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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2

Date: Friday, 25 October 2002

B E F O R E:

MR JUSTICE SULLIVAN

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THE QUEEN ON THE APPLICATION OF BERNARD

(CLAIMANT)

-v-

LONDON BOROUGH OF ENFIELD

(DEFENDANT)

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MR R CLAYTON QC AND MISS J RICHARDS (instructed by Tyrer Roxburgh) appeared on behalf of the CLAIMANT
MR H HARROP-GRIFFITHS (instructed by London Borough of Enfield, Legal Services Department) appeared on behalf of the DEFENDANT

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J U D G M E N T

1. MR JUSTICE SULLIVAN: This is a claim for damages under section 8 of the Human Rights Act 1998 (the Act). The factual background is not in dispute and is as follows.

Factual Background

The second claimant, Mrs Bernard, is 48 years old. She is severely disabled following a stroke. She suffers from hemi paralysis and has almost no use of her right arm and leg. She has very limited mobility and is dependent on an electrically operated wheelchair. She is doubly incontinent and also suffers from diabetes. She is cared for by her husband, the first claimant, who also looks after their six children, whose ages now range from between 20 to 3 years old.

2. For about seven years the claimants were owner/occupiers of a house in Firs Lane, London N21. That house was fully adapted by the defendant's Social Services Department to meet the second claimant's needs. Sadly, mortgage arrears built up and the claimants sold the house. They took a tenancy of a property which was not adapted in Turnpike Lane for about 15 months. When that tenancy expired they applied to the London Borough of Haringey for accommodation. Haringey referred them to the defendant and, in October 1998, the family was accommodated by the defendant's Housing Department at 45 Steel Road, Tottenham, pending inquiries under the Housing Act 1996.

3. The claimants argued that this property was not suitably adapted to meet the second claimant's needs. Rent arrears built up, and the defendant's Housing Department then accommodated the family at 26 Shrubbery Road. They moved in on 13th June 2000 and remained there until they moved out on 14th October 2002, the day before the hearing of this claim commenced.

4. By a letter dated 29th June 2000, the defendant's Housing Department notified the claimants that they were considered to be intentionally homeless from 45 Steel Road. The claimants requested a review. The earlier decision was confirmed by letter dated 3rd October 2000. The claimants appealed to the County Court. Their appeal was dismissed on 1st December 2000. The Court of Appeal gave them permission to appeal, heard the appeal on 4th December 2001 and dismissed it.

5. On 12th February 2002 the defendant's Housing Department notified the claimants that they would be evicted from 26 Shrubbery Road on 25th March. The claimants' solicitors protested and the threat to evict the claimants was effectively withdrawn in a letter from the defendant's solicitor dated 22nd February 2002.

6. The claimants' solicitors protest was well-founded. On 15th September 2000, the defendant's Social Services Department had undertaken a number of assessments of the claimants' needs. Roxine Harris, a disability social worker, and Sally Penfold, an occupational therapist, visited the claimants at Shrubbery Road and undertook a Straightforward Assessment and Care Plan, a Comprehensive Assessment and Care Plan and an Occupational Therapy Assessment. No criticism is made of these three assessments, indeed they appear to be a model of thoroughness. The Straightforward Assessment described the second claimant's needs as follows:

> "Mrs Bernard had a stroke when she was 6 months old which resulted in right hemiplegia spasticity in right upper and lower limbs; shortening of right lower limb and hypertension. Mrs Bernard uses an electric wheelchair and walking stick for mobility. However she is unable to use wheelchair as the property is inaccessible - she sits in a shower chair most of the day. She is unable to undertake personal care tasks - can manage a little with left hand. She depends

totally on her husband to assist with all aspects of personal care and to maintain personal hygiene. Needs assistance to cut up food but independently feeds herself. Owing to frequency and urgency means unable to access toilet; experiences stress incontinence, therefore wears pads. Accommodation inaccessible - remains in lounge area, unable to access first floor. Experiences disturbed nights owing to pain in right side - needs to be turned frequently during the night and husband assists."

The report went on to say:

"Husband is the sole carer - Mr Bernard is happy to continue with above but has requested assistance with childcare commitments."

7. The agreed outcomes and care plan objectives included the following:

"1. [Occupational Therapist] to undertake full assessment for appropriate adaptations/equipment to enable Mrs Bernard to function safely/effectively in the home.

2. To take housing issue to Panel requesting housing report for recommendation for suitable accommodation."

The Comprehensive Assessment described the background in a little more detail:

"Mr and Mrs Bernard and 6 children aged between 11 months and 19 years live in temporary accommodation. The property is not suitably adapted to meet the needs of Mrs Bernard and is inaccessible for wheelchair use. As a result, Mrs Bernard is confined to the lounge room where her bed is. The room is shared with her husband and 2 youngest children. The increasing difficulties in meeting Mrs Bernard's care needs in this property is causing stress to all concerned. Mr Bernard has reported the above to the Council and for some time requested more suitable accommodation. Social Services department has been requested to undertake a community care assessment to provide, as identified/agreed appropriate support. Mr Bernard (sole carer) supports his wife with all essential daily living tasks and also manages child care commitment."

Under a heading "Desired Outcome", this is said:

"Mrs Bernard would like to feel safe at home. Currently she cannot answer the front door. She is unable to access outside. Mrs Bernard needs assistance with all essential daily living tasks. Mrs Bernard would like a home suitably adapted for wheelchair use/equipment to enable her to function safely/effectively, which would provide a level of independence and improve quality of life."

Under "Personal Care" it said:

"Mrs Bernard depends totally on her husband to assist/support with all essential daily living tasks. Mr Bernard lifts his wife for all transfers. The bathroom is not easily accessible, have to negotiate steps. Once inside Mrs Bernard sits on the side supported by her husband to swing her legs into the bath for a wash."

Under "Personal Safety":

"Mrs Bernard feels very unsafe at home. Occasionally she is left alone with the

two youngest children when her husband has to collect the other children from school. At these times she feels particularly concerned should there be an accident/emergency she could not raise an alarm or help the children. Mrs Bernard has fallen 4 times injuring her breast and thumb. Generally feels very vulnerable in her situation."

Under "Household Tasks":

"Mrs Bernard is unable to carry out any domestic tasks - she is confined to the lounge room. Her husband undertakes all household tasks. The older children provide support occasionally by doing the shopping."

Under "Housing":

"Terraced 2 storey, 4 bedroom temporary accommodation. The property is inaccessible for wheelchair use. It has no adaptations to meet the needs of a disabled person. Mrs Bernard is confined to the lounge room where her bed is. She is assisted with all daily living tasks in this area. The property is accessed via the front door which opens from a small front area directly into the lounge room. This obviously affords no privacy. The room is cramped and is shared with her husband and the two youngest children ... There are concerns about the safety of children accessing staircase without adequate support."

Under "Mobility":

"Mrs Bernard needs assistance with all transfers. She can stand with support for a short while but becomes very unsteady. Mrs Bernard uses an electric wheelchair for mobility however, she has been unable to use this in her present property. She uses a walking stick to help her to stand. Mrs Bernard sits in a shower chair most of the day. She finds this extremely uncomfortable seating - lower part of her body becomes very sore."

The summary and care plan says this:

"Mrs Bernard and her family need assistance to move to a suitable adapted property where she would be able to resume a level of independence and her care needs would be safely met."

The recommendation is:

"... to take housing issues to Panel and to request housing report for recommendation for suitable accommodation."

8. The Occupational Therapy Housing Assessment Report described the property, said that it was not adaptable and explained why that was so. Under "Client's View Of Need" it said:

"Wheelchair accessible property to enable independent mobilisation within home. To have safe access to bathroom, toilet, kitchen and bedrooms."

