Internet does so by taking an initiative to gain access to it in a manner analogous to the purchase or other acquisition of a newspaper, in order to read it.

18. In judging in any given case whether there has been a real and substantial tort, in respect of which a particular claimant should be allowed to seek his remedies by way of vindication, it may sometimes be relevant to consider the attitude taken by the relevant defendant. In the present case, Mr Browne places reliance upon the fact that in the International Herald Tribune action a defence has been entered which seeks to justify the proposition that the Claimant is a "charlatan". He argues that it is singularly inappropriate to strike out an action once a plea of that kind has been put on the record. The Claimant should have a chance to meet it. It is a relevant consideration in determining whether there is any purpose to be served in his pursuing vindication (a point addressed by the Court of Appeal in the Jameel case).

25. I am quite satisfied that it was inappropriate for a finding of fact to be made on the scale of publication on the basis of incomplete evidence. It is a matter which should be left to trial. Furthermore, and in any event, even if the publications were confined to the Defendant's figure, there was no basis for concluding that there was no real and substantial tort.

26. The Claimant's legal advisers also take issue with the method of calculating the access to the article via the website. They argue, for example, that another method of calculation should have been adopted which would result in a possible total of 313 hits on the article within the United Kingdom. This would have involved calculating the percentage of visitors to the website from the United Kingdom accessing the music section as a fraction of the percentage of all visitors who accessed that section. I cannot possibly, at this stage, conclude that that is the right way or the only way of
making the necessary calculation.What is apparent, however, is that this cannot be determined until trial, if necessary with the assistance of expert evidence.

30. The Claimant does not accept, either, that the estimate of 27 hits on the article via the International Herald Tribune website can be relied upon. Evidence from Mr Schattenberg was served on his advisers very shortly before the hearing, so that there was no opportunity to investigate or deal with the material in time. It is again hard to resist the submission that the matter cannot properly be resolved at least until disclosure has taken place.

31. The International Herald Tribune argues that " … there is no necessity to put the Defendants to these costs when the simple answer appears to be that a few dozen people have accessed the article on the IHT website to this date". A few dozen is enough to found a cause of action here, although the damages would be likely to be modest.

33. More generally, I can also understand the Master's dismay at the cost and effort likely to be involved in a full scale trial of the issues in this case. As he pointed out, the events took place a long time ago and with the passage of time there may be difficulties in obtaining the evidence that would be required for a definitive outcome. The fact remains, however, that allegations of charlatanism and of lying cannot be dismissed as trivial. Moreover, even if defamatory allegations do relate to events of long ago, that cannot be a ground in itself for refusing access to justice: see e.g. Polanski v Condé Nast Publications Ltd [2005] 1 WLR 637, HL. The author clearly thought the allegations to be of topical interest to the readers. 34. As to the Master's other concerns, Mr Browne invited my attention to the comments of Thomas LJ in Aldi Stores Ltd v WSB Group Plc [2007] EWCA Civ 1260 at [24]:

"I do not see how the mere fact that this action may require a trial and hence take up judicial time (which could have been saved if Aldi had exercised its right to bring an action in a different way) can make the action impermissible. If an action can be properly brought, it is the duty of the state to provide the necessary resources; the litigant cannot be denied the right to bring a claim (for which he in any event pays under the system which operates in England and Wales) on the basis that he could have acted differently and so made more efficient use of the court's resources. … The problems which have arisen in this case should have been dealt with through case management."

35. It is plainly desirable that some sensible accommodation should be reached, so as to avoid a time-consuming and expensive trial, but that is in the hands of the parties. I am satisfied that the circumstances here cannot be characterised as an abuse of process: nor can it be said that it is appropriate to come to a conclusion on the merits of the litigation, at this early stage, on the basis that a jury would be perverse to resolve the contested issues of fact in the Claimant's favour or to find that he has been defamed.

Heidi Schøne has been a registered mental patient since 1988

18. The principal source of the information to the Norwegian newspapers in nineteen articles over 12 years, Heidi Schøne, is in fact herself a registered mental patient having been an in-patient at the Buskerud Psychiatric Hospital in Lier, Norway for several weeks in Autumn 1988 following a second suicide attempt in connection with abuse from the father of her first child. In 2003 her hospital psychiatrist Dr Petter Broch testified in Drammen Court that she suffered from an "enduring personality disorder initiated in her adolescence" and that she had "a tendency to sexualise her behaviour" and had been abused by almost her entire family. At the time of the civil libel case in 2003 Heidi Schøne was on a 100% disability pension for mental disorder. See Appellant's Court of Appeal papers to Norwegian Court of Appeal at paragraph 15 at (B/1/440). From 1995 Heidi Schøne constantly sexualised the Appellant's behaviour along with her press which accusations had absolutely no basis in reality. Ironic when one looks at the sexual history of Heidi Schøne whose own youth was dominated by casual sexual encounters. Indeed, the leading Norwegian broadsheet Aftenposten describes Norway as world leaders in casual sex at (B/21/645)

Learned judge wrong to say that Appellant's campaign articles and website in response to the above was "harassment" of Heidi Schøne.

What did the Appellant's 'harassment' articles consist of?

19. The learned judge has said at paragraph 71 of her judgement at (A/3/66) that the evidence that the Appellant has "harassed" Heidi Schøne is "overwhelming". She was wrong to say this as the campaign articles were justified comment in response to libellous newspaper allegations.

20. It should be noted that out of the 19 Norwegian newspaper articles printed on the Appellant over 12 years none of the newspapers ever printed his response and only one – Aftenposten in 2002 - informed him beforehand that an article was to be written about him. In some cases the Appellant did not discover the existence of an article for months or years. The Appellant's information campaign was extensive but cannot rightly be called "overwhelming harassment" as in the UK a right to reply is a fundamental right under article 10 of the ECHR. The Appellant was determined to teach the newspapers in Norway a lesson for ignoring their self-regulatory rules of being obliged to contact a subject both before and after an article was published and to publish a reply. These rules were flouted completely in the Appellant's case.

21. The Appellant's campaign articles and website (each giving the Appellant a conviction for "harassment") initiated in response to the newspaper harassment/Heidi Schøne's harassment of the Appellant are listed below. It must be noted however that these articles were produced and sent out from 1995 onwards. There was no evidence of harassment for the previous 13 years of 'sex-terror' as repeatedly alleged in the press, other than on Heidi Schøne's uncorroborated word. Heidi Schøne herself had been a registered mental patient and had had a large number of sexual adventures with many Norwegian men, so to allege that the Appellant is guilty of 13 years of sex-terror is rich coming from her.

(a) Life history in English of the Appellant's accuser Heidi Schøne at (A/16/228) referred to in the learned judge's judgement of 29 July 2011 at (A/3/71-73) (although it was a Norwegian language version that was in fact sent out) which Judge Anders Stilloff at Drammen City Court in his judgement of 11 February 2002 declared as truthful when he said "the information may to a greater or lesser extent have been correct" as per an extract of the Norwegian judgement referred to in the judgement of Sharp J. at (A/3/75 in the last sentence of the fifth paragraph) after Heidi Schøne's psychiatrist came to court to confirm that the Appellant's report contained "a core of truth". From 1995 to 2002 the Norwegian press said the reports had "no basis in reality" for example at (A/22/286 in the fourth paragraph, third line) and that the Appellant was a "mad man", presumably on the grounds that he had made it all up. The learned judge asked the Appellant in court if there was a judgement in a Norwegian court that his reports were ruled as "more or less correct" and he confirmed by letter to her date 21 March 2011 at (B/29/692 second paragraph) that this was indeed the case. The learned judge did not highlight this in her judgement which is regrettable as to make this important truth prominent and clear would reinforce the Appellant's position that his comments are accurate and not a work of fiction as alleged in the Norwegian press. The main reason for the Norwegian press to call the Appellant a "madman" and "insane" was therefore without foundation.

(b) Further report entitled 'Press Release' sent out in English from 1995 after first newspaper story at (A/17/229-230). How can this be called "harassment"?

(c) Norwegian language report (as originally sent out in 1995) with English box report sent out in Spring 2002 at (A/18/231).

(d) Report entitled 'The Englishman's Response to Drammens Tidende's etc.' and Norwegian language version actually sent out in response to Drammens Tidende article of 16 November 2011 at (A/19/232-238). Judge Stilloff expressed his surprise this was sent out after the Appellant's conviction for a previous information campaign. The Appellant told the judge in court that he had a right to reply and had this time not named Heidi Schøne.

Reports (a), (b) and (c) were said by Judge Stilloff to reveal an interest in Heidi Schøne of an 'erotic character' by the Appellant at (A/3/75 as per the fifth paragraph from an extract of the Norwegian judgement). It is submitted that this is a perverse interpretation that no proper reading of the evidence could possible conclude, certainly not in England.

(e) Website called Norway-shockers.com set up in 2000 being a whole five years after first Norwegian newspaper articles on the Appellant in 1995. The website is continually modified and updated and has changed much since its inception. It is also called Norwayuncovered.com. A UK newspaper would not be prosecuted for criminal harassment regarding its right to freedom of speech in publishing a like content.

22. It was wrong of the learned judge to say in paragraph 71 of her judgement that the above reports were a form of "overwhelming" harassment of Heidi Schøne by the Appellant, when it was obviously a proportionate response to newspaper allegations that came Appellant's way in the form of tens of thousands of newspapers sold on the 'Sex sells, Muslim mad-man label.' That the Appellant gave as good as he got in Norway by instituting a mass circulation campaign of his own was no legal reason for the Norwegians to convict him of harassment of Heidi Schøne out of revenge for the success of his right to reply under article 10 of the ECHR. The learned judge should have recognised this breach of human rights in the Norwegian decision to convict the Appellant for a leaflet and website campaign. Was the Appellant not entitled to any effective right of reply? The Norwegian way is not the British way: which newspaper in the UK copies the Norwegian press ethic of naming the subject solely by his religion? Or never contacts the subject to get or publish his opinion on vile unsubstantiated allegations before or even after going to print?

23. Heidi Schøne had in 1986 told the Norwegian police falsely that the Appellant had "attempted" to rape her in 1985 as related by the Appellant's lawyer's letter dated 28 February 1995 at (A/14/220 as per the third paragraph). But Heidi Schøne made the 1986 allegation a mere two weeks after the Appellant wrote to her father regarding her catastrophic lifestyle. The police did not contact the Appellant or question him over the allegation of attempted rape when he visited Norway in 1987, 1989, 1990 and 1991 - all before the cut off point prescribed by the Statute of Limitations in Norway. Ten years later, in 1996, Heidi Schøne then changed her allegation to "actual rape". The Norwegian police did not contact the Appellant in this regard. Yet Heidi Schøne's lawyer in court in 2002 called the Appellant "a rapist" but refused to give him her witness statement on the 'incident' as it would "prejudice his client's case". Heidi Schøne has also made a rape allegation to the Bergen police against a Bergen shopkeeper and also alleged that Greek men on holiday tried to rape her at knifepoint. Through her psychiatrist in Drammen Court in 2002/3 she alleged that her stepmother's father had sexually abused her, her two sisters used "subtle forms of punishment" on her and that her stepmother had "mentally abused" her and that she had a "pathological relationship" with her parents.

Court judgements in Norway impeachable: Renvoi rules 44 & 45

Rule 44 Renvoi: A foreign judgement is impeachable on the ground that its enforcement or, as the case may be recognition, would be contrary to public policy.

Rule 45 Renvoi: A foreign judgement may be impeachable if the proceedings in which the judgement was obtained were opposed to natural justice.

The Appellant's two convictions in Norway for detailing his side of the story on leaflets and on an internet website, as detailed above, were in breach of Rules 44 and 45 of Renvoi as hereinafter submitted as was the civil court decision in Norway to find Heidi Schøne not guilty of libel. The Appellant argued this in his skeleton argument at the 16 March 2011 hearing but the learned judge made only passing reference to this in paragraph 43 of her judgement at (A/3/61). There was no analysis of the Renvoi rules later.

24. In civil libel proceedings brought by the Appellant in Norway Heidi Schøne had alleged, on her word alone and without witness statements - much by way of ambush evidence on the day of the hearings that, for example, the Appellant had blackmailed her that if he could not "kiss her and touch her breasts" he would tell all her neighbours that her stepmother's father had sexually abused her and that the Appellant used to call her up to ask "what colour underwear" she was wearing. There was a whole lot more too including writing "hundreds of obscene letters" to her, all of which she said she had thrown away, a written threat to kill her young son (the letter was never written in fact and never produced in evidence), reinforced by alleged verbal threats to kill her son and alleged "staring hard" at her son that she took as a threat to kill him and threats to kill her friends, "family" and neighbours. But the Appellant could not cross-examine Heidi Schøne on any of these allegations as the Appellant remarked to the learned judge at the 16 March 2011 hearing. Indeed Heidi Schøne's psychiatrist submitted a letter which was read out on the second day of the trial saying that she was mentally unfit to face cross-examination. The Norwegian judge at the Court of Appeal allowed Heidi Schøne to give her evidence but then refused the Appellant the four hours that Heidi Schøne's lawyer had promised him for cross-examination as evidenced by paragraph 1) of the agreed timetable at (B/9/533) on the grounds that the trial had to be cut short by a whole day owing, if the Appellant recalls correctly, to another legal hearing the judge had to attend on. The judge himself decided to put a few questions to Heidi Schøne and her answers were not referred to in his judgement. The whole point of the appeal was in vain as the evidence of 16 years of sustained 'sex-terror' could not be tested, all in breach of the right to a fair trial under article 6 of the ECHR. A British court would find these procedural defects in breach of substantial justice. This was the test outlined in the case of Pemberton v Hughes [1899] 1 Ch. 781: 'The question is whether there was a procedural defect which constituted a breach of the English Court's view of substantial justice.' The Norwegian Court of Appeal had allowed a procedural defect of such a fundamental nature that a British court should not recognise the libel judgement in favour of Heidi Schøne.

The learned judge should have recognised the failings of the Norwegian judicial process in creating an unfair trial in breach of article 6 of the ECHR.

25. A UK libel jury would be very wary of accepting as true Heidi Schøne's evidence against the Appellant who was added to the list of her many abusers. Yet in Norway, where they do not have jury trials for libel, the judges decided at the Court of Appeal, without particularising in any detail, that what she said about the Appellant in respect of her uncorroborated word for the years 1982-1995 was true. The Appellant petitioned the

Supreme Court on 11 February 2004 for permission to appeal as at (B/2/477-503) which, without giving reasons, rejected his appeal at (B/3/504-506). The circumstances giving rise to the Court of Appeal judgement could not arise in the UK as there are procedures for disclosure and requirements for witness statements and rules regarding the reliability of evidence of mental patients such as Heidi Schøne and the dangers of accepting uncorroborated evidence as well as prevention of abuses such as being ambushed on the day of trial with unsubstantiated and new oral testimony. All the Appellant's pleadings to the Court of Appeal at (B1/427-476) and the Supreme Court in Norway at (B/2/477-503) were ignored in this regard. To top it all a police officer tells the court that the Appellant had been incarcerated in a mental hospital, when clearly he had not. The Appellant was not allowed to continue his cross-examination of Torill Sorte at the Court of Appeal just as the going got very difficult for Torill Sorte. The learned judge should have recognised these procedural failings in the Norwegian civil proceedings by specific mention in her judgement.

26. Under the doctrine of Renvoi as per Rule 45 a UK judge is allowed to disregard an overseas judgement obtained in breach of the normal rules of natural justice and this should have been considered by the learned judge here as requested by the Appellant in his skeleton argument for the hearing of 16 March 2011. The learned judge should moreover have included in her Appendix to the judgement extracts from the Appellant's appeal documentation to the Borgarting Court of Appeal and the Supreme Court in Norway to enable him to give his side of the story to such dubious and very damaging rulings. The Appellant could never test at any time the 1982-1995 uncorroborated evidence of Heidi Schøne. There must be a measure of proportionality in the learned judge's judgement.

According to the New Zealand Court of Appeal recognition of an overseas judgement may be denied on grounds of public policy where recognition would offend a reasonable New Zealander's sense of morality, but may not be denied simply because the case would have been decided differently in New Zealand: *Reeves v One World Challenge LLC* [2006] 2 N.Z..L.R. 184, [50] – [67] at (B/31/718-729). The Appellant refers to paragraph [67] of the *Reeves* case at (B/31/725) and submits that a British view of not being allowed to cross-examine a defendant in the form of Heidi Schøne on such highly damaging, uncorroborated allegations made without a witness statement, and by a mentally ill woman would be regarded as an outrageous injustice. Renvoi rule 44 has also, it is submitted, been breached.

27. Following the numerous salacious and uncorroborated allegations from Heidi Schøne in the press which, when coupled with mention of the Appellant's religion certainly demeaned the standing of the religion, then it was absolutely the Appellant's right to reply by putting her life history out to the Norwegian public by any medium possible, including a website. That the Appellant was convicted of harassment in Norway for these campaigns was a breach of Article 10 of the ECHR as in the UK there is a right to fair comment in reply and for the Appellant to acquaint the public with the girl's past history and report his response and findings on a website. To recognise the two Norwegian convictions for the Appellant's response to vile newspaper allegations would be contrary to UK public policy and in breach of Rules 44 and 45 of the Renvoi rules. After a sleepless night in the police cells the Appellant was coerced by the Norwegian public prosecutor to plead guilty to having a website that offended Heidi Schøne otherwise, he was told, he would go straight to prison for 8 months, instead of being allowed to go home on the promise of removing his website. The Appellant pleaded guilty under duress as why after several years of trying to get justice in a foreign land would the Appellant all of a sudden voluntarily plead guilty?

The Appellant was arrested and charged with the offence of having an 'offensive' website the moment his Court of Appeal civil libel case finished. The arrest was at the door of the

courtroom. This was a clear ambush and repugnant to the British sense of fair play. The British Embassy staff who visited the Appellant in the Drammen police station cells were offended that the Appellant was going to face imprisonment for a right of reply website. These embassy staff were informed by the police chief that they would be looking to imprison the Appellant.

Learned judge wrong not to recognise severe harassment and Islamophobic abuse of Appellant by Norwegian press over a period of 12 years.

28. The learned judge should have recognised (as the Norwegian authorities also failed to) that the newspaper articles provided to her from the Norwegian press (with certified English translations) at the hearing on 16 March 2011 were (i) clearly in the nature of sexual harassment of the Appellant with vile unsubstantiated allegations of "sex-terror" and " sex mad man" and "mentally ill man" and "insane man" (when the source of the information, Heidi Schøne, had herself already been a psychiatric patient with a history of sexual promiscuity with only her uncorroborated word to rely on for her own entirely new 1982 to 1995 allegations made out of revenge on the Appellant for exposing her past to a few of her neighbours after learning she had reported him for alleged attempted rape) and (ii) clearly Islamophobic in content with the constant references to the Appellant's religion as "Muslim" quoted for example 18 times in the Bergens Tidende newspaper in 1995, and continuing in the press to 2006, providing cause enough to provoke the Appellant into a firm and continuing response by a leaflet and internet campaign targeting Norway which response itself cannot therefore be correctly labelled as his "harassment" of Heidi Schøne, but a right to reply under article 10 of the ECHR. There were in fact 19 Norwegian press articles over a 12 year period on the Appellant from 1995 to 2006, the pick of which are as follows:

(a) Bergens Tidende newspaper article of 24 May 1995 at (A/15/221-222).

Stings:

Headline: '13 Years of harassment'

Word 'Muslim' mentioned 18 times.

'Heidi Schøne has been harassed and threatened with her life over a period of thirteen years'

'…he writes obscene words on the door. The words Heidi refers to are unprintable'.

'Heidi Schøne has been terrorised by an insane man who she had earlier been friendly with…'

'…he has made threats on my life…'

'He has also threatened to kill my family' said Heidi

'Erotic Paranoia' sub-title.

(b) Verdens Gang front page newspaper article of 26 May 1995 at (A/15/223-225).

Stings:

Front page headline: '13 years SEX-terror'

'Half-Arab Muslim man….obscene phone calls, death threats…'

'Psychiatrists think that the behaviour of the Englishman possesses all the symptoms of erotic paranoia: the sick person is convinced that another person is in love with him or her.'

'Me and my family were threatened with our lives. At one door he wrote 'Fuck you' with a knife.'

'He said that I and my family would be killed.'

(c) Drammens Tidende newspaper article of 27 May 1995 at (A/15/226-227).

Stings:

Front page headline: 'Badgered and hunted for 13 years.'

'For thirteen years an insane man has been making obscene telephone calls and has been stalking Heidi…The man has sent Heidi more than 400 obscene letters and threatened the lives of both Heidi and her family.'

'…half-German, half-Arab man…'

'…threatening the lives of the neighbours…'

'…threatened to kill her 9 year old son'

'In 1988 Heidi was sent funeral cards by the man who told her 'her days were numbered.' '

'Heidi knows the man's mother has tried to commit him to a mental hospital…'

[The Appellant in a recorded telephone conversation with the investigating police officer, Svein Jensen, in Norway in 1996 at (A/21/244-245) was told that they had no evidence for the above other than Heidi Schøne's 'word' which was not reliable according to this policeman].

[For the above three 1995 articles the Appellant instructed a lawyer in Norway to sue for libel but the lawyer, Karsten Gjone, missed the time limits and was found guilty of negligence by the Norwegian Bar Association on 13 January 1999 as per their report at (A/23/288-298).]

(d) Verdens Gang article of 7 July 1998 at (A/22/281-285).

Stings:

Front page headline: 'Impossible to shake off sex-crazed Englishman'

'…death threats'

'The Englishman has sent 300 letters to Heidi Schøne so far this year.'

'Psychiatrists believe that the threatening and lovesick Englishman may suffer from a case of extreme erotic paranoia.'

[The Appellant only discovered this article in 2003].

(e) Drammens Tidende article of 14 July 1998 at (A/22/286-287) and the subject of a libel claim in 2000.

Stings:

Front page: 'Sexually harassed for 16 years'

'For 16 years Heidi Schøne from Solbergelva has been pestered and followed by a mentally ill Englishman. In only the last year he has sent more than 300 letters to Heidi and made numerous phone calls.'

'The Muslim man has been obsessed by Heidi Schøne since she was 18 years old.'

'The man has previously threatened neighbours of the family with lethal force to know where they have moved.'

'Psychiatrists believe the Englishman suffers from an extreme case of erotic paranoia.'

[Allegation of 300 letters in the last year withdrawn by Heidi Schøne's lawyers, The psychiatrist, Nils Rettersdol, quoted in the press on the topic of ''erotic paranoia'' told the Appellant in a recorded conversation at (norwayuncovered.com/sound) that the press told him nothing about the Appellant and he was not speaking about the Appellant in particular but on the phenomenon generally and apologised to the Appellant when he was sent and read Heidi Schøne's letters to the Appellant].

Procedural history in Norway regarding Drammens Tidende claim for 14 July 1998 article

It must be noted that the Appellant started off in Norway by issuing a Writ against the newspaper Drammens Tidende, its journalist Ingunn Røren and editor Hans Arne Odde and Heidi Schøne on 13 January 2000 as at (A/25/305-351). The Appellant's record of the proceedings is given at (A/24/299-304). The first Court decision of 31 August 2000 at (A/26/352-365) was in favour of the Appellant allowing him to proceed to sue the newspaper even though he had used the Press Complaints Bureau (the PFU) to lodge a complaint. The PFU do not look into the truth or falsehood of newspaper statements but only decide whether in general terms a newspaper has the right to publish an article if it was in the public interest. The Appellant did not know that the PFU did not look into the truth or falsehood of statements in an article until after he promised not to sue the newspaper, which he was requested by the newspaper to do in return for them answering his complaint. The judge at first instance ruled that it was still the Appellant's right to sue the newspaper even though he had promised not to sue them in return for investigating his complaint. The newspaper appealed to the Court of Appeal and won by virtue of a decision on 24 November 2000 at (A/27/366-387). The Appellant appealed to the Supreme Court in Norway on 29 December 2000 at (A/28/388-403). New case law was to be made as the PFU itself was unsure as to its own rules. However the Appellant's lawyer Stig Lunde had missed the time limits to lodge the appeal which was accordingly dismissed on 16 February 2001 by the Supreme Court at (A/30/414-426). The fact is that many of the newspaper allegations were unproven or withdrawn but as the newspaper was no longer part of the action the judgement of 11 February 2002 did not note the withdrawals in its judgement as against the newspaper's own libels as distinct from Heidi

Schøne's libels – which for all the 1982-1995 evidence from her amounted to her own uncorroborated word. The only available recording of the actual events in the courtroom was left to the Appellant to note in his record of the proceedings at trial for 15 January 2002 at (A29/404-413) and note in his record of proceedings for 13 October 2003 at the Court of Appeal at (B/10/534-545) and his appeal papers to the Court of Appeal of 13 March 2002 and Supplemental Appeal of 12 June 2002 both at (B/1/427-476). The Appellant requested permission to Appeal to the Supreme Court on 11 February 2004 at (B/2/477-503) who refused on 17 March 2004 giving no reasons at (B/3/504-506). The actual events as per the Appellant's above mentioned notes of the proceedings are not reflected in the actual judgements which did not record numerous facts that went against the Norwegian participants. The Appellants appeal papers to the Court of Appeal at (B/1/427-476) did accurately reflect events and the evidence submitted in the courtroom.

(f) Drammens Tidende newspaper front page article of 16 November 2001 at (A/19/237-238 in Norwegian original).

Stings:

Front page headline: 'Fine for serious sex terror'

'16 years of sex terror'.

'..rape report was made because in her [Heidi's] opinion an assault had taken place and not in order to provoke the defendant.'

(g) Aftenposten newspaper front page article of 15 April 2002 at (B/5/513-518).

Main sting:

Front page headline: 'British Muslim terrorises Norwegian woman on the Internet'

[Appellant only discovered this article in 2003 although he did have a recorded conversation with the writer of the article at (B/5/510-512), journalist Mrs Reidun Samuelsen on 10 April 2002 in which she said at (B/5/511 at *): 'I didn't know that you were a Muslim…Nobody told me that and it doesn't matter for me.' The words are uploaded on the Appellant's website at norwayuncovered.com/sound].

(h) Dagbladet newspaper on-line article of 20 December 2005 at (B/13/553-559).

Stings:

Headline: 'Sexually pursued by mad Briton'

'Half-Arab, Muslim Briton'

'The terrorising continued right up to 1992. The man was then committed to a psychiatric hospital in the UK. A Norwegian police official who investigated the case explained that it was his mother who had him committed….When he came out again two years later, it carried on worse than ever.''

(i) Dagbladet newspaper front page article of 21 December 2005 at (B/14/560-568).

Stings:

Front page headline: 'Pursued by SEX-MAD man for 23 years'

'…a half-Arab Briton'

'I had a small child he thought should die. In other countries he would have been punished severely for that kind of threat' said Schøne.

'The terrorising continued right up to 1992. His mother then arranged for him to be committed to a psychiatric hospital in the United Kingdom. When he came out again two years later it carried on – worse than ever.'

[On the same day as the Dagbladet.no internet article - 20 December 2005 - the hate emails arrived. Some of the senders of the emails made it clear they actually believed the Appellant had been put in a mental hospital by his mother].

Dagbladet journalist Morten Øverbye accepts that Torill Sorte is a liar. Learned judge failed to recognise this important fact in her judgement having had the opportunity to listen to the conversation and view the transcript.

On 12 May 2007 Morten Øverbye, the journalist for Dagbladet who wrote the 20/21 December 2005 stories had a long (recorded) conversation (uploaded onto Appellant's website at norwayuncovered.com/sound) with the Appellant which included the following:

Farid. I don't know why you put that because, er…. First of all …First of all… Do you admit you have lied about "two years" in a mental hospital?
M.O. No, I wrote up the website on the 20th December that a police officer said so and in the wording …
Farid. And you believe her do you?
M.O. It came from a police officer explaining, er, it went, I think, but it's er….
Farid. No, did you speak to Torill Sorte to ascertain your facts?
M.O. But I spoke to her, yeah of course. You have been harassing her as well haven't you?
Farid. No. I've not been harassing her. I've just been questioning her. O.K. She's been harassing me, by saying that I've been in a mental hospital. Or my mother wanted to put me [in one], or I have been [in one]. Now where do you get the two years from?
M.O. I just told you that the sourcing on the website is, er, a Norwegian police officer.
Farid. So Torill Sorte is the source for the two years, yeah?
M.O. Yes and um, on the bottom of my first story it says, "P.S.!! Also a police woman who led the investigation of the Brit is now being harassed by name on his website."
Farid. Well it's not "harassing" - it's a right to reply. Do you not understand? I mean, you're a journalist. Obviously my point is that you are a second-rate nothing. You wouldn't get a job in a British newspaper in a million years. Because….
AND LATER:
Farid. Well, no other country on earth would be so perverse and bigoted as to get their own back….Isn't it some kind of criminal offence to insult Norway by printing the truth about their … certain institutions? That's what it's all about.
M.O. I don't think so.
Farid. Oh, just because the "Muslim man" hit back and put something up [on a website].
M.O. I don't think this is about you being a Muslim, sir.
Farid. Well to me the association…..so why every time print [the word] "Muslim"? Why every time print that? And also there's one article that says I'm….Torill Sorte printing in Eiker Bladet

that I am "clearly mentally unstable."
M.O. Torill Sorte the policewomen says that you are mentally unstable?
Farid. Yeah… "clearly mentally unstable" is the quote.
M.O. She was the person who investigated the case against you. She was the lead investigator.
Farid. Oh yeah, top woman! Yeah, fantastic investigative policewoman!
M.O. Where did she have that thought from? [That I was "clearly mentally unstable"]
Farid. 'Cos she's nuts. Anyone who say's that I've been two years in a mental hospital when I haven't is clearly a spiteful vindictive bitch and I've told her [as much]. In fact I phoned her up a few weeks ago. She didn't have the guts to speak to me. If it's not true that I've been in a mental hospital, then clearly she's a wicked liar. Agreed?
M.O. (Silence).
Farid. You can't even agree on that?
M.O. Of course I can. If she says you have been in a mental hospital and you have not been in a mental hospital, then she's lying…..
Farid. Yeah, exactly.
M.O. …..That's a no brainer.

(j) Eiker Badet newspaper article of 11 January 2006 at (B/15/569-574).

Main sting: 'Farid El Diwany' mentioned in first paragraph (first time ever named in Norway in 19 articles).

'…obviously mentally unstable…' says Sorte (at B/15/571 last line).

Constant Norwegian press reference to: "the Muslim man" and deep-seated Islamophobia exposed in Norway by 22 July 2011 killings

29. No UK newspaper constantly labels a subject by his religion as to do so would render it in breach of the human rights discrimination laws and so the learned judge in having the articles before her should not have condoned, by silence, such appalling Norwegian press practice. The learned judge had in front of her for comparison several other Norwegian newspaper articles demonstrating clear Islamophobia in relation to Muslims and the prophet Mohammad at (B/21/638-644) where the Prophet Mohammad has been described by a Norwegian preacher as a "confused paedophile" at (B/21/641 in the first paragraph) and by the popular right-wing politician Karl I Hagen as "a warlord, man of violence and women abuser" at (B/21/643 as per the fifth paragraph). Moreover the Appellant had a German grandfather who was killed in Stalingrad in the Second World War fighting for the Sixth Army. The Norwegian press referred to the Appellant as the "half-German, half-Arab man" which in Norwegian eyes is a derogatory term. The Germans invaded Norway. The Independent on Sunday newspaper did an article dated 2 February 2003 at (B/21/635-637) on the vile sexual and psychological abuse meted out after the war to the children of Norwegian women and the occupying German soldiers. The children were labelled the 'German whore children' and their treatment clearly illustrated the kind of perverted vitriol and abuse that a hated outsider can face from the Norwegian psyche. The Appellant faced similar repellent vitriol from the Norwegian establishment. The learned judge handed down the draft of her judgement on 29 July 2011 which was one week after the mass killings in Norway by the Muslim-hating fanatic Anders Behring Breivik. The learned judge could therefore take on board the fact that Islamophobia in Norway was indeed a real problem - as the Appellant's website and book on Norway had been saying for years. The Appellant believes that the learned judge should not have shied away from mentioning the Appellant's main objective featured on his website and in his book, entitled *Norway – A Triumph in Bigotry* (2008) - the exposure of Islamophobia in Norway.

Loving letters from Heidi Schøne

30. Heidi Schøne admitted at her libel trial in 2002 as recorded in the Appellant's record of the proceedings of 15 January 2002 at (A/29/404-413) that she had had all the newspaper articles from 1995 and 1998 read out to her as at (A/29/408 last paragraph) before they went to print which she said she did not correct and had thus adopted them in their entirety. She had clearly acted in a deceitful manner as it was obvious from her love letters to the Appellant after 1982 that he could not have been sexually harassing her "from the time he met her in 1982" or that he was suffering from "erotic paranoia" as he did not imagine Heidi Schøne loved him as her letters clearly expressed her love for him and her admiration for him as a decent man.

(a) In one letter (typed up version for easy reading and copy of original at A/7/188-200) post stamped 22-08-84 she says at (A/7/188 second paragraph and in original letter at A/7/194):

'Oh can't you marry two women…What about marrying an Egyptian as well as a Norwegian girl? Marry the Egyptian one first and when you are fed up with each other I'll come over and…'

(b) Heidi Schøne sent the Appellant a greetings card in 1984 at (A/8/201-202) saying:

For Someone Special…Anytime, Anywhere…I'll be there if you need me. Lots of love from Heidi

(c) Heidi Schøne sent the Appellant a letter in 1984 with a red love heart stuck on the back of the envelope (typed up version for easy reading and copy original at A/9/203-207) saying inter alia:

It was vey nice talking to you again! It's always nice talking to you. You're such a nice person and you know that too. Have you heard anything from the Egyptian girl recently?'

(d) Heidi Schøne sent the Appellant a letter in (typed up version and copy of original for easy reading at A/10/208-212) saying inter alia at (A/10/209):

Thank you very much for your letter and the phone calls! Nice to hear your voice again. I don't know why but you make me feel happy……I've been thinking a lot about you. As you always do or did, you make me think of life in general, about why we are all here, and what's gonna happen when we die.

(e) Heidi Schøne sent the Appellant a postcard post stamped 9 April 1985 at (A/11/213-215) and signed it off:

Lots of love, Heidi (with seven kisses)

In 1985 Heidi Schøne got pregnant for a second time to her abusive boyfriend Gudmund Johannessen, the one who caused her to attempt suicide in 1984 when he got her pregnant with twins but she miscarried them – she says – on discovering that he had been sleeping with her best friend as well. This 1985 pregnancy was not that straightforward as Heidi Schøne was having unprotected sex with two Norwegian men at the same time: Gudmund Johannessen and Bjorn-Morten. Mr Johannessen and Heidi Schøne went on to have two Aids test each after their child was born as Heidi Schøne told the Appellant in 1986 that due to Mr Johannessen's recently acquired habit of injecting heroin she was worried that her son might have contracted AIDS. The test results were negative. This action by Heidi Schøne was the

background to the so-called rejection of the Appellant by her in 1985 as labelled by Judge Anders Stilloff in Drammen Court in 2002 as the Appellant had strongly rebuked Heidi Schøne for getting pregnant again to such an abuser as Mr Johannessen. The Appellant's fears proved justified when in 1988 Heidi Schøne again attempted suicide due to abuse by Mr Johannessen. He beat her to the ground in 1990 and the police were called. Facts confirmed as "more or less correct" by Judge Anders Stilloff in his 2002 judgement.

(f) Heidi Schøne admitted in Drammen Court in 2002/3 that she had in the summer of 1988 requested the help of the Appellant and his best friend to assist her against the abusive father of two year old child, Mr Johannessen. Shortly after this cry for help Heidi Schøne attempted suicide followed by a move across the country to stay near her sister followed by admittance to the Buskerud Psychiatric Hospital near Drammen as an in-patient for several weeks.

(g) In the Autumn of 1990 Heidi Schøne sent the Appellant a Christian booklet which she had ordered from England entitled: 'I dared to call him FATHER' at (A/13/217-219) written by a Pakistani Muslim woman who had converted to Christianity after serious physical abuse by her husband. Heidi Schøne had become a Christian after being 'exorcised from demons' in her words (see Appellant's letter to solicitor Reg Whittal dated 13 August 1990 in the third paragraph at A/12/216), and she told the Appellant that she wanted to marry a Christian man "more than anything else in the world." She also sent the Appellant two postcards (which were not kept) from Egersund, Norway where her sister lived saying how nice the name 'Farid' sounded and how much her son Daniel liked the Appellant after the Appellant visited Heidi Schøne and her son in August 1990 for half a day.

Strange how Heidi Schøne's later characterisations of the Appellant were the exact opposite in every possible way of her earlier written statements in her letters. She had also in court made allegations of abuse and assault against the father of her first child as well as her stepmother, stepmother's father (sexual abuse) and two sisters. She had no phone for long periods including from 1988 to 1993 so to allege that the Appellant had made thirteen years of "obscene phone calls" to her was obviously not true. The Norwegian judgements constantly ignored this obvious evidence. Not one of these alleged year in year out obscene phone calls was recorded and put in evidence. No previous complaints of obscene phone calls and obscene letters for the period 1982 to 1995 were made prior the 1995 newspaper interviews with Heidi Schøne.

Learned judge should have recognised that responding to vile press allegations cannot be classed as "criminal harassment" and did not entitle Norwegian prosecutors to charge Appellant under Section 390A of the Norwegian Penal Code

31. To be described in the 1995 newspaper articles repeatedly as a "Muslim" who was "insane" and has threatened Heidi Schøne "with her life over a period of thirteen years" and was perhaps "suffering from erotic paranoia" and who had said that Heidi "and her family would be killed" and that for "thirteen years an insane man has been making obscene phone calls" to her and has sent her "more than 400 obscene letters and threatened the lives of both Heidi and her family" and that Heidi knows that the man's mother has "tried to commit him to a mental hospital" is quite worthy of a right of reply from the Appellant by telling readers in Norway about Heidi Schøne's own past. All these newspaper allegations were only sourced from the uncorroborated word of Heidi Schøne, herself a registered mental patient. No evidence was ever offered in court in Norway as to the "obscene phone calls" or "death threats over a thirteen year period" or the "400 obscene letters". Or, later, the alleged letter threatening to kill her son related by Torill Sorte to the Appellant in a recorded

telephone conversation on 22 April 1996 at (A/21/251 from the second quote from the top). And it was a proven lie by the police officer Torill Sorte that the Appellant had been ''put'' in a mental hospital by the Claimant's mother as alleged in Torill Sorte's witness statement dated 22 January 1997 as per the seventh and eighth paragraphs at (A/20/239-240) or put in a psychiatric unit for ''two years'' or at all as was later printed in a front page newspaper Dagbladet 2005 article. Moreover no evidence was offered as to Heidi Schøne's allegations of ''attempted rape'' changed a decade later to actual ''rape''. Indeed her lawyer refused to disclose her witness statement on this incident as he said it ''prejudiced'' his client's case. It did not stop this lawyer calling the Appellant ''a rapist'' in court in Norway on 15 January 2002. All this from a woman who was a psychiatric patient herself whose own father had tried to put her in a children's home in her adolescence and who had slept with numerous casual sex partners in the course of her youth with two abortions to one Norwegian boyfriend, two suicide attempts due to abuse by another on-off Norwegian boyfriend and whose psychiatrist is on record in court as saying she had ''a tendency to sexualise her behaviour'' and that she had been abused by almost her entire family.

Heidi Schøne waives her anonymity by allowing press coverage

32. The Appellant was convicted in absentia under section 390A of the Norwegian Penal Code in 2001 for harassment of Heidi Schøne as he had named her in his information campaign. However as Heidi Schøne had waived her anonymity by having her photos taken and name printed in her national and provincial newspapers the Appellant was entitled to name her and reveal her past history. The Appellant did have a lawyer, Harald Wibye, represent him at the Magistrate's Court hearing (set purposely three weeks before the Appellant's own civil libel prosecution was to begin). Mr Wibye told the magistrate that the case against the Appellant should be dismissed as he should have been charged under the alternative Section 390 of the Penal Code which gave a defence of justified comment. The judge adjourned to her chambers to consult her statutes and returned little the wiser, according to Harald Wibye, to rule that that proceedings would continue under the strict liability section and the Appellant was convicted.

Learned judge wrong not to acknowledge hate emails sent to Appellant and read out in court were severe sexualised religious (Islamophobic) abuse which Interpol London asked Interpol Norway to investigate in 2006. Learned Judge in breach of article 14 of ECHR regarding discrimination.

33. After the two Dagbladet newspaper articles of December 2005 in which Torill Sorte gave an interview, referred to in paragraphs 28 (h) and (i) above, members of the Norwegian public immediately sent vile emails to the Appellant (such as 'Sick devil. Go fuck Allah the Camel' and 'When you eat pigs do you lick the pig's arsehole clean before digging in?') wherein some of the senders actually believed the false statement of police sergeant Torill Sorte that the Appellant had spent two years in a psychiatric unit in the UK. The Appellant had never been a patient in any psychiatric hospital as confirmed by his family doctor's letter dated 22 April 2003 at (B/7/525). The hate emails are referred to at (B/17/581-591) and were sent by the Appellant to the Brentwood, Essex Police on 12 July 2006 at (B/17/580-601) who in turn sent them on to the Essex Police Hate Crimes Unit at Harlow for onward transmission to Interpol Norway. Interpol Norway did not offer any apology as can be seen in the Essex Police letter to the Appellant dated 23 July 2007 at (B/18/602). All the emails were read out in court to the learned judge by the Appellant but she refused to condemn the emails in her judgement. The emails were recognised as a hate crime by the Brentwood Police as per their 'Hate Crime * A Menace in Society' leaflet as at (B/17/578-579) and by the Apellant's M.P who was consulted on the matter. It seems that it is a hate crime that is entirely excusable

from the viewpoint of the Norwegian Police and the learned judge Sharp J. Not worthy of any comment whatsoever. As if it was a total irrelevance. Such it seems is the nature of Islamophobia: too minor and politically inconvenient even to officially acknowledge.

34. Indeed the Appellant now wonders whether the Norwegian Anders Behring Breivik, the Islamophobic mass murderer of 22 July 2011, sent him one of those emails at the time. The Appellant sent copies of the hate emails to the Norwegian Minister of Justice by way of a letter dated 20 December 2005 and followed the matter up on 19 February 2006, 14 June 2006 and an email dated 3 August 2006 all at (B/16/575-577). The Ministry of Justice in Norway replied to the Appellant on 19 September 2005 at (B/12/552) regarding the Aftenposten 15 April 2002 article 'British Muslim terrorises Norwegian woman on the Internet' only to say his ''opinion'' was ''acknowledged'' and no further enquiries would be answered.

Norwegian support for norwayuncovered.com

35. For those Norwegians who bothered to investigate the Appellant's website with impartiality and care there was solid support for the Appellant's website as in the five must read email examples at (B/19/603-612). The learned judge had three of them read out to her in court. No comment at all came from the learned judge.

Judge wrong to say in paragraph 72 of her judgement that Appellant was harassing Respondent Torill Sorte as well due to his voicemail phone messages and in paragraph 74 that issuing his Claim was a sign of harassment of Torill Sorte.

36. The 2007 phone messages transcribed in paragraph 12 of the judgement at (A/3/53-54) indicate the Appellant's obvious frustration at Torill Sorte's continued escape from justice for her false 1997 incarceration in a mental hospital allegation and for her 2005 Dagbladet newspaper ''two years'' in a mental hospital allegation for which she conclusively is an ''obvious liar''. Even the journalist who wrote the piece in Dagbladet stated on the correct assumption that the Appellant has not been a patient in a mental hospital, ''…she's lying. That's a no-brainer'' as per the recorded telephone conversation referred to above. The Appellant could not even remember leaving these voicemail messages four years after they were made.

37. The Appellant had included in his court bundle for the hearing on 16 March 2011 transcripts of all the (recorded) conversations he had had with Torill Sorte which were from 1996-1998. Before Torill Sorte knew these conversations had been recorded she alleged on oath in Drammen Court in January 2002 that these were harassing phone calls. They clearly were not harassing calls at all and the learned judge should have made mention of the strenuous attempts made by the Appellant through these calls to seek justice with Torill Sorte's help. With the evidence of these calls it can only be said to be a malicious lie later of Torill Sorte to label the Appellant as ''clearly mentally unstable'' or to say that his mother had told her that she had ''put'' him in a mental hospital and for Torill Sorte to be the source of the two years in a mental hospital allegation in Dagbladet.

Voicemail evidence was an ambush

38. However, the Appellant was ambushed by the very late revelation of these 2007 voicemail phone messages by Charles Russell who sent them to him by email the day before the hearing of 16 March 2011 with their clients' skeleton arguments and played the voicemail recordings in court first thing. According to the case of *O'Leary v. Tunnelcraft Ltd* [2009]

EWHC 3438 (QB) at (B/31/716-717) such ambush evidence should not be allowed as it should be disclosed earlier in order for the other party to have time to prepare a response in conjunction with all the evidence. The learned judge was wrong to include the transcriptions in her judgement. The real harassment was by Torill Sorte, who in telling her national press the lie of the Appellant being in a mental hospital, had committed a substantial abuse of his person and told an unforgiveable lie which resulted in vile religious hate emails. How was the Appellant supposed to forget that and "move on"? The evidence of the voicemail messages was very much a smokescreen and peripheral in the overall scheme of things when seen in the light of the outrageous lie from Torill Sorte that the Appellant had been incarcerated in a mental hospital.

39. For Torill Sorte to then compound matters by saying in Eiker Bladet a month later that the Appellant was "clearly mentally unstable" for calling her a liar and a cheat is evidence of her continued harassment of the Appellant. Torill Sorte should expect a few condemnatory messages which in any event were only left on her voicemail after she refused to speak to the Appellant when on Sunday 18th March 2007 he asked in a recorded conversation for an explanation as to how he was supposed to have spent two years in a mental hospital. Torill Sorte would not explain and fobbed off the Appellant by asking him to write to her.

40. Issuing a claim in the High Court against Torill Sorte is clearly not a sign of harassment of her as per the learned judge's opinion in paragraph 74 her judgement at (A/3/66). It is a legal attempt to clear the Appellant's name in the correct jurisdiction for an English translation of Torill Sorte's, re-published, serious allegations.

Learned judge wrong to purposely quote extract from Norwegian police complaints investigation in her judgement that gives distinct impression that the Appellant had been hospitalised in a psychiatric unit in the UK for two years or at all when he has not

41. The judge has in her Appendix to her judgement at (A/3/80-81), cherry-picked from a Norwegian Police Complaints Investigation decision dated 19 June 2007 the following quote:

The complaint against Police Inspector Torill Sorte
The information that El Diwany's mother helped to have him committed to a psychiatric institution was previously made public at Drammen District Court. In conjunction with that case, the Public Prosecution Authority did not find any reason to prosecute Police Inspector Sorte for perjury. The statements of Police Inspector Sorte were also investigated by the Special Police Investigation Commission (SEFO), who found it proven that no offence had taken place pursuant to Section 121 and sub-section 1 of Section 325 of the Norwegian Penal Code. We therefore cannot find any reason to reopen the case in relation to breach of confidentiality. The only question that remains is thus whether the contents of the articles in Dagbladet and Eiker Bladet are grounds to suspect Police Inspector Sorte of gross negligence in the performance of her duties.
…
With respect to the comment to Eiker Bladet that El Diwany is clearly mentally unstable, we consider it neither punishable as negligence nor defamatory. We here refer to the contents of El Diwany's website and the other facts of the case.
The Bureau has decided that on the basis of the above, there do not appear to be any grounds to investigate further whether Police Inspector Sorte has been guilty out [sic] any punishable offence in terms of her statements in the three articles referred to.

Decision

The case against Police Inspector Torill Sorte, Dagbladet and Eiker Bladet will be dropped, as there are no reasonable grounds for investigating whether any punishable offences have been committed; cf. the first subsection of Section 224 of the Criminal Procedure Act.

42. The decision by the judge to quote the above wording in her Appendix will clearly make people believe that the Appellant has been hospitalised when the learned judge has seen his family doctor's letter stating categorically that he has never been a patient in any psychiatric hospital at any time. The learned judge has made mention in paragraph 29 of her judgement of this family doctor's letter dated 22 April 2003 refuting any incarceration in a mental hospital. So the inclusion of the above extract from Norway is decidedly an aberration of major proportions since it creates a conflict in the minds of the public reading the judgement. The learned judge should have made it absolutely clear that the "information" on incarceration in a mental hospital that was made "public" in Norway was not true as the Appellant has never in fact been a patient in any psychiatric hospital. The Appellant provided a copy of his letter to his family doctor dated 22 April 2003 indicating that the letter of reply from his family doctor was in direct response to Torill Sorte's mental hospital allegations. When Torill Sorte told the court in Drammen in 2002 that the Appellant's mother had told her that she had "put" him in a mental hospital he called her a liar. In 2003 he had the chance to cross-examine her on this point in his appeal. This can hardly make the Appellant's appeal an 'abuse of process' in the Norwegian courts as stated by the Norwegian judge in his Court Of Appeal judgement quoted in the learned judge's judgement.

The Appellant did not threaten to kill a child

43. Besides which the Appellant had an absolute right to appeal against the inference in the Norwegian libel judgement of 11 February 2002 that he had threatened to kill a child, was an alleged writer of hundreds of obscene letters and maker of 13 years of obscene phone calls, a blackmailer and maker of death threats to neighbours and family of Heidi Schøne. The evidence for which came solely from the uncorroborated word of Heidi Schøne. The Norwegian libel judgement of 11 February 2002 declared:

"Following an overall assessment the court has concluded that the information, opinions and formulations for which Schøne is responsible are essentially true and are not inappropriate."

as quoted in the learned British judge's judgement at (A/3/75 in the last paragraph).

44. The Appellant produced his family doctor's letter in Drammen Court in October 2003 to Torill Sorte and asked her how his mother could have told her that he had been "put" in a mental hospital when he had not in fact been in one. She replied that his mother had told her this. So the Appellant asked her on what date and what time his mother told her that she had put him in a mental hospital, who called who and did she have any notes or attendance record as to the 'fact' of the conversation. Torill Sorte replied that she "could not remember" when the conversation took place or who phoned who and that she had no attendance notes. The fact is that the maker of this allegation, Police Officer Torill Sorte, the Respondent, so very obviously lied to the Drammen Court. The specially appointed Norwegian judge, Jan Morten Svendgard, who later investigated the Appellant's complaint as well as the Appellant's mother's complaint at (B/4/507-509) spoke to his mother who told him that Torill Sorte had made the whole thing up and the judge then reported this to the police complaints investigator Johan Martin Welhaven who decided that there was "not enough evidence" to prosecute Torill Sorte for perjury. It should be noted that Torill Sorte was not even contacted

or questioned by the Police Complaint's Investigator.

45. Mr Welhaven was appointed police chief to Vestoppland district in Norway on 16 September 2011 and his local press then did two stories on 20 and 21 September 2011 featuring and promoting another of the Appellant's websites detailing Islamophobia in Norway and Johan Martin Welhaven's part in it, in the light of the killings in Norway by Muslim-hater Anders Behring Breivik on 22 July 2011. Johan Martin Welhaven refused to condemn the religious hate emails which were part of his remit to investigate which Interpol Norway had passed on to him.

46. Torill Sorte's Eiker Bladet newspaper allegation of 11 January 2006 that the Appellant was ''clearly mentally unstable'' (the main libel in the Appellant's claim) is inextricably linked to her comments in Dagbladet newspaper on 20 and 21 December 2005 that the Appellant had been a patient in a mental hospital for two years, which is something some members of the Norwegian public also believed as was made clear from the hate emails. The journalist who wrote the article, Morten Øverbye made it quite clear to the Appellant in a recorded conversation later that Torill Sorte was the source for the ''two years in a mental hospital'' quote and told the Appellant that if he had not been a patient in a mental hospital for two years then Torill Sorte is ''…lying. That's a no brainer.'' When the Appellant blogged on Norwegian newspaper websites in 2005 that Torill Sorte was a liar and a cheat for swearing on oath in Drammen Court in 2002 and 2003 and in a witness statement in 1997 (which the Appellant did not see for 5 years) that his mother had told her she had ''put'' him in a mental hospital, Torill Sorte then told Eiker Bladet on 11 January 2006 at (B/15/570 in the last sentence):

''I deal with it and know that I did not do anything wrong in the matter. Not even an internal enquiry revealed anything wrong.''

and that to call her a liar and a cheat was an indication that the Appellant was ''clearly mentally unstable.''

The learned judge was wrong to imply that there had been a fair investigation into the Appellant's complaints against Torill Sorte's perjury by saying that his complaints on Torill Sorte's allegations of mental instability had been ''considered and rejected'' which reinforces the impression that Torill Sorte was telling the truth that he had been a patient in a psychiatric hospital for two years and was also mentally ill although no evidence as to why the Appellant is allegedly mentally ill has ever been provided by the very partisan Norwegian authorities.

47. An essential element in any investigation of a complaint is to consult the parties involved. The Police Complaints investigator in Norway in 2007, Johan Martin Welhaven, (appointed a police chief in 2011), did not even contact Torill Sorte who made the allegation or the two journalists who printed the allegations or the Appellant's mother! He also condoned the hate emails he was asked by Interpol to investigate!

48. In paragraph 69 of her judgement at (A/3/65-66) the learned judge makes reference to the Appellant's complaints to the Norwegian authorities which had been ''considered and rejected''. The rejections consisted of a decision on 15/07/2003 not to prosecute Torill Sorte for perjury due to ''no evidential foundation''. This was a get out for the Public Prosecutor's Office in order to save Torill Sorte's career and also so as not to render the Appellant's 2001 conviction for ''harassment'' unsafe given the ''mental hospital rumours'' evidence given by Torill Sorte at the Magistrate's Court which hearing the Appellant did not attend. There was

ample evidence to charge Torill Sorte not least the fact that the Appellant had not been put in a mental hospital and that Torill Sorte had never explained when the call with the Appellant's mother was allegedly made and why she had no notes of the time or date of the alleged conversation or who called who. Besides which the Appellant's mother was furious with Torill Sorte for this outrageous lie and would have welcomed a trial.

49. This left Torill Sorte free to repeat her lie in Dagbladet in 2005 this time alleging that the Appellant had been in a mental hospital for a whole two years in the UK from 1992. The Appellant's complaint against Torill Sorte for misconduct was again rejected by the Police Complaints Bureau due to a finding that "no reasonable grounds for investigating whether any punishable offences have been committed" as per a report dated 19 June 2007. The same public prosecutor as before upheld the decision, ignoring the newspaper correspondent's own evidence that Torill Sorte was "… a liar. That's a no brainer." Clearly a cover-up of major proportions.

This makes the learned judge's quote of allegations of mental instability having been "considered and rejected" very misleading in that it lends support to the false assertion that the Appellant has been a patient in a mental hospital.

Res judicata: no re-litigation in fact in UK courts

50. The Appellant is not re-litigating decided issues on this point as he has never issued a civil libel claim against Torill Sorte or Roy Hansen or the Norwegian Ministry of Justice and Police in the Norwegian Courts in relation to mental hospital/mentally ill allegations. He made a private complaint to the Norwegian Police Complaints Bureau and did not waive his right to take civil libel action in the UK, especially as there has been a major miscarriage of justice in Norway. Or is the Appellant just supposed to accept with good grace the implied 'fact' that he has been in a mental hospital when he has not and that he is mentally unstable? It is also an anomaly in that the official charged with investigating the Appellant's complaint against the policewoman Torill Sorte, Johan Martin Welhaven, has recently been appointed a local police chief which introduces the clear charge of bias, lack of impartiality and conflict of interest. All in breach of Article 6 of the ECHR.

