Neutral Citation Number: [2010] EWHC 2423 (Fam)

Case No: FD02P01268

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
(In Private)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 September 2010

Before :

MR JUSTICE MUNBY
(now LORD JUSTICE MUNBY)

- -

In the Matter of RB (Adult)

Between :

A LONDON BOROUGH	**Claimant**
- and -	
(1) RB (by her litigation friend the Official Solicitor)	
(2) MF	**Defendants**

- -
- -

Ms Nicola Greaney (instructed by the London Borough) lodged written submissions on behalf of the Claimant
Ms Angela Hodes (instructed by the Official Solicitor) lodged written submissions on behalf of the First Defendant
The Second Defendant appeared in person

Hearing date: 21 August 2009

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Judgment

Lord Justice Munby :

1. These are proceedings in relation to RB who was born in April 1946 and died on 7 December 2008. The Second Defendant, MF, was her partner for many, many years. It was an intense and for each of them the most important relationship of their lives. RB was English and a schoolteacher. MF is Iranian and a Professor with a doctorate in one of the exact sciences.

The proceedings: until RB's death

2. RB was diagnosed with multiple sclerosis in about 1976. Her condition gradually deteriorated. She retired early in 1990. In March 2002 she moved to the A home.

3. On 15 August 2002 the local authority began proceedings under the inherent jurisdiction, prompted apparently by concerns expressed by the A home about MF's

behaviour and his involvement with RB. The same day, 15 August 2002, the local authority applied ex parte to Johnson J who made an order forbidding MF to remove RB from the A home. That application had been supported by a witness statement from a social worker dated 14 August 2002 which alleged that MF had forbidden the staff at the A home to continue administering a drug called Baclofen which had been prescribed by RB's GP. It also insinuated, though it did not in terms explicitly allege, that MF had sexually abused RB who, it was said, was by then suffering from dementia and lacked capacity, inter alia, to consent to sexual relations with MF: "There are also concerns in respect of the sexual relationship between [RB] and her partner [MF] … There were also concerns about alleged sexual abuse". The witness statement had attached to it a letter report dated 10 July 2002 by Dr V A Watkin, a Consultant Old Age Psychiatrist, saying:

> "She is a vulnerable woman at risk of abuse if she returned home. Indeed if there are concerns about alleged sexual abuse as it is doubtful whether [she] can give true informed consent to engage in intimate relations with her partner then this needs to be addressed".

4. Subsequently there were various directions hearings (including some dealt with on paper) which I need not describe. On 17 November 2003 Johnson J made an order permitting, subject to conditions, supervised home contact between RB and MF.

5. On 10 May 2004 the case came before Bracewell J for what had been intended to be the final hearing; in the event it was adjourned to enable MF to obtain legal representation. I have transcripts of part of the proceedings and of Bracewell J's judgment, both of which I have read. Bracewell J made interim declarations as to incapacity and best interests, including declarations that RB lacked capacity in all material respects, that she should continue to reside at the B home (the placement at the A home having broken down in December 2002, according to the local authority due to MF's behaviour; RB moved to the B home in February 2003), that it was not lawful, not being in her best interests, for RB to receive intimate and/or personal care from MF and that it was not lawful, being contrary to her best interests, for any person, including MF, to engage in sexual relations with RB. The order provided for MF to visit RB at the B home and, subject to conditions, for the home contact to continue.

6. The matter came before Roderic Wood J on 4 August 2005. I have a transcript of part of the proceedings, which I have read. Roderic Wood J observed (transcript page 3) that "This issue of so far unsubstantiated allegations [of sexual abuse] is bedevilling this case." Ms Greaney, then as now appearing for the local authority, indicated (transcript page 2) that the local authority would be "happy" to include an appropriate recital in an order that these "unproven allegations" are "not relied upon … and not proceeded with."

7. On 15 November 2005, McFarlane J gave directions for a hearing to determine whether MF should have greater privacy in his contact with RB at the B home and, in particular, whether he should be permitted to shut the door to her room during contact visits. His order directed that:

> "there is to be no investigation or consideration by the Court of the issues of the administration of Baclofen to [RB] or any past allegations of sexual impropriety raised against [MF] by the [local authority]."

8. The hearing directed by McFarlane J took place before Ryder J on 4 April 2006. (I note in passing that Ryder J was the seventh judge to be involved, previous orders having been made by Hedley J and Bennett J as well as by Johnson J, Bracewell J, Roderic Wood J and McFarlane J.) I have transcripts of part of the proceedings and of Ryder J's two judgments, both of which I have read: [2006] EWHC 974 (Fam). Ryder J made a declaration by consent that it was not in RB's best interests to have Baclofen administered to her and, having heard evidence on these matters, further declared that it was in RB's best interests for MF to exercise contact with her behind closed doors at the B home but not when feeding her. The order provided for MF to apply if he sought determination of the factual allegations underlying the order made by Bracewell J on 10 May 2004 but went on to stipulate that:

> "At any hearing that is a consequence of such an application the issues of Baclofen administration and the past allegations of sexual impropriety shall not be pursued against [MF]."

9. In his first judgment, Ryder J made certain observations about MF and his relationships with carers (paras [15]-[17]) which accord entirely with my own impressions. I need not set them out.

10. In his second judgment, dealing with costs, Ryder J observed (para [23]) that in his earlier judgment he had substantially disagreed with each of the positions before him, his appraisal of the credibility of the witnesses and the circumstances not being that put forward either by the local authority or by the Official Solicitor (RB's litigation friend) or by MF.

11. On 19 September 2006, His Honour Judge Meston QC, sitting as a judge of the High Court, gave directions for the hearing of MF's application to set aside the orders made by Bracewell J on 10 May 2004. I have a transcript of the proceedings, which I have read. During the course of the hearing Ms Greaney said (transcript page 8):

> "the local authority's position has always been that we did not rely on any allegations of sexual abuse and the justification for the orders made by Mrs Justice Bracewell were simply to do with [RB]'s clinical condition and the care that she now requires, and that has always been the local authority's position … we do not rely on any allegation against [MF]. Obviously there are issues about his general behaviour."

12. That final hearing was fixed before me (the ninth judge to have been involved) for 3 July 2007. There are transcripts of most of the hearing, which I have read. Unfortunately this hearing also had to be vacated, due to the non-availability of one of the expert witnesses. I gave further directions for the final hearing. My order contained the following recitals:

> "Upon the claimant acknowledging that it does not seek and has not sought at anytime since August 2005 to advance a case against MF based upon allegations of sexual abuse of or sexual impropriety towards RB
>
> And upon the Claimant and the Official Solicitor confirming that in their view no useful purpose would be served in the Court exploring at the trial the issues of the past allegations of sexual abuse or sexual impropriety or the past administration of the drug Baclofen because these matters are not relevant to RB's current best interests as regards residence, care and contact
>
> And upon the Court deciding that neither the Claimant nor the Official Solicitor are to pursue the issues of past allegations of sexual abuse/sexual impropriety or the past administration of Baclofen
>
> And upon the Court recording that MF seeks factual determinations in relation to all the past allegations of sexual abuse/sexual impropriety or the past administration of Baclofen and permitting MF to file evidence about those matters if he so chooses."

But it went on to make clear that "It will be for the trial judge to determine how those issues are to be dealt with at the final hearing."

13. On 5 November 2007 I made a further order adjusting the timetable.

14. The matter came before Bennett J on 15 January 2008. He made an order dismissing MF's application that RB be taken home pending the final hearing (then listed for July 2008) and declared that it was in her best interests to remain until then at the B home. I have a transcript of Bennett J's judgment, which I have read: [2004] EWHC 3465 (Fam) [sic].

15. On 22 February 2008, Black J (as she then was) gave further directions. On 3 March 2008 the matter came before Sumner J. He was the eleventh judge to become involved. In addition to giving further directions, he made an order, including injunctions backed with a penal notice, regulating MF's behaviour while RB remained at the B home. On 31 March 2008 RB moved to the C home.

16. In the event there was yet further delay, the final hearing not beginning before me until 1 December 2008. Before it had finished, RB died unexpectedly on 7 December 2008. As before, Ms Greaney appeared for the local authority and Ms Hodes for the Official Solicitor. MF appeared in person.

17. The central issue for determination was whether, as the local authority and the Official Solicitor submitted, RB should continue to live and be cared for at the C home or whether, as MF wanted, she should return home to be looked after by him. Relying in particular upon the evidence of Dr Jefferys (see below), the local authority's case was that it was in RB's best interests to continue living at the C

home; that "there would be a high risk of a care package at home breaking down due to MF's non-compliance and/or interference with carers and/or health professionals and due to aggressive and/or abusive and/or unacceptable behaviour on the part of MF towards carers and health professionals" (this being particularised in a schedule); and that it would not be in RB's best interests to visit MF at home (though the contact he was currently having at the C home was in her best interests) or for MF to determine what medication she should receive or to give her personal care beyond that he was already providing. The Official Solicitor's position, as set out in his fourth and final statement dated 20 November 2008, was to essentially the same effect.

18. During the hearing I heard a substantial amount of oral evidence from a number of witnesses. I need not, in the circumstances, go through them all, though there is one matter I should mention before coming to the heart of the matter. MF wished to call three lay witnesses but the local authority and the Official Solicitor indicated that, although they did not accept their evidence in all respects, they proposed not to cross-examine them. In these circumstances I ruled that there was no need for any of them to be called to give oral evidence and that I would take their witness statements as read. In the event, and as matters turned out, nothing of great importance turned on any of this evidence and there is no need for me either to analyse it or to detail the respects in which the local authority and the Official Solicitor sought to differ from it. On the third day, 3 December 2008, I heard oral evidence from Dr Peter Jefferys and Dr Nabji Kahtan. I have a transcript of their evidence which I have re-read. Dr Jefferys is a Consultant in the Psychiatry of Old Age. In accordance with various directions given by the court he had produced ten reports, the most recent being dated 20 November 2006, 4 December 2007, 20 February 2008, 30 June 2008, 1 December 2008 (commenting on Dr Kahtan's report – see below) and 2 December 2008, all produced on the joint instructions of the local authority and the Official Solicitor. Dr Kahtan is a Consultant Forensic Psychiatrist. He produced a report dated 27 November 2008 on instructions which had been given by MF's solicitors on 25 June 2008.

19. On the next day, 4 December 2008, there was discussion on various topics before the evidence resumed. There is a transcript of this part of the proceedings, which I have re-read. I then heard evidence from MF. On 5 December 2008, although MF had not concluded his evidence, I heard evidence from Dr Michael Gross and Mr Mamode Sohewon (I have a transcript of their evidence which I have re-read) and then further evidence from MF. Dr Gross is a Consultant Neurologist. In accordance with directions given by the court, he had produced reports dated 25 April 2007, 4 September 2007, 6 February 2008 (jointly with Dr Jefferys), 2 June 2008, 10 July 2008 and 29 October 2008. Mr Sohewon is a senior charge nurse at the C home.

20. At that point (it was a Friday) I adjourned until the following Monday, 8 December 2008, when it was anticipated that MF's evidence would conclude and, with it, all the evidence in the case. However, RB died on the Sunday, 7 December 2008. In the circumstances the case could not continue on the Monday.

