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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION
(JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY
JAMES MARTIN FOR JUDICIAL REVIEW

WEATHERUP J

Introduction

[1] The applicant seeks judicial review of decisions of a Health & Social Services Trust concerning information relating to allegations against the applicant of sexual abuse. The relevant decisions are to retain the information and further to disclose that information to third parties.

[2] Between 1988 and 1992 the applicant lived with his partner and her two sons. In 1992 one of the sons made allegations of physical abuse against the applicant and the two children were placed on the child protection register between October 1993 and April 1994 as being in danger of potential physical abuse.

[3] The applicant then began a relationship with a woman who was to become his wife and they had two children. In 1996 one of the sons of his earlier partner made allegations of sexual abuse against the applicant. These allegations were investigated by social services and by the police and were denied by the applicant. No charges were preferred against the applicant. The applicant's first child was placed on the child protection register from July 1997 to August 1998 and the applicant's second child was placed on the child protection register between February 1998 and August 1998. It is the information in the possession of social services emerging from the investigation of this allegation which is the subject of this application for judicial review.

[4] In 2000 the applicant's marriage had broken down and he was living with a new partner who had three children. Social services had been involved with the new partner and her children in relation to childcare matters prior to her involvement with the applicant. When the applicant began living with the new partner and the three children the social worker who had conduct of the new partner's case checked the social services record system and established the history of the applicant as appeared in the records.

[5] The social worker involved with the applicant's new partner and her three children contacted the social worker who had been involved in the 1996 allegations of sexual abuse against the applicant and then she discussed the issues with a senior social worker. A letter was written to the applicant requesting him to attend the offices of social services for interview and at that meeting the social worker informed the applicant that his new partner was to be made aware of the allegations of sexual abuse that had been made against the applicant in 1996. In October 2000 the applicant so informed his new partner in the presence of the social worker. The applicant and his new partner separated shortly afterwards.

[6] There was then an exchange of correspondence between the Trust and the applicant's solicitors. The Trust explained its actions in these terms –

> "While there was a question of credibility regarding the statements of complaint in this case, this does not mean that there was not a child protection concern. The level of intervention in the case, particularly in the latter instance (being a reference to intervention with the new partner in 2000) was at a minimum level in that it was merely to ensure that the parents of children with whom Mr Martin was residing were aware of the nature of the allegations and were therefore in a position to make judgments about their children's protection.
>
> The Trust is very aware of the implications of the Human Rights legislation in cases such as this and recognises its responsibilities in these matters. Therefore where a conflict may exist it will always weigh carefully the rights of children to protection with the rights of a parent to privacy and a family life. However it views the welfare of children as the paramount consideration. In this case a professional judgment was made that to ensure adequate protection for specific children Mr Martin needed to disclose certain information.

> Every effort was made to involve Mr Martin in this process."

[7] The applicant's solicitor required the Trust to remove the applicant's name from the Trust's records and to undertake not to make disclosures about the applicant in future. The Trust refused to accede to those demands.

The applicant's grounds.

[8] The applicant's challenge is directed first of all to the decision to retain records of the allegations against the applicant and secondly to the decision to require the disclosure of the information in 2000 and thirdly to the refusal to undertake not to disclose information to third parties in future. The applicant's grounds are as follows –

> "(a) That the decision of the Trust to place and retain the applicant's name on said record system is unreasonable in the absence of any criminal conviction on the part of the applicant and/or in the absence of any hearing or determination of the evidence and/or allegations against the applicant.
>
> (b) That the decision of the Trust breaches the principle of natural justice and that the Trust has placed and retains the applicant's name in its record system in the absence of any or any fair hearing of the allegations against the applicant.
>
> (c) That the decision of the Trust to retain the applicant's name on the said record system and disclose or threaten to disclose the information contained therein to a third party in a relationship with the applicant is in breach of Article 8(1) of the European Convention on Human Rights as incorporated by the Human Rights Act 1998 as being an infringement of the applicant's right to respect for his private and family life.
>
> (d) That the recording, processing and/or use by the Trust of the information contained in the record system without the consent of the applicant is unlawful and/or in breach of the Data Protection Act 1998."

