IN THE LIVERPOOL COUNTY COURT Claim No. 0OL01001

BETWEEN:

KIRSTY X

Claimant

and

OLDHAM METROPOLITAN BOROUGH COUNCIL

Defendant

Judgment handed down at Manchester County Court on 5.7.2013

Following Trial on 4th – 7th June

1. The Claimant is a young woman, now aged 25 years. She brings this claim for damages against the Defendant, alleging breaches of the duty of care owed by its Social Services Department to her when she was a child.

2. Pursuant to an order made at the commencement of the trial, the individuals referred to in this judgment (other than professionals) are not to be identified save that the Claimant is identified (at her request) by her first name. I shall refer to her as "the Claimant" in the judgment and shall avoid naming others.

3. The Claimant first came to the attention of Social Services in 1989, when she was 17 months old. She was removed from her parents and taken into the Defendant's care in 1994 at the age of six-and-a-half years, remaining in care until she reached the age of eighteen. When she was 20, she gave birth to her daughter. The father of the child was her sister's partner. The Claimant had always had a difficult relationship with her sister. While there was never any doubt that the Claimant loved her daughter, concerns were raised about her ability to meet the child's needs. These concerns led to care proceedings and in February 2010, His Honour Judge Allweis made a care order, approving a plan for the Claimant's daughter to be adopted. In the course of his judgment, HHJ Allweis said (at paragraph 95) *"I am also clear that the underlying problem is a failure to address mother's psychological problems, which are a profound aspect of her personality rooted in her past."*

4. It is clear that the loss of her daughter was a devastating blow to the Claimant. Twice, she unsuccessfully appealed to the Court of Appeal against the orders of HHJ Allweis. She also made a claim to the European Court of Human Rights. The decision to permanently remove the Claimant's daughter appears to have been the catalyst behind this action. She told me in opening that the claim was "not about the money". I have no doubt that is true although (as the Claimant recognises) the only remedy open to this court is monetary damages.

The issues

5. Apart from a brief period when solicitors were on record, the Claimant has acted as a litigant in person. It is unsurprising then that her claim was not initially framed by reference to the relevant legal principles. However, in the course of the proceedings and at trial, the Claimant sensibly and properly sought to address the legal issues so that by the conclusion of the case her claim had crystallised into essentially two allegations of breach of duty. The first allegation is that there was a negligent delay in removing the Claimant from her parents. The second part of the claim relates to failure to provide the Claimant with therapy after she was taken into care.

6. The Claimant alleges that as a result of the delay in taking her into care she suffered further physical and emotional abuse. She also claims that through the delay in removing her from her parents and the subsequent failure to provide therapy she has suffered psychological damage. The Claimant goes on to claim that this damage has impacted on her ability to parent her own child and therefore that the loss of her daughter was a foreseeable consequence for which she should be compensated.

7. The Defendant admits that it owed a duty of care to the Claimant but denies any breach of that duty. Causation and damage are also denied.

8. The trial took place on 4th – 7th June 2013. The Claimant appeared in person with the assistance of a McKenzie Friend, Mr Jerry Lonsdale, who is connected with the organisation "Justice for Families". The Defendant was represented by Mr Adam Weitzman of Counsel. I am grateful to both parties for the sensible manner in which the trial was conducted. At a time when there has been much comment about the difficulties sometimes presented to the courts by litigants in person, I think it is worth

noting that the Claimant conducted her claim with dignity and efficiency. Mr Lonsdale carried out his role appropriately, giving the Claimant real assistance. Mr Weitzman also deserves credit for managing the defence of the action in a way that assisted both the Claimant and the court to understand the issues.

The evidence

9. I heard evidence from the Claimant and from two social workers, Mary Marrington-Blair and Heather Wilson. I also had a statement from a third social worker, Anna Taylor, a Civil Evidence Act notice having been served in respect of her evidence. The parties each called social work experts, Dr Peter Dale for the Claimant and Professor Christopher Payne for the Defendant. Medical evidence was given by Helen Roberts, forensic clinical psychologist, called by the Claimant and by Anthony Maden, Professor of Forensic Psychiatry for the Defendant. The evidence was completed over three days. The Claimant did not attend the final day of the trial. I accepted that there was a good reason for this and, at her request (through Mr Lonsdale) and to avoid any disadvantage to her, I agreed to receive submissions from both parties in writing. I have carefully considered those submissions and have taken time to review all the evidence. The trial bundle ran to almost 7000 pages, including the Claimant's social services records and those in respect of her daughter. I have particularly considered the contemporaneous records of the Defendant's involvement during the Claimant's childhood.

Limitation

10. I can deal briefly with the issue of limitation in view of the Defendant's sensible concession that, even if I find that the primary limitation period has expired, I should allow the action to proceed under section 33 of the Limitation Act 1980.

11. The Claimant brought her action 2 days after her 22nd birthday. On any basis, limitation could not start to run until the Claimant was 18 years old and she would then have three years to bring her claim so, at worst, the claim is a year out of time. However, the Claimant alleges that she did not have the requisite knowledge under section 14 of the Limitation Act 1980 until sometime after care proceedings for her daughter were commenced. If that is right, her claim is within time.

12. Under section 14, limitation in an action for personal injury does not start to run until the person injured first has knowledge –

(a) that the injury in question was significant;

(b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence ... or breach of statutory duty; and

(c) the identity of the defendant.

13. Despite Mr Weitzman's well argued submissions on this point, I do not accept that the Claimant had the requisite knowledge (whether actual or constructive) before her daughter's care proceedings began. One of her complaints is that the Defendant failed to provide her with proper "life story" work as part of the therapy she required. The Claimant was only six years old when she was taken into care. She cannot have been expected to remember the chronology of events leading up to the decision to remove her from her parents or to have knowledge of what social workers did or did not do during her early years. The acts and omissions relied upon can only have been brought to the Claimant's knowledge through consideration of the Defendant's records. I find that there was no reason for the Claimant to seek those records or to explore the Defendant's actions until it was being alleged in the course of the daughter's care proceedings that she had unresolved psychological problems due to her own life experiences. Insofar as the Claimant has suffered significant injury as a result of the Defendant's actions (and I will have to return to that issue), I find that she neither knew nor ought to have known this until her psychological state became an issue within the care proceedings. It is true as Mr Weitzman says that the fact that the loss of her daughter was the "trigger" for the Claimant bringing proceedings is not sufficient to determine the issue. However, the role of the care proceedings goes beyond this. The proceedings were the vehicle through which the Claimant began to gain knowledge of the matters of which she now complains. In turn that led to further investigation which the Claimant pursued promptly.