The proceedings: since RB's death

21. MF attended at court on 9 December 2008. I was not sitting but he spoke to the staff, indicating that he wanted the case to continue despite RB's death. On 10 December 2008 my clerk wrote on my behalf to counsel, inviting them to consider whether RB's

death caused the suit automatically to abate and, if it did not, what course they would invite me to take. In response, Ms Hodes provided me with a position statement on behalf of the Official Solicitor suggesting that the proceedings remained active until the court otherwise determined, that it was open to the court to give a judgment and make findings of fact notwithstanding that RB had died, and identifying certain matters about which, as she put it, "the Official Solicitor remains concerned."

22. On 18 December 2008, I made an order directing that MF was to file by 31 December 2008 a list of the issues he wished the court to determine, together with a copy of every document, not already filed, which he sought to rely upon. I further directed that the local authority and the Official Solicitor were to respond by 9 January 2009, indicating whether or not they agreed that the issues identified by MF should be determined by the court and identifying any further issues which they wished the court to determine.

23. On 23 December 2008, MF wrote saying that he wished to have an opportunity to cross-examine Mr Sohewon "properly", as he put it, suggesting that Mr Sohewon might have committed perjury in the course of the evidence he had given on 5 December 2008. On 25 December 2008 MF sent me a 'List of issues I am gravely concerned about.' On 9 January 2009, the Official Solicitor sent me a document containing his response to MF's list of issues and a list of further issues that he (the Official Solicitor) considered it appropriate for me to determine. On the same day the local authority sent me a document containing its response to MF's list of issues and a list of further issues that it wished me to determine.

24. On 19 March 2009 my clerk wrote to the parties on my behalf stating that I was not at that stage going to rule out any of the matters which MF wished to canvass, with the sole exception of the issue in relation to Mr Sohewon; I was not prepared to permit any further cross-examination of Mr Sohewon. The parties were told that there would be a one-day hearing on 29 April 2009 at which I would hear submissions on the various matters which had been raised. (By then both the local authority and the Official Solicitor had indicated that they did not wish to cross-examine MF any further.) I indicated that, so far as concerned the local authority and the Official Solicitor, counsel could lodge written submissions and did not need to attend the hearing.

25. In the event, the hearing was unable to proceed on 29 April 2009 due to lack of court time and had to be adjourned. The pressure of other commitments meant that, unhappily, it was not until 21 August 2009 that I was able to hear the case. Ms Greaney and Ms Hodes had lodged written submissions but did not attend. MF attended and addressed me at length. There is a transcript of what he said, which I have re-read.

26. I should record that between 23 December 2008 and 27 April 2009 I received a very large number of communications from MF, through the post or by email, setting out his concerns and complaints in considerable and often very repetitive – almost obsessive – detail. He also sent many documents, often duplicating and re-duplicating many times over what he had already filed. He provided me with further documents before and during the hearing on 21 August 2009. I need not refer to all this material in detail – I focus on the essentials – but I have had it all very much in mind.

27. I am very sorry that it has taken me so long to produce this judgment. By the time of the hearing on 21 August 2009 I had already embarked upon new commitments which proved unexpectedly onerous. RB having died, other more pressing matters had to take priority. And the fact is that because of the way in which MF has chosen to present his case – neither using the substantial trial bundles nor providing any bundle of his own and endlessly bombarding me with jumbled masses of repeatedly re-duplicated loose paper – it has taken me a disproportionate amount of time to identify, locate and analyse the key documents and to prepare this judgment, a process which has extended over many, many days.

The issues

28. I proceed to set out the various issues as they have been identified by the parties.

The issues: as raised by MF

29. The issues which concern MF are identified in his document of 25 December 2008, listed as (A) to (O). I set them out exactly as he describes them, emphasising by the use of quotation marks that the words are his, not mine: (A) "Impropriety of Ms Hodes at Court"; (B) "Mr Eckford Contribution"; (C) "False allegation of Ms Hodes"; (D) "Ms Mackintosh (representing O Solicitor) attributed false statement to [the B home]. [The B home] exposed her and N Mackintosh immediately resigned from the case"; (E) "Mr Sohewon W Statements"; (F) "The question of Ms Greaney's professional integrity and legitimacy at court"; (G) "Removal of incriminating documents from Court Bundles"; (H) "Justification for the allegation of sexual abuse and the actual sexual abuse by [the local authority] against me"; (I) "[The local authority] and Official Solicitor never ceased to relay on the accusation of sexual abuse in spite of having declared at various dates and to several Judges that they had not relied on the accusations of sexual abuse in order to impose restrictions on my contact with [RB]"; (J) "Breach of the order of Mr Justice Ryder dated 4th April 2006 as claimed by the OS and the Claimant"; (K) "The issue of Baclofen the heart of conflict"; (L) "The issue of false accusation of financial abuse, six times, by [the local authority] and the O Solicitor"; (M) "The issue of a fraudulent application made by [the local authority] to the Land Registry (Swansea Branch) in order to put a charge on our family home"; (N) "The issue of the O Solicitor having acted independently in the best interests of [RB]"; and (O) "False claim of [the local authority] supported by Care Agencies (on the pay role of [the local authority]) that I had three years of stability with a particular Care Agency".

The issues: as raised by the local authority

30. In its document sent to me on 9 January 2009 the local authority identified the following four issues which it asked me to determine: (1) "Whether it was in RB's best interests to remain resident at the C home or whether it was in her best interests to return to live with [MF]." This, it said, "will encompass findings on the issue of whether [MF] was likely to cooperate with any care package at home in light of the history of breakdown of care packages and placements in residential care homes due to [MF]'s behaviour"; (2) "Dr Jeffery's evidence and [MF]'s referral of Dr Jefferys to the GMC"; (3) [MF]'s conduct in respect of Mr Sohewon's evidence"; and (4) "The issue of [MF's Member of Parliament]". The local authority made clear in that

document its view that issue (1) "has important implications for the position on costs".

The issues: as raised by the Official Solicitor

31. In his document also sent to me on 9 January 2009 the Official Solicitor identified two further issues that he considered it appropriate for me to determine: (i) "The issue of Dr Jefferys' evidence and whether the accusations by [MF] that he was bias and unprofessional are substantiated. (This is of particular importance given [MF's] referral of Dr Jefferys to the GMC)"; and (ii) "Costs. The Official Solicitor seeks an order that his costs in the proceedings from the date of Mrs Justice Bracewell's Order of 10 May 2004 be paid by [MF]."

The issues: analysis

32. Many of the issues raised by the parties, and in particular by MF, overlap. I propose to deal with them in a more connected and, I trust, more logical and convenient order under the various headings which I set out below, cross-referring where appropriate to the issues as formulated by the parties.

33. First, however, I need to say a word about the nature of the exercise upon which, as matters have turned out, I am now embarked.

34. This is something which I initially canvassed with the parties on 4 December 2008, before RB's unexpected death: see the transcript pages 13-18. I observed (transcript page 13) that:

> "it is abundantly clear that so long as [RB] remains alive [MF] has an important part to play in her life. Precisely what that part may be is the central focus of these proceedings. But that he has a role to play is quite apparent, and nobody is disputing that … There is equally no doubt at all … that there a number of episodes in the history of this matter … which whatever their direct relevance to the fundamental issue … are matters about which [MF] feels very strongly indeed and which colour his entire thinking about this dispute, about the Official Solicitor and, more importantly, about the Local Authority … Now, whether [his] complaints are justified or not, they are so central to his way of thinking that it seems to me that they are directly impacting on his ability to work with those who in professional capacities are working for [RB], and in that sense are at least indirectly impacting upon his caring relationship with [her]. I am not at this stage able to identify … the extent to which these are matters which require to be gone into."

I added, however, that:

> "a number of these matters do require to be gone into, because unless they are gone into, and as far as the court is concerned finally laid to rest, they are going to rumble on forever and they

> are going to poison all attempts to work together collectively in [RB's] best interests."

35. I said I was "inclined to think" (transcript page 14) that there "may" be advantage in exploring "in some appropriate amount of detail, if not immense detail" (page 15) what I referred to as the sexual abuse issues, the "apology" and the Land Registry matter. I made clear to MF (page 16) that:

> "I am not conducting a general enquiry into the history of this matter … I am only contemplating exploring these issues because they do seem to me … to impact upon your caring role."

36. Within three days, however, the position had of course been transformed by RB's unexpected death. This does not mean that there is nothing for me to do. For example, justice to those who have been so stridently, indeed viciously, attacked by MF both before and after RB's death may require that I should express such views as I would have done if RB had not died. But the main reason for exploring a number of other more peripheral matters as I explained it on 4 December 2008 no longer exists. And this fundamental change in the human and forensic realities has to be taken into account in any decision as to whether, and if so to what extent, it is still appropriate for me to explore such matters.

The issues: (a) sexual abuse

37. MF makes two essential complaints. First,[1] he complains that the local authority wrongly accused him of sexually abusing RB: "[The local authority] was not justified to accuse me of sexual abuse and the actual sexual abuse did not exist." Second,[2] he complains that "[The local authority] and Official Solicitor never ceased to relay [sic] on the accusation of sexual abuse in spite of having declared at various dates and to several Judges that they had not relied on the accusations of sexual abuse in order to impose restrictions on my contact with [RB]".

38. There are in fact, as it seems to me, a number of different issues here which need to be considered separately. First, did the local authority make an allegation of sexual abuse? Second, did the local authority and/or the Official Solicitor continue to rely (and if so for how long) upon the allegation? Third, did the local authority ever apologise to MF for making the allegation and (if not) why did it assert that it had? Fourth, was the evidence available to the local authority sufficient to justify making the allegation (related to which is the more general question of whether the evidence as a whole was sufficient to justify the commencement of the proceedings)? Fifth, did sexual abuse in fact take place? I shall deal with these questions in turn.

39. Did the local authority make the allegation? The plain and simple fact, as I have already recorded, is that at the very outset of the litigation the local authority voiced concerns about possible sexual abuse. This has given rise to a number of controversies, fuelled, I have to say, by the very unfortunate manner in which the local authority has, down the years, sought to respond to MF's complaints on the

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1 Issue (H).
2 Issue (I).

topic. The first arises in this way. On 28 May 2003 the solicitors then acting for the Official Solicitor wrote a letter to the solicitors then acting for MF in the course of which they said, referring to a round table meeting the previous year:

> "the authority confirmed that the phrase 'sexual abuse' was not used in support of the application."

Unsurprisingly, that drew a response from MF's solicitors in a letter dated 4 June 2003 drawing attention to what the social worker had said in her witness statement dated 14 August 2002 and more particularly to what had been said by Dr Watkin.

40. The plain fact is that what was said at the meeting (or, to be more precise, what was said in the letter to have been said at the meeting) was simply wrong. True it is that the phrase "sexual abuse" was not used in the local authority's Part 8 Claim Form, but it appears both in the social worker's witness statement (paragraph 20, quoted above) and, as we have seen, in Dr Watkin's letter exhibited to that statement.