In advancing the above grounds the applicant contended that the retention and disclosure of the information had not been shown by the

respondent to be necessary. The respondent contended that its actions were necessary and during the hearing one of the issues on which attention focused was whether the materials before the court were sufficient to enable the court to be satisfied that the actions of the respondent were justified.

The legislation.

[9] The relevant legislative framework setting out the duties and responsibilities of the Trust is the Children (Northern Ireland) Order 1995. Part IV deals with support for children and their families and includes Article 18 which establishes the general duty to provide personal social services for children in need –

> "(1) It shall be the general duty of every authority (in addition to the other duties imposed by this Part) –
>
> (a) to safeguard and promote the welfare of children within its area who are in need; and
>
> (b) so far as is consistent with that duty, to promote the upbringing of such children by their families,
>
> by providing a range and level of personal social services appropriate to those children's needs.
>
> (2) For the purpose principally of facilitating its general duty under this Article, every authority shall have the specific powers and duties set out in Schedule 2."

Schedule 2 includes -

> "(1) Every authority shall take reasonable steps to identify the extent to which there are children in need within the authority's area."
>
> "5(1) Every authority shall take reasonable steps, through the provision of services under Part IV to prevent children within the authority's area suffering ill treatment or neglect."

[10] Part VI of the 1995 Order deals with the protection of children and includes Article 66 which provides under the heading "Authority's duty to investigate" that –

> "(1) Where an authority –
>
> (a) …
>
> (b) has reasonable cause to suspect that a child who lives, or is found, in the authority's area is suffering, or is likely to suffer, significant harm,
>
> the authority shall make, or cause to be made, such enquiries as it considers necessary to enable it to decide whether it should take any action to safeguard or promote the child's welfare.
>
> (7) If, on the conclusion of any inquiries or review made under this Article, the authority decides not to apply for an emergency protection order, a child assessment order, a care order or a supervision order the authority shall-
>
> (a) consider whether it would be appropriate to review the case at a later date; and
>
> (b) if the authority decides that it would be, determine the date on which the review is to begin.
>
> (8) Where, as a result of complying with this Article, an authority concludes that it should take action to safeguard or promote the child's welfare the authority shall take that action (so far as it is both within the power of the authority and reasonably practicable for it to do so)."

[11] Included in the statutory scheme is the particular requirement that social services should decide whether to take action to safeguard a child's welfare where there is "reasonable cause to suspect" that the child is "likely to suffer significant harm".

Private and family life.

[12] The applicant asserts that the retention and disclosure of this information constitutes a breach of Article 8 of the European Convention on Human Rights and Fundamental Freedoms.

Article 8 provides –

> "(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> (2) There shall be no inference by a public authority with the existence of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[13] It is not in dispute that the retention of this information affects the right to respect for the private life of the applicant and that the disclosure of this information affects the right to respect for the private and family life of the applicant. Accordingly the actions of the Trust in retaining and disclosing the information require justification under Article 8(2) of the Convention. This requires that such interference as has occurred is shown first of all to be in accordance with the law and secondly to be necessary in a democratic society for one or more of the permitted aims, which in the present case are the prevention of disorder or crime or the protection of the rights and freedoms of others.

Legality.

[14] As to the first limb of justification the applicant objects that the retention and disclosure of the information is not in accordance with the law. The Data Protection Act 1998 made new provision for the regulation of the processing of information relating to individuals including the obtaining, holding, issue and disclosure of such information. The present information is "sensitive personal data" for the purposes of Section 2 of the 1998 Act in that it consists of information as to the alleged commission by the applicant of an offence. Schedule 1 sets out the data protection principles and the first principle requires that personal data be processed fairly and lawfully and in particular shall not be processed unless at least one of the conditions in

Schedule 2 is met and in the case of sensitive personal data at least one of the conditions in Schedule 3 is also met. The relevant condition in Schedule 2 is contained in paragraph 5(b) and the relevant condition in Schedule 3 is contained in paragraph 7(b) whereby in each case it must be established that the processing is "necessary" for the exercise of any functions conferred on any person by or under an enactment.

