IN THE HIGH COURT OF JUSTICE **CO/2241/2009**
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

BETWEEN:-

R
(on the application of
SHARON SHOESMITH)

Claimant

and

(i) OFSTED
(ii) THE SECRETARY OF STATE FOR CHILDREN, SCHOOLS AND FAMILIES
(iii) HARINGEY LONDON BOROUGH COUNCIL

Defendants

SUBMISSIONS ON BEHALF OF THE CLAIMANT
IN RELATION TO CONSEQUENTIAL MATTERS

Introduction

1. These submissions set out the consequential orders sought by the Claimant in respect of this matter.

2. In order to keep these submissions as short as possible cross-references are made to previous submissions and materials already before the Court without repeating the content of these documents.

3. The Claimant asks that all consequential matters be dealt with in writing in order to limit the costs.

4. The submissions deal with: (i) costs; and (ii) permission to appeal.

(1) Costs

(i) General

5. Before considering the position as regards costs in relation to each of the Defendants in turn the following points of general application need to be made:

6. First, the Court, of course, has a discretion as to whether costs are payable by one party to another and, if so, the amount: see CPR 44.3. While the "general rule" is that the unsuccessful party will be ordered to pay the costs of the successful party the Court may make a different order: see CPR 44.3(2). (Indeed the House of Lords in ***Bolton MDC v Secretary of State for the Environment*** [1995] 1 W.L.R. 1176 said "in all questions to do with costs, the fundamental rule is that there are no rules. Costs are always in the discretion of the court". That was the case where it was held that

in public law proceedings a "losing party will not normally be required to pay more than one set of costs").

7. In considering what order to make the CPR directs the Court to consider: (i) the conduct of all the parties; and (iii) whether a party has succeeded on part of his case, even if he is not wholly successful (see CPR 44.3(4)).

8. While these general rules apply to judicial review as they do to other proceedings the Court of Appeal in ***R (Corner House Research) v Secretary of State for Trade and Industry*** [2005] 1 WLR 2600, said at paras 69–70: "We are satisfied that there are features of public law litigation which distinguish it from private law civil and family litigation … The important difference here is that there is a public interest in the elucidation of public law by the higher courts in addition to the interests of the individual parties. One should not therefore necessarily expect identical principles to govern the incidence of costs in public law cases …".

9. The issues raised in this case are issues of acute public debate and public interest as has been recognised by the Defendants and the judgment itself, see e.g. paras. 24, 46, 323, 376 and 541 of the judgment. Judges in a number of judicial review and related public law cases have declined to order costs against claimants whose challenges failed where they raised important public interest issues: see e.g. ***New Zealand Maori Council v Attorney-General of New Zealand*** [1994] 1 AC 466 and the numerous other examples in para. 18.4.2 of Fordham *Judicial Review Handbook* (5th ed). Moreover, in ***R (Davey) v Aylesbury Vale District Council*** [2008] 1 W.L.R. 878 the Court of Appeal said that "[i]n contrast to a judicial review claim brought wholly or mainly for commercial or proprietary reasons, a claim brought partly or wholly in the public interest, albeit unsuccessful, may properly result in a restricted or no order for costs". The Claimant's claim is at the very least <u>partly</u> brought in the public interest having regard to the fact that the case raises "a broader, and important, issue of legal principle to be considered irrespective of the merits or otherwise of this case" (see further below).

10. <u>Second,</u> the judgment recognised that this case raised the very difficult issue of "the inter-relation between the Secretary of State's powers under section 497A [of the Education Act 1996] and the contractual obligations of a local authority towards an employee who has to be removed from a position because of a direction under that section" on which the Court suggested "that there should be discussions in due course between central government, local government organisations and representatives of those who are employed in positions that might be affected by a direction under section 497A in order to establish a protocol for dealing with this kind of situation if it arises in the future" (see para. 541). As is explained in the w/s of Mr Child (1/3/63 – 65) the