41. Did the local authority and/or the Official Solicitor continue to rely upon the allegation, and if so for how long? It will be recalled that this was an issue canvassed before Roderic Wood J on 4 August 2005 and again before me on 3 July 2007, as well as before McFarlane J on 15 November 2005, Ryder J on 4 April 2006 and Judge Meston on 10 September 2006. To those events need to be added three further documentary references. A letter from the local authority to MF dated 16 May 2005 refers to a meeting attended by MF on 18 December 2002 and says:

> "At that meeting the Local Authority confirmed it was prepared not to seek findings of fact in respect of possible sexual abuse as the [A home] had not provided its witness statements."

A letter from the local authority to MF dated 10 October 2006 (see further below) says:

> "the Local Authority is prepared to acknowledge it has not been able to substantiate the allegation made that you sexually abused [RB] … the Local Authority has repeatedly made it clear to you that the allegations are not being pursued"

A letter from the local authority to MF dated 3 November 2006 refers to a meeting attended by MF on 4 October 2006 and says:

> "At that meeting, you were advised that as at 10 May 2004 the Local Authority had agreed not to pursue the allegations of possible sexual abuse against you, but that the Local Authority proceeded with and obtained the order dated 10 May 2004 on the basis of other outstanding concerns regarding [RB's] care and your concerning behaviour".

42. Pulling all the threads of this together the sequence of relevant events would seem to be as follows:

i) 15 August 2002: The local authority issued proceedings raising concerns about alleged sexual abuse.

ii) 18 December 2002: The local authority told MF that "it was prepared not to seek findings of fact in respect of possible sexual abuse" because it had not been provided with the relevant witness statements by the A home.

iii) 10 May 2004: The relief sought by the local authority from Bracewell J was *not* founded on any allegations of sexual abuse (see what Ms Greaney said to Judge Meston on 19 September 2006 and what was said by the local authority in its letter of 3 November 2006 in relation to the meeting on 4 October 2006).

iv) 4 August 2005: Ms Greaney told Roderic Wood J that the local authority would be "happy" to include an appropriate recital in an order that these "unproven allegations" are "not relied upon … and not proceeded with."

v) 15 November 2005: The order made by McFarlane J directed that "there is to be no investigation or consideration by the Court of … any past allegations of sexual impropriety."

vi) 4 April 2006: The order made by Ryder J contained a similar direction.

vii) 10 October 2006: The local authority acknowledged that it had not been able to substantiate the allegation.

viii) 3 July 2007: The order I made included a recital of "the [local authority] acknowledging that it does not seek and has not sought at anytime since August 2005 to advance a case against [MF] based upon allegations of sexual abuse of or sexual impropriety towards RB."

43. Reduced to essentials, therefore, the position would appear to be that the local authority had realised as early as December 2002 that it lacked the evidence to establish any case of sexual abuse (a position it reiterated in October 2006), that by May 2004 the allegations were no longer being relied upon by the local authority and that in August 2005 it acknowledged in court that the allegations were "unproven" and were not going to be relied upon or proceeded with. For his part the Official Solicitor has not relied upon the allegations since the hearing before McFarlane J.

44. It may be that this is said with the benefit of hindsight but I cannot help thinking that MF would have been spared much anguish, and the local authority, the Official Solicitor and the court much trouble, if the local authority, even if it was not prepared to withdraw the allegations, had been willing at a much earlier stage to write to MF saying in terms that it could not substantiate the allegations and that it was not going to pursue them, just as it is unfortunate that the reference in my order of 3 July 2007 was to August 2005 rather than to some date *prior* to the hearing on 10 May 2004.

45. Did the local authority ever apologise to MF for making the allegation? This issue, which, quite needlessly, has done much to exacerbate matters, arises in this way. On 10 October 2006 a senior solicitor in the local authority's Community Division wrote to MF the letter which I have already referred to and which, so far as material on this point, contained the following passages:

> "the Local Authority is prepared to acknowledge it has not been able to substantiate the allegation made that you sexually abused [RB]. It is understood that it is a matter of distress to yourself that the Local Authority did not seek findings of fact about the issue of sexual abuse. However, the Local Authority has repeatedly made it clear to you that the allegations are not being pursued. That remains the position … the Local Authority will not be entering into any settlement with you."

That position was re-iterated in the letter from the local authority to MF dated 3 November 2006 to which I have already referred in a different context. In addition to quoting the relevant passage from the letter of 10 October 2006 it said:

> "It is not correct that at the meeting on 4 October 2006, [the Assistant Director] admitted "that the accusation of rape put against you was a despicable lie all along."
>
> At that meeting, you were advised that as at 10 May 2004 the Local Authority had agreed not to pursue the allegations of possible sexual abuse against you, but that the Local Authority proceeded with and obtained the order dated 10 May 2004 on the basis of other outstanding concerns regarding [RB's] care and your concerning behaviour".

Copies of both these letters were exhibited to a witness statement by a social worker dated 20 December 2006 which contains this illuminating passage:

> "at the directions hearing on 19 September 2006 Judge Meston QC suggested that a form of apology to [MF] may go some way to resolving [MF's] outstanding concerns. Following a meeting … on 4 October 2006, an apology was offered by letter dated 10 October 2006. Despite this apology, [MF] maintains he should receive a financial settlement from the Local Authority."

46. On 12 December 2006, MF's Member of Parliament wrote to the local authority on his behalf raising a different matter. It was passed to the solicitor who had written the letter to MF on 10 October 2006. On 9 February 2007 she wrote a memorandum for the local authority's Director of Corporate Governance in which she said:

> "the LA decided not to pursue findings of fact that [MF] had possibly sexually abused his ex partner due to a lack of evidence … [MF] wants £ from the LA for "alleging sex abuse against him without the evidential basis". We have sent an apology letter but state that we will not be paying any £."

47. On 2 May 2007 the local authority's Director of Corporate Governance wrote a letter to the MP in which he quoted this memorandum, including the key passage:

> "We have sent an apology letter but state that we will not be paying any money."

48. At the hearing on 3 July 2007, I was taken to this letter (though not to the letter of 10 October 2006, which was not in the bundle). The first of the transcripts of that hearing (transcript page 2) records MF addressing me on the question of whether, as it had told the MP it had done, the local authority had in fact ever written a letter to MF apologising for having made allegations of sexual abuse against him. I asked Miss Greaney about this. The following dialogue ensued (transcript page 5):

> "MR JUSTICE MUNBY … the letter that was written to the Member of Parliament itself refers to an apology letter.
>
> MISS GREANEY Yes.
>
> MR JUSTICE MUNBY [MF] says he never had it.
>
> MISS GREANEY I have seen such a letter. As I understand it, it is not in the bundle. My solicitor sitting behind me does not have a copy of it in the particular file. But, there was such a letter sent."

49. The MP wrote to the local authority again on 9 October 2007. The Director of Corporate Governance replied on 12 November 2007 saying:

> "[MF] has misunderstood my previous correspondence which did not proffer an apology in the terms he now represents."

50. On 15 November 2007 solicitors acting for MF wrote to the local authority's Director of Corporate Governance, referring to the local authority's letter to the MP dated 2 May 2007 and to what had been said at the hearing on 3 July 2007. It went on:

> "Our client is bemused by this as he is not aware of ever having received any apology, written or otherwise, from the Borough … We should be grateful therefore if you could supply as with a copy of that letter by return."

On 30 November 2007, having received neither reply nor acknowledgement to that letter, MF's solicitor wrote again (the letter was sent by fax):

> "May we please now have a copy of the Borough's letter of apology without further delay, failing which we will have to assume that no written apology has ever been made, despite what has been said to [the MP] and to the court."

51. That letter seems to have crossed in the post with a letter which the Head of Legal in the local authority's Corporate Governance Directorate had written to MF's solicitors on 26 November 2007 (but which did not reach them until 30 November 2007). It enclosed copies of the letters to the MP dated 2 May 2007 and 12 November 2007, repeated that MF had misunderstood the previous correspondence "which did not proffer an apology in the terms [he] now represents" and concluded:

> "There is no further letter of apology further to the letter referred to and dated 2 May 2007."

52. Unsurprisingly, MF's solicitor was puzzled by this response. Later on 30 November 2007 he sent an email to the local authority's Head of Legal. Having set out the key passages in the letters of 2 May 2007 and 26 November 2007 he continued:

> "I am finding these two statements impossible to reconcile … Am I right in thinking that when the Borough wrote to [the MP] on 2 May the apology that was referred to was in fact that very letter and that no apology letter had been sent to our client? … If I understand correctly what you are now saying it appears that both [the MP] and Mr Justice Munby have been misled; if so the position must be corrected as soon as possible. Furthermore, our client will then expect to receive the letter of apology which he has never yet received."

He followed that up with a further email on 5 December 2007:

> "The issue is really quite simple: the Borough has told [the MP] and the Court that it has apologised to [MF]. If this is correct, then supplying me with a copy of that apology should be straightforward. If, however, no apology has ever been sent, then my client should surely be entitled to an explanation of why [the MP] and the Court have been misled and apologies should be given to both by the Borough."

53. On 7 December 2007 a principal lawyer in the local authority's Community Division replied on behalf of the Head of Legal by email. Attached to the email was a copy of the letter of 10 October 2006. The email said this:

> "[MF] was not sent a letter of apology and at no point during the recent court hearing on 5th November 2007 did counsel for the local authority say that a letter of apology existed … As explained recently, your client has misunderstood [the letter of 2 May 2007]. There was no letter of apology as such, rather the Local Authority had not substantiated the allegations of sexual abuse by seeking findings within the proceedings and that it was acknowledged that thus may have caused [MF] some distress."

54. His solicitor's response, emailed to MF the same afternoon, was pungent:

> "Words fail me. Either they are stupid or they think we are. [She] refers to a hearing on 5 November; my letter referred to the hearing on 3 July. As for the letter to [the MP], their explanation is pathetic. How can they say that we have misunderstood the words "We have sent an apology letter." That statement is simply a lie and it appears that they may have lied to Munby as well. I think that perhaps the best way forward is via your MP, who should demand an explanation of why the Borough has lied to him."

55. MF's solicitor emailed the local authority again on 14 December 2007:

> "There are two points to make on your email:
>
> 1 You say that our client "has misunderstood [the letter of 2 May 2007]." Please explain how [the] words "We have sent an apology letter" has been misunderstood? [He] told [the MP] in clear terms that an apology letter had been sent. You now tell me that this is incorrect. Please explain why [the MP] was given false information … Please confirm that a letter of apology will be sent to [the MP] which will explain how the Borough came to mislead him.
>
> 2 In my email … of 30 November I referred to what I am instructed was said by Counsel on behalf of the Borough to Mr Justice Munby on **3 July 2007**. In your response you refer to the hearing on 5 November 2007. Please let me know why your Counsel told Mr Justice Munby on 3 July 2007 that an apology had been sent to our client, when it was clear to the Borough that this was untrue, and confirm that the Borough will write to the Judge apologising for misleading him."

56. So far as I am aware, there was never any direct answer to these highly pertinent questions, but on 27 December 2007 the local authority lawyer who had sent the email on 7 December 2007 wrote to MF's solicitor. In the course of a discussion as to which documents should be included in the trial bundle in accordance with the directions I had given on 5 November 2007, she said:

> "There has been some correspondence … regarding the purported letter of apology … and somehow throughout the proceedings recently there has been a misconception that there is indeed a letter of apology when in actual fact there is only the letter … dated 2nd May 2007."