[15] The applicant submits that the processing of this information by its retention and disclosure is not "necessary" for the exercise of the Trust's functions conferred by the Children (Northern Ireland) Order 1995. The requirement that the retention and disclosure should be "necessary" also arises under the second limb of justification under Article 8(2) of the Convention and necessity will be considered below.

In addition the respondent relied on paragraph 3 of Schedule 3 where the processing of the data is necessary to protect the vital interests of another and the consent of the subject cannot reasonably be expected or has been unreasonably withheld. I would not be satisfied that this condition could be relied on in the circumstances if the respondent failed to establish that the processing was necessary for the exercise of the respondent's statutory functions.

However section 29 contains exemptions in respect of personal data processed for the purposes of the prevention or detection of crime where the operation of the provisions would otherwise prejudice such purposes. I am satisfied that the processing of the data in the present case falls within the exemption and is in compliance with the domestic legislation and satisfies the requirement of legality.

Proportionality.

[16] The second limb of justification introduces the concept of proportionality. The court should ask itself whether -

> "(i) the (legislative) objective is sufficiently important to justify limiting a fundamental right;
>
> (ii) the measures designed to meet the (legislative) objective are rationally connected to it;
>
> (iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective."

Lord Clyde in de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands & Housing [1999] 1 AC 69 as adopted by the House of Lords in R (Daly) v Secretary of State for the Home Department [2001] 2 AC 532 and R v A [2001] 2 WLR 1546 and R v Shayler [2002] 2 All ER 477.

[17] The first matter concerns a sufficiently important objective. Article 8 sets out the legitimate aims in relation to private and family life which include the prevention of crime and the protection of the rights of others. In the present case the objective is the protection of specific children from abuse. It is not in issue in the present proceedings that that is indeed the objective of the Trust and it clearly constitutes an important legitimate aim.

Secondly the measures must be rationally connected to the objective. The measures must be rational, fair and not arbitrary. In the present case the particular measure is the retention and disclosure of information to a specified person as the primary carer of the specific children so that she will be alert to the risk. The means adopted by the Trust are clearly focussed on the objective and are rational and not arbitrary. The fairness of the measures is a wider aspect of the balancing exercise to be conducted.

Thirdly the means must not be more than necessary. There should be minimal interference with the Convention right and a fair balance between the objective and the effect of the measure. This exercise involves a balance between the public interest in the prevention of a crime and the protection of children and the private interest in respect for an individual's private and family life.

Judicial Review of police policy on disclosure of convictions.

[18] The issue has been addressed by the courts in various contexts both before and since the commencement of the Human Rights Act 1998.
R v Chief Constable of the North Wales Police ex parte AB [1999] QB 396. concerned a judicial review of the policy of the police to make disclosure of the identity of convicted paedophiles to the owner of a caravan site where they were resident. At first instance Lord Bingham CJ accepted three principles –

(1) There is a general presumption that information of this nature should not be disclosed.

(2) There is a strong public interest in ensuring that police are able to disclose information about offenders where that is necessary for the prevention or detection of a crime or for the protection of young or other vulnerable people.

(3) Each case should be considered carefully on its particular facts assessing the risk posed by the individual offender; the vulnerability of those who may be at risk; and the impact of disclosure on the offender.

[19] On appeal Lord Woolf MR noted the competing interests that arose in such cases. The offender should not have the opportunity to reoffend; the position of the offender cannot be ignored; there is a danger of driving offenders underground so that agencies cannot maintain suitable supervision.

The court's approach was to confirm that each case must be judged on its own facts. Before making a decision the police would need as much information as could reasonably practicably be obtained in the circumstances and information from the subject of the possible disclosure would be valuable in assessing the risk. The court stated a basic test for disclosure which has been applied in the following cases (at page 428B) –

"Disclosure should only be made when there is a pressing need for that disclosure."

Judicial Review of disclosure by social services of allegations against an applicant..