History of the "mental hospital" allegations

51. The factual history of the "mental hospital" allegations conflict in major respects with the picture painted by the Norwegian authorities.

52. The rumours were started by Heidi Schøne in 1995 - herself a psychiatric patient in 1988 after a second suicide attempt related to abuse by the father of her first child. Heidi Schøne said in Drammens Tidende newspaper of 27 May 1995 in the penultimate paragraph, last sentence at (A/15/227 at *):

"Heidi knows that the man's mother has tried to commit him to a mental hospital,…".

53. The above allegation was false and the Appellant questioned Police Sergeant Torill Sorte about this on 22 April 1996 in a recorded telephone conversation at (A/21/253 at *) and got his mother to confirm that the allegation was a fabrication by Heidi Schøne who told Torill Sorte:

"Farid wants me to tell you…he wishes particularly at this moment to tell you that I did not threaten to put him into a mental hospital…"

54. On oath in Drammen Court on 16 January 2002 Torill Sorte swore that the Appellant's "despairing mother" had spoken to her telling her that she had "put" the Appellant "in a mental hospital." The Appellant's lawyer reacted by saying: "We have a tape recorded conversation saying the exact opposite." Torill Sorte replied that she did not know her telephone conversations were being recorded and came up with the excuse that it was Heidi Schøne's "report" to the police which stated that Heidi Schøne had spoken to the Appellant's mother and there were some "rumours" of the Appellant being put in a mental hospital and it was this report from Heidi that was "the more accurate account" of the Appellant's incarceration in a mental hospital. The tape was to be played the next morning in court with Torill Sorte if we called her to attend.

55. On the same evening of 16 January 2002 the Appellant's lawyer Stig Lunde called Torill Sorte who told him that the 22 April 1996 conversation was followed by another conversation that she had with the Appellant's mother who said that the Appellant had after all been treated in a mental hospital. The Appellant told Stig Lunde that this was a total lie by Torill Sorte as he had never been a treated in any mental hospital. By this time it was 10pm and Stig Lunde said it was too late to call Torill Sorte to be cross-examined next day and that it would look very bad for the Appellant if she swore on oath that his mother had made a complete U-turn to say that he had after all been a patient in a mental hospital.

56. The tape was played in court the next morning.

57. A 22 January 1997 Witness statement in Norwegian from Torill Sorte was given to the Drammen Court three days before the Appellant's civil libel trial which began on 16 January 2002. Torill Sorte referred to it in court. The Appellant had it translated into English after he returned to the UK. The relevant words from Torill Sorte at (A/20/239 last paragraph and overleaf at 240) are:

"The author has also been in touch with El Divany's [sic] mother. She is an elderly woman [62 in fact] who has given up trying to help her son. She says he is sick and needs help. This is something they have always struggled with and on one occasion he was admitted for treatment. His mother could not cope with all the trouble again and therefore just lets him carry on.

Other girls have also been harassed by El Divany [sic] and it was in connection with this that he was admitted for treatment."

This Witness statement is at complete variance with the reality of events as per the recorded telephone conversations at (A/21/244-280) that the Appellant had with Torill Sorte from 1996 to 1998 which the learned judge was given for the hearing. Sorte did not know she was being recorded and the conversations completely contradict what she has said in her Witness Statement. This should have been acknowledged by the learned judge.

58. Letter from Appellant's mother to Judge Anders Stilloff dated 22 January 2002 at (B/4/507-509) declaring Torill Sorte's allegation an "outrageous lie".

59. Dagbladet online national newspaper article of 20 December 2005 at (B/13/555):

"The terrorising continued right up to 1992. The man was then committed to a psychiatric hospital in the UK. A Norwegian police official who investigated the case explained later that it was his mother who had him committed… When he came out again two years later it carried on worse than ever."

60. Dagbladet national tabloid front page story of 21 December 2005 and under the following sub-heading at (B/14/563):

Committed

The terrorising continued right up to 1992. His mother then arranged for him to be committed to a psychiatric hospital in the United Kingdom. When he came out again two years later he was worse than ever."

61. Letter dated 3 September 2002 was sent to investigating judge John Morten Svendgard from the Appellant regarding Torill Sorte's perjury in January 2002.

62. Judge Svendgard called the Appellant's mother and asked her why she rang Torill Sorte. Appellant's mother said she never rang her but spoke to her only when her son called her to the phone in the course of a recorded conversation he was having with Torill Sorte to deny that she had ever tried to put him in a mental hospital.

63. Special Invesigation Authority in Oslo (SEFO) report dated 10 January 2003 signed by Judge Svendgard:

"SEFO had been in contact with the Complainant's mother and the Complainant's mother denied to the undersigned that she said anything like the subject of the complaint stated in her own report and in Court. The case appears to be one party's word against the other's as far as this is concerned, and further investigation with a possible interview with the complainant's mother cannot be expected to clarify this situation sufficiently for it to be possible to institute a prosecution for making a false statement."

64. Fax from Appellant to Judge Svendgard dated 12 April 2003 at (B/8/526) questioning judge's refusal to take matter further in the face of overwhelming evidence.

65. Letter from Appellant to his family doctor dated 12 April 2003 at (B/7/521-524) relating the Norway saga and asking GP to write a 'To Whom it May Concern' letter explaining that the Appellant has never been treated or incarcerated in a mental hospital.

66. Letter from family doctor dated 22 April 2003 at (B/7/525) explaining that the Appellant's medical records show categorically that he has never had treatment in a psychiatric hospital.

67. Appellant's appeal dated 25 April 2003 against Judge Svendgard's decision not to recommend prosecution of Torill Sorte, when judge was sent a copy of Appellant's family doctor's letter of 22 April 2003.

68. Oslo Public Prosecutor's office decision dated 27 February 2003 at (B/6/519-520) only received on 29 April 2003 when Appellant's appeal for Torill Sorte to be prosecuted was dismissed due to "lack of evidence of legal wrongdoing" of Torill Sorte.

69. Appellant appealed against above decision.

70. Oslo Public Prosecutor's office decision dated 15 July 2003 at (B/11/547) rejecting appeal on following grounds:

"The report regards a testimony given by Sorte to Drammen District Court in January 2002 where she explained that the plaintiff's mother, during a telephone conversation, told her that

the plaintiff had been hospitalized at a mental clinic. The plaintiff's mother has informed Sefo's chief executive that she has never said this. The disputed information is dealt with in the reported person's own report of January 22 1997, and the telephone conversation might possibly have taken place before this date. There are conflicting statements and based upon the existing information there is evidently no evidential foundation to charge for perjured statement, nor is there any foundation for assuming that further investigation will reveal information of vital importance to the prosecution. Consequently the appeal is dismissed."

71. Appellant's response to Public Prosecutor, Anne Grostad, dated 1 September 2003 at (B/11/546) accusing her of a cover up as there was overwhelming evidence to enable a prosecution.

72. Norwegian Bureau for the Investigation of Police Affairs report dated 19 June 2007 at (B/20/614-619) accompanied by covering letter dated 28 June 2007 by Deputy Director Johan Martin Welhaven [who on 16 September 2011 was appointed Chief of Police for Vestoppland District in Norway] into Appellant's complaint against Dagbladet and Eiker Bladet newspapers for promoting religious hatred by calling the Appellant "a Muslim" which in the case of Dagbladet produced the hate emails referred to Interpol and complaint against Torill Sorte for having given false information to these newspapers that the Appellant had been in a mental hospital for two years and was "clearly mentally unstable".

Johan Martin Welhaven concluded in his report at (B/20/616):

"With respect to the comment to Eiker Bladet that Diwany is 'clearly mentally unstable' we consider it neither punishable as negligence nor defamatory. We here refer to the contents of Diwany's website and the other facts of the case.

Decision
The case against Police Inspector Torill Sorte, Dagbladet and Eiker Bladet will be dropped as there are no reasonable grounds for investigating whether any punishable offences have been committed."

73. Appellant's appeal dated 12 July 2007 at (B/20/620-621) which letter is produced in full below:

For the attention of Johan Martin Welhaven
Spesialenhaten For Politisaker
2 PAGE FAX AND POST

12 July 2007

Dear Mr Welhaven,

Dagbladet, Eiker Bladet and Torill Sorte

I received yesterday your letter dated 28th June 2007 and please accept this letter to you as my appeal against your decision on all counts.
I note that your department have purposely not returned my calls, in keeping with the usual cover up that precedes all your police investigations into my complaints.
I note also from your decision that you have not spoken to Morten Øverbye, the journalist with Dagbladet who wrote those stories on me on 20th and 21st December 2005. If you had then he would have confirmed to you that Police Officer Torill Sorte was the source of the (false)

information which led him to print that I had been in a mental hospital for 2 years. As this is clearly not the case, then Torill Sorte is an abject liar and has purposely given false information to the newspapers to help blacken my character. Morten Øverbye himself, as you will see from the transcribed telephone conversation I had with him on 12th May 2007, all of which can be read on my website, has told me that, presuming the fact that I have never been in a mental hospital to be correct, then Torill Sorte is a liar. The whole conversation is on tape ready to be sent to you. But speak with him first.

In particular you yourself are in dereliction of duty for not speaking to Morten Øverbye or Torill Sorte or indeed myself to obtain clarification and certainty as to the facts.

Your personal opinion that Eiker Bladet, quoting Torill Sorte, are correct to call me "clearly mentally unstable" is an indication of your complete bad faith and bigotry in this investigation. You say that my website and other facts in the case support the allegation that I am "clearly mentally unstable." You do not mention which facts and what in particular in my website supports your belief. Reasons must be given. The fact is that if someone like me writes certain home truths about the Norwegian system that upsets Norwegians, then automatically the offender is "mentally ill". This approach is an age old inbred Norwegian trick. And it is probably the reason why the British authorities have not co-operated with your police in any way over your ardent desire to have my website shut down. In England we call it freedom of speech. Your Police authority's dirty tricks to get me prosecuted and fined mean nothing to anyone over here. What you people have done to me is unforgivable and your people's perverted actions must continue to be exposed on the internet.

Dagbladet, in their articles on me have specifically mentioned my religion and coupled this with slanderous allegations which resulted in those many emails denigrating me as a Muslim and the religion of Islam. Dagbladet have therefore clearly incited religious hatred and it is just another reflection on your inbred mentality that you cannot accept this. The British Police accept that those emails are in the nature of a hate crime and it is deceitful of Interpol Norway (composed of partisan Norwegians) to lie to Interpol London on this matter. That is why I have asked Interpol London to request Interpol Norway to reassess the matter with clarification and explanation.

Please also understand that as Torill Sorte is quite clearly a liar and perjurer then it is my absolute right to have the freedom of speech to say this on a website. It is not harassment of her. Just as I have the same right to express my side of the story on the mental patient Heidi Schøne. You will see in any case I have support for my views from others whose contributions are quoted on my website. You people establish a whole series of falsehoods and build on them to create a sick fantasy. The world deserves a website such as mine to see the scale of bigotry and hatred that exists in your country. I look forward to hearing from you on this appeal.

Yours sincerely,
Farid El Diwany

74. Appellant's letter of 18 July 2007 to Johan Martin Welhaven at (B/20/623-626) enclosing disc of recorded telephone conversation with Dagbladet journalist Morten Øverbye calling Torill Sorte, "…a liar. That's a no-brainer."

75. Reply of Johan Martin Welhaven dated 17 August 2007 at (B/20/628-632):

"The Special Unit sees no reason to reconsider the prosecution decision on the basis of what is stated in the appeal."

76. Memorandum of Response from Director of Public Prosecutions, Anne Grostad dated 5 November 2007 at (B/20/633-634) saying: "No grounds have been found for reversing decision not to proceed with case."

Learned judge wrong not to record Appellant's explanation for other extracts she quoted from Norwegian judgements in the Appendix to her judgement beginning at (A/3/68).

77. (a) Regarding the extract at (A/3/69) entitled:

(II) 11 FEBRUARY 2002: DISMISSAL BY THE DRAMMEN DISTRICT COURT OF THE CLAIMANT'S DEFAMATION CLAIM AGAINST MS SCHONE

there are a number of 1995 postcards sent by the Appellant to Heidi Schøne quoted to indicate "harassment". But it was not gratuitous. The 27 February 1995 postcard at (A/3/70) was written when the Appellant had spoken to Runar Schøne who made some crass remarks to the Appellant in his very poor English, when the Appellant was speaking to Heidi Schøne about past events in Norway which included a 1990 allegation that she thought the Appellant wanted to "kidnap" her son and over which the Appellant had long wanted an explanation for. The 7 and 8 April 1995 postcards at (A/3/70) were written when the Appellant was spoken to in such lewd and abusive terms by Heidi Schøne that he thought that she had reverted to her old sexualised self and so decided to remind her of the result of her disastrous sexual past. The 7 and 8 April 1995 postcards were written after phoning Heidi Schøne to protest when the Appellant had just discovered by receipt of his Bergen lawyer's letter of 28 February 1995 at (A/14/220) of Heidi Schøne's 1986 allegation of "attempted rape" to the police in Bergen which was the first time the Appellant had heard of this allegation. Even though it was an old allegation it was still a shock as it was a real attempt to ruin the Appellant and so duplicitous an act, as in 1988 she had begged for the Appellant's and his best friend's help to restrain her abusive boyfriend Gudmund Johannessen, (which she admitted to in Drammen Court in 2003). Also the Appellant was told by Runar Schøne (Heidi Schøne's husband): "Allah doesn't exist. Come to Jesus only he can save you" followed by a five minute speaking in tongues rant which in court in 2003 he admitted to as "babbling" as per Appellant's report of proceedings at (A/29/410 in third paragraph). At the 13 January 2002 libel trial in Norway Runar Schøne, the ex-husband of Heidi Schøne compared the Appellant to Osama Bin Laden as recorded in the Appellant's record of the proceedings at (A/29/410 in the fourth paragraph) and that he would have liked to have gone to London to "kill" the Appellant at (A/29/410 in the fifth paragraph).

78. The Appellant was so angry with Heidi Schøne's attitude and her lack of an apology for the false "attempted rape" allegation that he did send an account to several of her neighbours of her own past sexual history, which a local newspaper got hold of, could not believe was true, especially as Heidi Schøne denied it all, resulting in a very partisan press calling the Appellant "insane" and "Muslim" etc. It took a further seven years for a Norwegian court to vindicate the Appellant by ruling that his account of Heidi Schøne's life history was more or less correct as at (A/3/75 in the last sentence of the fifth paragraph). But as soon as the newspapers came out in May 1995 and they refused to print a response the Appellant contends that he then had total justification for informing the public of his accuser's past history. The newspapers continued their diatribe so the Appellant continued his campaign of informing the public of his accuser's lurid past.

79. The letter of 17 November 1997 at (A/3/73) to Heidi Schøne was written by the Appellant the minute he was told by Torill Sorte that Heidi Schøne still maintained that the Appellant

had threatened to "kill" her son "in a letter" even though no letter had been found after extensive police enquiries over the previous year. Moreover the letter of 17 November 1997 did not reach Heidi Schøne, as the Appellant well knew it would not, as all her post was diverted by the police to stop other members of the public writing in to her enquiring as to the Appellant's information campaign. The Appellant wrote the letter to let the police know his frustrations. The police put it in evidence to the court as if it had actually been received by Heidi Schøne. The Appellant happened to like Heidi Schøne's son very much indeed and later she told the Drammen Court that the Appellant had told her that her son was "a bastard and bastards don't deserve to live" which the Norwegian judge noted in his 2002 judgement - but as the Appellant denied ever saying this then it should not have been mentioned in the judgement. The Appellant pointed out to Heidi Schøne in his letter the irony of her situation in that she had actually killed her own unborn children (by abortions). Heidi Schøne then in 2005 in a front page article in Dagbladet newspaper article said that she had a young son the Appellant thought "should die" at (B/14/561 in the last paragraph). She was, in the Appellant's opinion, a criminal delinquent. To be denied the right to put the Appellant's side of the whole story on a website is against his Article 10 ECHR rights. The fact is that his website leaves out nothing and mentions everything that is said against him with one important saving – that no where on the actual website was the Appellant's name mentioned. The website is a comprehensive record of events and the placement of articles on it from the Norwegian newspapers is hardly meant to indicate that the Appellant endorses the allegations made in them.

80. It is the Appellant's above account that should be related in the judge's Appendix to her judgement to give an accurate picture of the reality of the events, which clearly the Norwegian judgements had failed to do. If the learned British judge is going to include extracts from Norwegian judgements then as the allegations are so serious it should be made quite clear, by including extracts from the Appellant's appeal papers to the Norwegian courts, that the Appellant did not for one moment think that the judgement should be allowed to stand as being a huge miscarriage of justice. It is only fair that the Appellant's side of the story is accounted for in the judgement which is well within the spirit of Rule 45 of the Renvoi doctrine.

81. The learned judge in choosing to quote particular passages from the Norwegian judgements in the Appendix to her judgement is thereby engaging in an assessment of the merits of the Norwegian litigation. In doing so she has ignored her duty to comment on the more obvious defects in the way the Norwegian judgements were arrived at: that they were not made in accordance with the evidence as the judges arrived at mistaken legal and factual conclusions. The learned British judge is under a duty to ensure that the Appellant is not unfairly prejudiced by her use of clearly misleading passages from Norwegian judgements in the Appendix and other quotes elsewhere in her judgement.

The learned judge was wrong to state at paragraph 33 of her judgement (A/3/59) that the Appellant was at fault for not writing a letter before claim to Torill Sorte.

82. One does not have to write a letter before claim if it serves no purpose. Torill Sorte would have ignored the letter. For one who lies so blatantly that the Appellant has been a patient in a mental hospital does anyone imagine that a letter before claim would achieve anything in the way of a settlement of the claim at an early stage? A letter before claim to Roy Hansen at (B/22/646-648) was sent.

The judge should explain exactly why the Appellant thought the ECHR was biased regarding his Application in 2004 against Norway as per the quote in her judgement in paragraph 42 at (A/3/61)

83. The Appellant's 2004 application to the ECHR regarding a libel claim over the 1998 Norwegian newspaper Drammens Tidende was rejected at the first stage in 2006 with no reasons given. Having a Norwegian judge at Strasbourg vote for Norway against the Appellant in his claim against Norway does raise the question of bias. The Norwegian judge was working in Norway almost the entire time that the newspapers were doing stories on the Appellant. He would not like reading in an Application that his own country had serious procedural legal defects and undoubted religious prejudice. The Application to the ECHR related to a 1998 newspaper article and Heidi Schøne's part in it and preceded the 2005 and 2006 newspaper allegations made by Torill Sorte repeated in English in 2009 on the internet. For the learned judge to quote that the Appellant thought the ECHR was "biased" without a word of explanation trivialises the matter and demeans the Appellant.

Learned judge was too casual in her analysis of allegation of harassment accusations in Particulars of Claim.

84. The words used in the Eiker Bladet internet article, "harassment" and "harassed" (paragraph 4 a) in the Particulars of Claim at A/4/90), gives no clue to readers anywhere that the alleged 'harassment' was in fact a large information campaign of the Appellant's in response to vast newspaper provocation. A minor campaign really when compared to the tens of thousands of newspapers sold reviling the Appellant. And a website (started five years after the first newspaper articles came out) initiated in order to combat vile mental, sexualised and religious abuse instigated by a registered mental patient - Heidi Schøne, a duplicitous police officer - Torill Sorte and a bigoted, third-rate press over a 12 year period, contravening all ethical norms of civilised behaviour and any rights to freedom of speech. Likewise for the two malicious prosecutions and convictions obtained against the Appellant under the Norwegian Penal Code in 2001 and 2003 for this leaflet 'harassment' and website 'harassment'.

85. The 'harassment' prosecution of 2001 was only initiated by the Norwegian police after the Appellant issued his libel claim in 2000. Up until then Heidi Schøne wanted to drop the 'case' as detailed in a recorded telephone conversation between Torill Sorte and the Appellant in March 2006 at (A/21/246 as per the eighth listed quote "put the case away"). It was only on the insistence of the Appellant that Torill Sorte induced Heidi Schøne go to the police station for questioning in 1996. Heidi Schøne, it is clear from the evidence, wanted out for a whole year. The Appellant wanted Heidi Schøne questioned and charged with attempting to pervert the course of justice. The police, it seems, regarded it as an affront that an outsider had the nerve to hit back and sue a Norwegian newspaper.
Why not prosecute in 1996 or 1997 if they had the alleged reservoir of evidence of 13 years of harassment and sex-terror?
Why were there no complaints from Heidi Schøne regarding the alleged 13 years of sex-terror, death threats to all and sundry, obscene phone calls and letters until the end of the 13 year period? The evidence for which was only her uncorroborated word.
Will Torill Sorte be able to defend that as classical harassment with the meaning the English readers interpret the word 'harassment' coupled with her tainted evidence given in obtaining the first conviction, in front of a British jury? The Appellant submits not.
Will a jury in England be persuaded that a campaign by one man against a whole country's press was really harassment of Heidi Schøne and Torill Sorte, instead of a right to reply and freedom of speech? The Appellant submits not.

Will a British jury accept that a vile, sexualised, religious hate campaign directed against the Appelant by Norwegians in 2005 instigated by Torill Sorte and Heidi Schøne and Dagbladet (saying for example "Sick Devil. Go fuck Allah the Camel" and "When you eat pigs do you lick a pig's arsehole clean before digging in?") was justified as a reasonable response to the Appellant's protests of innocence? Which Interpol was asked to investigate by the Essex Police Hate Crimes Unit. The Appellant submits not.

In paragraph 68 of her judgement at (A/3/65) the learned judge was wrong to record that the Appellant voluntarily acknowledged guilt for having a website when convicted in Norway for harassment.

86. As explained in the Appellant's letter of correction to the learned judge dated 9 August 2011 at point 15 at (B/28/687) there was a stark choice given to the Appellant (by way of ambush once the civil trial had finished in October 2003) by the Norwegian police prosecutors of either pleading guilty to website harassment and throwing himself at the mercy of the judge who would be "likely" to let him leave the country, or going straight to prison for website harassment. Under obvious duress the Appellant pleaded guilty after a sleepless night in the cells. A voluntary U-turn by the Appellant would make no sense after all the trouble he took to litigate in Norway. The Appellant only expressly "acknowledged guilt" "freely" under duress in the Magistrate's Court in Norway to avoid an immediate custodial sentence of 8 months in prison. Such a conviction cannot be recognised under Rule 44 of the Renvoi doctrine.

It was wrong of the judge not to acknowledge that Torill Sorte had withdrawn one of her libels as per the one mentioned in paragraph 4 b) of the Appellant's Particulars of Claim or to acknowledge that the Respondents skeleton arguments recognised the fact of amicable relations until 1996 which conclusively undermined the Norwegian civil judgement of 2003.

87. It was stated in paragraph 2 of the Appellant's Skeleton Arguments dated 14 March 2011, that the Appellant had in fact received many loving letters from Heidi Schøne from the time he met her in 1982 (which Torill Sorte omitted to mention in Eiker Bladet's offending article) - see for example the correspondence at (A/7/188-200 & A/8/201-202 & A/9/203-207 & A/10/208-212 & A/11/213-215) (which correspondence Torill Sorte had known about for years) meaning that the Appellant could not possibly have:

"…bothered Heidi Schøne and her family since 1982…" as alleged by Sorte.

Torill Sorte, had in effect withdrawn this libel - referred to in the Particulars of Claim as per paragraph 4. b) - by her comment that, as per paragraph 4 in her Witness Statement dated 2 February 2011 written on behalf of the Ministry of Justice at (B/26/680'B') [and remembering that the Appellant's friendship with Heidi Schøne began in April 1982 and she left back for Norway in June 1982]:

"They became friends. Heidi Schøne and Mr El Diwany corresponded, for some years amicably, after she had left England and returned to Norway."

Sorte's actual words in the professionally translated Eiker Bladet article at (B/15/570) were, in the third paragraph, "plagued Heidi Schøne and her family since 1982…" rather than "bothered Heidi Schøne and her family since 1982…" indicating an alleged very immediate, abrupt and serious level of harassment which Torill Sorte intended to convey to the public started in the very year the Appellant had met Heidi Schøne, 1982. Torill Sorte, deceitfully,

kept this pretence up by her comments to Roy Hansen, whilst knowing of the existence of Heidi's letters to the Appellant. As did Heidi Schøne for twelve years in her comments to the press. Heidi Schøne's letters were much more than 'amicable' in any case, for example in her letter post stamped 22-08-84 at (A/7/188 at start of second paragraph & A/7/194 in the second sentence from top) she says:

'Oh can't you marry two women…What about marrying an Egyptian as well as a Norwegian girl? Marry the Egyptian one first and when you are fed up with each other I'll come over and…'

The content of Heidi Schøne's letters totally contradict her later claims of the Appellant's alleged year in, year out sex-terror and obscene abuse from the time she returned to Norway in June 1982 as she alleged in the press at (A/15/221-227).

Heidi Schøne invited the Appellant to see her at Christmas 1984/5 and stay at her flat in Bergen which he did. She admitted in Court in Norway in 2003 that she had asked him for help in autumn 1988 to restrain the abusive father of her child. The Appellant visited her in Norway in August 1990 when she apologised for causing the Appellant so much hurt due, she said, to being "possessed by demons" followed by her exorcism and becoming a born-again Christian. See a copy of Appellant's letter to solicitor Reg Whittal of Foyen & Bell of Trafalgar Square dated 13 August 1990 at (A/12/216). Heidi sent the Appellant a Christian booklet in October 1990 at (A/13/217-219) in an attempt to convert him to Christianity ("witness you" as she told him) as she wanted to "marry a Christian man more than anything else in the world."

88. In paragraph 9 of the Respondents' Skeleton Arguments dated 14 March 2011 at (B/26/679) it is conceded by Counsel for the Respondents that:

"The nature of the relationship between Mr El Diwany and Ms Schøne appears to have been intermittently amicable until approximately 1996,…"

thus undermining the civil libel judgement in Norway in October 2003 that ruled as true that there had been severe harassment since, it seems, 1982. This supports the Appellants argument all along that there was no 13 years of "sex terror" since 1982 as repeatedly alleged in the Norwegian press and by Heidi Schøne, although the amicable relations had in fact stopped in 1995 just before the publication of the three May 1995 newspaper articles. The Appellant has always claimed that the Norwegian libel judgement was not made in accordance with the evidence and that on the matter of the appeal to the Supreme Court in Norway that court should have given reasons for rejecting the appeal application and in failing to do so was in breach of article 6 of the ECHR which the learned judge should have recognised under Rule 45 of the Renvoi doctrine.

Judgement available on internet reinforces falsehoods

89. When a Google search is done on the Appellant's name the learned judge's judgement of 29 July 2011 comes up on the list so considerably magnifying the damage to the Appellant's reputation.

Grounds of Appeal regarding Claim no. HQ10D02228 against the Ministry of Justice and the Police, Norway

90. The Appellant will not appeal against the substantive part of the judgement regarding the said Ministry as he accepts that he made a fundamental error in not stating in his application

to the Master, when applying for permission to serve out of jurisdiction, exactly why the Ministry was not immune from suit under the State Immunity Act 1978: NML Capital Ltd v Republic of Argentina [2009] EWCA Civ.41. The Appellant, a solicitor, is not a litigator but a non-contentious property lawyer.

91. The Appellant will however appeal against one aspect of the judgement on the issue of state immunity, namely that the learned judge was wrong to rule in paragraph 81 of her judgement at (A/3/67) that:

"…the proceedings do not relate to a commercial transaction or contract at all, but to a claim in libel: see for example, the opinion of Lord Millett in Holland v Lampen-Wolfe [2000] 1 WLR 1573 at 1587."

Lord Millett's said at 1587 at (B/31/714 in the first paragraph at the top of the page):

In my opinion the words "proceedings relating to" a transaction refer to claims arising out of the transaction, usually contractual claims, and not tortious claims arising independently [the Appellant's emphasis] of the transaction but in the course of its performance.

The present case is distinguished from the special facts and reasoning given by Lord Millet at 1587 in Holland v Lampen-Wolfe [2000] 1 WLR 1573 at 1587 on two main grounds:

(a) The Appellant's libel claim did not arise **independently** of the "commercial or professional or other" activity of Torill Sorte (as it did in Holland v Lampen-Wolfe) as the Appellant's claim related to the same commercial etc. activity that the police are always engaged in - being that of exchanging information with the press which information is published and aired in a commercial way. Torill Sorte's false statement to Roy Hansen of Eiker Bladet that the Appellant was "clearly mentally unstable" was part and parcel of the same commercial activity of exchanging information with the press: inseparable in scope and inextricably linked.

(b) The act of supplying the false "clearly mentally unstable" statement to the press was not performed in the exercise of sovereign authority as Police Sergeant Torill Sorte was engaged in a mad frolic of her own unrelated to the normal police activity of explaining police actions to the public.

The State Immunity Act 1978 would then not exempt Torill Sorte's Ministry from suit under the doctrine of vicarious liability. The commercial transaction element was the foundation for the libel claim and the catalyst for it.

This was an entirely academic Claim and application against the Ministry of Justice and the Police, Norway as no judgement can be enforced against the Norwegian government or a ministry. It was more about bringing the case to the attention of the Norwegian government on a matter of vicarious liability for an employee out on a mad frolic of her own.

Appellant's case and Holland v Lampen-Wolfe case compared

92. Mr Lampen-Wolfe, the Defendant, was educational services officer for the Department of Defence of the USA and located at a military base in the UK.
Ms Holland, the Claimant, sued for libel relating to a Memorandum written by Lampen-Wolfe in which very critical comments were made about Ms Holland's performance of her duties as a teacher of US servicemen/students at the military base, following complaints from the

students about Ms Holland's behaviour.

Ms Holland made a claim for libel against the United States government under the "commercial" transaction head in Section 3 of the State Immunity Act 1978. The context of the case was that of the provision of educational services from a United States university under a commercial agreement with the United States government: Troy State University, an independent public university in Alabama, provided educational courses for military personnel at United States bases in Europe and Asia.

It was decided in Holland v Lampen-Wolfe that the writing of the Memorandum by Mr Lampen-Wolfe was not an "activity" so as to bring the proceedings within Section 3(3) (c) of the State Immunity Act 1978. It was completely separate from the commercial activity of supplying educational services.

In the Appellant's case the "commercial" activity was the passing of information between the police in Norway and the press and media both in commercial and professional capacities to facilitate the selling of newspapers and radio news and during the course of which libellous/slanderous statements were made by Torill Sorte to journalist Roy Hansen.

Lord Millett said at (B/31/710) the following in Holland v Lampen-Wolfe:

The State Immunity Act 1978

The background to the State Immunity Act 1978 is well known. It is described at length in the speech of Lord Wilberforce in I Congreso and I need not repeat it in any detail. Until 1975 England, almost alone of the major trading nations, continued to adhere to a pure, absolute doctrine of state immunity. In the 1970's, mainly under the influence of Lord Denning M.R., we abandoned that position and adopted the so-called restrictive theory of state immunity under which acts of a commercial nature do not attract state immunity even if done for governmental or political reasons. This development of the common law was confirmed by your Lordships' House in I Congreso in relation to acts committed before the passing of the Act of 1978.

In the meantime Parliament enacted the Act of 1978, which gave statutory force to a restrictive theory of state immunity. It did this by means of a number of statutory exceptions to a general rule of state immunity. Thus section 1 states the general rule: a state is immune from proceedings in the United Kingdom except as provided in the provisions of the Act which follow. Part I of the Act contains detailed exceptions to the rule; these are cases where a state enjoys no immunity. There is no exception in respect of actions for defamation. The exceptions relied upon in the present case are contained in section 3, which is concerned with commercial transactions and contracts to be performed in the United Kingdom. It provides:

"3(1) A state is not immune as respects proceedings relating to—

(a) a commercial transaction entered into by the state; or

(b) an obligation of the state which by virtue of a contract (whether a commercial transaction or not) falls to be performed wholly or partly in the United Kingdom . . .

. . .

(3) In this section "commercial transaction" means

(a) any contract for the supply of goods or services;

(b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation; and

(c) any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character) into which a state enters or in which it engages otherwise than in the exercise of sovereign authority; but neither paragraph of subsection (1) above applies to a contract of employment between a state and an individual."

In my opinion, section 3(1)(a) is not satisfied because, although the contract between the University and the United States Government is a contract for the supply of services and therefore a commercial contract within the meaning of the section by virtue of section 3(3)(a), the present proceedings do not relate to that contract. They are not about the contract, but about the memorandum. The fact that the memorandum complains of the quality of the services supplied under the contract means that the memorandum relates to the contract (which is why section 16(2) is satisfied.) But it does not follow that the proceedings relate to the contract, which is what section 3(1)(a) requires. In my opinion the words "proceedings relating to" a transaction refer to claims arising out of the transaction, usually contractual claims, and not tortious claims arising independently of the transaction but in the course of its performance.
For the same reason I doubt that the writing and publication of the memorandum constituted an "activity" of an official character in which the United States engaged through the medium of the respondent, so as to bring the proceedings within section
3(3)(c). The context strongly suggests a commercial relationship akin to but falling short of contract (perhaps because gratuitous) rather than a unilateral tortious act. But even if the respondent's acts of writing and publishing the memorandum can be brought within the opening words section 3(3)(c), they are excluded by the concluding words of the subsection since, for the reasons I have given, they were performed in the exercise of sovereign authority.

The detail: Commercial transaction under Section 3(3)(c) State Immunity Act 1978

93. Regarding the Ministry of Justice's application to set aside, the Appellant refers to the State Immunity Act 1978 (''the 1978 Act'') at (B/31/730-736) and Section 3(1)(a) which says that a State is not immune as respects proceedings relating to a commercial transaction entered into by the State. Section 3(3)(c) contains a very wide definition of ''commercial transaction'' as being ''any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character) into which a State enters or engages otherwise than in the exercise of sovereign authority.'' It can be a transaction entered into by the state with a third party. It is not a requirement that the transaction is between the state and the claimant.

94. The acts of policewoman Torill Sorte, an employee of the state, are regarded prima facie as sovereign acts under the 1978 Act and also as the Ministry's (state's) acts under the doctrine of vicarious liability. If Torill Sorte is not immune under the 1978 Act, as per the arguments referred to below, then neither is her employer, the Ministry of Justice and the Police.

95. The Ministry of Justice, through Torill Sorte, was certainly engaged in an ''activity'' as required by the 1978 Act in that Torill Sorte spoke to the press repeatedly about the Appellant, ostensibly in the course of her police duties, which activity was with commercial organisations - the media - which sold newspapers and transmitted radio interviews. There was thus a ''commercial'' element or connection as required by the 1978 Act. There was also a ''professional'' element as required by the 1978 Act as what else but ''professionals'' engaged in a serious vocation do police officers regard themselves as? Torill Sorte was engaged in a professional business, giving specialist advice and supplied official information (albeit gratuitously) to the media which sold their stories for money. Sorte's activity in the present case was ostensibly part of her job for which she did receive a salary from her employer. She is in effect paid to talk to the media. Public relations/professional relations engagement by the police with the media must be seen as a commercial activity or one of a ''similar character'' just as it is for any private public relations/information supply organisation. Torill Sorte was engaged in a personal public relations exercise in which she hoped to convince the public that her accuser, Farid El Diwany, was nothing other than a complete madman for accusing her of being dishonest and a liar.

Torill Sorte was not engaged in an act of sovereign authority. She could not avail herself of the defence of entering into a commercial transaction in the exercise of state sovereignty

96. The exercise of state authority means the exercise of legitimate state power or sovereignty. However, Police Officer Torill Sorte's exercise of state sovereignty (if at all) in ostensibly utilising police powers, by talking to journalist Roy Hansen about the Appellant, was not legitimate; it was ultra vires. Her powers were not exercised under any code of conduct or furtherance of police powers, as the sole reason for her response to the newspaper Eiker Bladet was in order to justify a previous act of gross misconduct unconnected to any police investigation. Torill Sorte did not further any of the noble police objectives of police work and investigations in speaking to the press. Torill Sorte did the exact opposite by telling the press that the Appellant was ''clearly mentally unstable'' in response to the Appellant having called her a ''liar, dishonest and corrupt'' but omitting to say that the reason the Appellant had called her this was because she falsely stated in Dagbladet and in earlier sworn testimony that the Appellant had been incarcerated in a mental hospital (for two years as told to Dagbladet on 20 and 21 December 2005).

97. Following the Appellant's comments on Norwegian newspaper website forums and his own website that Torill Sorte was a liar for her false 1997 mental hospital allegation, she, in her own words had to ''ask to be taken off the case because I myself wanted to report the man'' (see Dagbladet newspaper 21 December 2005 at B/14/565). She was then free to speak to three newspapers (Dagbladet, Drammens Tidende and Eiker Bladet) and the local radio station of NRK (Norwegian Broadcasting) in a private capacity all of which was published and aired in late 2005 and 2006 in Norway. The Appellant was, as usual, ignored by the Norwegian media.

98. Torill Sorte was not in fact acting on any police case involving the Appellant as she states she had asked to be ''taken off the case'' at (B/14/565) and secondly any ''case'' that may have existed was that old chestnut of the Norwegian press and police calling the Appellant's right to reply to national vilification campaigns ''harassment''. Torill Sorte was thus, in relation to the Appellant's claim, engaged in a private, personal act (in speaking to Roy Hansen the journalist at Eiker Bladet) ''otherwise than in the exercise of sovereign authority'' and so neither she nor the Ministry of Justice are immune from libel proceedings under the 1978 Act. She represented herself as a police officer to the press. Her official behaviour was not legally sanctioned (see Controller & Auditor-General v. Sir Ronald Dawson [1996] 2 NZLR 278 CA). When one looks at the substance of the information supplied by Torill Sorte and the factual background that gave rise to her interviews with three media outlets in 2006 the activity did not have the official sanction of the Norwegian state and was not a permissible state action. It was unrelated to good policing by the state.

99. In telling Eiker Bladet newspaper that the Appellant was ''clearly mentally unstable'' and had harassed her personally Torill Sorte, although speaking as a police officer, was not acting under any duty to further police work or police aims. She was not speaking to the press on any matter relating to a police investigation on the Appellant as her comments related purely to the Appellant's very public accusations that she was ''a liar, dishonest and corrupt'' for falsely saying that the Appellant had spent two years in a mental hospital in the UK and for similar mental hospital comments in her 1997 witness statement and on oath in court in 2002 and 2003.

Farid El Diwany

Date: 26 October 2011

IN THE HIGH COURT OF JUSTICE Claim No. HQ10D02228
QUEEN'S BENCH DIVISION
BETWEEN:
FARID EL DIWANY
Claimant
and
THE MINISTRY OF JUSTICE AND THE POLICE, NORWAY
Defendant

IN THE HIGH COURT OF JUSTICE Claim No. HQ10D02334
QUEEN'S BENCH DIVISION
BETWEEN:

FARID EL DIWANY
Claimant
and
TORILL SORTE (1)
ROY HANSEN (2)
Defendants

SKELETON ARGUMENTS OF FARID EL DIWANY FOR 16.03.11 HEARING

I, Farid El Diwany, Solicitor, of [....] will say:

I am the Claimant in both these related cases and refer to my Witness Statements dated 4 January 2011 and 7 March 2011 which contain the detail of my arguments. I am a litigant in person. I am a solicitor but I am not a litigation solicitor and apologise for any inconvenience that I cause the Court because of this.

Please note that all my transcribed conversations (a) with Torill Sorte as per exhibit FED 5 and (b) with Morten Øverbye of Dagbladet newspaper as per exhibit FED 15 can be listened to on my website under www.norwayuncovered.com/sound.

1. Torill Sorte and Roy Hansen claim

The Court's primary consideration in considering whether to grant Torill Sorte's application to set aside my default judgement of 18 November 2010 is – Has she a defence with a real prospect of success? I submit not, when the following points are taken into account:

2. One libel withdrawn by Torill Sorte

Torill Sorte did not mention in Eiker Bladet's offending article, that I had in fact received many loving letters from Heidi Schøne from the time I met her in 1982 - see for example the correspondence in exhibit FED 7 with my Witness Statement of 4 January 2011, (which correspondence Torill Sorte had known about for years) meaning that I could not possibly have:

"…bothered Heidi Schøne and her family since 1982…" as alleged by Sorte.

I see that Torill Sorte, has now in effect withdrawn this libel - referred to in my Particulars of Claim (see exhibit FELD 33 in File 2) as per paragraph 4. b) - by her comment that, as per paragraph 4 in her Witness Statement dated 2 February 2011 written on behalf of the Ministry

of Justice [and remembering that my friendship with Heidi began in April 1982 and she left back for Norway in June 1982]:

"They became friends. Heidi Schøne and Mr El Diwany corresponded, for some years amicably, after she had left England and returned to Norway."

Sorte's actual words in the professionally translated Eiker Bladet article (as per exhibit FELD 1) were, in the third paragraph, "plagued Heidi Schøne and her family since 1982…" rather than "bothered Heidi Schøne and her family since 1982…" indicating an alleged very immediate, abrupt and serious level of harassment which Torill Sorte intended to convey to the public started in the very year I had met Heidi, 1982. Torill Sorte, deceitfully, kept this pretence up by her comments to Roy Hansen, whilst knowing of the existence of Heidi's letters to me. As did Heidi Schøne for twelve years in her comments to the press. Heidi's letters were much more than 'amicable' in any case, for example in her letter post stamped 22-08-84 (see exhibit FED 7) she says beginning on the fifth page, second line and then tenth line:

'Oh can't you marry two women'
'What about marrying an Egyptian as well as a Norwegian girl? Marry the Egyptian one first and when you are fed up with each other I'll come over and…'

The content of Heidi's letters totally contradict her later claims of my alleged year in, year out sex-terror and obscene abuse from the time she returned to Norway in June 1982. As at October 2003 in time for the Court of Appeal Norway libel trial she herself was a registered mental patient on a 100% disability pension due to 'an enduring personality disorder' initiated in her adolescence (as per her psychiatrist) and had accused her whole family of abusing her to varying degrees.

In 19 articles in the Norwegian press on me from 1995-2006 Heidi was described as a completely normal woman. My word was ignored all along.

3. No defence or substantiation offered for "clearly mentally unstable" libel

No defence or justification or substantiation has yet been offered by Torill Sorte (or the Ministry of Justice) for the most serious libel spoken by Torill Sorte referred to in paragraph 4.d) in my Particulars of Claim (see exhibit FELD 33 in File 2) namely:

"The man is clearly mentally unstable…"

This allegation must be read in the light of Torill Sorte's completely fabricated allegation made in Dagbladet newspaper three weeks earlier that I had spent "two years in a mental hospital in the UK." See the RWS professional translation (dated 17 January 2006) for the 21 December 2005 Dagbladet article entitled 'Sexually pursued by mad Briton' as per Exhibit FED 1 where on the second page, 7th paragraph, the words written were:

"The terrorising continued right up to 1992. The man was then committed to a psychiatric hospital in the UK. A Norwegian police official who investigated the case [Torill Sorte] explained later that it was his mother who had him committed.

When he came out again two years later, it carried on worse than ever."

The Dagbladet journalist Morten Øverbye confirmed to me in a recorded telephone

conversation in 2007, see exhibit FED 15 (the disc for which I enclose) that Torill Sorte was the source for the 'two years in a mental hospital' allegation, as per the 9th and 10th paragraphs on page 1. Morten Øverbye also made it quite clear that if I had not been in a mental hospital then Torill Sorte was a liar as per the 4th paragraph on page 2.

In my protests to the Norwegian public I vigorously denied this wicked lie from Torill Sorte and an earlier one from 1997 by Torill Sorte that I had been "put" in a mental hospital. In return Torill Sorte stated to Eiker Bladet that my calling her "a liar and corrupt and dishonest" indicated that I was "clearly mentally unstable".

How will a trial in the High Court in London help Torill Sorte convince a jury that I have been in a mental hospital for two years, or at all, and am "clearly mentally unstable" for denying this, when the Court has my family doctor's letter (see exhibit FED 2) stating categorically that I have never been a patient in a mental hospital?

Will Torill Sorte even turn up to a trial knowing that she will be cross-examined on her repugnant lie that she told a national newspaper in Norway that I had been a mental patient in a hospital in the UK for two years?

She should have replied by now by way of substantiation to this 'mental hospital' point in my Claim and cannot be allowed to wait until a trial to come up with an answer that will never be explained away in any case.

4. Roy Hansen is not defending my Claim

The Court is in an anomalous position in that Roy Hansen, a co-defendant, has not defended my claim or put in an application to set aside. It follows that my judgement of 18 November 2010 against him on the same facts will stand. It will be necessary for both defendants to defend my claim in order to achieve parity and as this is not possible now Torill Sorte's application to set aside should not be allowed.

5. Harassment and convictions for harassment

The words used in the Eiker Bladet internet article, "harassment" and "harassed" (paragraph 4 a) in my Particulars of Claim), gives no clue to readers anywhere that my 'harassment' was in fact a large information campaign of my own in response to vast newspaper provocation in accordance with my right to freedom of speech under Article 10 of the ECHR. See by way of examples exhibit FELD 3 being my so-called Press Release(s) replying to the 1995 Norwegian press assault. A minor campaign really when compared to the tens of thousands of newspapers sold reviling me. And a website (started five years after the first newspaper articles came out on me) initiated in order to combat vile mental, sexualised and religious abuse instigated by a registered mental patient - Heidi Schøne, a duplicitous police officer - Torill Sorte and a bigoted, third-rate press over a 12 year period, contravening all ethical norms of civilised behaviour and any rights to freedom of speech. Likewise for the two malicious prosecutions and convictions obtained against me under the Norwegian Penal Code in 2001 and 2003 for this leaflet 'harassment' and website 'harassment'.

The 'harassment' prosecution of 2001 was only initiated by the Norwegian police after I issued my libel claim in 2000. Up until then Heidi wanted to drop the 'case'. The police, it seems, regarded it as an affront that an outsider had the nerve to hit back and sue a Norwegian newspaper. Why not prosecute in 1996 or 1997 if they had the alleged reservoir of evidence of 13 years of harassment and sex-terror?

Will Torill Sorte be able to defend that as classical harassment with the meaning the English readers interpret the word 'harassment' coupled with her tainted evidence given in obtaining the first conviction, in front of a British jury? I submit not.

Will a jury in England be persuaded that a campaign by one man against a whole country's press was really harassment of Heidi Schøne and Torill Sorte, instead of a right to reply and freedom of speech? I submit not.

Will a British jury accept that a vile, sexualised, religious hate campaign directed against me by Norwegians in 2005 instigated by Torill Sorte and Heidi Schøne and Dagbladet in 2005 (saying for example "Go fuck Allah the Camel" and "When you eat pigs do you lick a pig's arsehole clean before digging in?" as per exhibit FED 6) was justified as a reasonable response to my protests of innocence? Which Interpol was asked to investigate by the Essex Hate Crimes Unit. I submit not.

6. State Immunity Act 1978 for Sorte and Ministry of Justice

Torill Sorte, by her Witness Statement of 2 February 2011 written on behalf of the Ministry of Justice and the Police, Norway in connection with my claim (under Claim number HQ10D02228) against the Ministry, by whom she is employed, is only pleading justified comment and qualified privilege as well as abuse of process. She herself is not pleading a defence of state immunity under the State Immunity Act 1978.
In her other Witness Statement of 2 February 2011 written in connection with my claim against her and Roy Hansen (under Claim number HQ10D02334), Torill Sorte does not plead state immunity. It is, in any case, the Ministry of Justice and the Police, Norway which has to make an application to plead state immunity for their employee, Torill Sorte, in order to be able to set aside, on the grounds of state immunity, my default judgement dated 18 November 2010 against Torill Sorte (as a co-defendant with Roy Hansen).

Torill Sorte's witness statement on behalf of the Ministry of Justice and the Police, Norway means that the Application by The Ministry, dated 22 December 2010 to set aside the Order dated 16 July 2010 by Master Eastman granting permission for service of my claim outside the jurisdiction on the grounds that I have not complied with the State Immunity Act 1978, is in conflict with Torill Sorte's own later Witness Statements given in connection with both of my Claims. If Torill Sorte is not claiming state immunity for herself as a state employee acting as a co-defendant with Roy Hansen or for the state when acting on behalf of the Ministry of Justice, then the Ministry's separate earlier application for state immunity for itself (against my claim for damages for vicarious liability) submitted by Christian Reusch must surely fail.

The Ministry's application to set aside on the grounds of state immunity should not be granted as it has been superseded by Torill Sorte's own separate witness statements wherein she does not plead state immunity for either of my claims. The Ministry is claiming Torill Sorte is the state as she is an employee of the state: that they are one and the same. Torill Sorte in her witness statement regarding my claim against her and Roy Hansen is not claiming she is the state. Either she is the state for both claims or for neither. Under the doctrine of vicarious liability Torill Sorte's acts are seen as the acts of her employer, the Ministry of Justice.
The Ministry and Torill Sorte are inseparable for these purposes and if Torill Sorte, in my claim against her and Roy Hansen, is not claiming immunity under the State Immunity Act 1978 then nor can the Ministry of Justice and the Police.

Torill Sorte is not a 'separate entity' under Section 14 of the State Immunity Act 1978. So much

is clear from the statement in paragraphs 3 and 4 of Christian Reusch's witness statement on behalf of the Ministry of Justice dated 22 December 2010 and from the case of Propend Finance v Sing (1996-1997) 113 ILR 611 which concerned a police officer and his employer relationship.

Torill Sorte has, in effect, waived the Ministry's own claim to state immunity by pleading fair comment and qualified privilege in her witness statement given on behalf of the Ministry of Justice and the Police.

7. Commercial transaction under Section 3(3)(c) State Immunity Act 1978

In the alternative, regarding the Ministry of Justice's application to set aside and in addition to my comments in paragraph 14(a) of my earlier Witness Statement I refer to the State Immunity Act 1978 (''the 1978 Act'') (copy enclosed) and Section 3(1)(a) which says that a State is not immune as respects proceedings relating to a commercial transaction entered into by the State. Section 3(3)(c) contains a very wide definition of ''commercial transaction'' as being ''any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character) into which a State enters or engages otherwise than in the exercise of sovereign authority.'' It can be a transaction entered into by the state with a third party. It is not a requirement that the transaction is between the state and the claimant.

The acts of Torill Sorte, an employee of the state, are regarded prima facie as sovereign acts under the 1978 Act and also as the Ministry's (state's) acts under the doctrine of vicarious liability. The Ministry of Justice and the Police, through Torill Sorte, is not immune under the 1978 Act, as per the arguments I refer to below:

The Ministry of Justice, through Torill Sorte, was certainly engaged in an ''activity'' as required by the 1978 Act in that Torill Sorte spoke to the press repeatedly about me, ostensibly in the course of her police duties, which activity was with commercial organisations - the media - which sold newspapers and transmitted radio interviews. There was thus a ''commercial'' element or connection as required by the 1978 Act. There was also a ''professional'' element as required by the 1978 Act as what else but ''professionals'' engaged in a serious vocation do police officers regard themselves as? Torill Sorte was engaged in a professional business, giving specialist advice and supplied commercial/official information (albeit gratuitously) to the media which sold their stories for money. Sorte's activity in my case was ostensibly part of her job for which she did receive a salary from her employer. She is in effect paid to talk to the media. Public relations/professional relations engagement by the police with the media must be seen as a commercial activity or one of a ''similar character'' just as it is for any private public relations/information supply organisation.

Torill Sorte was engaged in a personal public relations exercise in which she hoped to convince the public that her accuser, Farid El Diwany, was nothing other than a complete madman for accusing her of being dishonest and a liar.

The exercise of state authority means the exercise of legitimate state power or sovereignty. However, Police Officer Torill Sorte's exercise of state sovereignty (if at all) in ostensibly utilising police powers, by talking to journalist Roy Hansen about me, was not legitimate; it was ultra vires. Her powers were not exercised under any code of conduct or furtherance of police powers, as the sole reason for her response to the newspaper Eiker Bladet was in order to justify a previous act of gross misconduct unconnected to any police investigation. Torill Sorte did not further any of the noble police objectives referred to in paragraph 8 of Christian Reusch's Witness Statement of 22 December 2010.

Torill Sorte did the exact opposite by telling the press that I was "clearly mentally unstable" covering up the fact that the reason I had called her a "liar, dishonest and corrupt" was because she falsely stated in Dagbladet and in earlier sworn testimony that I had been incarcerated in a mental hospital (for two years as told to Dagbladet).

Following my comments on Norwegian newspaper website fora and my own website that Torill Sorte was a liar for her false 1997 mental hospital allegation, she, in her own words had to "ask to be taken off the case because I myself wanted to report the man" (see translation dated 24th April 2006 for 21 December 2005 Dagbladet newspaper as per exhibit FED 1 and the 2nd paragraph on page 5). She was then free to speak to three newspapers (Dagbladet, Drammens Tidende and Eiker Bladet) and the local radio station of NRK (Norwegian Broadcasting) in a private capacity all of which was published and aired in late 2005 and 2006 in Norway. I was, as usual, ignored by the media.

The Dagbladet 'mental hospital' story was printed online by Dagbladet on 20 December 2005 and then on the front page of the actual newspaper on 21 December 2005. It was coupled with the reference that I was "a Muslim". A vicious sexualised religious hate email campaign immediately followed from Norway (for example: "Go fuck Allah the camel" and "When you eat pigs do you lick a pig's arsehole clean before digging in?") and the Essex Police Hate Crimes Unit in Harlow saw fit to contact Interpol in London who passed my complaint to Interpol in Norway in 2007. Little wonder I called Torill Sorte for an explanation and apology (labelled by her as harassment). It took a year for the Norwegian authorities to say no one will be prosecuted in Norway for the hate crime or for incitement to religious hatred. They also excused Torill Sorte any punishment for falsely telling the whole country that I had been a patient in a mental hospital for two years giving no reasons (a cover up and totally repugnant to UK public policy to recognise such a decision following, moreover, a secret decision making process all in breach of Article 6 of the ECHR). Torill Sorte was not even consulted on my complaint it seems.

So my speaking about this vile religious hatred/vilification campaign and Torill Sorte's part in it on my website is labelled "harassment" by Torill Sorte.

The religious hatred campaign began in 1995 when Bergens Tidende newspaper called me the "Muslim man" some 19 times (see highlighted words in Bergens Tidende translation dated 24 May 1995 as per exhibit FELD 5) coupled with wild accusations of my suffering from "erotic paranoia". Of course, when I responded with my campaign (see exhibit FELD 3) it was called "harassment" by Heidi Schøne for which I was given a fine in the local magistrate's court, in absentia, in 2001.

Torill Sorte is still perpetuating the mental illness myth and this Eiker Bladet article on Roy Hansen's website just cannot be allowed to stand without legal action being taken. To date Torill Sorte has not explained why I am "clearly mentally unstable" in her Defence submissions. She now carefully avoids telling the Court that I was very upset for her enormous lie in telling the national newspaper Dagbladet that I had been in a mental hospital for two years in England. She kept silent on the real cause of my protest and said that calling her a liar, for unspecified actions on her part, makes me "clearly mentally unstable".