14. I find therefore that the proceedings were brought within three years of the Claimant's relevant date of knowledge. However, even if I was wrong about that I would (as the Defendant now concedes I should) unhesitatingly exercise my discretion under section 33 of the Limitation Act 1980 to allow the action to proceed. I would do so

because it seemed to me that the quality of the evidence was not adversely affected by the delay. The Defendant was able to rely on its records which were still available and I had the impression that the Defendant's witnesses still had a fairly good recollection of the Claimant and their work with her and her family even so long after the events in question. The delay in bringing the claim did not in any way affect the ability of the experts to comment on relevant issues. Further, I consider that there were good reasons for the Claimant not to have commenced proceedings before she was 21. At the end of her time in care the Claimant did not have a settled placement. In the course of her daughter's care proceedings, she was described as appearing younger than her years and having trust and attachment issues. She did not have a support network from where she might have drawn advice or assistance to help her consider proceedings. She became pregnant at 19 and gave birth aged 20. She plainly had a difficult time with the birth and difficulty managing the early days with her baby which brought her to the attention of Social Services. Thereafter her focus was obviously on her daughter and the care proceedings. She could not sensibly have commenced proceedings seeking compensation while trying to persuade the Local Authority and/or the court that her daughter should be returned to her. Indeed, I suspect that she would have been criticised had she done so.

15. It may be that the reason the Defendant has not simply conceded the issue of limitation altogether lies in the submission of Mr Weitzman that *"Even if the limitation bar is disapplied the defendant should not be prejudiced by the delay in bringing the claim."* He says *"it would be wrong if the absence of documents or the problems with witnesses' memories were to be relied upon to prove the case against the defendant."* Of course that is right. To do justice to both parties, I must weigh the evidence taking a realistic view and putting it in its proper context, including the timeframe. However, I do not think that the time that has elapsed since some of the events in question causes any particular evidential difficulty in this case.

<u>The duty and standard of care</u>

16. The Defendant accepts, as it must in light of *D v East Berkshire Community NHS Trust* [2004] QB 558, that it owed the Claimant a duty of care both before and after she was taken into care. The duty is a common law duty to take reasonable care to protect the Claimant from foreseeable injury. The standard of care is to be

determined by reference to the well known test laid down in *Bolam v Friern Hospital Committee* [1957] 1 WLR 582, "the *Bolam* test". Both parties have properly addressed their submissions by reference to the *Bolam* test.

17. Applying the *Bolam* test, social workers are not to be considered negligent if they act in accordance with a practice accepted as proper by a responsible body of social work opinion at the relevant time, even though other social workers might take a different view. The Claimant rightly identifies that the *Bolam* test was refined by the House of Lords' decision in *Bolitho v City and Hackney Health Authority* [1998] A.C. 232 so that where a body of professional opinion is relied upon it must be capable of withstanding logical analysis, having regard to comparative risks and benefits. This refined *Bolam* test must be applied in the context in which the particular professionals were operating.

18. It is right, as the Defendant reminds me, that this is a claim based on common law negligence and not an action for breach of statutory duty. The statutory framework provides part of the context in which the Defendant was operating. A useful summary of how the standard of care to be expected of social workers is to be viewed within that framework is to be found in the judgment of Lord Hutton in *Barrett v Enfield London Borough Council* [2001] 2 AC 550 at 591:

"The standard of care in negligence must be related to the nature of the duty to be performed and the circumstances in which the defendant has to carry it out. Therefore the standard of care to be required of the defendant in this case in order to establish negligence at common law will have to be determined against the background that it is given discretions to exercise by statute in a sphere involving difficult decisions in relation to the welfare of children. Accordingly when the decisions taken by a local authority in respect of a child in its care are alleged to constitute negligence at common law, the trial judge, bearing in mind the room for differences of opinion as to the best course to adopt in a difficult field and that the discretion is to be exercised by the authority and its social workers and not by the court, must be satisfied that the conduct complained of went beyond mere errors of judgment in the exercise of a discretion and constituted conduct which can be regarded as negligent."

19. In considering the relevant standard of care, I remind myself that it is important to apply the standards of the time in question. Standards and practices can and do change over time. It is also important that I consider the actions and decisions of the social workers in the context existing at the time they were made. Care must be taken not to judge what was done with the application of hindsight.

The social work expert evidence

20. The Claimant relied upon Dr Peter Dale, who had provided a report dated 20th July 2012. The Defendant's expert was Professor Christopher Payne from whom I had reports dated 17th May 2011 and 17th December 2012. In the usual course of events, the court would have directed that the experts discuss the case and provide a joint statement indicating areas of agreement and disagreement. I suspect that had that happened the experts would have found much on which they could agree, certainly in relation to matters of general practice. However, recognising the practical difficulties for the unrepresented and unfunded Claimant, the court did not order joint statements of the experts.

21. I recognise the difficulty faced by a litigant in person in instructing an expert to deal with liability issues. Without legal training, it is difficult to identify the correct issues calling for expert opinion. It is notable that Dr Dale's written evidence was not framed by reference to the *Bolam* test. The Defendant is critical of this but I consider that such criticism is unfair to Dr Dale. At trial, when the issues were framed for him in *Bolam* terms, he properly reflected on the test and responded in a measured and thoughtful way. Indeed, he made significant concessions which had the effect of narrowing the issues and in turn narrowing the scope of the claim. Equally, I do not think the Claimant should be criticised for this. She and Mr Lonsdale were realistic in acknowledging that the claim had somewhat narrowed in the course of the trial.

22. I also note that Dr Dale provided his report on a pro bono basis. In those circumstances, I think it is a little harsh to criticise him for not going through all the contemporaneous records. He readily accepted under cross-examination that statements and other documents prepared after the event would reflect hindsight and that to put oneself in the shoes of the social worker at the time a decision was made it would be better to look at contemporaneous records. Overall, I was impressed by the

manner in which Dr Dale gave evidence. I reject the Defendant's submission that he became an advocate for the Claimant rather than confining himself to giving expert evidence to assist the court. By contrast, I did have some concern that Professor Payne was falling into that trap when he was asked a question about the need for the Claimant to have been provided with therapy and he replied (emphasis added) *"My main argument in this case is that therapy would be an adjunct."* Having said that, as his evidence proceeded and during cross-examination, Professor Payne did display a willingness to consider and reflect upon the points put to him by the Claimant and I thought that he, like Dr Dale, was doing his best to fulfil his duty as an expert.

