

THE QUEEN
On the Application of SHARON SHOESMITH

- v -

(1) OFSTED

(2) SECRETARY OF STATE FOR CHILDREN SCHOOLS AND FAMILIES

(3) LONDON BOROUGH OF HARINGEY

Judge's remarks on handing down judgment

- 1. The judgment I will be handing down shortly is the judgment in the applications for judicial review brought by Ms Sharon Shoemith against Ofsted, the Secretary of State for Children Schools and Families and the London Borough of Haringey.**

- 2. As will be well known, the background to this case was the tragic death of Peter Connelly ('Baby P' as he is often referred to) in August 2007 at a time when he had been on the Child Protection Register within Haringey for approximately 8 months. After the convictions on 11 November 2008 of those responsible for the injuries that led to his death who had contested the criminal trial, the Secretary of State announced the following day that he was asking Ofsted to conduct an urgent inspection into the child safeguarding arrangements in Haringey. The fieldwork part of the inspection took place the following week, the report was drafted during the week after that and presented to the Secretary of State formally on 1 December 2008, although he saw a final draft on the evening of 30 November. In consequence of the conclusion of Ofsted that the arrangements within Haringey (those arrangements including the healthcare services and the police) were "inadequate" the Secretary of State decided to replace the Claimant, who was the Director of Children and Young People's Services (the 'DCS') and her Deputy with two named individuals as he was entitled to do under a particular provision of the Education Act 1996 which, by a subsequent Act, applies to a child services authority. The Claimant's contract of employment was with Haringey and very shortly after the Secretary of State's decision Haringey suspended the Claimant, then dismissed her summarily with no compensation and confirmed that decision following an internal appeals procedure.**

- 3. The Claimant has brought these proceedings to challenge the fairness of the process by which the Ofsted inspection was carried out and the report was prepared, the Secretary of State's decision and the decision of Haringey to dismiss her. So far as Haringey is concerned, she has also commenced Employment Tribunal proceedings which are "on hold" pending the outcome of these applications.**
- 4. As anyone who has followed this case will know, the course it has followed has been very unusual. The hearing before me took place in early October last year and on 5 November I indicated informally to Counsel that I would be ready to hand down judgment in the case on Friday, 13 November. The following day I was informed by the Treasury Solicitor on behalf of Ofsted that documents had been discovered which it was felt ought to have been taken into account in the preparation of Ofsted's case. As will be well known, as a result of that and the subsequent disclosure of many documents, the outcome of this case has been delayed very substantially. I have received extensive written submissions from the parties on the implications of the documents thus disclosed. That process finally ran its course on 18 March and on the following day I indicated to the parties that I had reserved my judgment again. Because of the delays in the case and its obvious interest, not least to the Claimant who has brought the proceedings, I have given priority over the last month to producing the final judgment. That has involved consideration of all the new material and a significant revisitation of the material that I was presented with in the Autumn.**
- 5. The draft judgment was available for proof-reading by Counsel early this week and I should like to express my appreciation to Mr James Maurici, Mr Tim Ward, Mr Clive Sheldon and, in the absence of Ms Ingrid Simler QC, Mr David Burn of Haringey for performing the proof-reading task at short notice and in a very short space of time. I take full responsibility for any errors that may appear in the judgment that is handed down.**
- 6. I am also grateful to all the teams for maintaining the obligation of confidentiality that I imposed upon them during the last few days.**
- 7. The judgment is far longer than I intended when I embarked upon writing it and it runs about 200 pages. A summary has been prepared which I hope will assist those who may be interested in finding the essential conclusions. I do, however, emphasise as strongly as I can**

that the judgment should be read as a whole and the full extent of the reasoning that has led me to those conclusions can be obtained only by reading it in its entirety. I am not so naïve as to believe that everyone who is interested in this case, or who has some view or preconceived notion of what it is about, will read the judgment in full, but it (and the summary plus these remarks) will be on the Judiciary website (<http://www.judiciary.gov.uk/>) from the moment I complete what I have to say and thus will be available for anyone with access to the Internet to see. I do hope that some commentators at least will take the trouble to read it in full.

8. I say this for two reasons: first, there may be some misconceptions about what I am required to decide in this case. The judgment makes it very clear that there is a very narrow focus to the issues that I am required to consider. That focus relates to a review of the fairness or otherwise of the procedures adopted by Ofsted, the Secretary of State and Haringey – the focus is not on the merits of the decisions made, nor upon whether the Ofsted inspectors were correct in their assessment of Haringey at the time, nor on whether the final form of the report was unfairly strengthened during the report writing stage. Equally, it is not a judgment which decides whether the Claimant is or is not entitled to compensation for the loss of her job. All these things, and more, need to be understood to put the judgment in its proper context. Second, although there is a narrow focus to what I have had to decide, there are one or two wider implications that may impact on child safeguarding arrangements more generally. Those implications derive from what might be termed loosely the “security of tenure” of someone who becomes the DCS of a particular area. The evidence in the case suggests that this is a pivotal role in securing what any decent citizen would want to see, namely, the best child protection system that can be devised. There are, so far as I can judge, some difficult issues that arise in that general context which I touch upon in the judgment. I merely express the hope that some mature and measured consideration is given to those matters.
9. Having used the expression “mature and measured consideration” once, I propose to use it again. Whilst the parties are aware of the decision I have made and have copies of the judgment I will be handing down shortly, they will have had a limited time in which to consider its implications. Doubtless each will wish to comment once the judgment is handed down and that is, of course, entirely acceptable and understandable. However, whilst