UN Immunity Convention 2004

I refer also to the argument submitted in paragraph 13 of my Witness Statement of 4 January 2011 regarding the United Nations Convention on Jurisdictional Immunities of States and Their Property of 2 December 2004 which is not yet in force in the UK which has not ratified

the said Convention. In the UK the State Immunity Act 1978 is the statute used where state immunity is claimed. It conflicts with the said Convention in some important respects. See the quote of Lord Diplock in paragraph 28 of the reported case of British Airways Board v Laker Airways Limited [1985] AC 58 (copy enclosed) as to why the said Convention cannot be relied on in the UK: 'The interpretation of treaties to which the United Kingdom is a party but the terms of which have not expressly or by reference been incorporated in English domestic law by legislation is not a matter that falls within the interpretative jurisdiction of an English court of law.'

8. Claimant's plea that Heidi Schøne be investigated in 1996

Further reference is made by Torill Sorte in her Witness Statement dated 2 February 2011 that Heidi Schøne presented herself in 1996 to Torill Sorte to make complaints of harassment against me. What Torill Sorte does not mention for which I have incontrovertible evidence, already supplied to the Court as per exhibit FED 5 on the third page, paragraph eight, in a conversation with Torill Sorte who told me that Heidi wanted to "put the case away." She did not want to prosecute my alleged 'thirteen years of sex terror and abuse and threats to kill.'

Heidi wanted to drop the so called "case" against me in 1996 - but I did not want to drop my case against Heidi for attempting to pervert the course of justice, so I insisted that Torill Sorte force Heidi to visit the police station.

I repeatedly asked Torill Sorte to investigate Heidi and to begin with she co-operated. Her colleague Svein Jensen who headed the investigation earlier, thought Heidi was a liar (recorded on tape and his transcribed words are with the Court as per exhibit FED 5 on the first page in paragraphs five and thirteen).

9. Torill Sorte asks to be taken off case in order to speak to the press in 2006

Torill Sorte was not in fact acting on any police case involving my person as she states she had been "taken off the case" and secondly any "case" that may have existed was that old chestnut of the Norwegian press and police calling my right to reply to national vilification campaigns "harassment". Article 10 of the ECHR (Freedom of Expression) allows me a right of reply. The Norwegians are in breach of Article 10. Only their press (and Heidi), it seems, are allowed a right of reply, and the right to explicitly religiously harass with impunity. The "Muslim man" is not allowed a right of reply. This is bigotry writ large and in obvious breach of Article 14 of the ECHR (Prohibition of Discrimination) and recognition of the Norwegian court verdicts on me would, I submit, be repugnant to UK Public Policy.

Torill Sorte was thus, in relation to my claim, engaged in a private, personal act (in speaking to Roy Hansen the journalist at Eiker Bladet) "otherwise than in the exercise of sovereign authority" and so The Ministry of Justice is not immune from libel proceedings under the 1978 Act. Torill Sorte represented herself as a police officer to the press. Her official behaviour was not legally sanctioned (see Controller & Auditor-General v. Sir Ronald Dawson [1996] 2 NZLR 278 CA). When one looks at the substance of the information supplied by Torill Sorte and the factual background that gave rise to her interviews with three media outlets in 2006 the activity did not have the official sanction of the Norwegian state and was not a permissible state action. It was unrelated to good policing by the state.

Torill Sorte, as a state employee, regularly enters into transactions or activities with separate commercial organisations supplying ostensibly official information. My claim against the Ministry of Justice is for liability under the doctrine of vicarious liability regarding separate

proceedings for the tort of libel relating directly to Torill Sorte's transaction or activity with one of these commercial entities, the newspaper Eiker Bladet. In telling Eiker Bladet that I was "clearly mentally unstable" and had harassed her personally Torill Sorte, although speaking as a police officer, was not acting under any duty to further police work or police aims. She was not speaking to the press on any matter relating to a police investigation on me as her comments related purely to my very public accusations that she was "a liar, dishonest and corrupt" for falsely saying that I had spent two years in a mental hospital in the UK and for similar mental hospital comments in her 1997 witness statement.

10. Heidi Schøne – registered mental patient in Norway

Heidi Schøne has herself been a patient in the BSS Psychiatric Clinic in Lier, Norway in 1988/9 immediately following serious abuse from the father of her child followed by attempted suicide.

Her severe psychiatric history, suffering from "an enduring personality disorder" (see second line page 6, penultimate paragraph of my record of proceedings of October 2003 Court of Appeal case in exhibit FELD 20) and "a tendency to sexualise her behaviour" as disclosed in court in Norway by her psychiatrist (see for example paragraph 15 on page 8 of the Supplemental Appeal translation in exhibit FED 16) makes her 1995-2006 newspaper allegations and court allegations in 2001, 2002 and 2003 on me (totally uncorroborated for the period 1982-1995) highly unreliable. At the October 2003 Court of Appeal trial she was on a 100% disability pension for mental illness.

All Norwegian court decisions totally ignored this crucial evidential aspect. Her psychiatrist, Dr Petter Broch, gave evidence to the Norwegian courts that her "enduring personality disorder" was initiated in her adolescence. Whilst no meaningful cross-examination could take place of Heidi Schøne by me she was allowed by the judge to give full and new evidence in court detailing my alleged crimes against her. The whole point of the October 2003 Court of Appeal trial in Norway was nullified by the judge's refusal to allow the four hours for cross-examination (agreed by Heidi Schøne's lawyer), when formulating directions for the trial.

The three 1995 newspaper articles (see exhibit FELD 5) referred to me for example as: "An insane man…" and "the Muslim man" suffering from "erotic paranoia". They could not believe that my description of Heidi Schøne's life history was true or that she liked me. I was later vindicated on both counts, but my evidence sent to the newspapers in summer 1995 was ignored, so the saga continued for another decade.

For further crucial detail on Heidi Schøne's pattern of deceit see my Witness Statement dated 7 March 2011 on pages 9-12:

[None of the allegations reported by Heidi Schøne to Torill Sorte at the police station in 1996 were previously ever reported by Heidi Schøne to the police and these allegations (along with those in the Norwegian press), which were added to and embellished over the years by Heidi, were of such a serious nature that I was forced to continue publishing my side of the story denying that I was, as "a Muslim" (as the press frequently called me), a potential child killer, rapist, mental hospital patient, sexual deviant suffering from erotic paranoia, writer of over 400 obscene letters to Heidi (none were ever produced at any time to anyone), sexual blackmailer, stalker and mortal danger to the public (noting that all of Heidi's own 1982-1995 allegations were solely on Heidi's uncorroborated word). Heidi also said in court that I was a user of morphine obtained from my father, a G. P. Still, it seems from Norwegian civil and criminal court decisions that all of the allegations from Heidi are judged to be true

leaving me to have to live with the ruling that, of the above, I am regarded judicially as a potential child killer, a rapist, writer of over 400 obscene letters, sexual blackmailer, stalker, liar and a complete Muslim hypocrite for the period 1982-2003. Whatever Heidi said in court was judged to be true. My criminal convictions in Norway for harassment were for my campaigns denying that I was all of the above, for telling Heidi what I thought of her lies to the press and other duplicitous behaviour, and for telling the public Heidi's sexual past which was seen as too intrusive. My 1995 and subsequent campaigns of 'harassment' against Heidi was taken as absolute proof that the campaign must have also been afoot for the years 1982-1995. Heidi repeatedly said in the press that my 'sexual harassment campaign' was in full flow from the very moment she returned to Norway in 1982. She ignored the fact that she had been writing nice letters to me for years after 1982. She was a wretched liar.

Heidi had from 1995 until 2006 allowed herself to be named in the press and always had her photo in the papers thus waiving her anonymity, but it cut no ice with the criminal courts or civil courts as justifiable or a defence when I named Heidi in my material denying hers and the media's allegations. It was absolutely my right to tell the public of Heidi's life history and sexual past in response to her lurid and sensationalised sexualised newspaper comments on me and indeed my commentary was acknowledged by her psychiatrist as "containing a core of truth" and by Judge Anders Stilloff as "more or less correct." Just how relating to the public Heidi's sexual history makes me 'a sex maniac', 'sex-focused' and 'a sex-terrorist' with a 'pathological interest in Heidi Schøne' is incomprehensible. I was only responding to the newspapers own sex focused stories. Heidi was the one who was extremely promiscuous and who constantly talked about sex and whose problems were largely related to her sexual adventures. She had had two abortions by the time she was 18.
Very loving correspondence between Heidi and me was exchanged between 1982 and 1991 in fact, but it was sporadic and intermittent. I did not keep all her letters. I kept some. I kept the Christian book written by a Pakistani woman abused by her husband that Heidi sent me in October 1990. But all throughout this period there were serious issues concerning Heidi's disastrous sexual conduct and personal behaviour. She often asked for advice and yet in major ways ignored it. The only reason she was in England as an au-pair was in order to recover from a second abortion to the same Norwegian man. We frequently met in St Albans and went twice to see Tottenham Hotspur at White Hart Lane. Even in England she was very unpredictable in nature.

She returned to Norway in June 1982 and we corresponded. There was no corresponding in 1983 but it resumed in early spring 1984 when I called her father to enquire after her and he gave me her number as she was staying alone in a basement flat elsewhere. Heidi told me she was recovering from a suicide attempt after a miscarriage of twins caused by the shock of finding out that her new boyfriend, one Gudmund Johannessen, had slept with her best friend. Her sister had found her in time to take her to the hospital to have her stomach pumped after an intake of pills. We called regularly and wrote often. I went to visit Heidi at Christmas 1984/5 when I discovered that her flatmate was an 18 year old prostitute. Heidi's behaviour had changed markedly from her time in England and she had become very volatile, which I put down to her suicide attempt earlier in the year. I visited her again in Easter 1985 when Heidi told me she had beaten up her flatmate on discovering that she had slept with the Bergen shopkeeper who Heidi had reported to the police for rape. Her on-off boyfriend Gudmund Johannessen (an ex-prison convict) turned up to smoke pot and I told Heidi off for letting him to do this. She took exception to my reprimand. In June 1985 Heidi told me she was pregnant again to this pot smoking boyfriend – the one who had caused her to make an attempt on her life. I wrote to tell her she was crazy to have let this happen and that it would spell disaster for her. When she came to England that summer she refused to see me. She called me immediately on her return to Norway.

When her child was born in April 1986 she told me that both she and the father had then had two AIDS tests each as she was seriously worried that she might be HIV positive as her boyfriend had been injecting heroin after buying the drug on a two week holiday to China and had been sleeping with other girls as well. The test results were negative. I later wrote (1986) to Heidi's father voicing my disgust at the way his daughter was carrying on and he gave her the letter. Within two weeks she had reported me (falsely) for attempted rape to the Bergen police but I did not learn of this allegation until 1995.

In the early summer of 1988 Heidi called me at my law office in Portland Place in the West End crying and begging for immediate help to restrain her abusive boyfriend who had told her and their son to "Fuck off." (All admitted by her in court in Norway). She wanted physical revenge on him and told me how right I had been all along in my judgement on her sorry situation. My prediction had come true and another suicide attempt soon followed from Heidi with ensuing treatment in a mental hospital in Lier in 1988/89. I wrote many consoling cards and letters to her and sent her a Brian Wilson music cassette called 'Love and Mercy.' (She admitted in court in 2003 to receiving the cassette). She came out of hospital and eventually decided to call me for an hour from her hotel, the Muller Hotel in Drammen, where she was a night receptionist. But by then I had written a letter scolding for not having the courtesy to get in touch for months after my concern for her. She received the letter afterwards and decided not to keep in touch. I went in February 1990 to see her in person and was arrested with a friend whilst in her sister's flat. I put it down to her usual personality problems and dislike for constructive criticism.

It was a mark of her condition to tell me later in August when I spent the day with her and her son that she thought I wanted to kidnap her son on my February trip. She related in some detail that she had become a Christian, was exorcised from demons and spoke in tongues.

When I discovered in early 1995 about the attempted rape allegation (see first page of an extract of a letter from my lawyer Helge Wesenberg dated 28 February 1995 as per exhibit FELD 4) I was so outraged at this lie that I wrote in May, in revenge, to Heidi's neighbours telling them her past. Within a week in late May 1995 I had made big stories in three Norwegian newspapers for '13 years of sex-terror.' (See exhibit FELD 5 for the stories and the professional translations). They cited my 'crimes' of day in, day out abuse and obscenity with threats to kill many people and that from 1982 to1995 I had been a serial abuser of her person (and Heidi said in court I had a violent temper), coercing her to convert to Islam, blackmailing her for sex. The evidence for all this was solely on Heidi's uncorroborated word. I have never hit her and she has never alleged this either. Gudmund Johannessen beat her up at her home in 1990 and she reported him to the police. She did not expect me to see the newspapers at all and read her obvious lies - so easily contradicted by the circumstantial evidence and the production of her letters to me. My first Norwegian lawyer, Karsten Gjone, missed the time limits to sue these three newspapers and was found guilty of professional misconduct by the Norwegian Bar Association (see exhibit FELD 6). My thorough but unorthodox attempts to combat this systematic abuse of me was so successful that the revengeful press, without telling me, did further 'sex-terror' articles on me over the next 12 years (see for example exhibit FELD 7 for two July 1998 stories on the 'sex-crazed Englishman'). It was one man against a whole country. The more I protested the worse the abuse that came my way, ending with a police officer, Torill Sorte, telling a national newspaper in 2005 that I had spent two years in a mental hospital in the UK. How desperate was that total fabrication?

It was Heidi's own stepmother Ellen who first called Heidi "a whore" when she had her

second abortion way back in 1981. I called Heidi "a whore" in 1995 in writing when, backed into a corner on the phone while questioning her on her attempted rape allegation she reverted to type and started talking in her sexualised way saying for example, "Do you want to have sex with me?" and "You only want me to come to England to warm your bed." Extracts from my letters to Heidi in early 1995 are provided by Judge Stilloff in his judgement of 2002, but not the letters in full. What is not mentioned is the abuse I was getting from Heidi on the phone that caused me to write these letters. I had had some strong reservations as to the circumstances of my February 1990 arrest in Norway and exactly what she had told the police and in December 1994 and January 1995 wrote to Heidi asking some questions. The letters went unanswered. No wonder, as when my investigating Norwegian solicitor wrote to me in late February 1995 he told me that Heidi had made an allegation of attempted rape against me to the Bergen police in 1986. When I tried to question Heidi about this she spoke obscenely and refused to tell me why she made an allegation of attempted rape or more particularly what my 'attempt' involved. For ten years after 1995 the Norwegian police refused to tell me what the 'attempt' involved. I had to give up asking in the end. Heidi had in any case upgraded this accusation to rape in 1998, so Torill Sorte told me. It took Heidi twelve years to change her story. Drammen Tidende newspaper then mentioned rape in 2001.

My 1995 letters to Heidi were not gratuitous abuse from me, but reminded her of her past misdemeanours and freewheeling behaviour in return for her claims of what a sexy attractive girl she thought she still was and how much she said I would love to have sex with her. I cannot stand these sort of sexual taunts and moreover it was this narcissistic behaviour that caused her to have her mental problems and abortions and Aids tests in the first place. Her husband spoke very little English and said moronic things in his stunted English. It did not follow, as the Norwegian courts decided, that I had been writing to Heidi for the previous 13 years calling her "a whore" and "a bitch", and making obscene phone calls. There was no evidence for this provided at all. It was a false conclusion from the court. Heidi did not have a phone from 1988 to 1993. I wrote to Heidi in 1997 in very condemnatory terms when I was told by Torill Sorte that Heidi was alleging I had threatened to kill her son in a letter. The letter was never found. It was not written in the first place. Dagbladet in 2005 wrote of my alleged desire to see her son dead.

As for Runar Schøne, Heidi's former husband, his behaviour became quite unwholesome. He answered the phone in June 1995 when I called Heidi to remonstrate on her newspaper comments. He immediately said: "Allah does not exist. Come to Jesus. Only he can save you." Then he proceeded to speak to me 'in tongues' until I put the phone down several minutes later. He admitted in Court in Norway to "babbling" when I put this incident to him. When I reprimanded Heidi Schøne in court after the close of proceedings in Norway in 2000 for falsely alleging that I had threatened to kill her son in a letter, Runar Shone shouted: "We have proof" which Stig Lunde my lawyer heard. No proof was ever provided. It never existed in the first place and was just a despicable lie. Before Judge Anders Stilloff in court in 2002 Runar Schøne compared me with Osama Bin Laden which raised the judge's eyebrow. In court in 2003 Runar Schøne, before Judge Agnar Nilsen Jr., spoke of how he wanted to go to London to literally "kill" me. Heidi specifically married Runar Schøne, a taxi driver, because he was a Christian.]

11. Abuse of Norwegian Court process

I refer to paragraph 6 of my previous Witness Statement and have corrected one comment by my letter dated 18 January 2011 to Charles Russell Solicitors as per exhibit FELD 8.

I did not think it was an abuse of the court system in Norway to issue a writ to deny 'sex-terror' since 1982 or that I was suffering from erotic paranoia or go to the Court of Appeal regarding these allegations and nor did my lawyer, Stig Lunde.

The original writ dated 13 January 2000 included as a defendant the newspaper Drammens Tidende as well as Heidi Schøne (see exhibit FELD 9).

The first hearing in Drammen Court in Norway on 24 August 2000 (see exhibit FELD 10 for my record of the proceedings) in fact went very well and I was allowed to proceed to sue the newspaper Drammens Tidende and Heidi Schøne (see exhibit FELD 11 for the Court decision dated 31 August 2000).

The newspaper Drammens Tidende appealed to the Court of Appeal which hearing I did not attend and their appeal was allowed declaring that they did not have to face trial (see exhibit FELD 12 for Court of Appeal decision dated 24 November 2000).

I went to the Supreme Court (see exhibit FELD 13 for appeal papers dated 29 December 2000 for which I was to make new case law in Norway regarding the Norwegian Press Complaints Commission's very uncertain rules).

My appeal was dismissed as my lawyer had missed the time limits to appeal (see exhibit FELD 14 for Supreme Court decision dated 16 February 2001).

This just left Heidi Schøne as defendant and the trial began on 15 January 2002 (my account of which is given in exhibit FELD 15). I lost.

So I appealed. I am certainly not, for example, a potential child killer and it is my right to appeal to the Civil Court of Appeal (see exhibit FELD 16 for appeal papers dated 13 March 2002 and 12 June 2002) and Supreme Court (see Exhibit FELD 17 for Appeal papers dated 11 February 2004) in Norway against the inference that I am a potential child killer - an allegation made solely on the uncorroborated word of a Norwegian psychiatric patient.

12. Retractions by Drammens Tidende newspaper in Court in October 2003

A whole host of new information came to light at the Court of Appeal but was most surprisingly omitted from the judge's judgement. I wrote it up in my contemporaneous record as per exhibit FELD 20. The judge's omissions and other basic mistakes formed the basis of my appeal to the Supreme Court.

In going to the Court of Appeal it was accepted by the Drammens Tidende newspaper editor, in evidence, that untruths were told in his newspaper about me and they could have "researched the matter much better." (See fifth paragraph on page 5 of exhibit FELD 20). For instance it was accepted that I did not write "300 letters to Heidi Schøne from 1997 to 1998" or that I had threatened with death her neighbours if they did not give me her new address. (See last paragraph on page 2 of exhibit FELD 20). Their journalist Ingunn Røren admitted that when she wrote that I was suffering from an extreme case of erotic paranoia she did not know what it meant, but had just lifted it from another newspaper. (See fourth paragraph on page 6 of exhibit FELD 20).

So I was vindicated in some respects. I also wanted to set the record straight with Torill Sorte's perjury: I had never been "put" into a mental hospital by my mother. What mental abuse of my mother by Torill Sorte! Her evidence tainted the trial. So the judge is perverse in saying

that bringing my appeal was an abuse of the legal process. He still allowed my appeal to the Supreme Court and had to assist my lawyer, Stig Lunde, with the appeal application. My appeal to the Supreme Court was dismissed on 17 March 2004 with no reasons given (see exhibit FELD 18 for Supreme Court decision).

(It can be seen in fact that very little of my original case was actually litigated and none of my opponent's evidence could be tested).

The Norwegian judge, Agnar Nilsen Jr., erred procedurally in not allowing me to properly cross-examine Heidi Schøne. The more so as Heidi Schøne was on a 100% disability pension for mental illness and was herself allowed to give so freely her ever changing, highly sexualised, evidence. The judge told the Court that he would have to cut short the trial ending it at 1pm on a Thursday instead of the scheduled 4pm on the Friday, which meant my cross-examination of Heidi could not take place, save for a paltry 20 minutes worth, when the judge himself insisted on asking Heidi the questions. The reason for this truncation of the trial became apparent the minute the trial finished, when I was arrested at the door of the court for having a website detailing my tribulations in Norway. (See exhibit FELD 19 for Drammens Tidende article dated 26 October 2003 entitled 'Plaintiff arrested in Court' following 'more than 20 years of persecution'). This left the whole of the next day, a Friday, to take me before the Magistrate's Court: charged again with harassment of Heidi Schøne. There has to be a suspicion that my civil appeal trial was a sham and that the judge knew I was going to be arrested.

I was not warned of the arrest by the Norwegian police of course. I pleaded guilty, not freely, but under duress as the police prosecutor, Ingunn Hodne, told me that either (1) I plead guilty to harassment and agree to take my website down within seven days of my return to England subject to the Magistrate's discretion not to give me an immediate custodial sentence of eight months imprisonment, or (2) go straight to prison for my website harassment.

The shock of this violation of my basic human rights was such that all I wanted to do, after a sleepless night in the cells, was to go back to England.

Even the two British Embassy officials who visited me in the cells in Drammen police station told me that there was no way I should be going to prison as I had a right to reply to the Norwegian newspapers. But I was told that the police were quite intent on giving me a prison sentence and that I had to take legal advice (see exhibit FELD 20 for my account of the arrest and conviction and the preceding Court of Appeal trial). It will be seen that what actually happened at the trial was wholly at variance with Judge Agnar Nilsen's record of the proceedings as per his decision of 14 November 2003.

13. 2001 Conviction

My first conviction (and a fine) for harassment of Heidi Schøne in 2001 for telling the public about Heidi Schøne's life history (see exhibit FELD 3) by way of reply to the national newspaper vilification campaign was obtained against me in absentia. The procedural errors were as stated in my Witness Statement dated 7 March 2011 on page 14 under the same heading: 2001 Conviction.

14. Duress, UK Public Policy and Human Rights Act 1998

Recognition of foreign convictions obtained under duress is against UK public policy as per

Rule 44 of the Renvoi principles which is certainly applicable to my 2003 conviction for having a website.

Recognition of foreign judgements is impeachable on the grounds that they are obtained in contravention of natural justice and where there have been procedural irregularities under Rule 45 of the Renvoi principles. I could never test the 1982-1995 uncorroborated evidence of Heidi Schøne at any stage. None of the arguments put at my civil trials were referred to in Norwegian judgements suggesting that my evidence was not considered at all. This was a fundamental breach of article 6 of the ECHR: the right to a fair trial.

The convictions were also given in direct contravention of Article 10 of the ECHR which is incorporated into the Human Rights Act 1998. I clearly have the right to express my opinion and reply directly to newspaper vilification campaigns based in no small part on religious abuse. That my opinion is expressed in a manner that some sections of the Norwegian public may find distasteful is acceptable and fair under the ECHR.

The civil libel judgement and the criminal convictions in Norway should not be recognised in the UK. The situations giving rise to them would never arise in England. They are contrary to English concepts of morality, decency, human liberty and justice and repugnant to these fundamental principles.

15. Torill Sorte

Torill Sorte is an obvious liar and has mentally abused me and my mother in a most dreadful way and the evidence is all there in black and white. I have not made pestering nuisance phone calls to her. A detailed explanation of my dealings with her is given on pages 15-17 of my Witness Statement dated 7 March 2011 under the same heading. (See also my recorded conversations with her in 1996-1998 as per exhibit FED 5. Before she knew these were recorded she said publically that even these calls were in the nature of harassment).

[12. It must, I submit, be obvious that Torill Sorte has lied to Dagbladet in a way that was clearly intended to destroy my credibility. Torill Sorte has continued to lie by telling Eiker Bladet that I am "clearly mentally unstable" and mislead the Court with the help of Charles Russell who advised her and drafted her Witness Statements. They and Torill Sorte and Christian Reusch are obliged under the CPR to correct errors and misleading statements. I cannot challenge Torill Sorte directly on her Witness Statements as she will not be present in Court on the hearing to set aside and dismiss my claims.
13. I have not, as Torill Sorte claims, made any pestering, nuisance phone calls to her. She was free to record my calls with her and will have to prove her claim. I have called her at home to decently challenge her outrageous lies. I called her in the evenings and late evening on a few occasions but only because there was more likelihood that she would be in. My calls to her were few in number as she refused to admit or explain anything. There was never any high volume number of phone calls. In any case I gave up calling her about four years ago. I was so incredulous that a police officer could tell such an appalling lie to a national newspaper that I had been in a mental hospital for two years followed by another mentally ill comment to Eiker Bladet - and get away with it. My family doctor's letter (exhibit FED 2) is with the High Court stating categorically that I have never been a patient in a mental hospital. It was also with the Norwegian courts in 2003. It defied human nature not to call Torill Sorte in protest. But she does think she is above the law as she is a police officer. She knows all the in-house tricks to get herself out of a very tight spot. And there is a nationalistic, bigoted element to her protection by others. What other national press and local press in western Europe calls a victim continuously - not by his name but by his religion? And whose

officialdom and court system never criticises this in any official reply to my complaints and legal actions? Norway's.
14. Torill Sorte's defence in paragraph 20 of her Witness Statement on behalf of the Ministry is disingenuous. Why not just say what she disassociates herself from in the Eiker Bladet article? Why no mention that the reason I was calling her a liar had nothing to so with any case investigation? My reaction was due to her lies that I had been incarcerated in a mental hospital. She wants to make it seem as if her comments were part of a criminal "case" but this is just a ruse. Her silence over the years implies consent and approval to the article the subject of my claims. Besides, journalists usually read an article over to its chief interviewee before publishing it.
15. I did not appreciate Torill Sorte putting in a 1997 witness statement (exhibit FED 3) to the Norwegian Courts in 2002 in Norwegian, which was read out to me for the first time ever in open court in January 2002 saying that I had been treated in a mental hospital. She repeated this on oath. She had committed perjury as I have, as a matter of fact, never been treated as a patient in any mental hospital. This was the main evidence that Torill Sorte gave in court in my claim against Heidi Schøne. So I related my side of the story on my website. Torill Sorte called it harassment.
16. My claim against Torill Sorte is not an abuse of process or a symptom of continuing harassment of her. She is an abject liar and I have clearly been libelled in the UK and the longer the article in question is allowed to stand the greater the likelihood of damage I stand to come by. I am not re-litigating decided issues. I have not sued Torill Sorte before and it has not been declared in any court of law in Norway that I am mentally disturbed. As stated above, readers in the UK will get the distinct impression that I am a mad man who harasses women and readers will not understand the truth that the harassment I am accused of in the article was in fact my campaign to defend the years of abuse suffered at the hands of the Norwegian press and Heidi Schøne and Torill Sorte. Torill Sorte has inflicted on me mental abuse out of pure malice. I could not sue in Norway for the 2006 article as appearing in person would have led to instant arrest and imprisonment as I had not removed my website. The Eiker Bladet article is still online and published world wide in most of the world's languages. It is accessible via a hyperlink in English when a google search is done on my name and this hyperlink which is at the top of the list immediately below a link for a property investment company making mention that Farid El Diwany is a senior solicitor based in the City of London (see exhibit FELD 22). Readers click on the Norwegian article 'Translate this page' link and read that I am mentally disturbed and an abuser of women. A "Muslim" abuser of women. The link existed previously (as per exhibit FELD 23) for 26 October 2009 and accompanying articles of the same date and see also article for 11 June 2010 (exhibit FELD 24) and the google search for 20 August 2010 (exhibit FELD 25).]

16. Torill Sorte's defence as per Norwegian lawyer's letter of 18 October 2010

Torill Sorte's defence to my claim, as per exhibit TS2, through her Norwegian lawyer Espen Johansen's letter dated 18 October 2010 firstly contests the Court's jurisdiction saying it should come under the Norwegian jurisdiction only, and in the alternative claims justified comment.

Contrary to what the Torill Sorte's Norwegian lawyer states I have never lived in Norway. I have been an infrequent visitor on very short trips. The Norwegian Press Complaints Bureau (the PFU) does not look into truth or falsehood of the comments made in a newspaper article. They only rule in very general terms as to whether the newspaper has a prima facie right to publish a story on public interest grounds. So it is a complete red herring for Sorte's Norwegian lawyers to say I had an effective remedy with the PFU. I should know after being given the run around for years by the PFU and extensive litigation to Supreme Court level in

Norway regarding their role in the investigation of my previous complaints.

On page 2 of the letter to the Senior Master Sorte's Norwegian lawyer states that the article ''was written according to regular Norwegian journalistic ethics and it was not considered necessary to obtain Mr El Dewany's (sic) opinion.'' So in calling me ''clearly mentally unstable'' it was still not necessary to contact me to get my views?

Hardly in accordance with any sound ethical press regulations! Yet out of the 19 articles done on me, (being the ones that I knew about), in often front page national and provincial newspapers in Norway over a period of 12 years (1995-2006) I was never, save on one occasion, asked my opinion as to the contents of the articles to be printed, including unforgivably in 2005 an article in Dagbladet saying I had wanted a young child to die (Heidi previously said she thought I actually wanted to kill her son Daniel which I had written in a letter), had been in a mental hospital in the UK for two years and was a ''Muslim''. I have never been in any mental hospital anywhere and have certainly never wanted her young child to die or threatened to kill him. The Norwegian press failure to get my opinion on such serious allegations would never be seen as acceptable by a UK court on grounds of public policy.

No apologies were ever issued on my contacting the newspapers to protest directly about an article that had been printed. When I protested on my own initiative by the usual method of my own website (started in 2000 being a whole five years after the first newspaper articles on me) and advertising my website I am given an 8 month suspended prison sentence for 'harassment' and ordered to take my website down.

When I used the Norwegian newspaper website fora to protest in 2005 I am abused in the crudest of terms by Torill Sorte and Heidi Schøne and Dagbladet. They do to me what they falsely accuse me of doing to them. Even the Hate Crimes Unit of the Essex police sent a complaint to Interpol in Norway on my behalf after the vilest Norwegian religious and sexual harassment campaign imaginable. Interpol Norway left it to the internal Norwegian authorities to deal with my complaint who ruled that the hate campaign and its initiation by Torill Sorte and the national newspaper Dagbladet was all quite understandable and acceptable and rejected my complaint. Interpol Norway passed the buck.

The English version of the offending Eiker Bladet article is published each day on the internet in the UK and is seen in the UK, where I live and work as a solicitor and have a reputation to defend, and is where I discovered the article after a google search on my name, making the proper jurisdiction for hearing my claim the UK.

Regarding Hansen's and Sorte's purported defence of justified comment and qualified privilege in their letter of 21 September 2010 no substantive evidence was supplied by their Norwegian lawyer to support this defence within the CPR time limits up to the time I obtained judgement in default on 18 November 2010. That Torill Sorte's new lawyers, Charles Russell in London, have now put in some substantive documentary evidence is all very well but they have still not put in any evidence to justify why I am ''clearly mentally unstable'' and will not be allowed to at this stage, not that they will ever come up with anything anyway.

Torill Sorte is saying via her Norwegian lawyer's letter of 21 September 2010 in the penultimate paragraph, in effect, that in not being able to accept that her allegation that I am ''clearly mentally unstable'' was true (which is linked with her 'fact' that I have been in a mental hospital for two years when I have not) and continuing to protest about this allegation as well as others (together with Roy Hansen's allegations) by way of a High Court claim I am guilty of ''on-going harassment of Ms Sorte''.

17. Breach of confidentiality charade

One total untruth by Torill Sorte's Norwegian lawyers is to say that I have reported her for "breach of confidentiality." For a full explanation of Norwegian sleight of hand see under the same heading as above in my Witness Statement dated 7 March 2011 on page 18.

[18. One total untruth by Torill Sorte's Norwegian lawyers is to say that I have reported her for "breach of confidentiality." The Norwegian authorities, by sleight of hand, took it upon themselves to look into whether Torill Sorte's own false allegation in a 1997 witness statement and repeated on oath in Court - that my mother told her that I had been "put" in a mental hospital - was a breach of confidentiality by making public my mother's alleged statement to Torill Sorte. The defect in this procedure is that I have definitely never been in a mental hospital anywhere ever and Torill Sorte's evidence that my mother told her I had been "put" in a mental hospital is a pure concoction. And perjury by Torill Sorte. The fact that there is a cover up over this in Norway is not my fault. The Norwegian authorities ruled that Torill Sorte was not in breach of confidentiality - ignoring my actual complaint that as I have never in fact been in a mental hospital then what else but a liar could Torill Sorte be? My own family doctor has stated categorically that I have never been a patient in a mental hospital and the Court has his letter to this effect.]

18. Norwegian lawyers ignore the CPR and the Senior Master

Moreover Torill Sorte has not supplied any evidence that the Acknowledgement of Service, which she says had been posted to the Court by recorded delivery, had actually been filed with the Court. Where is Torill Sorte's post office recorded delivery slip and certificate of posting?

The Defendants have also not supplied the letter of 18 October 2010 from the Senior Master to their Norwegian lawyer who, it is apparent, was asked by the Senior Master in that letter to supply an address for service in the UK for the Defendants or of the address of an English qualified solicitor in Norway (or one in the EEA). The Defendants had full court explanatory notes for defendants translated into Norwegian sent to them with the Claim plus a letter from the Senior Master dated 18 October 2010 but still chose not to comply with the CPR requirements or take any advice from a UK qualified solicitor. When I sued unrelated parties for libel in Norway in 2000 I took Norwegian legal advice and was told I had to supply an address for service in Norway, which I did by providing the address for a Norwegian lawyer in the town of Moss.

The Defendant's Norwegian lawyers were, it seems, negligent in not advising their clients as to a fundamental aspect of UK law regarding the provision of an address for service. Ignorance of the law is no defence and wilful refusal to abide by the CPR/take the advice of the Senior Master after his letter of 18 October 2010 is no defence either. The Norwegian lawyers wanted to proceed on their own terms and in effect rebuked the Senior Master.

The CPR require that a defendant must provide a comprehensive response to the particulars of claim: what is admitted and what is denied together with a statement of truth. No comprehensive response was ever provided in time by Torill Sorte or Roy Hansen nor was statement of truth provided either via their Norwegian lawyers.

19. Payment into Court

But if the Court is minded to set aside my judgement against Torill Sorte and grant a trial then:
(a) I ask that my costs thrown away up to and including the hearing be awarded to me and also that Torill Sorte's costs similarly not be awarded against me and
(b) that Torill Sorte be made to pay a sum into Court on account of my costs and damages with the amount depending on whether the Ministry is paying for her as it seems they are paying for her costs in using Charles Russell.

20. Witness Statement of James Quartermaine regarding Roy Hansen & Torill Sorte

Torill Sorte does not have a real prospect of successfully defending her claim for the reasons set out above.

The convictions against me should not be recognised by the Court on public policy grounds for the reasons stated above.

The Human Rights Act 1998 will prevent recognition of all Norwegian civil and criminal judgements against me (as detailed in exhibit FELD 26).

21. Steps taken by the Second Defendant in response to Particulars of Claim

Regarding paragraph 4 of James Quartermaine's Witness Statement, given the extreme vilification and mental abuse by Torill Sorte of me, I saw no point in writing a letter before action to her as it would have achieved nothing. The idea behind a letter of claim is that by giving Torill Sorte proper information about the case in advance of proceedings there is greater prospect of the dispute being resolved. There was no chance whatsoever of this dispute being resolved as my efforts to resolve matters with the Norwegians over the previous decade have clearly been fruitless and hopeless.

Torill Sorte would not talk to me when I called her to complain. She had done so much damage in 2005 with her outrageous lie to Dagbladet that there was not the slightest prospect of a settlement to avoid litigation by writing a letter before action to her. Indeed, her comments are still online. She has not indicated that she has asked Roy Hansen to take the article off the internet. She wants to defend my claim. Besides, I sent a letter before action to her co-defendant Roy Hansen (see exhibit FELD 27). Torill Sorte and Roy Hansen have used the same Norwegian lawyer and Torill Sorte herself, via her Norwegian lawyer, raised no objection to not having received a letter before action. It is all water under the bridge.

In paragraph 5 of his Witness Statement, James Quartermaine speaks of Torill Sorte's attempts to follow Norwegian legal procedure in responding to my claim in the High Court through her Norwegian legal advisers. Every lawyer should know that when dealing with a foreign jurisdiction the laws of procedure are not the same as at home and that it is essential to get the advice of the appropriate expert lawyer qualified in the jurisdiction of the issuing court. The Defendants' lawyers have been negligent. Torill Sorte and Roy Hansen were not litigants in person, when procedural errors made are more understandable. I only saw the Defendants' so-called defences – two separate alterative, but unsubstantiated, defences in two letters made through their Norwegian lawyers with no statement of truth – when the Application to set aside was made by Charles Russell, so I cannot be blamed for entering default judgement. So I should not be liable for any of Torill Sorte's legal costs to date should my judgement against her be set aside.

22. Abuse of Process

Re-litigating decided issues

In response to paragraphs 7 and 8 of James Quartermaine's Witness Statement I am not re-litigating decided issues. I am litigating undecided issues.

My litigation in Norway related to one 1998 article in Drammens Tidende and even that was not litigated in any meaningful way as the defendant newspaper went to the Court of Appeal and succeeded in having my claim against them declared null and void on the grounds that I had, two years earlier, promised not to sue if the Norwegian Press Complaints Bureau (the PFU) looked into my case.

I was tricked by the PFU as I did not know at the time that they did not look into the truth or falsehood of newspaper allegations nor did I know that I could still sue in Court after using the PFU. My appeal to the Supreme Court in Norway on these points was dismissed as my lawyer, Stig Lunde, had missed the time limits and no discretion to hear our appeal was exercised by the court in our favour. A pity, as it was going to create new case law in Norway. This was despicable sleight of hand by the PFU who earlier, in 1995, on seeing me referred to solely as the "Muslim man" so many times in the press did not exercise their independent right to look at the religious hatred aspect and in 1996 dismissed my complaint against three 1995 newspapers stories for being out of time.

This action then left just Heidi Schøne as defendant and that went to the Supreme Court, who dismissed my appeal without reasons. Without reasons! As I was prevented from cross-examining Heidi Schøne at the Court of Appeal the whole trial was unfair and a total waste of time. But as a certified mental patient on a 100% disability pension Heidi's evidence was allowed in full and allowed to go totally unchallenged.

The British courts must be allowed a proper understanding of the Norwegian legal system and that its model of natural justice bears no comparison to the British model and their treatment of claimants like myself would be seen as a breach of the Human Rights Act 1998.

I have not sued either Torill Sorte or Roy Hansen in Norway. I am suing on a 2006 article now, republished every day on the internet.

The most serious allegation in the article, that I am "clearly mentally unstable" has not been declared as true by any Court of law in Norway. It is only since I discovered the article was available in English on the internet that I have been able to sue in the UK courts. I live and work here and my reputation is deemed to have been damaged. People searching for my name on google here and clients/prospective clients here and abroad searching for my name and accessing the article will certainly see me in a very bad light even on the google translation as it stands as the gist of it is easily understood. In practice the article will probably remain online for some time to come and the translation is bound to improve and be perfected - as anyone can alter it.

23. Google is a facilitator not a publisher

I played no part whatsoever in creating the google translation facility. Google is not a publisher but a facilitator without which the internet would never function and it is not they who should be on trial for libel. It is the defendants in my two claims.

Roy Hansen would know that but for the existence of his online article in Norwegian it would never have been translated into English. The format of the English version of the article is just an extension of the Norwegian version with exactly the same colours and lay-out and adverts as the Norwegian version (see exhibit FELD 28). The English version is a reasonably foreseeable consequence of Roy Hansen's placement of the Norwegian article on his website.

24. Not a stale article

The article is not a stale article as it is re-published every day in Norwegian and English and its publication in English is fairly recent – discovered by me in 2009. The fact that the article is in English now makes it in effect a fresh article as I am litigating on it at the first available opportunity in the most appropriate forum.

25. Article on my website with name redacted

The article is on my website but as rightly stated by Charles Russell I have redacted my name – which makes all the difference in the world as no where on my site is my name mentioned. I use the pseudonym of Frederick elsewhere. No one reading my website is told it is Farid El Diwany who is the subject of the articles.

All of the nineteen articles on me by the Norwegian press that came to my attention, many by chance, are on my website to show the pattern of abuse I have suffered but that cannot be seen in any way as an admission that I believe the contents of the articles to be true. For eighteen of these articles the press did not name me and they tried to argue that this omission made it all very passive and excusable. The persistent naming of my religion of Islam in the same breath as calling me a sexual monster was treated as being all quite within the media's rights of freedom of expression. They all feigned surprise when I got upset and then doubled and redoubled my punishment when I protested.

From having no whiff of any deviant sexual illness or stalking attributes at any time from 1982 to 1995 I had become, overnight, the most extreme sexual Muslim abuser known to Norway. All on Heidi Schøne's uncorroborated word.

26. Norwegian establishment sex/mental abuse is not new

See paragraph 30 on page 22 of my Witness Statement dated 7 March 2011 for another example of major Norwegian psychological and sexualised abuse.

[30. In fact this mental and sexualised abuse of me had echoes of the Norwegian sexual and mental abuse of the children of Norwegian women and German soldiers from the last war, a case at the ECHR. (See exhibit FELD 29 being a 2003 Independent on Sunday newspaper feature on the Norwegian abuse and establishment cover-up).The Norwegians themselves called these innocent children the German "whore children" in a vitriolic, pernicious campaign that had many parallels with my own ghastly Norwegian experience. My mother is German and the Norwegian press knew this all along. Being a Muslim with an Egyptian father and a natural German mother was a fatal combination for the Norwegian press. I am very much an outsider to the Norwegians and their campaign of religious, sexualised abuse was especially pernicious because the newspapers never named me, making it very difficult to sue.

As for the religious prejudice element in my case see a small sample of other examples provided with exhibit FELD 30 from The Times and Aftenposten's English web desk.]

27. Newspapers obliged to consult subject before and after publication

If this sex-terror story was up for consideration by a national newspaper in England instead of Norway I would have been contacted by the newspaper for my opinion. And they would never have made my religion centre stage as did Verdens Gang and Bergens Tidende in 1995 and Aftenposten in 2002 (see exhibit FELD 31 for Aftenposten of 15 April 2002 article and prior conversation with journalist for an example of blatant Norwegian duplicity).

My large 'harassment' campaign would never have been necessary. It is accepted procedure that a newspaper should and usually does, on a 'sex' story of this nature, contact a subject first and obtain his views and check the facts for accuracy before going to print. This was all ignored in Norway. To call a subject by his religion only and in conjunction with highly salacious, sexualised and mentally abusive allegations would never happen in England. To have a registered mental patient such as Heidi Schøne, the main supplier of information to the press with, from summer 1995, a known history of sexual licence and psychiatric hospitalisation and still regard her testimony for over a decade afterwards as reliable would never happen with English newspaper editors. A criminal prosecution for one newspaper printing a response to another newspaper's 'sex' story just does not happen, no matter how personal.

My facts were all true about Heidi Schøne and Torill Sorte and my campaigns were a proportionate response. No newspaper in Norway ever printed my response so I had to generate my own publicity. The question of facing a prosecution and a criminal conviction in England would never have arisen as here religious vilification campaigns are not initiated by the press.

28. Norwegian support for my website

My website has been praised by enlightened Norwegians (as per exhibit FED 10). Their messages make essential reading. My allegations on the website are all true. Where is the lie in labelling Torill Sorte 'guilty of gross misconduct whilst in public office' with such fulsome and overwhelming evidence?

The Norwegians went on and on sexualising my behaviour when it was all a charade and their main witness, Heidi Schøne, was herself described by her own psychiatrist as having a "tendency to sexualise her behaviour." I responded by giving them a taste of their own medicine: a full rundown of Heidi's sexual and mental history.

Torill Sorte and Heidi Schøne (and all others mentioned on my website) are all free to sue me for libel. And at least, in England, they will not be arrested after the civil libel trial for their own newspaper vilification campaigns nor will they be given a suspended prison sentence under duress, even though their allegations were all bigoted, perverted, sexualised nonsense.

They will not be religiously vilified by the UK press even though they themselves had incited religious hatred in Norway and incurred the interest of Interpol for the hate crime committed against me. They will not be locked up in a police cell for speaking their minds on this case. Here in the UK their human rights will be real and not illusory.

In response to paragraph 10 of James Quartermaine's witness statement and exhibit JAQ5 I enclose my own correspondence with the Norwegian authorities (as per exhibit FELD 32) to show how the rules of natural justice were not followed by the Bureau of Investigation of

Police Affairs in their decision of 19 June 2007. Johan Martin Welhaven gives no substantial reasons to justify his support for Torill Sorte calling me "clearly mentally unstable."

29. Publication in England and harm presumed

I have clearly stated in my Particulars of Claim that the Eiker Bladet article is published on the internet and as it can be seen in the UK in English it is published to third parties in England and Wales.
If I can access the article via a google search on my name then so can third parties. As long as the article remains online there is every opportunity for third parties to access it via a google search on my name.
Referring to paragraph 13 of James Quartermaine's Witness Statement it is a fact that Roy Hansen's article is on the internet on his own website and has been published to the world in Norwegian and English and many other languages.

The posting of an article on a US website that is accessible to English subscribers constitutes publication in England as per paragraph 16 in Jameel v Dow Jones & Co. Inc. [2004] EWHC 1619 and [2005] QB 946 CA (copy enclosed). The same principle applies to Roy Hansen's Norwegian website and its' English extension which is accessible to English readers and is therefore published in England. As per paragraph 19 in Richardson v Schwarzenegger [2004] EWHC 2422 QB (copy enclosed) it is "well settled" that "an internet publication takes place in any jurisdiction where the relevant words are read or downloaded."

I do not have to adduce evidence of any actual harm caused to my reputation within the jurisdiction. In paragraph 2.08 on page 17 of 'A Practical Guide to Libel and Slander' by Jeremey Clarke-Williams and Lorna Skinner under the heading 'Burden of Proof' it says: 'The claimant merely has to prove facts from which it can be reasonably inferred that the words complained of were brought to the attention of a third party. He does not have to prove that the allegations were brought to the actual attention of a third party.'

See also paragraph 20 of Richardson v Schwarzenegger which says: '…the English law of defamation provides for a presumption of damage to reputation once any defamatory communication has been established.'

30. No abuse of resources of High Court

The principles in the case of Jameel v Dow Jones & Co Inc [2005] QB 946 CA (copy enclosed) cited by James Quartermaine regarding an abuse of resources of the Court are not relevant to my case. The Claimant in Jameel was not working in London or the UK - as I am as a lawyer in private practice with a reputation to protect. In paragraph 17 of the judgement in Jameel the defendant adduced evidence that only five people in the UK jurisdiction had seen the article (available on subscription only) that the claimant was suing on and its libel content was at best tenuous. In my case no such evidence has been provided by Torill Sorte.

The longer the Eiker Bladet link is online the greater the chances of third parties looking at it. My claim was also against Roy Hansen and for an injunction requiring him to remove the article and he is not defending my claim. In Jameel the article was removed from the internet (see paragraph 7 of the judgement). In my case the link and article is still online.
I have to try something to stop this vilification and it cannot therefore in any way be described as vexatious litigation.

31. Particulars of Claim were understood by defendants

My Particulars of Claim (see my claim form as per exhibit FELD 33) are not materially defective and do not require any substantive amendment. I have complied with CPR PD 53 paragraphs. 2.1, 2.2 and 2.3 and have set out the words complained of and the defamatory meanings. Only brief but adequate details are required not an exhaustive explanation.

The defendants understood the claim and its meaning and did not, through their Norwegian lawyers, put in any defence alleging defective particulars of claim within the time limits.

Torill Sorte has suffered no prejudice as my particulars of claim specified in full the article complained of and her Norwegian lawyers made it quite clear that they knew the article I was referring to. Master Leslie saw no defect in my Particulars of Claim when he gave me judgement on 18 November 2010. Master Eastman saw no defect in my almost identical particulars of claim when he gave permission for my claim against the Ministry to be served out of jurisdiction. Christian Reusch, for the Ministry, made it quite clear that he understood what the Claim was about.

Torill Sorte's new lawyers, Charles Russell, should not be allowed to put forward a new defence at this stage outside the time limits when defences have already been submitted by Torill Sorte's former Norwegian lawyers. The time has passed for creating entirely new defences.

A defendant who files a defence and defends on the merits will be taken to have acquiesced and therefore it is too late to strike out as an abuse of process if the abuse is founded on the bringing of the claim (Johnson v Gore Woods [2002] AC1).

Torill Sorte and Roy Hansen's Norwegian lawyers filed a purported defence and did not allege defective Particulars of Claim and so therefore acquiesced. It is too late for another firm to defend from scratch. The defendants Norwegian lawyers should have asked for an extension of time.

32. I refer to my arguments in my witness statement of 4 January 2011 as well.

STATEMENT OF TRUTH
I believe that the facts stated in this submission of skeletal arguments are true.

.....
Signed Dated: 14 March 2011
Farid El Diwany
Claimant

IN THE HIGH COURT OF JUSTICE Claim No. HQ10D02228
QUEEN'S BENCH DIVISION
BETWEEN:
FARID EL DIWANY
Claimant
and
THE MINISTRY OF JUSTICE AND THE POLICE, NORWAY
Defendant

WITNESS STATEMENT OF FARID EL DIWANY

I, Farid El Diwany, Solicitor, of [..... ....] WILL SAY AS FOLLOWS:

1. I am the Claimant in this matter and hereby reply to the Witness Statement dated 22 December 2010 of Christian Reusch an attorney at law at the Office of the Attorney General for Civil Affairs, Norway, who is instructed by the Defendant.

2. At the same time as applying to set aside the Order of 16 July 2010 by Master Eastman granting permission for service of my claim outside the jurisdiction, Christian Reusch has, in his Witness Statement:

(a) conceded that the Defendant is vicariously liable for the acts and omissions of all police officers in Norway including in particular a police officer Torill Sorte and accepted that her comments, the subject of my Claim, were authorised by the Defendant;

(b) put in a defence to my claim based on qualified privilege and justified comment.

3. In paragraph 5 of his Witness Statement Christian Reusch has referred to my "public harassment" of Torill Sorte "partly in the form of repeated comments posted on newspaper websites in Norway claiming, for example, that Ms Sorte was dishonest and corrupt." (Comments which I, the Claimant, stand by). Christian Reusch has not mentioned that he and/or the Ministry are well aware of the following facts (by way of several letters in 2005 from myself to the Minister of Justice as hereinafter referred to):

(a) that I am entitled to a right of reply (as per Article 10 of the ECHR) to Torill Sorte's own earlier public statements in, for example, the national newspaper Dagbladet in Norway and in her own witness statements and when giving evidence on oath in Court. Note in particular the following:

(i) Torill Sorte was the confirmed source of information to the journalist Morten Øverbye printed in the Norwegian national newspaper Dagbladet on 20 December 2005 (online) and repeated on the front page of the actual newspaper on 21 December 2005 stating that I the "Muslim man" had been a patient in a psychiatric hospital for two years in England. (See exhibit FED1 showing both articles professionally translated into English at my expense). This allegation was a total fabrication by Torill Sorte who made it up. Torill Sorte knew this to be a fabrication as in October 2003 at the Court of Appeal in Drammen in my civil libel prosecution over a 1998 Drammens Tidende newspaper article, I presented the court and Torill Sorte with my family doctor's letter dated 22 April 2003 (see exhibit FED2) which stated categorically that I had never been a patient in a mental hospital. This letter was specifically requisitioned by me in order to refute Torill Sorte's earlier evidence, sworn on oath before

Judge Anders Stillof in the Drammen City Court in January 2002, that my mother had told her that I had been "put" into a mental hospital (another total lie and in any case my mother did not tell her this as no such conversation took place on this unknown occasion). The Defendant is well aware that I was not contacted by Dagbladet either before or after the December 2005 articles were published.

(ii) Torill Sorte had also put in evidence to the Court of Appeal in Norway in October 2003 her signed witness statement from 1997 claiming that my mother had told her that "he [Farid] was sick and needs help... and on one occasion he was admitted for treatment." (See exhibit FED5 with Sorte's Norwegian witness statement and professional translation, paid for at my own expense). As I have clearly never been a patient in a mental hospital then my mother could not possibly have told Torill Sorte that the contrary was the case. I constantly pressed the Norwegian authorities to provide me with Torill Sorte's attendance notes recording the date and time of this alleged mental hospital conversation with my mother and the date and time of the call and by whom the call was made. The Norwegian authorities ignored me and dismissed my complaint (suggesting a cover up by them and conspiracy to pervert the course of justice). Moreover my mother had written to Judge Anders Stilloff in January 2002 (see exhibit FED4) to report Torill Sorte's perjury.

(iii) I had on one occasion only asked my mother to come to the phone to speak to Torill Sorte in April 1996 to tell her that Heidi Schøne's 1995 newspaper comments that my mother had "wanted" to put me into a mental hospital were false. This my mother did. Heidi Schøne has in fact herself been a registered mental patient since 1989 at the BSS Psychiatric Clinic in Lier, Norway. Her psychiatrist, Dr Petter Broch, has testified in court that his patient has an "enduring personality disorder" and "has a tendancy to sexualise her behaviour."

And that Heidi has been mentally abused by her stepmother and two older sisters and sexually abused by her stepmother's father [all only on Heidi's word] and that her problems were initiated by a difficult adolescence.
The April 1996 conversation between Torill Sorte and my mother was recorded by me along with all my other calls to Sorte and selected transcripts were allowed in evidence in court in Norway provided I translated them into Norwegian first, as Judge Stillofs command of English was not fluent. But there was no time to actually use them in court. However the April 1996 conversation with my mother was not put in evidence but when Torill Sorte on oath communicated for the first time ever to me that my mother had allegedly told her that I had been put into a mental hospital, my lawyer Stig Lunde interrupted her to say that is not what a recorded conversation we have on tape says here: that the very opposite was the case. Sorte was caught out as she said she had no idea her conversations with me were being recorded. The day's proceedings were then brought to a close. But in the evening Stig Lunde spoke to Torill Sorte who told him that if she was called back next morning to face cross-examination over her mental hospital comment she would say that, unbeknown to me, my mother had spoken to her again to make a complete U-turn to say that I had in fact been put into a mental hospital. Stig Lunde feared that it would look bad for me in front of the judge if a police officer swore on oath for a second time that my mother had later made a complete U-turn and told her I had in fact been put into a mental hospital. I knew I had never been "put" (sectioned or otherwise) into a mental hospital and I was shocked at the blackmailing tactics of a police officer to get out of a cross-examination over her perjury - by threatening another perjury. The tape was played next day in court with my mother clearly telling Sorte that it was a lie that she had told Heidi that she had "wanted" to put me into a mental hospital as reported by a Norwegian newspaper.

The transcripts of all my recorded conversations with Sorte are in the possession of the

police in Norway and the courts and have been accessible on the internet on my website for years. They clearly contradict Torill Sorte's false witness to the press (see exhibit FED5).