23. Both Dr Dale and Professor Payne had strong academic credentials in the field of social work. In the course of the trial, I raised some concerns about Professor Payne's apparent lack of practical experience. In response, Mr Weitzman referred me to the first instance decision in *TF v London Borough of Lewisham*, a decision of His Honour Judge Birtles in the Mayor's and City of London County Court. He has repeated that reference in his closing submissions. Having chosen to cite that decision, I am a little surprised that he made no reference to another first instance decision, that of Her Honour Judge Hampton, sitting as a judge of the High Court in *ABB v Milton Keynes Council* [2011] EWHC 2745 (QB). I note that Professor Payne gave evidence for the defendants in each case and that the claimants in both cases called a Mrs Ruegger. The judges in those two cases reached very different views as to which expert was to be preferred and as to the relevance of Professor Payne's qualifications and experience. Having seen the otherwise exemplary way in which Mr Weitzman conducted these proceedings, I am satisfied that there was no improper motive for his omission but clearly it would not be right for me to give weight to HHJ Birtles' assessment of Professor Payne without also considering that of HHJ Hampton. In the event, I have formed my own assessment of each expert's qualifications and experience.

24. I find that Dr Dale did have some useful practical experience which was not a feature of Professor Payne's background. From 1986 to 2001, in the course of working for the NSPCC, he was involved in many internal and external reviews of social work practice, including Serious Case Reviews and formal evaluations of individual social workers and teams. Between 1985 and 1991, he also worked part-time as a Guardian

ad Litem. I believe that these roles gave him some useful practical experience which is relevant to his role as an expert in this case, although I accept the Defendant's submission that case reviews would necessarily involve the application of hindsight in a way that decision making in "on the ground" social work would not.

25. However, it would be far too simplistic for me to simply prefer the evidence of Dr Dale over that of Professor Payne on the basis of his experience. I must also be careful not to bend too far in making allowances for Dr Dale on the basis that he was instructed by an unrepresented litigant. There were some deficiencies in his evidence caused by him not initially applying the correct legal test which make it particularly important that I test his opinions. I recognise that to some extent Professor Payne has also been disadvantaged by the lack of opportunity to discuss the issues with Dr Dale and to prepare a joint statement.

26. In all the circumstances, I have had to be very careful in weighing the expert evidence and testing it against all the evidence in the case, particularly contemporaneous records which in some cases were not considered by Dr Dale. The evidence of both experts has assisted me to understand the background and climate in which social workers were operating at the relevant times. I take that evidence into account in weighing what was actually done by the social workers. However, the expert evidence cannot by itself determine the question of whether there was any breach of duty on the part of the Defendant. That remains a decision for me, to be determined in light of all the available evidence.

27. An important part of the expert evidence and an area where there appeared to be a large measure of agreement between Dr Dale and Professor Payne related to what Dr Dale described as a "pendulum swing" between "family preservation" and "child rescue" as the predominant guiding principle in the child protection world. While Dr Dale considered that social workers should have the professional aim to find the reasonable middle ground between these poles, he accepted that it was hard to devise any error free system and that there was a tendency to find two separate practices developing with it being a matter of chance whether a child encountered a team rooted in one pole or the other.

28. I sense that the Claimant feels a real sense of injustice that she was left with her parents for so long despite evidence that she was suffering harm whereas her own daughter was taken from her at an early stage because there were concerns that she would suffer harm if she remained with the Claimant. I can understand why she feels this is unfair. However, the context of the time at which decisions were made is important.

29. The Cleveland Report was published in 1988 and widely reported. One of the conclusions in that report was that social workers should have been more cautious in their interventions and there was a general view that children had been removed from their families too readily. Dr Dale and Professor Payne agree that in 1989 and into the early 1990's there had been a swing towards family preservation. This represents the period in which social services were considering whether the Claimant should remain with her parents. By contrast, her daughter was born in November 2008 and care proceedings were commenced in May 2009. Peter Connelly ("Baby P") died in 2007. Subsequently, there was widely reported criticism of Haringey Children's Services for their failure to intervene and protect Baby P from abuse. By 2009, the pendulum had swung firmly towards a pervading culture of child rescue. Professor Payne told me that there has been a "massive increase" in the number of care orders made since 2007, reflecting a change in ethos following the Baby P case.

30. I agree with Dr Dale that social workers striving for best practice should seek to find the sensible middle ground between the two poles. However, I can also see that there is an inherent tension between family preservation and child protection and that it will not always be easy to negotiate that middle ground. Decisions either way can result in social workers being severely criticised and indeed in public enquiries as is apparent from the Cleveland and Baby P cases. It is difficult without applying hindsight to say whether a particular decision is right or wrong. Of course, while the wrong decisions may attract much interest, as Dr Dale put it we never hear about those cases where social work intervention has been positive and successful. This perhaps explains the swings seen in social work practice.

31. The circumstances in which social workers operate must be taken into account in setting the ambit of what is and is not to be considered reasonable. The tension

between family preservation and child protection will mean that there is scope for differences of opinion as to whether a child should be removed from its natural family. The Court must be careful not to find that a decision was negligent merely because other social workers might have taken a different view.

Failure to remove

32. This issue significantly narrowed in light of concessions made by Dr Dale when he gave his oral evidence. The experts are now essentially agreed that it cannot be said that the Defendant was negligent in failing to seek to take the Claimant into care between 1989 and November 1993. That was Dr Dale's view having considered the *Bolam* test and I find that he was right to make the concession that he did. He acknowledged that the family was being monitored and that work was being done with them. Indeed, Dr Dale was complimentary about the investment by social services which included extensive support from a family support worker. Dr Dale acknowledged that some improvements were charted and that while that was the case it was sensible to continue with that process. However, he added that he thought that the overall trajectory was downwards, going on to agree that this was the case when analysis was done with the perspective of hindsight. He thought that prior to November 1993 different social workers might have taken different views. Where there was a range of reasonable options, it plainly cannot be said that the Defendant was negligent for taking one option rather than another.