[20] R v Local Authority and Police Authority in the Midlands ex parte LM [2000] 1 FLR 612 was closer to the facts of the present case in that it involved disclosure by police and social services of allegations of sexual abuse. The applicant owned a company which had a contract to transport school children. There had been allegations of sexual abuse against the applicant but he had not been prosecuted. The applicant applied for judicial review of the refusal of police and social services to undertake not to make disclosures of the allegations to a local authority with which the applicant's company sought a contract. The court allowed the application and quashed the decisions of the police and the social services on the ground that they had not approached the issues on the correct basis. Dyson J referred to the guiding principles of the exercise of the power to disclose as set out in ex parte AB as follows (at page 622) –

> "Each of the respondent authorities has to consider the case on its own facts. A blanket approach was impermissible. Having regard to the sensitivity of the issues raised by the allegations of sexual impropriety made against LM disclosure should only be made if there is a `pressing need'. Disclosure should be the exception, and the not the rule. This is because the consequences of disclosure of such information for the subject of the allegations can be very damaging indeed."

[21] Dyson J then stated that what was required was that the police and the social services examine the facts and carry out the exercise of balancing the public interest in the need to protect children against the need to safeguard the right of an individual to a private life. He identified three particular factors to be considered –

(1) The belief of the authority as to the truth of the allegation. The spectrum of cases will include at one end cases where the person has been

convicted of a criminal offence and at the other end where the authority conclude that there was no substance in the allegation.

(2) The interest of the third party in obtaining the information. Again the spectrum of cases will include at one end local authorities with a statutory responsibility for the protection of children and at the other end members of the public whose only interest is the exposure of those whom they consider to be child sex abusers. Even with disclosure to a local authority some assessment is required of the level and quality of access to children of the person concerned.

(3) The degree of risk posed by the person if disclosure is not made. The aspects mentioned above are also applicable in relation to this factor.

[22] In ex parte LM it was found that the police position was that all allegations of child sex abuse should be disclosed whenever the subject of the allegations was likely to come into contact with children because all allegations of sex abuse are a cause for concern and the welfare of children is paramount. It was found that the police had adopted a blanket policy which was not acceptable. Social services proposed to disclose the information to another local authority without any indication that an assessment had been made of the particular facts of the case and on the basis that the other local authority would carry out its own investigations and again this was found not to be the correct approach.

The court considered that arguments based on Article 8 largely overlap with arguments on irrationality. The burden on a respondent was stated to be that "if a decision to disclose is to survive scrutiny by the court for irrationality, substantial justification is required." (page 625) The court has to be persuaded that there is "real and cogent evidence of a pressing need for disclosure". Neither the police nor the social services had placed material before the court that demonstrated such a pressing need for disclosure.

Judicial Review of a disclosure decision concerning a risk to specific children.

[23] Re S (Sexual Abuse Allegations – Local Authority Response) [2001] 2 FLR 776 related to circumstances where the concern has been for specific children. The applicant had been acquitted of charges of sexual abuse of a young girl and when he formed a relationship with a new partner who had two young daughters the local authority where he lived and another local authority for the area to which the claimant and his new partner and children intended to move proposed to disclose information about the claimant. The application for judicial review of the decisions of the two authorities on the basis that they had not applied their statutory duties correctly was dismissed. Scott-Baker J concluded –

(a) The statutory test (under Article 66 of the 1995 Order) identifies the critical question as whether the authority "have reasonable cause to suspect" a child is likely to suffer significant harm. The need to establish facts on the balance of probabilities has no place in the exercise by an authority of it various protective responsibilities under the Children Act 1989 (being in similar terms to the 1995Order). [Paragraph 34.]

(b) An acquittal on criminal charges for sexual abuse does not absolve the authority from protective responsibilities to children and a view may still be formed which is adverse to the acquitted person (or non prosecuted person). [Paragraph 37.]

(c) The question was – were the defendants justified in concluding they had reasonable cause to suspect a child in their area was likely to suffer significant harm? Were the decisions unreasonable in the Wednesbury sense (Associated Provincial Picture Houses Limited v Wednesbury Corporation [1948] 1 KB 223). [Paragraph 42.]

(d) The Human Rights Act 1998 added little to the conventional test. Having referred to Article 8 it was stated that the social workers have to conduct a balancing exercise both in domestic law and under the European Convention.