57. On 30 January 2008 the MP wrote to MF. Having set out the passage from the transcript of the proceedings on 3 July 2007, he continued:

> "It appears that such a letter of apology was never sent which indicates that both Mr Justice Munby and I were misled by the [local authority]."

58. On 30 September 2008 the MP sent me, unsolicited by the court, a long letter which he described as his witness statement for the hearing due to begin on 1 December 2008. Part of it relates to this episode. In it the MP refers to the letters of 2 May 2007, 11 November 2007, 30 November 2007 and 30 January 2008 and to the hearing before me on 3 July 2007. In relation to the letter of 2 May 2007 he says that the local authority's Director of Corporate Governance "deliberately lied to me in order to mislead me. Lying to me in order to mislead me became only clear when I received [the letter of 11 November 2007] in which he had said that the letter of apology did not exist." In relation to the hearing on 3 July 2007 he says that "Ms Greany deliberately lied to Mr Justice Munby in order to mislead him by declaring that she had seen the letter of apology and that they had sent [MF] a copy".

59. On 14 November 2008 Ms Greaney sent me a letter responding to the MP's allegation against her – of having "deliberately lied" to me – and saying, unsurprisingly, that the allegation was "misguided and untrue". She confirmed that the letter which she had had in mind, though it was not in front of her, when she addressed me on 3 July 2007 was the letter dated 10 October 2006.

60. On 28 November 2008 the local authority's Director of Corporate Governance wrote to me dealing with the MP's allegation against him. He says that it "is simply not true" and asserts that "the evidence filed in these proceedings will confirm this." He refers to MF's position statement of 30 August 2007 {1/82} "in which [MF] confirms that he received a letter of apology from the Local Authority" – so he did but, as the position statement makes clear, MF was referring to the letter sent to the MP on 2 May 2007 which asserted (wrongly as would now seem) that "We have sent an apology letter", so MF can hardly be criticised for using the same phrase. He refers to the social worker's witness statement of 20 December 2006, which he says "exhibits a copy of the letter of apology dated 10 October 2006." He says:

> "Any confusion caused is as a result of the interpretation [MF] places on the letter of 10 October 2006 … [MF] has subsequently referred to that letter as being a letter of apology in which the Local Authority apologised for falsely accusing him of sexually abusing [RB]. The letter did not say that. My letter to [the MP] of 12th November 2007 clearly states '"[MF] has misrepresented [sic: in fact the letter actually said misunderstood] my previous correspondence which did not proffer an apology in the terms he now represents'. I did not state that a letter of apology did not exist."

61. I regret to have to say this, but the stance adopted by the local authority in its correspondence (I make clear that I am *not* including Ms Greaney in this criticism) is characterised by what I can only describe as prevarication, obfuscation and bluster.

62. The position is, and always was, very simple:

    i) The relevant letter was that dated 10 October 2006.

    ii) The local authority chose to describe that letter, both in its dealings with the court and in its dealings with MF (and his solicitor) and the MP, as "an apology letter."

    iii) Given its contents, it is unsurprising that MF and his solicitor did not read the letter of 10 October 2006 as containing an apology.

63. When the point was raised with the local authority it had a choice:

    i) It could have said, 'The relevant letter is that dated 10 October 2006. It is true that the letter does not contain an apology. But it was intended to be a letter of apology and should be understood as being a letter of apology.'

    ii) Or it could have said, 'The relevant letter is that dated 10 October 2006. The letter does not contain an apology and was not intended to be a letter of

> apology. We accept that we should not have described it as an apology letter and we would like to apologise (to MF, to the court and to the MP) for having done so.'

The local authority chose to do neither, choosing instead to resort to tactics which can only be deplored.

64. The consequences have been dire. Both MF's solicitor and the MP concluded that the local authority had been lying. That view, unsurprisingly, was taken up by MF. So the local authority's handling of this issue has served only to inflame matters and to fuel MF's suspicions about the local authority. Much time and trouble would have been saved if the local authority could only have found it in itself to face up to the realities. It did not. It is a saddening example of the institutional inability of some bureaucracies ever to admit that something has gone wrong.

65. Was the evidence sufficient to justify making the allegation? I can take this shortly. There was, in my judgment, material in its possession in relation to possible sexual abuse which justified the local authority in saying what it did in the evidence it put before Johnson J. Whether it was prudent for the local authority to do so is, perhaps, more debateable. It has conceded that it did not have in its possession – in fact it has never had – the *evidence* to establish what it was alleging. As the local authority said in the letter of 10 October 2006, "it has not been able to substantiate the allegation" that MF sexually abused RB. I cannot help thinking, and this is not just with the benefit of hindsight, that it might have been better if an allegation of this kind – an allegation which, unless it could be substantiated, was inevitably going to sour relations and cause MF very great distress – had not been made unless and until the local authority was in possession of the relevant evidence. It was not a vital component of the case put to Johnson J, nor, as the local authority has been at pains to point out, was it something that it needed to rely upon to obtain the relief it successfully sought from Bracewell J. Almost inevitably, the mere fact that the allegation was made, and then not pursued, has infuriated MF and served in the event only to exacerbate the situation.

66. MF raises as a separate complaint that the allegation of sexual abuse was made by the local authority although it had not gone through what he says were the necessary statutory procedures under *'No Secrets'* in relation to a vulnerable adult in its care, including involving the police. Indeed, he says, the reason why the local authority did not follow the appropriate procedures is because there never was any sexual abuse – an allegation which if it means what MF seems to be insinuating is utterly devoid of any foundation. It may be that the proper procedures were not followed but that fact, if fact it be, cannot in my judgment have any bearing on the question of whether or not the local authority was justified in ventilating its concerns with the court.

67. On the wider question of whether, apart altogether from any allegation of sexual abuse, the local authority was justified, on the material it had, in commencing the proceedings in August 2002, there can in my judgment be only one answer. Whatever the final outcome, the local authority was fully justified in bringing the matter to court. It cannot be criticised for commencing the proceedings.

68. Did sexual abuse in fact take place? MF is, and always has been, vehement in his denials of any form of sexual abuse. But that is not an issue on which I can sensibly

adjudicate, given that all I have is what MF says. The local authority – and I do not, of course, criticise it in any way, for it has acted in this regard in accordance with the directions of the court – has sought neither to pursue the allegation nor to deploy such material bearing on the issue as is available to it. What I can say is this. The local authority, to repeat, acknowledges that it has not been able to substantiate the allegation, not being in possession of the necessary evidence. In these circumstances, if the allegation had been pursued the local authority would inevitably have failed – being unable to prove what it was asserting. And the consequence of that would have been, as a matter of law, that the court would have proceeded on the footing that there never was any sexual abuse: *In re B (Children) (Care Proceedings: Standard of Prof) (CAFCASS intervening)* [2008] UKHL 35, [2009] AC 11, at paras [2], [32].

The issues: (b) Baclofen

69. The issue in relation to Baclofen[3] has assumed a dominating position in MF's thinking about the case – he calls it "the heart of the conflict" – which is unwarranted both historically and forensically. The fact is that Baclofen, previously prescribed by her GP, was administered to RB for only two limited periods in 2002, from 16 April to 4 May and again from 4-12 July 2002; as Ms Greaney points out, the details are conveniently summarised in Dr Jefferys' report of 23 January 2004. On each occasion, and whatever MF may now have come to believe, it was stopped promptly when MF objected, so it is difficult to see how either the A home or the local authority can sensibly be criticised. Moreover, even if such criticism was justified it could hardly justify or excuse MF's behaviour towards care staff either at the A home or elsewhere.

70. MF asserts that, following the meeting on 26 June 2002 which I refer to below, and in order to silence him after he had complained about the administration of Baclofen and to take control, a plan was hatched between the local authority and the A home to obtain the injunction which, in the event, was granted by Johnson J on 15 August 2002. If and insofar as the suggestion is that either the local authority or the A home behaved in some inappropriate or improper way, the allegation, in my judgment, is groundless.

71. Whether the administration of Baclofen was appropriate or, as MF would have it, harmful to RB, is not a topic on which I can sensibly form a view so long after the relevant events. Nor is there any need for me to do so, for MF's view that it was not appropriate was, in effect, vindicated by the order Ryder J made on 4 April 2006 that it was not in RB's best interests to have Baclofen administered.

The issues: (c) the court bundles

72. MF alleges[4] that both the Official Solicitor and the local authority "excluded" and "removed" from the court bundle supplied to me on 3 July 2007 what he calls "incriminating documents". He says that both those bundles and the bundles lodged for the hearing on 1 December 2008 were "untrustworthy and tampered with" and that both the Official Solicitor and the local authority have denied what they did. He insinuates that they have perverted the course of justice: "I would have thought that

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3 Issue (K).
4 Issue (G).

removal of documents from Court bundles would be tantamount to perverting the course of justice."

73. In my judgment there is absolutely no warrant for any of these allegations.

74. During the hearing on 21 August 2009 MF handed me (loose, unpaginated and not in any chronological or, seemingly, even thematic order) copies of what he said were the relevant documents. (These corresponded, though not in all respects, with a list he had previously given me of 16 documents which were, he said, "missing" from the bundles filed at court for the hearing on 3 July 2007.) Ignoring those which were duplicated in what he handed up, they amounted to 42 pages, covering the period from 2 September 2002 to 27 June 2008. There was no 'smoking gun'; indeed, most of these documents were of only marginal relevance to anything I had had to decide at the hearing in December 2008 and even less significance. Apart from some letters to MF from the B home in 2007 indicating that, as it was put in a letter dated 26 October 2007, "no problems [are] being experienced", the only significant documents were the letter of 28 May 2003 from the Official Solicitor's solicitor, the letters of 16 May 2005 and 30 December 2005 from the local authority and the two letters of 28 April 2008 from MF to the Official Solicitor, to which I have referred elsewhere in this judgment.

75. The local authority, as it was obliged to, prepared the court bundle – I say bundle; in fact the bundle ran to several lever arch files. As always, and not least where, as here, the documentation was so voluminous, it was the duty of the local authority to exercise a proper professional discretion as to what should, and what should not, be included in the bundle. I am wholly unpersuaded that the local authority (or for that matter the Official Solicitor) carried out this task in anything other than a responsible and professional way; quite the contrary.

76. It was always open to MF to ask that any additional documents, if relevant, be included in the bundle. But he chose not to do so in the usual way, by producing specific documents and asking that they be included in the bundle in the appropriate places. As I have already mentioned, he chose, throughout, neither to use the court bundle everyone else was using nor (until a very late stage in the proceedings indeed) to provide any bundle of his own containing what he said were the relevant documents. Instead, as I have said, he has endlessly bombarded the court with jumbled masses of repeatedly re-duplicated loose paper.

77. Having considered all that material I come to three conclusions: first, that MF has throughout had every opportunity to place before the court whatever documents he has wished to rely upon – an opportunity, I should emphasise, of which he has never been slow to avail himself; second, that the documents he relies upon, insofar as they were not already in the bundle, were by and large, as I have said, of limited relevance or significance; and, third, that the allegations he has chosen to pursue in this respect against both the local authority and the Official Solicitor are and always were utterly groundless. In particular, the allegation that they have "removed" documents from the bundle for some improper reason is utterly devoid of merit.