Under "Carer's View Of Need" it said "As above".

9. As part of the assessment process, the first claimant completed a self assessment form in which he explained that the children suffered because he was not able to take them out. He had no social life and, because of the burden of looking after his wife, he was unable to pursue any leisure activities:

"Because of the wife's situation there is always a strain on our relationship but somehow we always seem to overcome this. I have to understand the tremendous strain my wife is under from not being able to do things for herself and the children."

He mentioned his back problems and his concerns for his wife and children. If his back pains became worse "who would then look after the wife and children?"

10. Ms Harris recommended that Ms Penfold "take the housing issues to Panel requesting a housing report for recommendation for suitable accommodation." That was done on 18th September 2000. On 17th October 2000 Ms Penfold viewed a four bedroomed property to see if it might be suitable for the family, but concluded that it was not and so informed the defendant's homeless persons team. It is not disputed by the defendant that, in the light of these assessments carried out by its Social Services Department, it was under a duty, as the local Social Services Authority responsible for the provision of community care services to the claimants, to make arrangements for, inter alia, the provision of suitably adapted accommodation for the second claimant under section 21(1)(a) of the National Assistance Act 1948: see R v Kensington and Chelsea Royal LBC ex parte Kujtim [1994] 4 All ER 161, and R (On the Application of) Banatu v Islington LBC [2000] 4 CCLR 445. Policy guidance makes it plain that although the statutory duty is owed to the second claimant, every attempt must be made to ensure that the family can remain together.

11. The defendant failed to discharge that statutory duty. For some unexplained reason the recommendation of the defendant's Social Services Department was not acted upon by the defendant's Housing Department. By a letter dated 2nd August 2001, the claimants' solicitors wrote to the defendant's legal department referring to the assessments made in September 2000 and to the defendant's duty under section 21 of the 1948 Act, and expressing astonishment that "our clients have been left to languish in grossly unsuitable accommodation which does not meet their most basic community care needs."

12. Apart from a letter, also dated 2nd August 2001, from the defendant's solicitor saying that she was waiting for fresh instructions from the Council's Housing and Social Services Departments, there was no response to the claimants' solicitors. In September 2001 they sent an independent Occupational Therapist Report's to the defendant. That report confirmed the defendant's own assessments. Under "Present Housing", the Occupational Therapist said:

"There is a 4 inch step at the front door, which opens directly into the lounge.

The stairs to the upstairs are open plan to the lounge...

The kitchen is open plan from the other side of the stairs and there is then a door with a 4 inch step which leads out to a lean to porch. This porch leads to the bathroom/toilet.

Bathroom/Toilet

As stated above, the bathroom and toilet are at the rear of the ground floor of the property and can only be accessed from the sitting room via a series of 5 steps. The porch has a plastic roof which leaks water and caused the floor to be extremely slippery. The shower has a 10 inch step and is totally inaccessible to Mrs Bernard. She has a bathlift in situ but is unable to access the bathroom or bath without her husband's support. She has no privacy and is also often incontinent as she cannot get to the toilet in time.

She tries to reduce her fluid intake in an effort to reduce the amount of times she goes to the toilet but this has poor implications for her diabetes management."

Further points were made, including the fact that the second claimant had no privacy to get changed and no independent access to her clothes.

13. Under the heading "Social Effects of Housing" the Occupational Therapist said:

> "Mrs Bernard should be using a powered wheelchair and have equipment that would assist with transfers. The property is totally inaccessible for a wheelchair and too small for any equipment. The wheelchair has been retained by the wheelchair clinic until suitable accommodation is found.
>
> She is therefore totally dependent on her husband for all personal and domestic tasks of daily living. She cannot move without his assistance. Her husband also has to care for their 6 children in addition.
>
> Mrs Bernard is only 47 years old and is incontinent due to the difficulties of getting to a toilet in time, due to the layout of the property and her lack of wheelchair use.
>
> She has no independent access to suitable washing facility.
>
> She is unable to care for or supervise her children as she cannot move about the home...
>
> She is unable to cook for the family as she would like to.
>
> She is unable to go out without considerable difficulties.
>
> She is unable to fulfil her role as mother and carer of her children due to the poor accommodation she is living in."

The conclusion was, perhaps unsurprisingly:

> "The present property is totally unsuitable for the needs of Mrs Bernard as a disabled person.
>
> It denies her access to a wheelchair which is her only form of independent and safe mobility.
>
> It denies her, her role as mother in caring for her children.
>
> It denies her access to essential washing and toiletting facilities."

14. The defendant did not make any response to this report nor was there any substantive response to a series of letters from the claimants' solicitors in October 2001 and early February 2002. Eventually, the claimants' solicitors made an application for permission to apply for judicial review and, at long last, but only after the threat of eviction, there came the letter of 22nd February saying that there was, in fact, no intention to evict the claimants. That letter suggested a further assessment of the claimants' care needs. The claimants' solicitors replied that this was unnecessary, their needs had not altered since September 2000. That proved to be correct. After a visit to the claimants on 11th March 2002, Ms Harris

confirmed that her previous assessments remained valid. The second claimant's health had deteriorated slightly and she was still suffering from incontinence.

15. Further correspondence from the claimants' solicitors, who were anxious to avoid a contested hearing of the application for permission to apply for judicial review and for interim relief, if at all possible, went unanswered. The defendant failed to comply with an order requiring it to serve an acknowledgment of service by 18th March 2002. No acknowledgment of service had been filed by the time of the oral application for permission to apply for judicial review on 21st March, indeed no acknowledgment of service has ever been filed by the defendant.

16. At that hearing, the Council formally conceded through Counsel that it did indeed owe a duty to the claimants under section 21. Permission to apply for judicial review was granted by Lightman J, and the defendant was directed to provide information as to the availability of accommodation and the steps it was taking to make accommodation available to the claimants.

17. At the substantive hearing on 27th March I ordered, largely by consent (submissions were made as to the precise terms of the order) that the substantive application for judicial review should be granted and that the defendant should provide accommodation for the claimants by a two stage process. The defendant had three months to identify an appropriate property and three months thereafter to adapt it to meet the second claimant's needs. If those timescales could not be met for any reason, the defendant had to agree an extended period with the claimants or apply to the court for an extension.

18. The application for judicial review contended, inter alia, that the defendant's conduct had been in breach of Articles 3 and 8 of the European Convention on Human Rights (the Convention). In addition to a mandatory order, damages were claimed under section 8 of the Act. The claim for damages was adjourned and came before me on 15th October. In the meantime, the process of finding a suitable property was not progressing smoothly. After chasing correspondence from the claimants' solicitors, the defendant, on 20th May, made an offer of accommodation at 66 Mitchell Road. It was eventually conceded by the defendant that this property would be too small for the needs of the claimants and their family; it would have been statutory overcrowded. Unfortunately, this concession was not made until the very last minute, on 29th July, the day before an application by the defendant for the discharge of the order dated 27th March was due to be heard. The defendant was contending that the offer of number 66 meant that it had discharged its statutory obligations to the claimants. The defendant did, however, explain that it was continuing to make inquiries in case another property might become available. Number 53 Tewkesbury Terrace was offered to the claimants and accepted by them but it fell through because the landlord did not wish to have his property adapted, understandably this caused the claimants great disappointment.

