



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

RULING OF THE ADMINISTRATIVE COURT ON CONSEQUENTIAL MATTERS
FOLLOWING THE JUDGMENT HANDED DOWN ON 23 APRIL 2010

THE HON. MR. JUSTICE FOSKETT

Introduction

1. I handed down the judgment in the substantive proceedings on 23 April. The oral hearing took place between 7-12 October 2009 but, as will be well known, judgment had to be delayed because of the emergence of documentation from Ofsted that had not been revealed as part of its duty of candour. Further written submissions were made by the parties once the disclosure process had run its course, those submissions concluding on 18 March.

2. When I handed down the judgment, I said this (see my Speaking Note published on the Judiciary website, www.judiciary.gov.uk):

" ... 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."

3. Having summarised the conclusions contained in the substantive judgment, I concluded my observations when handing down the judgment in this way:

"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.

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."

4. As will also be well known, I raised with the Treasury Solicitor my concerns about the disclosure process in the case arising from Ofsted's case and the correspondence concerning that was also published on the Judiciary website.

5. Subsequently, on 14 June, I invited the parties to indicate within 14 days whether they had further applications to make consequent upon the judgment. In summary, it was in due course intimated to me that the Claimant would be seeking payment of the costs associated with investigating and making submissions on the further disclosure by Ofsted on an indemnity basis (see the order of 15 December 2009), that she would be seeking costs orders in her favour against certain of the parties and that she would be seeking permission to appeal. Each Defendant intimated that it would seek an order for costs against the Claimant and each, without any invitation to do so (see paragraphs 42-43 below), gave reasons for resisting the Claimant's application for permission to appeal.

6. All parties have asked me to deal with the issues thus arising "on paper" without any oral hearing. I have been content to do so since I have "lived" with this case for a good number of months, but I wanted further information about the amount of costs being sought by the Defendants before being prepared to consider these applications. Relevant information has been provided and the final letter copied to me on the issues that have arisen was sent on 30 July.

7. I have now had an opportunity to consider these various matters and this document contains my ruling on them. I shall be asking the Claimant's advisers to produce in due course a comprehensive order that reflects the various decisions and directions I have given, including the extension of time mentioned when the judgment was handed down.

A. COSTS

An agreed issue

8. It has been agreed by Ofsted that the costs payable to the Claimant under paragraph 9 of the order of 15 December 2009 should be paid on an indemnity basis and, accordingly, any detailed assessment of those costs if they are not agreed will be on that basis and I order accordingly. I understand also that costs were incurred by the Claimant's legal team in responding to the media application in which copies of the additional documents disclosed by Ofsted were supplied to members of the media. For the avoidance of doubt, Ofsted should pay those costs on an indemnity basis.

Another (unarguable) issue

9. The claims for costs made against the Claimant by the Secretary of State and by Haringey include sums referable to each of those parties considering the further disclosure made by Ofsted and the formulation of submissions associated with that disclosure. Irrespective of any other order that I might make, I cannot see upon what basis it would be fair to make any order against the Claimant in relation to those costs, and, accordingly, I propose to leave them out of account whatever other order I may decide to make.

The competing contentions on costs up to the end of the trial

10. I will summarise without comment at this stage the competing positions taken by the parties on costs:

(a) The Claimant and the Secretary of State

The Claimant submits that the correct order in relation to the Secretary of State is "no order as to costs. The Secretary of State claims from her just short of £138,000 as the costs to the end of the trial.

(b) The Claimant and Ofsted

The Claimant submits that Ofsted should pay 50% of her costs up to the end of trial (presumably, 50% of her costs against Ofsted) or, alternatively, that there should be no order as to costs. Ofsted submits that it should receive its costs (said to be just over £115,000) up to the end of the trial or, alternatively, that there should be no order as to costs.

(c) The Claimant and Haringey

The Claimant submits that Haringey should pay her two-thirds of her costs - presumably two-thirds of her costs as against Haringey. Haringey seeks an order for costs against the Claimant of in the region of £88,500 (although there is some VAT to be added to some elements within that figure).