(iv) The quotes in Dagbladet that I had been a patient in a mental hospital for two years were coupled with the statement that I was a "Muslim." There followed immediately a vicious religious hate email campaign from Norway after the public had been told by the newspaper that I had a website giving my side of the story. The website only started in 2000 (which was five years after the first newspaper articles on me in Norway) as a result of the newspapers not printing a word of my side of the story. One journalist, Ingunn Røren of Drammens Tidende, told the Press Complaints Bureau (the PFU) in Norway that she refused to print my response in order "to protect me from myself." The public were not told by the Dagbladet newspaper of the name of my website but the public easily found it for themselves. The emails targeted me and my religion saying e.g. "Go fuck Allah the Camel" and "...do you lick a pig's arsehole clean before digging in."

I submitted a written complaint to my local police in Brentwood (see exhibits in FED6) which was passed on to the Harlow Police Hate Crimes Unit who sent it on to Interpol. It took a year for Interpol Norway (all Norwegian police in effect) to conclude that no one would be prosecuted for the hate crime (see exhibit FED6 from the Harlow Police Hate Crimes Unit). Clearly, however, the newspaper Dagbladet had incited religious hatred and Torill Sorte had played a crucial part in it. The Ministry of Justice were told of the hate email campaign at the time and of Dagbladet's articles and saw fit not to reply or apologise - even to say a simple sorry for the vile abuse I had encountered. This in spite of Minister Knut Storberget's public pronouncements on the need to do more to combat religious hate crime.

(b) It is plain to see that after this event in late December 2005 I had, more than ever, every right in public to call Torill Sorte a liar and dishonest and an abuser and guilty of gross misconduct whilst in public office. I even called her to protest about her duplicity but never used foul language. Yet Sorte then responds to my protests and refutations of her lies by, in 2006, continuing her lies by her all-pervasive "mentally ill" comments on me not just through the Eiker Bladet article of 11 January 2006 by Roy Hansen, but also in Drammens Tidende and to her national radio station NRK. I was not contacted by journalist Roy Hansen at any time, nor by Drammens Tidende or the radio station - all in clear breach of their ethical rules of conduct. The Defendant has known this for several years. Christian Reusch has himself given his unequivocal support to Torill Sorte. But he has misled the High Court of Justice by failing to give a balanced picture to the High Court from facts within his and/or the Ministry's knowledge. Torill Sorte's decade long false mental hospital allegations go beyond the scope of any proper police investigations into whatever her case was. The police were not even interested in looking into the matter in 1996 as Heidi Schøne wanted to drop the case. I did not want to drop the case and insisted that Torill Sorte question Heidi.

4. In paragraph 7 of his Witness Statement Christian Reusch repeats the claim of Norway's national and provincial newspapers in 1995 that I have harassed Heidi Schøne continuously after she returned to Norway in 1982 from being an au-pair in England. The two attached copy letters from Heidi Schøne (then Heidi Overaa) from 1984 (one postdated 22 August 1984 but mistakenly dated by her as 13 August 1983) and postcard from 1985 (see exhibit FED7) clearly show that we had lost contact and that she regards me as a real gentleman and she explicitly expresses her love for me. In 1995 Verdens Gang and Bergens Tidende and Drammens Tidende newpapers were sent these letters in response to their May 1995 articles and said nothing. Yet my behaviour in a further 20 or so Norwegian newspaper articles until 2006 (those that I happened to discover that is) was described thereon in as being 'Sex-terror' from 1982. My character and behaviour were described in the newspapers

and by Heidi Schøne as being the polar opposite in every aspect to that described in her letter of 1984 (of which there are more). Yet in 1988 she asked me and my best friend Russell Gilbrook, a third dan in karate, (then the drummer with Alan Price and later for Chris Barber and presently the drummer with Uriah Heep) to assist her against her abusive boyfriend Gudmund Johannessen who had just caused her to make a second attempt on her life. She admitted all this in court yet still said I was, prior to this, another one of her many abusers.

What girl asks someone to travel to her country to help her against the abusive father of her child when that someone is also allegedly an extreme abuser too? She described me in court from 2002 as a rapist, a blackmailer: that if she did not let me "kiss her and touch her breasts" I would tell all her neighbours that she had been sexually abused by her stepmother's father; that I had threatened to kill her young son in a letter (no letter was ever produced) and had "stared hard" at him which she took as a sign of her fear that I would kill her son, Daniel. That I had threatened to kill her neighbours, her friends and family and had written over 400 obscene letters to her (none were written and none were produced). None of these allegations were reported to the police at the time regarding this alleged 'year in year out sex terror': the allegations were reported only to the newspapers in 1995 by Heidi, no doubt for money, and it was only by chance that the newspaper articles were made known to me by a lawyer I was using at the time to investigate Heidi Schøne.

Torill Sorte did not even read the three 1995 newspaper articles until I sent them to her in 1996. Police officer Svein Jensen is on record in March 1996 as saying he did not really believe Heidi Schøne. In August 1990 I visited her and her son and spent a lovely day with them. Heidi told me much about herself and her son and related how she had become a Christian and had been exorcised from the Devil and had spoken in tongues. She apologised for the problems she had inflicted on me and let me cuddle her young son who took out his dummy and gave me a big kiss. Much correspondence followed and Heidi sent me a Christian booklet, (she phoned me to say she had ordered from England) hoping to convert me to Christianity (see exhibit FEDS being the cover of the book and some internal pages). This happy period was conveniently forgotten by Heidi in her 1995 contact with the newspapers - after we fell out in 1994 when I discovered that in 1986 she had told the Norwegian police that I had attempted to rape her. This was not true and she did it in revenge for me writing to her father warning him of her dangerous behaviour (her association with a drug user who was the father of her child was just one aspect). I got some of my own revenge for this false attempted rape allegation by telling her neighbours all about her past.

Then immediately thereafter in May 1995 the stories about me in the newspapers commenced. I therefore have every right to make it quite clear to the public that I am definitely not a sex terrorist or potential child killer. Yet the Ministry of Justice through Christian Reusch, who between them have long since known my side of the story, (see exhibit FED9 being three copy letters to the Minister of Justice himself and one reply from the Ministry in 2005), omit to tell the High Court of my reasons for replying to the national newspaper vilification campaign through blogging on Norwegian newspaper websites. Christian Reusch does not even state a very important fact that Heidi Schøne has been a registered mental patient since 1989. It is also an acknowledged judicial fact that the evidence for all the alleged harassment from 1982-1995 is solely on the basis of Heidi's word. There was no corroboration from any source.

Because, in replying to the public/press, I had described Heidi's past history which included her abortions and sleeping around, the newspapers called me a "sex-obsessed mad man." The very opposite was the case - it was Heidi and the press who were sex obsessed and bigoted. I did not want to have sex with her in England as I had not had sex before and could

not have sex with a girl I had recently met who was in such a mess because of her sexual past. The thought of having sex with a girl recovering from her second abortion was a real turn off anyway. I have a letter in my possession in which she acknowledges that she begged me to stay the night with her in England but I did not want to. She was on the pill "just in case" she said.

5. Mention is made by Christian Reusch of my conviction in November 2001 on criminal charges of harassment. What has not been made clear by Christian Reusch, yet is within the knowledge of his honourable Ministry, is the following:

(a) What the Police in Norway term "criminal harassment" is in English law termed a right to reply, of fair comment and freedom of expression in line with the ECHR Article 10 and mirrored in the U.K by the Human Rights Act 1998. I had been especially successful in responding to the Norwegian national newspaper vilification campaign, which response in turn had upset the Norwegian establishment as I had devised a very effective way of getting my message across to the population to point out to their mis-informed public the very unprofessional ways of-their second rate press and police force. I was applauded in emails by a few members of the Norwegian public and urged to continue my website (see exhibit FED10 being three emails as examples).

(b) The Bergens Tidende newspaper article of May 1995 (see exhibit FED11) is clearly in the nature of a hate crime and is a clear incitement to religious hatred making mention of me as a Muslim some nineteen times (when my religion had nothing to do with the story) coupled with comments that I was mentally ill possibly suffering from an extreme case of erotic paranoia. I was not contacted before or after this article by the newspaper and my then lawyer, Karsten Gjone, missed the time limits to sue the three Norwegian newspapers who all wrote similar articles on me in 1995, and Gjone was found guilty of breach of professional conduct by the Norwegian Bar Association in 1999. My replies to these articles by mentioning in detail my accuser Heidi Schøne's past history - made in direct response to her own highly sexualised and salacious and totally false newspaper allegations – was termed harassment by the police and got me a fine of 10,000 Norwegian kroner (£1,000.00), which I refused to pay, and a conviction under Section 390A of the Norwegian Penal Code which is a strict liability offence: sending out true descriptions of someone of a very personal nature is an offence. Let it be noted that my hastily appointed lawyer Harald Wibye tried to get the charge dropped as he argued that the correct charge should have been under Section 390 of the Penal Code which gave a defence of justified comment. The magistrate, one Marianne Djupesland and the police prosecutor were taken by surprise at this request by my lawyer and the magistrate had to retire to her chambers to consult her statutes as she was ignorant of the basis of Section 390. She returned to Court and with no explanation decided Section 390 was not the appropriate section to have charged me with. She would continue with the Section 390A charge and I was duly fined and convicted in absentia.

I told the police in earlier negotiations, when they wanted to do a deal and fine me only 5,000 Norwegian kroner, that as Heidi Schøne had allowed her name and photograph to be printed in her national and provincial press then I had every right to respond in a public way by mentioning her name. The police said that in mentioning her name I was harassing her. I replied to them that if I did not mention her name my right of reply would be meaningless. The fine was given to me in absentia at the local Magistrate's Court in Norway and as Torill Sorte was the chief police witness for the prosecution (again mentioning mental hospital rumours as related to me by my lawyer Harald Wibye) and Heidi Schøne the other witness my conviction is unsafe as Torill Sorte is a proven liar and perjurer and Heidi Schøne's outrageous evidence cannot be seen as safe as she is under a mental disability with obvious

motives for revenge. My own evidence for Harald Wibye did not arrive by special recorded delivery post until after he had left for the hearing at the magistrate's court. He had to make do witha minimal four or so faxes from me and other papers from Stig Lunde.

(c) The police prosecution was timed to sabotage my civil libel prosecution of Drammens Tidende (not just Heidi Schøne) due to begin a few weeks later and I had to spend all my spare time preparing for that in England. Moreover I was told that if I was going to turn up at the Magistrate's Court then Heidi Schøne was not going to go, which for me would render the hearing pointless as Heidi Schøne could not be cross-examined. I was not given a suspended prison sentence in 2001 as stated by Christian Reusch. That came in October 2003 for my website which again was a malicious prosecution as under the ECHR Article 10 I have every right to reply to hate crimes and national vilification campaigns occasioned on my person in Norway. The British Embassy officials who visited me in the cells in Drammen supported me on that issue and did not waht me to get the threatened eight months in prison that the Norwegians were intent on giving.me. Another deal was done with the Police who put me under duress insisted that if I did not plead guilty to harassment for having a website in return for an eight month suspended prison sentence (and a promise to take the website down within seven days of my return to the U.K) I would go straight to prison for eight months. But that the offer of a suspended sentence was subject to the magistrate's discretion who may still decide to give me an immediate custodial sentence. So it was a nervous wait before the magistrate until he released me with a suspended sentence. I did not take down the website and can never return to Norway. Several newspapers had, after 1998 in the meantime, printed more front page articles on me without my knowledge and it dawned on me when I found these articles in some cases 5-6 years later (see exhibit FED12 for the national tabloid Verdens Gang from 1998 which I only discovered in 2003) that due to the highly sensationalised vitriolic comments in them I was never going to get a fair civil trial or criminal trial. I had literally become public enemy number one.

6. Mention is made by Christian Reusch that the Court of Appeal judge in October 2003 stated that my civil appeal was by its nature an abuse of the judicial system. (This case related my claim relating to a 14 July 1998 article from Drammens Tidende (see exhibit FED13)).

Where did Christian Reusch get that information from? It is not mentioned in the Court of Appeal judgement by Judge Agnar Nilsen Jr. My civil lawyer, Stig Lunde, did not think that I had abused the system as his ably worded appeal indicated and he appealed to the Supreme Court with the assistance of Judge Agnar Nilsen Jr. The Supreme Court made no mention at all of my appeal to the Court of Appeal or to the Supreme Court being an abuse of the system. The Supreme Court rejected my appeal giving no reasons - but in Norwegian law no reasons are ever given by the Supreme Court if the claim is for under 100,000 Norwegian kroner. I had made a nominal claim against Heidi Schøne as my main claim was against co-defendant Drammens Tidende newspaper in the original writ. (Libel trials are dealt with by judges, not jury, in Norway).

What Agnar Nilsen Jr. did not let me do was cross-examine Heidi Schøne at the Appeal for the four hours that her lawyer had agreed to let me have. The judge allowed me about half an hour and only if he directed the questions at her himself. The whole point of the appeal had been destroyed in those few minutes. The judge said that he wanted the case to be finished early at 1pm on that particular Thursday instead of at the end of Friday. It just so happened that at precisely 1pm on that Thursday the police were waiting at the door of the courtroom to arrest me for my offending website. The judge told me over two years later that he had no idea until afterwards that I was going to be arrested but he did say in our 20 minute telephone conversation that he regretted the hate email campaign. But someone must

have told the police of the precise time the trial was to finish, in-time for the magistrate's court to charge me the next day, Friday (after a sleepless night in the cells). Over this nine year period I can honestly say that the whole campaign was an orchestrated campaign of mental torture of my person by the Norwegian establishment. Christian Reusch supports his country's system of judicial/press abuse of my person and religious hate crimes. His silence indicates acquiescence with this assault. I am left with the distinct impression that I have been judged to be an evil Muslim pervert. That will never do. That my appeal on my civil libel claim by way of Application to the ECHR was rejected in 2006 with no reasons given came as a surprise as did the fact that the Norwegian judge at Strasbourg, Mr Sverre Erik Jebens, who voted for Norway, was allowed to sit on the case. The ECHR wrote to tell me he was completely independent from Norway when I questioned why a Norwegian judge sat on a case as one of three judges in an application against Norway. Throughout the 1995-2003 newspaper campaign on me Mr Jebens was in Norway latterly as a judge and formerly as a police prosecutor up to his posting in 2004 to the ECHR. What would he make of my fierce criticism of a legal system he had grown up with and supported? There was a suspicion of bias by his sitting on my case in Strasbourg.

7. My description of Heidi Schøne's past as described in Norwegian and English (see exhibit FED14) was verified as "more or less correct" by Judge Anders Stillof in court in August 2002 and as containing "a core of truth" by her psychiatrist Dr Petter Broch.

8. Christian Reusch has described in paragraph 8 of his Witness Statement the laudable police guidelines when talking to the press. But they have not been followed by Torill Sorte. On the contrary she has encouraged and directly facilitated false and partisan reporting, sustained and nourished falsehoods and covered up her own deceit and gross misconduct preventing the exposure of her as unworthy of public service, deceived the public as to the true facts in a case and thus brought the police service in Norway into disrepute. And she has the support of Christian Reusch.

9. Even the Dagbladet journalist Morten Øverbye has called Torill Sorte "a liar...that's a no brainer" when I told him I have never in fact been in a mental hospital. (See exhibit FED15 being an extract of a transcript of a recorded conversation with Øverbye in 2007).

10. All the above information in this my witness statement has in essence been supplied to the Defendant or its constituent parts and is available on my website which the Norwegian police have looked at for years and still do. It is unbecoming of Christian Reusch to repeat comments that he must surely know are misleading to the High Court. It is incumbent on him to at least state the full facts of the matters he has described to give a balanced picture. I am a solicitor and do not deserve to be treated with such disdain. No newspaper in England would ever react in a similar way to the Norwegian press. The judicial system of natural justice in Norway does not follow the British model in some crucial aspects. The Norwegian judiciary never acknowledged once that it was within my legal rights to reply to the public to vile comments by the press or Heidi Schøne. I might as well have been in Serbia.

11. To indicate Norway's antipathy to the stranger/outsider/Muslim in their midst I enclose three articles from Aftenposten of Norway and one from the Times of London as examples of the trend (see exhibit FED16).

12. Norwegian judicial rulings on me are irrelevant with regard to my claim before the High Court against the Defendant as it is submitted that the rationale behind the Norwegian rulings would offend public policy here and therefore not be recognised by the courts in the United Kingdom.

13. In response to paragraph 10 and exhibit CR1 of Christian Reusch's Witness Statement I say that The United Nations Convention on Jurisdictional Immunities of States and Their Property of 2 December 2004 ("the Convention") is indeed not yet in force. Norway has ratified the Convention but the United Kingdom has not ratified it - only signed it. The Convention does not represent a codification of the present status of customary U.K law. It is not referred to in Civil Procedure Rules 6.36 or 6.37 or 6BPD 3.1 which cover permission to serve out of jurisdiction. The High Court is not obliged to take the Convention into account and it is not the practice to do so. In the case of British Airways Board v. Laker Airways Limited [1985] AC 58 Lord Diplock said: The interpretation of treaties to which the United Kingdom is a party but the terms of which have not either expressly or by reference been incorporated in English domestic law by legislation is not a matter that falls within the interpretive jurisdiction of an English court of law'.

14. In response to the Application dated 12 December 2010 by the Defendant through its solicitor for orders (1) and (2) to be made, I will say that:

(a) in respect of the application for order (1) Master Eastman was correct in making his Order dated 16 July 2010 permitting service of my claim against the Defendant outside the jurisdiction as the Civil Procedure Rules (CPR), as drawn, allow for service out of jurisdiction on a State for a tort where damage was sustained within the jurisdiction as provided for in paragraph 3.1.(9)(a) of Practice Direction 6B - and specifically in connection with the tort of libel as per CPR 6.37.44 which is part of the guidance referred to in CPR 6.37.25. Additionally CPR 6.37.43 specifically mentions negligent or fraudulent misstatement as "damage". Damage to my reputation has been caused as has a form of personal injury by way of mental distress resulting from the libels. I could argue that it was the culmination of a national mental torture campaign against me.

The Civil Procedure Rules do not precisely correspond with the requirements of the State Immunity Act 1978 which has a more restrictive jurisdiction, but the CPR do take account of the said 1978 Act but by design do not allow a State to be immune from the tort of libel. Until the CPR are changed to accommodate the exact requirements of the said 1978 Act the CPR must prevail.

(b) in respect of the application for order (2) my claim is one which may be brought in England and Wales pursuant to Article 5(3) of the Lugano Convention signed on 30 October 2007 by the European Community, Iceland, Switzerland and Norway ("the Convention").

Article 5(3) provides that: 'A person domiciled in a Contracting State may in another Contracting State be sued...in matters relating to tort, delict or quasi-delict, in the Courts for the place where the harmful event occurred'.
Quoting from The Law of Defamation and the Internet (Second Edition 2009) by Matthew Collins, Barrister, Owen Dixon Chambers, Melbourne in paragraph 25.34 on page 345:

'In defamation actions, the 'harmful event' occurs both in the place or places where the defamatory publication is distributed and the place where the publisher is established.'

And in paragraph 25.35:

'Where material is published by a defendant domiciled in a Regulation State or a Convention State to a global audience via the Internet and it can be proved that the material has been read, heard or seen in the United Kingdom Article 5(3) of the Brussels Convention and Article 5(3) of each of the Conventions [which includes the Lugano Convention] will therefore permit

a United Kingdom court to exercise jurisdiction over the defendants.'

The 'harmful event' afflicting me is provided by the internet download from google.co.uk when my full name is entered on the google.co.uk search engine and the offending article is available by clicking on the hyperlink Translate this page' appearing as fourth in the list (see exhibit FED17).

15. The bona fides of the Defendant and its concern for justice would be well served by their expressly waiving the immunity they claim for this case and submit to the High Court's jurisdiction.

STATEMENT OF TRUTH
I believe that the facts stated in this witness statement are true.

Farid El Diwany Claimant
4th January 2011

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Transcript of hearing on 16 March 2011 before Mrs Justice Sharp

Case No: HQ10D02334 & HQ10D02228

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 16 March 2011

BEFORE:

MRS JUSTICE SHARP

BETWEEN:

FARID EL DIWANY

Claimant

- and -

(1) ROY HANSEN
(2) TORILL SORTE

Defendants

AND BETWEEN:

FARID EL DIWANY

Claimant

and

THE MINISTRY OF JUSTICE AND THE POLICE, NORWAY

Defendant

MR F EL DIWANY appeared in person.

MR D HIRST (instructed by **Charles Russell**) appeared on behalf of the Defendants SORTE and MOJP Norway.

MR R HANSEN did not appear and was not represented.

Proceedings

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MRS JUSTICE SHARP: Yes.

MR HIRST: Good morning, my Lady. I appear this morning on behalf of Ms Torill Sorte, the defendant in the first action, and The Ministry of Justice and the Police, Norway, a defendant in the second action. I am not instructed by the first defendant in the first action, Mr Roy Hansen.
You should have three hearing bundles in Charles Russell's colours marked A, B and C. There has been an attempt on the part of those instructing me to agree bundles with Mr El Diwany but I understand this morning that you may have additional bundles which he lodged separately with the court.

MRS JUSTICE SHARP: I have four bundles lodged by Mr El Diwany but I think they duplicate the material which is contained in the hearing bundles lodged by Charles Russell.

MR HIRST: They do.

MRS JUSTICE SHARP: Mr El Diwany, thank you for your bundles, but to avoid me looking at the same document in two different places, unless there is some good reason to do so, I propose to look simply at the documents in bundles A, B and C.

MR EL DIWANY: Yes, I have not had an opportunity to look at them, I have been too busy and I only got them on Monday. I think we will manage because my exhibits are clearly marked and I will do what I can to assist you.

MRS JUSTICE SHARP: Thank you. Very well.

MR EL DIWANY: Can I just start, my Lady, by saying that with regard to the case against The Ministry of Justice, I read an email on Sunday evening from James Quartermaine and put two and two together, went to the Law Society the next evening and realised, that the permission that Master Eastman gave to serve The Ministry of Justice in Norway was flawed in that I did not in my application state the grounds that the Ministry should be immune under the State Immunity Act 1978.
The case of MNL v Republic of Argentina is quite clear and my learned friend yesterday put that case into the skeleton argument, and so a stay or struck out, I would like to apply at a later date but for the moment it is going to fail.

MRS JUSTICE SHARP: Your case against The Ministry of Justice?

MR EL DIWANY: Yes, because Master Eastman was wrong to allow it to be served on the Ministry through the Foreign and Commonwealth Office. The point I would like to make in relation to that if I may is that I am a litigant in person; I am a solicitor but not a litigator. I do not know The White Book very well and I would have thought that a simple letter from Charles Russell, who have been counsel all along, pointing out their very case, I would have conceded there and then because it is absolutely certain that there has been a flaw in my application.

MRS JUSTICE SHARP: Mr El Diwany, you will have an opportunity to make your submissions once I have heard from Mr Hirst. That is very helpful; you have indicated that you concede that point and any subsequent arguments you wish to make in relation to it can be dealt with once I have heard from Mr Hirst.

MR EL DIWANY: It is costs mainly, yes. Thank you.

MRS JUSTICE SHARP: Well, we will put that to one side for the moment.

MR HIRST: Thank you, my Lady, in that case I will address the immunity point solely on the basis of any application that Mr El Diwany may make to vary the order or apply to serve outside of the jurisdiction on a future occasion.

There is a further preliminary point concerning evidence. We have sound recordings which were taken from five voicemails left on Ms Sorte's answer phone in 2007 and 2008. They are not in evidence yet, they were only disclosed to us by Ms Sorte on Monday. I seek the permission of the court to introduce the voice recordings at the apposite moment in my submissions. They are relevant, we would say, to the issue of abuse of process and also they go to statements in Mr El Diwany's supplemental witness statement. They contradict statements that he made in that.

These were electronically sent to him yesterday and, as I understand it, the effect of his reply was that he did not take issue with their introduction and so on that basis I would seek to introduce them later on in the course of the hearing subject to any application for their exclusion.

MR EL DIWANY: May I address the court?

MRS JUSTICE SHARP: Briefly.

MR EL DIWANY: Yes. I would like to introduce the reasons I left those messages on Torill Sorte's voice mail and that was because mainly she had lied to a newspaper.

MRS JUSTICE SHARP: Yes, before we get into the detail of it, Mr El Diwany, we are just dealing first of all with the principle, that is whether the court should listen to them. As I understand it you take no objection to that, but you wish to make a point about why they were left.

MR EL DIWANY: Only if I can read out first the sickening, sexualised religious hate mail that I received from members of the public after Torill Sorte spoke to the newspapers saying quite falsely that I had been in a mental hospital for two years. You have my family doctor's letter that says quite categorically I have not, so I was very angry with Torill Sorte and I left some messages on there which I feel are quite justified and I am angry. But that is the main reason.

MRS JUSTICE SHARP: I think this hearing will proceed more quickly if I listen to everything first of all about what is said on behalf of the applicants by Mr Hirst.

MR EL DIWANY: Yes, my Lady.

MRS JUSTICE SHARP: Once I have heard that, I can hear the voicemails without deciding whether or not they are helpful or admissible and then I can hear you in response on everything. Yes.

MR HIRST: My Lady, there is one further insertion to the material for the defendants, which I would ask to hand up if I may. It is simply material evidencing the search engine aspects of the case and I believe it will help the court to understand some of the technical issues which I will come onto in due course. Mr El Diwany, it is an insertion at the rear of bundle A.

MRS JUSTICE SHARP: Would you like me to put it in the back of the bundle?

MR HIRST: Yes, please, at the very back of bundle A.

MRS JUSTICE SHARP: At the back of tab 11?

MR HIRST: Yes, please. It will take a fresh tab and it is paginated sequentially.

MRS JUSTICE SHARP: I do not appear to have an index with page numbers on it.

MR HIRST: I can only apologise for that. It is indexed at the front by tab.

MRS JUSTICE SHARP: I know, but that is not particularly helpful in a bundle of this size.

APPLICATION BY MR HIRST

MR HIRST: I apologise, my Lady, and I will bear that in mind when I make references to the material. (pause)

The court will be aware that there are applications today in two different claims, which could perhaps have been brought together, but were in fact issued quite separately. We requested obviously that the application should be heard together and considered by the same judge because it will have become evident by now that certain issues overlap greatly and of course they are both based on the same allegedly defamatory publication. Therefore, there may be some necessity to cross-reference between the two claims. As I suggested in my skeleton, I am going to call the action against Roy Hansen and Torill Sorte, "The Torill Sorte claim" or "The Torill Sorte action" and the claim against the Ministry, "The Ministry claim" or "The Ministry action".

The applications; in the Torill Sorte claim there are applications by Ms Sorte to set aside the default judgment entered on 18 November. If the court then accedes to this application, there is a further application to strike out on various grounds, which are set out in my skeleton argument and will be expanded upon. The application notice is at bundle A, tab 3, page 11. There were two witness statements served in support of the application, a witness statement of Ms Sorte of 2 February 2011 and a witness statement of James Quartermaine of the same date. Both are at bundle A, tab 3, pages 15 to 28.

In the ministry claim there was an application issued on the 22 December that seeks to set aside the order of Master Eastman of last summer for permission to serve out of the jurisdiction on the basis that Mr El Diwany has not, as he

concedes this morning, satisfied the court that the principle of state immunity does not apply. Alternatively, there was a separate point made on lack of jurisdiction under the relevant international convention. The application notice in this regard is at bundle A, tab 9, pages 165 to 167. Two witness statements are in support of this; the witness statements again of Ms Sorte of 2 February and that is at bundle A, tab 9, pages 176 to 179, and the witness statement of Christian Reusch who is an attorney of the Ministry of Justice and the Police. That witness statement is at bundle A, tab 9, 169 to 171.

Unless asked to do otherwise by your Ladyship, I was going to introduce the claims briefly by referring the court to the Particulars of Claim in both cases and the claim forms and deal then with the setting aside of default judgment. Then if the court indicates that I should do so, I will then proceed to make the application to strike out in the Torill Sorte claim and then deal lastly with the vestigial points on the Ministry application, bearing in mind what Mr El Diwany has just told the court.

As you will have been aware from reading the skeletons and the witness statements, there is a pretty decent hinterland of factual material in this case. The useful background I would submit is presented in paragraphs 1 to 22 of my skeleton argument and the witness statements of Ms Sorte and the supplemental witness statement of Mr El Diwany cover the ground. Needless to say, we do not agree with the spin that he puts on events. I will confine myself to the minimum of chronology and background as I make my submissions.

In terms of the parties, Mr El Diwany is a UK-qualified solicitor who is domiciled in the jurisdiction. He states in his evidence that he is not a litigation specialist and he of course appears in person without representation. All of the defendants are domiciled in Norway. Ms Sorte is a local police officer with the rank of superintendent or sheriff. Mr Hansen is a journalist who runs his own local news website which I will refer to as, "Roy's Press Service" because it is considerably easier than the Norwegian title for it. The Ministry of Justice and the Police (to give its formal title) is a department of state whose Ministry is a member of the government of the Kingdom of Norway. Police officers like Ms Sorte are overseen at the first level by a national police directorate but ultimate accountability for policing matters, as well as for the civil and criminal justice systems, rests with the Ministry. It would be the equivalent of the policing oversight functions of The Home Office in this country being subsumed into the responsibilities of the UK Ministry of Justice as I understand it.

There is further information should your Ladyship require it on the organisation of the police service in Norway and the legislative footing for it in the witness statement of Mr Reusch, the reference paragraphs 3 and 4, bundle A, tab 9, page 169.

If I may refer the court now to the claim form in the Torill Sorte action, which was issued on 21 June 2010. It is found at bundle A, page 2, and the contents of the claim form are worth noting. (pause)

There were claims for damages in relation to what appears to be two separate publications marked with "a" and "b". The first is a claim in relation to an online article published it is said in English by Mr Hansen. The second claim as per the claim form (b) is a claim in relation to allegations spoken by Ms Sorte in an article regarding Mr El Diwany. There is also a claim for an injunction against Mr Hansen but not Ms Sorte and exemplary and aggravated damages are claimed.

Turning to page 4 of the bundle, the Particulars of Claim. In my submission, they are not the model of clarity, nevertheless it is clear at paragraph 3 that the claim is brought against Ms Sorte on the basis that the statements that she made in an interview with Mr Hansen, the journalist, were then published within an article written and published by him on-line. The article complained of is identified in paragraph 3 of the pleading. There is a Google-facilitated translation of the Norwegian article in the fifth line.

Your Ladyship may find that the second page, because of a copying error, is missing.

MRS JUSTICE SHARP: I have page 4A.

MR HIRST: It has been inserted, excellent. The details of publication and defamatory meaning are given at paragraphs 4, 5 and 6. It is pleaded there that Mr Hansen publishes or causes publication of an online article containing defamatory words, some of which were "Spoken by and otherwise sourced from the second defendant". The court should note that the assertion that the publication was in English and the words complained of are set out in English at paragraph 4 also, and the defamatory meaning is pleaded at paragraph 5. Paragraph 6 deals with publication; Mr El Diwany explains that a Google search on his full name, i.e. "Farid El Diwany" produces a hyperlink to "Roy's Press Service" and for the article in English and Norwegian the link contains his name. He invites the court to infer that there has been publication to a sufficient but unquantifiable number of readers likely to include clients and prospective clients of his law practice.

Paragraph 8, which begins at the bottom of page 4A and continues overleaf, deals with damages. The points I would invite the court to note are that the article is said to have been initiated for the first time in English by the first defendant without warning. This is the second sentence of 8.1. A request to remove the article in Norwegian and English was directed to Mr Hansen only in the summer of 2009, which is at paragraph 8.6 on page 6. Mr El Diwany pleads in the summer of 2009 he telephoned Mr Hansen who runs the website informing him that the words were false and to remove the article in Norwegian and English.

That is the claim against Ms Sorte and Mr Hansen. The claim against the Ministry was issued earlier on 14 June 2010; it is found at bundle A, tab 7. The claim form and Particulars of Claim are remarkably similar to those in the Torill Sorte action, it appears to be something of a cut and paste job, save that there were prefatory averments to establish vicarious liability. The Particulars of Claim refer to the very same article and put the claim against Ms Sorte on the basis of her being, "Quoted in Norwegian and English in the article".

MRS JUSTICE SHARP: Where are you reading from now?

MR HIRST: I am getting that from the first line of paragraph 3:

> "The said police officer, Ms Torill Sorte, is quoted in Norwegian and English on a website at the URL and is accessible to the world at large. An article in English appears on the website wherein Ms Sorte has referred to the claimant by the use of defamatory words."

It is not crystal clear because he does not give the precise URL or the article; nevertheless, it is sufficient to say that when one reads the Particulars of Claim it is obvious that the same article is being sued upon.

Paragraph 4 on page 157 is notable because it is nowhere contended that Ms Sorte published the article, but once again it is pleaded that the article contained words spoken by and otherwise sourced from her. Indeed, the pleading at paragraph 4 is interesting in the sense that it does not say who has published it, it just says, "From a date unknown but before 1 July 2009 there was published in English" without actually naming Mr Hansen curiously.

For the purposes of the applications, the Particulars of Claim in the Ministry action are not materially different from those in the Torill Sorte action. The same pleaded meaning is there, the case in publication is identical save that Mr Hansen has been expunged from the scene. The court will notice that the words complained of in both Particulars of Claim are extracts from a publication in English. Each claim refers to an article about Mr El Diwany published by Roy's Press Service. There is only one article and this is the article I will refer to whenever I say, "The article" in my submissions. A copy of it is to be found at bundle A, tab 3 at page 129. (pause) My Lady, you should have an article in Norwegian headed, "Roy's Presset Jeneste".

MRS JUSTICE SHARP: I do.

MR HIRST: The court will see it is in Norwegian, it bears Mr Hansen's by-line and a publication date of 11 January 2006. On the second page of the article in Norwegian the court will see that the same publication date is given for publication in a Norwegian newspaper called *Eiker Bladet*. A professionally translated version of this article obtained by the Ministry of Justice can be found at bundle A, tab 7, pages 160 to 161. It may be worthwhile at this time to pull it out of the leverarch file because inevitably, with the words complained of, it tends to be the most referred to document. (pause)

I now turn to my submissions on setting aside the judgment in default. There are two situations in which the court may set aside default judgment. One is of a right under the rules and the other is discretionary. We say that Ms Sorte comes within both. If I may refer you to CPR 13.2; it provides that the judgment should be set aside where it was wrongly entered.

MRS JUSTICE SHARP: Just wait a minute let me get to it.

MR HIRST: I am sorry. CPR 13.2.

MRS JUSTICE SHARP: Yes. (pause)

MR HIRST: It directs that judgments should be set aside where they were wrongly entered and the conditions in CPR 12.3.1 were not complied with. When one refers back to 12.3.1 on page 382 of the current White Book, one sees that judgment may be entered if the acknowledgment of service and/or defence is not filed in time.

Under CPR 6.35.3, the time for acknowledging service was 21 days from the service of the Particulars of Claim. The court will see that the Particulars of Claim

were served on Ms Sorte on 25 August 2010, this is in bundle C, tab 33, page 435. It is a certificate.

MRS JUSTICE SHARP: I just need the reference but I do not need to look at the document.

MR HIRST: Therefore, time would have expired on 15 September 2010. Ms Sorte's evidence is that she did return the acknowledgment of service to the court on 7 September. This is evidence contained in her witness statement.

MRS JUSTICE SHARP: I have read her witness statement.

MR HIRST: My Lady, you may well also have seen that the evidence that we were able to find was the post room evidence from the Norwegian police station, which shows a document was indeed returned to the Royal Courts of Justice on 7 September. Sadly, perhaps because these are foreign litigants, she was acting on her own and did not retain the photocopy of the acknowledgment of service but in it her evidence is that she contested jurisdiction and wished to defend. We know that those are incompatible choices but it is her evidence that that is what she ticked when she returned it.

Having returned the acknowledgment of service that gave her until 29 September to put in a defence. On 21 September, a Norwegian lawyer instructed by her and Mr Hansen wrote to the court purporting to defend the claim and provided detailed explanation. The reference for that is bundle A, tab 3, pages 22 to 23. You will note that the reference in the letter to having returned signed subpoenas, which I suggest this morning refers to the acknowledgment of service, as that is the only thing Ms Sorte says she had returned.

MRS JUSTICE SHARP: That document has never emerged, the one that was sent?

MR HIRST: It would appear from the order that the Master made in November that nothing landed on the court file.

MRS JUSTICE SHARP: There is still nothing on the court file?

MR HIRST: No. It is deeply regrettable because in my submission if either the letter or the acknowledgment of service had hit the court file, the Master would never have made the order which he did make. When one looks at the letter from the Norwegian attorney, it is very clear that the claim is to be defended and to be contested, either on jurisdiction or on the merits. One sees from the order that the Master was in the belief that Ms Sorte had not acknowledged service, which we dispute, although obviously we accept that the court file contains neither this letter nor the acknowledgment. Unfortunately, when one looks at the letter one can see that the claim number is not mentioned in the letter but obviously the parties are and it is just very regrettable that nobody was able to match the letter to the correct case file.

MRS JUSTICE SHARPE: "In any event" you said.

MR HIRST: In any event, either the steps that were taken provide an of-right set aside under 13.2 or under 13.3 Ms Sorte will show by arguments advanced in support of this application that she has a real prospect of successfully defending the claim, although the matters that I have just referred to concerning the lawyer's letter and the purported return of the acknowledgement of service constitute some other good reason why the judgment should be set aside and Ms Sorte allowed to defend the claim. That is within 30.3(i)(b).

At this point having made the application to set aside, obviously I can go no further if the court is against me.

MRS JUSTICE SHARPE: I think you should go further.

MR HIRST: The application on the merits, the first ground that I would rely on is there were no reasonable grounds for bringing this claim. Your Ladyship will be well aware of the nature of the strike-out jurisdiction. The court has to consider whether strike out is proportionate and just, reasonable, and in accordance with the overriding objective. Applications should be granted where the court is of the view that the claim is bound to fail. Striking out is not inherently contrary to the rights of access to the court or to justice and does not confound the Article 6 rights of the claimants or defendants.

The claim as it is pleaded by Mr El Diwany as against Ms Sorte is unsustainable for a number of reasons which we say are sufficient to dispose of this, as against her, and in some of the circumstances of the entirety of the claim against both of the defendants. Firstly, it is my submission that the only act in connection with this article taken by Ms Sorte that she is responsible for was to make certain oral statements to Mr Hansen, the journalist who published it, during an interview. This is indeed Mr El Diwany's pleaded claim on this, as we have seen. The use of the words "allegation" and "spoken" in the claim form indicates that this is really a claim for slander. The formulation used at paragraph 4 of the Particulars, which is "spoken by and otherwise sourced from". Effectively, Mr El Diwany is suing on a conversation between Ms Sorte and Mr Hansen, which took place sometime in late 2005/early 2006. We know this because the article was published on 11 January 2006. It is essentially a journalist's conversation with a source, albeit a police source, a public servant.

Ms Sorte did not publish or cause to be published the article, nor is that pleaded. She did not choose the words. She did not make it available to *Eiker Bladet*, the newspaper which carried it, nor did she upload it to Roy's Press Service where it is currently published online. It is notable that Mr El Diwany directed his take-down request to Roy Hansen only, and in the letter before action, the reference to which is bundle C27 page 373, he refers Mr Hansen to "your website". As a source, one does not have control over the finished product, as I take Mr El Diwany to suggest in his evidence and skeleton, nor where the finished product, the journalism, will be disseminated.

Contrary to what he suggests, the source tends not to have copy approval as it is against journalistic ethics and conventions. What a source may say to a journalist can well end up on the cutting room floor and this is out of his or her control. A good known example is actually seen in what was published. It is Ms Sorte's evidence to the court at paragraph 17, the reference bundle A tab 9 page 178 paragraph 17, but she deliberately refrained from using Mr El Diwany's name in

the interview as appears to be some sort of police practice in Norway, and indeed Mr Hansen must have taken the decision to name him in the article.

A I would concede that a source for an article can in some circumstances be the driver for publication, however this is not that case. The circumstances I have in mind is where an allegation or revelation is communicated to a journalist which is just so hot and sensational that the journalist cannot afford, for the progress of their own career, to ignore it. The allegations in this case of harassment and mental instability, which are complained of, had of course received relatively wide circulation prior to this publication in the Norwegian Press, a reference to this is

B the *Dagbladet* article, the reference in Mr El Diwany's witness statement is tab B, page 6.

MRS JUSTICE SHARPE: So far as the application, this is an application for no reasonable grounds of success, what is the status of the evidence in relation to whether or not, what she did or did not say? The only matter which is relied on in

C the Particulars of Claim is the article.

MR HIRST: Yes, my Lady.

MRS JUSTICE SHARPE: She says that she did not name him.

MR HIRST: Yes. The evidence is her evidence of how the conversation proceeded.

D

MRS JUSTICE SHARPE: I follow that but for the purpose of this matter I look at the pleading, do I not?

MR HIRST: I am sorry.

MRS JUSTICE SHARPE: I look at the pleading.

E

MR HIRST: One looks at the pleading and one sees that no oral communications are pleaded even though they are referred to. One would expect, in the practice direction, obliges claimants to set out as well as can be done the words complained of. If oral statements are being made, in my submission that is not present here. The limitation period in any event --

F

MRS JUSTICE SHARPE: I follow all those arguments but so far as this one is concerned, if it were in the hands of another pleader it might be said it is to be inferred that she must have named him from the fact that he is named in the article.

MR HIRST: Can I turn you to her evidence on this?

G

MRS JUSTICE SHARPE: I have read her evidence and what she says about it, that she deliberately did not, but what I am asking you is what is the status of that evidence having regard to the nature of the application which you make at the moment?

MR HIRST: The status of the evidence would go to -- it is her case on what was said. There is no other evidence. We do not have a witness statement from Roy Hansen as to what was said. It may be that there is an inference (because his name is in

H the article) that she referred to him. She said says that she did not. The reference

that I was suggesting to you is, as Ms Sorte said in her evidence, is that he came to her, Roy Hansen came to her for an interview because the information had been covered recently in the -- Mr El Diwany accepts that he complains about the other newspaper articles. So, a newspaper called *Dagbladet* the month beforehand had made these allegations in relation to Mr El Diwany. So it cannot have been that Mr Hansen, this is her evidence, he was not flying blind into this journalistically. He had other materials which had prompted him to follow up the story and ask for an interview. Indeed her evidence is that Mr Hansen was also following up the public statements that Mr El Diwany is making at this time whereby he is using his own website to do so and also the websites of Norwegian media outlets.
As you clearly have on board from the thrust of these submissions and from the skeleton, it is a slander claim out of time in a foreign country and it follows that the English court has no jurisdiction over this. The conversation in question is an act which takes place in Norway face to face.

MRS JUSTICE SHARPE: I follow all those arguments. This is a different point which is that she says, "I did not name him". But what is sued on is an article to which she has contributed and in which she is quoted, in which he is named. The question I asked was what is the status of her evidence, in relation to this aspect only, for your application? In other words, it is not a Part 24 application, no reasonable prospect of success, no realistic prospect of success. It is an application under CPR 5(3).

MR HIRST: Yes. I am not sure I follow the precise concern you have with the evidence.

MRS JUSTICE SHARPE: Am I simply to accept her evidence without more?

MR HIRST: It is not contradicted and I see no grounds on which it can be contradicted.

MRS JUSTICE SHARPE: All right.

MR HIRST: It follows, and you have this I am sure, that considering that it is a conversation in a foreign land and there is no jurisdiction under the relevant provision of the Lugano Convention 2007, which is the international convention that governs civil proceedings between Norway and the United Kingdom. I can turn you to it but suffice to say that the relevant provisions that a person domiciled in a contracting state may be sued in another state bound by the Convention in matters relating to tort, defamation is a tort under English law, *delict* or *quasi delict* in the courts of the place where the harmful event occurred or may occur. If the harmful events, on any reading, are in Norway --

MRS JUSTICE SHARPE: What you are dealing with now is paragraph 36.2 of your skeleton, is it?

MR HIRST: Yes it is. The Lugano Convention is in tab 20 in full of the authorities bundle. Article 5(3) is on the fourth page.

MRS JUSTICE SHARPE: Do you want me to look at it?

MR HIRST: Yes, please. The full text says:

> "A person domiciled in a state bound by the Convention may in another state bound by this Convention be sued in matters relating to tort *delict* or *quasi delict* in the courts of the place where the harmful event occurred or may occur."

It is well known.

MRS JUSTICE SHARPE: Are you reading from page 3?

MR HIRST: Yes, sorry, it is page 3. My apologies. Article 5(3). It is well known under English law that the harmful event, i.e. publication, in claims for slander or libel, where the act takes place is either where the material is accessed or read, or purchased if it is a hard copy, and it must follow from that, the location when one is considering a slander claim is where the conversation or the statements are spoken.

None of this is pleaded. We would concede obviously that a sting(?) concerned with harassment might be an actionable slander in certain circumstances because it connects commission of offences. The mental instability sting in my submission would not be actionable because it does not fall into any of the categories for actionability per se and no proof of special damages otherwise identified.

MRS JUSTICE SHARPE: You would have to argue that it did not fall within section 2 of the Defamation Act 1952.

MR HIRST: I need to look at what that says. (pause) Sorry, my apologies. Yes, we would have to show that it does not fall into section 2. These are words not spoken of someone in a calling or profession is spoken of as a man, as an individual. It is really not something relevant to trade or carrying on business or profession, in my submission. It does not say Farid El Diwany is an English solicitor in the translation. It just says Englishman.

My second argument, or perhaps third argument, is that any plea of justification is bound to succeed. There is no prospect of Ms Sorte or Mr Hansen for that matter failing to prove the essential truth of Mr El Diwany's pleaded defamatory meaning in his Particulars of Claim based upon a number of decisions made on the public record in Norway. It is worth the court reminding itself of the pleaded meaning which is that the claimant harasses several Norwegian women including, and in particular, Heidi Schøne and also Police Chief Torill Sorte, and that the claimant is mentally ill, and that his being Muslim has a connection to the behaviour complained of. Two essential stings here of the meaning are that Mr El Diwany harassed women and that he is mentally ill. It is not for the court today and it is not my application to ask it to determine whether the second part is defamatory or not, or passes the test threshold in Thornton v Telegraph Media Group [2011] EWHC 1884 (QB).

But the four matters that we would say that justify the primary harassment sting are set out in paragraph 35 of my skeleton argument. They are, and I am hoping (because it will cut short some time) that you have had a chance to review the underlying documents, they are a conviction of 2 November 2001 under the Norwegian penal code for harassment in the Eiker, Modum and Sigdal District Court. The reference is bundle A, tab 3, pages 44 to 50. The second matter of

public record is the dismissal on 11 February 2002 by the Drammen District Court of Mr El Diwany's private prosecution for defamation of Ms Schøne based on allegations that she published in these papers that he had sexually harassed her and was mentally unwell. The court found these allegations by Ms Schøne to be justified. I am referring you to English translations, which have been professionally commissioned for this litigation by the Ministry of Justice and the Police, so that any point can be made on translation quality. What Charles Russell have done is where they had the documents in both languages, they put the Norwegian behind it. But Mr El Diwany does not take any points on the documents we are relying on being poorly translated.

The third matter of public record -- I may not have given you the reference. The reference for the first instance libel case decision is bundle A, tab 3, 66 to 83.

MRS JUSTICE SHARPE: You set all this out in your skeleton.

MR HIRST: Yes.

MRS JUSTICE SHARPE: It is all listed at paragraph 36.

MR HIRST: It is all there, as is paragraphs 36, 6 and 7 of my skeleton. An explanation of why the conventions at least do not fall foul of the provisions of the Rehabilitation of Offenders Act 1974. Suffice to say that the provisions are that an equivalent conviction under foreign law, under English law the conviction is treated as an equivalent sentence, for the purposes of Rehabilitation of Offenders. So, a suspended sentence of eight months by the Norwegian court handed down in October 2003 is dealt with by section 5(2)(b) of the Rehabilitation of Offenders Act and that would be a sentence exceeding 6 but not 30 months and therefore for adults it is spent after 10 years. So the sentence is not yet spent and it can be referred to without that Act biting or deployment of it in any defence in a libel claim. I have included the Rehabilitation of Offenders Act in full.

MRS JUSTICE SHARPE: I do not think you need to refer to it.

MR HIRST: No. It is at tab 18 of the authorities if required. For the English court to arrive at a conclusion that Mr El Diwany had not harassed Norwegian women would conflict with clear decisions made in both the civil and criminal branches of the Norwegian justice system and findings otherwise would of course conflict with the notions of mutual respect, which stipulates that nations afford to each other's judicial systems. I know that Mr El Diwany will disagree profoundly with that sentiment later on when I am finished.

The same point may arguably be said of the statement that Mr El Diwany is mentally unstable. This received consideration within the Norwegian criminal justice system rather as part of a complaint to the prosecution authorities in Norway that Ms Sorte should be proceeded against in relation to this article and a couple of other articles. The reference for this is bundle A, tab 3, page 125.

My Ladyship, do you have this document?

MRS JUSTICE SHARPE: I am just getting it. Yes.

MR HIRST: One will see on page 125 that the complaint is outlined. At the top one sees it is an official document with a case number and the description has a heading. Under the complaint is says:

> "Police Inspector Torill Sorte is accused of giving false information to the press. The article states that El Diwany was involuntarily committed to a psychiatric institution in 1992. In the article *Eiker Bladet*, Police Inspector Sorte is quoted as saying that she considers El Diwany to be mentally unstable."

This was a complaint made, as the preamble says, on 2 March 2007 asking that Ms Sorte be proceeded against under sections of the Norwegian criminal law. It says that the Public Prosecution Authority passed the complaint to the body that made the final determination, the Norwegian Bureau for the Investigation of Police Affairs. This is their determination. It is dated 19 June 2007. One sees at page 127 that the man who decided it was the Deputy Director of the Bureau, a man called Martin Welhaven.

MRS JUSTICE SHARPE: What is the point you are making here?

MR HIRST: The point I am making is that, if one turns to consideration of the *Eiker Bladet* article, one finds it on 127. The point is that this has been considered through the prism of this invitation to prosecute which was made in 2007.

MRS JUSTICE SHARPE: Which is whether the claimant is mentally unstable?

MR HIRST: Yes, it is the second limb. I am really just addressing the second limb here of what he complains of in the present action, to show that it has received consideration directly in terms of this article as well.

MRS JUSTICE SHARPE: Therefore what is the point of it?

MR HIRST: Therefore this is, I would suggest, a document that your Ladyship would be entitled to take judicial notice of as having been decided on a previous occasion by a competent body.

MRS JUSTICE SHARPE: This is an equivalent of what in this jurisdiction?

MR HIRST: I suppose this would be the equivalent of laying in information or a charge or complaint at a police station, and then perhaps a Magistrate's Court determining the validity of the complaint and whether it should then be referred to the Crown Prosecution Service.

MR EL DIWANY: My Ladyship, can I interrupt?

MRS JUSTICE SHARPE: No, I will hear you, Mr El Diwany, when we have finished. As I said, everybody does their submissions in one go. Yes?

MR HIRST: I am suggesting that it is a decision made by a public authority acting with due process under the Norwegian Law. Of course on a separate matter the court is of course free to form its own view as to whether the hallmarks of persistent and

obsessive harassment conducted over the decade or more, including the present proceedings, do not carry the stigma at the very least of a mental obsession or a conduct which reasonable persons would hold to be abnormal or highly unusual.

MRS JUSTICE SHARPE: You were just going to show me what is on page 127.

MR HIRST: Yes. I will read you the fourth paragraph we rely on in relation to this submission. With respect to the comments in *Eiker Bladet* that El Diwany is mentally unstable, we consider it neither punishable as negligence nor defamatory. We here refer to the contents of El Diwany's website and the other facts of the case. It is not a particularly expansive statement but it is essentially a submission that I just made to you that when one pays regard to the underlying facts of the case and Mr El Diwany's website. As you have already seen, we have produced in the evidence at page 140 just some small flavour of what it is to be found there.

MRS JUSTICE SHARPE: They say it not actionable.

MR HIRST: The decision is that it is not actionable because --

MRS JUSTICE SHARPE: It has no grounds to investigate.

MR HIRST: The decision is that it is not as a matter of the regulations and codes and law of Norway that bind on this action on the police, on her making the statement, that it is not negligent. They also find that it is not defamatory. I would take the second sentence of this paragraph to be simply saying that it is a fair inference from everything that one sees in the case history, the history between these two people, i.e. as the witness in civil proceedings and also the convictions for harassment which are referred to on page 126 of this decision.
My next more substantial argument is that there is not a sustainable case in publication.

MRS JUSTICE SHARPE: Can I just ask you before you go on to that, is there any particular order because you have dealt with these in slightly order in your grounds you set out in paragraph 30?

MR HIRST: Of my skeleton?

MRS JUSTICE SHARPE: You set them out and then in your skeleton you deal with them in a rather different order.

MR HIRST: There is no particular reason for doing it. I think what I have probably done is I have tried to make the more significant ones towards the end.

MRS JUSTICE SHARP: All right.

MR HIRST: I mean, this is the most substantial of the points that I wish to make.

MRS JUSTICE SHARP: That you are coming to now?

MR HIRST: It is also one that, if you are with me, will dispose of the claim in its entirety.

MRS JUSTICE SHARP: Which one are you coming to now?

MR HIRST: I am coming to now, if you have my skeleton argument in front of you, paragraph 36.8. It is also an argument which the documents which I handed up at the beginning of my submissions will go to help illustrate the fallacy of the claim as it is presented.

As you are well aware, publication of articles on the Internet is not to be assumed in Mr El Diwany's favour. The case from which it is reasonable to infer publication must be proved by claimants, in line with established principles. The burden lies on the claimant of demonstrating that third parties have read or accessed materials sued upon. The authority for this is Al Amoudi v Brisard [2006] 3 All ER 294. It is at authorities, tab 1. In that case, the case on publication against a Swiss terrorism investigator was pleaded on -- would it assist you to look at these principles in Al Amoudi v Brisard?

MRS JUSTICE SHARP: Yes, I think we might as well.

MR HIRST: It is at the first tab in the authorities. If you turn to paragraph 10 of the judgment, Gray J says:

> "In relation to the issue of publication, a convenient starting point is to set out the way the claimant puts his case ... [which is very similar to this case] ... until at least May 2004 the defendants owned and maintained a website ... until the date identified ... above the defendants published or caused to be published on the Internet at [the website] to a substantial but unquantifiable number of readers in the jurisdiction ..."

In the absence of clear evidence of publication in the jurisdiction, the claimant applied --

MRS JUSTICE SHARP: Where are you reading from now? Are you reading from paragraph 10?

MR HIRST: No, no, paragraph 13. The defence contains a summary of the defendant's case, that in the relevant period (this is paragraph 13 of the judgment) there was no evidence of publication in the jurisdiction, in that it was a Jameel v Dow Jones [2005] 2 WLR 1614 abuse. Nobody had been identified, no third party, as having downloaded or seen the words in the relevant limitation period, and the point on proportionality at 2.9.

It was then argued by the defendants that a libel claimant has many presumptions in their favour. This is to be seen at paragraph 24. The argument presented here was that there were many presumptions in favour on damage and falsity, but that it is essentially publication, because something is simply on the Internet, is not a presumption that the law will make in favour of the claimant on an Internet defamation claim.