19. At the hearing on 30th July, the defendant withdrew its offer of number 66. Its application to discharge the order dated 27th March was dismissed and it was granted, by consent, an extension of time until 30th September to identify a suitable property and make it available for the claimants' occupation. The period of three months for subsequent adaptions remained unchanged. Following yet more chasing correspondence from the claimants' solicitors, which eventually included a threat to make an application for an order requiring the defendant to show cause why its Director of Social Services should not be committed to prison for contempt of court, the defendant, on 17th September, identified 92 Middleham Road, a five/six bedroomed house in Enfield. The first claimant viewed the property and accepted it. The family was not able to move in until 14th October 2002, more than two years after the assessments in September 2000.

20. To complete the factual background, the first claimant's witness statement explains the problems faced by him and his family at Shrubbery Road. Having referred to his back injury and to the torturous route up steps and down steps to the bath and WC in the lean to at the back of the house, he says this:

> "Because my wife is doubly incontinent and only gets, frequently, less than 1 minute warning of the need to use the toilet, she commonly defecates or urinates before we reach the toilet. The result has been that I have had to persistently clean the carpets, together with her clothes and bedclothes. This is a problem, which arises several times each day. I have to go to the laundrette often twice a day, and because of the layout of the house, I have had to buy adult size nappies for my wife together with disposal pants and wipes...
>
> We only have benefits to live on and the additional cost of going to the laundrette twice a day and having to buy large amounts of floor cleaner and carpet cleaner has left us impoverished. We have not been able to pay the difference between our Housing Benefit and rent because we are so impoverished by these laundrette and cleaning costs.
>
> Additionally, my wife's role in bringing up the children is greatly limited. She cannot access the upper part of the house at all and it is a real struggle for her to leave her bedroom, which is in fact, the family's living room.
>
> She has no privacy. We have six children, and she is in the living room, which is accessed directly from the front, street door.
>
> Understandably my wife finds this state of affairs depressing and demeaning. It is very humiliating for her to constantly defecate or urinate in her clothing, as she is unable to reach the toilet. This happens as a result of the layout of the house and because the house does not have proper adaptations for a disabled person."

21. There is no challenge to this evidence. It echoes, and to some extent, amplifies the defendant's own assessments. As I have indicated, apart from Ms Harris's witness statement, which deals with her assessments in September 2000 and March 2002, the defendant has not produced any evidence to explain why nothing was done in response to the former assessment until after judicial review proceedings had been commenced; to explain its repeated failures to respond to correspondence from the claimants' solicitor; or even to explain why it was not possible to comply with the timescale set out in the court's order of 27th March, or the extended timescale to 30th September.

22. Counsel for defendant, Mr Harrop-Griffiths, was placed in the unenviable position of having to concede on 27th March that there had been a breach of statutory duty (no written acknowledgment of any error or omission has ever been forthcoming from the Council), and then to respond to this claim for damages without the benefit of any evidence, much less any explanation or apology to the claimants from the defendant. In these unpropitious circumstances, he discharged a most difficult task with considerable ability.

The Law

By virtue of section 6(1) of the Act it is unlawful for a public authority to act in a way which is incompatible with a Convention right. The claimants contend that the defendant acted incompatibly with their rights under Article 3 and Article 8 of the Convention.

Article 3

Article 3 provides so far as material that the claimant should not be "subjected to inhuman or degrading treatment." The prohibition in Article 3 is an absolute one, permitting of "no qualification or excuse." It is not in dispute that the claimants were badly treated as a result of the defendant's failure to act on the assessments in September 2000, but:

> "Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim."

see A v United Kingdom [1998] 27 EHRR 661 at paragraph 20.

23. The sole issue between the parties under Article 3 is whether this threshold was or was not crossed in the light of all the circumstances of the case as described above. The defendant points to the need for the threshold to be set relatively high, since the right under Article 3 is an unqualified one. The claimants make the point that the standards applied by the European Court of Human Rights are becoming more strict. In Selmouni v France [2000] 29 EHRR 403, at paragraph 101 the court observed:

> "The Court has previously examined cases in which it concluded that there had been treatment which could only be described as torture. However, having regard to the fact that the Convention is a 'living instrument which must be interpreted in the light of present day conditions', the Court considers that certain acts which were classified in the past as 'inhuman and degrading treatment', as opposed to 'torture' could be classified differently in future. It takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies."

24. The claimants placed particular reliance on two cases concerned with the treatment of prisoners in custody. Peers v Greece [2001] 33 EHRR 51 and Price v United Kingdom [2002] 34 EHRR 53. These cases demonstrate that in deciding whether treatment is "degrading" within the meaning of Article 3, the court will have regard to whether its object is to humiliate and debase the person concerned. But the absence of any such purpose "cannot conclusively rule out a finding of violation of Article 3:" see paragraph 74 of Peers.

25. In paragraph 75 of that case, the court said:

> "... in the present case, the fact remains that the competent authorities have taken no steps to improve the objectively unacceptable conditions of the applicant's detention. In the Court's view, this omission denotes lack of respect for the applicant. The Court takes particularly into account that, for at least two months, the applicant had to spend a considerable part of each 24-hour period practically confined to his bed in a cell with no ventilation and no window which would at times become unbearably hot. He also had to use the toilet in the presence of another inmate and be present while the toilet was being used by his cellmate. The Court is not convinced by the Government's allegation that these conditions have not affected the applicant in a manner incompatible with Article 3. On the contrary, the Court is of the opinion that the prison conditions

> complained of diminished the applicant's human dignity and arose in him feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance. In sum, the Court considers that the conditions of the applicant's detention in the segregation unit of the Delta wing of the Koridallos prison amounted to degrading treatment within the meaning of Article 3 of the Convention."

In Price a severely disabled woman had been imprisoned for three nights for contempt of court. In paragraph 30 of its judgment, the court said:

> "There is no evidence in this case of any positive intention to humiliate or debase the applicant. However, the Court considers that to detain a severely disabled person in conditions where she is dangerously cold, risks developing sores because her bed is too hard or unreachable, and is unable to go to the toilet or keep clean without the greatest of difficulty, constitutes degrading treatment contrary to Article 3."

It should be noted that in that case male officers had been required to assist in lifting the applicant on to and off the toilet, and that "by the time of her release the applicant had to be catheterised because of the lack of fluid intake, and problems in getting to the toilet had caused her to retain urine": see paragraphs 28 and 29 of the court's judgment. Reference was also made to two other prison cases: Dougoz v Greece [2001] 10 BHRC 306 and Kalashnikov v Russia, judgment dated 15th July 2002.

26. On behalf of the claimants Mr Clayton QC points to the fact that for over two years, after September 2000, the second claimant had to live in conditions where she was unable to access the toilet or to keep herself clean without the greatest difficulty. As a consequence of the wholly inadequate accommodation in Shrubbery Road, she soiled herself on a number of occasions each day; she had no privacy, was unable to go out of her house, unable to go upstairs and unable to move anywhere downstairs without her husband's assistance. She had to share a cramped living room with her husband and two youngest children, the other children having to go through that room in order to get upstairs. Her husband's health was placed at risk. His back problem was made worse and she felt not merely vulnerable and unsafe but also frustrated and humiliated because she was unable to do anything for her family and was totally dependent upon them.

27. On behalf of the defendant Mr Harrop-Griffiths stresses the fact that there was no intention to humiliate or debase the claimants, and that the defendant's Social Services Department had discussed with the first claimant the provision of some assistance, for example respite care, or help with the care of the second claimant in her home, but the first claimant did not want such assistance. He did ask for help in getting the children to school, but the defendant was unable to assist with this due to limited resources. The claimants were advised to consult their GP with a view to an assessment by an incontinence adviser, although it is fair to say that there is no indication as to how such advice might have been of any real assistance, given the second claimant's medical condition and her living arrangements. She thought that it was pointless to consult her GP about this and did not do so.