(e) The authority's assessments and actions are of a nature where a wide margin of appreciation has to be given to the interpretation of Article 8(2) of the Convention. [Paragraph 55.]

(f) References were made to ex parte AB and ex parte LM that included setting out the pressing need test of Lord Wolff and the three considerations outlined by Dyson J.

[24] In Re S the court was satisfied that there was reasonable cause to suspect the likelihood of harm to specific children. The authority had made a close examination of the criminal process and the court made a close examination of their analysis. The authority carried out a balancing exercise between the public interest and the need to protect children and the private interest in the need to safeguard respect for private and family life. The court was satisfied that each of the authorities had conducted the appropriate balancing exercise. Further the response of the authorities was justified by the pressing need test in that disclosure of the information was sufficient to meet the risk and there was no information passed on which was not justified by the pressing need for disclosure.

Applications for disclosure in family proceedings.

[25] The disclosure issue has arisen in family proceedings where an application may be made to the court for the disclosure of information that has emerged in the course of those family proceedings. Re C (Sexual Abuse – Disclosure to Landlords) [2002] EWHC 234 (Fam). The police and Social Services applied for permission to disclose findings of sexual abuse made in care proceedings to housing associations and private landlords to whom the respondent might in future apply for accommodation. The court granted permission for disclosure to the housing associations but refused permission for disclosure to private landlords. Here was a case where there was no finding of sexual abuse to the criminal standard of proof as in ex parte AB but there was a finding of sexual abuse to the civil standard of proof and where relevant considerations included the maintenance of confidentiality in children's cases and the importance of encouraging frankness in children's cases. Bodey J gave detailed consideration to the factors favouring disclosure and the factors against disclosure. He approved disclosure to the housing association taking account of the three considerations outlined by Dyson J in ex parte LM; he was satisfied that there was real and cogent evidence of a pressing need for disclosure; he was satisfied that limited disclosure was necessary to achieve the legitimate aim in that it would be acceptably controlled by the identified officers of the housing association. In refusing disclosure to future housing associations or private landlords Bodey J was influenced by the greater difficulties of controlling the information if more widely released and he concluded that the balancing exercise of need and harm fell against such extended and more open ended disclosure and he concluded that there was no pressing need for such disclosure.

[26] Re L(Disclosure to Third Party) [2002] NIFam 24 considered an application by a Trust for leave to release to the child protection unit of specified social services, two medical reports and a statement that included sexual abuse by a father, as agreed and found to be proved in family proceedings. Gillen J conducted the balancing exercise which included taking into account the interests of specific children who were living with the offender who had admitted sexual abuse of another child in his care as well as the public interest in encouraging frankness by maintaining confidentiality in family proceedings. It was ordered that disclosure should take place on the clear understanding that no further disclosure should take place beyond that permitted by the order.

Intensity of review.

[27] In the present case the respondent was reluctant to furnish details in relation to the allegations made against the applicant and in relation to the balancing exercise undertaken. In general it may be said that when a

Convention right has been engaged and a public authority is required to justify interference with a Convention right there is now a greater intensity of review than was formerly the case. The cases referred to above demonstrate that on the issue of disclosure of the type of information with which this case is involved there has in any event been a significant intensity of review of such decisions by the courts under the domestic law ground based on irrationality. However the heightened intensity of review, whether in domestic law or under the Convention, will in turn require the public authority to provide to the court such materials as are sufficient to enable the court to complete the appropriate review. Greater intensity of review may require consideration of a greater quantity of materials than would otherwise be the case.

[28] The general movement to greater intensity of review was outlined by Lord Steyn in R (Daly) v Home Secretary [2001] 2 AC 532 at paragraph 27 and 28. First there was the traditional Wednesbury ground of review based on relevant considerations and rationality (Associated Provincial Picture Houses Limited v Wednesbury Corporation [1948] 1 KB 223). Then there was heightened scrutiny in relation to human rights matters (R v The Ministry of Defence ex parte Smith [1996] QB 517. Then the heightened scrutiny was found not to be sufficient in human rights cases as it did not equate to the approach of proportionality in addressing legitimate aim and proportionate response. Smith and Grady v United Kingdom [2000] 29 EHRR 493. Any greater intensity of review would involve a shift to a merits review and that goes beyond the role of the courts in such matters.