Claimant's union's insurance did not cover judicial review proceedings. Eventually the insurers agreed to (part) fund the proceedings but only by way of a single payment. Those funds were entirely exhausted by trial and hence any order for costs made against the Claimant falls to be paid entirely by her personally. The Claimant's union has now renegotiated insurance cover in the light of this case and others in her position in future will thus have greater access to funding. Unfortunately this has come too late for the Claimant. It does have a bearing on costs though as the judgment recognised the "importance more generally" of this issue as "[i]t could affect the position of many senior local authority officers whose responsibility it is to oversee the administration of some of the most difficult and sensitive areas of local government action" (para. 495). It is submitted that it is unfair in such circumstances that the Claimant should have to pay the costs of the Defendants of litigating issues of such general importance.

11. Third, the Claimant suggests that the Defendants' conduct of these proceedings has not been proportionate, and indeed has been oppressive: see paras. 7 – 12 of the Claimant's 1st Reply and the letters from Beachcroft at HB/7/21 dated 6 October 2009. It is anticipated that the costs the Secretary of State will seek will be very substantial indeed and beyond those one would normally expect. The late service of the first tranche of evidence on behalf of Ofsted and the Secretary of State caused very serious prejudice to the Claimant: see the letters at HB/7/21 dated 6 October 2009. The service shortly before trial of yet further evidence including for the first time a suggestion by the Secretary of State that he did not direct Ofsted not to give the Claimant feedback again caused prejudice. The position was that the Claimant did not know the full extent and nature of the case she had to meet until the eve of trial.

12. Fourth, the effect of the actions of all three Defendants has left the Claimant in a position whereby she is unable to obtain employment and faces financial ruin: see para. 3 of the Claimant's Skeleton Argument; para. 4 of the Claimant's 1st Reply; paras. 257 – 264 of the Claimant's 2nd w/s at TB/2/2/565 – 567 and especially paras. 203 – 303 of the judgment. She has been left without any income or savings. She has been on job-seeker's allowance. Her only asset is her home on which she has a substantial mortgage and which she has only been able to fund (on an interest only basis) by way of "loans" from friends and family and by borrowing against the equity. Any award of costs enforced against the Claimant would result in her being rendered homeless. Her difficulties in ever finding work again are illustrated by a recent incident. The Claimant started a master's course (paid for by her brother) seeking to re-train in psychotherapy. *The Sun* and *Daily Mail* discovered this and ran stories on it[1]. This harassment and the consequent reignited media attention (which lasted a further whole week, when the Claimant was unable to

[1] (see e.g.http://www.thesun.co.uk/sol/homepage/news/2951806/Baby-P-boss-Sharon-Shoesmith-wants-to-be-a-counsellor.html)

leave her flat) caused the Claimant some considerable distress and caused her to consider leaving the course altogether.

13. Fifth, in respect of all three Defendants there is the Court's overall conclusion (see para. 541) that "I cannot think that any party will truly look back at how matters were handled in this case with complete satisfaction". This is explored further below.

(ii) Ofsted

14. In relation to Ofsted the costs need to be broken down into two periods:
    i. the costs up to and including the trial;
    ii. the costs post-trial caused by the late disclosure.

15. Dealing with these in reverse order.

(a) the costs post-trial caused by the late disclosure

16. In relation to the costs post-trial caused by the late disclosure the Court has already awarded the Claimant her costs against Ofsted, see the order dated 10 November 2009. The Court reserved the issue of whether those costs should be paid on an indemnity basis or on the ordinary basis (the Court did award the costs of the 10 November 2009 hearing itself to be on an indemnity basis).

17. This is not the place to rehearse the failings of Ofsted in respect of disclosure and its duty of candour: see further the Claimant's response to Ofsted's post-trial disclosure dated 9 February 2010 at paras. 1 – 7 and 40 – 65 and Appendix 2 of the judgment. As the Court noted Ofsted's failure was a collective one and although it "appears now to have been rectified, [this was] at some considerable cost, not merely financially, but by way of increasing the anxieties and pressures on the Claimant and delaying the outcome of a case that is of widespread interest. It should not have happened" (para. 42, Appendix 2). Similarly the letter from the Treasury Solicitor to the Court with which we have recently been provided accepts serious mistakes were made (whatever the explanations for these now offered) that should not have been made.