11. The figures mentioned are, of course, figures that have not been the subject of "assessment" by a Costs Judge. It is well known within the legal profession that, following an assessment on a standard basis, a costs bill is usually reduced to between 60 and 70% of the sum claimed: hourly rates may be challenged, the number of hours spent may be considered excessive and so on. I am proposing to treat a figure of 66% of the sum claimed by each of the Defendants to the end of the trial as the realistic amount they could achieve, assuming a full costs order in their favour, following an assessment on a standard basis.

The arguments

12. I will not extend this Ruling by setting out in detail the arguments advanced in support of these competing contentions. I have attached to the Ruling the written submissions made to me (though not every item of correspondence), the submissions of the Secretary of State being made in a letter from the Treasury Solicitor dated 28 June, which is also attached.

13. The position taken by each Defendant, broadly speaking, is that the Claimant has "lost" the case and, accordingly, she should pay the costs of each Defendant, those costs running in total to several hundred thousand pounds. Whilst I did not mention the question of costs expressly in the observations I made when I handed down the judgment, I should have thought it was plain from the first of the two paragraphs noted in paragraph 3 above that I did not see this as a plain case where the Claimant could be said to have "lost" in the usually accepted sense of that term and, accordingly, I invited the parties "to give careful consideration to the implications before taking any further steps in this litigation". The only steps left in the litigation for each Defendant was to apply for costs. Apart from conceding

the matter to which I have referred in paragraph 8 above, no party has made even a marginal concession in the Claimant's favour on the issue of costs notwithstanding the fact that I was very critical of significant features of each Defendant's case. Plainly, those are factors I will have to take into account in deciding what order, or orders, to make.

Some general factors

14. There are two general propositions that have informed my approach to the issues raised:

(a) Whilst in "ordinary" civil litigation between two parties, the starting point is that the unsuccessful party pays the successful party's costs, the court has a very wide discretion to order differently if the justice of the situation requires a different order: see CPR, r. 44.3. The starting point is frequently modified.

(b) However, whilst the same starting point applies in judicial review proceedings, as the Court of Appeal said clearly in *R (Corner House Research) v Secretary of State for Trade and Industry* [2005] 1WLR 2600, there are differences between "ordinary" civil litigation and judicial review (or public law) cases such that the approach to the incidence of costs "will not necessarily be identical". This distinction derives largely from the fact that there is in such cases often a wider public interest in the elucidation of public law principles in addition to the interests of the particular individual parties. The observations of the Court of Appeal were made in the context of an application made by the Claimants in that case for a "protective costs order". Although I have not had the benefit of submissions on the point, there is, in my judgment, no reason not to have regard to the general factor identified by the Court of Appeal at the conclusion of a substantive case in appropriate situations: the principle remains as valid at that juncture as it does at any other time.

15. The Claimant in this case brought her claim because she was aggrieved at the way she was treated: see paragraph 32 of the judgment. To that extent, there was plainly a substantial personal interest in bringing the proceedings. Whilst I did not feel able to uphold her claims in law, (a) there were a number of areas in which I expressed the view that she had not been treated with the "fairness" often expected by the law and (b) the area of law is a difficult one (see further paragraph 45 below) and, for the reasons given in the judgment, extremely important. Focusing for this purpose solely on the role of the DCS, it is (as indicated in the judgment) a pivotal role in child protection arrangements within local areas throughout the

country. An obvious area of concern, given the manner of the Claimant's removal from her position in such a high profile way, is the issue of who would be prepared to take on such a pivotal role without effective legal protection of his or her contractual position and reputation. Bringing this claim has highlighted a problem area of the law in a sensitive and important context and it is unfortunate that the Claimant's professional organisation was not at the time able to fund her claim: it is the kind of claim that merits support of that nature and the position, I understand, has now been changed although it cannot affect the Claimant's personal position. Whether my judgment elucidates the area of law is for others to judge, but there has been a significant public interest in having the issues ventilated – not just from the point of view of those who hold the position of DCS (and other equivalent or similar positions in local government), but from the point of view of the Secretary of State, Ofsted and local authorities generally, including Haringey. The financial burden of bringing issues such as this into relief should not, in my view, be shouldered by one individual. Whilst the Claimant may well have brought this claim largely to seek vindication of her own personal position, the process has involved the bringing into focus of important issues and this, it seems to me, is a significant factor for me to take into account in assessing the applications made by the Defendants.