The decision that Gray J arrived at is to be found at paragraphs 31 and following. I read paragraph 31:

"The question which I therefore have to decide is whether the Claimant is right to say that there is a rebuttable presumption of law, in the sense which I have indicated, that the publication on the Internet of the two items complained of was to a substantial but unquantifiable number of people within the jurisdiction."

Then at paragraph 33 he said:

"It is well known (and juries are routinely so directed) that some facts are capable of direct proof, whereas others may properly be proved by inference. Thus publication of the items complained of in the present case to a particular individual could be proved by calling that individual to say that he or she accessed the items and downloaded them within the jurisdiction. A wider publication may be proved by establishing a platform of facts from which the tribunal of fact could properly infer that substantial publication within the jurisdiction has taken place."

My submission on these statements of Gray J is that no platform of facts has been created from which publication could reasonably be inferred. Mr El Diwany has not named a single person who read the article.

His case on publication is based on too many unsafe assumptions. Firstly, publication would appear to be dependent on Internet users entering his full name, Farid El Diwany, into a Google search, but there is no evidence that people do this. They may do it, they may not. Mr El Diwany is not a household name and there has been nothing in the United Kingdom, at least, to catapult him to notoriety.

Secondly, Mr El Diwany makes the assumption that because the link to the article is amongst the Google search results of his name, readers in England must have accessed it. It is submitted that the fact that a particular search engine (but this is submitted by Mr El Diwany in his evidence rather than by me) provides a link to the article is one that one can infer substantial publication from.

But the point of a search engine is that it is comprehensive, and in the case of the word set "Farid El Diwany" there are only four Internet hits on this particular combination of words on Google, the search engine that he references, and they are all associated with him. This can be seen at (it is the document that I sent with my skeleton argument yesterday) page 429 of bundle A. At page 429, you will see that I have taken a screen print of the Google search, which Mr El Diwany relies upon, and you will see that there are four results, the top four, which clearly refer to him and are producing material from the Internet in which his name has been included. The link that we are considering today is the fourth of those results. The fact that Google picks up his name is therefore, I would suggest, as equally likely to be a function of the scarcity of the search term than any popularity of the article in question. It is my submission that the fact that a site is found by Google is neither here nor there, because this is the purpose of search engines, to return a comprehensive set of results.

This is illustrated also by reference to the same search performed on rival search engines. This is the documents that I handed up earlier. They are at the back of bundle A at tab 12.

MRS JUSTICE SHARP: What do you want me to look at?

MR HIRST: If you look at page 433, you will see there, the same search term as is run on Google is run on Bing, which is the Microsoft rebranded search engine, which was launched with fanfare a year or so back. The sixth search result is the fourth search result on Google, it is the link in question. At the bottom of this page, you will see that it is on the fifth page of the results, which Bing deems to be relevant to the search inquiry on the name "Farid El Diwany". You will see at the bottom, it lists the number of pages. I hope you can see it. I hope the copy is good enough to see that it is number 5 which is in bold, which indicates that I am printing from the fifth page and not from the first page. I did not print off pages 1 to 4, because obviously a search engine does not give you the same result 20 times.
The same point can be made briefly --

MRS JUSTICE SHARP: What point are you making then?

MR HIRST: The point that is being made here is that there is no inference, based upon being high on a search return, of substantial publication. I am simply making that point by reference to two other search engines, which put this article on the fifth page of results, i.e. well down the batting order. Also, at page 432 of bundle A, you have the same exercise conducted on the yahoo.co.uk search engine, where it is on the eighth page. This is really to try and scotch the idea that the fact that something is on Google means that there is a substantial publication in the jurisdiction as a result. Yahoo and Bing certainly suggest that there is not.
Of course, the facts of the case, the facts of the publication, work against there being any reasonable inference. Roy's Press Service is not some major blue chip website like the BBC or MSN.com. It is a local Norwegian press service, which can hardly be of interest to people in England where, in all probability (I have been unable to find the statistics) the number of Norwegian speakers must be fairly low. Indeed, I can say that Norway has one of Europe's smaller populations linguistically, with a mere 4.9 million people, which I think is sort of the numbers found in Wales.
Contrary to Mr El Diwany's submission, the site is actually written and published in Norwegian only, and not in English. It may help you to look at the front page of the website in this regard, which is at page 430 of bundle A. As we can see, it is a Norwegian language website. There are no pages in English. It cannot properly be supposed that Internet users would casually stray across an article buried deep by this point (because it is an archived publication) within a Norwegian language media site. This point runs against Mr El Diwany's pleading that he relies upon an English version. There was no English version published by Mr Hansen. Readers in this jurisdiction would clearly, if they accessed it as Mr El Diwany invites the court to suppose, need to know who he was, to start with; they would clearly have to perform a search on his name, and then they would have to decide within that search to access the link which came up, which was very clearly to a foreign website. If one looks at that fourth search result, it is clearly in a foreign language, whether one knows or not it is Norwegian; and when one considers the article, they would have to have understood Norwegian.
The publication that Mr El Diwany really complains about is not by Mr Hansen or Ms Sorte at all, but by a third party, Google Inc, domiciled in California under far more favourable media laws. One can only speculate whether that has been a factor in Mr El Diwany pursuing the claim that he has, rather than as against Google as an intermediary.

When one looks at the search results (this is on page 429) it is clear from this fourth result that the link itself, the material itself, is in Norwegian. This is the underlined hyperlink that the user clicks on to access the underlying material, and alongside it, it is relatively clear that Google is offering its own translation service, where the square brackets say, "Translate this page". One can see when one looks at the other entries on this return that, because they are in the English language, no such facility is offered. For example, Mr El Diwany's own law firm website, which is the top entry, and his LinkedIn entry, which is written in English, no "translate this page" facility is offered.

This service, you may have noted, is not delivered by Bing and Yahoo when the same search result is performed. Therefore, on the basis of the three searches which I have put before the court in evidence, the translate facility is unique to Google.

At this point I would ask the court to turn to the Google facilitated translation, which is at bundle A3, page 132. You can probably anticipate what I am going to say about it. One does not really need to read more than the first three paragraphs to see this is gibberish, which no self-respecting website publisher or journalist would ever consider putting out. In fact, the very unreadability and unintelligibility of it would, I would submit, rationally serve as a deterrent to anyone reading anything more than a few lines of it.

This factor is obviously picked up by Mr El Diwany in his pleadings at paragraph 4 of the Particulars of Claim, where he uses the "sic" abbreviation in square brackets at several points when he sets out the words complained of. It is also noticeable that, when one compares this version, which was produced as one can see on 24 January this year, with other versions which may be found in exhibits to Mr El Diwany's supplemental witness statement (the reference is bundle C, tab 25, page 353) one can see that the translations produced by Google Translate change with the seasons and that words and combinations or words, some of which may well be vital to meaning, become altered, depending on when one happens to run the translate facility.

Quite straightforwardly, this is a publication which it would be highly unjust and unreasonable to fix Ms Sorte or indeed Mr Hansen with responsibility for, and yet it is the one sued upon. The lack of responsibility for this was inadvertently referred to by Mr El Diwany in his letter before action, which the court will find at bundle C, tab 27, page 373, if I can ask you to refer to it. Mr El Diwany writes to Mr Hansen on 10 March last year:

> "I refer to my telephone call to you last year [which he pleads was in the summer of 2009] when I asked you to remove your own article entitled, 'Forsettering' ..."

I cannot read it.

MRS JUSTICE SHARP: You do not need to try.

MR HIRST: Yes. I shall not attempt any Norwegian. The sentence I rely on is the last one of this paragraph:

> "Your website is available in the United Kingdom in English, thanks to the Google translation facility, and the English version of your article contains false and defamatory allegations about me."

Nor can it be right, in my submission, that just because Google translations exists as part of the search engine service, can it be reasonably foreseeable that publications are made available in English in this jurisdiction, although no doubt it would do wonders for forum shopping and libel tourism if that were the case. Publishers may not know that their output is being rendered unintelligible by software based in (I suppose) California. One sees that there is no sign of this facility when you use the search engine in your own language. Again, with the colour copies at the back of bundle A, if one looks at page 434 (I have not succumbed to Googling myself, but I have Googled my chambers) so you can see that it just provides an English language search return for "5 Raymond Buildings". If you turn to page 436, you will see that I have run the same search in Google Norway, which of course has the second line compatibly with the English search on Mr El Diwany. One sees that it offers a translation, and when one runs the translation, at page 435 of the bundle, one will see the chambers' website rendered into, I doubt fluent, but nevertheless Norwegian. I will bet my bottom dollar that nobody I work with thinks that the content we slave over is being turned into some kind of international software language by anyone who chooses to look at it outside the jurisdiction. I just think people will not be aware of that, and there is no reason to think that websites are deliberately opting to have this service applied to them. It would appear to be more like a blanket provision, an automated service provided as part of the search.

My last point on no reasonable grounds for bringing the claim is that this claim is a disproportionate interference with Article 10 of the convention. Any claim that may exist on the facts, as I would submit they are, i.e. a slander claim or a publication claim, is a stale one dating from early 2006 at the latest, and to the extent that allowing the claim to continue, this would be a disproportionate interference with freedom of expression. Although the article remains online (it was published five years ago) this never-ending liability point (it is archive material, I would suggest) was considered in the context of claims in relation to newspaper website articles, i.e. non-contemporaneous material in Times Newspapers Ltd (Nos 1 and 2) v United Kingdom - 3002/03 [2009] ECHR 451, which is at bundle --

MRS JUSTICE SHARP: I have set those passages out in Budu v The British Broadcasting Corporation [2010] EWHC 616 QB.

MR HIRST: Yes. It is the point you have made in Budu, which I have cited in the skeleton argument. In fact, it is wrapped up rather nicely in that. You have it in my skeleton. It is really a question of weighing the competing convention rights and competing prejudices to the parties when one considers this question. Taking the phrase that one has to show exceptional circumstances from the European Court's judgment at paragraph 48 of its judgment, the point is made that it would be disproportionate to allow a claim unless some exceptional circumstances show that bringing a claim in relation to archived material after a lapse of time; that case does not say what a lapse of time is, but I would suggest that five years in this case is certainly that. When one considers the Internet has only really been a medium for 10 or 15 years, that is a reasonably long period of time.

Mr El Diwany does not show any exceptional circumstances for issuing in June 2010, he simply states in his evidence (the reference is paragraph 28, bundle B, page 21) that he only discovered the article in 2009. I know two things in relation

to that statement. If he did discover it in 2009, and the pleadings suggest it was the summer of 2009, he still took almost a year between telephoning Mr Hansen and issuing the claim in June 2010. The onus, of course, is on claimants in defamation actions to move with some speed.

Secondly, disclosure in 2009 is actually contradicted by the evidence. On 2 March 2007, as I showed you earlier on, Mr El Diwany submitted a complaint in relation to this article in Norwegian, and two others, to the Norwegian prosecution authority, in the past it is the Norwegian Bureau for the Investigation of Police Affairs. His complaints about the publication were all dismissed, as we saw. You already have the reference. It is bundle A3, pages 125-127.

In terms of prejudice, one can only speculate what the journalist's position would be, but it may well be that Mr Hansen's involvement in the facts of this case went as far as the one article that was produced. Certainly, having to investigate defences, perhaps responsible journalism defences, evidence after a period of four or five years may be considered prejudicial.

MRS JUSTICE SHARP: What do you submit I should do about the position of Mr Hansen?

MR HIRST: As I am going to come on to in abuse of process, there are some very strong arguments in this case that perpetually re-litigating matters, which have been comprehensively investigated and determined hitherto, is an abuse of process, and the public interest that there should be a finality to litigation would not be best served by allowing the claim against Mr Hansen to continue. It may be that when you have heard what I have to say in relation to abuse of process, that you may form a stronger view on Mr Hansen's position. If I may turn to the issue of abuse of process in this case --

MRS JUSTICE SHARP: You have put it on two bases, the Jameel basis first, and the second is the more conventional Henderson v Henderson [1843] 3 Hare 100 type of abuse.

MR HIRST: Yes.

MRS JUSTICE SHARP: But is the way you put it that it is an impermissible collateral attack? Is that the principal ground?

MR HIRST: Yes.

MRS JUSTICE SHARP: So you are not saying it is *res judicata* strictly?

MR HIRST: No, we are not saying it is a strict application of *res judicata* because the parties are obviously different in the present Torill Sorte claim. What we do say is that this is the re-litigation even between separate parties where the issues are substantially overlapping or the same is a species of abuse of process that the court should view as substantially overlapping or the same, is a species of abuse of process that the court should recognise.

MRS JUSTICE SHARP: Do you say that by reference to Dexter Ltd v Vlieland-Boddy [2003] EWCA Civ 14?

MR HIRST: Yes. I have prepared some relatively detailed submissions for the court on what Auld LJ had to say in Bradford & Bingley Building Society v Seddon & Ors [1999] 1 WLR 1482.

MRS JUSTICE SHARP: Yes, before you get to that, I just want it to be clear in my own mind, mapping out what your points are, because it is just in paragraph 51 of your skeleton argument, you say that an allied form of abuse of process which is also relevant.

MR HIRST: Yes.

MRS JUSTICE SHARP: All that I was trying to understand was exactly what you are saying there. What are you saying, it is relevant in addition to what, Jameel, or something else?

MR HIRST: There are clearly two different grounds for considering abuse, one of which is when proportionality is in issue. I should say that the categories of abuse are not closed but I am focusing today on proportionality being an issue here where the gain is not worth the candle.

MRS JUSTICE SHARP: That is the Jameel.

MR HIRST: That is the Jameel point and I rely on Mr Justice Eady's encapsulation of it in Kaschke v Osler [2010] EWHC 1075 (QB) at paragraph 22. I am saying, on this basis, it is a no real and substantial tort case with no evidence of damage and with considerable prejudice to the defendants.

On the second limb, I am saying that re-litigation even where the parties are different may also amount to an abuse of process which is well recognised by the Court of Appeal, if not the House of Lords or the Supreme Court, and my basis for saying so will be the judgment of Auld LJ in Bradford & Bingley v Seddon. Is it more helpful if I take you through the stats?

MRS JUSTICE SHARP: I think I understood it correctly that there were two bases, one is Jameel and the second effectively, what amounts to an impermissible attempt to re-litigate issues which have already been decided, an impermissible collateral attack.

MR HIRST: There seem to be two parts to the test as suggested by Bradford & Bingley.

MRS JUSTICE SHARP: Well, let us go to that then.

MR HIRST: It is at tab 3 of the authorities. This is a case where there had been litigation before by the same parties, albeit that on the second occasion the issues were slightly different. If we can pick it up at the introduction of Auld LJ, it is page 1484, at the bottom, he said:

> "The appeal raises the question in what circumstances a court may strike out as an abuse of process on the ground of inconsistency an action between parties and on issues different from those in an earlier action. Is inconsistency enough in the absence of special

circumstances or, for example, must there be some additional factor such as dishonesty or a collateral attack ..."

A

He then says that the broad question is whether the second claim in Bradford & Bingley fell foul of the established principle in Henderson v Henderson that where a party should, save in special circumstances, bring forward his whole case in one go and not seek to re-open the matter.
So although this case did concern the same parties, he also said at page 1490F, after he had set out the well known dictum of Sir James Wigram, Vice Chancellor,
B in Henderson:

"In my judgment, it is important to distinguish clearly between *res judicata* and abuse of process not qualifying as *res judicata*, a distinction delayed by the blurring of the two in the court's subsequent application of the above dictum. The former, in its cause of action estoppel form, is an absolute bar to re-litigation,
C and in its issue estoppel form also, save in special cases or special circumstances [he gives references]. The latter, which may arise where there is no cause of action or issue estoppel, is not subject to the same test, the task of the court is to draw the balance between the competing claims of one party to put his case before the court and of the other not to be unjustly hounded given the earlier history of the matter."

D

Then, and this is what we do rely on, at the bottom:

"Thus, abuse of process may arise where there has been no earlier decision capable of amounting to *res judicata*, either or both because the parties or the issues are different, for example, where liability between new parties or a determination of new issues should have been resolved in the earlier proceedings. It may also
E arise where there is such an inconsistency between the two that it would be unjust to permit the later one to continue."

And then at page 1492, under the heading of "Re-litigation and additional elements", he said this:

"In my judgment, mere re-litigation, in circumstances not giving
F rise to cause of action or issue estoppel, does not necessarily give rise to abuse of process. Equally, the maintenance of a second claim which could have been part of an earlier one, or which conflicts with an earlier one, should not, per se, be regarded as an abuse of process. Rules of such rigidity would be to deny its very concept and purpose. As Kerr LJ and Sir David Kerr emphasised
G in Bragg v Oceanus Mutual Underwriting Association (Bermuda) Ltd. [1982] 2 Lloyds 132 respectively, the courts should not attempt to define or categorise fully what may amount to an abuse of process."

He then goes on to say:

"Sir Thomas Bingham MR underlined this in Barrow v Bankside
H Agency [1996] 1 WLR 257, CA stating, that the doctrine should not be 'circumscribed by unnecessarily restrictive rules' since its

purpose was the prevention of abuse and it should not endanger the maintenance of genuine claims. Some additional element is required, such as a collateral attack on a previous decision."

Also what may assist your Ladyship are some paragraphs on page 1494 where he discounts in effect the claimant having to show that there are some special circumstances which allow them to bring the later claim but that rather the duty is on the person alleging abuse to demonstrate the later claim is an abuse. That point is made at 1496C. So that is what was said in 1999 by Auld LJ.

The Henderson v Henderson principle, the classic embodiment of *res judicata* between the same parties as a ground of abuse, was given a modern re-statement in Johnson v Gore Wood & Co [2002] 2 AC 1.

In that case a businessman brought a personal claim against solicitors in circumstances that an earlier claim brought by his company was settled on favourable terms and the defendant firm applied to strike out the second claim as an abuse. I shall not take you to the classic re-statement of Lord Bingham because it was a case essentially between the same parties but the reference to it is paragraph 31 of the judgment.

The thrust of what he said applied to cases between the same parties but there is an associated species of abuse, which I rely upon, where a party makes collateral attacks on the final decision averse to him, which had previously been made by a court of competent jurisdiction. The abuse need not involve the re-opening of a matter already decided but may cover issues of fact which are so clearly part of the subject matter that it would be an abuse to allow new proceedings to be started in respect of them. That principle I have set out in my skeleton argument and it is supported as a recognised principle by what was said by Peter Gibson LJ in Dexter Ltd v Vlieland-Boddy and then summarised by Clarke LJ.

If I just take you to that briefly, it is at tab 5 of the authorities bundle.

MRS JUSTICE SHARP: Well the point that is made in 4, on the face of it, it looks as though what he has in mind is a situation in which something could have been raised in earlier proceedings.

MR HIRST: Yes.

MRS JUSTICE SHARP: And that does not arise here.

MR HIRST: No, it does not, but if you turn to paragraph 49 of Dexter at tab 5, you will see that the principles to be derived, Clarke LJ states, of the which the most important is from Johnson v Gore Wood, can be summarised as follows, and this follows a consideration of the law by Peter Gibson LJ where the point is considered that cases between different defendants may also give rise to abuse and you will see that his distillation of the principles is certainly wide enough to cover the present case.

MRS JUSTICE SHARP: It is well settled, is it not, that if something can be held to be an impermissible collateral attack, albeit not between the same parties, then that can amount to an abuse of the process.

MR HIRST: Yes. In a libel context certainly it has been well decided. It is the ratio of Schellenberg v BBC [2000] EMLR 296 which formed really a hybrid of the proportionality and re-litigation abuse principle, and secondly a very good example of it in operation in the context of defamation is the decision of Gray J in Pedder v News Group Newspapers Ltd [2003] EWHC 2442 QB. In Pedder the claimants began separate libel actions against different newspapers over what was essentially the same story. When one claim was dismissed at trial, the defendant in a later action, i.e. another newspaper group, applied to have the claim dismissed because the issues were effectively all nearly the same.

MRS JUSTICE SHARP: But what you say here is that the issue in relation to, certainly the harassment point, with the connotations which have been described, has already been determined in the Norwegian courts.

MR HIRST: Yes.

MRS JUSTICE SHARP: And what is sought to be done here is an impermissible collateral attack upon that decision.

MR HIRST: Yes.

MRS JUSTICE SHARP: That is what you are saying.

MR HIRST: Yes. That is right; I have noted various sections of the evidence that I can take you to, which are exactly that. There were sustained and clear attempts on collateral attack of the criminal convictions and the civil decisions involving Mr El Diwany.

MRS JUSTICE SHARP: That is, in short, where you put your case in this on the second limb, as it were, category of abuse.

MR HIRST: Yes, because the re-litigation, as I understand the authorities to establish, it is not enough to show simply whether a different party is involved. The re-litigation of itself amounts to abuse of process. It is clear that one has to go further than that and show an additional element, is what Gray J called it in Pedder, and that may be a collateral attack, which this certainly is, but it may also be some circumstances of harassment or unnecessary vexation, which we also say this is.
My Lady, you have seen a largely overlapping complaint about the same newspaper article, which was made in relation to the police prosecution of Ms Sorte already. That complaint was dismissed. The decision of the Bureau considering it refers to earlier complaints of perjury against Miss Sorte, which were also dismissed by prosecutor and also by the special police investigation commission. Also at the heart of that complaint lay the second limb allegation of mental instability.

MRS JUSTICE SHARP: Do you need that in addition to the findings in the criminal case?

MR HIRST: It is there to meet the anticipated point that the mental instability allegation has not received judicial treatment. We would say that when you look at the

decision of the prosecutor and the prosecution authority, i.e. the Bureau, that it has received a proper investigation. It is difficult to make comparisons between the systems.

MRS JUSTICE SHARP: Of course the point does not arise if you succeed on publication and the Jameel abuse.

MR HIRST: That is absolutely right. The re-litigation piece is obvious. The references I would rely on to show it from the materials produced by Mr El Diwany are these references: it is at bundle B, the supplemental witness statement, pages 1 to 25. The paragraphs are not broken down but if you was to be referred to paragraph 5, paragraph 9 and paragraph 11 on page 13.

MRS JUSTICE SHARP: You are saying that Mr El Diwany's own witness statement shows that this is what this is all about?

MR HIRST: Yes. He is not doing anything to disguise that it is an attempt to undermine and demonstrate the previous decisions, which were made under the Norwegian system, were wrong. He is very open about that. The Particulars of Claim go to this as well, in paragraph 8.

There is a second element to this, we say, which is that there is an obvious unjust oppression in requiring a foreign public servant, a police officer, to answer these claims, which have been judicially and non-judicially investigated several times in her own country and dismissed. There is an unmistakeable pattern of harassment in the way that Mr El Diwany has sought to bring Miss Sorte to account for evidence in the Norwegian civil proceedings and her statements to the press.

The process of bringing her to account has been pursued, we say, with an unusual and abnormal fervour. The same body, for example, in the case of the prosecution authority has been asked twice to consider the same complaint about Miss Sorte, namely that she is a perjurer for introducing the allegation of mental instability into the proceedings in the defamation claim.

MRS JUSTICE SHARP: I think the complaint about that is that it is said she said that Mr El Diwany had been in a mental hospital for two years and that is the point that is objected to.

MR HIRST: Yes. It is clearly the same essential sting as suggesting mental instability. I mean it is an extension of the sting no doubt, but it is the same essential sting. Of course what is being complained of is an allegation of mental instability because that is the only one that is in the translated version of the article, not an allegation of incarceration.

MRS JUSTICE SHARP: "Contention", in that context.

MR HIRST: Yes. The last matter on the Torill Sorte claim is in connection with the recordings, which I referred to at the outset.

MRS JUSTICE SHARP: Do you have something?

MR HIRST: I do. There are two ways of listening to them. One is tried and one is untried. My iPhone produces a very clear audible version of the recording, which I think, if everybody is reasonably quiet, would sound quite well around the court, unless this court --

MRS JUSTICE SHARP: Can you tell me what it is I am going to listen to and what is the point that you are asking me to consider in relation to what is going to be played.

MR HIRST: It is for consideration of the point that these proceedings go beyond mere re-litigation and that they are designed to harass and vex Ms Sorte. For example, the present proceedings are referred to in the voicemails. I should say again, the prospects of these proceedings are referred to in the voicemails.

MRS JUSTICE SHARP: But what relevance do they have?

MR HIRST: What they tend to suggest, on listening, is that the claim that has been brought is an exercise in harassment. An ugly exercise in harassment and dragging somebody into court in this country against the --

MRS JUSTICE SHARP: You are saying they are brought for an impermissible collateral purpose.

MR HIRST: Yes, an impermissible collateral purpose, but they also evidence a contextual background of anti-social behaviour and they are highly suggestive of a vendetta being pursued against Ms Sorte.

MALE SPEAKER: And the dates?

MR HIRST: We have transcripts. We believe they are 2007 and 2008.

MRS JUSTICE SHARP: All right.

MR HIRST: I would invite your Ladyship to --

MRS JUSTICE SHARP: Do you have transcripts?

MR HIRST: We have transcripts and we have the original recordings. They are very short, by the way. They are no more than 30 seconds each.

MRS JUSTICE SHARP: Can I have the transcripts then, please? (handed)

MR HIRST: I invite your Ladyship to read --

MRS JUSTICE SHARP: Do you want to just play them? Go on.

MR HIRST: I can certainly play them. It might be better if I hand my iPhone towards the bench. Mr Quartermaine makes a valid point. This is not the totality of communications that Mr El Diwany attempted to make to Ms Sorte. This is merely a selection. There were occasions where she picked up the phone or her

son picked up the phone, we are instructed, or that she is in the office and the call was made to the police station and she picked up the phone.

MRS JUSTICE SHARP: And these are left on her answer machine at home?

MR HIRST: Yes, those are our instructions.

MRS JUSTICE SHARP: All right.

MR HIRST: Your Ladyship, I do not know if you prefer to play them or if the associate would --

MRS JUSTICE SHARP: I am not going to touch it, Mr Hirst. Get the associate to --

MR HIRST: So there are five recordings in order, all that one does is press the button to play. When it is done, one presses done. Returns to this screen, press the next one.

> "(1 second of Norwegian spoken)
> MR EL DIWANY: You cowardly bitch, answer the phone. The only excuse you'll have is if you're in a mental hospital. Your mother is probably visiting you now. Anyway, how does it feel to be on the front page of a website, you piece of trash. Inbred, Norwegian trash, that's all you are. Now I'll keep on until you resign or are sacked, you piece of trash.
> (2 seconds of Norwegian spoken)
> MR EL DIWANY: Come on, coward, just pick up the phone. Come on, cheat, pick up the phone, you piece of trash, you liar, abuser, crooked policewoman. Pick up the phone, you piece of shit. You bloody coward. God damn you, you dishonest trash.
> (2 seconds of Norwegian spoken)
> MR EL DIWANY: If I can't speak to you, let me speak to the psychiatrist who is taking care of you in the mental hospital. At least he should have the honour to tell me what your condition is, apart from being a lying pervert that is, and well protected by Judge Nilsen, weren't you? You're all trash, you lying bitch, Come on, answer the phone. You ruin lives, you do. You cheap little shit.
> (2 seconds of Norwegian spoken)
> MR EL DIWANY: Come on. Come to the phone, you piece of shit. Come to the phone you piece of damn little shit. Come on. You pervert. You sickening pervert. If only we could get you into court in England, you piece of fucking shit. What's it like being an abuser, a liar and a cheat? A corrupt policewoman, hmm? Nothing you can do about it now because you made the big, fatal error, so just resign. I'm going to have to do something. I'm going to have to speak to the judge or the court, because you, you must be dismissed. You utter piece of trash.
> (2 seconds of Norwegian spoken)
> MR EL DIWANY: Come on, you wretched pervert. Answer the phone. You disgusting piece of trash, a liar and there's nothing

you can do, nothing you can do to help yourself because you're a perverted, lying pig who perverts the course of justice and is protected by your trash judge. You know you've lied. I know you've lied in such an extreme, stinking way and this will follow you for the rest of your life. You Norwegian piece of inbred trash."

MR HIRST: My Lady, my final submission on the abuse of process is that, with these recordings in mind, and bearing in mind the application to strike out at an interim stage, the court is reminded to consider what a reasonable person would think the purpose of pursuing this claim actually is. When a broad merits-based approach, which lies at the centre of Lord Bingham's test in Johnson v Gore Wood is adapted, the court can exercise its discretion rightly to dismiss the claim as an abuse. That completes my submissions on the Torill Sorte claim.

MRS JUSTICE SHARP: You did not deal with the limitation period, or did you?

MR HIRST: The limitation period was dealt with on two bases. Either the conversation was in 2006, and therefore, as a slander claim, is out of time. There is no application to disapply limitation, for either a claim based on oral statements or a publication claim based on the online article, which itself was published in 2006. Now, I do not dispute that it is still on Mr Hansen's website. We have been able to access it until quite recently for preparing the court documents. My submission in relation to that is really contained in the point in Budu v BBC and the disproportionality point that the European Court referred to at the end of their judgment in Loutchansky.

MRS JUSTICE SHARP: That is on the footing that your argument on whether she is responsible for the publication at all.

MR HIRST: Yes.

MRS JUSTICE SHARP: But that only comes into play then.

MR HIRST: It only comes into play then if the court does not see it simply as a slander. If the court is concerned that there is some further causation elements that can be justly fixed to Ms Sorte, it comes into play then.

MRS JUSTICE SHARP: Right. Thank you.

MR HIRST: On the Ministry claim, I bear in mind the submission that Mr El Diwany made at the outset this morning. He would appear to concede, for the reasons which are set out in my skeleton argument at paragraphs 76, 77 and 78, that he was unable to satisfy the procedure, which is both set out in the White Book in the notes to 6.37.24 under the heading of Actions Against Foreign States, both that and the proper procedure for serving a claim form out of the jurisdiction, which includes emanation of a foreign state as a defendant, which is addressed in the NML Capital Ltd v Republic of Argentina [2011] UKSC 31 case in the Court of Appeal. I should point out that this is a decision which is under appeal, although I

do not believe that the procedural grounds that I am referring you to form part of that appeal, as you will see if I can just take you --

MRS JUSTICE SHARP: Putting aside the procedure for a moment, if the position was that there was no cause of action for the reasons you have given in relation to Ms Sorte, then there would be no case involving the Ministry of Justice, because their only involvement in it is if they are vicariously liable for her publication. If there is no claim against her, it follows there would not be any involving the Ministry of Justice, is that right?

MR HIRST: Yes.

MRS JUSTICE SHARP: And then secondly, so far as the other matter is concerned, apart from the principle, as it were, what has to be shown in order to have found jurisdiction, you raise the question whether, even if he had followed the proper procedures, there would not be any case against the Ministry of Justice at all.

MR HIRST: Yes, for the reasons on jurisdiction, which I referred to actually in connection with the argument on the Torill Sorte claim. Those reasons are that there is no jurisdiction under Article 5(3) of the Lugano Convention. Those reasons are sufficient to dispose of the claim in both matters because, of course, if today both claims were not before the court in isolation, we were just considering --

MRS JUSTICE SHARP: But basically what you say is he would not be able to satisfy the procedural grounds because of the state immunity here. Is that what you are saying?

MR HIRST: It is both. He is not going to be able to satisfy that state immunity does not apply to the bringing of the action against the Ministry and, even if that is wrong, there is no jurisdiction, depending on the view that the court takes as to what the tortious act was. If it takes the view that I am suggesting, that it is a slander claim, then there is no jurisdiction either, which would be a ground on which the claim could be struck out or the order set aside because obviously it has to be shown to be a good claim as well as one which does not involve the principle of immunity of state.

MRS JUSTICE SHARP: What I am asking you is, put aside for the moment what was or was not demonstrated to Master Eastman at the relevant time, what do you say are the grounds upon which this claim should go? First of all you say because there is no case against Ms Sorte at all.

MR HIRST: Yes, I mean it is all of the reasons which were advanced as to why the claim should be struck out against Ms Sorte.

MRS JUSTICE SHARP: Yes, but secondly you say it is not a case in any event where -- or are you saying that this is a case of state immunity?

MR HIRST: Yes, I mean we do say it is a case of state immunity and this is also a basis on which the court should set aside Master Eastman's order. It is brought in

relation to things done by an officer of the state in the execution of public duty as a police person. Police communications with the media are not prohibited and in this case the specific statements are not --

MRS JUSTICE SHARP: That is the evidence of the lawyer.

MR HIRST: That is the evidence of Christian Reusch. The reference is at bundle A9, 169-171. It does not conflict with law or the regulations on the police, which are designed to promote better understanding of police work or to give information about specific cases, dispel information and rumour and promote law and order. As Ms Sorte says in her evidence to the court, she was contacted in late 2005 by a number of journalists in her role as a police officer because she had been exposed, as a police officer, in the Heidi Schøne case and as a witness as a result of that in civil proceedings, and this has exposed her to attacks by the claimant. The statements that she made to Mr Hansen were completely consistent with the public record in Norway, in the form of Mr El Diwany's convictions and the decisions of the civil courts. Mr El Diwany used websites himself of the Norwegian newspapers and his own website to attack her as a policewoman.

MRS JUSTICE SHARP: I follow those arguments, it is not a case of simply saying, "Well, he followed the wrong procedure", because the point is that, if you are saying that even if he tried to demonstrate what needed to be demonstrated, he would not be able to because the principles of state immunity mean that there would be no proper case to be brought against the Ministry of Justice.

MR HIRST: Yes, because the underlying actions that were relied upon are actions of a police person in the line of duty, which is part of the principle of a sovereign act of the state. I mean, clearly police activities are essential and fundamental to the essence and wellbeing of the state and its ability to order itself and defend itself and to good law and order.
Is it helpful if I take your Ladyship to the House of Lords authority on the acts of public servants when foreign states are sued? It is in the bundle, it is not tabbed. It is Jones v Ministry of Interior of Kingdom of Saudi Arabia [2006] 2 WLR 1424. It is behind the last tab. It is helpful on this question. Unfortunately my clerks have let me down with the print document, it does not have page numbers and it is clearly not the proper law report cited. But, nevertheless, on the third page, you will see that Lord Bingham introduces the conjoined appeals, which are brought against a foreign state and its officials. He said one principle, historically, the older of the two, is that sovereign states will not, save in certain specified instances, assert its judicial authority one over the other. Then when you see who the parties are, it is the Ministry of the Interior in the first action, a lieutenant colonel sued as a servant or agent of the Kingdom.

MRS JUSTICE SHARP: Where are you looking now?

MR HIRST: I am looking at paragraph 2. The claims were for torture, false imprisonment, trespass and assault and battery and, as in this case, the kingdom applied to set aside service of the proceedings and to dismiss the claim on grounds of state immunity. In the second action:

"Messrs Mitchell, Sampson and Walker are the claimants in the second action giving rise to this appeal. They issued High Court proceedings on 12 February 2004 against four defendants. The first two defendants were sued as officers in the Kingdom's police force. The third defendant was sued as a colonel in the Ministry of Interior of the Kingdom and deputy governor of a prison in which the claimants were confined. The fourth defendant was sued as head of the Ministry of Interior."

If you turn to paragraph 9, over the page, this is the general proposition that the rule laid down:

"Thus the rule laid down by section 1(1) of the 1978 Act is one of immunity, unless the proceedings against the state fall within a specified exception."

It is the principle of restrictive immunity. At paragraph 10, halfway down, Lord Bingham says:

"There is, however, a wealth of authority to show that in such case the foreign state is entitled to claim immunity for its servants as it could if sued itself. The foreign state's right to immunity cannot be circumvented by suing its servants or agents."

Various authorities are cited for that. At paragraph 11, it was said:

"In some borderline cases there could be doubt whether the conduct of an individual, although a servant or agent of the state, had a sufficient connection with the state to entitle it to claim immunity for his conduct. But these are not borderline cases. Colonel Abdul Aziz is sued as a servant or agent of the Kingdom and there is no suggestion that his conduct complained of was not in discharge or purported discharge of his duties as such. The four defendants in the second action were public officials. The conduct complained of took place in police or prison premises ..."

MRS JUSTICE SHARP: In this case, it is said expressly that the Ministry of Justice is vicariously liable, so the claimant himself is saying that the principle of vicarious liability would only work if Ms Sorte was acting within the scope of her employment at the relevant time.

MR HIRST: Unfortunately it is not quite as simple as that. That is certainly what the pleaded case says, unfortunately his evidence is contradictory and he says both. He says on the one hand it is an act of state and it is an act of public duty by police personnel and, at the same time, he tries to maintain that it is a private PR issue of private statements.

MRS JUSTICE SHARP: Yes, but I am saying, so far as the pleaded case against the Ministry of Justice is that it was vicariously liable. On that basis, then it is not open, on the face of it, for the claimant to argue that the claim, in respect of the Ministry of Justice, is in respect of the private conduct by Ms Sorte, because --

MR HIRST: That is my understanding. I believe, from his --

attempt caused by Johannesson and then she went into the BSS Psychiatric Clinic in Lier.

When I sued her for libel in 2000, I could not cross-examine her at all. I was completely barred from cross-examining her; the reason that I cannot quite understand, but was that she was a psychiatric patient. I should have been allowed to cross-examine her. That is a fundamental aspect of a right to a fair trial in Article 6. She was saying all sorts of things. If you think the allegations, which you may not have read yet, I am everything under the sun. I am a rapist, I am a potential child killer, I am a sexual blackmailer, an abuser, and death threats to everybody. She said I wrote 400 obscene letters to her. In court not one of them turned up. She did not keep any, gave them to no one. But it was still regarded as true, and how can that be? They do not exist. She did not ever complain to anyone before about them. So a mental patient is allowed to say all this.

In 1995, I discovered an allegation that I had attempted to rape her. In 1986, she went to the police saying I had attempted to rape her. But that allegation to the police, she only went there two weeks after I wrote to her father saying she had terrible behavioural problems and he had to do something about it.

MRS JUSTICE SHARP: Why did you write to her father?

MR EL DIWANY: To warn him, to tell him that she is pregnant again to a chap injecting heroin, he was an ex-convict, Gudmund Johannesson, she tried to commit suicide before over him by taking pills, and so I wrote to her father and said, "You have to do something". Within two weeks, out of spite, she went to the police to allege I had attempted to rape her, and that was 18 months after I last saw her. That 1986 attempted rape allegation changed to rape in 1988 and Torill Sorte told me that.

I was having very amicable conversations with Torill Sorte in 1996 to 1998 and you have the transcriptions of the conversations and they are all available on my website, very amicable. The first policeman there, Mr Svein Jensen said, "There is so much stuff here, I do not believe her. This cannot be true." And they were going to drop the case. There was no great reservoir of evidence there that I have been sexually harassing her, blackmailing her, for instance --

MRS JUSTICE SHARP: I think, if I remember correctly from looking at the transcript that there was some suggestion that if you took down your website that matters might be left, as it were the proceedings would not begin and everything would be as it was.

MR EL DIWANY: Yes, the website. Why? Because not one newspaper in 19 articles in Norway gave me a right to reply. I could say nothing. Three 1995 newspapers, the articles referred to me as an "insane man" and a "Muslim man suffering from erotic paranoia". They could not believe that my description of Heidi Schøne's life history was true or that she liked me.

MRS JUSTICE SHARP: What are you reading from?

MR EL DIWANY: Sorry, I beg your pardon my Lady, I am reading from page 1 of my supplemental witness statement. We have these articles here and it is totally unacceptable for a newspaper to refer to me as "the Muslim man" 19 times in one

attempt caused by Johannesson and then she went into the BSS Psychiatric Clinic in Lier.

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MR EL DIWANY: Sorry, I beg your pardon my Lady, I am reading from page 1 of my supplemental witness statement. We have these articles here and it is totally unacceptable for a newspaper to refer to me as "the Muslim man" 19 times in one

article without saying why they are doing it. We have this article, it is exhibit FED/11. (pause)

A

MR HIRST: Tab A, 389.

MRS JUSTICE SHARP: Thank you very much. Yes?

MR EL DIWANY: In the article I gave you, I did highlight the 19 occasions in which "Muslim man" was used and that is coupled with, on the next page, the "suffering
B from erotic paranoia" with two psychiatrists saying I may or do suffer from erotic paranoia. Why am I suffering from erotic paranoia? What is it? It is firstly called "old maid's syndrome" where somebody imagines a woman loves him. Well, I did not have to imagine, I knew Heidi Schøne once loved me because her letters to me speak of marriage and what a decent chap I am and all the rest of it. These 1995 articles from the very start, every article that has been done on me in
C Norway, say that, from the very moment I met her, I was sexually harassing her. I was committing all sorts of crimes. But these 1995 articles came out without her knowing that I found the newspaper articles. She did not think I would read them.

MRS JUSTICE SHARP: Right, well, it is 1.00pm now. I will rise and sit again at 2.00pm, so you can continue your submissions at 2.00pm.

D MR EL DIWANY: Thank you, my Lady.

(The short adjournment)

MRS JUSTICE SHARP: Yes.

MR EL DIWANY: So, three 1995 newspaper articles. One large provincial and one
E national newspaper. *Verdens Gang*. In *Bergens Tidende* , they are calling me "Muslim man" 19 times, "suffering from erotic paranoia". "Threatened Heidi Schøne's life." "Harassed her because she did not want to be with a Muslim man." In *Verdens Gang*, "13 years of sex terror." So it all began in 1982. 13 years before 1995, in 1982. So we can have a look, if we may, at one of Heidi Schøne's letters.
F Exhibit FED/7. I have typed it out because her writing was illegible in many cases, but I can undertake it is correctly typed. The typed version is absolutely correct. This letter, do you have it, my Lady?

MR HIRST: It is page 348 of bundle A.

MR EL DIWANY: This was post stamped 22 August 1984. She says halfway down on
G the typed up version:

> "Bloody he! I don't know why I think of you. Oh, can't you marry two women! He-he! That was a joke. I can finish my studies in Norway first and then I'll come over to England and get married to ... You will probably be old and dead by then. He-he! What about marrying an Egyptian and Norwegian girl? A blonde and a dark
H one, that should be a good or should I say nice combination. Marry

the Egyptian one first and when you are fed up with each other I'll come over."

Later on she says, at 690:

"It feels good to know that you care about me as a person, and not just as a "sex object. Seriously, I mean it. It feels very nice. But I still think we are going to lose contact when you are married."

This is a very complimentary letter and there is a card she writes to me. I did not keep many of her letters, but you can see there is another one. She wrote a card, a few pages on:

"For someone special; I'll be there if you need me. Anytime, anywhere, I'll be there if you need me."

She writes to me in this black letter, it is a few pages on, in the last half from the back, undated 1984. She says:

"It is always nice talking to you. You're such a nice person and you know that too. But how are you now? Have you heard anything from the Egyptian girl recently?"

And she goes on, postcard:

"Thank you very much for your letters. I just want to write this card to you to show that I think a lot of you. I do really hope you take care of yourself and that everything works out for you, love. Lots of love, Heidi [and several kisses]."

So, that was 1985. Yet we find her evidence to the newspapers, in 1982 paints me as basically the devil. She did that in revenge for me telling her neighbours her past, because of her false allegation of attempted rape. I am not the only one who has been accused of that. She accused --

MRS JUSTICE SHARP: Sorry? She did it in revenge for you telling the neighbours?

MR EL DIWANY: Yes. I told her neighbours her past --

MRS JUSTICE SHARP: Why did you do that?

MR EL DIWANY: Because I just discovered an allegation of attempted rape made a few years earlier. To this day I cannot find out from the police what the attempted rape is. That could have got me into a lot of trouble.

MRS JUSTICE SHARP: I am just trying to follow why you told the neighbours.

MR EL DIWANY: Because I found out. I told the neighbours her past. Her past.

MRS JUSTICE SHARP: Because --

MR EL DIWANY: Because I had found out that I had been subjected to a false allegation of attempted rape, which has now changed to, well, actual rape. No charges were brought, none that I am aware of.

So my convictions, my first conviction was due to the information campaign that I conducted to correct what the press had written because they were not taking any notice of my communications to them, lengthy communications with her letters. (pause)
I am just trying to find the campaign articles I wrote; sent to the public.

MR HIRST: Can I help?

MR EL DIWANY: It is at FELD/3.

MRS JUSTICE SHARP: That is your supplementary witness statement?

MR EL DIWANY: Yes. So-called press release.

MRS JUSTICE SHARP: Just wait a minute.

MR EL DIWANY: So, it was directly relating to her past. They have written about me, so I wanted them to know exactly about the woman who was writing it herself, to the newspapers. It is just a historical précis to go with the second article. It is entirely shown more and more --

MRS JUSTICE SHARP: This is written by you?

MR EL DIWANY: Yes, that is my letter to correct the press.

MRS JUSTICE SHARP: You refer to yourself in paragraph 3 as, "The Muslim man"?

MR EL DIWANY: I do. Only because they started it. They put, "The Muslim man" originally. It was to let them know who it was. I am not going to put my name to such awful stuff, so I put "The Muslim man" only in response to their -- they started, "The Muslim man", without saying why. (pause) All of this, all my information was deemed as more or less correct by the judge and by her psychiatrist. "Core of truth", said the psychiatrist. So, there is no disputing this, it is correct.

MRS JUSTICE SHARP: Where do I find that?

MR EL DIWANY: It is only in my reports on the cases myself. Because, although I asked the judge to note that, and that was why I went to appeal as well, they did not do it. But, I can give a personal undertaking that Dr Petter Broch in 2003 described my reports on her as containing a core of truth. Judge Anders Stilloff, in 2002 I believe, said my reports were "more or less correct". I have referred to that in my appeal documents.

MRS JUSTICE SHARP: Yes, but it is not in the judgment of the court?

MR EL DIWANY: No. There is a lot in the judgment of the court that they do not put in. It is very mischievous in my opinion. Especially the fact that I did not write 300 letters to Heidi Schøne from 1997 to 1998. They conceded that was untrue. It was not put in the judgment. Nor was the fact that one of the journalists who

wrote that I was suffering from erotic paranoia, she said that she did not know what erotic paranoia meant and she only lifted it from another newspaper, which was *Bergens Tidende*. I think it points in my favour. The editor said he could have researched the matter much better. But, of course by then the newspapers were not in the dock because they had craftily slipped out of it in 2000 after making me promise not to sue them in return for the Norwegian Press Complaints Bureau, (Norwegian phrase). They said, "We will only look into your complaint if you promise not to sue the newspapers". So, naively, I promised. Only to discover that they do not look into the truth or falsehood of the comments made in the newspapers. They just look into the general matter of whether a newspaper has a public interest story.

After that, I appealed to the Supreme Court of Norway to ask the judge to let me sue the newspaper. Unfortunately my lawyer, Stig Lunde, my second lawyer, missed the time limits. So, new case law was going to be created with the Press Complaints Bureau in Norway. It was not, because my lawyer had missed the time limits.

I complained to the Press Complaints Bureau in 1996 after I had my articles translated. I was luckily sent the articles by my lawyer who was investigating Heidi Schøne's conduct in the 1990s. He sent me the newspapers, I had them translated and I complained to the Press Complaints Bureau in Norway. They wrote to me over the course of four months, eventually deciding that I was out of time. So, I could not progress there either.

MRS JUSTICE SHARP: Which newspaper articles are you talking about?

MR EL DIWANY: I complained about all three. *The Verdens Gang*, *Drammens Tidende* and *Bergen Tidende*. *Tidende* just means news. So, it is Bergen News, Drammen News and Verdens Gang, which is the big tabloid. I found out later that they had an independent right to investigate newspaper articles themselves if there is religious hatred evidence, well, there certainly was. Nineteen times, "The Muslim man suffering from erotic paranoia". Which has now been proven to be baseless. They refused. They were very aggressive as well.

So, I tried. In the end I said to them:

> "This stuff is so blatantly Islamophobic. I had a German mother. I was born here. I like rock music, my best friend is the drummer in Uriah Heep. I am not a fanatic of any sort."

So, I decided the only way to teach these people a lesson was to institute my own campaign, which was a leaflet campaign to all and sundry in Norway by whatever means I can manage. So, it just --

MRS JUSTICE SHARP: When you say, "Teach these people a lesson", which people are you referring to?

MR EL DIWANY: The newspapers. They must have sold tens of thousands of newspapers on that salacious stuff on me. So, I sent it to the public to let them know. What else could I do? I could not sue, because my first lawyer, Karsten Gjone, missed the time limit. Oh, another one missing the time limits. He was found guilty by the Norwegian Bar Association of negligence. I do have that report.

Again, at FELD/6, my Lady, his name is Karsten Gjone. (pause) It has the Norwegian decision. Plus, well there is a professional translation in the fax, I can promise that. At the very last page of the English:

"Lawyer Karsten Gjone acted in breach of good lawyer's practice. Missed the time limit."

(pause) The conclusion in the Norwegian, that that has been passed to, your Honour, I do not speak Norwegian, (Norwegian phrase).

MRS JUSTICE SHARP: Well, if there is a translation you should read the translation, should you not?

MR EL DIWANY: Yes. This translation is off my website, but it is an actual correct translation, and Norwegians do not refer to, when they put "NN" in there, that means the party, Heidi Schøne. They do not put the names. But I can undertake personally that this is a correct translation. He was found in breach of good lawyer's practice.

MRS JUSTICE SHARP: It is bit difficult for you to do that if you do not speak Norwegian.

MR EL DIWANY: I got it translated by my usual translators; RWS Translations, Gerrards Cross. I just did not have time to find the -- it is tucked away. But, I can undertake that is correct. (pause)

So, out comes the next article. There were two articles in 1998. One of them I did not know about for five years, which was *Verdens Gang*, I think that says, "Sex crazed man". But I did sue on the 1998 *Drammens Tidende* article, which went to the Supreme Court. I sued in 2000, the newspaper and the journalist and Heidi Schøne. As I have told you just now, the newspaper managed to get out of it by sleight of hand, saying that I had promised not to sue. I did not know that even though you used the Press Complaints Bureau in Norway you can still sue them afterwards if you do not like their decision. I did not have that chance at all because the Court of Appeal in Norway decided that my promise was permanently binding. I could never sue them now. So, we went to the Supreme Court and missed the time limit.

So that just left Heidi Schøne before Judge Stilloff, and I could not cross-examine her. I was stopped from cross-examining her. She said all sorts of stuff about me being a sexual predator. Her evidence from 1982 to 1995 was all uncorroborated. There was not one scrap of evidence from any witness or anyone else, her neighbours. Writing 400 obscene letters. "Can you produce one of them please?" Not one, because she has thrown them away, which made my (several inaudible words).

She was a psychiatric patient; her evidence was given freely as to all my crimes. None of that evidence was put to the police ever, up until 1996 when Heidi Schøne decided to complain because I had insisted Torill Sorte investigate her for her basic attempt to pervert the course of justice by saying I am a danger to the public. So, there was no evidence at all. It all came after this, in 1996. I begged Torill Sorte, "Please investigate this woman". But, at the same time I was continuing to send my reports to the Norwegian people about Heidi Schøne's past. Because newspapers are supposed to phone you up and get your comments before -- they

are supposed to print your response. But, their main agenda was that I was Muslim with a German mother.

A What I hope does not upset the court is that my grandfather was a German soldier, killed in Stalingrad. The Germans, of course, are not liked particularly by the Norwegians. They invaded them in World War II and they had a huge story about the abuse of the children of German soldiers born to Norwegian women, because they rather liked each other during the war. They were called "the German whore children". Not my words, but the words of Norwegians. They were sexually abused in a most disgusting manner and put in mental hospitals. So the mental B hospital approach is one that has been tried and tested before. They do that anywhere. People outside are mental if you do not agree with them.

I had that article called, "Sleeping with the enemy". I am not going to read it to you, my Lady, because the gist of it is quite clear. Severe psychiatric, mental and sexual abuse of children. It went to the European Court for Human Rights, because the Norwegians covered up for years and did not admit to their crimes, but I think they have now. One of these ladies was -- one of these German "whore C children" was singer in Abba, Frida, whose father was a German soldier. So I was an ideological enemy, being Muslim and having a German grandmother.

Henrik Lunde gave evidence in court in 2003. He was from the Anti-Racist Centre, to say that no newspaper in Norway refers to the victim, or a subject as Christian or Jewish. So, it was absolutely wrong to refer to him as a Muslim, particularly as being a Muslim is an opposing religion, even though my mother is a D born Protestant.

Was this just a one-off, this religion thing? No. 2002, headline, "British Muslim terrorises Norwegian woman on the Internet". I had a conversation with a journalist before that. Reidun Samuelsen was her name. Her duplicity has to be read out. (pause) "Sleeping with the enemy" is the -- sorry. I beg your pardon. FELD/31. (pause) I can undertake that this is an RWS translation. Professional translation:

E "British Muslim terrorises Norwegian woman on the Internet. Started after an au pair job 20 years ago."

Again, we are going back to 1982, quite long. Why put "British Muslim"? Why not just put "Briton"? My conversation with the journalist who got in touch with me by email. Again this is in page 1, this is on my website at the moment.

F MRS JUSTICE SHARP: What, this article is on your website?

MR EL DIWANY: Oh, they are all on my website. The point is I record their conversations and I give them the norwayuncovered.com\sound for these conversations. You can hear them at your leisure.

On the first page of this I telephoned the newspaper on 10 April, once they had G seen my website. They emailed my ISP to ask me to make contact. Halfway down:

"We need to establish, to me the story here not is not about the past, by why you are writing on the Internet about this."

MRS JUSTICE SHARP: What are you reading from now?

H

MR EL DIWANY: I am reading halfway down this untitled document, it is a transcript of a phone conversation I had with them.

MRS JUSTICE SHARP: What page is that on?

MR EL DIWANY: This is page 1 of 3. It is at the end of the Norwegian article. At the top it has got, "I telephoned the newspaper".

MRS JUSTICE SHARP: Yes. (pause)

MR EL DIWANY: So, I talk about that they keep putting, "A Muslim man".

MRS JUSTICE SHARP: You contacted the journalist yourself?

MR EL DIWANY: Yes, I did. We had a chat and I recorded this. On the second page, halfway down, she says, "We need to establish, did they put your name in print, or something?" That is very hard to see your name in print. That is why -- I think that was a calculation on their part, because they can say whatever they want. I think the main thing is the abuse. So, she said to me, "Did they put your name in print or something?" I said:

> "No. They didn't put my name. The main thing is that I'm Muslim. They don't care about my name, they care that I'm Muslim. You see the newspaper articles on the website, you people in general do not like Muslims. I know that because I have spoken to enough Norwegians over the years. The main thrust of the May 1995 *Bergen Tidende* article, they don't care what my name is. They know and want to attack me as a Muslim."

Reidun Samuelsen says, "I didn't know that you were a Muslim." And I put:

> "Obviously, she hadn't in fact looked at my website for very long because the three 1995 newspapers were up there in Norwegian, together with the English translation."

Then she goes on to say, "Nobody told me that and it doesn't matter for me."
So, that was my conversation. I did not know about this article that she did, "British Muslim terrorising Norwegian woman on the Internet", for 1½ years. The only reason I knew about it is because Heidi Schøne in court let it slip out. So, I go home after the case, Googling the word "Muslim" and "Norwegian", and out comes this article, "British Muslim terrorises Norwegian woman on the Internet."

MRS JUSTICE SHARP: Sorry. I am just looking at the conversation in 397-398. The position is that you ring her out of the blue. You tape your telephone conversation. She discovers that a quarter of the way down. You tell her what is on your website?