18. The Claimant asks that the costs be ordered to be assessed on an indemnity basis: see CPR r.44.4. Indemnity costs are normally reserved to cases in which the court wishes to indicate its disapproval of the conduct in the litigation on the part of the party against whom such costs are awarded – but this is not limited to cases where there is some lack of moral probity, or moral condemnation, and includes cases where there has been a significant level of unreasonableness in its conduct of the litigation: see the relevant notes in the White Book.

19. It is clear that lack of candour and/or failures to disclose can properly attract indemnity costs awards: see e.g. para. 10.4.6 of Fordham *Judicial Review Handbook* 5th ed. Indeed the document "GUIDANCE ON DISCHARGING THE DUTY OF CANDOUR and DISCLOSURE IN JUDICIAL REVIEW PROCEEDINGS", prepared by the Treasury Solicitor in January this year and referred to in Appendix 2 of the judgment and in the post-trial correspondence from the Treasury Solicitor says in terms that a failure to comply with the duty of candour may result in an adverse award of costs (see para. 1.6). In the ***Al-Sweady*** case ([2010] H.R.L.R. 2) indemnity costs were awarded because of the failures in candour/disclosure (see paras. 13 and 44 of the Divisional Court's judgment).

20. Moreover, given the Claimant's lack of funds if indemnity costs are not awarded any shortfall between: (i) the legal costs incurred by the Claimant; and (ii) costs recovered on the ordinary basis would fall to be met by the Claimant personally. That cannot be acceptable given that the candour/disclosure failings lie entirely with Ofsted as the judgment recognised.

21. It is understood that Ofsted will not oppose an order that the costs post-trial caused by the late disclosure be on an indemnity basis.

(b) the costs up to and including the trial

22. It is accepted that Ofsted succeeded at trial. Nonetheless the Claimant contends that the proper order for costs is that Ofsted should pay 50% of the Claimant's costs up to and including the trial, alternatively that there should be no order as to costs. It is understood Ofsted will seek its costs up to and including trial and in the alternative argue that the appropriate order is no order as to costs.

23. The learned Judge has already indicated that in light of the candour/disclosure failures he would "... irrespective of the outcome of these proceedings ... need some persuading that Ofsted should be the beneficiary of any positive order for costs in its favour from any other party in the proceedings" (see para. 15 of Appendix 1 of the judgment). It is respectfully submitted that the learned Judge's preliminary indication on this matter is right. Ofsted should not obtain any order for costs in the circumstances of this case.

24. Moreover, it is contended that the appropriate award is that Ofsted pay 50% of the Claimant's pre-trial costs to reflect the following:
    i. its disclosure/candour failings (see above) which meant that the Claimant did not know the full extent of materials relevant to her case until after trial. It should be noted that the order for (indemnity) costs in ***Al-Sweady*** appears in fact to have extended to *all* of the Claimant's costs. Reliance is also placed on the comments made in paras. 44, 45, 221 and 543 of the judgment as regards candour/disclosure;

ii. its late service of its original evidence and late service of reply evidence (see paras. 7 – 12 of the Claimant's 1st Reply and see also the letters from Beachcroft at HB/7/21 dated 6 October 2009). The effect was again that the Claimant did not know the full case against her until shortly before trial, see further para. 44 of the judgment;

iii. the surprising absence of any contemporaneous record (including in the RoE) of what Ofsted asserted at trial was the crucial case-tracking feedback meeting: see para. 219 of the judgment;

iv. the "unfortunate" comments of Ms Brown and Ms Gilbert at the 1 December 2008 meeting with the Secretary of State: see para. 293 of the judgment.