16. Furthermore, it does not seem to me that the Claimant can be criticised for proceeding against each party as a defendant. Indeed none of the defendants has taken any point about this. However, it is necessary to put this consideration into context. Often parties other than the “obvious” defendant are introduced as Interested Parties in judicial review proceedings. Notwithstanding this the practice tends to be to restrict the costs that an unsuccessful Claimant may have to pay overall: see Fordham, *Judicial Review Handbook*, 5th edition, paragraph 18.1.7. In this case there were discrete claims to be made against each defendant even though the actions of each were closely entwined with the actions of the others. Equally, perhaps to some extent with the wisdom of hindsight (although it might have been anticipated by her advisers), it was to the obvious advantage of the Claimant to have all these parties before the court and subject to the obligation of candour. But for that I am not convinced that all the potentially relevant parts of the story would have been told. For example, but for the disclosure by the Secretary of State, no-one would have known what was said by Ms Gilbert and Ms Brown to the then Secretary of State on the morning of 1 December (see paragraphs 291-293 of the judgment). Whilst I have not been able to reflect my criticism of that episode in any remedy in law for the Claimant, it helps inform the events of the press conference later

that day about which I ventured further criticisms (see paragraphs 303 and 398 of the judgment). Another example is afforded by the revelation in Ofsted's post-trial disclosure of the changes made to the draft report concerning the Climbié Inquiry recommendations at the behest of the then Leader of the Council in the presence of the Chief Executive (see paragraphs 297-298). I characterised this as "unfair", not merely to the Claimant, but to others in the managerial team. Equally, but for the Ofsted disclosure, the fact that Haringey was arguably seeking evidence to support its own disciplinary proceedings against the Claimant and others would not have been revealed (see paragraphs 343-346 of the judgment).

17. Finally, when looking at the general position in this case, there is no doubt at all that a great deal of evidential material was thrown in the direction of the Claimant's case in (literally) the days approaching the hearing before me in October last year. Lengthy letters written to each of the defendants by the Claimant's solicitors on 6 October (the day before the hearing commenced) articulated the issues very clearly. I will highlight the following:

(i) Secretary of State's case

Whilst no extensive new material was disclosed shortly before the hearing, the revelation referred to in paragraph 179 of the judgment emerged only when Ms Pugh's second witness statement was received by the Claimant's solicitors at shortly before 16:00 on 2 October.

(ii) Ofsted's case

Four new witness statements were provided on 1 October, two of them after 18:00 hours that day.

(iii) Haringey's case

Two witness statements, one from Mr Young and one from Dr O'Donovan (dealing in some considerable detail with the circumstances of the Ofsted inspection and the preparations for it), were served on 1 October.

Each defendant asserts that the late delivery of this material arose from the late delivery of the Claimant's own substantial substantive witness statement on 18 September. However, it is quite plain that that statement was delayed significantly by the delays in supplying the evidence (and, to some extent, the disclosure) on the part of the various defendants, principally on the part of the Secretary of State, at an earlier stage.

18. What, of course, is known now (which was not known at the time of the hearing) is that a very large amount of potentially relevant documentation within Ofsted's control had not been revealed and/or taken into account in the preparation and presentation of its case. In the light of those subsequent events, I am bound to say that the letter from the Treasury Solicitor dated 2 October (the Friday before the hearing commenced on the following Wednesday), explaining the delay in providing its Skeleton Argument and evidence in reply, makes pretty hollow reading.