28. Although some would undoubtedly describe the conditions in which the claimants were forced to live for 20 months as degrading, particularly in view of the consequences of the second claimant's incontinence, I am not persuaded that the "minimum level of the severity threshold" is crossed. I recognise that the Convention is a living instrument and that conditions which might have been regarded as acceptable in the relatively recent past would now be regarded as inflicting degrading treatment. Although not conclusive, the fact that

there was no intention to humiliate or debase the claimants is a most important consideration. The cases concerned with prisoners' rights, upon which the claimants placed great reliance, must be treated with great caution outside the prison gates. A prisoner is in a uniquely vulnerable position: detained against his will, he is literally at the mercy of the prison authorities. It is understandable that the protection afforded by Article 3 should be rigorously applied in such circumstances, even if there is no intention to humiliate or debase. The regime under which a prisoner lives will have been ordained by the prison authorities. Thus, whatever the authority's purpose may have been in imposing a particular regime, there will have been a deliberate decision to subject the prisoner against his will to that particular regime.

29. The present case is very different, not merely because the second claimant was living (in admittedly deplorable conditions) in her own home, surrounded by her family but also because those living conditions were not deliberately inflicted upon her by the defendant. The defendant failed to act on the September 2000 assessments but there is nothing to suggest that the defendant's breach of statutory duty was any more than that: a failure to act. The claimants' case appears to have fallen into an administrative void between the defendant's Social Services and Housing Departments. Thus, the claimants' suffering was due to the defendant's corporate neglect and not to a positive decision by the defendant that they should be subjected to such conditions.

30. To set against this consideration there is the fact that the claimants were forced to live in deplorable conditions for many months (compare, for example, the Price case where the applicant was detained in prison for just three days). There was some dispute as to how long the defendant had been in breach of its statutory duty. Given the nature and extent of the second claimant's disabilities and the size of the family (six children, one of whom is now over 20) it is unrealistic to expect that the Council would have been able to identify an appropriate property in less than three to four months following the assessments in September 2000. In the event, it took them some two years.

31. In the absence of any evidence from the defendant as to the availability or non-availability of suitable properties, I conclude on the balance of probability that the claimants had to remain in manifestly unsuitable accommodation for some 20 months longer than would have been the case if the defendant had discharged its statutory duty towards them reasonably promptly. I acknowledge that the case under Article 3 is finely balanced. Deplorable though the conditions were in Shrubbery Road for those 20 months, I do not consider that they crossed the necessary threshold of severity so as to amount to a breach of the claimants' rights under Article 3.

Article 8

By contrast the case under Article 8 is not finely balanced. Under Article 8 the claimants are entitled to respect for their "private and family life." While the main thrust of Article 8 is to prevent arbitrary interference by public authorities with an individual's private and family life, the European Court of Human Rights has recognised that Article 8 may require public authorities to take positive measures to secure respect for private or family life: see Markcx v Belgium [1979] 2 EHRR 330, at paragraph 31. In Botta v Italy [1998] 26 EHRR 241, the court said this in paragraphs 32 to 34:

> "32. Private life, in the Court's view, includes a person's physical and psychological integrity; the guarantee afforded by Article 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings.

> 33. In the instant case the applicant complained in substance not of action but of a lack of action by the State. While the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities, it does not merely compel the state to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. However, the concept of respect is not precisely defined. In order to determine whether such obligations exist, regard must be had to the fair balance that has to be struck between the general interest and the interests of the individual, while the State has, in any event, a margin of appreciation.
>
> 34. The Court has held that a State has obligations of this type where it has found a direct and immediate link between the measures sought by an applicant and the latter's private and/or family life."

It is unnecessary to attempt to define "family life" since it is not in dispute that "the fundamental element of family life is the right to live together so that family relations can develop naturally and that members of a family can enjoy one another's company": see paragraph 13.90 of Clayton & Tomlinson's Law of Human Rights.

32. I accept the defendant's submission that not every breach of duty under section 21 of the 1948 Act will result in a breach of Article 8. Respect for private and family life does not require the state to provide every one of its citizens with a house: see the decision of Jackson J in Morris v LB Newham [2002] EWHC 1262 (Admin) paragraphs 59 to 62. However, those entitled to care under section 21 are a particularly vulnerable group. Positive measures have to be taken (by way of community care facilities) to enable them to enjoy, so far as possible, a normal private and family life. In Morris Jackson J was concerned with an unlawful failure to provide accommodation under Part VII of the Housing Act 1996, but the same approach is equally applicable to the duty to provide suitably adapted accommodation under the 1948 Act. Whether the breach of statutory duty has also resulted in an infringement of the claimants' Article 8 rights will depend upon all the circumstances of the case. Just what was the effect of the breach in practical terms on the claimants' family and private life?

33. Following the assessments in September 2000 the defendant was under an obligation not merely to refrain from unwarranted interference in the claimants' family life, but also to take positive steps, including the provision of suitably adapted accommodation, to enable the claimants and their children to lead as normal a family life as possible, bearing in mind the second claimant's severe disabilities. Suitably adapted accommodation would not merely have facilitated the normal incidents of family life, for example the second claimant would have been able to move around her home to some extent and would have been able to play some part, together with the first claimant, in looking after their children. It would also have secured her "physical and psychological integrity". She would no longer have been housebound, confined to a shower chair for most of the day, lacking privacy in the most undignified of circumstances, but would have been able to operate again as part of her family and as a person in her own right, rather than being a burden, wholly dependent upon the rest of her family. In short, it would have restored her dignity as a human being.

34. The Council's failure to act on the September 2000 assessments showed a singular lack of respect for the claimants' private and family life. It condemned the claimants to living conditions which made it virtually impossible for them to have any meaningful private or family life for the purposes of Article 8. Accordingly, I have no doubt that the defendant was

not merely in breach of its statutory duty under the 1948 Act. Its failure to act on the September 2000 assessments over a period of 20 months was also incompatible with the claimants' rights under Article 8 of the Convention.

Section 8(3) of the Act

It does not follow that the claimants are entitled to an award of damages. Under section 8(1) the court "may grant such relief or remedy or make such order within its powers as it considers just and appropriate." Section 8(3) provides:

> "No award of damages is to be made unless, taking account of all the circumstances of the case, including-
>
> (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and
>
> (b) the consequences of any decision (of that or any other court) in respect of that act,
>
> the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.
> (4) In determining-
>
> (a) Whether to award damages, or
>
> (b) The amount of an award,
>
> The court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention."

35. If the parties are agreed upon one thing in this case it is the difficulty of identifying any principles upon which the European Court of Human Rights decides whether it is necessary to afford just satisfaction under Article 41. In its report on "Damages under the Human Rights Act 1998" (October 2000), the Law Commission emphasises the breadth of discretion under Article 41 and says in paragraph 4.43:

> "In practice, the discretion given to the domestic courts under the [Human Rights Act] appears to be no less broad than that of the Strasbourg Court under Article 41."

Paragraph 4.44 says:

> "We have seen that the Strasbourg Court, in deciding whether just satisfaction requires an award of damages, takes into account a wide range of matters which are not referred to in section 8 of the [Human Rights Act]. Thus it may refuse damages altogether, or grant them on a more or less generous basis. Such cases are never expressly identified by the Court as departures from the principle of *restitutio in integrum;* usually the reasons are simply not articulated. In Part III we attempted to identify the factors which the case-law suggests are taken into account by the Strasbourg court when it assesses damages:
>
> (1) A finding of a violation may constitute just satisfaction.