78. As Ms Greaney points out, there is a telling illustration of MF's whole approach to this issue. He sought the original handwritten notes of a particular meeting on 26 June 2002, suggesting that the typed up version was not accurate. At my direction, the

relevant files were brought to court. They included the handwritten document; there was no difference between it and the typed up version. And as Ms Greaney also points out, this document is also revealing for another reason, for it referred to the Baclofen issue and recorded concerns about its harmful side effects – in other words, assisted MF's case – yet it had very properly been included in the bundle by the local authority. Hardly, one might think, the behaviour of a litigant intent upon behaving as MF would have us believe the local authority was behaving.

The issues: (d) Mr Sohewon

79. MF raises two issues in relation to Mr Sohewon. First,[5] he asserts that Mr Sohewon gave "inaccurate" evidence on oath before me on 5 December 2008 in circumstances which, he insinuates, involved Mr Sohewon committing perjury: "If it transpires that Mr Sohewon committed perjury, than I would like to know whose interest he is protecting and why." Second,[6] he asserts that Ms Hodes has made the "unsubstantiated and false allegation that I have manufactured Mr Sohewon's W Statements." This episode also forms the basis of issues raised both by the local authority and by the Official Solicitor. The local authority[7] invites me to consider MF's conduct in relation to Mr Sohewon's evidence. Both the local authority[8] and the Official Solicitor[9] invite me to consider MF's complaints about Dr Jefferys, complaints which at least in part were sought to be founded on what was said to be Mr Sohewon's evidence.

80. The matter arose in his way. In his report dated 30 June 2008 Dr Jefferys reported at length on an interview he had had with Mr Sohewon on 19 June 2008. MF subsequently produced to the court a statement apparently dated 28 July 2008 and purportedly signed by Mr Sohewon challenging significant parts of Dr Jefferys' account of what he had said to him on 19 June 2008. But when Mr Sohewon attended court to give evidence on 5 December 2008 he surprised everyone by repudiating that statement. Put shortly, his oral evidence was that the contents of the statement did not represent his evidence; that it had been written by MF; and that he (Mr Sohewon) had not read it before signing it. He added (transcript page 71) that when he signed it he was busy and did not pay much attention to it; MF had asked him to sign "Just to prove that you were present with Dr Jefferys". Asked about this by MF, Mr Sohewon said (transcript page 71) "I did a mistake. I should have read it … But I trusted you." Cross-examined by Ms Greaney, Mr Sohewon confirmed (transcript page 83) that he agreed with Dr Jefferys' account of their interview:

> "Q: When you read … this report of Dr Jefferys … was your reaction "Oh, that is wrong, I did not say that"?
>
> A: No, no, no. I agreed with him everything I said."

81. In the course of his cross-examination of Dr Jefferys on 3 December 2008, MF said this (transcript page 40) about Mr Sohewon's reaction to reading Dr Jefferys' report:

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5 Issue (E),
6 Issue (C).
7 Issue (3).
8 Issue (2).
9 Issue (i).

> "when he read your report, he was outraged, he said, "I do not accept, I denounce this man. This man has acted unprofessionally and dishonestly." I said, "How?" He said, "These are the things that he has said about me, they are not true." I said, "What can I do about it?" He said, "I'm going to write a witness statement, signed, that what he has reported on my behalf, what he has attributed to me, they are false.""

Cross-examined by Ms Hodes, Mr Sohewon (transcript pages 86-87) denied that he had ever said this to MF. Indeed, he said that he had never discussed Dr Jefferys' report with MF. "No. No, no, no, no, no, as it would have been unprofessional on my part to discuss anything with MF." (I might add, having observed both of them in the witness box that the language MF attributes to Mr Sohewon is very much closer to MF's style of speech than to anything I heard Mr Sohewon say.)

82. I gave MF every opportunity to ask Mr Sohewon questions: the relevant part of the transcript runs to some twelve pages (transcript pages 69-82). At the end, MF said (transcript page 82) "I have got nothing else to say. I have said everything." When, subsequently, MF asked for permission to cross-examine Mr Sohewon I refused (see paragraph [24] above). By then the trial had concluded, apart from submissions. More important, I was satisfied that MF had had a more than adequate opportunity to ask Mr Sohewon questions and, in the course of asking those questions, to make clear where and why he disagreed with what Mr Sohewon was saying. In short, I took the view that no useful purpose would be served by allowing MF a 'second bite at the cherry'.

83. MF asserts that Mr Sohewon was 'got at' – the phrase is mine though the sentiment is his. In a letter to me dated 10 January 2009, MF said: "I claim strongly that Mr Sohewon has been interfered with in order to protect [the local authority's] interest as well as the Official Solicitor's interest." He says that the oral evidence Mr Sohewon gave was not the truth. For their part, Ms Greaney and Ms Hodes invite me to accept Mr Sohewon's oral evidence.

84. I accept the oral evidence Mr Sohewon gave. I believed what he was saying. It follows that no reliance can be placed upon the statement purportedly given by him on 28 July 2008. Dr Jefferys' account of their meeting on 19 June 2008 is correct. Dr Jefferys says so; and Mr Sohewon, as we have seen, agrees.

85. Ms Hodes rightly says that the matter is of grave importance. That is so, and for two quite separate reasons.

86. In the first place, MF has, as I understand it, relied in support of his complaint to the GMC about Dr Jefferys on the assertion that Dr Jefferys' account of his meeting with Mr Sohewon was not merely wrong but dishonest. Moreover, and as we shall see, Dr Kahtan relied in particular upon Mr Sohewon's statement of 28 July 2008 in coming to his conclusion that Dr Jefferys was both lacking in impartiality and biased. So the question of Mr Sohewon's witness statement is at the heart of MF's complaint to the GMC. But for the reasons I have given, there is no substance in any complaint against Dr Jefferys so far as it is founded on Mr Sohewon's alleged witness statement. Dr Jefferys' account of his meeting with Mr Sohewon was neither wrong, let alone

dishonest. Mr Sohewon, in his oral evidence, which I accept, agrees that Dr Jefferys' account of their meeting is correct. That, in my judgment, is the end of the point.

87. The second point goes to MF's conduct. The local authority, supported by the Official Solicitor, invites me to find that MF sought to mislead the court by filing what purported to be a witness statement setting out Mr Sohewon's evidence but which in fact had been written by MF. It also invites me to consider whether any further action should be taken against MF arising from these events.

88. I am not prepared to find that MF set out deliberately to mislead the court, though his conduct was both foolish and reckless. MF is a man with strong and entrenched views who, much of the time, does not listen to what people are saying. He hears (or rather thinks he hears) what he wants to hear. And, I suspect, on occasions he attributes to others views which are in fact his own, treating silence or the absence of vigorous dissent as agreement with what he is saying. It must be for others to determine whether any further action should be taken. For my part I do not propose either to take any further action or to suggest that anyone else does.

89. So far as concerns the complaint that Ms Hodes made the "unsubstantiated and false allegation" that MF had "manufactured" Mr Sohewon's witness statement, there is nothing in it. Given what Mr Sohewon had said, Ms Hodes was fully entitled to cross-examine MF vigorously on the point and to do so in the terms of which complaint is made. Indeed, I would go further. It is precisely what one might expect counsel to do in such circumstances.

The issues: (e) Dr Jefferys

90. As already mentioned, both the local authority[10] and the Official Solicitor[11] invite me to consider MF's complaints about Dr Jefferys, complaints which, founded on what Dr Kahtan said in his report of 27 November 2008, have led MF to report Dr Jefferys to the GMC.

91. In the course of his cross-examination of Dr Jefferys on 3 December 2008, MF confirmed to me (transcript page 17) that he made four allegations against Dr Jefferys: first, an allegation of bias; second, the allegation that Dr Jefferys from the outset went with preconceived ideas; third, the allegation that it had become a personalised fight against him; and, fourth, the allegation that Dr Jefferys was not independent. "Absolutely", said MF. In addition, there was, of course, the allegation in relation to the meeting with Mr Sohewon on 19 June 2008 which I have already dealt with.

92. The Official Solicitor's view of Dr Jefferys is clear and unequivocal:

> "Dr Jefferys has provided evidence in a significant number of adult welfare cases over many years and continues to do so. For my part I have the utmost trust and confidence in his integrity, independence and professional judgement."

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10 Issue (2).
11 Issue (i).

I am not surprised that the Official Solicitor should express himself in those terms, for his appraisal of Dr Jefferys, in terms of his integrity, independence and professional judgement accords entirely with the very clear view I formed, having read his various reports and watched and heard him give oral evidence.

93. Dr Jefferys' various reports were, as one would expect of an expert giving evidence in the Family Division in a case such as this, insightful, measured, balanced, authoritative and impartial. His analysis was clear and his conclusions were compelling. In circumstances where he would have been justified in being angered by some of the suggestions being put to him, his oral evidence was all the more compelling for being cool, calm and measured: see, for example, his clear and compelling answers (transcript pages 17-22 and 28) to the allegations being made against him by MF on the basis of Dr Kahtan's report (see below).

94. Inevitably, any assessment of Dr Jefferys' evidence involves an assessment of the evidence given by Dr Gross and, more particularly, by Dr Kahtan. I deal first with Dr Gross.

95. The essential difference between Dr Jefferys and Dr Gross appears clearly enough from their joint report dated 6 February 2008 setting out, in agreed terms, the matters on which they were agreed and the matters on which they disagreed. They were agreed that there was nothing about the nature of what they called RB's "severe physical and mental disabilities" that "in itself" prohibited her management at home rather than in a nursing home "provided a satisfactory community care package is in place." They differed on the crucial question of whether MF would manage.

96. Dr Gross opined that:

> "MF does have the necessary skills to safely manage the care needs of RB within their home *provided he cooperates with a community care package*" (emphasis added).

Dr Jefferys, in contrast, opined that it was "unacceptable" to expose RB to what he saw as the risk:

> "MF's attitude to care agencies and health professionals has become polarised to a degree which makes confrontation between MF and RB's carers within a short time of a return home highly likely. The risk is increased because of his growing anger and frustration over the situation. The consequences of confrontation for RB could be immediate and potentially fatal if it impacted on her practical care."

97. In his final report dated 29 October 2008, Dr Gross reiterated the opinion "I have always had", that RB "should be looked after in her own home and *that there is no neurological reason why that should not take place*" (emphasis added). He added that he was "not able to comment on the psychiatric matters." He expressed his "concern" that "occasional and dare I say it quite trivial episodes, have been flagged up by individuals who I, as a consultant neurologist will say ought to know better."

98. Following his cross-examination by MF, I asked Dr Jefferys a series of questions (transcript pages 50-56) to which he gave answers which I found compelling and convincing. To my final question, "So putting the matter slightly more generally … but now bringing MF back into the equation, is it within the realms of practicality on a common sense view as matters stand today to think that one could somehow put together a package which would be viable at home?", Dr Jefferys' answer was unequivocal: "No."