33. The key event now underpinning this part of the claim was an assault on the Claimant by her father on 27th October 1993. This is documented in the Defendant's contemporaneous records. At 9.30a.m. on that day, the Claimant's mother telephoned the family support worker, Cheryl Davies, asking for a home visit and stating she was at the end of her tether and could not cope with the girls (the Claimant and her sister). She suggested that the father had said that he was going to lose his temper and end up smacking the girls or leaving her. Suggestions were made to her for her to manage the morning and Cheryl Davies agreed to visit later that day. At 11.20 a.m. the mother phoned again demanding an immediate visit because the father had hit the Claimant and she had a black eye. This was said to have occurred during the night but the mother claimed not to have been aware of it until then. A home visit was arranged with Cheryl Davies and Mary Marrington (then the family's key social

worker) attending. The parents were spoken to. Mary Marrington stressed the importance of the parents taking on board the advice they were being given about their parenting.

34. The Claimant underwent a medical examination on 28th October 1993. A home visit by Cheryl Davies that day was said to go "quite well". Further home visits on 1st and 4th November 1993 are also said to have gone well. It is clear that the family was being kept under close supervision at this time. I note that the police were also involved, the Claimant's father was arrested and admitted the assault, for which he received a caution. On 11th November 1993, a case conference took place. Dr Dale is critical of the outcome of that conference. It was noted that Cheryl Davies had been involved with the family since August 1993 and to date had achieved nothing. It was difficult to work with the family. The conference noted that there were a lot of long-standing concerns and it was felt that the situation was deteriorating. Legal advice was obtained from Helen Vaulter of the Defendant's legal services department who commented that there was insufficient evidence then to warrant statutory intervention *"as the injury was not particularly severe and therefore does not constitute significant harm, there is also evidence to show that the parents are cooperating and the children are attending school. However, the situation would need to be closely monitored and should the injuries increase in frequency then the issue of statutory involvement would need to be looked at again."* The unanimous decision of the case conference was that the Claimant and her siblings should be registered on the "at risk" register in the category of physical abuse. The Defendant followed the legal advice and the recommendation of the case conference and care proceedings were not instituted.

35. It is at this point that Dr Dale maintains that the Defendant was negligent in failing to commence care proceedings. It was his opinion that it was not sufficient merely to register the children as being at risk following the assault and in the context of long-standing concerns. He said that by then there was a *"whole constellation of alarm bell factors"* coupled with significant injury to a young child. This led to his view that *"no reasonable case conference would conclude that court proceedings should not be instituted at that time"*. He thought that it was "more likely than not" that an interim care order would have been granted although appeared to acknowledge that the

children might have remained at home. He did not agree that a reasonable body of social workers at that time would have accepted that registration was a sufficient step.

36. Professor Payne disagrees. He describes the Defendant's response following the assault as *"a proportionate response to the incident"*. He said in his report (paragraph 61 page 291) that *"the incident was not sufficient to initiate care proceedings at that point, but that there were warning lights beginning to flash that justified the child protection plan that was put into place."* He went on *"I would consider the Defendant's actions to have been reasonable and it was not negligent to have allowed the children to remain in parental care at that point."* Professor Payne maintained his views at trial. So there is a clear dispute between the experts as to whether the decision not to seek the removal of the children but instead to place them on the at risk register was one that no reasonably competent department could have taken according to the prevailing climate of the time.

37. I cannot simply regard Professor Payne's opinion as evidence that there was a responsible body of social work opinion that would have regarded the Defendant's decision as proper without further analysis. However, neither can I prefer Dr Dale's opinion without enquiring into the basis for it. In order to decide this dispute, I must also consider the lay evidence and the contemporaneous documentary evidence.

38. The only relevant lay evidence I heard on this issue was that of Mrs Mary Marrington-Blair (Mary Marrington as she was at the relevant time). Generally, I was impressed by the manner in which Mrs Marrington-Blair gave her evidence. She could recall the incident in 1993 when the Claimant's father assaulted her. She acknowledged the concerns about the family but maintained that her view was that registration on the child protection register was sufficient and that the department should continue to work with the family. She indicated that at the time she felt she was balancing the risks. She went on to say: *"With hindsight, I might reach a different decision but at the time I was balancing the risks as I thought appropriate."* I thought this was a sensible answer which reflected proper consideration of what was known at the time and that which came to be known (namely that the Claimant's parents were not in fact capable of change). It fitted with my assessment of her that she was a responsible and committed social worker, who displayed warmth and

concern for the Claimant and who I thought had been doing her best. That is not to say that a generally responsible social worker cannot occasionally make a negligent mistake. To test whether that was the case here, I have carefully considered the contemporaneous records. Such records provide, in my judgment, the best evidence of how the decision making was approached at the time and is the closest the court can come to assessing the decision on the basis of the circumstances existing when it was made rather than by applying hindsight.

39. In August 1993, the Claimant's mother appeared to be having a parenting breakdown. Help was put in place. I have carefully considered all the Defendant's contact sheets from August 1993 to October 1994 and the daily logs kept by Cheryl Davies starting from 30th September 1993. I note that Dr Dale had not done this exercise. He placed heavy reliance upon the statement of Mary Marrington prepared for the purpose of care proceedings in 1994. It is not clear that he in fact ever had a complete copy of that statement. The copy in the bundle is missing a page and I am told that neither party now has a complete version. What is clear is that the purpose of that statement was to look back (with hindsight) over events and to explain to the court why it was then contended that a care order should be made. That is rather different from looking at the evolving situation and making decisions as events unfold.

40. What emerges from the records is that the Claimant's parents were clearly under considerable stress in October 1993. The father had a stroke connected with his epilepsy. The family went on holiday and it was a disaster. They returned home to find that they had been burgled. Mother then had a car crash. After intervention from Cheryl Davies there seemed to be some settling down so that on 18th October 1993 things seemed a little better. The next week's home visit was missed due to an understandable change of plans which meant Cheryl Davies missed the parents. The assault then occurred shortly after. Thereafter visits were stepped up and the family was being closely monitored. Through November 1993, the detailed records show a more positive picture. On 1st November, both parents seemed calmer and reported feeling more relaxed. Mother reported that she felt she was getting somewhere with the girls and was learning to be patient. Father was interacting better with the children. There were some positive features in the visit on 4th November.