(2) The degree of loss suffered must be sufficient to justify an award of damages.

(3) The seriousness of the violation will be taken into account.

(4) The conduct of the respondent will be taken into account. This may include both the conduct giving rise to the application, and a record of previous violations by the State.

(5) The conduct of the applicant will be taken into account."

36. Having regard to all the circumstances outlined in the Factual Background (above), I am satisfied that an award of damages is necessary to give just satisfaction to the claimants. This was a serious breach of their rights under Article 8. The claimants and their family had to live in deplorable conditions, wholly inimical to any normal family life, and to the physical and psychological integrity of the second claimant for a considerable period of time.

37. On behalf of the defendant Mr Harrop-Griffiths, whilst not seeking to belittle the impact of the defendant's failure on the claimants, points out that the first claimant had indicated that he was happy to continue looking after his wife without seeking any care assistance from the defendant, and that advice was given as to who to approach for assistance with incontinence problems. These matters do not alter the fact that the assessments had made it clear that Shrubbery Road was wholly unsuitable and that the real need was for alternative, suitably adapted accommodation. So long as the family remained at Shrubbery Road the defendant's willingness to offer other forms of help was of no real assistance to the claimants.

38. The defendant also points to the effect on the claimants of the relief that has been granted by the court. Once 92 Middleham Road has been adapted, the claimants will have been provided with a suitable home for themselves and all their children, including those over 18. They have also been given financial security as regards payment of the rent (insofar as it exceeds the benefits available to them). Thus the claimants, by comparison with many families in London, who have to live in unsuitable or cramped accommodation, have derived a considerable long-term benefit. There is no evidence about 92 Middleham Road. I understand the property is a five to six bedroom house, certainly the claimants appear to be pleased with their new home. On the limited information available, I am prepared to accept that the defendant has, albeit very belatedly, not merely discharged its duties under the 1948 Act and Article 8, but has done so in full measure. The defendant's obligations might have been complied with by the offer of accommodation that was less satisfactory from the claimants' point of view; this is a factor to bear in mind in deciding the quantum of any award. But I do not accept that it justifies a refusal to award the claimants any financial compensation for the 20 months or so during which the defendant failed to respect their rights under Article 8.

39. I accept that in many cases the finding of a violation, particularly when coupled with a mandatory order, may constitute just satisfaction. Concerns have been expressed in various quarters about the development of a "compensation culture". In my experience in this court, dealing with a wide range of complaints against public authorities, most citizens who have suffered as a result of some bureaucratic error are not motivated, or at least not primarily motivated, by a desire for monetary compensation. They institute proceedings because they feel outraged by what they see as an injustice and want "them", the faceless persons in an apparently insensitive, unresponsive and impenetrable bureaucratic labyrinth, to acknowledge that something has gone wrong, to provide them with an explanation, an apology and an assurance that steps have been taken to ensure (so far as possible in an imperfect world) that

the same mistake will not happen again. This assurance will at least give them the satisfaction of knowing that they have not suffered in vain.

40. If a public body takes all of those steps reasonably promptly, once the problem has been drawn to its attention, then it may well be the case that nothing more is required by way of monetary compensation in order to afford "just satisfaction" in very many cases. Sadly, that is not the position in the present case. The defendants were repeatedly urged by the claimants' solicitors to take action in numerous letters written between August 2001 and February 2002; most of those letters were simply ignored.

41. Through Counsel, the defendant agreed to the making of a mandatory order on 27th March 2002, but there has been no acknowledgment that the defendant was in error, no explanation, no apology, and nothing to indicate that the defendant's procedures have been improved so that the same kind of mistake, the Housing Department failing to act on Social Services Department assessments, is less likely to occur in the future. Moreover, the defendant's conduct in dealing with the matter was not confined to mere inaction. In February 2002 the Housing Department threatened to evict the claimants. The threat was soon withdrawn, but it should never have been made had there been proper liaison between the defendant's Housing and Social Services Departments. After 27th March 2002 the defendant failed to comply with the original and then with the extended timescales set by the court. There may well have been a reasonable explanation but, again, there has been no apology or explanation, and the apparent delays were compounded by the defendant's insistence, maintained until the 11th hour, that the offer of 66 Mitchell Road had discharged its statutory duty.

42. A number of authorities were cited by the parties, dealing with the approach of the European Court of Human Rights to its discretionary power to award compensation, but I find it unnecessary to refer to them since I am entirely satisfied that a refusal to award the claimants damages under section 8 of the Act would not afford them just satisfaction for their 20 months ordeal and would indeed be most unjust.

Quantum of Damages - Discussion

The guiding principle is restitutio in integrum, a principle which is, for obvious reasons, much easier to apply where there has been pecuniary rather than, as in the present case, non-pecuniary loss. The additional laundry and cleaning costs mentioned by the first claimant in his witness statement have not been quantified. No "tariff" can be derived from decisions made by either the domestic courts or the European Court of Human Rights. In the case of the former there are, as yet, no reported decisions that might be of any assistance and, in the case of the latter, there is a marked lack of consistency in the court's many awards. A selection of those awards is helpfully analysed, article by article, in section B of the Law Commission's report.

43. Mr Clayton relied in particular on the awards in the "prison" cases, but for the reasons set out above I do not consider that they provide useful comparables. Comparisons with awards made by the European Court of Human Rights are made even more difficult by the need to make allowances, not merely for inflation since the dates of the awards, but also for differing standards and costs of living throughout Europe. For example, an award of a sum, the sterling equivalent of which is £3,000, to an applicant in Greece may be worth much more in real terms than an award of £3,000 to an applicant in the United Kingdom. The Law Commission's report refers to a paper by Lord Woolf "The Human Rights Act and Remedies" in which he suggested eight possible principles which might be applied when considering an award of damages under section 8. Those principles included:

"(2) The court should not award exemplary or aggravated damages...

(4) The quantum of the award should be 'moderate', and 'normally on the low side by comparison to tortious awards.'"

The claimants do not suggest that I should award them exemplary or aggravated damages.

44. When considering pecuniary loss, the Commission observes in paragraph 4.61:

> "Lord Woolf's suggestion that awards should be 'on the low [side] in comparison to tortious claims' would seem to require a departure from the principle of *restitutio in integrum* applied by the Strasbourg Court. As we have noted, like awards in tort, Strasbourg awards are designed to reflect the full amount of the loss."

Having noted in paragraph 4.63:

> "... that the Strasbourg Court's awards for non-pecuniary losses cover a wide range of intangible injuries. The categories of loss which have been compensated under this heading include pain, suffering and psychological harm, distress, frustration, inconvenience, humiliation and anxiety."

The Commission say this in paragraphs 4.66 to 4.68:

> "4.66 It may be reasonable to expect awards for non-pecuniary loss under the [Human Rights Act] to be kept to 'moderate' levels, to use Lord Woolf's term. This proposal is consistent with the general experience that the Strasbourg Court 'has not proved unduly generous' in awarding compensation. In *Heil v Rankin*, the Court drew attention to the observations of the Canadian Supreme Court in relation to the assessment of non-pecuniary loss:
>
> > This is the area where the social burden of large awards deserves considerable weight. The sheer fact is that there is no objective yardstick for translating non-pecuniary losses, such as pain and suffering and loss of amenities, into monetary terms. This area is open to widely extravagant claims...
>
> 4.67 This caution was echoed by the Court of Appeal:
>
> > The compensation must remain fair, reasonable and just. Fair compensation for the injured person. The level must also not result in injustice to the defendant, and it must not be out of accord with what society as a whole would perceive as being reasonable.
>
> Thus:
>
> > Awards must be proportionate and take into account the consequences of increases in the awards of damages on defendants as a group and society as a whole.
>
> This required the court to have regard to factors such as the fact:
>
> > that our decision will have a significant effect on the public at large, both

> in the form of higher insurance premiums and as a result of less resources being available for the NHS.
>
> 4.68 Similar considerations will apply under [the Human Rights Act]. However, in this context, as in that of pecuniary loss, it is hard to see why awards under [the Human Rights Act] should be 'on the low side by comparison with tortious awards.' In those cases where there is a close common law analogy, for example wrongful detention, the tariffs established in cases such as *Thompson v The Commission of Police and Metropolis*, would appear equally applicable, subject of course to account being taken of the facts of particular cases. But there is no reason to think that the courts will find any difficulty in developing appropriate tariffs for standard types of case."