MR EL DIWANY: Yes. She contacted me because she had seen my website.

MRS JUSTICE SHARP: Before this?

MR EL DIWANY: Yes. Oh yes. She left a message on my email asking me to ring her.

MRS JUSTICE SHARP: Why is that?

MR EL DIWANY: I am very careful with Norwegians and clearly recording people has been a God send, as you can see with my recording with Torill Sorte who said I always abused her. There were three years of conversation and not one word of abuse when she was being sensible. It all changed, of course, when she said I had been put in a mental hospital, which is about the worst thing you can say when it is not true. You have my family doctor's letter.

MRS JUSTICE SHARP: What changed when she said that? What, that you started abusing her after that?

MR EL DIWANY: I did not abuse her all.

MRS JUSTICE SHARP: You said, "I didn't abuse her before and it all changed after she ..."

MR EL DIWANY: Oh yes, it all changed.

MRS JUSTICE SHARP: I was asking you what you were saying changed.

MR EL DIWANY: What changed? My whole attitude towards her as an honest policeman supposedly by going on oath in court to say that my mother had put me in a mental hospital. This was outrageous. What a thing to hear. My lawyer, Stig Lunde, during the case he said, "We've got a tape recording cassette here of Mr El Diwany's mother", because I asked my mother to speak to her, to deny the fact that Heidi Schøne had said my mother wanted to put me in a mental hospital. Coming from a psychiatric patient like Heidi, "Wanting to put me in a mental hospital". We played the tape and it said Mr El Diwany's mother never wanted to put him in a mental hospital. I have not been in one, that is quite definite.

In the evening, my lawyer Stig Lunde rings up Torill Sorte to say, "Look, we're going to cross-examine you in the morning about this mental hospital thing", and she said to Stig, "If I'm asked to come back, I will retract what I said. I will make a complete u-turn and I will say that Mrs El Diwany phoned me up again to retract what she said, to say in fact that he had been put in a mental hospital."

I know I have never been in one. My doctor's letter confirms that. We played it to the book. We did not ask her back because he said it would be very bad in front of the judge if it seemed as if I had been in a mental hospital. I said to my lawyer, "I've never been in one". It was too late. He had told her the night before she is not going to come to court so we could not cross-examine her. That is why I appealed against Stilloff.

I cannot be accused of abusing the Norwegian court process if I am described by Heidi Schøne as a potential child killer, written her letters threatening to kill her son. Where is the letter? I did not write it. She never had a copy, nothing. Did not even give it to the police, nothing. I think she said she gave it to the police but they had lost it, surprise, surprise.

Torill Sorte next time at the court before Anders Stilloff. I had my family doctor's letter from 2003 and I said her, "Well, you have put in a witness statement from 1997". I am going to refer to you that witness statement, my Lady; 1997 witness statement. (pause) Exhibit FED/3.

MRS JUSTICE SHARP: Whose witness statement is this?

MR EL DIWANY: I beg your pardon?

MRS JUSTICE SHARP: Whose witness statement is this?

MR EL DIWANY: Torill Sorte's own witness statement.

MRS JUSTICE SHARP: All right.

MR EL DIWANY: FED/3; it has the Norwegian and an RWS translation.

MRS JUSTICE SHARP: Page 259?

MR EL DIWANY: FED/3.

MR HIRST: Yes, it is at page 259.

MR EL DIWANY: Just the bottom paragraph:

> "The author has also been in touch El Diwany's mother. She is an elderly woman [I think she was 62 at the time; hardly elderly] who has given up trying to help her son. She says he is sick and needs help. This is something they've always struggled with and on one occasion he was admitted for treatment. His mother could not cope with all the trouble again and therefore just lets him carry on."

I mean, that is a despicable thing to say. I have never been admitted for any treatment and I have a tape saying the exact opposite where my mother had told her, "I never wanted to put him in a mental hospital". Because I had my mother once to speak to the police officer when we were having a good time. I recorded all those conversations and my mother has written to Judge Stilloff to complain bitterly about this lie and that is FED/4. I think, ultimately, I mean my doctor's letter and the fact that I have never been in one proves that I have not been in one. FED/4, Judge Anders Stilloff, 22 January 2002. I will read it, shall I?

MRS JUSTICE SHARP: Yes.

MR EL DIWANY:

> "Dear Sir,
> Policewoman Torill Sorte.
> I write in connection with the above named policewoman's evidence given at the recent trial in your court between my son Farid El Diwany and Heidi Schøne. I was shocked and distressed to hear that Torill Sorte swore under oath that I told her that I had put Farid into a mental hospital. This is an outrageous lie. At no

time has my son been in a mental hospital or had psychiatric treatment of any kind. His family doctor will confirm this in writing to you.

I, myself, was deeply insulted at this preposterous suggestion. You have heard the tape from 1996 wherein I specifically told Torill Sorte that I had not threatened to put Farid into a mental hospital as has been written in the newspapers. This was the only time I had spoken with Torill Sorte.

For 28 years I was the wife of a doctor in general medical practice and often assisted my husband in his work. I am not being manipulated by my son in any way and it is grossly offensive of others to suggest that this might have been the case.

I would be grateful if you could ensure that Torill Sorte is dealt with in the appropriate manner."

I will refer to my family doctor's letter, which I specifically requisitioned for the court in 2003. His name is Dr Athreya. He works in the Shenfield, Essex, Department of Health Practice. And it is FED/2. (pause)

MRS JUSTICE SHARP: Page 257?

MR HIRST: Page 257, yes.

MR EL DIWANY:

"To whom it may concern", 22 April 2003, it has my name, date of birth and address:

"I confirm that I am the general medical practitioner of the above named gentleman. On careful perusal of Mr El Diwany's medical records I can state categorically that I can find no evidence that Mr El Diwany has being committed as an inpatient at any psychiatric hospital. I trust this is satisfactory for your requirements. Please do not hesitate to contact if you need any further information."

So, it is in black and white, no psychiatric treatment.

I used that letter in court in 2003 in my appeal before Judge Stilloff. I said, "Torill Sorte, you clearly stated in a witness statement that my mother put me in a mental hospital". I said, "We have a taped conversation saying the opposite so when did you call her again?" "Oh, no record, you know, nothing". I said, "Well, you are a liar. I have not been in a hospital because my family doctor's letter says so". At that precise point Judge Stilloff intervenes and says, "I will stop the proceedings there". When Torill Sorte leaves he says, "If you ever have an outburst like that again I will not let you cross-examine further in this court". My tone of voice was calmer than now. I just said to Torill Sorte, "Well, my family doctor's letter clearly indicates that you are a liar". That tone of voice. I could not cross-examine any further.

We were on the point of getting her. She is a crook. She is a dishonest police officer and if it happened in England she would be sacked. I do not know that perjury investigation -- I think it was a cover up, personally. Cover ups do happen. And they are very opaque as to the reasoning they give. I do not think she was consulted properly. There is no consultation basis for their decisions, these

Norwegians. They do it all on paper. You cannot put anything in except your letters. They do not even tell you if they consult the other side. Not very good at all. Certainly not the British way of doing things. I think she should personally be in prison for lying.

But we had another chance. Now that she was being let off she was free to carry on. We come to her newspaper article and this is the crux of my complaint and my present claim. We come to the newspaper article in *Dagbladet* exhibit FED/1. (pause) RWS translation.

MRS JUSTICE SHARP: Page 241?

MR EL DIWANY: Page 241. It has: "Sexually pursued by mad Briton".

MRS JUSTICE SHARP: Yes.

MR EL DIWANY: "Twenty-three years", this is a 2005 article, so again we are going back to 1982, quite inaccurate. They tried to say that, once again, everything started the minute she went back to Norway. "Has been sexually harassed"; they think my leaflet campaigns on her past are sexual harassment. They talk about me as a sexual madman so I put a path which is correct. What am I? I sexually harassed her. Again, halfway down:

> "For her, the nightmare began when, as an 18 year old au pair she met half-Arab Briton on a boat trip between France and England. She was travelling with a girlfriend when she noticed a five-six year older man looking at her."

So it began when I met her, 18. Clearly wrong. Second page, subheading, "Terrorised":

> "She did not want to have any further contact with him when she later moved back to Norway."

Well, we have seen her letters. She is a liar. I mean, in others they have said I have written, "F off". Letters telling her to F off, all the time, daily. I carved, "F off", on her door. No way. Why do they not photograph the door? That was nonsense. Anyway, this is the crux of the matter, I am reading from the third paragraph from the bottom:

> "The terrorising continued right up to 1992. The man was then committed to a psychiatric hospital in the UK. A Norwegian police official investigating the case [and this is Torill Sorte because she was only one that was investigating it] explained later that it was his mother who had him committed. When he came out again two years later it carried on worse than ever."

Two years in a mental hospital. I spoke to the journalist, Morten Overbye, who wrote that article. He did not ring me up before, refused to print my reply, but I recorded his conversation in which he called Torill Sorte a liar. That is a no-brainer and that conversation (pause) FED/15. I have given you the disc in evidence.

MRS JUSTICE SHARP: I do not know what page this is on.

MR EL DIWANY: I beg your pardon?

A

MRS JUSTICE SHARP: I do not know what page this is on if you are asking me to look.

MR EL DIWANY: You have it at FED/15.

MRS JUSTICE SHARP: I have a very large bundle with a large number of pages in it
B which are not separated.

MR EL DIWANY: No. It is three pages FED/15.

MRS JUSTICE SHARP: For future reference, for people putting bundles together with large exhibits. it is very helpful it they put --

C

MR HIRST: Page 410.

MR EL DIWANY: I beg your pardon, my Lady, I am sorry about that.

MRS JUSTICE SHARP: All right.

D

MR EL DIWANY: I think we better read it all out:

"El Diwany: I do not know why you thought that because, first of all, do you admit you have lied about two years in a mental hospital?

Overbye: No, I wrote up the website on 20 December, a police officer said so and in the wording --

El Diwany: And you believe her, do you?

E

Overbye: It came from a police officer explaining when I think that it's ...

El Diwany: No. Did you speak to Torill Sorte to ascertain your facts?

Overbye: Had I spoke to her? Yeah, of course. You have been harassing her as well, haven't you?

F

El Diwany: No, I've not been harassing her. I've just been questioning her, okay. She's been harassing me by saying that I've been in a mental hospital or my mother wanted to put me in one or I have been in one. Now, where'd you get the two years from?

Overbye: I just told you that the sourcing on the website is her, a Norwegian police officer.

El Diwany: So, Torill Sorte is the source for the two years, yeah?

G

Overbye: Yes, and on the bottom of my first story it says. 'P.S. Also the police officer who led the investigation of the Brit is now being harassed by name on his website.'"

El Diwany: [I replied] Well, it's not harassing. It's a right to reply. Do you not understand? I mean, you're a journalist, obviously the point is that you're a second rate nothing. You wouldn't get a job in a British newspaper in a million years

H

because ..."

Later on, I put:

> "El Diwany: Well, no other country on earth would be so perverse and bigoted as to get their own(?) back. Isn't it some kind of criminal offence to insult Norway by printing the truth about their -- certain institutions? That's what it's all about.
> Overbye: [In reply he said] I don't think so.
> El Diwany: Oh, just because the Muslim man hit back and put something up on a website.
> Overbye: I don't think this is about you being a Muslim, sir.
> El Diwany: Well, to me the association, so why every time print the word 'Muslim'?"

He printed the word "Muslim" in his article:

> "Why every time print that? And also there's one article that says I am ... Torill Sorte printing in *Eiker Bladet* that I'm clearly mentally unstable."

I had not known about the English translation of that from Google actually until 2009:

> "Torill Sorte, the policewoman, says that you are mentally unstable ..."

MRS JUSTICE SHARP: Sorry, what point are you making?

MR EL DIWANY: I had referred to Torill Sorte printing in *Eiker Bladet*. This is the article I am suing on now, that I am clearly mentally unstable. Of course I knew about that article. But the reason I am suing now is because, for the first time in 2009, I found it in English. In English, on the net with my name, which is downloaded here in the UK where a deal of damage is presumed:

> "El Diwany: Yes, 'Clearly mentally unstable', is the quote.
> Overbye: She was the person who investigated the case against you. She was the leading investigator.
> El Diwany: Oh yeah, top woman. Yeah, fantastic investigative policewoman. Where did she have thought from that I was clearly mentally unstable? Because she is nuts. Anyone who says that I have been two years in a mental hospital when I have not is clearly a spiteful, vindictive bitch and I told her as much. In fact, I phoned her up a few weeks ago. She did not have the guts to speak to me. If it is not true that I have been in a mental hospital then clearly she is a wicked liar. Agreed? [Silence] You cannot even agree on that?
> Overbye: Of course I can; if she says that you have been in a mental hospital when you haven't been in a mental hospital then she's lying.
> El Diwany: Yeah, exactly.
> Overbye: That's a no brainer."

So the journalist there confirms that she is a liar.

MRS JUSTICE SHARP: The journalist's opinion about this, that or the other is really not very helpful to me.

A

MR EL DIWANY: It goes some way. I have not been in a mental hospital and --

MRS JUSTICE SHARP: You have made that point.

MR EL DIWANY: What happened after all that? Some vicious hate email. Email that Interpol was investigating. I am going to read one or two of those out if I may.
B Exhibit FED/6. (pause)

MR HIRST: It is page 325, bundle A.

MRS JUSTICE SHARP: Thank you.

C MR EL DIWANY: I wrote a letter to the Brentwood Police. We will go on to the second one, if we may. It is entitled (Norwegian phrase) means "pig" in Norwegian:

> "Wow, I just browsed at your website and I must say you strike me as the most filthy, pig-eating, Muslim maniac I have ever encountered. When you eat pigs, do you lick the pigs' arsehole clean before digging in? I have one advice for you, take out your
D willy, that is your mangled penis and shove it into a pig's arse, maybe you'll get some weird looking kids. I seriously doubt that anything other than a pig would take your semen. Best regards and good luck on dying pig fucker! By the way, you really do a good job of showing Muslims as crazy, even better than Osama."

The first one:

E

> "I would like to give a big laugh to you, the most stupid, crazy fuck. Have you gotten your head examined lately? I would like to point out to you that being stupid knows no colour. I was once a Muslim but, when I realised that Mohammed couldn't be anything other than a confused paedophile, I knew that the true god would never speak to such a loony. So, you think that killing a foetus that
F has not gained consciousness is more wrong than raping children. It is more and more clearly that you are insane. The only human thing to do is to place a gun to your head and pull the trigger but I suppose it wouldn't do much damage as the damage is clearly well done. I heard that your mother got you into hospital."

So, they clearly believed the newspaper:

G

> "Bad Muslim taking orders from a woman. May I recommend a rope around your neck since you are never going to paradise. Better to end your misery right?"

There is another one, "Sick devil go fuck Allah the Camel". The next one, "May Allah put you behind bars where you belong fucking creep". The next one:

H

> "You must be the sickest fuck ever. Muslims are root of all evil and you are living proof of it."

The next one, "You Arab pig swine pervert". Next one:

> "We have a €10,000 reward on your head. We're going to get you man. We're going to clear the world from an idiot like you. Burn in hell. P.S. Going to fuck your mother, she like white man."

The next one:

> "Are you by any chance a Catholic priest? And did your daddy touch your penis and/or dropped you on the head when you were born? Or maybe your parents suffered for BSS (baby shaking syndrome) either way you are one fucked up dude. Did someone touch your bum bum in the mental ward? Oh hell, all Norway knows you are crazy as fuck man but I think you are funny, very sad and funny. I give you let's say 10 years and I bet that you've killed yourself or at least got another hobby than harassing women you can't get. Ha-ha, such a wanker. What triggered your funny behaviour? Are you sick or just a horny helpless loser? Tried Prozac with Viagra? Oh wait, I'm sure someone tried that combo in the mental ward when they made love to your bum bum. Do you call your penis King Kong? Happy Christmas mother fucker. Oh wait, I bet you are inbred. Your dad is your son is your mum is your sister is your uncle in your bum bum. P.S. I eat foetuses for breakfast. And it's Mr Americum."

The next one, "You stink please die". The next one:

> "After visiting your website I can now understand why your mother had you put away for a while, clearly the best option."

Here is one that makes a difference:

> "Hey you, I'm from Bergen in Norway. I've read all your stories on the Norwegian site. I don't really know what to believe but yours seems more likely. I don't know. In Norway you are made out to be a sexed up maniac who was a freak from the first meeting. Well, I don't know but today it's all over the net in Norway about you and how they had to block you from lots of Norwegian Internet sites because you were disturbed. Well, I don't know but I hope it gets sorted out and I think, I'm not sure, but I think I support you."

That went off to Hate Crimes Unit in Harlow and Interpol in London and they sent it to the Interpol in Norway. One year later, nothing. I inquired at the Harlow Hate Crimes Unit. We have their letter as proof it went to Interpol. (pause) FED/6.

Last letter, confirms Interpol are doing nothing with Torill Sorte telling the newspaper I have been in a mental hospital; obviously helped the people thinking in Norway I was crazy, especially reference to wanting a child to die and being Muslim. This is proof I did contact the Hate Crimes Unit.

The Interpol in Norway passed the buck to a gentleman called Johann Martin Welhaven. His decision supports saying there is nothing libellous or slanderous,

saying it was right to call me as clearly mentally unstable. He did not even contact --

MRS JUSTICE SHARP: What are you asking me to look at now? Decision of who?

MR EL DIWANY: Yes, Johan Martin Welhaven, who is the police investigator. I would just like to say that I did correspond with him and I will refer to that correspondence but he refused to listen to or tell me what he thought of the disc of journalist Morten Overbye saying that Torill Sorte was a liar. He refused to say why I am clearly mentally unstable. No reasons given. You must give reasons. But he is not a court of law, he is not a doctor. No doctor was employed by them. I am not re-litigating because you have to give reasons and you must consult the parties. Torill Sorte would have to be consulted. My correspondence, which I will show you is adequate --

MRS JUSTICE SHARP: Your correspondence is where?

MR EL DIWANY: My correspondence with Johann Martin Welhaven on this point and my complaint to him is -- (pause)

MR HIRST: I believe it is at page 400, bundle C.

MR EL DIWANY: Exhibit FELD/32. (pause)

MRS JUSTICE SHARP: I see in that bundle, page 401. (pause)

MR EL DIWANY: Shall I read it out?

MRS JUSTICE SHARP: If you want to.

MR DIWANY:

> "Dear Mr Welhaven, *Dagbladet*, *Eiker Bladet* and Torill Sorte.
> I received yesterday your letter dated 28 June and please accept this letter to you as my appeal against your decision on all counts. I note that your department has purposely not returned my calls in keeping with the usual cover-up that precedes all the police investigations into my complaints. I note also from your decision that you have not spoken to Morten Overbye, the journalist with *Dagbladet* who wrote those stories on me on 20 or 21 December 2005. If you had, then he would have confirmed to you that police officer Torill Sorte was the source for the false information that led him to think that I have been in a mental hospital for two years.
> As this is clearly not the case, then Torill Sorte is an abject liar and has purposely given false information to the newspapers to help blacken my character. Morten Overbye himself, as you will see from the transcribed telephone conversations I had with him on 12 May 2007, all of which can be read on my website, has told me that, presuming the fact that I have never been in a mental hospital to be correct, then Torill Sorte is a liar. Our whole conversation is on tape ready to be sent to you but speak with him first.

In particular, you yourself are in dereliction of duty by not speaking to Morten Overbye or Torill Sorte or indeed myself to obtain clarification and certainty as to the facts. Your personal opinion that *Eiker Bladet* quoting Torill Sorte are correct, to call me, 'clearly mentally unstable' is an indication of your own complete bad faith and bigotry in this investigation.

You say that my website and other facts in the case support the allegation that I am clearly mentally unstable. You do not mention which facts and what in particular on my website supports your belief. Reasons must be given. And even though this is not a court, Article 6 of the European Convention of Human Rights, reasons must be given for decisions. The fact is that if someone like me writes certain home truths about the Norwegian system that upset Norwegians, then automatically the offender is mentally ill. This approach is an age old inbred Norwegian trick.

[I do not like Norway, my Lady.] It is probably the reason why the British authorities have not co-operated with your police in any way over your ardent desire to have my website shut down. In England, we call it freedom of speech. Your police authority's dirty tricks to get me prosecuted and fined mean nothing to anyone over here. What you people have done to me is unforgivable and your people's perverted actions must continue to be exposed on the Internet."

On page two:

"*Dagbladet*, in their articles on me, have specifically mentioned my religion and coupled this with slanderous allegations which resulted in those many emails denigrating me as a Muslim and the religion of Islam. *Dagbladet* have therefore clearly incited religious hatred and it is just another reflection on your inbred mentality that you cannot accept this.

The British police accept that those emails were in the nature of a hate crime and it is deceitful of Interpol Norway, composed of partisan Norwegians, to lie to Interpol London on this matter. That is why I have asked Interpol London to request Interpol Norway to reassess the matter for clarification and explanation.

Please also understand, that as Torill Sorte is quite clearly a liar and perjurer, then it is my absolute right to have the freedom of speech to say this on a website. It is not harassment of her. Just as I have the same right to express my side of the story on the mental patient, Heidi Schøne.

You will see in any case I have support for my views from others whose contributions I have quoted on my website.

You people established a whole series of falsehoods and build on them to create a sick fantasy. The world deserves a website such as mine to see the scale of the bigotry and hatred that exists in your country.

I look forward to hearing from you on this appeal."

It went to appeal and, without giving reasons, they dismissed my appeal, no reasons given.

A I have Norwegians who have supported my website. Norwegians, honourable people. I do not dislike Norwegians per se, just the ones that do not play fair.

I will read you out FED/10. (pause) I have taken out his name. He wants anonymity, but I do have the originals. I can undertake -- I can promise this.

MRS JUSTICE SHARP: Which page?

B MR EL DIWANY: This is the first page after the exhibit cover sheet.

MR HIRST: It is page 381 at bundle A.

MRS JUSTICE SHARP: Yes?

C MR EL DIWANY: This is a gentleman who actually wrote to me:

"Dear sirs, I have incidentally come across this page on the net and found interesting notes about my home country. I just want to say that I find most of your experiences credible and to the point. In my opinion Norway is lacking in true professionalism in many aspects of public life, leaving quite a number of people, also 'native Norwegians', victims of circumstance and ill doers.

D As I gather from the Internet page, your bad experiences and interest in the 'dark side' of Norway started with Heidi Schøne. I can only offer my sympathy and also add that there has been a number of such women exposed as liars and criminals the last decade.

Unfortunately, political correctness is a disease under which the Norwegian society suffers heavily. "Women are poor and E defenceless" and "All men are rapists" are only two of the politically correct (incorrect!!) statements in Norway. Coupled with the lack of professionalism in the newspapers and the judicial system these politically correct statements have paved the way for a large number of miscarriages of justice.

The most common case is that of a divorce involving children. A F very common practice, I am ashamed to say, has been for the wife to claim some sort of sexual abuse towards her or the child (when in reality no such thing has occurred). The reason for such a claim is to obtain full parental control of the children after divorce. This would make sure that the wife can control the husband's contact with the children (making it no contact usually) and at the same time make sure that the husband would have to pay a very G substantial amount of money to the wife regularly, until all children are considered adults by law, that is 18 years of age. The very unfortunate fact about the Norwegian judicial system is that until recently the wife (and her lawyer) usually backed this claim only by quote "expert" statements from psychologists. Except for one or two outrageous cases that were appealed all the way to the H Supreme Court, the Norwegian courts never contradicted these experts' psychological claims.

This situation was revealed to the public in a series of articles in the Norwegian newspaper *Adresseavisen* in 2000 or 2001 (cannot remember exactly), when a number of lawyers wanted an end to the shameful practice. The lawyers also said that lawyers dealing with divorces knew a number of psychologists willing to give any kind of "expert statement" in the court for money. Thus, they could arrange a divorce to whatever outcome, just by false accusations through a very severe lack of professionalism on behalf of both lawyers, psychologists and courts. The use of psychologists in Norwegian courts have now being changed, also due to the abysmal part in the 'Bjugn case', where a vast number of children were falsely claimed to have been abused by a number of men. The Norwegian Society of Psychologists has also publicly excused the misconduct of some of their members involved in this case.

This is just to say that I think part of your impression of the Norwegian general disliking of Moslems and Islam is that you have experienced the kind of injustice many 'native Norwegians' also have experienced. I do not think it makes your experience better but one should always try to call a spade a spade.

I think there has been a change of attitude in the courts in Norway over the last years and a number of people have had their cases reopened and gotten their names cleared. These cases were given major headlines in the newspapers when they were first run, but when they are now reopened, the newspaper does not care about them. This goes only to show that the papers are not very serious in this country but I think it also shows that even here a lie is a lie and will only take you so far. I also feel that, even though feminist movements still are a major factor in establishing what is 'politically correct' in Norway, they also have begun to feel some embarrassment by some of the acts of their 'sisters'.

My thoughts on abortion mirror yours, I think, and even if you might not think so from the public debate in Norway, there is a number of people that are really frustrated by the abortion laws. For instance, it has been very difficult for the hospitals to find enough doctors and nurses willing to work at the abortion clinics. This is a fact that the media and official Norway have been wanting to stay out of public knowledge. In fact, abortion is such a sensitive subject it is not seen as the proper subject to discuss at all. The government does not want a public debate on abortion, and I think this is so because they know that a majority, or at least a large minority of the Norwegian people is against it, and the way it is practised. It is a disgrace, but people who officially protest about the abortion laws are frozen out of society."

I myself am against abortion:

"I hope you will continue this webpage because I find it to be an important addition to the shallow Norwegian debate on our society. However, I think the way some part of it is written down, many

Norwegians will feel offended before they manage to get to the truth of it."

A

I will leave that one. There is another one, 5 March 2007:

"Thank you for enlightening me. I am disgusted with the Norwegian attitudes against, well, everything. Norwegians are the most intolerant selfish bastards ever to have walked this earth. By Norwegians, I do not mean everyone of course, but a great deal of the Norwegian population is narrow-minded, with very little

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enlightenment about the rest of the world except what the USA wants us to know. We are just hanging on to American attitudes against everything, from drugs to religion. The only news we get is American or Norwegian/other Western news

The drinking culture in Norway is the most shocking. A lot of Norwegians drink to become intoxicated and mad. That is my impression at least after living here for soon 25 years. There is no

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way of describing the hatred here of the unknown which lies deep in the Norwegian people, rotting them from the inside.

Fear, my friend, is what I believe is the problem. They are all afraid to find out anything about anything, maybe because the truth will shock them as positive; a very rare feeling for the Norwegians, obviously.

D

I apologise to you on behalf of the Norwegian people. I am ashamed to call myself a Norwegian after I read the emails which you have received. The most peaceful of all greetings to you and keep up the good work. Very interesting material."

One of the most interesting emails that I received is this one from a lady, who wrote me a couple of them:

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"Dear Frederick [because that is what I call myself on my website], I have read a lot about your story regarding HS [that is Heidi Schøne]. There is no doubt in my mind, based on your taped conversations, that you have experienced grave injustice, mainly from Norwegian newspapers and the Press Complaints Bureau [that is the PFU] but also from Heidi Schøne and the embarrassing

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fact that Norwegian officials and law enforcement officers hardly speak English.

That said, I am surprised that you are so harsh regarding Torill [that is Torill Sorte]. From what I have read, she is the only person that understands you. Did she do something wrong regarding your case after what is referred to in the page mentioned above? And please do not send me everything you had. I understand it is quite

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a lot.

Why have you not pressed civil charges against the newspapers and the PFU? It seems obvious that they have even made up large parts of your story, a story based on bad oral translation, or relied on lies from their source. In either way, they, or Heidi Schøne, are doing to you exactly what they claimed you did to Heidi Schøne. 'Invade the sovereignty of your privacy', bring shame on your

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good name or whatever it translates to in English, not only because

they wrote false articles in which they did not name you but because the PFU have done a dreadful job in gathering facts - if they tried to at all - to decide your complaints. It should be perfectly simple to find out whether you have been admitted to some treatment or not and if you have actually threatened to kill anyone. Their failure to do so would only strengthen the suspicion that things have gone wrong since the alleged letter in which you are supposed to have threatened Heidi Schøne's son got lost in Bergen.

The most disturbing thing is that is that the Press Complaints Bureau - PFU - not only ruled in favour of the newspapers but they re-claimed that you are a mentally disturbed individual that is not given the right to have your side of the story to 'protect yourself for your own good'."

That is because one newspaper, since discredited, refused to print my response because they said they were protecting me from myself. The ultimate insult:

"To me, the newspapers' claim you have sent Heidi Schøne 400 letters. Based on this again, you are sexually ill in some way. Based on this also. If there is no mental illness of relevance to the matter, this is infinitely more worrying than the wrongdoings of Heidi Schøne in the past, with the effect that you are not able to forgive Heidi Schøne for her wrongdoings. Not that I blame you. I know how disturbing it is when someone never asks for forgiveness but receives it from God and Jesus instead.

Your web pages, I have no idea why you do not focus on the simple matter of Heidi Schøne. Every other article on your pages are, as you probably know, vilely offensive to most people, giving them perfect excuse to regard you as insane, much more convenient than to believe you. These articles plainly were anti-Norway articles written by the foreign press but also by the Norwegian Press."

MRS JUSTICE SHARP: You have put them up on your --

MR EL DIWANY: They are on my website and I have some examples here:

"Personally, I think it is wrong of you not to separate your views rooted in your religion that collide with common Norwegian sense and your views/truths regarding your experience with the Norwegian legal system, newspapers and PFU. If you do not see that comparing people with pigs [I actually did not do that in any major way. There is one which is the editor of the newspaper, his image of his face turning into the face of a pig but that is exactly how he should be described. We are dealing with reality here] and claiming that most people are maniac idiots killing unborn children and fucking around on drugs [I am against abortion and so it does double up as an anti-abortion website] ruins your case as a serious bringer of truth. You might as well be completely insane. You could still be right about your claims regarding Heidi Schøne and PFU and the newspapers but no one will ever listen to you."

MRS JUSTICE SHARP: This lady says that what she has seen on the website gives people a perfect excuse to regard you as insane.

MR EL DIWANY: Ah, but she carries on later, takes that all back:

> "If you really most of all are interested in being believed regarding Heidi Schøne, you can simply try to look beyond the fact that we are not all Muslims. You have the tapes on the page mentioned above. They must be a completely devastating blow if accepted in a court of law [that is the taped recordings that I had had with a number of the people] but they probably will not. I assume they were made without consent.
>
> It might also serve you justice if you redesign your pages, remove the general hatred pages."

I mean I have a thing, a general hatred of Muslims in which the international press and other articles about how they despise Islam (overspeaking)

MRS JUSTICE SHARP: General hatred to everyone and Norwegians in particular?

MR EL DIWANY: No, it is just a general hatred about -- I mean, I did not write the articles. They are from a third-party press.

MRS JUSTICE SHARP: So you put them on your website.

MR EL DIWANY: Yes, that is right. I will read one to you later.

MRS JUSTICE SHARP: We do not have all day. I use that as a metaphor. This case is going to finish at 4.15pm. Mr Hirst has his right to reply to your submissions so bear that in mind.

MR EL DIWANY: This lady continues to the next email:

> "Dear Frederick, I found what I missed earlier (I Googled keywords regarding an article in *dagbladet.no* since the Norwegian search-engine "*Kvasir*" did not give many results).
>
> Firstly, I only found fragments of your story, but now I realise that the whole thing is on your "hate pages". [That was a euphemism. The Norwegians call my website hate pages but obviously I do not.] No wonder you hate us... I do not know what to say. You probably have no idea who Tor Erling Staff is, what position Faremo used to have. [These are the people in the Press Complaints Bureau.] You should have had someone by your side all the way to ensure you got correct advice whilst enabling you to manoeuvre our corrupt labyrinth of bureaucracy.
>
> I hereby declare my unconditional support of you regarding the HS case (still doesn't mean we are all killer maniacs on drugs). I can only in my wildest dreams imagine what you have had to fight over the past years, and I guess I as a Norwegian, is 'supposed' to be amazed that you have taken all this so far. Usually, we just bend

over and take it up the ass when the mighty troll turns its ugly head our way.

I am lost for words as to your taped conversation which I know to exist for a fact. Still, corruption is clearest from me in the PFU/Elden case (Faremo) but the policewoman lying under oath and the writer that claimed you accused her of living in sin is really just ... mind-boggling ... where does it end? I for one have never been brave enough to tape conversations with officials displaying this same kind of behaviour as your villains, but you actually given me hope. Instead of fleeing this God-forsaken country, I might start my own war from now ..."

Fully supportive once she has read the website properly.

I will just go to two articles on my website regarding the Norwegian press. (pause) It is FED/16.

MR HIRST: Page 412 of bundle A. (pause)

MR EL DIWANY: If I may go briefly first to the *Aftenposten* newspaper, "Memoir insults Muslims". This is a politician who retired (Carl Hagen) who wrote a book, second paragraph:

"A passage where the controversial Hagen calls the Prophet Mohammed a warlord, man of violence and abuser of women has, unsurprisingly, caused offence."

That is what he thinks of Prophet Mohammed. The one above that, "Norwegian preacher kindles religious strife". Second sentence in the first paragraph:

"A high profile sermon where Sorgaard called the Prophet Mohammed 'a confused paedophile' has triggered fears of religious war."

Again, there is one of Hagen, a politician making Islamophobic comments. The Times, front page, Oslo Notebook, Tony Samstag, 27 December.

MR HIRST: Page 413.

MR EL DIWANY:

"Norwegians' charity to foreigners ends at home. [This is a Muslim chap, page 48.]

Aslan Ashan is a graphic artist who came to Norway 20 years ago from his native Pakistan, settling in a suburb of the capital. Recently he had what must have seemed a good idea. A Christmas party for those residents of Oslo, particularly the elderly, who would otherwise be alone. Mr Ashan and his friends, mainly Muslims, reasoned that their willingness to work during the Christian holiday was, as he put it, 'an exploitable resource'.

According to what statistics you read, up to half of the population of Oslo may be living alone, ironic in a society crippled by religious fundamentalism where the sanctity of family life is cited as justification for a depressing shortage of social amenities.

> The local council was happy to put up about £3,000 for the party. But weeks passed and not one Norwegian had accepted the invitation. So Mr Ashan went on a national religious radio programme to repeat his offer. This time the lonely responded in force, from all over the country; not, however with even one grateful acceptance but with scores of abusive telephone calls. A consensus emerged that the bloody foreigners, not content with taking their jobs, social benefits, women and so on, were now trying to steal Christmas from the Norwegians. This seasonal tale from the folk who claim to have invented Father Christmas illustrates the Dag Hammarskjöld Syndrome: the tendency of small, provincial countries to wax idealistic over exotic, impoverished peoples while abhorring the stranger in their midst."

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I will not read any more of that.

I will make the point about Torill Sorte's article in *Eiker Bladet* calling me "clearly mentally unstable". She mixes it, of course, with convictions. The reason I was calling her clearly mentally unstable is because she said that I have been put in a -- I called her a liar, abusing her position, for saying I had been put in a mental hospital in 1997 and spent two years in a mental hospital. She said that in 2005, that I spent two years in a mental hospital.

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Now, after that hate email campaign, I was quite confused. I tried to speak to her sensibly over the phone but she would not say anything. I knew there was no recourse to any justice in Norway. So I left some messages on her voicemail to make sure she got the point. So it is no use saying that we are re-litigating because I am not suing Heidi Schøne. I am not suing any newspaper, except a journalist. I am suing Torill Sorte purely for calling me "clearly mentally unstable", for saying that I have been in a mental hospital for two years. That is all it is.

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MRS JUSTICE SHARP: That is not all it is because in your Particulars of Claim -- do you want to have a look at what you said in your Particulars of Claim?

MR EL DIWANY: I have mentioned harassment, yes.

MRS JUSTICE SHARP: Yes, you did.

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MR EL DIWANY: Harassment in England, you think he goes -- the convictions for harassment, the first one was pertaining to obscenity for my campaign of denying what the newspapers have said. No newspaper gave me any right to reply so I said to them, "Heidi Schøne has put her name and photograph in the newspaper so I have the right to reply". And they said, "Look, by putting her name, you are intruding on her privacy". And I said, "Well, in that case, I can never reply. Your newspaper is not helping." "Oh, that is not our problem."

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So I put my point of view and that is why I had a conviction. But at this actual hearing, I was told that the hearing was three weeks hence, or two weeks hence, and I was in the middle of preparing my civil case. I could not possibly go out there but they said, "You might go to prison if you do turn up. In any case, even if you do go, Heidi Schøne would not come. She does not want to face you." So I said, "Well, what is the point in coming, if (a) I might go to prison and (b) I cannot cross-examine her?"

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They charged me under a strict liability offence but there was not made available a defence of justified comment.

MRS JUSTICE SHARP: Was it a strict liability offence?

MR EL DIWANY: Yes, section 390.

MRS JUSTICE SHARP: Certainly, I have read somewhere somebody mentioning *mens rea* and *actus rea* so maybe it is something.

MR EL DIWANY: I did not turn up. I did not go. I had a lawyer appointed at the last minute. He had told me Torill Sorte was making mental hospital rumours again.

MRS JUSTICE SHARP: Did you appear or did you not?

MR EL DIWANY: No, no.

MRS JUSTICE SHARP: You did not appear personally. Did you have a lawyer appearing?

MR EL DIWANY: Yes, they only received the documentation the day before. He tried to have me charged under section 390 as opposed to section 390A by saying I am justified on my comments on Heidi Schøne because she has told so many lies to the newspapers. So the magistrate, Marianne Djupesland, went back to consult the statutes but came back without giving reasons and said, "We are going to continue". So I was guilty. Just a small fine but they also said I might have gone to prison, but I will tell them about it next time anyway for my Court of Appeal.

During my civil appeal in 2003, I could not cross-examine Heidi Schøne at all. That was the whole reason for the appeal. A lawyer, Vegard Aalokken, agreed four hours for her to be cross-examined. There is just so much there and all of a sudden, two days into the trial, the judge said, "I'm going to stop the case on Thursday at 1.00pm and that won't leave much time for you, Mr El Diwany, to cross-examine". Anyway, after doing that, he gave me 20 minutes. He asked the questions. It was hopeless. It was just a complete waste of time.

At the end of the trial, the civil trial, I was arrested at the door of the court. The police were there, took me back to the cells for my website. British Embassy officials came, Neil Hulbert. They said to me, "There's no way you should be convicted for a website. We've seen it. You shouldn't be convicted for that. You have the right to reply."

The prosecuting magistrate said to me, "You've got two choices, (a) you're going to prison straightaway for eight months or (b) you can go back home to England, take the website down within seven days and we'll give you an eight-month prison sentence, suspended for two years, one or the other", and that is still subject to the Magistrate's discretion. That was after 12 sleepless hours in the cells. I pleaded guilty under duress. I just wanted to get out. There was going to be no fair trial, nothing. It was strict liability again. We have a right to reply, the newspaper vilification over -- it was eight years then. So duress, you can say that was a conviction under duress. I was in a dreadful state.

So those convictions for harassment, people reading them here in the UK would think, "Oh, he goes well into the blackmail for sex with Heidi Schøne". They will

not understand she is a mental patient. They will not understand that all her evidence is from her own word and completely uncorroborated. So Torill Sorte has also withdrawn her lie. She is putting a type of value on like Heidi Schøne in the family since 1982 and in her witness statement, paragraph 4 of the witness statement of 2 February written on behalf of the Ministry of Justice, she says:

> "They became friends. Heidi Schøne and Mr El Diwany corresponded for some years amicably after she had left England and returned to live in Norway."

The gist of my article is well understood. It has a passage at the bottom in red saying that I am clearly mentally unstable. It is not all gibberish. It has my name at the top. People can get the gist of it and also this article can be changed. Anyone can change it to make it read properly. Torill Sorte has withdrawn one of the lies. That is clearly set out in my witness statement. She has not offered any clinical substantiation of why I am clearly mentally unstable and why I have been in a mental hospital for two years. She has not made it clear at all that she is calling me clearly mentally unstable for my refutation of being two years in a mental hospital. It is doubling the wickedness by saying that the poor chap who has denied being two years in a mental hospital and called her a liar and an abuser for not being in a mental hospital and is clearly mentally unstable for saying that.

Roy Hansen is not defending my claim so I have won against him. It is an anomaly, but how can I -- I have won against him but not Torill Sorte.

I have spoken to my Lady about the state immunity. The one flaw in my application before Master Eastman is that I did not put in my application with grounds why the state should be immune. I did put it in here in my witness statement, Commercial Transactions under Section 3(3)C of the State Immunity Act and that Torill Sorte was engaged in the commercial transaction with the newspapers. In speaking to the press, she was engaged in supplying information to newspapers that sell their copy for money. It is related to a commercial transaction entered into by the state.

Section 3(3)(c) contains a very wide definition of commercial transactions being:

> "Any other transaction or activity whether of a commercial, industrial, financial, professional or of other similar character into which a state enters or engages otherwise than in the exercise of sovereign authority."

She was acting *ultra vires* in saying I was clearly mentally unstable relating to my denial that I had been in a mental hospital for two years so she was not exercising any police objectives, no objectives as enumerated by Christian Reusch in telling the public about police cases. This had nothing to do with anybody's case. It finished long ago. She was just -- she went out on her own as a police officer in a private non-police related action to say (a) I am clearly mentally unstable because I have denied living in a mental hospital for two years.

MRS JUSTICE SHARP: If she went out in a private non-police related action, why should the Ministry of Justice be vicariously liable for what she said?

MR EL DIWANY: Because she spoke as a police officer. It was alleged that --

MRS JUSTICE SHARP: If it is in a private capacity on your argument then she was not acting in the course of her employment.

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MR EL DIWANY: But she spoke as a police officer. It says in the article she spoke as a police officer, only Christian Reusch --

MRS JUSTICE SHARP: What is your case? Is your case she was acting in a private capacity or in an official capacity?

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MR EL DIWANY: She was acting in an official capacity as a police officer but not furthering the objectives of police work and that is a clear exception in the States Immunity Act, that she was not acting under sovereign authority. Sovereign authority means that she was obliging the policy of police, of the police in giving the public good information about criminal cases, furthering the repute of the police, but she was not. She was acting outside state sovereignty and I have put that in detail in my witness statement, as a commercial transaction. She regularly

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supplies information to the police and although --

MRS JUSTICE SHARP: She regularly does what?

MR EL DIWANY: She regularly supplies information to the police. She is engaged in a professional transaction by --

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MRS JUSTICE SHARP: Well, she is a police officer.

MR EL DIWANY: Yes, but she is still engaged in professionally in her transaction with the newspapers and she is paid, in effect paid for giving information to the newspapers. There is some transaction there. There is no case law on this but I think this could have been viewed as a very loosely defined commercial

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transaction.

I am a solicitor here in London, very close to this court.

MRS JUSTICE SHARP: What sort of solicitor are you and what sort of work do you do?

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MR EL DIWANY: Commercial and residential property.

MRS JUSTICE SHARP: Do you work for yourself or for a firm?

MR EL DIWANY: No, I am with a firm. I have some high profile Arab clients, very high profile. Putting my name in it, I cannot have clients and prospective clients, the Google search is the most popular, Google UK, Google.com. We have seen if

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you type in my name up comes the few references to me. People are going to be enticed by Farid El Diwany in Norwegian. They only have to click on it to translate this page. There may not be many of them. There is enough maybe to have a severe effect on my reputation and respect(?).

The reason that this Google article is up there in Norwegian is because it has been put there on the net by Roy Hansen. I am not famous. I do not want to be. But I still have a living to earn and I cannot risk people in the future or now typing at it

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and one day someone is going to make that translation perfect. As it is, I did have

one person phone me up and say, "Clearly mentally unstable it's got" and I did not even tell him it was on there. I think someone said something yesterday there is 22 monthly searches on my name, brought it to court. But for the Roy Hansen article being on there in Norwegian it would not be here in English and I have only known about it since 2009 when it is English. Reading that, clearly it just cannot carry on. I am not going to stand for that article being up there and I am going to try and do something about it.

The opposition, no one wants to sue me for my websites just because it is distasteful to some people and the English like it here. Lots of Norwegians like it. If I wrote something, for instance, bad about Muammar Gaddafi, who I personally detest, then when you go to Libya, people are going to say, "Oh your page is against Gaddafi. We love Gaddafi." Every country, if you write against them, they say, "You hate us; you're mad". But if you are a pioneer in these things -- I have exposed Norway a lot and they will not welcome me back and their newspapers went on for a decade in terms that the British press would never accept and although I have said things that hurt them, under the European Convention of Human Rights, just because someone finds an article distasteful does not mean that it is wrong. That is clear under European Convention law.

I am so tired, my Lady. I cannot carry on.

MRS JUSTICE SHARP: Thank you very much.

SUBMISSIONS BY MR HIRST

MR HIRST: If I can briefly pick up on a few points. In my submission, what you have heard this afternoon from Mr El Diwany barely engaged with the majority of the substantive submissions made on publication this morning by myself and, in particular, I would highlight his singular failure to address the submission which was at the centre of what I had to say which is that the claim as against Ms Sorte is a claim based upon oral statements only, which is outside the jurisdiction of this court and not actionable in terms of limitation.

The way I would categorise the large parts of the submissions made to your Ladyship this afternoon is that they were an exercise in revisions of the public record of various decisions made in Norway over the last decade. In short, it is my submission that Mr El Diwany would, through the prism of this litigation, put Norway on trial. He seems not to see the distinction that he is free to air his grievances in accordance with the law by use of his own website and any publications that he may choose to make, whether online or otherwise, but he seems not to grasp the point that when court proceedings are initiated in which his cause is to be ventilated and public resources are to be consumed as a result, that the considerations may be different.

He has referred us this afternoon to the Norwegian Press Complaints Commission and the decisions that it made as regards his case. The 2001 conviction for harassment, also in the decision of the Drammen Court in the first instance decision in the defamation case, and also predominating the issue of whether Ms Sorte had misled that court. His intention is clearly to prove that Ms Sorte's evidence back in 2002 was misplaced and that she misled the court. Various attempts have been made to do so within the criminal justice system in Norway.

Essentially, Mr El Diwany does not recognise that there are any impediments to revising all of this material in the present proceedings. I would wish to develop

one point I did not make by reference to evidence earlier this morning. What I did not do to save on time was to take your Ladyship through the decisions of the Norwegian criminal and civil courts. I do not consider that I need to do so in relation to the criminal convictions but it may be helpful if I can ask you to turn to page 66 of bundle A, which is the first instance decision in the libel proceedings. My submission and argument here is geared essentially to showing that all aspects of the claim that Mr El Diwany wishes to bring before the court in both of the present claims on both of its limbs was addressed in the civil proceedings for defamation in Norway.

At page 77, one sees that the court's judgment records the argument that Mr El Diwany made to that. It introduces his submissions and in the fourth paragraph, it explains:

> "What has particularly upset El Diwany is the allegations that he should have raped or attempted to rape Shøne and that he should have threatened go kill her son Daniel."

Of the contents of *Drammens Tidende/Buskerud Blad*'s article of 14 July 1998:

> "It is particularly the following statements in El Diwany's view jeopardise his sense of honour and reputation which are essentially are untrue."

Here we have the sexual harassments limb:

> "El Diwany has not pursued ...(reading to the words)... subject of sexual harassment, harassed or subject to terror or death threats."

Over the page, the court's recording of his submissions continues in the first paragraph:

> "Schøne was very open about her sex life which resulted in sexual morals becoming a discussion topic and Diwany finding reason to make constructive criticisms in an attempt to guide her. He was concerned about her ongoing mental health. Ms Schøne had not understood this and regarded his involvement with her as persecution and terror. She should have let him know this. He has never made any death threats although his description of Schøne's son, Daniel, 'Bastard, he doesn't deserve to live' was certainly crass."

MR EL DIWANY: I never said that.

MR HIRST: The next section I rely on as well, which is clearly the court, in my submission, has tried to replicate what it had done over the page and has reproduced allegations which the veracity of was being pursued as part of Mr Diwany's case on this occasion. Here we will see, "Mad man, mentally ill, very sick, mentally ill, erotic paranoia". Again, his evidence that he has never been hospitalised for treatment for mental disorders is recorded.

As is normal in any judgment of any court around the world, the discussion and the decisions tend to come towards the end and at page 81 you will see the conclusions section of this particular judgment. I refer the court from the third paragraph onwards which reads:

"The court's point of departure is that Diwany has clearly had a very intense and prolonged interest in Schøne, far exceeding that resulting from a normal acquaintance. Despite the fact that Schøne – at any rate from 1985 – rebuffed the form of attention he showed her as time went on, of which he must have been aware, he continued to send her letters, call her by telephone, spy on her and seek her out. There is no doubt that she justifiably perceived this as persecution and harassment. This all culminated in Diwany's reports sent to neighbours, friends and family of Schøne [Mr Diwany took us to one of those earlier] already prior to publication of the newspaper articles in 1995. These reports and the many thousands of similar reports that Diwany sent all over the country following publication of the newspaper articles constitute gross breaches of Schøne's confidence.

They fully reveal the unhealthy interest he showed for her and his motive of revenge following her rejection of him. The court therefore does not believe that the motive of revenge that Diwany has admitted was limited to what he perceived as allegations of rape and death threats directed at Schøne's son Daniel. There can be no doubt that Diwany's highly unusual interest in Schøne was of erotic character. The letters and postcards and, not least, the reports he sent her concern to a great extent her sexual morals and relationships with other men. Sexual harassment is an apt designation of these writings. Schøne cannot be reproached for publicly dissociating herself from extremely personal and sensitive information concerning, inter alia, abortions, sexual matters and suicide attempts, even if the information may to a greater or lesser extent have been correct."

Then, the judge states:

"Following an overall assessment, the court has concluded that the information, opinions and formulations for which Schøne is responsible are essentially true and are not inappropriate."

Now, wound up in the exercise of overall assessment, I would submit, is both of the limbs, of which the current proceedings complain, relating to mental state and harassment. Hopefully, taking your Ladyship through the court's record in this matter will illustrate the extent to which both aspects of his complaint have been properly considered by a competent court in a foreign country.

The overall thrust, I would suggest, of what Mr El Diwany seeks to achieve is to be found in his supplemental witness statement in bundle B. pages 1-25, which is that he really sees the exercise that he undertook historically in terms of his own communications, and also the bringing of these proceedings in England, as a pure exercise of his own rights to freedom of expression and his own rights to communicate and reply, right of reply and to put his own spin on events.

The freedom of expression is not an unqualified right. There is a balance to be struck in all matters and it is my argument the competent bodies have already determined that no balance was struck by Mr El Diwany. His actions have clearly been taken on several occasions to have disproportionately interfered with the legal rights of other people. Of course, I am referring to Ms Schøne in this regard.

If there is anything further I can assist the court with. (pause)

MRS JUSTICE SHARP: Just give me a moment. (pause) I do not think so.

MR HIRST: There is one point that I omitted. It was raised towards the end of Mr El Diwany's submissions this afternoon; that he can bring himself within the exclusion from state immunity, which is when a foreign state has entered into commercial transactions. It is section 3 of the State Immunity Act. This point is addressed by Lord Millet is one of the authorities before the court. It is at tab 19:

> "It is the concept of restricted immunity means that if a party bringing a claim can show that the state is not immune if the proceedings relate to a commercial transaction entered into by the state or an obligation of the state which by virtue of contract whether a commercial transaction or not forced to be performed wholly or partly in the United Kingdom."

This is dealt with by Lord Millet in Holland v Lampen-Wolfe [2000] 1 WLR 1573, which is in the bundle at tab 8. Unfortunately, the formatting on your copy has stripped out the numbering on the paragraphs but it is the third page from the back of the authority. Lord Millet addresses section 3 and the essence of what he has to say is that the proceedings need to relate to a contract, very simply. This was a libel case, Lampen-Wolfe, and the memorandum is in fact the defamatory article and Lord Millet says, "These proceedings are not about the contract. They are about the memorandum." There was a background of whether work was being done under a US Army contract in Great Britain and failed to be excluded under another section of the Act. It does not follow the procedure related to contracts which is what Section 3(1)(a) requires. Mr El Diwany's suggestion that there was some commercial contract going on here in which Ms Sorte was involved that these proceedings relate to, is, in my submission, fanciful.

MRS JUSTICE SHARP: Thank you very much.

MR EL DIWANY: My Lady, can I just come back briefly?

MRS JUSTICE SHARP: Yes.

MR EL DIWANY: This judgment referred to by my friend here, I could not cross-examine Heidi Schøne at all on her evidence. I could not do that and that is a fundamental flaw in the Norwegian procedure. It is not a jury trial out there. The first decision was by Judge Stilloff was flawed because he was sitting on his own and his English was not good. I could not cross-examine the woman. I have a host of allegations against me that are sickening. I must have the chance to cross-examine. That is why we appealed. She is a registered mental patient whose own psychiatrist has said she sexualises her behaviour. She has motives for revenge. I am the last person on earth who is sex focused and writes filthy sexy stuff. I do not blackmail her for sex. If I cannot touch her breasts and kiss her, she said I would go and tell all her neighbours that she has been sexually abused by her grandfather.

She has put evidence in court. It is in my bundle that her sisters mentally abuse her. Her mother mentally abuses her. Her grandfather sexually assaulted her. Her

psychiatrist has said she has a pathological relationship with her parents and on and on it goes.

I must be able to cross-examine that evidence on her. It must be made clear that she is a mental patient whose evidence cannot be relied on as reliable. None of that is stated in these judgments. I appealed on that. I could not cross-examine in the appeal. I was arrested. They did not want me at all. They started it by not giving me a chance to put my response to the newspapers.

I am not what they say and I will not have this being said about me in these courts that judgment is correct. We appealed to the European Court of Human Rights on this. I went to the Supreme Court in Norway. They gave no decisions for my appeal and under the European Convention of Human Rights a court must give reasons for its decisions for refusing an appeal. This clearly has been breached and at the European Court of Human Rights, who looked at it? One Norwegian, Sverre Erik Jebens.

MRS JUSTICE SHARP: What happened in the European Court of Human Rights?

MR EL DIWANY: Rejected immediately. He looked at it. I wrote to the court and I said, "Sverre Erik Jebens was a Norwegian judge the whole time these newspaper articles were coming out. How can he possibly sit on the case?. There is a whiff of bias." They wrote to me to say he is totally unconnected to Norway. He is independent. That just cannot be the case. I know Norwegians. They are very nationalistic, and the other was a Croat.

MRS JUSTICE SHARP: The other who?

MR EL DIWANY: The other lady was a Croat.

MRS JUSTICE SHARP: Which other lady?