19. It is, of course, not known what the Claimant's attitude to the proceedings would have been had all this material been available a good while in advance of the hearing. Some of the disclosure might have given her cause for thinking that her case was stronger. Some, assessed by reference to the normal approach in judicial review proceedings, might have taken her in the other direction. However, the whole purpose of the proper preparation of cases, whether in the Administrative Court or any other court, is to enable parties to take stock of their position in a measured way before the hearing of the case is due to take place. Each of the defendants in this case is a public body with the legal and other resources available to ensure that this is achieved. To the extent that it was not achieved in each of their cases is something that it would be wholly wrong for me to ignore.

The orders made

20. I should preface my conclusion on the orders that I propose to make with the well-established proposition that it will be inevitable that I will have to take a broad view of the position in order to reach an appropriate conclusion. Given that all parties wish me to deal with the matters on paper and none has advanced an argument in which a closely-defined issues-based order is sought, I have endeavoured to stand back from the details and look at the general picture, balancing the relevant considerations found in rule 44.3 of the CPR, in order to do broad justice to the situation.

(i) The Claimant and the Secretary of State

21. Given the approach referred to in paragraph 11 above, I regard £92,000 (66% of £138,000) as the maximum amount the Secretary of State could obtain following an assessment of costs on the standard basis. However, looking at the matter overall, it seems to me that the Secretary of State has benefited most from the public airing of the legal issues involved. I will not rehearse the reasons in detail, but the effect of my judgment is that his

recourse to section 497A of the Education Act 1996 was vindicated and that, where his judgment was that urgent steps were necessary to reassure the public generally - and those in the particular area of Haringey - about child protection arrangements, fairness to the individuals affected by his decision could be placed lower in the scale than might otherwise be the case. If that broad analysis of the legal position prevails, the Secretary of State and his successors have benefited significantly from the judgment. As I have said, I consider it would be grossly unfair for the Secretary of State to benefit from that overall conclusion at the expense of a private individual who, unfortunately, was not fully supported financially by her professional organisation.

22. To that extent, and painting with a very broad brush, I would say that any order for costs that, in principle, might be awarded in the Secretary of State's favour should be reduced by one-half to reflect the benefit he has achieved on the back of a claim brought by an individual. In other words, the maximum recovery in principle should be £46,000.

23. However, that is not the end of the story. Whilst there is, on the material presented to me, no criticism to be made of the Secretary of State in relation to the duty of candour and disclosure, there was late evidence in the case. Indeed there had been an adverse costs order against the Secretary of State made by another judge before the hearing before me and yet, notwithstanding that, a further statement from Ms Pugh was served shortly before the hearing revealing something of importance (namely, that if Ofsted considered that it was precluded from giving feedback to those affected at Haringey, that reflected a misunderstanding). The preponderance of the evidence suggests that the somewhat frenetic production of evidence shortly before the hearing commenced found its origins in delays in the preparation of the Secretary of State's case. When assessing the conduct of the litigation, that cannot be ignored.

24. In addition to that, I do not think I can ignore the fact that the manner in which the Claimant's removal from her position took place, the comments made about her publicly at the press conference on 1 December 2008 and the effective encouragement of Haringey by the Secretary of State to dismiss her without compensation contributed to the impetus for this litigation from the Claimant's perspective: when someone perceives that he or she has been treated unfairly by those in power, so much the greater is the desire for redress and vindication. In many respects this is an unusual case, but it seems to me to be wholly unreal

for me to ignore that kind of factor in the overall analysis of what drove the need for this litigation.

25. I do not accept the argument advanced by Mr Maurici that this is a case where there should be no order as to costs as between the Claimant and the Secretary of State. Whilst I have indicated the factors that, in my view, militate against the Secretary of State's position on costs, it cannot be ignored that the Claimant (a) has not secured the formal relief she was seeking and (b) has made a number of suggestions, including that the Secretary of State's decision was driven by party politics, which I have rejected.

26. Doing the best I can to reflect these various factors, I propose to order the Claimant to pay £25,000 (to include VAT) towards the Secretary of State's costs.