To this trial judge, the final sentence of paragraph 4.68 appears somewhat over optimistic, but in a footnote (number 127) the Commission does refer to two potentially valuable sources of information in relation to awards of damages or compensation in circumstances which are more closely comparable with the facts of the present case. Damages for discomfort, inconvenience and injury to health arising out of breaches of repairing covenants in residential tenancies; and recommendations by Local Commissioners for Administration (Local Government Ombudsman) that local authorities pay compensation when claimants have suffered as a result of maladministration.

45. Many complaints to the Local Government Ombudsman are made by or on behalf of disabled persons who contend that they have been deprived of benefits or assistance as a result of maladministration. This is in broad terms what has occurred in the present case. While awards by the European Court of Human Rights have been "moderate" and certainly not "unduly generous" it is difficult to see why damages under section 8 should be "on the low side" by comparison with tortious awards. Equally, it is difficult to see why they should be high by comparison with tortious awards. The Act seeks to hold a balance after all between the rights of the individual and the rights of society as a whole.

46. On the facts of the present case there is no comparable tort. There is no evidence that the conditions in Shrubbery Road caused any mental or physical injury to the claimants; I do not overlook the fact that the first claimant's back problems were aggravated, but this caused him discomfort, distress and inconvenience rather than injury. The second claimant must have suffered a great deal of discomfort, distress and frustration, but it says much for her resilience that she managed to cope and did not become mentally or physically ill. She was understandably very frustrated and depressed but she did not seek medical help for clinical depression.

47. In these circumstances it seemed to me that the JSB Guidelines for the Assessment of General Damages in Personal Injury Cases and the awards noted in Part K of Kemp and Kemp's The Quantum of Damages, dealing with minor injuries, where there is a complete or almost complete recovery, and where damages are principally for pain and suffering (K1-102) might also provide a useful comparison. Is there any good reason why the claimants should be awarded significantly more (or less) for their suffering over the period of 20 months than they would have received if they had made a full recovery after 20 months from some minor mental or physical injury resulting in pain and suffering sustained as a result of the defendant's negligence?

48. Dealing with the first of these three potential sources of information as to the level of awards: damages for inconvenience, discomfort and injury to health as a result of breach of repairing covenants, Mr Harrop-Griffiths referred to the Court of Appeal's decision in Wallace v

Manchester City Council [1998] 30 HLR 1111. In that case Counsel for the appellant contended that there was "an unofficial tariff of damages for discomfort and inconvenience of £2,750 per annum at the top and, £1,000 per annum at the bottom." The appellant had been awarded £3,500 general damages. She contended that the award covered 5 years and was thus outside the tariff. The Court of Appeal disagreed: assuming, but without deciding, that there was an unofficial tariff, the period of disrepair under consideration by the trial judge led to an award of a little more than £1,000 per annum, within the tariff. The defendant Council did not dispute the existence of such a tariff. In my view it provides a useful yardstick, not least because the discomfort and inconvenience caused by serious disrepair at the upper end of the scale will not be wholly dissimilar to the kind of problems faced by the claimants. Given the second claimant's incontinence and almost complete lack of mobility within her home, the discomfort and inconvenience suffered by the claimants would have been significantly worse. Thus, the upper end of the "tariff" (around £5,000 for 20 months disrepair) might reasonably be regarded as being at the lower end of an appropriate range for the present case.

49. The parties had not considered the two other possible sources of information: the reports of the Local Government Ombudsman and the awards for pain and suffering in cases of minor personal injury. I invited them to make written submissions dealing with these matters, and I am most grateful for their very helpful responses. Mr Clayton referred to a number of decisions by the Local Government Ombudsman, recommending awards between (at current values) £16,530 and £2,120 for various failures in the field of social services: to provide care for a child with severe learning difficulties, to provide home care assistance for a mother with multiple disabilities, to provide a residential placement for a young man with learning disabilities, to provide a residential care home for an elderly lady, and adequate care at a multi purpose day centre for a young man with sensory impairment. In all of these cases, the families who acted as carers suffered varying degrees of stress, exhaustion, anxiety and disruption to their lives. At the bottom end of the scale, a mere failure to recognise a carer's needs merited an award of £2,000. Non-provision of services for a relatively short period of time can result in a substantial award (£5,000 for 11 months of stress and exhaustion). At the top end of the scale, in cases where there is a great deal of anxiety and disruption or extreme stress, significantly more has been recommended (£10,900). The highest recommended award (£16,350 at current values) included a significant element of pecuniary loss. The complainant had been unable to find a suitable job because of her care commitments, had sought medical treatment for depression, had exhausted her substantial savings and was reduced to living on income support, her previous standard of living having disappeared.

50. It is not possible to identify that part of the recommended award which related to non-pecuniary loss because Local Government Ombudsman's awards, in terms of quantum, are generally unreasoned. Excluding this case, it would appear that the range of recommended payments for distress etc., where there have been failures for substantial periods to provide care facilities for those who are disabled, has been between £5,000 to £10,000. The claimants submit that for the reasons set out in the Factual Background (above), their sufferings in the present case were much greater and more prolonged than those of the complainants in the Ombudsman cases.

51. Mr Harrop-Griffiths submitted that a useful starting point was the Commission for Local Administration in England's Guidance on Good Practice, Part 6 of which deals with remedies. This makes it clear that in deciding upon an appropriate remedy the Local Government Ombudsman seeks "as far as possible to put the complainant in the position he or she would have been in but for the maladministration" (paragraph A.6). Paragraphs A21 to 25 deal with loss of a non-monetary benefit (such as suitable educational provision) and paragraphs 30 to 31 with distress. This is broadly defined in similar fashion to the approach adopted by the

European Court of Human Rights to include "stress, anxiety frustration, uncertainty, worry, inconvenience" et cetera. Paragraph 30 continues:

> "This needs to have regard to all the circumstances including the severity of the distress, the length of time involved, and the number of people affected (for example, members of the complainant's family as well as the complainant).
>
> 31. This element may be a moderate sum of no more than a few hundred pounds or less but in cases where the distress has been severe and/or prolonged, a more substantial sum may be justified."

52. Sections B and C of the Guidance deal with Council housing repairs and neighbour nuisance cases, and suggest awards ranging between £200 to a £1,000 a year depending on the severity of the disrepair and/or the nuisance: see paragraphs B16 and C17. "But a careful assessment of the facts may on some occasions point to sums above or below that range." It may well be the case that the housing disrepair cases which result in complaints to the Local Government Ombudsman, rather than in legal proceedings for breach of repairing covenants, are at the less serious end of the spectrum: compare the lower end of the tariff referred to in Wallace above.