MR EL DIWANY: At the European Court of Human Rights, and the third was a -- but all I got back was that there are 140,000 outstanding applications at the European Court and 95 per cent of them are routinely rejected. There has been severe criticism in this country of the system there and it needs reforming. They will not have the time to look in detail at --

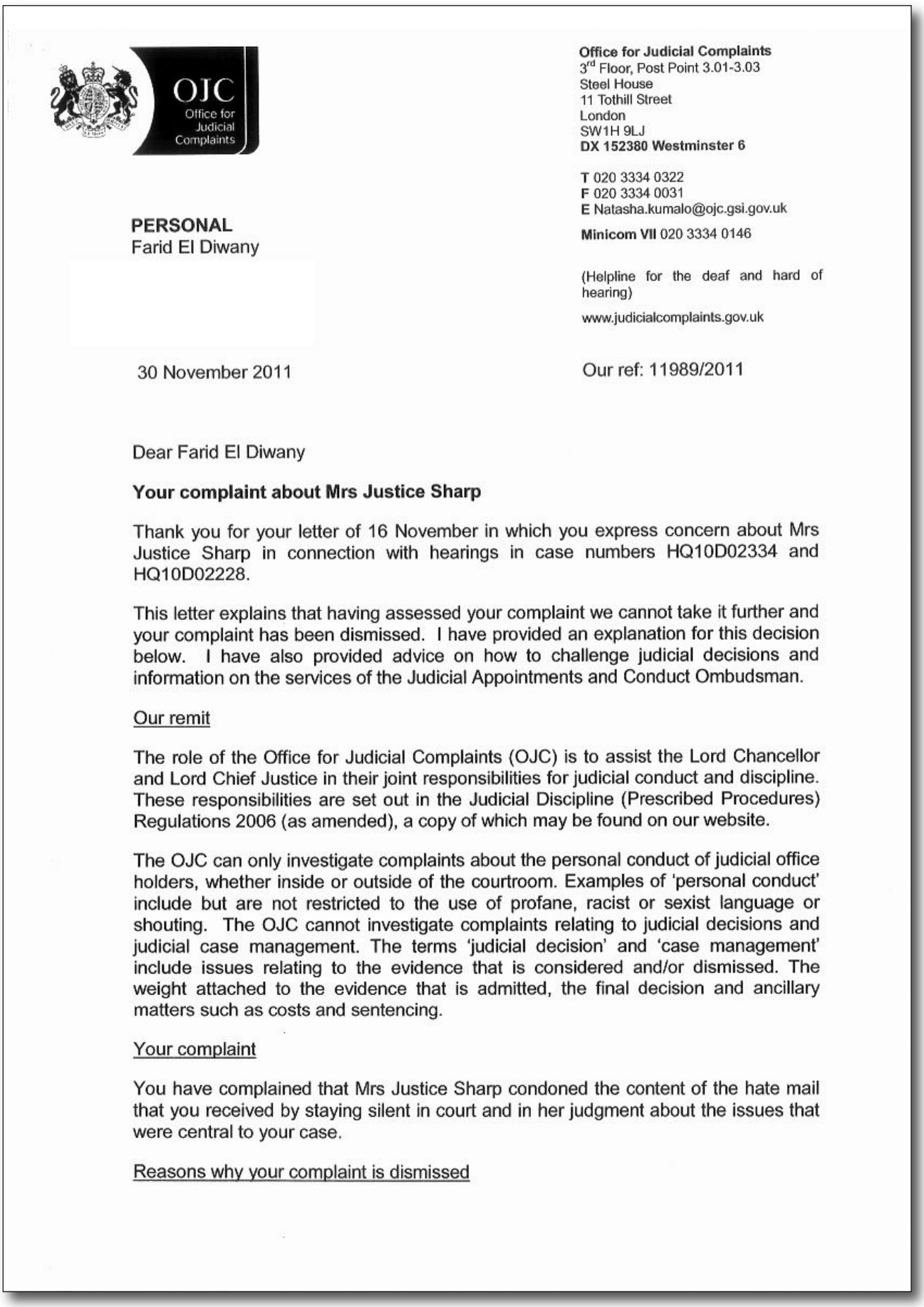
MRS JUSTICE SHARP: I am not going to go into all that. I understand the point you have made. Thank you very much. Do you want to say anything more?

MR HIRST: No, my Lady.

MRS JUSTICE SHARP: I am going to reserve my judgment. I will hand it down later. The parties will be notified when it is ready for handing down.

(Hearing concluded)

Office for Judicial Complaints 2011-12 & 2014 - plus correspondence with The Right Honourable Chris Grayling MP Lord Chancellor and Secretary of State for Justice 2015



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Office for Judicial Complaints

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PERSONAL
Farid El Diwany

30 November 2011

Our ref: 11989/2011

Dear Farid El Diwany

Your complaint about Mrs Justice Sharp

Thank you for your letter of 16 November in which you express concern about Mrs Justice Sharp in connection with hearings in case numbers HQ10D02334 and HQ10D02228.

This letter explains that having assessed your complaint we cannot take it further and your complaint has been dismissed. I have provided an explanation for this decision below. I have also provided advice on how to challenge judicial decisions and information on the services of the Judicial Appointments and Conduct Ombudsman.

Our remit

The role of the Office for Judicial Complaints (OJC) is to assist the Lord Chancellor and Lord Chief Justice in their joint responsibilities for judicial conduct and discipline. These responsibilities are set out in the Judicial Discipline (Prescribed Procedures) Regulations 2006 (as amended), a copy of which may be found on our website.

The OJC can only investigate complaints about the personal conduct of judicial office holders, whether inside or outside of the courtroom. Examples of 'personal conduct' include but are not restricted to the use of profane, racist or sexist language or shouting. The OJC cannot investigate complaints relating to judicial decisions and judicial case management. The terms 'judicial decision' and 'case management' include issues relating to the evidence that is considered and/or dismissed. The weight attached to the evidence that is admitted, the final decision and ancillary matters such as costs and sentencing.

Your complaint

You have complained that Mrs Justice Sharp condoned the content of the hate mail that you received by staying silent in court and in her judgment about the issues that were central to your case.

Reasons why your complaint is dismissed

As explained above, the OJC cannot investigate judicial decisions or judicial case management. Regulation 14 (1)(b) requires that the OJC dismiss any allegation that falls into either category.

I have found that your complaint is about judicial decisions and judicial case management. It is for this reason that I cannot take your complaint any further.

Matters relating to the evidence and information that the Judge considered in reaching their decision, the decisions that the judge has made and the legitimacy of the decisions fall outside the remit of the OJC as they fall into the category of 14(1)(b) and concern a judge's decision making.

The way to challenge a judge's decision is by appealing. Although it is not guaranteed that there would be a right of appeal. Alternatively, you may be able to challenge the decision by judicial review. We suggest that you seek legal advice in order to find out what your options are and how to proceed.

You may find it helpful to seek advice from a solicitor, law centre or the Citizens Advice Bureau (http://www.citizensadvice.org.uk). The Community Legal Service (CLS) – a Government organisation – might also be able to help. This service helps put people in touch with sources of legal advice in their area. Further details about the CLS can be found on their web-site (http://www.clsdirect.org.uk).

The Judicial Appointments and Conduct Ombudsman

If you are unhappy with my handling of your complaint, you can contact the Judicial Appointments and Conduct Ombudsman, Sir John Brigstocke KCB. The Ombudsman can only consider complaints about how the OJC has handled your complaint. He has no power to investigate your original complaint about Mrs Justice Sharp.

The Ombudsman can consider a complaint if you write to him within 28 days of receiving our final decision. After this time, he will consider whether he is able to investigate it. The Ombudsman can be contacted:

- in writing at: *9th Floor Tower, 9.53, 102 Petty France, London, SW1H 9AJ*
- by e-mail at headoffice@jaco.gsi.gov.uk; and
- by telephone on 0203 334 2900.

Further information about the Ombudsman can be found at www.judicialombudsman.gov.uk.

I am sorry that it is has not been possible to investigate your concerns. I know that you will be disappointed with this decision. If you would like any further information about the reasons given, or if you feel that I have failed to address any of the points in your complaint, please contact me.

Yours sincerely

Natasha Kumalo, Office for Judicial Complaints

Sir John Brigstocke KCB,
Judicial Appointments and Conduct Ombudsman,
9th Floor Tower, 9.53,
102 Petty France,
London SW1H 9AJ.

5 December 2011

Dear Sir,

Complaint against Mrs Justice Sharp regarding personal behaviour and discrimination

I am a solicitor, a Muslim, and attach a copy of my letter to the Office for Judicial Complaints (OJC) dated 16 November 2011 and their reply dated 30 November 2011.

I am surprised to read from the OJC that, in a judge (Mrs Justice Sharp) condoning those vile Islamophobic hate emails (directed at myself) by staying silent after I had read them out to her in court as an example of extreme Islamophobic abuse in Norway, this is not classed as 'personal conduct' or indeed 'discrimination'. But rather that it falls within the category of 'judicial decision' which cannot be investigated by the OJC. This interpretation of the rules allows racist and Islamophobic abuse to be condoned through the back door.

If the use of racist language by a judge in court is an example of 'personal conduct' then the omission of a judge to condemn vile Islamophobic abuse brought into evidence in court (and a central feature of the case) must surely also be classed as an example of 'personal conduct' especially where the abuse is so stark and cries out for comment. It beggars belief that a judge can stay silent on this. Mrs Justice Sharp is not a Muslim of course.

Certainly it is an example of discrimination and if say the victim had been a Jew then the judge would no doubt have commented. The Essex Police Hate Crimes Unit called the emails a hate crime and sent them off to Interpol London who passed them on to Interpol Norway.

The nature of my libel claim before Mrs Justice Sharp, which I lost, is such that it is highly unlikely that permission will be given to appeal to the Court of Appeal on this discrimination/personal conduct/failure to condemn issue alone. There is therefore no remedy in practice to investigate the obvious error of judgement from the judge.

Please ask the OJC to reconsider their decision or provide a remedy yourself.

Yours faithfully,

Farid El Diwany

Conduct Complaint Form

Use this form to particularise the details of your complaint to the Ombudsman about how the Office for Judicial Complaints (OJC), a Tribunal President or Magistrates Advisory Committee handled your complaint. You can complete this form online or by sending to us at the address at the end of this form.

JUDICIAL APPOINTMENTS & CONDUCT OMBUDSMAN

Guidance notes

1. The Ombudsman's role is to consider whether the OJC, Tribunal President or Magistrates Advisory Committee, as appropriate, handled your complaint to them correctly. You must have made your complaint about the judicial office holders' personal conduct to one of these bodies in the first instance.
2. The Ombudsman cannot investigate the outcome of a complaint about a judge, tribunal member or a magistrate; he can only look at the process that organisation adopted when handling your complaint. If you do not think that your complaint was handled according to their published procedures, then you can complain to the Ombudsman.
3. The Ombudsman needs your complaint to be fully particularised, providing evidence to support each element of your complaint. You must make your complaint to him clear and succinct and do so in the **space provided in this form**. We will contact you if we require further information.
4. You must state exactly why you believe the OJC, Tribunal President or Magistrates' Advisory Committee's handling of your complaint fell short of the standards you could reasonably expect. You may, **for example**, believe that it took too long to investigate your complaint, that you were not kept updated as to progress, that insufficient attempts were made to independently verify what happened during the hearing or that aspects of your complaint were ignored. Please provide **specific details** to illustrate your complaint. **For example**, if you believe that not all the issues you raised were considered you would need to set out exactly what issues were not considered.
5. You must make your complaint within 28 days of receiving the letter from the OJC, Tribunal President or Magistrates' Advisory Committee, notifying you of their decision about your complaint. The Ombudsman is not required under the Constitutional Reform Act 2005 to consider complaints outside this period, and will only do so in exceptional circumstances. These should be explained in section 4 of this form.

1. Your Details *(Please complete in BLOCK CAPITALS)*

☑ Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other *(please specify):*

Name: FARID EL DIWANY

Address:

Postcode:

Email:

Contact phone number(s):

2. Permission

If the Ombudsman decides that he is able to deal with your complaint, he will need your permission to contact the OJC, a Tribunal President or Magistrates' Advisory Committee. In most cases it will be impractical to proceed with an investigation if you withhold permission.

I confirm that I am content for the Judicial Appointments and Conduct Ombudsman's Office to contact the OJC, Tribunal President or Magistrates' Advisory Committee about my complaint	▣ Yes ☐ No
I have read and understood the Conduct Leaflet and understand that the Ombudsman can only look at the way in which my complaint was handled by the OJC, Tribunal President or Magistrates' Advisory Committee.	▣ Yes ☐ No

3. Your signature

Signature: Date: 16 December 2011

4. Your complaint

Your complaint must be set out concisely on this page only. You must give **specific details**, illustrating exactly why you believe the OJC, Tribunal President or Magistrates' Advisory Committee's handling of your complaint fell short of the standards you could reasonably expect.

The Ombudsman will investigate the issues that you provide below if he considers your complaint warrants investigation. He will not be able to deal with your complaint unless you particularise your concerns **on this form.** You may provide supporting documents if necessary.

I am a solicitor, a Muslim, and attach a copy of my letter to the Office for Judicial Complaints (OJC) dated 16 November 2011 and their reply dated 30 November 2011.

I am surprised to read from the OJC that, in a judge (Mrs Justice Sharp) condoning the enclosed vile Islamophobic emails (directed at myself) by staying silent after I had read them out to her in court on 16 March 2011 and in her judgement, this is not classed as either 'personal conduct' or 'discrimination'. I read the emails out in court to the judge to explain that it was the defendant Torill Sorte who had instigated the hate emails by her comments to the Norwegian press and as an example of the 12 years of Islamophobic abuse I had received from Norway including from their press. How does the OJC justify its interpretation of the definitions of 'personal conduct' and 'discrimination' to exclude the need for comment in the form of unequivocal condemnation by Mrs Justice Sharp of the hate emails which I raised as an issue central to the libel case? The OJC decided that my complaint fell within the category of 'judicial decision' which they cannot investigate. This interpretation of the rules allows racist and Islamophobic abuse to be condoned through the back door. To succeed in getting permission to appeal on this point alone to the Court of Appeal would be most unlikely. There is no remedy in practice to investigate the obvious error of judgement from Mrs Justice Sharp.

The Essex Police Hate Crimes Unit called the emails a hate crime and referred them to Interpol.

The OJC failed to address the issue of discrimination by way of the judge not recognizing the nature of the hate crime when specifically asked to do so by a Claimant.

5. What are you hoping to achieve from your complaint?

The decision of the OJC be set aside and direct that they look at the complaint again.

Submit by Email | Print Form

This form can also be found on our website at www.judicialombudsman.gov.uk and can be downloaded and sent to us by email to headofoffice@jaco.gsi.gov.uk

If you wish to complete this form by hand, please send it to the Judicial Appointments and Conduct Ombudsman, 9th Floor, The Tower, 102 Petty France, London SW1H 9AJ.

If you have a disability, if English is not your first language, or if you need advice on how to complete this form please contact us on 020 3334 2900 or email headofoffice@jaco.gsi.gov.uk

JUDICIAL APPOINTMENTS & CONDUCT & OMBUDSMAN

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www.judicialombudsman.gov.uk

Mr F El Diwany

16 January 2012 Ref: 11-1439

Dear Mr. Diwany,

Your Complaint

I have seen the correspondence between you and the Office for Judicial Complaints (OJC), together with your letter and completed complaint form to my office in relation to their handling of your complaint about the conduct of Mrs Justice Sharp during a Court hearing held at the Royal Courts of Justice on 16 March 2011.

Your complaint to the OJC

On 16 November 2011, you wrote to the OJC to explain that you had received "hate" emails from Norwegians, which had been classified as a hate crime by Essex Police and they had sent them to Interpol Norway. You claimed that the Defendant in the case, Torill Sorte, was the catalyst for the hate emails through lies she had told the Norwegian National Press about you and, in their coverage, the Norwegian Press had mentioned you were a Muslim, though had not named you.

You complained that, on reading out the emails in Court, Mrs Sharp –

- Knew the Norwegian Press had been labelling you by your religion on and off for twelve years, yet she stayed silent in Court and in her judgement on the central issue in your case of Islamophobia in Norway and the hate crime against you;
- Did not utter one word of regret about the treatment you had received.

The OJC wrote to you on 30 November 2011 and explained that, having assessed your complaint, they could not take it forward and it was to be dismissed. They stated that your complaint was about judicial decision-making and case management and that your only option was to seek legal advice on whether an appeal would be appropriate as the only way to challenge a judge's decision was by appealing. They also advised that you could write to my office if dissatisfied with their handling of your complaint.

Your complaint to me

You wrote to my office on 5 December and returned your completed complaint form on 16 December 2011. You complained that:

- You were surprised to hear from the OJC that a judge condoning vile Islamophobic hate emails by staying silent after you read them out to her in Court is not classed as personal conduct or indeed discrimination.

- The OJC's interpretation of the rules allows racist and Islamophobic abuse to be condoned through the backdoor.

- If the use of racist language by a judge in Court is an example of personal conduct, then the omission of a judge to condemn vile Islamophobic abuse brought into evidence in Court must surely be classed as an example of personal conduct, especially where the abuse is so stark and cries out for comment.

My remit

In accordance with Section 110(2) of the Constitutional Reform Act 2005, I am required to review a complaint where 3 conditions have been met, the first of which is that I consider a review to be necessary. My remit specifically precludes me from reviewing decisions taken by those considering conduct complaints; I can look only at the process by which those complaints were handled

I enclose a copy of the relevant part of the Constitutional Reform Act 2005 for your information.

My evaluation of your complaint

I have considered the points you have raised in order to determine whether your complaint falls within my remit to investigate. My view is that:

- There is no evidence to suggest that the OJC did not consider your complaint properly or correctly because, despite your assertions, your complaint solely relates to Mrs Justice Sharp's judicial decision-making and case management and not to her personal conduct.

- The OJC explained that they were not able to investigate your concerns and advised you that your only option was to seek legal advice to determine whether an appeal would be appropriate. I agree with this advice.

- The evidence you provided to the OJC did not substantiate the allegations you made about Mrs Justice Sharp's personal misconduct. I do not agree therefore, that the OJC interpreted the rules incorrectly to allow abuse to be condoned through the backdoor.

My decision

I do not believe that you have provided me with any examples of maladministration in respect of how the OJC failed to investigate your complaint properly. I have therefore come to the view that there are no matters which merit further investigation into your complaint and I am sorry there is nothing more my office can do for you.

Yours sincerely,
LAMarris.

pp **Sir John Brigstocke KCB.**
Approved by and signed in his absence

(5) "Senior judge" means any of these—
  (a) Master of the Rolls;
  (b) President of the Queen's Bench Division;
  (c) President of the Family Division;
  (d) Chancellor of the High Court;
  (e) Lord Justice of Appeal;
  (f) puisne judge of the High Court.

(6) "Sentence" includes any sentence other than a fine (and "serving" is to be read accordingly).

(7) The times when a person becomes and ceases to be subject to prescribed procedures for the purposes of section 108(4) or (7) are such as may be prescribed.

(8) "Under investigation for an offence" has such meaning as may be prescribed.

Applications for review and references

110 Applications to the Ombudsman

(1) This section applies if an interested party makes an application to the Ombudsman for the review of the exercise by any person of a regulated disciplinary function, on the grounds that there has been—
  (a) a failure to comply with prescribed procedures, or
  (b) some other maladministration.

(2) The Ombudsman must carry out a review if the following three conditions are met.

(3) The first condition is that the Ombudsman considers that a review is necessary.

(4) The second condition is that—
  (a) the application is made within the permitted period,
  (b) the application is made within such longer period as the Ombudsman considers appropriate in the circumstances, or
  (c) the application is made on grounds alleging undue delay and the Ombudsman considers that the application has been made within a reasonable time.

(5) The third condition is that the application is made in a form approved by the Ombudsman.

(6) But the Ombudsman may not review the merits of a decision made by any person.

(7) If any of the conditions in subsections (3) to (5) is not met, or if the grounds of the application relate only to the merits of a decision, the Ombudsman—
  (a) may not carry out a review, and
  (b) must inform the applicant accordingly.

(8) In this section and sections 111 to 113, "regulated disciplinary function" means any of the following –
  (a) any function of the Lord Chancellor that falls within section 108(1);
  (b) any function conferred on the Lord Chief Justice by section 108(3) to (7);

(c) any function exercised under prescribed procedures in connection with a function falling within paragraph (a) or (b).

(9) In this section, in relation to an application under this section for a review of the exercise of a regulated disciplinary function –

"interested party" means –

(a) the judicial office holder in relation to whose conduct the function is exercised, or

(b) any person who has made a complaint about that conduct in accordance with prescribed procedures;

"permitted period" means the period of 28 days beginning with the latest of –

(a) the failure or other maladministration alleged by the applicant;

(b) where that failure or maladministration occurred in the course of an investigation, the applicant being notified of the conclusion or other termination of that investigation;

(c) where that failure or maladministration occurred in the course of making a determination, the applicant being notified of that determination.

(10) References in this section and section 111 to the exercise of a function include references to a decision whether or not to exercise the function.

111 Review by the Ombudsman

(1) Where the Ombudsman is under a duty to carry out a review on an application under section 110, he must –

(a) on the basis of any findings he makes about the grounds for the application, decide to what extent the grounds are established;

(b) decide what if any action to take under subsections (2) to (7).

(2) If he decides that the grounds are established to any extent, he may make recommendations to the Lord Chancellor and Lord Chief Justice.

(3) A recommendation under subsection (2) may be for the payment of compensation.

(4) Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the applicant as a result of any failure or maladministration to which the application relates.

(5) If the Ombudsman decides that a determination made in the exercise of a function under review is unreliable because of any failure or maladministration to which the application relates, he may set aside the determination.

(6) If a determination is set aside under subsection (5) –

(a) the prescribed procedures apply, subject to any prescribed modifications, as if the determination had not been made, and

(b) for the purposes of those procedures, any investigation or review leading to the determination is to be disregarded.

(7) Subsection (6) is subject to any direction given by the Ombudsman under this subsection –

(a) for a previous investigation or review to be taken into account to any extent, or

The Lord Chancellor
Ministry of Justice
DX 152380 Westminster 8

16 April 2014

Dear Sir,

COMPLAINT AGAINST MRS JUSTICE SHARP (now LADY JUSTICE SHARP)

I am a solicitor practising at Nasir & Co in Lincoln's Inn.

I am writing to you about an internet libel case I took in my personal capacity at the High Court in 2011 and 2012. I have already complained to the Office for Judicial Complaints (OJC) and the Ombudsman on the aspect of vile Islamophobic hate email from Norway, central to my case, condoned by Mrs Justice Sharp. The OJC and the Ombudsman both said they were powerless to intervene in the area of Mrs Justice Sharp's 'case management powers'. This wide discretionary judicial power can lead to enormous injustice and must be corrected.

In 2010 I obtained judgment in the High Court against a Norwegian police officer Torill Sorte.

I had also issued a claim against Torill Sorte's employer: the Ministry of Justice & the Police, Norway.

In 2011 Torill Sorte issued an application to set aside my judgment on grounds of no jurisdiction and at the same time the Ministry of Justice & the Police, Norway issued an application to have my claim dismissed on the grounds of no jurisdiction. Both applications were granted by Mrs Justice Sharp.

My claim was based on the fact that when a google search was done on my name in the UK up came a January 2006 article on me from a Norwegian newspaper with an additional 'Translate this page' link (put there by the Norwegian journalist), so readers could view the article in intelligible enough English via Google translate. I had been named and also labelled by my religion: 'Muslim man' and additionally called "clearly mentally unstable" by the police officer Torill Sorte. This was bound to upset me and affect my reputation as a solicitor. Torill Sorte had called me "clearly mentally unstable" in response to my well circulated condemnation of her outrageous lie on the front page of Norway's *Dagbladet* newspaper of 21.12.2005 that I had been 'incarcerated in a UK mental hospital for two years from 1992-1994' at the instigation of my mother. I have never been a patient in a mental hospital at any time and have been a practising solicitor since 1987. Following this *Dagbladet* newspaper article, in which I was again called 'Muslim' I received horrendous sexualised Islamophobic hate emails from Norway, which are enclosed, and I spent half an hour or so reading them out to Mrs Justice Sharp. I have the transcript of the hearing of 16 March 2011 and indeed sent it to Mrs Justice Sharp along with a covering letter.

The Essex Police Hate Crimes Unit called the emails a hate crime and sent them off to Interpol. The Chief Constable of Essex, after getting in touch with the National Crime Agency (NCA), has confirmed that the emails came from Norway. The Norwegians were upset that I ran a website from the year 2000 highlighting Islamophobia in Norway. The Norwegian press had been writing about me since 1995 and continued up to 2011 but invariably called me "the Muslim man" and in about 24 articles named me but once. Ironically the source for the newspapers' information was a Norwegian girl I knew

who was in fact a registered mental patient in Norway. When I complained to the Norwegian Police Complaints Bureau over police officer Torill Sorte's ludicrous allegations of being "clearly mentally unstable" and of having allegedly been "a patient in a UK mental hospital for two years", a copy of my complaint was not given to the police officer. She in fact took no part whatsoever in the investigation over my complaint about her allegations. (Mrs Justice Sharp knew all this from my evidence). Quite at variance with the standard practice in the UK with the IPCC. Instead the Norwegian Police Complaints Bureau ruled that Torill Sorte was right to call me "clearly mentally unstable" because of the "contents" of my website and "other facts". When I enquired of the official at the Bureau what exactly on my website indicated that I was "clearly mentally unstable" and what in addition were the "other facts" which indicated this he refused to tell me. He (Johan Martin Welhaven) did not even address my point of how a police officer can tell a national newspaper the total fabrication that I have been a patient in a mental hospital for two whole years. Moreover when asked to investigate and condemn the hate emails he refused to.

When I sued at the High Court for the libel of being labelled "clearly mentally unstable" Mrs Justice Sharp declared in her judgment of 29 July 2011 that this 'ruling' by Mr Welhaven at the Norwegian Bureau for the Investigation of Police Affairs was all in order and acceptable and that by suing here for an internet libel (which was bound to affect my peace of mind) I was "abusing" the court process and "harassing" Torill Sorte. Mrs Justice Sharp thought it was quite alright that Torill Sorte had not been asked herself by the Norwegian Police Complaints Bureau why she thought I was "clearly mentally unstable". Surely there had to be sound reasoning and substantiation from the Norwegian Police Complaints official in his decision as to why I am supposed to be mentally ill? It is appalling that Mrs Justice Sharp accepts and adopts a non-court decision that has no reasons given or any factual basis for its pronouncement. She would not accept a similar decision from the IPCC. It is a clear breach of my human rights. Mrs Justice Sharp said that as the Norwegian Police Complaints Bureau had already rejected my complaints relating to my mental health then I was abusing the court process by re-litigating here: *res judicata* applied.

Why was Norwegian bigotry exported and condoned by a High Court judge in the form of Mrs Justice Sharp? Why did Mrs Justice Sharp utter not one word of regret in her judgment about those vile hate emails read out to her? I read them out to her to indicate that I had every right to be upset with Torill Sorte – as, if she had not fabricated the lie and told her newspaper that I was in a lunatic asylum for two years (and the newspaper also called me the 'Muslim man'), then the hate emails would not have followed - as some of the senders indicated that they believed I had been incarcerated. I expected a response from Mrs Justice Sharp in her judgment.

I told Mrs Justice Sharp at the hearing (and it is in the transcript) that the reason the Norwegians did not like me was firstly that I was Muslim and had been subjected to a decade long religious hate campaign from Norway's press (and note that Mrs Justice Sharp's judgment was handed down just a week after the Muslim-hater Anders Breivik's killing spree in Norway) and secondly that the Norwegians knew that my mother was German and that her father was a German soldier killed in Stalingrad fighting for the army of General Von Paulus. It took me over a year to discover that Mrs Justice Sharp was Jewish. Her religious background can be the only reason for her bias and prejudice. Which judge can possible give no comment on emails sent to me saying for example: 'Sick devil. Go fuck Allah the Camel'? Or: 'When you eat pigs do you lick the pig's arsehole clean before digging in'?

The OJC and the Ombudsman said that as Mrs Justice Sharp had not actually said anything in court or in her judgment regarding the hate emails and other Islamophobic evidence from Norway, she was not at fault or in breach of good behaviour; she was entitled to say nothing as it was part of her remit under her 'case management powers'. Nonsense! Do you think that if I was continually called 'the Jew'

in the Norwegian press or the emails sent to me said: 'You dirty Jew - go fuck a pig' then Mrs Justice Sharp would have stayed silent in her judgment? Islamophobia was central to my High Court case but you would not have a clue that it was when reading Mrs Justice Sharp's judgment. Just because Mrs Justice Sharp knows how to play the game of cover up – by staying silent – is not reason enough to allow her to escape censure under the protection of her 'case management powers'.

I did ask the Court of Appeal for permission to appeal on this 'bias and prejudice' point but permission was refused with no reasons given. The main argument for refusal to appeal being given was lack of jurisdiction to sue as I could not adduce evidence as to who had seen the offending wording on the internet in line with the *Mardas* case. So this is another failing in the law of libel. Anything can be said about you on the net but if you have not got the means to gather evidence as to who had looked at it there is no basis for a claim.

I want Lady Justice Sharp reprimanded and I want an apology from her. She said that I did not bring my claim to defend my reputation. In other words that I should have the humility to accept that I am "clearly mentally unstable" when such comments come up on the internet, and not protest when it is said that I have been a patient in a UK psychiatric unit for two years - when in fact I have not for one second been incarcerated; and have the wisdom to accept that it is only fair comment from Norway in emails saying, for instance, 'I seriously doubt that anything other than a pig could take your semen.'

I look forward to hearing from you.

Yours faithfully,

Farid El Diwany
Solicitor
Nasir & Co

msn Hotmail®

Printed: 21 December 2005 12:37:51

From: Student14 <student14@itetpost.no>
Sent: 20 December 2005 11:53:07
To:
Subject: You are fucking cracy

I would like to give a big laugh to you. Most stupid cracy fuck, have u gotten ur head examined lately. I would like to point out to you that beeing stupid knows no color. I was once a muslim. But when I realised that Mohammed counldnt be anything else than a confused peadophile. I knew that a true God would never speak to such a looney. So you think that killing a featus that has not gained consciouness is more wrong than reaping children. It is more and more clearly that you are insane. The only humane thing to do is to place a gun to your head and pull the trigger. But I supose it wouldnt do to much damage, hence the damage is clearly well done. I heard that your mother got you into hospital, bad muslim taking orders from a woman. May I recomend a rope around your neck since you are never comming to paradise. Better to end your misory right?

msn Hotmail®

Printed: 20 December 2005 14:20:13

From : Grise Spiser <youareapigoinkoink@operamail.com>
Sent : 20 December 2005 12:48:04
To :
Subject : Nice website

Wow, I just browsed your website and I must say you strike me as the most filthy, pigeating muslim maniac I have ever encountered.

When you eat pigs, do you lick the pigs asshole clean before digging in?

I have one advice for you, take out your willy, that is your mangled penis, and showe it into a pigs ass, maybe you'll get some weird looking kids. I seriously doubt that anything other than a pig would take your seamen.

Best regards and good luck on dying pigfucker!

By the way, you really do a great job in showing of muslims as crazy, even better than Osama!

OINK OINK fucker ;)

Burn in hell!

--

msn Hotmail

Printed: 20 December 2005 13:50:08

From : Jule G Roten <getawayrobbie49@hotmail.com>
Sent : 20 December 2005 10:28:14
To :
Subject : Sick devil.

Sick devil, go fuck Allah the Camel.

msn Hotmail®

Printed: 20 December 2005 14:12:47

From : Mattis Henriksen <st.odin@hotmail.com>
Sent : 20 December 2005 10:08:09
To :
Subject : In god we trust.....

May allah put you back behind bars where you belong!!! Fucking creep!!

msn Hotmail®

Printed: 21 December 2005 12:11:29

From : Yeah Baby <pointless911@hotmail.com>
Sent : 21 December 2005 11:06:39
To :
Subject : Farid!

You most be the sickes fuck ever! Muslims are root to all evil and you are the living proof of it.

MSN Messenger http://messenger.msn.no Den enkleste og raskeste måten å holde kontakten på

msn Hotmail®

Printed: 21 December 2005 12:35:49

From : Walker Sigma <walkeratsigma957@yahoo.com>
Sent : 20 December 2005 09:37:20
To :
Subject : Go and fuck ur self

U Arab pigsvine pervert.

msn Hotmail®

Printed: 20 December 2005 14:28:54

From : Marcus G <svenskmarcus@hotmail.com>
Sent : 20 December 2005 11:21:55
To :
Subject : Going to get you

we have put an 10.000 Euro reward on your head...we going to get you man, we going to clear the world from an idiot like you..:)

Burn in hell..

ps. going to FUCK your mother...she like WHITE man...

msn Hotmail®

Printed: 21 December 2005 12:17:11

From : americum <americum@gmail.com>

Sent : 21 December 2005 02:43:49

To :

Subject : hello, whats this i smell? donkeypoop or monkeypiss? one million dollars for the first wanker who reads this!

are you by any chance a catholic priest? and did you daddy touch your penis and/or dropped you on the head when you were born? or maybe your parents suffered for BSS (baby shaking syndrome) eitherway you are one fucked up dude.

did someone touch your bum bum in the mental ward? oh hell, all norway knows you are crazy as fuck man. but i think you are funny, very sad but funny. i give you, lets say... 10 years and i bet that you have killed yourself or atleast gotten another hobby than harrasing women you cant get, haha such a wanker.

what triggered your funny behaviour? are you sick or just a horny helpless looser? tried prozac combined with viagra? oh wait, im sure someone tried that combo in the mental ward when they made love love to your bum bum. do you call your penis king kong?

happy christmas motherfucker. oh wait, i bet you are inbreed! your dad is your son is you mum is your sister is your uncler is your bum bum.

ps. I EAT FOETUSES FOR BREAKFEAST.

AND ITS MR.AMERICUM.

msn Hotmail®

Printed: 20 December 2005 14:21:58

From : eetfuk <eetfuk@www3.powertech.no>
Sent : 20 December 2005 12:03:21
To :
Subject : Please Read this as it is urgent

You stink, please die

msn Hotmail®

Printed: 21 December 2005 12:25:17

From : Tom Bano <tombano@hotmail.com>
Sent : 21 December 2005 10:23:49
To :
Subject : Clearly..

After visiting your website, I 'can now understand why Your mother had you "put away" for a while.
Clearly the best option.

Regards,
Tom Bano

msn Hotmail®

norway_2003@hotmail.com Printed: 20 December 2005 13:52:56

From : Madeleine Birkenes <mrs.sainsbury@gmail.com>
Sent : 20 December 2005 10:44:54
To :
Subject : heidi

hey you. i amfrom bergen in norway and i have read all your stories and the norwegian side. i dont really know what to belive but yours seems more likely. i dunno. in norway you are made out to be a sexed up maniac who was a freak from the first meeting. wel i dunno but today it si all over the net in norway about you and how thay had to block you from lots op norwagian intrenet sightscoz u were disturbed. well i dunno but i hope it all gets sorted out and i think.. im not sure but i think i support you

from
Madeleine Sainsbury

From : .no>
Reply-To : ..no
Sent : 10 February 2006 00:46:05
To :
Subject : Norway - shocking etc

Dear Sir(s?),

I have incidentally come across this page on the net and found many interesting notes about my home country.

I just want to say that I find most of your experiences credible and to the point. In my opinion Norway is lacking in true professionalism in many aspects of public life, leaving quite a number of people, also "native norwegians", victims of circumstance and ill-doers.

As I gather from the internet page, your bad experiences and interest in the "dark side" of Norway started with Heidi Schøne. I can only offer my sympathy, and also add that there has been a number of such women exposed as liars and criminals the last decade.

Unfortunately, political correctness is a disease under which the Norwegian society suffers heavily. "Women are poor and defenseless" and "All men are rapists" are only two of the politically correct (incorrect!) statements in Norway. Coupled with a lack of professionalism in the newspapers and the judicial system these politically correct statements have paved the way for a large number of miscarriages of justice.

The most common case is that of a divorce involving children. A very common practice, I am ashamed to say, has been for the wife to claim some sort of sexual abuse towards her or a child (when in reality no such thing has occurred). The reason for such a claim is to obtain full parental control of the children after divorce. This will make sure that the wife can control the husbands contact with the children (making it NO contact usually), and at the same time make sure that the husband will have to pay VERY substantial amounts of money to the wife regularly until all children are considered adults by law, that is 18 years of age. The very unfortunate fact about the Norwegian judicial system is that until recently the wife (and her lawyer) usually backed this claim only by "expert" statements from psychologists. Except for one or two outrageous cases that was appealed all the way to supreme court, the Norwegian courts never contradicted these expert psychologist claims. This situation was revealed to the public in a series of articles in the Norwegian newspaper Adresseavisen in 2000 or 2001 (cannot remember exactly), when a number of lawyers wanted an end to the shameful practice. The lawyers also said that lawyers dealing with divorces knew a number of psychologists willing to give any kind of "expert statement" in court for money. Thus, they could arrange a divorce to whatever outcome just by false accusations, through a very severe lack of professionalism on the behalf of both lawyers, psychologists and courts. The use of psychologists in Norwegian courts have now been changed, also due to their abysmal part in the "Bjugn case", where a vast number of children were falsely claimed to have been abused by a number of men. The Norwegian society of psychologists have also publicly excused the misconduct of some of their members involved in these cases.

This is just to say that I think part of your impression of a Norwegian general disliking of Moslems and Islam is that you have experienced the kind of injustice many "native Norwegians" also have experienced. I don't think it makes

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your experiences better, but one should always try to call a spade a spade.

I think there has been a change in attitude of the courts in Norway the last years and a number of people have had their cases reopened and gotten their names cleared. These cases were given major headlines in the newspapers when they were first run, but when they are now reopened, the newspapers does not care about them. This goes only to show that the papers are not very serious in this country, but I think it also shows that even here a lie is a lie and will only take you so far. I also feel that even though the feminist movements still are a major factor for establishing what is "politically correct" in Norway, they also have begun to feel some embarrassment by some of the acts of their "sisters".

My thoughts on abortion mirrors yours I think, and even if you might not think so from the public debate in Norway, there is a number of people that is really frustrated by the abortion laws. For instance it has been very difficult for the hospitals to find (enough) doctors and nurses willing to work at the abortion clinics. This is a fact that the media and official Norway has been wanting to stay out of public knowledge. In fact, abortion is such a sensitive subject it is not seen as a proper subject to discuss at all. The government does not want a public debate on abortion, and I think this is so because they know that a majority or at least a large minority of the Norwegian people is against it, and the way it is practised. It is a disgrace, but people who officially protest about the abortion laws are frozen out of the society.

I hope you will continue this webpage as I find it to be an important addition to the shallow Norwegian debate on our society. However, I think the way some part of it is written now, many Norwegians will feel offended before they manage to get to the truth in it.

If you are interested in reading about the "Bjugn case" I can recommend this link:

http://home.online.no/~eraagaar/

Knut Erik Aagaard has written many interesting articles presented here, but the ones titled "Overgrepslæren 1-10" are about the "Bjugn case". They were all published in the Oslo newspaper Arbeiderbladet, which today is called Dagsavisen.

Best regards,

---

tlf:

Ministry of Justice

The Right Honourable Chris Grayling MP
Lord Chancellor and Secretary of State for Justice
102 Petty France
London
SW1H 9AJ

T 020 3334 3555
F 020 3334 3669
E general.queries@justice.gsi.gov.uk

www.gov.uk/moj

The Rt Hon Eric Pickles MP
House of Commons
London
SW1A 0AA

Our ref: MC9934

22 May 2014

COMPLAINT ABOUT LADY JUSTICE SHARP

Thank you for your letter of 13 May 2014 in which you enclosed a letter from your constituent Mr Farid El Diwany.

As you may know, the Lord Chief Justice and I share joint responsibility for judicial conduct and discipline. Our responsibilities cover matters relating to allegations of potential personal misconduct in the way that a judicial office holder has behaved, whether inside or outside of the courtroom. We cannot consider complaints about judicial decisions or case management. Complaints about judicial misconduct are handled in accordance with the provisions of the Judicial Discipline Regulations 2013 and the supporting Judicial Conduct Rules 2013. We are assisted in our duty by the Judicial Conduct Investigations Office, JCIO (formerly known as the Office for Judicial Complaints).

Mr El Diwany explains in his letter that he has previously raised his complaint against Lady Justice Sharp (formerly Mrs Justice Sharp) with the Office for Judicial Complaints and his complaint was dismissed finding no evidence of misconduct. The issues that Mr El Diwany is raising in his current letter relate to Lady Justice Sharp's decisions on his case at the High Court. These are matters which fall outside of the remit of the JCIO on two counts. Firstly, the Judicial Conduct Rules 2013 are clear that we cannot consider a complaint about judicial decision and case management. The appropriate way to challenge such matters is through the appeal process at the court. Secondly, the Rules are clear that we cannot consider a matter which has already been dealt with, whether under these Rules or otherwise, and does not raise any new issues of misconduct (Rule 21h). Mr El Diwany's current letter does not raise any new issues of misconduct.

I regret therefore that there is nothing further that I or the JCIO can do to assist Mr El Diwany.

CHRIS GRAYLING

The Rt Hon Eric Pickles MP
House of Commons
London SW1A 0AA

2 June 2014

Dear Mr Pickles,

Lady Justice Sharp (formerly Mrs Justice Sharp)

Thank you for your letter of 29 May 2014 enclosing a copy of Chris Grayling's letter of 22 May 2014.

I telephoned the Judicial Conduct Investigations Office (JCIO) today and spoke to a lady called Mrs Sarah Murrell (Tel: 020 7073 4719). She gave her permission for me to quote her view of judicial misconduct after I read out to her Rule 6 in paragraph 10 – *Guidance to the Rules, from The Judicial Conduct (Judicial and other office holders) Rules 2013; Supplemental Guidance (October 2013).* Mrs Murrell told me that the JCIO's (her) opinion of judicial misconduct can, depending on the context, cover the case where abusive comments are read out to a judge in court and a lack of comment or intervention from the judge equates to misconduct. This scenario must surely cover my case - as more abusive comments than those sent to me in the emails from Norway regarding Islam and read out to Mrs Justice Sharp (read from paragraph A on page 48 of the enclosed transcript of the hearing before Mrs Justice Sharp on 16 March 2011) one cannot expect to find. The context of the hate emails, the contents of which have been acknowledged by Interpol as a hate-crime, were central to my High Court case: Islamophobia in Norway.

The Judicial Conduct Rules 2013 state in paragraph 21:

21.The Judicial Conduct Investigations Office must dismiss a complaint, or part of a complaint, if it falls into any of the following categories—
(a) it does not adequately particularise the matter complained of;
(b) it is about a judicial decision or judicial case management, and raises no question of misconduct;
(c) the action complained of was not done or caused to be done by a person holding an office;
(d) it is vexatious;
(e) it is without substance;
(f) even if true, it would not require any disciplinary action to be taken;
(g) it is untrue, mistaken or misconceived;
(h) it raises a matter which has already been dealt with, whether under these Rules or otherwise, and does not present any material new evidence;
(i) it is about a person who no longer holds an office;
(j) it is about the private life of a person holding an office and could not reasonably be considered to affect their suitability to hold office;

Paragraph 21(b) would cover my situation. A question of misconduct has been raised and Sarah Murrell has told me that my complaint may well fall within the scope of the JCIO's powers to investigate. For paragraph 21(h) new material evidence is present as detailed below and above by Sarah Murrell.

So Mr Grayling's officials, who no doubt advised him regarding the contents of his letter to you of 22 May 2014, are not wholly correct in their definition of 'judicial misconduct' and this calls into question the decision given by the Office for Judicial Complaints (OJC) of 30.11.2011 (ref: 11989/2011) and its subsequent endorsement by the Ombudsman Sir John Brigstocke KCB on 16.01.2012 (ref: 11-1439). The OJC may have got it fundamentally wrong and the JCIO must therefore revisit my complaint.

My original complaint to the OJC came under the 2006 Rules and the 2013 Rules are still not clear enough. There must in any event be specific reference in the Rules that 'judicial misconduct' covers say 'acts of silence and omission from a judge in court or in a judgment to remarks properly brought before the court which are likely to cause gross offence to a faith community which demand comment from the judge who then fails to pass a proper opinion'.

There is also new evidence not submitted before: (a) the enclosed transcript of the hearing before Mrs Justice Sharp which bears no resemblance in major areas regarding the justice of the case and the judge's integrity to the comments she made on my case in her judgment and (b) the fact of my discovery after my complaint to the OJC that Mrs Justice Sharp is Jewish. Her Jewish background was inevitably bound to prejudice her view of me when I told her that my grandfather had been a German soldier killed in Stalingrad in WW2 (see paragraph A on page 40 of the transcript). As Britain had also been to war with Germany I expressed my regret to the court at my grandfather's background – as a gesture of goodwill. But because of the Holocaust, German soldiers from World War Two will always be an abhorrence to Jews and understandably so. As will be the offspring of German soldiers – my mother and myself. So there is thoroughly natural justification for me to assert that there is every chance of bias and prejudice by Mrs Justice Sharp against me, coupled with the fact that I am Muslim, with an Egyptian father – with all the hostility over the decades engendered by the Arab-Israeli conflict. Moreover Jews do not believe that the prophet Muhammad is a genuine prophet – they believe he is an imposter. I suspect therefore that the above reasons caused Mrs Justice Sharp to condone those unspeakably vile emails directed at myself. It is unnatural for a judge to make no comment on emails which were read out to her for the express reason of eliciting a reaction. Is Mrs Sharp telling me that I have no right to be upset at these emails? It is as if I have some deep character flaw attributable to my being a Muslim and that her clandestine wisdom is paramount.

What Mrs Sharp is definitely telling me in her judgment is that I must accept with stoicism that I am 'clearly mentally unstable' for unexplained, unsubstantiated *Norwegian* reasons and that the fact of my accuser Torill Sorte alleging falsely that I have been a mental patient for two years in an asylum must just be accepted as one of the mysteries of life. And that to protest here in the UK by taking a court case is "harassment" of Torill Sorte. I am not a libel lawyer. I am a property lawyer. I acted as a litigant in person. I did not have £50,000 to instruct Counsel. I cannot possibly be expected to live with an article coming up on the internet from Norway in 2009, downloaded here, saying that I "Farid El Diwany... a Muslim" am "clearly mentally unstable". Which came up when a Google search was done on my name, accessed by Roy Hansen's deliberately engineered 'Translate this page' link. I am not abusing the court process by making a claim here. I am most certainly trying to defend my reputation. Mrs Justice Sharp declared that my action was not intended to defend my reputation. What utter rubbish! Indeed the other party to the action, the Norwegian journalist Roy Hansen, has long since taken his defamatory article off the net. Many people from Norway sent me emails, read out to Mrs Justice Sharp, supporting my norwayuncovered.com website.

Furthermore my point about rampant Islamophobia in Norway was totally justified: one week before Mrs Justice Sharp's judgment Anders Behring Breivik, the virulent Muslim-hater from Norway went on a killing spree that shook Norway to the core. Indeed, he surely must have known of me as the publicity I engendered in Norway in my anti-Islamophobia campaign was huge. For what reason would Breivik

use the word 'Brentwood' – my home town – in his fictitious offshore Antiguan company called 'Brentwood Solutions Limited' other than that he was taking a dig at me? It is widely acknowledged that the actions of Anders Behring Breivik were just the extreme manifestation of a popularly held view; many Norwegians agreed with his opinions on the issues of loathing for the very notion of Islam and its followers. Milosevic, Karadzic and Mladic were heroes for Breivik.

The defendant in my High Court case, police officer Torill Sorte, told her national newspaper *Dagbladet* in December 2005 that my mother had put me into a UK lunatic asylum for two years in 1992. This was a complete fabrication and it is most unfortunate that the Civil Procedure Rules (CPR) in the White Book have not be amended to allow a defendant like Torill Sorte to be compelled to face cross-examination in this jurisdiction, particularly as she sent in her witness statements to the High Court and used London solicitors to defend her. (Note that as a result of my case the CPR rules were amended to allow an address for service to be given in Norway when a claim is issued from the UK. Most helpful to our Norwegian friends of course as the reason judgment was given in my favour against Torill Sorte in the first place was due to her failure to properly acknowledge service of the Claim, despite the Senior Master of the High Court telling Torill Sorte's then Norwegian lawyers the correct procedure). *Dagbladet* newspaper added that I was "a Muslim" who "wanted a young child to die" (the source for which was the uncorroborated word of Heidi Schøne - a registered Norwegian mental patient whose psychiatrist came to court in Norway in 2003 in my libel prosecution of her to say she was "suffering from an enduring personality disorder" was on "a 100% disability pension for mental illness" and was "unfit to testify" and had been abused by most members of her immediate family. She did testify, but without making witness statements beforehand and the Norwegian judge refused me permission to cross-examine as they had run out of time!! Never ever did I want Heidi Schøne's young child to die and I said so to Mrs Justice Sharp in court. Not in a million years would Mrs Justice Sharp accept in her court such procedural irregularities as found in Norway's judicial system. But she declared all Norway's judicial procedures in my case in Norway as fair. How, after a lifetime of practice using the CPR?). As a direct result of *Dagbladet's* newspaper comments of 20 and 21 December 2005 the hate emails arrived after Norwegians looked at my website highlighting Islamophobia in Norway. Some of the senders of the hate emails believed Torill Sorte when she told the newspaper that my mother had put me in a lunatic asylum for two years. I told Mrs Justice Sharp that I had left sarcastic condemnatory messages on Torill Sorte's voicemail (recorded in her judgment) as I was very angry with Torill Sorte for her outrageous lie of two years' incarceration in a mental hospital - which was the cause for Norwegians believing I was a registered mental patient and resulting in the emails being sent to a 'mad Muslim'. Mrs Justice Sharp thought my protest to Torill Sorte in leaving voicemail messages was "harassment" of Torill Sorte. What about the blatant lie of Sorte's accusation that I have been a mental hospital in-patient for two years and the hate emails Sorte in no small part caused to be sent to me? Why no comment on that harassment of me and the repulsive filth in the emails? Did Mrs Justice Sharp think I deserved them? Is Islam so hated by her that she sees it right and proper not to comment?

Please also note that I did ask for permission to appeal on the point of the hate emails and permission was refused by the Rt. Hon. Sir Richard Buxton on 14 December 2012 with no reasons given (see paragraphs 29 and 33 of my Skeleton Argument enclosed). He made no comment whatsoever himself on the hate emails which also is totally unacceptable. He thought my case hinged solely on the points of slander, time limits and jurisdiction. It was as if Islamophobia and Breivik were just a mirage.

What would a Muslim judge have thought of all this? There are of course no Muslim judges in the High Court at present. And unlikely to be for some time to come.

I would like a meeting with you and Chris Grayling to discuss this matter.

Thank you once again for your help which was vital. It made all the difference.

Yours sincerely,

Farid El Diwany
Solicitor

P.S. Due to the amount of paperwork I have enclosed two copies of this letter. One for you and one for Chris Grayling.

Judicial Conduct and Investigation Office
81-82 Queens Building
Royal Courts of Justice Strand
London WC2A 2LL

12th July 2014

Dear Sirs,

Lady Justice Sharp (formerly Mrs Justice Sharp)

I refer to the decision given by the Office for Judicial Complaints (OJC) of 30.11.2011 (ref: 11989/2011) and its subsequent endorsement by the Ombudsman Sir John Brigstocke KCB on 16.01.2012 (ref: 11-1439) regarding my complaint against Mrs Justice Sharp concerning her failure to comment in her judgment dated 29.07.2011 on vile, sexualised, Islamophobic hate emails sent to me from Norway read out to her at a hearing at the RCJ on 16.03.2011.

I have recently discovered by speaking to Mrs Sarah Murrell of the JCIO - on 2 June 2014 and again a few days later – that the JCIO's established view of judicial misconduct can, depending on the context, cover the case where abusive comments are read out to a judge in court and a lack of comment or intervention from the judge amounts to judicial misconduct. The OJC decision dated 30.11. 2011 declared that they had no power to investigate my complaint as Mrs Justice Sharp's failure to comment on the hate emails in court or in her judgment were part of her 'judicial decision' and 'case management' powers which are not part of the OJC's remit to investigate. This assessment of the rules by the OJC in 2011 appears to be wholly incorrect. Therefore I am applying again for my complaint to be looked at again.

More abusive comments than those sent to me in the emails from Norway regarding Islam along with outrageous sexualised personal insults in my capacity as a Muslim one could not expect to find. (See paragraph A on page 48 of the enclosed transcript of the hearing before Mrs Justice Sharp on 16th March 2011). Interpol have acknowledged that the hate emails sent to me (copies enclosed) and put in evidence at the hearing before Mrs Justice Sharp are a hate-crime and the crime is still being investigated in Norway by Interpol and the Norwegian police. The place and importance of these hate emails were central to my case before Mrs Justice Sharp: Islamophobia in Norway. That Islamophobia in Norway existed was amply demonstrated a week before Mrs Justice Sharp's judgment through the actions on 22 July 2011 of Norwegian mass-murderer and virulent Muslim-hater Anders Behring Breivik. I had made it quite clear (see the transcript) to Mrs Justice Sharp that I was a campaigner against Islamophobia in Norway, where for over a decade I was the

subject of the most severe form of bigotry from the mainstream Norwegian press - but you would never have thought this from reading Mrs Justice Sharp's judgment.

I just could not understand how Mrs Justice Sharp could stay silent on hate emails that were read out to her for the specific purpose of eliciting a reaction. I am left with the feeling that she hates Islam and thinks that I am deserving of the comments in the emails. What else could I conclude when she sees fit to keep quiet on emails saying for example: 'Sick Devil. Go fuck Allah the Camel' and 'When you eat pigs do you lick the pig's arsehole clean before digging in? I seriously doubt that your semen could be taken by anything other than a pig'? It was the Defendant in my claim, Torill Sorte, whose comments to one of her national newspapers, in no small part, initiated these hate emails. Reading out the hate emails to Mrs Justice Sharp was therefore wholly relevant to my case. It is unnatural for a judge to stay silent on the horrendous content of these hate emails.

I had told Mrs Justice Sharp at the hearing that my grandfather had served as a German soldier in the Second World War and that as Germany had invaded Norway in the war, then Germans were not liked by the Norwegians (see paragraph A on page 40 of the transcript). The Norwegian press had labelled me 'half Arab, half German' (a derogatory term). I was not to discover for another year that Mrs Justice Sharp was Jewish.This for me helped explain her dislike for my German heritage and her quite unforgiveable omission in failing to condemn the hate emails and explain in her judgment that this was one reason I was so angry with the defendant Torill Sorte.

Paragraph 21(b) of the Judicial Conduct Rules 2013 covers my case: there is a question of judicial misconduct regarding judicial decision and judicial case management. Paragraph 21(h) of the Rules covers my case too as the comments of Sarah Murrell is new evidence as is the transcript (which was not done until after my complaint to the OJC), as is my discovery later that Mrs Justice Sharp was Jewish and therefore likely to be prejudiced against me for my German/Arab/Muslim background.

My original complaint to the OJC came under the 2006 Rules but the 2013 Rules are still not clear enough. There must in any event be specific reference in the Rules that 'judicial misconduct' covers say 'acts of silence and omission from a judge in court or in a judgment to remarks properly brought before the court which are likely to cause grave offence to a faith community which demand comment from the judge who then fails to pass a proper opinion'.

Yours faithfully,

Farid El Diwany

Judicial Conduct
Investigations Office

Judicial Conduct Investigations Office
81 & 82 Queens Building
Royal Courts of Justice
Strand
London
WC2A 2LL
DX44450 Strand

T 020 7073 4719
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E inbox@jcio.gsi.gov.uk

http://judicialconduct.judiciary.gov.uk

The Rt Hon Eric Pickles MP
House of Commons
London
SW1A 0AA

Our ref: 19040/2014

18 August 2014

Dear Minister

I am writing further your letter of 24 July in which you enclosed a letter from your constituent Mr Farid El Diwany for the Judicial Conduct Investigations Office (JCIO), formerly known as the Office for Judicial Complaints, to consider.