(iii) <u>the Secretary of State</u>

25. In relation to the Secretary of State the Claimant contends that notwithstanding that the Secretary of State has succeeded the proper order is no order as to costs.

26. Before considering this further there is a preliminary point. Even if the Secretary of State is awarded costs against the Claimant these should exclude any post-trial work undertaken by the Secretary of State as a result of Ofsted's late disclosure. The Secretary of State must look to Ofsted to pay those costs.

27. It is anticipated that the Secretary of State's costs will be very substantial. An estimate of those costs has been sought but not yet provided. Under the CPR Pt 43 PD the Court may (see paras. 6.1 and 6.3) at any stage order a party to file and serve an estimate of costs. The Court of Appeal has encouraged the use of such powers: see ***Griffiths v Solutia UK Ltd*** [2001] EWCA Civ 736. Para 6.1 of the PD says in terms that the giving of such estimates is "in order to assist the court to decide what, if any, order to make about costs ...". The Judge is asked not to determine costs until this estimate is provided. If the Claimant is required to pay even a proportion of what is anticipated will be very substantial costs she would only be able to do so by realising the remaining equity in her home. She would then be homeless. This has been explained to the Secretary of State but the application is apparently nonetheless to be pursued.

28. That the proper order is no order as to costs is supported by the following matters:

i. the fact that the issues raised in this case are issues of acute public debate and public interest as has been recognised by the Defendants and the judgment itself: see above;

ii. the late service of evidence by the Secretary of State. This included the first tranche of evidence and caused very serious prejudice to the Claimant and also the service shortly before trial of further evidence including a suggestion by the Secretary of State that he did not direct Ofsted not to give the Claimant feedback. This again caused prejudice: see

paras. 7 – 12 of the Claimant's 1st Reply and see also the letters from Beachcroft at HB/7/21 dated 6 October 2009. As a result the Claimant did not know the case she had to meet until the eve of trial. The judgment records the following (and see also para. 44 of the judgment):

> "179 I should say that Mr Shippam's witness statement containing these paragraphs was dated 24 July and I assume it was served on the other Defendants not long thereafter. Ms Brown's first witness statement was dated 16 July 2009. She said in that statement that she "had been told that we were to report directly to the Secretary of State, and that there was to be no interim feedback to the local authority", her understanding being as indicated in paragraph 177 above. She exhibited her notes for the set-up meeting on 13 November (see paragraph 181 below) which indicated that "we will be unable to offer a feedback meeting at the end of inspection fieldwork [because our] brief is to feed back to the Minister." These pieces of evidence certainly supported what, in due course in her witness statement of 21 September, the Claimant said she was told by Ofsted at the outset of the inspection, namely, that there was to be "strictly no feedback during the course of the inspection either to me or to any of the other agencies." Indeed that was clearly recorded in the evidence that she gave to the Haringey Appeal Hearing in January 2009 (see paragraph 349 et seq below), the transcript of which was attached to the witness statement of Councillor Dodds on behalf of Haringey dated 2 June 2009. In her second witness statement, dated 2 October, some five days before the commencement of the hearing, Ms Pugh responded to this assertion of, as she put it, "the Claimant", in this way:
>
> > "The Secretary of State did not prohibit the giving of feedback during the course of the inspection. The Secretary of State did say in his letter to Her Majesty's Chief Inspector, Christine Gilbert, of the 12th November 2008 ... that 'Given the importance and urgency of these matters, I request that a first report should be submitted to me by 1 December 2008'. By this, the Secretary of State indicated that the report should be submitted to him and not to anyone else by that date. Insofar as this may have been interpreted by Ofsted as meaning that there should be no feedback at all to the Claimant or other agencies before submission of the report, then this would have been a misunderstanding."
>
> 180 Leaving aside for present purposes the comment that this position of the Secretary of State took a rather long time to emerge given the much earlier stage than the Claimant's second witness statement that Ofsted's view was revealed and indeed from sources other than the Claimant, it is plainly of concern that the Secretary of State and those advising him may apparently have thought that there would be feedback during the inspection process whereas those conducting it thought that he had precluded it. I did not find Mr Eadie's attempt to suggest that there "was in fact no misunderstanding" particularly convincing. I will have to consider, in due course, whether in truth this advances the Claimant's case as to unfairness, but it does illustrate the consequences that can flow from engaging at short notice in a vastly accelerated form of an otherwise well-established process. I am far from suggesting that the decision to proceed in this accelerated way was wrong or reflected a misjudgement, but it does illustrate starkly the need for clarity of thinking when such a decision is made and for very clear lines of communication between those engaged on important practical issues."