(ii) **The Claimant and Ofsted**

27. At a time when I was having to consider whether I should order cross-examination of certain witnesses, and when the costs consequences of such a course were in issue, I ventured this thought:

"Unless I am asked to consider some kind of cost-capping order, I am not at this stage prepared to pre-judge my overall discretion as to costs when that issue comes to be addressed save to say that, as things stand, it will come as no surprise to the parties that, irrespective of the outcome of these proceedings, I may need some persuading that Ofsted should be the beneficiary of any positive order for costs in its favour from any other party in the proceedings. However, all that is for another day if the issue arises."

28. Given that Ofsted now seeks a substantive order for costs against the Claimant, that other day has now presented itself.

29. The view I expressed was, of course, provisional in a number of respects and, as Mr Ward and Mr Lask submit correctly, I had not at that stage obtained a full appreciation of the impact of the additional disclosure. That wider picture did become available thereafter and it is, of course, something to be considered now on the question of costs.

30. It is argued that the subsequent disclosure did not have any material impact on the outcome. That seems to me to be too simplistic an approach. I accept that, having taken everything into account, I was unable to accept that the claim against Ofsted succeeded. However, there were aspects of the subsequent disclosure that, potentially at any rate, strengthened the case advanced by the Claimant that inadequate opportunity was given during

the inspection to address points of concern. Ms Brown's description of the circumstances in which the inspection took place, composed only days after it had ended, was very revealing. It was not disclosed originally. It might have had an impact on the outcome. In fact it did not, but that is not the point. The way in which the final version of the report came into existence was relevant. Not to the question of whether the report was "beefed-up" but to the issue of the opportunity given during the inspection process for points of concern to be addressed by those (including the Claimant) who might be affected by its outcome. I did conclude that one very sensitive (and potentially emotive) part of the report, dealing with the recommendations of the Victoria Climbié Inquiry, was not adequately ventilated during the inspection process. That is a separate matter from that referred to in paragraph 16 above, albeit to some extent related to it. Again, it was my judgment that it made no difference to the outcome of the case. But again, that is not the point.

31. All litigation is conducted on the basis that there is full, fair and relevant disclosure. That finds its reflection in the judicial review setting in the obligation of candour. I need not set out the history of all of this in this Ruling: it appears in the judgment, particularly in Appendix 2.

32. The obligation of candour was, by whatever fault-lines operated, signally not honoured by Ofsted in this case. The correspondence between me and the Treasury Solicitor reveals an acceptance by him that his department contributed to this failing. That was an appropriate position for him to take in the light of the investigation carried out by Mr Philip Havers QC. However, I would observe that the advice given by the "seconded lawyer" to Ofsted, on two separate occasions towards the beginning of the process, about what the obligation of candour involved was proper, accurate and unambiguous. It was plainly not heeded, or was overlooked, by members of the Ofsted team thereafter.

33. It is entirely open to a court to deprive a party of costs that it might otherwise be entitled to receive because of its conduct within the litigation. There are many examples in the reported cases. In my judgment, this is a paradigm case for doing so.

34. There will be no order as to costs as between the Claimant and Ofsted. For the avoidance of any doubt, I should emphasise that I would have taken this step and reached this conclusion even had the Claimant been supported financially by her professional organisation.

(iii) The Claimant and Haringey

35. It is correct to say, as Ms Simler QC submits in her written submissions on costs, that the effect of my judgment was to dismiss the Claimant's claim against Haringey and to hold that the place where her grievances against Haringey ought to be ventilated is the Employment Tribunal. However, I reached this position by a different process of reasoning from that deployed by Haringey. It had said that there was no "public" element in the Claimant's position, thus depriving her of a judicial review remedy, whereas I held that there was such a "public" element, but held that the Employment Tribunal also existed as an avenue for redress, and that it ought to be regarded as the "first port of call". On that basis I declined to grant her the relief she was seeking. I did, however, indicate my views on the substance of her case against Haringey in case there was an appeal against my decision.

36. It seems to me that the result of the argument between the Claimant and Haringey on this particular issue is "costs-neutral" and I do not see that either is justified in claiming costs against the other on that issue. That is a factor I shall bear in mind in deciding what order, if any, to make overall.