Mr El Diwany's letter refers to a complaint about Lady Justice Sharp that he previously made to the Office for Judicial Complaints. His complaint was dismissed on 30 November 2011 as his concerns related to matter of judicial decision and case management and there was no evidence of misconduct.

The Lord Chancellor's letter to you dated 22 May 2014 explained that Mr El Diwany's complaint falls outside of the JCIO's remit for two reasons. The first being that the complaint relates to matters of judicial decision and case management. Had Lady Justice Sharp wanted to comment directly on the evidence read out by Mr El Diwany at the hearing then this would have been a matter for her discretion. A decision not to directly respond to the content of the emails read out either at the time or in a judgment is a matter for the Judge to decide. The JCIO does not have the remit to consider matters of judicial decision and case management where there is no evidence of misconduct. A decision not to voice a specific opinion on the content of evidence presented in court is not evidence of misconduct.

Secondly, the Judicial Conduct (Judicial and other office holders) Rules 2014 states that the JCIO cannot consider a matter that has already been dealt with, whether under these Rules or otherwise, and does not raise any new issues of misconduct (Rule 21 h). As the Lord Chancellor explained, Mr El Diwany's current letter does not raise any new issues of misconduct. I therefore dismiss Mr El Diwany's resubmitted complaint under Rule 21 h) as it has already been considered by the Office for Judicial Complaints under the Judicial Discipline Regulations 2006 and it does not raise any new matters of misconduct.

I am sorry that Mr El Diwany appears to have been given the wrong impression of how the JCIO might be able to reconsider his complaint. I am afraid that there is nothing further that the Lord Chancellor or the JCIO can do to assist Mr El Diwany.

In the event that Mr El Diwany is unhappy with the way in which the JCIO has handled his complaint he contact the Judicial Appointments and Conduct Ombudsman. The Ombudsman can only consider complaints about how the JCIO has handled your complaint. He has no power to investigate the original complaint about the Judge.

The Ombudsman can consider a complaint if you write to him within 28 days of receiving our final decision. After this time, he will consider whether he is able to investigate it. Mr El Diwany can contact the Ombudsman:

- in writing at: 9th Floor Tower, 9.53, 102 Petty France, London, SW1H 9AJ;
- by e-mail at headoffice@jaco.gsi.gov.uk; and
- by telephone on 0203 334 2900.

For further information about the Ombudsman see www.judicialombudsman.gov.uk.

I have enclosed a copy of this letter for you to send to Mr El Diwany.

Yours sincerely,

Sarah Hughes
Head of Casework, JCIO

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Investigations Office

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The Rt Hon Eric Pickles MP
House of Commons
London
SW1A 0AA

Our ref: 19040/2014

22 October 2014

Dear Minister

I am writing further your letter of 8 October in which you ask that I arrange a meeting with Mr Farid El Diwany to discuss his complaint about Lady Justice Sharp.

In my letter dated to you dated 18 August I explained that Mr El Diwany's complaint has been considered in full by our off office and it was dismissed on 30 November 2011 as his concerns related to matter of judicial decision and case management and there was no evidence of misconduct. The Lord Chancellor's letter to you dated 22 May 2014 also explained that Mr El Diwany's complaint falls outside of the JCIO's remit. I am afraid that there is nothing further that the Lord Chancellor or the JCIO can do to assist Mr El Diwany. I have spoken to Mr El Diwany on the telephone this afternoon to clarify this position and explain that I am not in a position to meet with him to discuss his complaint and no further action will be taken.

Mr El Diwany has been informed that if he is unhappy with the way in which the JCIO has handled his complaint he contact the Judicial Appointments and Conduct Ombudsman.

I have enclosed a copy of this letter for you to send to Mr El Diwany.

Yours sincerely,

Sarah Hughes
Head of Casework Team, JCIO

Conduct Complaint Form

Use this form to particularise the details of your complaint to the Ombudsman about how the Office for Judicial Complaints (OJC), a Tribunal President or Magistrates Advisory Committee handled your complaint. You can complete this form online or by sending to us at the address at the end of this form.

JUDICIAL APPOINTMENTS & CONDUCT OMBUDSMAN

Guidance notes

1. The Ombudsman's role is to consider whether the OJC, Tribunal President or Magistrates Advisory Committee, as appropriate, handled your complaint to them correctly. You must have made your complaint about the judicial office holders' personal conduct to one of these bodies in the first instance.
2. The Ombudsman cannot investigate the outcome of a complaint about a judge, tribunal member or a magistrate; he can only look at the process that organisation adopted when handling your complaint. If you do not think that your complaint was handled according to their published procedures, then you can complain to the Ombudsman.
3. The Ombudsman needs your complaint to be fully particularised, providing evidence to support each element of your complaint. You must make your complaint to him clear and succinct and do so in the **space provided in this form**. We will contact you if we require further information.
4. You must state exactly why you believe the OJC, Tribunal President or Magistrates' Advisory Committee's handling of your complaint fell short of the standards you could reasonably expect. You may, **for example**, believe that it took too long to investigate your complaint, that you were not kept updated as to progress, that insufficient attempts were made to independently verify what happened during the hearing or that aspects of your complaint were ignored. Please provide **specific details** to illustrate your complaint. **For example**, if you believe that not all the issues you raised were considered you would need to set out exactly what issues were not considered.
5. You must make your complaint within 28 days of receiving the letter from the OJC, Tribunal President or Magistrates' Advisory Committee, notifying you of their decision about your complaint. The Ombudsman is not required under the Constitutional Reform Act 2005 to consider complaints outside this period, and will only do so in exceptional circumstances. These should be explained in section 4 of this form.

1. Your Details *(Please complete in BLOCK CAPITALS)*

☑ Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other *(please specify):*

Name: Farid El Diwany

Address:

Postcode:

Email:

Contact phone number(s):

2. Permission

If the Ombudsman decides that he is able to deal with your complaint, he will need your permission to contact the OJC, a Tribunal President or Magistrates' Advisory Committee. In most cases it will be impractical to proceed with an investigation if you withhold permission.

I confirm that I am content for the Judicial Appointments and Conduct Ombudsman's Office to contact the OJC, Tribunal President or Magistrates' Advisory Committee about my complaint — ▣ Yes ☐ No

I have read and understood the Conduct Leaflet and understand that the Ombudsman can only look at the way in which my complaint was handled by the OJC, Tribunal President or Magistrates' Advisory Committee. — ▣ Yes ☐ No

3. Your signature

Signature:

Date: 3 November 2014

4. Your complaint

Your complaint must be set out concisely on this page only. You must give **specific details**, illustrating exactly why you believe the OJC, Tribunal President or Magistrates' Advisory Committee's handling of your complaint fell short of the standards you could reasonably expect.

The Ombudsman will investigate the issues that you provide below if he considers your complaint warrants investigation. He will not be able to deal with your complaint unless you particularise your concerns **on this form.** You may provide supporting documents if necessary.

My complaint to the JCIO was made by letter dated 12 July 2014, a copy of which was given to my MP Eric Pickles, the Government minister who assisted me in my complaint. I also wrote a long and detailed letter to Mr Pickles on 2 June 2014 in reply to Lord Chancellor Chris Grayling's letter of 22 May 2014 to Mr Pickles, which covered the rampant Islamophobia of Mrs Justice Sharp, a Jewess, in her dealings with me as the grandson of a German soldier (on my mother's side) killed at Stalingrad and the son of an Egyptian Muslim - facts made known to Mrs Justice Sharp at my hearing on 16 March 2011 at the RCJ in my libel case against Norwegian defendants, including the Norwegian Ministry of Justice and the Police. Appealing to the Court of Appeal on Mrs Justice Sharp's Islamophobia in condoning Norwegian hate emails sent to me and read out to her in court (as per the transcript sent to the JCIO) saying for example: 'Go f**k Allah the Camel' and 'When you eat pigs do you lick the pig's arsehole clean before digging in' and 'I seriously doubt that anything other than a pig could take your semen' elicited no response from the Court of Appeal. The matter was not addressed at all. But in my letter to Eric Pickles of 2 June 2014 I quoted words expressed to me in my conversation of the same day with Sarah Murrell of the JCIO, who said that: "Judicial misconduct can, depending on the context, cover the case where abusive comments are read out to a judge in court and a lack of comment or intervention by the judge equates to misconduct". And that this view of the JCIO had "always been" their stance. Sarah Murrell's advice was at complete variance to the advice given to Eric Pickles by (and via the civil servants advising him) Chris Grayling's letter of 22 May 2014 - as also notified to me in the OJC's decision to me dated 30 November 2011 following my first complaint on Mrs Justice Sharp's Islamophobia: that the OJC had no remit to investigate a judge's judicial decision making and case management and that, in Mrs Justice Sharp condoning vile Muslim-hating emails sent to me - by staying silent - when the purpose in reading them out to her was to elicit a response on Norwegian Islamophobia, was a matter entirely for Mrs Justice Sharp. At my request Eric Pickles asked for a meeting with the OIJC to discuss judicial bigotry and Islamophobia with a view to changing the Judicial Conduct Rules to prevent a Mrs Justice Sharp scenario ever happening again. My point about Norwegian Islamophobia, the crux of my case at the RCJ, was amply proven on 22 July 2011 when Anders Breivik blew up my opponent's building, the Ministry of Justice and the Police, Norway and went on a killing spree later all because he hated Muslims (and his views have much mainstream Norwegian support: as detailed in Oslo University academic Sindre Bangstad's 2014 book entitled 'Anders Breivik and the Rise of Islamophobia'). Sarah Hughes, head caseworker at the JCIO, wrote to Eric Pickles on 22 October 2014 rejecting his request for a meeting to discuss Sarah Murrell's advice to me and how best to go about changing the Judicial Conduct Rules.

5. What are you hoping to achieve from your complaint?

Sarah Hughes told me on 22 October 2014 when I called her that she had not consulted with Sarah Murrell as to why Sarah Murrell had given me the advice she did and that I must have misunderstood Sarah Murrell's advice. I said I did not misunderstand Sarah Murrell's advice at all. This is a clear failure in natural justice. I need to know precisely why this advice was given to me by Sarah Murrell and why she was not consulted in this matter by Sarah Hughes when she replied to Eric Pickles. It was only due to Sarah Murrell's advice that I re-activated my complaint. My point is that the rules regarding what constitutes judicial misconduct are not clear and need to be amended to include the scenario of a judge such as Mrs Justice Sharp using her discretionary powers to advance Islamophobia. Judicial Islamophobia and bigotry has to stop.

Submit by Email | Print Form

This form can also be found on our website at www.judicialombudsman.gov.uk and can be downloaded and sent to us by email to headofoffice@jaco.gsi.gov.uk

If you wish to complete this form by hand, please send it to the Judicial Appointments and Conduct Ombudsman, 9th Floor, The Tower, 102 Petty France, London SW1H 9AJ.

If you have a disability, if English is not your first language, or if you need advice on how to complete this form please contact us on 020 3334 2900 or email headofoffice@jaco.gsi.gov.uk

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PRIVATE AND CONFIDENTIAL
Mr Farid El-Diwany
[redacted]

18 November 2014

Your ref: 14-2173

Dear Mr El-Diwany

Your complaint

Thank you for your correspondence with my officers setting out your concerns.

I have now completed a preliminary investigation into your complaint and I enclose a copy of my report. I do not believe a review is necessary as there is no prospect of any finding of maladministration.

I realise that this will be a disappointment to you, but would like to assure you that I considered both the handling of your complaint and the points that you raised most carefully.

Yours sincerely,

Sir John Brigstocke KCB

JUDICIAL APPOINTMENTS & CONDUCT OMBUDSMAN

JUDICIAL APPOINTMENTS AND CONDUCT OMBUDSMAN'S REPORT

COMPLAINT BY MR FARID EL-DIWANY

Introduction

Mr El-Diwany wrote to me on 3 November 2014 and asked me to review the investigation carried out by the Judicial Conduct Investigations Office (JCIO) in relation to the complaint he had raised about Mrs Justice Sharp at a Court hearing held at the Royal Courts of Justice on 16 March 2011.

Background

Mr El-Diwany initially complained about Mrs Justice Sharp to the JCIO on 16 November 2011 (then known as the Office for Judicial Complaints); this complaint was dismissed on 30 November 2011 as being about judicial decision-making and case management. Mr El-Diwany raised a complaint about the JCIO's handling of his complaint with my office on 5 December 2011 and I determined on 16 January 2012, after considering his correspondence and the JCIO's file, that his complaint did not require further investigation.

I will not be reconsidering the JCIO's handling of Mr El-Diwany's original complaint to the JCIO in this report. I will only be considering how the JCIO has handled the complaint he re-submitted in April 2014 and his correspondence thereafter.

My remit

In accordance with Section 110(2) of the Constitutional Reform Act 2005, I am required to review a complaint where 3 conditions have been met, the first of which is that I consider a review to be necessary. My remit specifically precludes me from reviewing decisions taken by those considering conduct complaints; I can look only at the process by which those complaints were handled. I enclose a copy of the relevant part of the Constitutional Reform Act 2005.

Mr El-Diwany's complaint to me

Mr El-Diwany raised concerns that;

- In his letter to his MP, Mr Eric Pickles, dated 2 June 2014, he quoted words expressed to him in a telephone conversation on the same day with JCIO caseworker, Mrs Sarah Murrell, who said that judicial misconduct can, depending on the context, cover the case where abusive comments are read out to a judge in Court, and a lack of comment or intervention by the judge equates to misconduct, and that this view of the JCIO has always been their stance.

- Mrs Murrell's advice was at complete variance to the advice given to Mr Pickles in a letter from the Lord Chancellor, dated 22 May 2014.

- At his request, Mr Pickles asked for a meeting with the JCIO to discuss judicial bigotry and Islamophobia, with a view to changing the Judicial Conduct Rules to prevent a "Sharp scenario" happening again. However, Ms Sarah Hughes (Head of the JCIO Casework Team) wrote to Mr Pickles MP on 22 October 2014, rejecting his request to discuss Mrs Murrell's advice and how best to change the Rules.

- Ms Hughes wrote to him on 22 October 2014 and said she had not consulted with Mrs Murrell as to why she had given the advice she did and that he must have misunderstood her advice. He did not misunderstand and this was a clear failure in natural justice. It was only due to Mrs Murrell's advice that he reactivated his complaint.

My decision

I have decided that Mr El-Diwany's complaint does not warrant a full investigation. In reaching this conclusion, I am commenting solely on the process by which the JCIO considered the complaint. I cannot comment on the merits of the JCIO's decision or on Mr El-Diwany's case before Mrs Justice Sharp.

Factors taken into account

I have taken the following factors into account in reaching my decision:

- Mr El-Diwany's views, as expressed in his correspondence with my office and previously with the JCIO; and

- The JCIO's papers regarding the handling of the complaint.

Mr El-Diwany's complaint to the JCIO

Mr El-Diwany wrote to Mr Pickles MP on 16 April 2014 to reiterate the concerns he had originally raised about Mrs Justice Sharp with the JCIO on 16 November 2012. He advised that he had already seen complaints to the JCIO and my office about "vile Islamophobic hate emails from Norway" dismissed as being about Mrs Justice Sharp's "case management powers" and he believed this wide discretionary judicial power could lead to enormous injustice and had to be corrected.

Mr El-Diwany set out the background of his Court case against Norwegian Police Officer, Torill Sorte, and claimed that he was suing for the libel of being labelled "clearly mentally unstable". Mr El-Diwany claimed that Mrs Justice Sharp had declared in her judgment of 29 July 2011 that this "ruling" by Mr Welhaven, at the Norwegian Bureau for the Investigation of Police Affairs, was in order and acceptable and that suing for an internet libel, meant he was "abusing the Court process" and "harassing" Torill Sorte.

Mr El-Diwany claimed that Mrs Justice Sharp thought it was quite alright that Torill Sorte had not been asked by the Norwegian Police Complaints Bureau why she thought he was "clearly mentally unstable" and it was appalling that Mrs Justice Sharp had accepted and adopted a non-Court decision. Mr El-Diwany wanted to know why Norwegian bigotry had been condoned by a High Court Judge and he

questioned why she did not show one word of regret in her judgment about the vile hate emails he had read out in Court to her.

Mr El-Diwany stated that he told Mrs Justice Sharp the reasons why he believed that the Norwegians did not like him, which was because he was a Muslim and his mother was German, whose father had been killed fighting at Stalingrad. He explained that it took him over a year to discover that Mrs Justice Sharp was Jewish and her religious background could be the only reason for her bias and prejudice. He claimed that Mrs Justice Sharp knew how to play the game by staying silent when he read out the emails to her, but this was not reason enough to allow her to escape censure under the protection of her case management powers. Mr El-Diwany also stated that he wanted Mrs Justice Sharp reprimanded and for him to be provided with an apology.

Mr Pickles MP forwarded Mr El-Diwany's letter to the Lord Chancellor on 13 May 2014 to request a response and the Lord Chancellor wrote to Mr Pickles MP on 22 May 2014. He explained that the issues raised related to Mrs Justice Sharp's decisions on Mr El-Diwany's case and were matters that fell outside the remit of the JCIO on two counts. The Judicial Conduct (Judicial and other office holders) Rules 2013 were clear that the JCIO could not consider a complaint about judicial decisions and case management, and the appropriate way to challenge such matters was through the appeal process at the Court. The Lord Chancellor also advised that the Rules were also clear that the JCIO could not consider a matter which had already been dealt with, whether under these Rules or otherwise, and did not raise a new issue of misconduct. Therefore, as Mr El-Diwany's letter did not raise any new issues of misconduct, there was nothing further that he or the JCIO could do to assist him further.

After writing to Mr Pickles MP on 2 June 2014, Mr El-Diwany wrote again to him on 12 July 2014 to set out his recollection of the conversation he had with Mrs Murrell on 2 June 2014. He said that this meant that, depending on the context, his complaint could potentially amount to judicial misconduct. He explained that the JCIO decision of 30 November 2011 stated that they had no power to investigate his complaint about Mrs Sharp's failure to comment on the hate emails in Court, or in her judgment, as this was part of her judicial decision and case management powers, which were not part of the JCIO's remit to investigate. However, he believed that their assessment of the Rules was wholly incorrect and he was applying for his complaint to be looked at again.

Mr Pickles MP wrote to the JCIO on 24 July 2014 and asked them to consider Mr El-Diwany's complaint. Ms Hughes replied on 18 August 2014 and explained that the complaint had been dismissed on 30 November 2011 as about judicial decisions and case management, and there was no evidence of misconduct. She reiterated the contents of the Lord Chancellor's letter and explained that, had Mrs Justice Sharp wanted to comment directly on the evidence read out by Mr El-Diwany at the hearing, then this would have been a matter for her discretion. A decision not to directly respond to the content of the emails read out, either at the time or in a judgment, was a matter for the judge to decide.

Ms Hughes explained that the JCIO did not have the remit to consider matters relating to judicial decisions or case management where there was no evidence of misconduct, and a decision not to voice a specific opinion on the content of evidence presented in Court was not evidence of misconduct. In addition, Ms Hughes advised that the JCIO were not able to consider a matter which had already been dealt with, and did not raise any new issues of misconduct. She was sorry it appeared that Mr El-Diwany had been given the wrong impression that the JCIO might be able to

reconsider his complaint, but there was nothing further the Lord Chancellor or JCIO could do to assist him.

Mr Pickles MP wrote to Ms Hughes on 8 October 2014 and advised that Mr El-Diwany had asked for a meeting to be arranged and he would attend with Mr El-Diwany if his diary allowed. Ms Hughes replied on 22 October 2014 and reiterated that the complaint had already been considered in full and there was nothing the Lord Chancellor or the JCIO could do to assist Mr El-Diwany. Ms Hughes advised that she had spoken to Mr El-Diwany on the telephone that day and had explained that she was not in a position to meet with him to discuss the complaint and no further action would be taken. She also advised Mr Pickles MP that, if Mr El-Diwany was unhappy with the way the JCIO had handled his complaint, he should contact my office.

My findings

I have considered the points Mr El-Diwany raised in order to determine whether his complaint falls within my remit to investigate and my view is that the JCIO handled Mr El-Diwany's complaint properly and correctly and the decision was consistent with the legislation and guidance as set in the Judicial Conduct (Judicial and other office holders) Rules 2014.

- I can understand that Mr El-Diwany would be upset by the e-mails which he received. However, the e-mails were read out in Court by Mr El-Diwany as part of his evidence and the JCIO's view that the issues raised by Mr El-Diwany related to Mrs Justice Sharp's judicial decision-making and case management and not her personal conduct was consistent with its guidance. Leaflet JCIO1 on the JCIO website states that:

  > "A Judge's role in court is to make independent decisions about cases and their management. These are often tough decisions, and Judges have to be firm and direct in the management of their cases. Examples of Judges' decisions include the length or type of sentence, whether a claim can proceed to trial, whether or not a claimant succeeds in their claim, what costs should be awarded and what evidence should be heard."
  >
  > "This sort of decision cannot form the subject of a complaint. If you are unhappy with such a decision you are advised to seek legal advice from a solicitor, local law centre, Citizens Advice Bureau or the Community Legal Service to discuss whether you have a right of appeal."
  >
  > "If your complaint is not about a Judge's decision but about the Judge's personal conduct you have the right to complain to the JCIO. Examples of potential personal misconduct would be the use of insulting, racist or sexist language".

  It was not for the JCIO to review the merits of Mrs Justice Sharpe's decisions or case management. There was no critical Appeal Court judgment.

- The JCIO clearly explained that Mr El-Diwany had already made his complaint about Mrs Justice Sharp to the JCIO in 2011and it had been dismissed. Therefore, the complaint was appropriately dismissed as having already been dealt with, in accordance with Rule 21(h) of the Judicial Conduct (Judicial and other office holders) Rules 2014.

- I note Mr El-Diwany's claim that he received telephone advice from Mrs Murrell at the JCIO on 2 June 2014 that conflicted with the JCIO's previous decision to dismiss his complaint, and this was the reason why he re-submitted his complaint. However, it is clear from the correspondence on the JCIO's file that he wrote to Mr Pickles MP prior to receiving this advice, on 22 April 2014, with a view to having his complaint reconsidered and the Judicial Complaint Rules amended.

- In relation to my investigation on the telephone advice provided by Mrs Murrell to Mr El-Diwany, I have considered the JCIO correspondence in full, including a telephone note of Ms Hughes' conversation with Mr El-Diwany on 22 October 2014 and a file note of a conversation between Ms Hughes and Mrs Murrell, dated 12 November 2014, in which Mrs Murrell was asked to set out her two conversations with Mr El-Diwany on 2 June 2014.

    - It is clear from the telephone note that Ms Hughes explained that she could not attest to what Mrs Murrell had said, but when someone makes a telephone enquiry, the JCIO try to advise the complainant, based on the information they are provided with over the telephone. She advised that, where a complaint sounds like it potentially might involve misconduct (based on the limited assessment they can make without seeing the full detail of the complaint), they advise the complainant to put their complaint in writing, so they can make a full assessment. Therefore, in the event that Mrs Murrell had advised Mr El-Diwany that the JCIO may be able to investigate the complaint, she would have been telling him this based on the information given over the telephone, and it would not have been a full assessment of the complaint.

    - It is also clear from the file note, dated 12 November 2014, that Mrs Murrell initially believed Mr El-Diwany's was complaining about comments made by Mrs Justice Sharp and based her assessment on the claim the judge had made inappropriate comments. It was not until Mr El-Diwany telephoned again on 2 June 2014 and provided more information, that she realised the comments had been made by someone else and his complaint had already been dismissed. Therefore, Ms Hughes believed that both pieces of advice provided by Mrs Murrell were correct, based on the information provided by Mr El-Diwany over the telephone.

- I cannot be certain as to what Mr El-Diwany was told on 2 June 2014 and I acknowledge that he may have been confused by the initial advice provided by Mrs Murrell. However, the available evidence would not be sufficient to enable me to state definitely that the JCIO had misadvised Mr El-Diwany or that the advice provided amounted to maladministration. In addition, it is my view that his complaint was appropriately dealt with by the JCIO.

I do not believe that Mr El-Diwany has provided me with any examples of maladministration in respect of how the JCIO failed to investigate his complaint properly and, in accordance with Section 110(3) of the Constitutional Reform Act 2005, I do not consider that a review is necessary.

Sir John Brigstocke KCB **18 November 2014**

(5) "Senior judge" means any of these –
  (a) Master of the Rolls;
  (b) President of the Queen's Bench Division;
  (c) President of the Family Division;
  (d) Chancellor of the High Court;
  (e) Lord Justice of Appeal;
  (f) puisne judge of the High Court.

(6) "Sentence" includes any sentence other than a fine (and "serving" is to be read accordingly).

(7) The times when a person becomes and ceases to be subject to prescribed procedures for the purposes of section 108(4) or (7) are such as may be prescribed.

(8) "Under investigation for an offence" has such meaning as may be prescribed.

Applications for review and references

110 Applications to the Ombudsman

(1) This section applies if an interested party makes an application to the Ombudsman for the review of the exercise by any person of a regulated disciplinary function, on the grounds that there has been –
  (a) a failure to comply with prescribed procedures, or
  (b) some other maladministration.

(2) The Ombudsman must carry out a review if the following three conditions are met.

(3) The first condition is that the Ombudsman considers that a review is necessary.

(4) The second condition is that –
  (a) the application is made within the permitted period,
  (b) the application is made within such longer period as the Ombudsman considers appropriate in the circumstances, or
  (c) the application is made on grounds alleging undue delay and the Ombudsman considers that the application has been made within a reasonable time.

(5) The third condition is that the application is made in a form approved by the Ombudsman.

(6) But the Ombudsman may not review the merits of a decision made by any person.

(7) If any of the conditions in subsections (3) to (5) is not met, or if the grounds of the application relate only to the merits of a decision, the Ombudsman –
  (a) may not carry out a review, and
  (b) must inform the applicant accordingly.

(8) In this section and sections 111 to 113, "regulated disciplinary function" means any of the following –
  (a) any function of the Lord Chancellor that falls within section 108(1);
  (b) any function conferred on the Lord Chief Justice by section 108(3) to (7);

(c) any function exercised under prescribed procedures in connection with a function falling within paragraph (a) or (b).

(9) In this section, in relation to an application under this section for a review of the exercise of a regulated disciplinary function –

"interested party" means –

(a) the judicial office holder in relation to whose conduct the function is exercised, or

(b) any person who has made a complaint about that conduct in accordance with prescribed procedures;

"permitted period" means the period of 28 days beginning with the latest of –

(a) the failure or other maladministration alleged by the applicant;

(b) where that failure or maladministration occurred in the course of an investigation, the applicant being notified of the conclusion or other termination of that investigation;

(c) where that failure or maladministration occurred in the course of making a determination, the applicant being notified of that determination.

(10) References in this section and section 111 to the exercise of a function include references to a decision whether or not to exercise the function.

111 Review by the Ombudsman

(1) Where the Ombudsman is under a duty to carry out a review on an application under section 110, he must –

(a) on the basis of any findings he makes about the grounds for the application, decide to what extent the grounds are established;

(b) decide what if any action to take under subsections (2) to (7).

(2) If he decides that the grounds are established to any extent, he may make recommendations to the Lord Chancellor and Lord Chief Justice.

(3) A recommendation under subsection (2) may be for the payment of compensation.

(4) Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the applicant as a result of any failure or maladministration to which the application relates.

(5) If the Ombudsman decides that a determination made in the exercise of a function under review is unreliable because of any failure or maladministration to which the application relates, he may set aside the determination.

(6) If a determination is set aside under subsection (5) –

(a) the prescribed procedures apply, subject to any prescribed modifications, as if the determination had not been made, and

(b) for the purposes of those procedures, any investigation or review leading to the determination is to be disregarded.

(7) Subsection (6) is subject to any direction given by the Ombudsman under this subsection –

(a) for a previous investigation or review to be taken into account to any extent, or

Sir John Brigstocke KCB
Judicial Appointments & Conduct Ombudsman
Postal Area 9.53
9th Floor, The Tower
102 Petty France
London SW1H 9AJ

20 November 2014

Dear Sir John,

Reference 14-2173 - Mrs Justice Sharp (now Lady Justice Sharp)

Thank you for your letter of 18 November 2014 enclosing a copy of your Report into my complaint.

For the record and as a corrective to the findings in your Report I enclose the transcript of a recorded conversation I had with Sarah Murrell of the JCIO on, I think, 4 June 2014 together with the tape recording itself. This was the second conversation we had; the first one being on the 2 June 2014. We did not have two conversations on the 2 June 2014. I decided to record this second conversation as I felt it may prove a useful record, in time to come, of what actually was said.

What I said in the first conversation on 2 June 2014 with Sarah Murrell was clearly stated in the second paragraph of my letter to Eric Pickles MP of 2 June 2014, a copy of which you have. This second paragraph should really have been repeated in its entirety in your Report as it is a contemporaneous record of what was discussed with Sarah Murrell as opposed to the JCIO's file note of the conversations made only on 12 November 2014 – five months and 10 days later.

It is quite obvious from the second recorded conversation that Sarah Murrell clearly remembered from earlier in the week that her understanding of the advice she gave me on 2 June 2014 was in accordance with my telling her that it was third party comments that offended me in the form of the hate emails from Norway and not – as you have stated in your Report on page 5 that I was 'complaining about comments made by Mrs Justice Sharp...' Sarah Murrell did not want me to repeat any of those foul emails in the second conversation as she specifically told me not to 'repeat them again' when I reminded her of the contents of one of them. I had previously told her examples of the choicest bits of the hate emails on 2 June 2014. Therefore your conclusion that: 'Therefore, Ms Hughes believed that both pieces of advice provided by Mrs Murrell were correct, based on the information

provided by Mr El-Diwany over the telephone' is not correct. Mrs Murrell's advice to me on 2 June 2014 is indeed as stated by me in my letter of the same day to Eric Pickles MP: that she gave me permission to quote her view of judicial misconduct, which she said '...can, depending on the context, cover the case where abusive comments are read out to a judge in court and a lack of comment or intervention from the judge equates to misconduct'.

There has been maladministration by the JCIO. I did not misunderstand Mrs Murrell's initial advice and to a significant degree she more or less confirmed it in her second conversation with me. This is why I wanted a meeting with the JCIO as their advice is not clear in the round. The rules need to be changed to make things fairer and not just clearer. Judicial bigotry and Islamophobia has to stop.

Also, for the record, so that you have absolute proof of my earlier comment that Interpol are investigating the matter of the hate emails, I enclose a copy of a letter from the Essex Police dated 28 April 2014 stating that 'they are still waiting to hear back from Oslo.' I have been waiting eight years for the Norwegian establishment bigots to trace the senders of the many hate emails. Even over three years after the Muslim-hater Anders Behring Breivik's killings in Norway the Norwegian Police are still not co-operating with Interpol, in spite of Minister Eric Pickles' intervention earlier this year.

Yours sincerely,

Farid El Diwany

Judicial Conduct Investigation Office (JCIO) transcript of telephone conversation with Mrs Sarah Murrell (SM) on 4 June 2014 with Mr Farid El Diwany (FED)

JCIO (a lady): Good afternoon, Judicial Conduct Investigations Office.

FED: Yes, good afternoon. Is Sarah Murrell in this morning (sic) please?

JCIO: Er, yes she is. Can I ask who's calling?

FED: Yeah, I'm a solicitor in Lincoln's Inn. My name's Farid El Diwany. I spoke to her a couple of days ago.

JCIO: Do you have a complaint with us?

FED: Um, well I did some time back [in 2011] but I was just discussing a, um, matter of real importance and, er, she gave me some very helpful comments, but, um...

JCIO: I can help you if you want.

FED: I'd prefer to speak to her if I may. Is that possible?

JCIO: Um, well, I'll see if she's available. If you'd like to hold.

FED: Thank you.

[Short wait]

JCIO: Sorry to keep you sir. If I lose you, her extension is 4736. I'm just going to transfer you.

FED: Thank you very much.

SM: Good morning, Judicial Conduct Investigations Office. Can I help you?

FED: Yes, good morning is that Sarah?

SM: Yes.

FED: Ah good. It's Mr El Diwany, Farid El Diwany. You remember we spoke a couple of days ago on this, er, business of judicial misconduct?

SM: I speak to many people I'm afraid.

FED: Oh, OK.

SM: How can I help you sir?

FED: We discussed this business of, um, material being read out in court to the judge, which, well in my case, was so vile and she didn't ...

SM: Oh yes there was no comment or intervention or something...

FED: Yes that's right. Now what puzzles me is that when I did complain about this very thing in 2011 [to the JCO] what one of your...I don't know if she's still with you... but one of your colleague's wrote back to me and...I'll give you her name... Natasha Kumalo... she said to me that, and I'll quote it: 'I found that your complaint is about judicial decisions and judicial case management...'

SM: Yes.

FED: ...'It is for this reason that I cannot take your complaint any further'.

SM: OK.

FED: But, um, what you told me the other day, um, if, you know, there is something that is so demanding of a response from the judge... it's so awful it may, you know, in the context..

SM: We are looking at a very slim chance here because at the end of the day it's still their views...it's still their opinion that they needn't of (sic) intervened.

FED: Yeah.

SM: And if that's the conclusion that the caseworker drew at the time in relation to the information that she was sent then that's her decision.

FED: But, yeah, I didn't send her the transcript [of the hearing before Mrs Justice Sharp of 16 March 2011]. I didn't have it then but um...

SM: I don't know what else I can say to you sir. There'd be some real exceptional circumstances where it could be considered misconduct but by and large it is the judge's... as I've tried to explain to you sir if it's not intervened... as something that is considered to be terribly inappropriate... that's his decision to do so.

FED: Who? The caseworker or the judge?

SM: Well, the judge. And in respect of the caseworker she's gonna be working with whatever information you've provided to her. I mean she's quite satisfied that the information provided, um, leads to no more than a judge's decision...

FED: Well, she said that under no circumstances, basically, could they consider the matter because it's... [a matter of judicial decision and case management]

SM: That may well be the case sir. But as I said I'm looking at this very, very, very loosely. By and large if a judge does not intervene in something that someone else might consider inappropriate that's his discretion to do so.

FED: But, say there's... there's some wild prejudice. I mean I... this particular judge, Sharp, she... I didn't know she was Jewish... but my grandfather was a German soldier and hearing that is gonna put her off. I assume it put her off because the stuff I read out to her in court about, um, you know... is really filthy sexualised hate-email involving my religion, which...I'm Muslim, as well...and it was so vile that I just couldn't believe...[that the judge could stay silent on this in court and in her judgment]

SM: Well, you know... you've used a very useful word there...'vile'. If a judge is causing a... if offence could be caused... you must remember it's not the judge saying these things... it's someone else saying these things.

FED: Yeah, that's right and I... I said to her [Mrs Justice Sharp] that's the reason I am upset with the defendant [Torill Sorte] um, because... she was in no small part the catalyst for this hate-email and that's why I'm upset. It was really bad stuff and I thought to myself... which judge on earth does not comment about this?

SM: I don't know what else I can say to you sir.

FED: Can I re-submit the complaint with the new evidence I've got in the form of the transcript and the fact that I know she's... I knew later that she's Jewish and would have taken offence at the fact that my... [grandfather was a German soldier]

SM: Is that not a presumption sir? Thinking that someone may have taken offence...

FED: Well, um...

SM: If someone is Jewish you are presuming that offence was taken.

FED: Well, the fact that my grandfather was a German soldier? Yes, there is a whiff of bias. Coupled with the fact... when you get stuff written to me saying, 'When I lick a pig's arsehole clean...'

SM: Yeah, enough of that.... You don't need to repeat that again.

[Note that Sarah Murrell implicitly acknowledges here that she had heard me tell her parts of the worst of the hate-emails in our conversation a couple of days earlier on 2 June 2014, which meant that she knew all along it was not the judge's comments I was repeating but third party comments]

FED: So for her not to [comment]... I mean this is a hate-crime that Interpol... the Essex Police put to Interpol. There's no two ways about it... and for a judge to actually ignore that... which is central to the case, is just unforgiveable. And I can't get over it...but what... what you're telling me is that *now* the rules... have the rules changed so that unacceptable behaviour [by a judge] can be looked at even though it's obviously part and parcel of case management and a judicial decision?

SM: The rules in that respect haven't changed.

FED: They haven't, no?

SM: No.

FED: Oh, OK.

SM: I mean, if you want to write in... all I can say is we'll look at it sir.

FED: All right. Well fine, thanks very much for that.

SM: Sorry I can't be more helpful.

FED: That's fine thank you. Bye bye.

SM: OK thank you. Bye bye.

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PRIVATE AND CONFIDENTIAL
Mr Farid El-Diwany

[redacted]

4 December 2014

Your ref: 14-2173

Dear Mr El-Diwany

Your complaint

Thank you for your letter, dated 20 November 2014, with attachments, including a transcript of a conversation you state you had with Mrs Murrell at the Judicial Conduct Investigations Office (JCIO) on 4 June 2014. You also enclose a tape recording of the conversation, which I have considered not necessary to listen to due to your provision of the transcript.

You write in response to my report to you, dated 18 November 2014, in which I deemed that the JCIO had dealt with your complaint in accordance with the Judicial Conduct (Judicial and other office holders) Rules 2014. I will deal with the points you raise in turn.

I apologise for the error in my previous report and acknowledge that you had a telephone conversation with Mrs Murrell on 2 June 2014 and again on 4 June 2014, rather than two conversations on 2 June 2014 as stated in my report. From your correspondence to Eric Pickles MP, it had appeared that both conversations took place on 2 June 2014.

You state that I should have repeated the second paragraph of your letter to Mr Pickles, dated 2 June 2014, in my report as this was "a contemporaneous record of what was discussed with Sarah Murrell as opposed to the JCIO's file note of the conversations made only on 12 November 2014 – five months and 10 days later".

I did set out your conversation with Mrs Murrell in my report under the heading – Mr El-Diwany's complaint to me – which sets out the advice you claim that Mrs Murrell gave you on 2 June 2014. In my investigations, I also had to consider the views expressed by Mrs Murrell and Ms Hughes, who spoke to you on 22 October 2014, and come to a decision on whether the JCIO mishandled your complaint.

As I explained in my report, I could not be certain as to what advice you were given by Mrs Murrell and I acknowledged that you may have been confused by the initial advice provided by her on 2 June 2014. However, the available evidence, provided by you and on the JCIO file, was not sufficient to enable me to state definitely that the JCIO had misadvised you or that the advice provided amounted to maladministration.

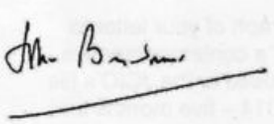
I do not agree that it was clear from the second recorded conversation that Mrs Murrell clearly remembered her understanding of the advice she gave you on 2 June 2014 was in accordance with you telling her it was third party comments that had offended you and not, as I have stated in my report, that you were "complaining about comments made by Mrs Justice Sharp". As you state in your transcript, Mrs Murrell said, "Oh yes, there was no comment or intervention or something…" This, in my view, is not substantive evidence that Mrs Murrell knew that you had been complaining about third party comments rather than comments from a Judge in your earlier conversation on 2 June 2014.

It is also clear from the transcript you have provided, and the transcripts I have read on the JCIO file, that Mrs Murrell and Ms Hughes both based their advice on the information they were provided withy by you over the telephone. I cannot be certain, as already explained, what advice Mrs Murrell provided you on 2 June 2014, however, Ms Hughes clearly advised you on 22 October 2014 that, where a complaint sounds like it potentially might involve misconduct (based on the limited assessment they can make without seeing the full details of the complaint), they advise the complainant to put their complaint in writing, so that they can make a full assessment.

Mrs Murrell explained that your complaint was unlikely to amount to judicial misconduct but, if you wanted to write to them with the details of your complaint, it would be considered. This was the appropriate advice to give and I can see no maladministration in the JCIO's handling of your complaint.

I understand your disappointment that your complaint has not been resolved as you would wish, but I must now bring our correspondence to a close.

Yours sincerely,



Sir John Brigstocke KCB

[redacted]

12 December 2014

The Right Honourable Chris Grayling MP
Lord Chancellor and Secretary of State for Justice
102 Petty France
London SW1H 9AJ

Dear Mr Grayling,

Lady Justice Sharp

I refer to your letter of 22 May 2014 (your reference: MC9934) addressed to my MP Eric Pickles on the matter of my complaint against Mrs Justice Sharp (now Lady Justice Sharp). Mr Pickles had sent you a copy of my letter dated 16 April 2014 with his letter to you dated 13 May 2014.

I need to know from you that, unlike Mrs Justice Sharp, you do not condone the enclosed vile, sexualised, Islamophobic hate- emails sent to me from Norwegians and read out to Mrs Justice Sharp on 16.03.2011 at the RCJ at a hearing to set aside judgment against two Norwegian defendants. I was the Claimant and read these emails out to Mrs Justice Sharp in order to illustrate that Norway had a problem with hatred for Muslims and that one of the defendants in my case was in no small part the catalyst for these hate-emails being sent to me. I expected a reaction and sympathy from Mrs Justice Sharp for the great distress receiving these emails had caused me. I got no response whatsoever from Mrs Justice Sharp. She is Jewish – as I discovered much later. I have two impediments no doubt in her eyes: I am Muslim, with a Middle East background as she knew and I also told her that my grandfather was a German soldier killed in Stalingrad. No wonder she condoned these hate emails - which were central to my case. She must have had a huge personal grudge because of my background, as it is otherwise quite unnatural for anyone to keep quiet when asked to express a view on a matter such as this. The Court of Appeal stayed silent too. The Ombudsman did recently express his understanding at how distressed I must have been at receiving this filth. Ironically, in the same week as Mrs Justice Sharp set aside my judgment (29.07.2011) my opponent's building was blown up by virulent Muslim-hater Anders Behring Breivik in Oslo (22.07.2011). I was vindicated – Norway did have a big problem with hatred for Muslims as Breivik's actions were just the extreme manifestation of a popularly held view in Norway. Interpol regard these emails as a hate-crime and are still trying to get the co-operation of the Norwegian police in tracing the senders of these 2005 emails. What a long wait for me.

Can you also tell me in which circumstances a judge would be justified in condoning these hate-emails?

Can you tell me when the Judicial Conduct Rules will be changed to make condoning the likes of these hate-emails by a judge (by silence in court and / or in a judgment when comment / condemnation is reasonably called for) a misconduct offence?

Yours sincerely,

[redacted]

Farid El Diwany
Solicitor

Ministry of Justice

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Rt Hon Eric Pickles MP
House of Commons
London
SW1A 0AA

Our ref: MC 018591

27 January 2015

Dear Eric

MR FARID EL DIWANY OF [redacted]

Thank you for your letter dated 18 December on behalf of your constituent Mr El Diwany. In his letter, Mr El Diwany raises concerns that his complaint was not answered fully by the Judicial Appointments and Conduct Ombudsman (JACO) and seeks a meeting to discuss his complaint.

The Constitutional Reform Act 2005 states that the Lord Chancellor can only investigate complaints that the Ombudsman has been negligent in his duty and not complaints into the factual findings or decisions of the Ombudsman or the previous investigating bodies.

With this in mind, the details of Mr El Diwany's letter have been examined. Mr El Diwany's concern centres on the decisions reached by the Ombudsman regarding the actions of the Judicial Conduct and Investigations Office (JCIO). Your constituent believes that the Ombudsman did not adequately answer his complaint. Having read the file, I do not agree with that view. The details of the complaint were thoroughly considered and there is no evidence of maladministration either by the JCIO or the JACO. Your constituent goes on to say that "the Ombudsman has not told me what can be done to change the Judicial Conduct Rules..." however there is no duty on the Ombudsman to provide this advice.

The Ombudsman is not a route for appeal of fact or to challenge the original findings of the court; his role is to investigate whether or not the JCIO handled the matter properly which he has done. As such there is nothing that would compel me to seek further redress in respect of your constituent's complaint and there is no basis or purpose to meet to discuss this matter further.

If Mr El Diwany continues to feel that the wrong decision was made in the original hearing, the way for him to be able to deal with that original finding of fact is to either appeal or to request a judicial review of the matter. If he wishes to proceed with either of these routes it is recommend that he obtain independent legal advice.

Yours best wishes

CHRIS GRAYLING

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Mr Farid El Diwany
[redacted]

Our ref: 19040/2014

4 February 2015

Dear Mr El Diwany

I am writing further your letter of 12 December addressed to The Rt Hon Chris Grayling. Mr Grayling has asked the Judicial Conduct Investigations Office to reply on his behalf because, as you will be aware, we support the Lord Chancellor in his responsibilities for judicial conduct and discipline.

As it has been previously explained, your complaint about Lady Justice Sharp relates to matters of judicial decision. The fact that you are unhappy that Sharp LJ did not react in the way that you would like to the evidence presented in court does not make this a matter of misconduct; it is a matter for the judge's discretion. A decision not to react to a piece of evidence does not demonstrate tacit approval.

There are no plans to amend the remit of the Judicial Conduct Investigations Office to incorporate investigating matters of judicial decision and case management. There is already an appropriate process for challenging judicial decisions and that is the appeals process in the court.

The Lord Chancellor, Lord Chief Justice and the JCIO are unable to assist you any further with this matter. Any future correspondence will be filed without acknowledgement or reply.

Yours sincerely,

Sarah Hughes
Joint Head of Casework, JCIO

George Carman QC and his junior Victoria Sharp

Victoria Madeleine Sharp was a media barrister for 30 years and finished up practising in the Temple. Her clients included the Daily Mail. She was a junior to the late George Carman QC – the 'King of Libel' and the most famous barrister England has ever known.

The sad reality of George Carman at the Bar was exposed in full by his son Dominic who in 2002 wrote his biography called No Ordinary Man – A Life of George Carman published by Hodder and Stoughton. Dominic Carman had a love hate relationship with his father and clearly wanted revenge on him for what 'Gorgeous George' (as he was known) had put him and his mother through over the years. At the age of only seven Dominic took an overdose and later slashed his wrists thanks to his father's brutish behaviour. The book, even a decade on, makes compulsive reading. George is described by his son variously as a bad keeper of secrets, an inveterate drunk, womaniser, gambling addict (£3 million lost at the tables) and bisexual. George was born in 1929 and brought up in a strict Catholic family and attended St Joseph's College in Blackpool where: 'Brutal physical punishment was routine.' When George got married, son Dominic frequently was sent away following parental arguments: 'Portraying himself as the innocent victim of a ''neurotic wife'' his [George's] control of events was imperious. Policemen were handled with consummate skill. Quickly adopting a cool and menacing tone, George took charge of the situation by putting them in a metaphorical witness box, immediately letting it be known exactly who he was and whom he knew… not wishing to get further involved in a 'domestic' with an awkward barrister the enforcers of the law made a strategic withdrawal.'

George Carman QC came down from Manchester in 1980 to live in a flat in Lincoln's Inn.

Dominic Carman relates that: 'He [George] acquired a reputation for turning up at court sometimes late and often inebriated. But he never went completely over the edge, knowing somehow just when to stop. An inner steel kept him going'…'Keen to encourage and motivate he adopted an avuncular approach towards young barristers'… and 'was generally lucky to attract people who were aware of his talent, understood his weaknesses, indulged him with their time and forgave him almost anything'… 'Even more embarrassing was finding him at his Chelsea flat in 1991 with teenage escorts – tall, blonde and on good money. He was unashamed. Again I was introduced as a friend. George it seemed could resist everything except temptation.'

In his chapter the 'King of Libel' Dominic says: 'For reading up on the law, he [George] came increasingly to rely on an excellent spread of juniors. In addition to Adrienne Page and Victoria Sharp, these included Andrew Caldecott, James Price, Heather Rodgers and Hugh Tomlinson. Between them these six provided outstanding support in more than 90 per cent of his libel work.'

What was libel work in practical terms all about? What was Victoria Sharp all about? Says Dominic Carman:

'In reading the narrative of his libel trials, it is worth remembering that one week George might appear for a newspaper, robustly defending its cause and journalistic integrity against a hostile plaintiff whose frailties would be examined with remorseless Jesuitical scrutiny. The

next week he could be acting for another plaintiff suing the same newspaper, which would then be pilloried and vilified for its disgraceful conduct and underhand methods in terms of outrage, horror and disbelief. To the jury, hearing it for the first time, either argument would seem to be delivered with absolute conviction and sincerity. Across all areas of legal practice, only defamation requires such well-managed schizophrenia from the advocate'.

'During all the moments of drama, tension and surprise in libel, he never deviated from the principal task for which he was employed: advocating his client's case whatever its inadequacies. The client was always right, and he never forgot that inside or outside the courtroom. In classic tradition, he believed the role of the advocate was to represent fearlessly and with passionate conviction whomever his client happened to be and to put their case across to the best of his ability, while upholding the highest standards of the Bar. The rights and wrongs of the argument were for others to decide. There was only one certainty when he went into court, as Ian Katz wrote in May 1994 for the Washington Post: 'In the land of libel, George Carman is king.'

At the very beginning of his chapter 'Damaged Reputations' Dominic quotes thus:

'Any woman facing George Carman in court does so at her peril. She must prepare herself for the bloodless abattoir and thence almost inevitably, the bone yard of damaged reputations.' So warned Jani Allen, the South African journalist, eighteen months after facing George in her action against Channel 4.'

'Women made George's reputation in libel. In a series of cases brought by female litigants during a four-year period from February 1990 to January 1994, he achieved several outstanding victories. Even when defeated, damages were often modest. From that period, six of the most prominent trials are examined in this chapter. Each of these featured a sexual element or sexual matters. Where it was not a part of the original libel, George introduced the theme to the courtroom, encouraging widespread coverage in both broadsheet and tabloid newspapers. Dramatic consequences were guaranteed. His methods and language aroused considerable controversy as he conducted himself with a style that was fearless and devastating. As Victoria Sharp explains: 'He understood women very well. He tested women in exactly the same way as men. Perhaps some women were not used to it'.

I myself came to acquire a fearsome reputation in Norway for tearing down the xenophobic barriers erected by the Norwegian press and their amateurish third-rate journalists. The never-to-be forgotten lesson they learnt from me was that if you attack a person by his religion in the press and do not print his response to their allegations (which in my case all came from a registered Norwegian mental patient) then the simple way for a press victim to retaliate was by way of a target-specific fax and letter campaign followed by a website which is advertised on the newspapers own websites' unmonitored comment sections. This had never been done in Norway before. The press were enraged. George Carmen would have been proud of me for the 12 years of torment I inflicted on the Norwegian reprobates - with the ensuing press coverage I received from these hate filled racists. I forced the closure of all the mainstream Norwegian newspapers' free comment blog facilities. One had to register after that and their IT officers vastly improved their internet security. These fools actually expected me to take it on the chin as I had not been named in their newspaper articles, thus minimising the reputational damage. They deliberately called me by my religion and coupled it with the vilest conjecture, ignoring all their own press ethics. If they thought they were going to get away with that then they had another thing coming. I knew it was me they had written about as did others in Norway who knew me. When I retaliated by my own hugely

successful information campaign, plus five years down the line with the launch of a website, whereby I had named my accuser (the registered mental patient who had waived her own anonymity by allowing her name and photo to be printed in her press) the police said it was 'harassment' to name my accuser even if my information was true (which the court ruled it was) and they prosecuted me for it. This would never happen in England with the sort of press ethics and civil procedures we have here and the stupendous hypocrite Mrs Justice Sharp knows this. But her own religious background and prejudice no doubt got the better of her when she also adopted the antiquated Norwegian model of natural justice – based for example on a total inability to allow me to cross-examine in the Norwegian libel courts to any meaningful degree, let alone the George Carman way so beloved by his former junior Victoria Sharp. Jury trials are not available in Norway; only three judges sit hearing the case. And parliament does not provide the Norwegian courts with the money to allow recordings to be made of civil trials, so no transcript can ever be requisitioned. Any Norway-critical comments are taken very badly.

Mrs Justice Sharp also sits as a Crown Court judge presiding in murder trials. Had a reincarnated George Carmen come before her for historic offences she no doubt would have been obliged to give him a prison sentence for the wife-beatings he inflicted on one or other of his three wives. But at the time of George Carman's often inexcusable behaviour his retinue kept what they knew of it under their hats - or should I say under their wigs. Regarding his stark exposure of his father, Dominic Carman says: 'From widespread comment that followed publication, the view of some senior barristers was best summarised by Jonathan Sumption QC [now a Supreme Court judge]: "George Carman was not important enough for his personal problems to become public property. There is no need to lie about them, when it is possible to say nothing about them at all." '

In the Preface to his book Dominic Carman states: 'Should there be a posthumous right of silence that excludes from his biography the debauchery and domestic violence that permeated George's daily life for more than four decades? Are the private transgressions of a distinguished public figure eternally to be swept under the carpet, simply because he was famous and had a first-class mind? Many argue the case. Former Express and Independent editor Rosie Boycott commented in the BBC2 drama-documentary Get Carman: "George was safe. George was golden. Nobody in Fleet Street would criticise George because they never knew when they would need him." To how many other public figures does that apply?'

Did Victoria Sharp know that her leader George Carman was a brute in private? People always know a lot more about the home lives of their colleagues than meets the eye: word gets around. But Victoria Sharp kept quiet in any event. Most people in her position would – tolerant of an abuser she could not afford to cross. After George retired in 2000 following a diagnosis of prostate cancer he continued to speak to his juniors. Relates Dominic: 'Among those on his contact list, Adrienne Page and Victoria Sharp made themselves available whenever he called their chambers or home. Victoria Sharp said: 'I'm afraid George brought out my mothering instinct… I've got four children. He would ring me up at home at about one o'clock on Sunday and say: "I'm not calling at an inconvenient moment am I?" In the end, I spent more time talking to him than to my husband.'

In 1986, after three divorces, the 56 year old George fell in love with 'his perfect woman' - the 'young, attractive, always expensively dressed, tough, strong-willed' Karen Phillips, a 30 year old barrister, who was to be George's constant companion until the end of his life. Several times George proposed marriage to her but was always turned down. It seems there was no sexual relationship according to Dominic Carman. But she was frequently seen on George's

arm at special social events where the great and the good were present. She had been a law student at Chelmer Institute of Higher Education in Chelmsford, Essex and graduated in 1979. I was acquainted with her myself. Karen Phillips did very well for herself after qualifying as a barrister. According to Dominic Carman her friends 'included Julia Morley, who co-ran the Miss World beauty contest, the comedian Russ Abbott and Winnie Forsyth, a former Miss World and the wife of entertainer Bruce Forsyth. The names of well-known people frequently cropped up in her conversation… George and Karen acted together for Elton John's wife Renate in her divorce from the singer… But although crowded with friends and fixtures, her life lacked the substance of real commitment… From 1980 to 1993, Karen also shared a life with David Green, a wealthy, married businessman, seventeen years her senior, whose main home was in Northamptonshire with his wife and children. He bought her a BMW convertible and a flat in Belsize Park which they jointly owned, where she lived most of the time, while he stayed there a few times each month when in London… Karen and David were to remain an item until his business went into liquidation. She then kept the flat and the BMW.' Then the wealthy boxing promoter Jarvis Astaire entered Karen's life. He was six years older than George. Jarvis and Karen became an item 'following their 1995 Concorde trip together to New York'. Karen still looked after George until he died. Three days before his death he changed his will to give Karen a one-third share in his estate.

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