99. As the local authority and the Official Solicitor pointed out before the hearing in December 2008, Dr Gross appeared to have been provided with selective information by MF and his reports had failed to address the history of MF's failure to engage with care and health professionals and his behaviour towards them. The local authority also brought to my attention the criticisms of Dr Gross expressed by Roderick Evans J in *Williams v Jervis* [2008] EWHC 2346 (QB) at paras 98-119.

100. Various features of Dr Gross' oral evidence stand out.

101. It became apparent (transcript pages 11-15) that, in contrast to Dr Jefferys, he was not entirely familiar with the approach of the Family Division in cases such as this. Moreover it also became apparent (transcript pages 22, 48, 55) that he had not been supplied with all the relevant documents

102. More fundamental, his approach of course was that of a neurologist rather than a psychiatrist. Thus, although he accepted (transcript page 24) that MF's cooperation with any care package would be "essential", he said (transcript page 27) that this was really a matter for another discipline. Nonetheless, I found his discussion of the topic (transcript pages 25-30) to be as I put it (transcript page 30) "so helpful … albeit that it is impressionistic", though, I should add, he tended to address the problem from a clinical perspective and in somewhat general terms rather than focussing upon the specifics of MF's potential care of RB.

103. At the end of the day the crux of the matter was illuminated by Dr Gross' answer to a question posed by Ms Greaney. She asked (transcript page 33):

> "the question as to whether or not this particular carer, namely MF, would cooperate and whether therefore a care package would work in the home, that is not something that as an expert neurologist you are able to give a view on?"

Dr Gross replied:

> "The only comment I would make as a neurologist is that in principle an individual can look after someone as disabled as RB with the right care … I think that [MF] would be perfectly capable … The other questions in terms of cooperation with the care support team, that is for the court. It cannot possibly be for me because I am a neurologist".

104. Though in the event I prefer Dr Jefferys' analysis – in essence because I am sadly driven to conclude that MF would not have been able, however much he might try, to cooperate with any community care package that might have been provided for RB – I

make absolutely no criticism whatever of Dr Gross. There is simply no basis for doing so. He was careful to recognise and acknowledge the proper boundaries of his own professional discipline. Both in his reports and in his oral evidence he had correctly identified the key question as being whether MF could cooperate. And he gave what, from his professional standpoint, were entirely appropriate reasons for saying that the answer to that question was a matter for the court rather than a neurologist. His evidence so far as it went was relevant and helpful.

105. Dr Kahtan's evidence stands in a very different position. It was troubling, very troubling.

106. In his report dated 27 November 2008 Dr Kahtan expressed very strong criticism of Dr Jefferys. Thus (para 30) he expressed the view that

> "the direction this case has taken has been primarily determined not by mental health issues but by the antagonism of two powerful opponents, namely Dr Jeffries [sic] and MF himself, both of whom have an investment in being "right"."

Referring (para 154) to something Dr Jefferys had said in a report dated 24 July 2003, he said:

> "I wonder if this is an example of Dr Jeffery's [sic] trying to find arguments against RB visiting the flat and showing bias."

Referring (para 165) to another passage in the same report, he said:

> "Thus Dr Jefferys is relentlessly negative about the prospects for MF to care for RB",

adding the extraordinary comment:

> "One is tempted to suggest that if it is so obvious that placing her in MF's care would break down, to allow this to happen."

I am not surprised that Dr Jefferys (transcript page 61) described this suggestion as being so preposterous that he thought Dr Kahtan was being facetious. Yet when he was pressed on this in cross-examination by Ms Greaney, Dr Kahtan sought (transcript pages 98-99) to justify what he had said, repeating (transcript page 98) that "if Dr Jefferys thinks it's so obvious why not give it a trial".

107. Referring (para 192) to a later report by Dr Jefferys dated 23 January 2004, Dr Kahtan said:

> "This shows that the relationship between MF and Dr J has become a personality clash, very personal dispute between the two man [sic] that has stopped being about RB's care."

Dr Kahtan expressed his overall conclusion as follows (para 299):

> "I am not aware of any physical or mental health reasons why MF would not be able to look after RB in her flat … He has a

> good understanding of her care needs and in my opinion has shown a truly exceptional level of devotion to her."

108. Dr Kahtan then turned (paras 300-304) to make a number of extremely serious allegations against Dr Jefferys. He described (para 300) the local authority as "being predominantly represented by Dr Peter Jefferys" and said (para 301) that "The battle … has become quite personalised between Dr Jefferys and MF." He continued (para 304):

> "In my view Dr Jefferys was not impartial from the start and even though the Local Authority admitted error in making various allegations Dr Jefferys has not been able to shift from his original conclusions. Most worryingly, in his last report, he appears to have misunderstood or misquoted a senior nurse at RB's current placement in painting a picture of MF as someone who does not have RB's best interests at heart. The statement by this nurse suggests a worrying lack of impartiality on the part of Dr Jefferys. While it is possible that Dr Jefferys simply misheard or misunderstood the comments made, it seems more likely that he has been biased against MF from the start."

109. In the course of answering questions from Ms Hodes, Dr Jefferys said (transcript page 62) that he had never seen an expert report about another expert that was quite so damning in its sweep as Dr Kahtan's:

> "I haven't seen other experts described in the same way by experts. I've seen practitioners protesting about expert reports they don't agree with in strong terms, but I've not seen court instructed experts write reports in this way."

110. Dr Kahtan's oral evidence on 3 December 2008 was also concerning for a number of reasons.

111. In the first place it was apparent that Dr Kahtan's instructions left much to be desired. He accepted (transcript page 116) that the letter of instructions from MF's solicitors was neither appropriate nor adequate: "I think it's a very poor letter." Moreover, he had to accept (transcript pages 77, 79, 85, 112, 127; I could quote other examples) that he had not seen a significant number of what were on any view very important documents. He commented (transcript page 113) that "I have to say I have had a lamentable lack of information on the whole case." And he accepted (transcript page 116) that he had gone outside his specific instructions when expressing views on whether Dr Jefferys was biased.

112. Second, it became apparent (transcript pages 111-116, 129) that Dr Kahtan was unfamiliar with the procedures and practice governing expert evidence in the Family Division, his own practice being predominantly in other jurisdictions.

113. Third, he had to accept (transcript page 70) that he did not have particular experience of dealing with people with severe dementia, adding:

> "of course this report is not focussed on – the subject of the report is not somebody with severe dementia at the moment; the subject is the evidence of Dr Jefferys and MF as a potential carer."

He added (transcript page 112) that "I interpreted my task in a fairly limited way as primarily a review of Dr Jefferys' reports". He had to accept (transcript page 82) that, in contrast to Dr Jefferys, he had not carried out any risk assessment, saying (transcript page 84) that it was not his remit.

114. Fourth, Dr Kahtan seemed hesitant, even prevaricating, when pressed on the subject of his criticisms of Dr Jefferys. Notwithstanding what he had said in his report, he volunteered, unprompted, the comment (transcript page 73) that "I didn't want to put it as strongly as Dr Jefferys has been biased". That comment, perhaps unsurprisingly, seems to have puzzled Ms Greaney, who said "Well you do say that in your report" before asking him "Are you retracting that? To that very pertinent question there was no clear answer. I asked him (transcript page 125) whether he stood by paragraphs 300-305 of his report as written. His answers (transcript pages 125-127) were hesitant, had to be extracted from him by a process akin to cross-examination and involved a substantial amount of 'back-pedalling'. This part of the transcript requires to be read in full to get the full flavour of his evidence. It gives a dispiriting picture of an unconvincing and at times evasive witness.

115. Earlier, in his evidence Dr Kahtan had said (transcript page 69):

> "I want to make it absolutely clear that I had not in any way suggested nor supported a referral of Dr Jefferys to the GMC … I would not in any way consider referring or asking the GMC to review a senior and distinguished person like Dr Jefferys."

Later (transcript page 131) he said that he was "very, very shocked" about the complaint to the GMC, adding (transcript page 134) that "I am very sorry that he's done that."

116. Asked by Ms Hodes (transcript page 128) whether he was still prepared to stand by his report as it was, Dr Kahtan said "I think I could make significant improvements to it … There are clearly shortcomings."

117. That last concession is correct, so far as it goes. But it is in truth a masterly understatement. For the blunt truth, painful though it is to have to say it, is that in cross-examination Dr Kahtan's evidence was undermined to such an extent that I am left unable to rely upon any of it.

118. I acknowledge that Dr Kahtan was entitled to assume that Mr Sohewon's evidence would be as set out in what he was entitled to assume when he was giving his evidence was Mr Sohewon's witness statement of 28 July 2008. But even making that allowance I am unable to accept any of his criticisms of Dr Jefferys as set out in the various paragraphs of his report to which I have referred. Nor, I am bound to say, do I think that Dr Kahtan was justified in making any of these very serious allegations. The brute fact, in my judgment, is that he was not. There was not – there never was –

any proper basis for the accusations he chose to hurl at Dr Jefferys. And when 'push came to shove' in the witness box there was, as I have said, much 'back-pedalling'.

119. I return to where I began. Dr Jefferys' reports and evidence were insightful, measured, balanced, authoritative and impartial. His analysis was clear and his conclusions were compelling. His professional integrity and his professional competence remain, in my assessment, unblemished.

The issues: (f) allegations of financial abuse

120. MF alleges[12] that between 2003 and 2008 the Official Solicitor and the local authority "falsely accused me six times of financial abuse without any evidence." He identifies those involved in these false accusations as including Ms Mackintosh, Ms Hodes and the Official Solicitor himself.

121. I propose to deal with this briefly.

122. MF has an enduring power of attorney in his favour, which the Court of Protection registered on 25 October 2006. That court is seised of the financial aspects of MF's dealings with RB. And it is to that court that those who seek to challenge MF's dealings with RB's property ought in principle to turn. This court, as it seems to me, is concerned with such matters only insofar as they bear upon the personal welfare issues with which this court, in contrast to the Court of Protection, has been involved. But with B's death, there is no longer any welfare issue for this court to determine. In these circumstances these are issues which, if they are to be pursued, are for another forum. Indeed, that being so it would, as it seems to me, be inappropriate for me to explore them any further.

123. All that I need say, and I think I can properly say this without encroaching upon anyone else's jurisdiction, is that whether or not the allegations which the Official Solicitor (and others on his behalf) have made are ultimately borne out – a matter on which I express no views whatever – I am satisfied that they have at all times been made by all concerned in good faith, without any impropriety and in circumstances where there appears to have been an appropriate basis for the articulation of the Official Solicitor's concerns.

The issues: (g) other allegations against MF

124. MF complains[13] that the local authority falsely claimed that he had had three years of stability with a particular care agency in looking after RB at home: "I totally reject and denounce [the local authority's] claim". He further complains[14] that during the hearing in December 2008 Ms Greaney claimed that he had breached the order Ryder J made on 4 April 2006: "I totally challenge this claim and I am prepared to demonstrate the truth of my challenge."

125. I can deal with these matters shortly. As to the first, what the local authority was saying is borne out by the social work records. Any further consideration of the point now would be fruitless. So far as concerns the second, there was evidence, which Ms

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12 Issue (L).
13 Issue (O).
14 Issue (J).