53. Mr Harrop-Griffiths referred to other awards recommended by the Local Government Ombudsman ranging between £750 to £4,250 for distress, worry and inconvenience as a result of failures to deal properly with an occupational therapy assessment, to make home adaptations, in one case for four years, and to provide residential care for a person with a severe learning disability. (These awards are recommended in reports dating between 1996 and 1999 and have not been updated for inflation). In one of these cases (resulting in a recommendation in 1999 that the family be paid a total of £4,250) concerns had been expressed about the medication, food hygiene, personal hygiene and health monitoring of a severely disabled woman who "was forced to live in conditions which the Council assessed as utterly unsuitable for 11 months longer than she should have done." These awards are broadly consistent with the awards at the lower end of the range derived from the cases relied upon by the claimants.

54. I have found the awards recommended by the Local Government Ombudsman of great assistance. In effect, they are seeking to give just satisfaction for the adverse consequences of administrative failings of the kind which occurred in the present case. But it is important to bear in mind that in every case the Ombudsman's report will try to explain how the maladministration occurred. Part of the remedy is invariably a recommendation that the Council apologise to the claimant, if it has not already done so. In very many case assurances are given that procedures have been improved so as to reduce the risk of similar mistakes in the future.

55. Turning to the Guidelines in Personal Injury claims, the reported decisions do not disaggregate the amounts awarded in respect of pain, suffering and loss of amenity, the last two being relevant in the second claimant's case. Mr Harrop-Griffiths referred to the JSB Guidelines (5th edition) for cases where there has been psychiatric damage generally, and post-traumatic stress disorder. For minor cases of the former, where awards of £750 to £3000 are appropriate, "the level of award will take into consideration the length of the period of disability and the extent to which daily activities and sleep were affected." Awards of £2,000 to £4,000 are suggested for minor cases of PTSD:

> "In these cases a virtually full recovery will have been made within one or two years and only minor symptoms will persist over any longer period."

In Kemp and Kemp the awards for "minor injuries" defined as "cases of complete or almost complete recovery where damages are principally for pain and suffering and shock" ranged between a few hundred pounds to around £6,000 at 2002 values.

56. Mr Clayton submits that the Personal Injury awards and Guidelines are of no real assistance, save that they provide a benchmark for keeping one's feet on the ground: see John MGN [1997] QB 586. The consequences of minor injuries are not truly comparable with the humiliating conditions endured by the claimants over a period of 20 months, and different policy considerations are in play. In Heil v Rankin [2000] 2 WLR 1173 Lord Woolf, MR, said this in paragraph 36:

> "Awards must be proportionate and take into account the consequences of increases in the awards of damages on defendants as a group and society as a whole. The considerations are ones which the court cannot ignore. They are the background against which the fair, reasonable and just figure has to be determined."

Claimants are entitled to damages for personal injury as of right if liability is established. There are numerous such claimants, and any general increase in the quantum of personal injury damages is bound to have far-reaching effects. By contrast, the award of damages under section 8(3) is in the court's discretion, an award does not follow merely because there has been a breach of a Convention right.

57. Mr Harrop-Griffiths submitted that the approach adopted by Lord Woolf, whether in his paper referred to by the Law Commission (above), or in Heil v Rankin pointed to the need for any award under section 8(3) to be kept within moderate bounds. The claimants respond that awards should not be pitched too low since this would diminish respect for the fundamental rights enshrined in the Convention. In Alexander v Home Office [1988]1 WLR 968, the Court of Appeal was concerned with an award of damages for unlawful racial discrimination. May LJ said this at page 975:

> "Award should not be minimal, because this would tend to trivalise or diminish respect for the public policy to which the Act gives effect. On the other hand, just because it is impossible to assess the monetary value of injured feelings, awards should be restrained."

In their skeleton arguments the parties had not put forward any figures: the claimants arguing for a "substantial" award; the defendants for a "moderate" one if damages were considered appropriate, which was not accepted.

58. By the conclusion of proceedings the claimants were contending for an award of £10,000 to £20,000 for the second claimant and £5,000 for the first claimant; and the defendant, without prejudice to its contention that no award was necessary, for an award not exceeding £4,000 in total for both claimants.

Conclusions on Quantum

The award to the claimants should not be minimal, that would undermine for the policy underlying the Act that Convention rights should be respected by all public authorities. As with damages for Personal Injuries the court must not ignore the consequences of awards under section 8(3) for public authorities generally and society as a whole. On a simplistic view of local authority accounting, the larger the award to the claimants under section 8 the less there will be for the London Borough of Enfield to spend on providing social service

facilities for the many others in need of care within the borough. Even if the money does not come out of the social services budget, it will have to come from some other service's budget and/or from Council taxpayers.

59. To set against this public disbenefit, it is very much in the interests of society as a whole that public authorities should be encouraged to respect individual's rights under the Convention. A "restrained" or "moderate" approach to quantum will provide the necessary degree of encouragement whilst not unduly depleting the funds available to the defendant for the benefit of others in need of care. I have seen no justification for the latter part of Lord Woolf's fourth proposition "that the quantum of awards under section 8(3) should normally be on the low side by comparison to tortious awards." It is clear from his dictum in Heil v Rankin (above) that in updating such awards the Court of Appeal has already taken account of the interests of both defendants as a group and society as a whole. Bearing in mind the importance of securing compliance with the Convention, I see no justification for a further reduction, pushing damages under section 8 down below the level of tortious awards. Indeed, the awards in Kemp and Kemp for pain and suffering, and loss of amenity in cases of minor personal injury, appear to be on the low side by comparison with the awards recommended by the Local Government Ombudsman for disruption, distress worry and inconvenience suffered as a result of maladministration by local authorities. Why this should be so is not clear, it may be that the adverse effects of the maladministration in such cases lasts for longer than the suffering and loss of amenity in most cases of minor personal injury. It is not easy to reconcile the awards recommended by the Local Government Ombudsman for distress, worry et cetera, with the JSB Guidelines for minor psychiatric damage/PTSD. It may be that looked at in the round, the overall impact of such minor illnesses upon claimants' "Daily activities" lives is less severe and intrusive than the effects of maladministration upon the complainants' lives in those cases considered by the Ombudsman.

60. I accept the claimants' submission that the Personal Injury awards and Guidelines are of limited assistance. They are generally very far removed on the facts from the circumstances of the present case. The Local Government Ombudsman's recommended awards are the best available United Kingdom comparables. Although I am awarding damages under section 8 as just satisfaction for a breach of the claimants' Article 8 rights, this case is, in essence, an extreme example of maladministration which has deprived the second claimant of much needed social services care (suitably adapted accommodation) for a lengthy period: some 20 months.

61. When considering what is necessary to afford them just satisfaction, it is important to bear in mind that the claimants' ordeal is now over, they have a home which (when adapted) will be suitable for the whole family. In this respect many Londoners would consider them to be fortunate. That said, they had to endure deplorable conditions, wholly inimical to private and family life, for a long time. They have received no explanation or apology and do not have the comfort of knowing that their sufferings have not been in vain. There is no indication that this case has prompted the Council to introduce revised procedures. The claimants' problems have been compounded by the defendant's conduct: its failure to respond to correspondence or to make any meaningful response until driven to do so by judicial review proceedings, the unwarranted threat of eviction, and its failure to comply with timetables set by the court. These criticisms may appear harsh, but they are inevitable in the absence of any relevant evidence from the defendant.

62. For all these reasons, I am satisfied that the award to the claimants should be at the very top of the £5,000 to £10,000 range identified above. Although there are two claimants it is important to avoid double counting, and since these damages are intended to give them just satisfaction for a breach of their Article 8 rights, it is sensible to start off with an overall figure

to reflect the impact of the breach on their family life together, and then to apportion that figure between the two claimants having regard to the relative effects on their private lives. Bearing all these factors in mind, I conclude that the appropriate figure is £10,000, and I apportion that £8,000 to the second claimant and £2,000 to the first claimant.