iii. the conduct of the Secretary of State in the following additional respects:

a) the comments made by the Secretary of State at a press conference about insufficient management oversight on the part of the Claimant, see para. 303 of

the judgment: “In fact, no such opinion appears in the ‘Summary judgement’: since it is not the policy of Ofsted to mention individuals, it is unlikely that it would have been recorded in the report. It is that comment that Mr Maurici says (almost certainly correctly) was induced by what was said by Ms Brown and Ms Gilbert to the Secretary of State earlier that morning (see paragraph 291 above). Whether the opinion represented the reality of the position within Haringey or not (and again it is not for me to say), it is unfortunate (and, one has to say, intrinsically unfair) that it was repeated in such a public setting without the Claimant, or indeed her Deputy, having had a full and fair opportunity to refute it. It went to their respective abilities and competence. Indeed it was a public comment such as this, taken along with comments about “fitness for office”, that is arguably more likely to have affected the future careers of the Claimant and her Deputy than the actual decision to replace them because of weaknesses found in the system within Haringey for which they held ultimate responsibility” (emphasis added);

b) the Secretary of State’s actions in talking to the press before the Claimant had been informed – see para. 398 of the judgment: “It appears that no arrangements had been made to communicate the effect of the Secretary of State's decision to the Claimant, or even the gist of the final version of the Ofsted report, before the directions were issued at 12.30 on 1 December or before the Secretary of State announced the position at a televised news conference that afternoon. This means that the first she knew that she had been removed from her office was when she saw the announcement to that effect on the television….I cannot avoid the comment that a Government Minister might feel less than pleased if the Prime Minister was to remove him or her from office by announcing their unfitness for office directly to the nation before telling the Minister concerned. One question the Secretary of State was asked at the press conference was why the Claimant had not resigned “given the damning findings of Ofsted”. He had to draw attention to the fact that she had not yet seen the report. I do not think that any fair-minded person could think that this was a satisfactory state of affairs.”

c) the Secretary of State’s article in *The Sun* and actions re the press – see para. 405 of the judgment “However, taking such a step and being photographed with someone conveying a petition demanding that certain actions be taken shortly before considering what action to take does run the risk of a court being forced to draw the inference that a material consideration in taking the decision a few days later was the petition and the influence of the particular newspaper - or that it reflected a pre-determination to act in a particular way.”

d) the Secretary of State expressing his opinion on the Claimant's employment status at the press conference – see para. 406 "As I shall indicate later, I consider the Secretary of State, who was anxious to state clearly that the Claimant's employment status was a matter for Haringey (something emphasised also by his officials), would have been better advised not to have been persuaded to express a view at the press conference about whether she should receive compensation from her employers. That could be seen as seeking to put pressure upon the authority which, as a public body, was obliged to consider properly, fairly and with due regard to its own legal powers what it should do in what was almost certainly a complex legal position: cf. ***Gibb v Maidstone and Tunbridge Wells NHS Trust*** [2009] EWHC 862 (QB) . He should, in my view, have remained entirely detached from the employment consequences for the individuals affected by his direction and have emphasised that that was the case. However, he was not alone amongst senior national and local politicians in making comments of this nature and, in any event, the comments have nothing to do with the merits of the decision he had made by then or whether the procedure he adopted prior to making it was fair or otherwise".

29. In all the circumstances the Court is respectfully asked to make no order as to costs against the Claimant in favour of the Secretary of State.