the result of the case is clear, the consequences, in my view, require careful consideration and I shall be encouraging the parties to take stock and not rush back to court on consequential applications. I shall be extending the time for doing that so that there is no obligation to come back quickly.

- 10. For that reason, I had been intending in any event not to require the attendance of any of the parties' Counsel today. However, it has emerged that each is heavily engaged in other litigation today and one, on the news I last received, is still stranded abroad because of the recent air travel restrictions. So those combined factors explain the absence of any parties or their representatives in court today.**
- 11. I do not want to extend these few words by adding yet another layer of verbiage to the judgment (which I hope will speak for itself) and the summary (which is only a summary, but I hope gives a sufficient immediate flavour for what the judgment contains). However, in a few sentences I will try to set out in very foreshortened form the essence of what I have concluded.**
- 12. The recent background in the case has been the late disclosure of material by Ofsted. It has caused me (and would have caused any judge who sits in the Administrative Court) very considerable concern. Judges who sit in that court depend upon public bodies to comply with what, in legal circles, is called the obligation of candour. The court, which has a huge workload, would rapidly grind to a halt if this obligation was not complied with properly on a regular basis. Ofsted undoubtedly failed in this regard initially. However, they have endeavoured to put it right and, as I said at the time the whole issue arose, they and their legal team behaved perfectly properly and correctly by bringing the matter to my attention. For the reasons I have given in Appendix 2 to the judgment, I am still not happy that I have received a full explanation for the initial failings and I indicate that I am proposing to take the matter up personally with the Treasury Solicitor. However, I have to proceed on the basis the obligation has now been complied with and, unless there is still something undisclosed, my appraisal of the documents and the evidence now available is that the Claimant has not been disadvantaged by any breach of the obligation of candour by Ofsted.**
- 13. So far as the other "headlines" of the case are concerned, my conclusion has been that, on the evidence as deployed before me, I can find no sustainable basis for the**

suggestion that there was political or other improper interference in the Ofsted inspection or the report-writing process by or on behalf of the Secretary of State. Had there been any such interference, it would have put a very different complexion on the case.

- 14. I have rejected as “too simplistic” the suggestion that the Secretary of State’s decision to commission the Ofsted inspection was driven by “party politics”, as indeed I have also rejected the suggestion that he was improperly influenced in making the decision he did on 1 December 2008 by a petition presented to him a few days previously by a national newspaper.**

- 15. Turning to the more central matter of fairness, in the procedural sense, of the processes adopted, I have accepted Ofsted’s essential case that the purpose of their inspection was to inspect the overall functioning of child safeguarding in Haringey at the time and that it did not involve an inquiry into the specific roles or conduct of the Claimant or any other individual. The Ofsted team did not see itself as, nor was it, conducting some kind of disciplinary investigation into the Claimant or others who worked at Haringey. Their obligation was no more than to produce a *bona fide* and open-minded report. That would include discussing matters with the Claimant and others as the inspection proceeded and, save in one quite important respect, the evidence has satisfied me that they did do so. That one important respect would not, for the reasons I give in the judgment, have made any difference to the outcome, but it remains an important matter. There is overwhelming evidence that the circumstances of the inspection, rushed as it was and in the full media spotlight, was far from ideal both from the point of view of the inspectors and those at Haringey trying to co-operate with the inspection. Indeed there are strong grounds for thinking that the Claimant and others whose roles might be questioned did not have a full, fair and measured opportunity to put over their position about their own personal responsibility for what was found. But that did not invalidate what Ofsted did.**

- 16. Since it is not my task on a judicial review application to examine the merits of what occurred, I have not been asked to review the merits of the inspection to see if the conclusions reached during it were justified, nor have I considered whether the report in due course produced fairly reflected the findings made “on the ground” in Haringey.**