41. In the circumstances, I can understand why the case conference recorded that the parents were cooperating and can see that the social workers may have felt that they were finally getting somewhere in their work with the family. The assault was not ignored. Intervention was stepped up. Positive progress seems to have been maintained through November. However, the situation deteriorated again around Christmas 1993, the family having had to move to hostel accommodation which was clearly less than ideal. The family moved again to more settled accommodation in January 1994. However, by March 1994, there were sufficient further concerns that the Claimant and her siblings' registration on the at risk register was extended to reflect that the risk of emotional abuse. From 30th May 1994 to 24th June 1994, the children were in foster care while their mother was in hospital (I have seen reference to them being in foster care for May and June but it is clear that the period in question was just under a month). After further bruising to the Claimant was reported in August 1994, a child protection conference was held on 9th September 1994. A decision was then taken to seek an interim care order. The Claimant and her sister were removed from their parents on 13th October 1994.

42. It is clear from this history that the Defendant did not ignore concerns about the Claimant. The decision in November 1993 was taken having regard to previous incidents and concerns. The assault was not viewed in isolation. After the Claimant and her siblings were placed on the child protection register they continued to be monitored. Having provided the parents with support and an opportunity to change and in light of ongoing concerns, the Defendant took further action initially extending the registration to include emotional abuse and then commencing care proceedings. This was not a case of social workers closing their eyes to the Claimant's circumstances but rather making a positive decision to keep her with her natural family until it was felt that things had gone on long enough and that family preservation could no longer be prioritised in view of an ongoing risk of harm.

43. Had the Defendant's social workers decided to commence proceedings in November 1993, they could by no means be certain that the court would endorse the Claimant's removal from her parents. Dr Dale acknowledged in cross-examination that an unsuccessful attempt to remove a child through court proceedings can often end cooperation with the parents. Professor Payne also referred to the difficulty of getting

parents to cooperate in the absence of an order. After the assault, the records show that the parents were cooperating and there were some positive signs. Failed court proceedings at that stage risked undoing that. Accordingly any proper assessment of risk would not have been all one way. Those best placed to judge the risks were those on the ground working with the family at the time. There would be a range of reasonable responses from social workers acting in such circumstances. I accept that some would have sought removal at an earlier stage. However, having weighed all the evidence, I cannot say that the decision not to seek removal before September 1994 fell outside the ambit of decisions open to responsible social workers.

44. Professor Payne and Dr Dale have very different views as to the appropriate response in November 1993. I am satisfied that Professor Payne's opinion accords with a responsible body of social work opinion at the relevant time. The Defendant's social workers, including Mary Marrington, fitted into that body. Dr Dale's view that the Claimant should have been removed from her parents at that time represents the view of an alternative body of social work opinion. The fact that the Defendant adopted one rather than the other does not lead to a finding that it acted negligently. In that respect, I cannot and do not accept Dr Dale's opinion that no reasonable social worker would have failed to commence care proceedings in November 1993.

45. Having made the decision that they did in November 1993, the Defendant's social workers reasonably continued to monitor and assess and reasonably increased their intervention in response to such monitoring up to the point that the decision was taken to take care proceedings. I therefore find that there was no negligent delay in taking the Claimant into care and this aspect of her claim fails.

Causation and quantum had the Claimant established breach of duty in relation to failure to remove her earlier

46. Had I found otherwise and determined that there was a breach of duty in not seeking the Claimant's removal in November 1993, the result would have been that, at most, she would have been taken into care 10 months earlier than she was. Allowing for the period when she was placed with foster carers in any event, this would represent no more than an additional 9 months with her parents. My finding in relation to breach of duty means that I do not need to deal with causation in any detail. However, I shall

deal briefly with the point. I recognise some force in the Defendant's argument that it cannot be said that the course of care proceedings would necessarily have been the same had the decision to seek a care order been taken in November 1993 rather than September 1994. However, I think a finding that it was negligent not to seek a care order in November 1993 would imply that a court would have endorsed removal at that stage. A finding of breach in November 1993 would then have led to the conclusion that the Claimant spent 9 months longer with her parents than she would otherwise have done. I accept, as the Defendant argues, that she would have been placed with her sister initially and that the bullying and bruising which the sister caused might not have stopped immediately but the only sensible conclusion following a finding of breach would be that the whole process would have been accelerated by about 9 or 10 months. The burden would be on the Claimant to demonstrate that she suffered harm as a result of the delay and the extent of such harm. There is no evidence, medical or otherwise, that she suffered any long term harm in the final 9 to 10 months before she was removed from her parents and which she would not have suffered had proceedings been started at the end of 1993. The closest the expert evidence comes to addressing this point is to be found in the report dated 3rd September 2012 of the Defendant's psychiatric expert Professor Anthony Maden at paragraph 101: *"It is possible but not probable that her subsequent progress in childhood would have been better had she been removed earlier from home."* That would not be sufficient for the Claimant to establish a causal link (on a balance of probability) between any long term harm and the alleged delay. However, there is some evidence that the Claimant suffered some harm in the relevant period. She was observed to have some bruising (possibly caused by her sister rather than her parents directly). She continued to suffer some emotional neglect. If breach of duty had been established, she would be entitled to be compensated for the pain and suffering resulting from the physical and emotional injury caused directly by her parents or by their neglect of her needs. In this case, I do not think damages for pain and suffering would be capable of precise quantification. Rather, they would necessarily have to be subject to something of an impressionistic assessment having regard to the period involved, the Claimant's age and her general circumstances. On that basis, had I found for the Claimant on this part of the claim, I would have awarded general damages for pain and suffering of £1,500. No other heads of loss would fall for consideration on the available evidence.

Failure to provide therapy

47. The Claimant alleges first that the Defendant failed to provide her with therapy which had been recommended by two psychologists during the course of her care proceedings. She also points to the need for such therapy being supported by the Guardian ad Litem and the comment in the judgment of His Honour Judge Lees when making a care order on 28th September 1995 when he said *"the need for the children to have continued therapy seems self-evident"*.

48. The Claimant's case extends further by alleging that the Defendant generally failed to provide adequate therapeutic support while she was in the Defendant's care.