63. In conclusion, I would like to thank all counsel for their very considerable assistance in piloting me through these unchartered waters.

64. MISS RICHARDS: My Lord, we are very grateful to your Lordship for the judgment, there are just two small matters. Firstly, costs, we would ask for an order for costs, the defendant to pay the claimant's costs and for detailed assessment CSL funding, I doubt that that will be in dispute.

65. My Lord, the second matter is one which is flagged up at the very end of our skeleton argument, our main skeleton argument. Your Lordship knows the adaptations have still got to be undertaken. We are anxious that when the adaptations come to be done that the local authority does not claw back the £10,000 as a contribution towards the cost of the adaptations. I did just want to show your Lordship, in that respect, a passage in Selmounie which really deals with a similar point.

66. MR JUSTICE SULLIVAN: Do we actually need to do it, because if Mr Harrop-Griffiths is prepared to give an assurance in open court that they will not, he can always take instructions on that. I mean, I think it should not take those behind him a great deal to work out that I might be fairly sympathetic to that suggestion.

67. MR HARROP-GRIFFITHS: My Lord, I am sure that will not go without notice. I had overlooked that point, I must say.

68. MR JUSTICE SULLIVAN: So I had.

69. MR HARROP-GRIFFITHS: I did not appreciate that it might be raised at this stage. My Lord, all I can suggest at this point is that the matter to be taken on board and considered by Enfield and, if necessary, for the matter to come back before the court.

70. MR JUSTICE SULLIVAN: What I shall do is to say, rather than to decide the matter because that will simply prolong things by requiring all sorts of authorities to be cited, what I can order is that that £10,000 is not to be clawed back by the Council to pay for the adaptations without the leave of the court. That will mean the Council will have to come back, if they have a perfectly good reason for doing so, then fair enough, if they have not, they have not. It will mean we do not have to thrash through all the authorities at this stage. Do you think that is sensible, Mr Harrop-Griffiths?

71. MR HARROP-GRIFFITHS: My Lord, yes, I think that is right.

72. MR JUSTICE SULLIVAN: Right, I will incorporate that in the order. Have you any points you want to make on costs, detailed assessment for legal aid purposes?

73. MR HARROP-GRIFFITHS: My Lord, so far as costs are concerned, concerning the approach taken by the claimants in relating their case to Articles 3 and 8 together, they have failed so far as Article 3 is concerned, that was a major plank in their claim and it was pursued throughout with some tenacity in oral argument. It clearly was a matter of particular concern to the authority as to whether that would succeed or not. It has failed and, in my submission, that ought to be reflected in any order for costs to be made. It is rather difficult, as it always is the case, to determine precisely how much time was taken up with an argument that has failed

in the scheme of things. But, in my submission, particularly bearing in mind the seriousness of the allegation, albeit I appreciate that was a finely balanced judgment on the part of your Lordship, in my submission, it ought to be reflected in the costs.

74. MR JUSTICE SULLIVAN: Thank you very much. Miss Richards, I do not need to trouble you about that.

75. The claimants are to have their costs. I do not think it right to award them only partial costs. It seems to me the Article 3 argument was not merely a very finely balanced one, but almost all of the facts and matters prayed in respect of Article 3 were equally applicable under Article 8, and it is not as though Mr Clayton engaged in unnecessary repetition. So I do not think that, in practice, other than the citation perhaps of a couple extra authorities, the reliance on Article 3 added a great deal to the overall length of the case.

76. I do not accept that there is a case for a partial award of costs, I think the claimants ought to have all their costs. There ought to be detailed legal aid assessment. I further order that the Council is not to seek to claw back that £10,000, by way of contributions to the cost of the adaptations, without leave of the court. Any more for any more?.

77. MR HARROP-GRIFFITHS: My Lord, can I say that clearly my clients will be considering your Lordship's judgment, I do not have any specific instructions to apply for permission to appeal. My Lord, I do not do so therefore at this moment. If I do get those instructions, perhaps I could make the application in writing?

78. MR JUSTICE SULLIVAN: Yes, somewhat unusually, generally one does not encourage people to appeal but, quite frankly, I would not be unsympathetic to an application for the simple reason that this is the first case of its kind, there are simply no guidelines at all, and I can quite understand, in one sense, if either party thought that the Court of Appeal should express a view. I realise it is a matter of quantum, that is normally within the judge's discretion. But, plainly, the proper approach to quantum under section 8 does raise issues of wider importance.

79. Therefore, I have to say, subject to what Miss Richards might say, were you to make an application I would be sympathetic to it, just perhaps as if she made an application I would have been sympathetic as well, but she has not. So, is there anything you want to say, Miss Richards, because I do not want to waste time and have Mr Harrop-Griffiths engaging in further correspondence and me then just saying, 'Yes, this the is first time.'

80. MISS RICHARDS: I would like to deal with it, my Lord, briefly. We appreciate that this is the first time and, therefore unchartered, waters. Having said that, we are really extremely anxious on behalf of the Bernards for what they have gone through to come to an end. Your Lordship has given very helpful guidance. Your Lordship has reached a figure on quantum which, frankly, we would have thought unlikely to be regarded by the Court of Appeal as disproportionate and, therefore, unlikely to be affected, even if the Court of Appeal were to give greater guidance. We really do not want Mr & Mrs Bernard to have to carry on with this, we want them to be able to get on with their lives.

81. MR JUSTICE SULLIVAN: Yes, the fact of the matter is that if the Court of Appeal looks at the figure and thinks it a bit odd, then they can always give leave. Yes, thank you very much. Sorry, about that Mr Harrop-Griffiths, you are not actually making an application at the moment, so I am not refusing it and I am not granting it. I certainly am happy for you to make any further application, if so advised, in writing, provided obviously you send a copy to those instructing Miss Richards and that they and she has an opportunity to respond in

writing, it is sensible I think to do it in writing rather than bringing the whole road show back again. Let us do it that way then.

82. I think what I can do, Mr Harrop-Griffiths, perhaps, is to extend -- I do not want you to have to rush into this, as sometimes the timescales require people to do, this is a long judgment, it is a novel point, it is sensible that the Council sits down and thinks about it with you. Therefore, why do I not give you a period of 14 days after you have received the final transcript to do that.

83. MR HARROP-GRIFFITHS: My Lord, I would have thought that that would be sufficient.

84. MISS RICHARDS: Yes, my Lord, the only thing that has just occurred to me is that we have not talked about the time period within which the compensation is to be paid.

85. MR JUSTICE SULLIVAN: No.

86. MISS RICHARDS: I suppose it is sensible that that should be done after permission to appeal has been considered by the Council.

87. MR JUSTICE SULLIVAN: Yes, I think one does not normally say----

88. MISS RICHARDS: It is normally 28 days.

89. MR JUSTICE SULLIVAN: Yes, I would have thought 28 days, because I will get the transcript back, could you object to being ordered to pay £10,000 in 28 days?

90. MR HARROP-GRIFFITHS: I would not have thought so.

91. MR JUSTICE SULLIVAN: Not personally, Mr Harrop-Griffiths. Well, then that is the way we will deal with it, Miss Richards. I think it is a practical solution: £10,000 in 28 days, and within that time you will be able to make an application and I can, in the light of my decision on that, always consider what to do about that period.

92. MR HARROP-GRIFFITHS: My Lord, yes.

93. MR JUSTICE SULLIVAN: Thank you both very much.