Greaney was entitled to rely upon, supporting the claim that MF had indeed breached Ryder J's order. There is, as matters now stand, no point in going on to consider whether the allegation has in fact been made out.

The issues: (h) the application to the Land Registry

126. MF complains[15] that the local authority has made what he says is a "fraudulent application" to the Land Registry to register a charge on RB's home to recover expenditure incurred on her behalf which the local authority asserts that it is entitled to recover. He says that RB never wanted to go into a nursing home and submits that I should declare the application "null and void" and remove the charge. I sought to clarify the nature of the complaint during the hearing on 4 December 2008 and, in particular, why MF was saying the local authority's application was fraudulent: see the transcript, pages 8-10. He was clear that it was because the local authority's application to the Land Registry was "untrue" inasmuch as it was said the local authority had "asked [RB] to pay for her accommodation and she had failed to pay" (transcript page 9). In answer to my question, "What is untrue about that?" MF's response was that RB "could not speak, as she was demented." A little later (transcript page 10), MF agreed that his essential complaint against the local authority was that "the application to the Land Registry was supported by the assertion that they had asked [RB] and she had refused."

127. It appears from documents MF has shown me that the charge arises under a mortgage dated 22 March 2005 made by the local authority in accordance with section 22 of the Health and Social Services and Social Security Adjudications Act 1983 to secure moneys owed to the local authority in respect of accommodation provided by it to RB under the National Assistance Act 1948. Notice of the local authority's application to register the charge was given by the Swansea District Land Registry on 29 April 2005; the notice was addressed to RB. The application was supported by a statutory declaration dated 22 March 2005 which deposed that "The owner has failed to pay the sum assessed as due to be paid by her to the Council for the Part III accommodation." On 15 December 2006 MF wrote to the local authority asking the following question: "Did you ever ask her to pay for her accommodation and as she failed to pay then you decided to put a charge on her property?" The local authority's response, in a letter dated 4 January 2007, was "the charge was placed on the … property following instructions from the Council's Assessment and Income Manager as a result of unpaid invoices for accommodation charges." On 23 April 2008, MF, acting, he said, as RB's attorney pursuant to the enduring power of attorney the Court of Protection had registered on 25 October 2006, applied to the Land Registry seeking removal of the charge. On 14 May 2008 the local authority wrote to the Land Registry objecting to the application, asserting in effect that the charge had been lawfully created in accordance with section 22 and pointing out that RB was the sole owner of the property and that MF had no registered interest in the property. The local authority questioned MF's locus to make the application and observed that his appointment as RB's attorney was currently in issue before the Court of Protection – an assertion seemingly at odds with the fact that the power of attorney, as I have said, had been registered by the Court of Protection on 25 October 2006. Following a response from MF the Land Registry wrote on 1 September 2008 stating that the matter must now be referred to the Adjudicator to HM Land Registry pursuant to section 73(7) of the Land

[15] Issue (M).

Registration Act 2002. Since then the matter has been *sub judice* before the Adjudicator.

128. Again, I propose to deal with this briefly.

129. It is not for me to determine whether the local authority was (and is) entitled to the charge it asserts, or to determine MF's complaint that the local authority failed to comply with the relevant rules in relation to its dealings with the Land Registry and the Adjudicator. Those are matters for the Adjudicator. What I can, and as it seems to me should, do is to address MF's complaint that the local authority's application to the Land Registry was "fraudulent." Even on the basis of MF's own assertions it plainly was not.

130. If his complaint is that the local authority falsely asserted that RB had "refused" to pay, it founders on the indisputable fact that what was said in the statutory declaration was merely that she had "failed" to pay. If his complaint is that the local authority falsely asserted that RB had "failed" to pay – seemingly on the footing that such an assertion was inconsistent with her lack of capacity – then his complaint is equally without substance, because "failure" in this context does not connote any conscious decision.

131. It may be that the local authority will establish its right to the charge, it may be that it will not. On that issue I express no views whatever. But there is absolutely no warrant for MF's allegation that the local authority was (or is) acting fraudulently in making its claim. Whether it succeeds or fails, there is nothing to show or even to suggest that the local authority was (or is) acting otherwise than properly and in good faith in pursuing the claim.

The issues: (i) Mr Eckford

132. MF says two things about Mr Eckford, a member of the Official Solicitor's staff. First,[16] he says that he is extremely concerned about what he calls Mr Eckford's "role and contribution" in the matter. Second,[17] he asserts that "everyone" involved in this case who is "associated" with the Official Solicitor – he names Mr Eckford as well as Ms Mackintosh and Ms Hodes – "has acted without probity at court."

133. There is absolutely nothing in either of these claims. So far as concerns the first it is wholly unparticularised and it is not clear what is being alleged. So far as concerns the second, to the extent that specific allegations have been made against the Official Solicitor or his representatives I have dealt with them. The allegation that the Official Solicitor or his representatives have acted "without probity", whether at court or elsewhere, is groundless and totally without merit.

134. The complaints about Mr Eckford are completely groundless and entirely without substance. He has behaved throughout in an entirely professional manner. His integrity and competence are unblemished.

The issues: (j) Ms Mackintosh

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16 Issue (B).
17 Issue (D).

135. MF makes the same general allegation against Ms Mackintosh as against Mr Eckford.[18] In her case, however, he adds particulars[19] which, as we have seen, allege that she attributed what he calls a false statement to the B home, the assertion further being that when this was "exposed" she "immediately resigned from the case." He also[20] accuses Ms Mackintosh of being involved in making what he says were the false accusations of financial abuse between 2003 and 2008.

136. So far as concerns the alleged false accusations of financial abuse, I have dealt with them already. The complaint against Ms Mackintosh in this respect is as groundless as against the others: she acted in good faith and without any impropriety. So far as concerns the generalised allegation of want of probity it is, as in the case of Mr Eckford, groundless and totally without merit.

137. So far as concerns the only other allegation, there is, I am satisfied, nothing in it. Ms Mackintosh was passing on, in good faith and as her professional obligations required, information which she had in fact received, via the local authority, from the B home, together with the views of her client, the Official Solicitor. She was not "exposed" – there was nothing to expose – and this wholly innocuous incident had nothing to do with her departure from the case. The Official Solicitor terminated her instructions because it had become clear that there were going to be substantial difficulties in recovering his costs from RB's estate and he decided to bring the case 'in house' in order to keep costs to a minimum. The Official Solicitor is categorical: there was no other reason for terminating her instructions.

138. The complaints about Ms Mackintosh are completely groundless and entirely without substance. She has behaved throughout in an entirely professional manner. Her integrity and competence are unblemished.

The issues: (k) Ms Hodes

139. MF has four complaints about Ms Hodes. Again, all are completely groundless and entirely without substance. Ms Hodes has behaved throughout in an entirely professional manner. Her integrity and competence are unblemished.

140. First,[21] MF asserts that Ms Hodes acted "without probity" and has "forfeited her professional integrity and is no longer fit to be in court representing [RB]." The foundation of this extremely serious allegation is that Ms Hodes told Bracewell J on 10 May 2004 that RB had made a decision not to pursue public funding, his point being that RB, as he put it, "could not make a decision as she was medically demented." What Ms Hodes actually said, according to the transcript (page 8), was this: "the first defendant took the decision not to pursue public funding and her representation through the Official Solicitor is funded by her own means." On 25 March 2008 MF wrote to the Official Solicitor quoting this extract (though not supplying a copy of the transcript) and asking; "Can Miss Hodes … substantiate the above statement …?" In a letter dated 3 April 2008 Mr Eckford replied, saying it was hard to answer the question directly since he had not seen the transcript and could not see the context. He continued, "[RB] did not make a decision not to pursue public

18 Issue (D).
19 Issue (D).
20 Issue (L).
21 Issue (A).

funding", adding that she was financially ineligible. This letter drew a furious response from MF, who in a letter addressed to the Official Solicitor dated 28 April 2008 alleged that:

> "The Official Solicitor attributed lies to [RB] in order to damage her best interests. Either substantiate the statement of Ms Hodes to Mrs Justice Bracewell or else I totally and utterly reject the Official Solicitor's claim to be working for the best interests of [RB]."

In another letter he wrote the same day to the Official Solicitor, MF said:

> "I totally denounce and reject your claim to impartiality and independence and that you are working for the best interests of [RB]. Not only are you not working for the best interests of [RB] but also you are actively working to the detriment of [RB']s best interests … the Official Solicitor has been acting to the DETRIMENT of [RB's] interests all along. This is called corruption. Can you defend yourself?"

Further letters which MF wrote to the Official Solicitor on 1 August 2009 and 3 August 2009 accuse him of "lying" to Bracewell J on 10 May 2004 "in order to deceive her".

141. This episode is an illuminating if saddening example of MF's obsessive pursuit of points, essentially trivial and devoid of merit, which nonetheless assume unwarranted significance in his mind and then erupt as the tenuous foundation for allegations which are as utterly baseless as they are extravagantly expressed. I explored this particular complaint during the hearing on 4 December 2008: see the transcript, pages 4-5. Having identified the point being taken by MF, I commented with reference to what Ms Hodes had said to Bracewell J (page 5): "I suspect the answer may be that that was a perfectly correct lawyer's way of expressing the fact that [RB], acting through her appropriate representatives, have taken that decision."

142. I remain of that view. The complaint is utterly baseless.

143. As a footnote to this episode I should mention that in a letter dated 9 January 2009 MF alleged that during the hearing on 4 December 2008 I said to Ms Hodes:

> "[MF] says you are not fit to be in this court, can you provide an explanation to the court why you made false statement to Mrs Justice Bracewell?"

I have not been able to find this passage in the transcript. And I should like to emphasise that if I did say anything of this kind I was *not* expressing any view of my own – I was certainly not suggesting it as being my view that Ms Hodes had made a false statement – but merely summarising MF's position as I understood it.

144. Second,[22] he accuses Ms Hodes of being involved in making what he says were the false accusations of financial abuse between 2003 and 2008. So far as this is

[22] Issue (L).

concerned, I have dealt with it already. The complaint against Ms Hodes in this respect is as groundless as against the others: she acted in good faith and without any impropriety.

145. Third,[23] MF asserts that Ms Hodes has made the "unsubstantiated and false allegation that I have manufactured Mr Sohewon's W Statements." I have dealt with this already. The complaint against Ms Hodes in this respect is as groundless as the others: she acted in good faith and without any impropriety.

146. Fourth,[24] MF makes the same general allegation against Ms Hodes as against Mr Eckford and Ms Mackintosh. It is, just as in the case of Mr Eckford and Ms Mackintosh, groundless and totally without merit.