[29] In dealing with the third level of intensity of review Lord Steyn set out two general matters in relation to the proportionality approach (at para. 27) –

> "First, the doctrine of proportionality may require the reviewing court to assess the balance which the decision-maker has struck, not merely whether it is within the range of rational or reasonable decision. Secondly, the proportionality test may go further than the traditional grounds of review in as much as it may require attention to be directed to the relative weight accorded to interests and considerations."

[30] This topic was revisited by the House of Lords in R v Shayler [2002] 2 All ER 477. At para [33] Lord Bingham stated that with any application for judicial review alleging violation of a Convention right the court will now conduct a much more rigorous and intrusive review than was once thought to be permissible. Similarly Lord Hope at para [75] referred to the greater intensity of review available under the proportionality approach to issues relating to alleged breaches of Convention rights -

> "A close and penetrating examination of the factual justification for the restriction is needed if the fundamental rights enshrined in the Convention are to remain practical and effective for everyone who wishes to exercise them."

The Respondent's justification.

[31] Initially the applicant provided limited material in relation to the allegations against the applicant and in relation to the assessment of that information by the Trust and the balancing exercise undertaken by the Trust. Indeed while the respondent's replying affidavit indicated that the Trust must weigh carefully the rights of any child to protection against the rights of any individual to privacy and family life the affidavit also stated that in childcare practice it was "commonplace" to tell or warn a partner if child protection issues were involved. The Trust's approach was to emphasise that a wide discretionary area of judgment was required to be extended to the Trust as the primary decision-maker and that to require a greater detail in relation to the primary decision would place an undue burden on the Trust. That a wide discretionary area of judgment should be accorded to the primary decision-maker on issues of this nature is not in doubt. But when a public authority has to justify actions which would otherwise be a breach of Convention rights a discretionary of judgment does not absolve that public authority from placing before the court such material as would enable the court to be satisfied that the ingredients of justification have been established. Proportionality may require the court to assess the balance which the decision-maker has struck and the court must be in possession of material that deals with the factors contributing to the balancing exercise. Proportionality may require attention to be directed to the relative weight accorded to interests and considerations and the court must know the nature of and the decision-maker's assessment of those interests and considerations. To do so is not to engage in a merits review but to bring the appropriate scrutiny to the decision making process, while recognising that the primary decision has been accorded to another.
Had the material before the court remained as it was when the hearing commenced I would not have been satisfied that the respondent had established that in the particular circumstances of the present case the disclosure of information was justified.

[32] However the respondent furnished further material in relation to the disclosure decision and I review the justification for the respondent's disclosure in the light of that additional material. That additional material comprised particulars of the 1996 allegations; particulars of a 1997 case conference which considered social services' response to the allegations in dealing with the applicant's children; particulars of a 1998 review when the

applicant's children were removed from the protection register, particulars of the 2000 assessment when the applicant took up residence with his new partner and her children. In assessing the matter by reference to the three considerations outlined by Dyson J in ex parte LM the position is as follows –

(1) The belief of the authority as to the truth of the allegation. In the present case there was no criminal conviction and there was no finding in civil proceedings but there was reasonable cause to suspect the children were likely to suffer significant harm. The social worker involved at the time of the allegations stated that she was not prepared to dismiss the allegations as having no foundation and the senior social worker who made the decision on disclosure noted that placing the applicant's children on the child protection register was an indicator that the allegations had been taken seriously and she was not aware of any basis on which the allegations could be discounted.

(2) The interests of the third party in obtaining the information. The information is being disclosed to the primary carer. That person's interest will be to seek to enhance the level of protection for the children. That interest is clearly at the end of the spectrum which is directed to protection of the children. In the present case there would have been direct contact with the specific children as the applicant would have been resident with the children and liable to have had regular contact which inevitably would have been unsupervised from time to time and would have involved young children who were vulnerable as having already come to the attention of Social Services.