49. It is the Claimant's case that the failure to provide her with appropriate therapy was negligent and resulted in her sustaining substantial psychological damage and ultimately resulted in the removal and adoption of her daughter.

50. In a report dated 18th April 1995 prepared in the course of the care proceedings, Jean Sambrooks, consultant clinical psychologist, observed that the Claimant was currently presenting as a somewhat detached child and that there was a need to ensure that she is able to attach appropriately to a significant adult. Ms Sambrooks also recommended that some work was done to address the Claimant's relationship with her sister as their future emotional development would be better served by some resolution of their difficult relationship rather than by separating them. She added (paragraph 4.4.3) *"Kirsty's apparent emotional detachment, her emotional lability and her need to lie are also issues that would benefit from further exploration whether from an experienced foster carer or a professional."*

51. Moira Lochery, consultant clinical psychologist, prepared a report dated 28th August 1995 in which she said (paragraph 8.4.2) *"It is my opinion that both girls should receive some therapy while in short term placement to endeavour to improve their relationship with a view to being reunited at a time of long term placement."*

52. The two psychologists agreed in a joint statement dated 23rd September 1995 *"Jointly we feel that [the Claimant and her sister] need some therapeutic input to improve*

their relationship with each other and also feel the information from this input needs to be assimilated into any future care plans involving separate or joint placements."

53. The Guardian ad Litem's report dated 15th September 1995 noted that the Local Authority intended to give priority to some therapeutic work with the girls in separate short-term foster homes, whilst they explore the options of long-term placement for them. At paragraph 9.5, she continued *"Both [girls] will need therapeutic work and counselling as a matter of urgency to try to address [the serious difficulties in their relationship]. They will obviously also need a stable and understanding placement whilst this work is done and in the future to help them develop in a normal, healthy manner."*

54. I have already referred to the judgment of HHJ Lees which acknowledged the need for continued therapy. Following the making of the final care order, the Defendant sought to follow up the recommendations for therapy by contacting Dr Daud, consultant in child and adult psychiatry based at the local child and family unit. Initially, there appears to have been some difficulty in that the psychologists refused to disclose their reports to Dr Daud for the purpose of assessment. Dr Dale suggested that this looked to him like *"a petty inter-agency dispute"*. He did not lay blame for this with the Defendant and neither do I. Indeed, it appears that the Defendant was able to resolve the difficulty and the reports were disclosed before a meeting between Dr Daud and Mary Marrington in January 1996. That meeting followed a letter written by Dr Daud to Mary Marrington and dated 20th December 1995. In that letter, Dr Daud questioned the timing of intervention by way of therapy suggesting the first question might be whether the priority was to attempt to improve the relationship between the sisters or to find a more stable environment. The suggestion was that therapy would take time and might delay the finding of a permanent, stable environment.

55. It is clear that Mary Marrington went to some lengths to clarify the response from Dr Daud. She set up a meeting with Dr Daud on 23rd January 1996. She had plainly also continued to seek advice from Moira Lochery as Dr Daud refers to contact with Moira Lochery following a meeting within Social Services. At the January 1996 meeting with Dr Daud, the recommendations of the psychologists were discussed. The

minutes record that: *"Dr Daud informs us that if they were to undertake therapy, the girls would again need to be assessed. There would be no guarantee they would respond to therapy and there were difficulties in putting a timescale around it – obviously it would not be practical for the girls to remain in short term placement while a lengthy piece of work takes place. There were discussions around the timing of such a piece of work and the Child and Family Unit expressed the view that [the girls] would be less amenable to the piece of work if they were in a short term placement because of the uncertainty of their futures. there would also be no point in starting a piece of work with temporary carers."* It was agreed that therapeutic work should not take place at that stage but that long term placements should be sought and that the unit could be approached when the girls were relatively stable *"if this were felt necessary"*.

56. The Claimant relies upon the evidence of Dr Dale that it was not reasonable for the social workers to follow Dr Daud's recommendations at this time. Dr Dale criticises the process adopted at the meeting in that he says that the two psychologists should have been involved and that without that it was "an inadequately informed meeting."

57. Helen Roberts, called as the Claimant's medical expert, indicated that she would not say it was a pre-requisite for therapeutic treatment that the child should first be settled but that would certainly help.

58. Professor Maden said in his report (paragraph 103) that he could understand why the recommendation for therapy was made when the Claimant and her sister were first taken into care but that the Claimant's progress in her first placement suggests the concerns were over-stated. He said *"Psychiatry is far from an exact science and it is impossible to know for certain which psychological or behavioural problems will respond to placement in a normal, caring foster home and which will require therapy."* In his oral evidence, Professor Maden appeared to agree with the approach taken by Dr Daud in that he accepted that the prime need was for stable and consistent parenting rather than therapy. He went on to say that there was a big question as to whether therapy will be effective if not in a stable and secure placement. He thought that therapy would not get very far without the "bedrock of stability". His experience was that *"you wait for stability of placement"* and cannot do therapy without that. He

felt this was a common view amongst psychiatrists and that while crisis intervention could be done therapy to bring about lasting change would have to wait.

59. Professor Maden was an impressive expert and I was satisfied that his views represented that of an established body of psychiatric opinion. This provided support for the advice given by Dr Daud.

60. The Defendant cannot be criticised for accepting advice from an appropriately qualified medical practitioner. Criticism would be all the more inappropriate when the Defendant, through Mrs Marrington, took steps clarify and indeed question that advice in light of the views expressed by the psychologist.

61. It is also of relevance that by January 1996, the decision had been taken that the Claimant and her sister could simply not be placed together in view of their significant relationship difficulties. A significant part of the recommendations for therapy had therefore fallen away and this change in circumstances would have formed part of the background against which Mrs Marrington was considering all the expert advice received. It would be wholly wrong to find that she had been negligent in accepting Dr Daud's advice. Indeed, I would go further and say that she acted properly and carefully in clarifying that advice and checking it against the earlier recommendations.

62. Under cross-examination, Professor Payne accepted that he thought the Claimant made a good point in suggesting that the Defendant should have looked at interim treatment while a permanent placement was sought for the Claimant. However, what could be done would depend on the local resources available. I note that the joint statement of Jean Sambrooks and Moira Lochery in fact refers to limited local therapeutic resources. I agree with the Defendant's submissions that Professor Payne's evidence did not amount to a concession of *Bolam* negligence.