- 17. For those reasons, very shortly expressed, I have concluded that Ofsted met its obligation of “fairness” in the process adopted. I do have some reservations (which are reflected in the judgment) about things said about the Claimant “behind closed doors” which then found their way into what the Secretary of State said later, to which I will refer shortly, but I do not think that those matters invalidated what Ofsted did.**
- 18. When the Secretary of State was presented with the Ofsted report he had clear material upon which to issue such direction as he thought appropriate under the relevant part of the Education Act to which I have referred. It has not been part of the case presented to me that what he did was beyond his powers. What is said is that it was unfair of him effectively to replace the Claimant without having given her an opportunity to make representations about her personal responsibility for the position with Haringey.**
- 19. My conclusion on this issue, in a nutshell, was that he was entitled to assume (as was in fact the case) that Ofsted would discuss any matters giving rise to the possibility of adverse comment about the general arrangements with the Claimant and others at Haringey and to that extent she (and they) would have had an opportunity to influence what was in the report. On that basis, and given that his decisions were being made in the context of widespread concerns about child safeguarding, not just in Haringey (where there were about 200 children on the child protection register at the time) but more widely, he was entitled to place the issue of fairness to individuals much lower in the scale than would normally be the case where someone’s job is on the line. That does not mean that fairness to individuals should be ignored completely, but how fairness is achieved in any situation is, on well-established legal authorities, very much dependant on the circumstances. My conclusion is that, in the particular circumstances of this case, fairness was achieved, albeit by no means at the level normally to be expected where a disciplinary or similar process was being pursued.**
- 20. Having concluded that, and thus concluded that the Secretary of State’s decision on 1 December cannot be impugned on the ground of unfairness, I do express some misgivings about things said at the subsequent press conference concerning the Claimant (and indeed others) because she (and they) had not had a proper opportunity to refute what was to be said. Those matters are highlighted in the summary of the judgment: they do reflect upon the Claimant’s professional competence and personal responsibility for what occurred at Haringey**

and, for the reasons I give in the judgment, she did not have a fair opportunity to respond to those matters. I have been unable to conclude that this would have made any difference to the Secretary of State's decision, but it is right that I should draw attention to them.

- 21. I am also concerned that the Secretary of State was persuaded to offer his opinion at the Press Conference that the Claimant should be dismissed without compensation. That, as he said himself, was a matter for Haringey and it was wrong to give support to that position no matter how strongly some people might have felt about it. Not merely was it a matter for Haringey, but there are some quite complex legal and practical issues that required mature reflection.**
- 22. However, notwithstanding those matters, I have not been persuaded that I can declare the Secretary of State's decision unlawful because it was made against the background of an unfair procedure. Had I been wrong in concluding that fairness had been achieved, I have been forced to conclude (somewhat reluctantly, because it is not a very attractive proposition) that, even if the Claimant had made further representations to him, it would have made no difference to the outcome in the circumstances.**
- 23. So far as Haringey is concerned, I have reached the conclusion (albeit for different reasons from those advanced before me) that the best place for the determining whether the Claimant has been treated unfairly by Haringey in her dismissal is in the Employment Tribunal. The advantage of that procedure over judicial review is that the Employment Tribunal can look at the wider merits of the case, including the procedural aspect. On judicial review, the court is confined to looking at the procedure. Should my decision in this (or indeed any other regard) be the subject of appeal, I have, for the benefit of the Court of Appeal, set out my views about the procedure adopted by Haringey. I emphasise in the judgment that these views are not binding on the Employment Tribunal and are not designed to influence the outcome of those proceedings if they are continued.**
- 24. In a nutshell, I have not been satisfied that the procedures at Haringey gave the appearance of fairness. Comments were made on behalf of the Council in the immediate aftermath of the Secretary of State's decision on 1 December that gave the appearance that the outcome of any disciplinary process was a foregone conclusion and**

that, not merely would the Claimant be dismissed, but that she would be dismissed without compensation. I recognise that there were many people calling for that to happen at the time and doubtless many people still hold the view that that is the appropriate decision. They are, of course, entitled to their opinion, but it may well be an opinion not based on a full appreciation of the true background and the legal issues. There is, therefore, another side to that argument and, as I have indicated, the legal position is difficult. There is the wider concern of who will undertake the role of DCS if someone can be removed in these circumstances without a proper and an obviously fair process. That could potentially impact on the whole structure of the child safeguarding arrangements throughout the country which everyone, whatever their views about this particular case, must regard as extremely important. As I observe in the judgment, unless those who become involved in these procedures take particular care to act, and be seen to act, with scrupulous fairness “fair process according to law will simply be subverted by the political or media pressures of the moment.” That cannot be so.

- 25. In very short summary, those are my conclusions. They will result, in the formal sense, in the dismissal of the Claimant’s applications. As may be appreciated, they do raise rather more issues than just that consequence and it is for that reason that I am inviting the parties to give careful consideration to the implications before taking any further steps in this litigation.**
- 26. I shall extend the time for making any consequent applications generally, with permission to apply. I cannot dictate, but my hope is that no party will feel the need to make any application to me until at least 28 days has elapsed from today. If that hope is realised I will arrange to contact all parties at the expiration of that period to see whether any further intervention on my part is required. In due course, an order giving effect to today’s decision and any consequential matters will be drawn up.**
- 27. I should like to take this public opportunity of thanking all Counsel for their considerable assistance in a very difficult case. I may not have agreed with all of the submissions they put before me, but a considerable amount of industry and learning went into each of them and I am very grateful for that.**