37. Other factors that are relevant to the issue of costs between the Claimant and Haringey in the sense of militating against Haringey's position are (a) the late submission of material evidence (see paragraph 17(iii) above) and (b) a failure on Haringey's part to disclose, as part of its duty of candour, the last-minute change to the draft report to which I referred in paragraph 16 above. (I am less persuaded about the significance of the report of Mr Fallon to which Mr Maurici refers in his written submissions.) Those considerations are more likely to militate against a costs order (or a full costs order) in favour of Haringey, rather than resulting in Haringey having to pay something towards the Claimant's costs. However, there is a matter which, in my judgment, does justify a modest payment by Haringey towards the Claimant's costs.

38. Although Haringey's case was that the Employment Tribunal was the only venue for the airing of the Claimant's grievances, a fair part of the case deployed before me was devoted to endeavouring to demonstrate that the procedure adopted following 1 December 2008 was fair. Whilst I endeavoured to express my views on this issue with some circumspection given the possibility of further proceedings taking place before the Employment Tribunal (see paragraphs 517-532 of the judgment), it was, I am sure, plain to everyone that I was not satisfied that the procedures adopted by Haringey at this time gave

the appearance of fairness and that, had I felt it my role to do so, I would have granted relief in relation to Haringey's decision. If one has to talk in terms of "wins" or "losses", the Claimant "won" on this issue and Haringey "lost". It is open to a court to make an issues-based costs order irrespective of the overall outcome of a case against a party. Given my conclusions on this part of the argument, I see no reason why the Claimant should not receive something to recompense her for, in effect, winning on the issue.

39. I believe I have been told that her professional organisation was prepared to make a lump-sum payment of £50,000 to fund her case up to the conclusion of the hearing in October last year. I do not know whether her legal team have looked to her for additional fees, but for present purposes I will assume that the total amount the legal team can charge her (subject, of course, to the order for costs in her favour dealing with Ofsted's additional disclosure) is £50,000 (a very modest figure when compared with the sums claimed by each of the other parties). If so, she would not have been able to claim more than that against the other parties if she had been successful.

40. Again, doing the best I can on the "broad-brush" approach to which I have referred previously, I think that Haringey should pay the Claimant £10,000 (inclusive of VAT) to reflect her "victory" and their loss on this issue.

B. PERMISSION TO APPEAL

41. The Claimant invites me to grant her permission to appeal. The grounds upon which I may do so are set out in rule 52.3(6) of the CPR as follows:

"Permission to appeal may be given only where-

- (a) the court considers that the appeal would have a real prospect of success; or
- (b) there is some other compelling reason why the appeal should be heard."

42. There is one preliminary observation I wish to make before indicating my rulings on the applications. An application such as this is ordinarily seen as an application made by the losing party to the judge, a process in which the victorious party is not normally invited to take part. It can safely be assumed that in the majority of cases the victorious party would prefer that permission to appeal is not given. The practice in the Court of Appeal (reflected in paragraphs 4.15-4.16 of the Practice Direction) tends to be that the intervention of the

respondent to an application for permission to appeal is “by invitation only”. I believe that general approach is the approach adopted by judges at first instance.

43. Against that background, I was surprised that each defendant felt entitled, without any invitation from me to contribute to the debate, to make submissions on the issue even before the application had been made to me in a formal sense. Each has submitted that the relevant test has not been satisfied. I may be forgiven for observing that had I found for the Claimant and they had each sought permission to appeal, they might well have protested at any attempt by the Claimant to intervene in the argument. At all events, I intend to deal with this matter, as I always do, simply on the basis of the test set out in the relevant rule, to which I have referred above, in the light of the arguments that the Claimant would propose to advance to the Court of Appeal if permission was granted.

44. Although the test in the rule is expressed as an “either/or” test, it is not always easy to apply it in that way. Nonetheless, I can express my conclusion relatively shortly.