63. Looking at the Defendant's records, as the Defendant invites me to, it does seem that some work that might be described as therapeutic was being done with the Claimant in 1996 prior to her move to a long term placement. There are records of work being done to address her feelings and forms and drawings in File 3 of the trial bundle

which suggest that some therapeutic input was being provided, probably by social workers or play therapists. Having attempted to refer the Claimant for psychiatric therapy and in the absence of evidence of any other readily available resource at the time, I find this was an appropriate attempt at some short-term therapeutic input while a permanent placement was sought and once the Claimant and her sister had been separated.

64. On this issue, I prefer the evidence of Professor Payne to Dr Dale. I thought that Professor Payne gave his evidence on this aspect in a measured and reflective way acknowledging that more might have been done while not conceding any breach of duty. By contrast, I did not think that Dr Dale had taken account of all relevant factors and all the steps that had been taken. Again, it may be that he was disadvantaged by not having had all the records. Whatever, the reason I do not believe that his suggestion that Mrs Marrington or other social workers acted outside the ambit of a responsible body of social work practice can stand up to logical analysis. I find that Mrs Marrington did what she reasonably could to ensure the Claimant's therapeutic needs were met at this time. In an ideal world, more therapeutic input might have been provided to the Claimant but I cannot judge what did occur by the standard of an ideal world. To do so would not come close to the requirements of the *Bolam* test.

65. At a review in February 1997, concerns were expressed about the time it was taking to find the Claimant a long-term placement and Mary Marrington arranged a further consultation with Dr Daud, although it is not clear whether this in fact took place or was postponed while the Claimant moved into a long term placement with Mrs H. This move took place in March 1997.

66. Once she had moved, there were ongoing concerns about the Claimant and this led to Mrs Marrington with the Claimant's foster mother seeking advice in September 1998 from a psychologist, John Kenworthy. Mr Kenworthy concluded that the foster mother had a good understanding of how to work with the Claimant and should continue with that support. He advised that it would be a long slow process but that it would not be appropriate for him to offer any individual work with the Claimant.

67. Again, this is evidence of the Defendant seeking appropriate external help. Dr Dale was not critical of this stage. He accepted it was good practice to seek outside help and that at that point in time it was reasonable to accept the advice provided this was not a period of particular problems. It was decided that ongoing work would be continued by Mrs H, the foster carer. I do not understand the Claimant to make particular complaint about this period. If she does, such would not, in my judgment, be sustainable on the evidence.

68. The next relevant event occurred in July 2000 when it was noted that the Claimant was upset by the arrival of another foster child in the family. By then, Mrs Marrington was no longer her social worker. the new social worker, Roseanne McDonnell referred her to a psychologist, Nicki Milton. The Claimant was happy to attend sessions with Nicki Milton and did so on three occasions. Unfortunately, Ms Milton then went onto long term sick leave. It is said by the Claimant that the defendant failed to put any suitable alternatives in place. However, the Defendant responds by saying that alternative sessions were arranged with a counsellor in January 2001. The Claimant was then aged 12 and she became a teenager in April that year. By June 2001, there had been another change of social worker with Heather Wilson taking over. The Claimant came to value Heather Wilson. At some later point she wrote a letter praising her input. This is attached to Heather Wilson's witness statement. In June 2001, Heather Wilson recorded that the Claimant did not want to see a counsellor at present. Her views were respected. In fact, she had reached a reasoned decision following discussion with Mrs H. The sessions were not felt to be beneficial. The Claimant told me in evidence that the counselling was not the same and that she *"didn't get on with her"*. It is unfortunate that the sessions with Nicki Milton which the Claimant did seem to find beneficial came to an end. However, the Defendant cannot be blamed for that.

69. It is all the more unfortunate that the Claimant's placement with Mrs H then broke down in 2001. The reasons for this were complex. When giving evidence, the Claimant was upset when talking about the breakdown of the placement. A conflict arose between Mrs H and the Defendant due to concerns about her safeguarding of children in her care when some contact arose with a known paedophile. The Claimant was aware of tensions but not the reasons for them. It is understandable that the

circumstances were kept from her. Unfortunately, she wrongly assumed that the problems related to her. There was also mention at the time of the possibility of Mrs H retiring. The Claimant said "I thought I was going to get shipped on again". She decided that she needed to move now rather than wait for this to happen and started playing up including refusing to go to school to get attention. There was also some tension with the Claimant's natural family. The Claimant was able to talk about this period with real insight. Having heard her evidence, I cannot say that the breakdown was caused because the Claimant was suffering untreated psychological problems at the time. It seems to me that there was a complex set of circumstances that any young teenager would struggle to understand. It is very sad that the placement with Mrs H broke down. Neither the Claimant nor the Defendant can properly be blamed for the fact that it did.

70. The Claimant moved to live with Mrs L. After that move, Heather Wilson agreed to commence some life story work with the Claimant. One session of life story work took place. I am not sure this was handled as well as it should have been. The Claimant was naturally upset to see reference to possible sexual abuse. In fact while the first referral to Social Services followed concerns about possible sexual abuse, an explanation for the observed symptoms was given and it was concluded that there were no grounds for intervention. Sexual abuse was not in reality a feature of the Claimant's history. It is clear from the records of the time that Mrs L was not happy with the limited life story work that had been done. It was suggested that she and the Claimant were left with more questions than answers. The Claimant was referred to Lorraine Wild, counsellor, whom she saw in September 2001. Ms Wild asked for further life story work to be carried out before more counselling was provided. In a letter dated 6th December 2002, she said: *"I contacted Heather today and she informed me that due to pressure of work, she was no further forward in collating the information from the files so she was not in a position to say when the work with Kirsty would recommence."*

71. I note that the record keeping in this period was not as good as previously. In her statement in these proceedings, Heather Wilson, indicated that she could not specifically recall the referral to Lorraine Wild (which was made by Jane Bowen, family placement worker). However, she accepted that she would probably have been

involved in the discussions at the time. She did not recall the Claimant having too many behavioural problems at that time. In her statement she did not deal with the reasons why the life story work was not completed. When giving oral evidence, she explained the reference to pressure of work at the time. It became clear that this specifically related to work she was having to undertake with the Claimant's family. She said a lot of other work was being done. The situation was not steady. There was chaos in the family. She recalled the Claimant's mother getting married in 2003 and there being arrangements to make around that including a meeting with the Claimant's sister. There were difficulties with the Claimant's father. Ms Wilson did not always feel welcome in the Claimant's life and had to take time to build a relationship although she did achieve that. There was an interesting exchange in the course of the evidence when Heather Wilson suggested that time was being taken up dealing with crises and that as soon as one was finished there would be another crisis. At this point, the Claimant stepped in and supported what Heather Wilson was saying about managing one crisis after another. This was an interesting exchange. It was a very genuine acknowledgment that what Ms Wilson was saying was right. It also demonstrated signs that there had indeed been a good relationship between the Claimant and Ms Wilson.