(3) The degree of risk posed by the person if disclosure is not made. The social worker who was originally involved with the applicant's family assessed the risk to the children from the applicant as low. There had been doubts about the credibility and motivation of the complainants and an assessment as to the seriousness of the allegations based on the age difference between the applicant and the complainants as being only 2-3 years. The applicant's wife and his new partner had not considered that he was a risk and similar concerns had not emerged since the original allegations although the applicant had maintained contact with his children.

Conclusion.

[33] The respondent had reasonable cause to suspect that the applicant's new partner's children would be likely to suffer significant harm and had grounds to conclude that action was required to safeguard the childrens' welfare. An assessment was made based on the facts and circumstances of the particular case. A pressing need for disclosure was established. A balance of the considerations affecting the applicant's interests and the public interest was carried out. While the respondent referred to disclosure being commonplace I am satisfied from a consideration of all the materials in the

case that there was no blanket policy of disclosure in operation, nor was there any absence of regard for the requirement to establish a pressing need in the particular case. Further the measure adopted of requiring disclosure to the new partner reflected no more than was necessary in the circumstances. In addition the respondent involved the applicant in the exercise by requesting his attendance with social services to explain the proposed action and to involve the applicant in the actual disclosure to the new partner. In all of this the respondent has a significant discretionary area of judgment.
Accordingly the respondent has provided substantial justification for its actions both for the purposes of Article 8, and had it been a specific ground of challenge, for the purposes of irrationality.

[34] In so far as the exemption under section 29 of the Data Protection Act 1998 may not apply to the applicant's case (and at paragraph [15] above I have found that it does apply) I am satisfied that the actions of the respondent were equally necessary for the purposes of the exercise by the respondent of its statutory functions as required by the schedules to the 1998 Act.

[35] As far as the future is concerned the considerations that led to disclosure in 2000 may apply again and the respondent remains entitled to retain its records and to judge any future action in accordance with the test of pressing need and the factors discussed above as they apply to the facts as they then exist in the particular case at that time.

[36] The applicant's grounds are set out at paragraph [8] above –

Under (a) the applicant claims that it was unreasonable of the respondent to retain the record of allegations in the absence of any conviction or any hearing or determination. As appears above the statutory test is whether the respondent has "reasonable cause to suspect" the risk to the children and that does not require a finding in criminal or civil proceedings or to the standard in such proceedings. When the allegations were made there was an investigation and the applicant's version of events was ascertained and the respondent decided that action was to be taken in relation to the relevant children at that time. It was not unreasonable for the respondent to retain the information to enable it to carry out its functions in future.

When the matter re-emerged in 2000 the respondent revisited the earlier inquiries and interviewed the social worker then involved and reassessed the position before making a determination in the circumstances then prevailing. Given the finding that the respondent was justified in making disclosure of the information, the respondent's decision to retain the information clearly cannot be considered unreasonable.

Under (b) the applicant claims procedural impropriety in that the information was retained without a fair hearing of the allegations.

The duty to act fairly and reasonably in making such decisions is illustrated by R v Norfolk County Council, ex parte M [1989] 2All ER 359. Allegations were made against M and at a social services case conference it was decided to enter M's name on a child abuse register and he was notified of that fact, but not that his employer had been informed. The decision was quashed on the basis of unfair procedures and Wednesbury unreasonableness. The case conference had failed to make an assessment of the validity of the complaint and had given M no warning of its intentions and held no prior consultation and had put secret pressure on the employer.

However in the present case there was an investigation involving the applicant and social services were entitled to be satisfied that there were grounds for reasonable suspicion although no proceedings were undertaken. As the respondent remained entitled to act on reasonable suspicion, having carried out the appropriate balancing exercise in such circumstances as later prevailed, it cannot be considered to be unfair that the information obtained in the initial investigation be retained.

Under (c) the applicant claims that retention and disclosure of the information was in breach of Article 8. For the reasons set out above the respondent has justified the retention and disclosure of the information.

Under (d) the applicant claims that the processing of the information without the applicant's consent was unlawful and in breach of the 1998 Act. As appears from the discussion above neither the balancing exercise between public and private interests nor the operation of the relevant provisions of the 1998 Act depend on the applicant's consent.

[37] For the reasons set out above the applicant's grounds are rejected and the application is dismissed.