(iv) <u>Haringey</u>

30. Haringey have indicated that they will seek an order of costs against the Claimant. The Claimant submits that the proper order in respect of costs as between herself and Haringey is that the Council should pay 2/3 of her costs to be the subject of detailed assessment if not agreed. (Again even if contrary to this Haringey is awarded any costs against the Claimant these should exclude any post-trial work undertaken by Haringey as a result of Ofsted's late disclosure. Haringey must look to Ofsted to pay those costs).

31. On the substance of the Claimant's case the Court has upheld her complaints that Haringey's actions in dismissing her were unfair and flawed: see paras. 517 – 533.

32. The claim for judicial review failed because the Court decided that the appropriate venue for determining the issue of the fairness or otherwise of the Claimant's summary dismissal by Haringey is the Employment Tribunal. In other words that the Claimant had an alternative remedy. This conclusion was reached as the learned Judge noted on a basis different to that actually argued for by Haringey.

33. Formally the position would thus seem to be that the Claimant has persuaded the Judge that the decision was unfair, flawed and hence liable to be quashed but that the learned Judge has in his discretion determined to refuse relief because of the existence of an alternative remedy.

34. Given that the Claimant succeeded on the substance of her case and only lost because of a line of reasoning not pursued by Haringey at the substantive hearing it is submitted that there is no basis for Haringey to recover any costs against the Claimant. Indeed it is contended that the proper order is that Haringey pay 2/3 of the Claimant's costs.

35. The Courts have recognised that costs can be awarded against a defendant where it has been "victorious" in judicial review proceedings but only on the basis of the discretionary refusal of relief: see e.g. ***R v Lambeth LBC , ex p Touhey*** (2000) 32 HLR 707, 728. Moreover, the Courts have recognised that an award of costs in favour of a Defendant in judicial review may not be appropriate even where it has won if a Claimant nonetheless had a "strong and justified sense of grievance" (see ***R (Bloggs) v SSHD*** [2002] EWHC 1921). That is surely the case here given the learned Judge's conclusions on fairness as regards Haringey.

36. There are other matters which justify the order for costs being sought:
    i. Haringey also failed in their duty of candour/disclosure. They did so in two key respects: (i) the involvement of Mr Fallon (see HB/7/19 and 20); and (ii) the very serious failure of disclosure identified in para. 320 of the judgment and which only emerged when Ofsted's late disclosure was made;
    ii. The extremely late evidence submitted by the Council: see paras. 88 – 102 of the Claimant's 1st Reply and paras. 44 and 190 – 196 of the judgment (in which surprise is expressed that evidence given by Mr Young and Dr O'Donovan, produced very shortly before trial, was not articulated more fully at an earlier stage and had not been referred to at all in the Claimant's Dismissal Appeal Hearing).

(2) <u>Permission to appeal</u>

37. The Claimant seeks permission to appeal on the following matters:
    i. In respect of Ofsted the learned Judge erred in concluding and/or did not address the following points:
        a) Ofsted was not in breach of statutory duty (in breach of the published arrangements applicable to JAR's);
        b) Ofsted did not act in breach of natural justice in that the communication of the gist of alleged "central concerns" was not sufficient in this case to comply with the rules of natural justice;

c) there had been adequate communication of the gist of alleged "central concerns" and the giving of an adequate opportunity to respond thereto was capable of being sufficient in this case to comply with the rules of natural justice as no adequate communication of the gist was made by Ofsted and no adequate opportunity to respond was given;

ii. In respect of the Secretary of State that the learned Judge erred in concluding that:

a) in effect the circumstances were such that the Secretary of State was not required to afford the Claimant any hearing whatever before acting as he did to remove her from office;

b) in any event nothing the Claimant could have said would have made any difference;

c) *The Sun* petition was not an unlawful consideration.

iii. In respect of Haringey that judicial review was not the appropriate remedy.