72. There was plainly a balance to be struck at this time between engaging the Claimant in support to address issues related to her childhood and managing current issues in a way that would be acceptable to the teenage Claimant. While there was crisis around her, the Claimant was in many ways doing very well. There was a 'blip' in her educational history around the time her placement with Mrs H broke down but after she moved to Mrs L she worked hard at school to catch up. She continued to work hard and achieved success, obtaining a good set of GCSE's and becoming a prefect. Having had such a difficult start in life, this was remarkable and reflects very well on the Claimant.

73. I note that Dr Dale is not particularly critical of the Defendant during this particular period. He notes that *"it is often less easy to engage adolescents in therapeutic work"* (report paragraph 14.6). However, he does say in the appendix to his report that it is his view that the failure of the Defendant to provide life story work for Kirsty over a period of so many years falls below expected standards of childcare practice. He adds

that the failure to *"keep to the agreement with the counsellor at the meeting on 30/9/02 was directly responsible for [the Claimant] not being provided with a counselling service by Lorraine Wild"*.

74. In my judgment, it is too broad a statement to say that failure to provide life story work fell below "expected standards". Further, when writing his report Dr Dale did not have the full picture as to why this work was not done around 2002/3. I believe that he drew back from alleging that there was *Bolam* negligence at this time when giving oral evidence. He was right to do so. Certainly, in my judgment, there is no sufficient basis for finding that Heather Wilson was negligent in her work with the Claimant at this stage.

75. It is a great shame that the Claimant's placement with Mrs L broke down in December 2003. The Claimant believes the breakdown was due to her behaviour. The Defendant points to the ill health of Mrs L. The Claimant accepts she had a brain tumour but maintains that Mrs L fostered other children after this time. There was an argument with Mrs L. She told the Claimant to "get out". The Claimant took this seriously and left. She has since spoken to Mrs L and realises she did not actually want the Claimant to leave permanently. Her ill health probably caused pressure. The Claimant's father was encouraging her to leave. I simply do not think it can be said that the lack of life story work or therapy caused the placement to fail. Again, very sadly, the Claimant was caught up in a combination of difficult circumstances.

76. From 2004 to 2007, the Claimant accepts that this period of her life was quite settled and that she was having some input by the Defendant's After-Care Department. In her written submissions she poses the question whether that was down mainly to her own determination to start her adult life on the right path. I would accept this was the case. I am not sure the Defendant does as she suggests "seek to take credit for" the positive outcomes. However, they can point to them as reasons why they might not have identified a particular need for the Claimant to have therapy in the later part of her childhood. As the Claimant's medical expert Helen Roberts said in her report (paragraph 82) her *"fairly profound psychological difficulties"* were *"masked by [the Claimant's] obvious intelligence"* and *"she appears to function at a higher level because she is bright and, in many ways, a resourceful survivor"*.

77. In giving his judgment in the care proceedings for the Claimant's daughter, HHJ Allweis described her as likeable, clearly intelligent and articulate. Having seen her give evidence, I entirely agree. In many ways, the Claimant must have appeared to be doing so much better than many other looked after children. Having regard to the limited resources available to the Defendant, it would impose an unreasonably high standard to expect social workers to have identified a need for therapeutic input at a time when the Claimant was apparently doing well.

78. It follows from the above that I find that the Claimant has not established a breach of the duty of care owed to her on the basis of a failure to provide therapy.

Causation in relation to non-provision of therapy

79. Had I found otherwise in relation to breach of duty, I would have had to go on to consider causation.

80. Helen Roberts and Professor Maden agreed that the Claimant had not suffered from any psychological or psychiatric condition from the age of 16.

81. The Claimant would have to prove that therapy during her childhood would have materially altered the outcome. The medical evidence produced does not establish this.

82. The medical evidence certainly does not establish that the Claimant would not have lost her daughter had she had therapy. Both medical experts agreed that she had personality traits (as opposed to a personality disorder) that made it difficult to bond with her daughter. Both also agreed that there were many factors surrounding her daughter's birth that did not help. The pregnancy was unplanned. The father was the partner of the sister with whom the Claimant had a very difficult relationship. There were some physical problems after the birth and probably post-natal depression. The Claimant's accommodation was unsettled. Professor Maden suggested there might be a genetic tendency towards difficulty in forming attachments but was cautious about putting this forward, conceding it was speculative.

83. In short, there is simply no evidential basis which would have allowed me to find a causal link between a lack of therapy and any loss or damage which could be compensated in a common law claim for negligence.

84. The claim for non-provision of therapy must also fail.

Other issues

85. In her skeleton argument the Claimant put forward another point about an alleged failure in the Pathway Plans. That part of her claim was not entirely clear but in any event it appears to have been withdrawn following the oral evidence of Dr Dale, who accepted there was no breach of duty according to the correct test in the "After Care" period. The Claimant's closing submissions do not pursue this point.

Conclusion

86. I have considerable sympathy for the Claimant. She did not receive love and security as a child. She desperately wanted to provide such things to her daughter but was found to be incapable of meeting her child's needs in light of the damage she had sustained from her past. I have read her "Personal Impact Submissions" with sadness. I note her real and obviously genuine desire that her daughter should not suffer as she has. She refers to vicious cycles. Sadly, I believe she was caught up in a pattern laid down in earlier generations. I have read enough about her daughter's placement to believe that the cycle has been broken for her. It is a tragedy that this did not happen in the Claimant's generation. However, the fact that it did not cannot in itself lead to a finding that the Defendant was negligent.

87. I have had to put sympathy aside and analyse the Claimant's case according to established legal principles. Having done so, I have found that there was no breach of duty on the part of the Defendant. It follows that this claim must be dismissed.

Recorder Amanda Yip QC