The issues: (l) the Official Solicitor

147. MF makes five complaints about the Official Solicitor. First,[25] he complains, as we have seen, that the Official Solicitor "never ceased to relay [sic] on the accusation of sexual abuse in spite of having declared at various dates and to several Judges that [he] had not relied on the accusations of sexual abuse in order to impose restrictions on my contact with [RB]". Second,[26] he asserts that the Official Solicitor "excluded" and "removed" from the court bundle supplied to me on 3 July 2007 what he calls "incriminating documents", that both those bundles and the bundles lodged for the hearing on 1 December 2008 were "untrustworthy and tampered with" and that the Official Solicitor has denied what he did. Third,[27] he accuses the Official Solicitor personally of being involved in making what he says were the false accusations of financial abuse between 2003 and 2008. Fourth,[28] he asserts that "everyone" involved in this case who is "associated" with the Official Solicitor "has acted without probity at court." Fifth,[29] he asserts that the Official Solicitor has not only not acted independently in the best interests of [RB], but on the contrary [he] has acted collusively with [the local authority] to the detriment of [her] best interests."

148. In a letter dated 11 April 2009 he adds the complaint that "the Official Solicitor and [the local authority] would first BLACKEN my name and DEMONISE me in ADVANCE and then exploit the consequent conflict in order to discredit me." In the letter of 1 August 2009 to which I have already referred he summarises his complaint in the following compendious terms:

> "the Official Solicitor in collusion with [the local authority], using Dr Peter Jefferys as the front man, abducted [RB] and imprisoned her in three different [homes] where she did not want to be … all on the back of false allegations of sexual abuse, violence towards [RB] emotional as well as physical and the false accusation of theft against me in order to remove

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23 Issue (C).
24 Issue (D).
25 Issue (I).
26 Issue (G).
27 Issue (L).
28 Issue (D).
29 Issue (N).

> financial control from me in order to carry out a fraudulent transaction of putting a charge on our family home."

149. So far as concerns the first, second, third and fourth of these complaints, I have dealt with them already. I need not repeat what I have already said.

150. So far as concerns the final complaint, that the Official Solicitor did not act independently in RB's best interests but collusively with the local authority and to her detriment, the allegation is fatuous. Throughout this long and difficult case the Official Solicitor has acted, as he always does in such cases, with a rigorous and fearless concern for the best interests of his client. Why on earth should he do otherwise? The fact that on many – even most – matters he has, in the event, seen 'eye to eye' with the local authority is no basis for an allegation of collusion. It merely reflects the reality that in this particular case, in the light of all the evidence, the Official Solicitor's appraisal of where RB's best interests truly lay accorded with the local authority's view. He was entitled to take that view just as he was, I am sure, acting with complete propriety in doing so.

151. Whether these allegations are made against the Official Solicitor personally, or against his office or members of his staff, they are groundless and totally without merit. He and his staff have behaved throughout in an entirely professional manner. His (and their) integrity and competence are unblemished.

The issues: (m) Ms Greaney

152. MF asserts[30] that Ms Greaney "misled" me in what she said on 3 July 2007 in relation to the letter of apology. He calls into question what he calls her "professional integrity and legitimacy" and asserts that "therefore she is not legally fit to be in court." He also makes the complaint[31] that she claimed he had breached the order Ryder J made on 4 April 2006.

153. I have dealt with both these matters already and need not repeat what I have already said. In relation to the first, I ought, however, to add this. When she addressed me on 3 July 2007, Ms Greaney, as she made clear to me, did not have a copy of the letter to hand. She was therefore speaking from memory and at a time when the local authority's repeatedly stated view was, as we have seen, that the letter in question was an apology letter. She is not to be criticised therefore for associating herself with that terminology. The suggestion that she was "misleading" me and, indeed, that she "deliberately lied" to me, is utterly groundless. The attack on her professional integrity is totally unwarranted. Such allegations should never have been made.

154. Ms Greaney has behaved throughout in an entirely professional manner. Her integrity and competence are unblemished.

The issues: (n) the local authority

155. MF makes numerous complaints about the local authority. I have already identified each of these complaints and dealt with all of them. There is nothing I need add.

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30 Issue (F).
31 Issue (J).

The issues: (o) the MP

156. I need next to consider the involvement of the MP.[32] It will be recalled that on 30 September 2008 the MP sent me, unsolicited by the court, a long letter which he described as his witness statement for the hearing due to begin on 1 December 2008. Part of it, which I have already considered, relates to the 'apology' issue. But it covered many other topics.

157. This witness statement is a curious and concerning document. It contains no evidence. The MP does not even profess to have any personal knowledge of any of the relevant matters. Indeed, the MP makes clear that the statement is based "entirely" on "official documents from court hearings", expert reports, and documents of the various parties; in truth, it would seem, merely such documents as MF had selected for him. The witness statement was in substance merely argumentative, seeking to make good, apparently, the proposition with which it began:

> "I allege that it is a long tale of mistreatment of [RB] and [MF] by various public bodies."

It then rehearses the various complaints canvassed by MF before concluding:

> "It is abundantly clear to me, in the light of above documentary evidence, that [MF] and [RB] have been the innocent victims of unusual practises of some elements within [the local authority] and the potential of abuse of power."

158. In the course of the witness statement the MP made various serious allegations against a number of individuals and organisations, including in particular (though this is not a complete list) that the local authority had made "false accusations" of sexual abuse, that a senior officer of the local authority had "deliberately lied" (this is a reference to the letter of 2 May 2007), that Ms Greaney had "deliberately lied to Mr Justice Munby in order to mislead him"; that the Official Solicitor had "falsely accused" MF of financial abuse, that the local authority had likewise made a "false accusation of financial abuse", that the local authority had "made a fraudulent application to Land Registry", that the local authority had made a "false accusation of sexual abuse" which they "knew … was false", that the local authority and the Official Solicitor "decided to tell lies to Mr Justice Meston and Mr Justice Munby", that the local authority "has lied to Mr Justice Munby and Mr Justice Meston", that Dr Jefferys "has behaved dishonestly and unprofessionally" and that the B home "in order to cover up … produced fake care notes."

159. On 17 November 2008, my clerk, on my instructions, wrote to the MP drawing attention to these allegations, asking whether he had any material to substantiate these (and all the other allegations) beyond what was set out in the letter and its enclosures, and inviting him to produce this further material as soon as possible. The MP replied on 19 November 2008 saying that it was MF who had supplied all the documents and "requesting you to withdraw my letter as a Witness Statement". My clerk responded on 26 November 2008, pointing out that the MP had not answered the questions set out in his letter of 17 November 2008. A further letter from the MP dated 26

[32] Issue (4).

November 2008 did not take matters significantly further. On 28 November 2008 the local authority wrote saying that it had received an email from the MP "apologising and withdrawing his witness statement."

160. Ms Greaney's submission, as set out in the position statement she had prepared for the hearing in December 2008 at a time when it was thought that the MP would be giving evidence, was that his evidence was irrelevant and inadmissible in its entirety, propounding facts on the basis of a partial selection of documents that he had seen. I am inclined to agree.

161. More important, however, is the almost complete lack of substance in the various allegations made by the MP. I have covered the ground already and need not repeat what I have already said. The MP was entitled to be very critical (as indeed I have been) of the local authority's response to his inquiries about the so-called apology letter. But that apart, each of the allegations he made was completely groundless. There was no proper basis for making any of them. They were unjustified and unsubstantiated. It is concerning that the MP should have allowed himself to be persuaded by MF to associate himself with so many groundless allegations. It is concerning in the context of legal proceedings in a court (I say nothing, of course, about proceedings anywhere else) that a Member of Parliament should make so many allegations, of such a very serious nature, against public authorities and professional persons when the allegations are based on such exceedingly flimsy foundations.

The issues: (p) RB's best interests

162. I turn finally to the question of RB's best interests,[33] an issue that was central so long as she was alive but which is now of largely historic importance.

163. I have already described (paragraph [17] above) the way in which the local authority and the Official Solicitor put their case, based in particular on Dr Jefferys' evidence, that it was in RB's best interests to continue living in the C home. And I have also described (paragraphs [95]-[98], [102]-[103]) the essential differences between Dr Jefferys and Dr Gross and explained (paragraph [104]) why in the event I preferred Dr Jefferys' analysis. Fundamentally, as I said, this was because I am sadly driven to conclude that MF would not have been able, however much he might try, to cooperate with any community care package that might have been provided for RB. The reality – the overwhelming probability – is that there would have been a continuation and repetition of MF's often unacceptable and sometimes aggressive behaviour.

164. The Official Solicitor's views were set out at some length in his fourth and final statement dated 20 November 2008. His final submission is that no evidence came to light during the hearing in December 2008 to make him alter those views. The local authority's stance is the same; its position at the end of the hearing remained as it had set it out at the beginning of the hearing.

165. I need not in the circumstances explore the evidence in detail. I acknowledge that in relation to some of the specific incidents relied upon by the local authority and the Official Solicitor there may be more merit in MF's contentions than they are prepared to acknowledge. I have also borne very much in mind the points made by Ryder J to

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[33] Issue (1).

which I have referred (paragraphs [9]-[10] above), points which in many respects accord with my own impressions of the evidence. But, be all that as it may; the inescapable fact is that what remains more than suffices to vindicate Dr Jefferys' analysis and to make good the local authority's case.

166. The sad fact, as the local authority correctly submits, is that there is a very substantial history of non-cooperation by MF with numerous care agencies and professionals, much of it documented in great detail. And whatever may be said by way of explanation or extenuation in relation to some of these incidents, the overall picture is clear. Nor, sadly, was I able to detect anything in MF's presentation or evidence during the hearing in December 2008 which gave even the slightest hint that his attitude might have changed or indeed be capable of change. There was simply nothing which even began to suggest that the future might be different from the past. I have already quoted (paragraph [98] above) Dr Jefferys' considered view on the matter. I was not at all surprised by his answer; and it accords entirely with the view I have formed having now heard all the evidence.

167. MF is understandably concerned about the Human Rights Act implications of a decision such as this. This is not the occasion, nor is there any need, for an elaborate explanation of the law or of how it applies in this case. It suffices to say that I have had the Human Rights Act 1998 and, in particular Article 8 of the Convention, very much in mind, just as I have had very much in mind the fact that RB and MF were each entitled to the protection of Article 8. My approach here is that set out in *Re S (Adult Patient: Inherent Jurisdiction: Family Life)* [2002] EWHC 2278 (Fam), [2003] 1 FLR 292, paras [18]-[49], and *Re MM; Local Authority X v MM (by the Official Solicitor) and KM* [2007] EWHC 2003 (Fam), [2009] 1 FLR 443, paras [100]-[121] (see also *A Local Authority v E* [2007] EWHC 2396 (Fam), [2008] 1 FLR 978, paras [66]-[67], *LLBC v TG, JG and KR* [2007] EWHC 2640 (Fam), [2009] 1 FLR 414, paras [30], [33], and *Re SK, A London Borough Council v KS and LU* [2008] EWHC 636 (Fam), [2008] 2 FLR 720, para [108]). I have had those principles at the forefront on my mind throughout. But in the final analysis, and this is consistent with the Strasbourg jurisprudence, the matter has to be determined by reference to RB's best interests – and that is what I have done.

The issues: (q) costs

168. The local authority and the Official Solicitor have raised the question of costs.[34] I propose to say nothing on the topic at this stage save to make two points. First, this is not a jurisdiction in which costs follow the event: *Re HM, PM v KH (No 5)* [2010] EWHC 2107 (Fam), paras [27]-[28]. Second, anyone considering any application for costs will no doubt carefully consider *all* my findings.

[34] Issues (1), (ii).