38. It is not intended to rehearse the submissions made below in relation to these matters. However,

i. in relation to iii. above the following points are made as the Court found against the Claimant on this matter on a basis different to that argued for by Haringey (see above): The Claimant contends that ***McLaughlin v Governor of the Caymen Islands*** [2007] 1 WLR 2839 strongly supports her position that judicial review is the appropriate remedy. In that case the Privy Council recognised that if a public authority purported to dismiss the holder of an office in excess of its powers or in breach of natural justice or unlawfully the dismissal was, as between the public authority and the office holder, null, void and without legal effect. Mr McLaughlin's proceedings were by way of judicial review. The Employment Tribunal is confined to considering if the dismissal was unfair and if it concludes it was the damages that can be awarded are limited. ***McLaughlin*** shows that the logically prior question is whether the dismissal was lawful, if not it is void and accordingly: (i) there can be no unfair dismissal, as there is no dismissal at all; and (ii) the Claimant would be entitled to damages on the basis that she in fact remains employed to this date. The Employment Tribunal has no jurisdiction to rule on the public law unlawfulness of the dismissal;

ii. as regards ii. a) above the Claimant will contend that the conclusions reached as regards what was required in terms of fairness on the part of the Secretary of State was contrary to recent House of Lords authority: see ***R (Wright and others) v Secretary of State for Health*** [2009] 1 A.C. 739.

39. It should be noted that for the avoidance of doubt in relation to Haringey the Claimant on the substance succeeded in respect of Ground 1 (HB/1/1/48 – 49). The Court did not (and did not

need to) rule on Grounds 2, 3 and 4 (HB/1/49 – 50). The substantive grounds would only need to be considered by the Court of Appeal if by virtue of a Respondent's Notice Haringey challenged the learned Judge's findings on Ground 1 (which they have indicated they will consider). The appeal at present is confined to the issue of the appropriateness of judicial review as a remedy.

40. In support of the application for permission to appeal the following brief submissions are made:

41. First, the case clearly raises issues of considerable public importance (see above). The judgment recognises that the whole Baby P case raises issues of acute public interest (see para. 46). Moreover, some of the key underlying legal issues are themselves of considerable public interest including the issue of the inter-relation between the Secretary of State's powers under section 497A and the contractual obligations of a local authority towards an employee who has to be removed from a position because of a direction under that section. The judgment recognises that this issue was one of great difficulty and complexity. Thus it is said:

> "494 An important issue arises as to the most appropriate legal process for a DCS to follow if aggrieved by the decision of his or her employer to terminate the contract of employment in consequence of the direction of the Secretary of State which the local authority does not challenge. Should a challenge of the local authority's decision by way of judicial review be permitted? Or is the DCS to be left to his or her remedies under the law of contract and/or the statutory provisions relating to unfair dismissal?
> 495 The issue is important in this case, but it also is of importance more generally. It could affect the position of many senior local authority officers whose responsibility it is to oversee the administration of some of the most difficult and sensitive areas of local government action"

42. These matters support the view that there is a compelling reason why the appeal should be heard: see CPR 52.3(6)(b). Indeed the learned Judge said that these matters gave rise to "a broader, and important, issue of legal principle to be considered irrespective of the merits or otherwise of this case".

43. Second, it is submitted that the appeal has a realistic prospect of success. While the Court has found against the Claimant it has been recognised that the issues are difficult ones. Thus the learned Judge said (see para. 540) that he had reached his conclusions "with a lurking sense of unease". Moreover, the judgment recognises that the legal issues were "complex" (see para. 406 of the judgment). Moreover, it is contended that the judgment is in conflict with the decisions of the Privy Council in ***McGloughlin*** (above) and the House of Lords in ***Wright*** (above). It is not proposed to rehearse all of the legal arguments here. It is submitted that this is plainly a case where permission to appeal is appropriate. It is surprising to say the least that the Defendants have intimated that permission to appeal will be resisted.

44. The Claimant's legal representatives (solicitors and counsel) have entered into a CFA in respect of the appeal.

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Monday , 28 June 2010