45. For reasons which will be clear from the judgment, I consider that the legal relationship between the Secretary of State (who has the statutory power to intervene in a local authority’s affairs pursuant to section 497) and the local authority as the employer of someone who can effectively be removed from his or her employment, is an extremely difficult area. There seems to be no very clear direct authority on how the role of each is carried out in the kind of circumstances that prevailed in this case and which could prevail in other situations. As I have said, the issue has arisen in this case in the highly important area of the protection of vulnerable children who may be the victims of physical abuse, but it could easily arise in other circumstances too.

46. There is, in my view, a wider public interest than merely the interest arising from the circumstances of this case for a considered judgment of the Court of Appeal, reflecting on the authorities to which my attention was drawn, so as to provide an authoritative focus in this difficult area.

47. That would result in granting permission to appeal, certainly against my conclusions in relation to the Secretary of State and Haringey, on the second of the two grounds provided for in rule 52.3(6). However, I would, I think, draw back from granting permission myself on this basis if I thought that there was no reasonable prospect of the appeal succeeding on its merits.

48. As to that issue, so far as the Secretary of State is concerned, I have concluded that a lower threshold of fairness to an individual in the Claimant's position was justified than would normally be required because of the context in which his decision under section 497 was made. Whilst I believe I am right in this conclusion, it would be quite wrong for me to take the view that there is not a perfectly respectable argument that the threshold should have been higher than that which I regarded as appropriate. It is a matter upon which views may reasonably differ and I consider that it is by no means fanciful that the Court of Appeal may differ from my view.

49. So far as the principal issue between the Claimant and Haringey is concerned, this is very much a legal issue and depends on the interpretation and application of well-established authorities in the particular context of the position of a DCS. Again, it is an area where views on the legal conclusions to be drawn could differ and, whilst in one sense this is no more than a reflection of the broader public interest ground to which I have already referred, I do think the test for granting permission to appeal on the second limb of rule 52.3(6) is met also.

50. I would, therefore, grant permission to appeal against my decisions concerning the Secretary of State and Haringey on both limbs of rule 52.3(6).

51. The position of Ofsted is not, however, so straightforward. Ofsted was chosen by the Secretary of State to conduct the relevant investigation in this case. Whilst that may have represented the "obvious" choice of investigator in the particular circumstances, it is not necessarily the choice that would be made on every occasion and in every circumstance. If Ofsted will not always be the investigative link between the Secretary of State and the relevant local authority in a situation such as that presented in this case, then I am not sure it would be appropriate to grant permission to appeal on limb (b) of rule 52.3(6).

52. As to the merits of a possible appeal in this particular case (which engages limb (a)), I have concluded in the judgment that the Ofsted inspectors were merely performing what they were set to do by the Secretary of State, within the time limits imposed, and that the process adopted involved sufficient opportunity for those, such as the Claimant, who may be affected by the outcome, to put forward their views. Those conclusions were essentially factual conclusions and, unless it be suggested that there was no evidence to support my findings of fact (which I do not think is the suggestion), I do not think that there is a realistic prospect of appealing against those conclusions. My factual findings as to Ofsted's involvement will be available for consideration by the Court of Appeal. The more important issue is whether the

Secretary of State was entitled to rely on this process as effectively discharging his obligation of fairness to the Claimant. That issue seems to me to be one capable of being argued in the Court of Appeal without Ofsted's involvement as a party.

53. For those reasons, I do not consider that the tests set out in rule 52.3(6) are met in Ofsted's case. If the Claimant pursues her appeal against the Secretary of State and Haringey, but wishes to appeal against the decision in relation to Ofsted, she will have to seek the permission of the Court of Appeal to do so.

Conclusion

54. I believe that all appropriate consequential decisions have now been made. I would ask Mr Maurici to draw up, with a view to agreement between the parties, a comprehensive order giving effect to the judgment handed down on 23 April, the extension of time granted to all parties for the consequential applications, the costs orders and the decisions on the applications for permission to appeal. When an agreed order is available, if I approve it, I will initial it. I will invite submission of the agreed form of order (or an indication of difficulties over agreeing it if that should occur) by **4:00pm on Monday 20 September**.