

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
LEICESTER DISTRICT REGISTRY**

CLAIM NO: B90LE472

B E T W E E N :

MR JW

Claimant

-and-

**LEICESTER CITY COUNCIL (1)
LEICESTERSHIRE POLICE (2)**

Defendants

JUDGMENT

(Save as otherwise stated, all page numbers refer to the trial bundles)

INTRODUCTION

1. The Claimant in this action was born on 28th April 1994 and is now 24. He has had the misfortune to experience a troubled childhood. He has been known to the First Defendant's children's services department from the age of 2 when he was placed in voluntary care by his mother. A full care order was made when he was 6 years old. Over the next nine years, the Claimant was placed either with foster carers or in children's homes, those

placements being organised or managed by the First Defendant. He has had a statement of special educational needs related to Attention Deficit Hyperactivity Disorder. He is known to be vulnerable.

2. On 4th July 2009, after concerns that he was being groomed by an adult male lollipop man when resident at Wigston Lane Children's Home in Leicester, he was moved to Dunblane Avenue Community Home, a residential home for young people in the care of the First Defendant. The Home accommodates seven young people between the ages of 13 and 18 and its ultimate goal is to prepare young people for independence. Many of the children accommodated there had emotional and behavioural difficulties and the Claimant was no exception. During his period of residence at the Home, and until the events with which this court is concerned, he had a history of absconding. He experienced problems with his relationship with his mother and his mother's partner. He was believed to have abused substances by sniffing solvents and consuming cannabis. There are a number of episodes when he is reported to have been intoxicated.

3. On 4th August 2009 Martin Todd (MT) a 40-year-old persistent sex offender was provided with housing accommodation by the First Defendant's housing department at 2 Alloway Close, Leicester, described in documents I have seen as, "around the corner" or a "stone's throw away" from the children's home. MT was subject to registration on the Sex Offenders' Register for life. His placement at Alloway Close was arranged under the supervision of the local Multi Agency Public Protection

Arrangements (MAPPA). He had been assessed by the group responsible for his supervision as at risk level 3, the highest risk provided for in the statutory guidance relating to these arrangements.

4. In or around November 2009, the Claimant was abused by MT. He disclosed the abuse to a social worker on 9th December 2009. MT was convicted after trial in March 2011 of two counts of sexual assault and one of attempt rape against the Claimant. He was sentenced to an indeterminate sentence for public protection with a minimum term of five years. The trial judge, His Honour Judge Hammond, was so concerned about the circumstances at the time of the abuse, that he asked the police to conduct an enquiry.
5. The Claimant now brings this claim, against the Defendants seeking damages for personal injury and consequential loss for the psychological and psychiatric injury that he suffered as a result of the abuse. It was commenced on 24th April 2015.
6. The Claimant alleges negligence on the part of both Defendants and breaches of Sections 6, 7 and 8 of the Human Rights Act 1998 (the 1998 Act) and in particular Articles 3 and 8 of Schedule 1 to the Act. In summary the Claimant alleges that there was a failure to take reasonable preventive measures to prevent the abuse or to investigate credible suspicions that the Claimant had been subject to abuse. A number of particulars of matters complained of are given in the pleadings which in summary amount to a failure by the First Defendant to prevent the Claimant from absconding, to adequately supervise him, to respond adequately or at all

to apparent drug and alcohol use or provide the Claimant with sufficient supervision.

7. Against the Second Defendant the Claimant alleges a failure to conduct appropriate assessments of the suitability of the accommodation at Alloway Close for MT and breach of the Human Rights Act and negligence in placing MT at that accommodation and failing to provide relevant agencies with appropriate information about MT's placement there.
8. Initially the Claimant also brought a claim against the Probation Service, but this was discontinued.
9. The First Defendant defends the claim under the 1998 Act asserting that the claim is time-barred by Section 7(5). It accepts a duty of care to the Claimant to take reasonable care to avoid or prevent the Claimant from suffering injury. It denies any breach of duty and asserts that the staff at the Home were properly trained, that the Claimant was well supervised, that there was no reason to suspect the abuse and that staff at the Home were unaware of the presence of MT until after the abuse started. It was also pleaded that the treatment at the hands of MT was not of sufficient severity to engage Article 3 although it was admitted that it was capable of engaging Article 8. In argument the Second Defendant has conceded that the abuse was such that it engaged Article 3.
10. The Second Defendant also defends the claim relying on the limitation provisions of the 1998 Act. He denies a duty of care to the Claimant and he denies duties under Article 3 or Article 8.

11. It is common ground that the Claimant has suffered psychiatric and psychological difficulties as a result of the abuse. Injuries have been dealt with by Professor Peckett for the Claimant and Dr Kehoe instructed by the Defendants. Both are experienced Consultant Psychiatrists. In their joint discussions they reached a substantial agreement that the Claimant suffered PTSD and that the sex abuse was the primary cause. They disagree as to the effect and extent of the injury. They have agreed that there is an ongoing disability, but not the extent to which this prevents the Claimant earning his living. They both recommend treatment.

THE FACTS

12. There are few substantial issues of fact. The facts stated below are, unless otherwise stated, either uncontroversial or my findings of fact. It is agreed by all parties that the Claimant suffered abuse perpetrated by MT. The dates of the abuse are shown on the indictment used at trial as 23rd October, 30th October and 14th November 2009. The aspects of the Claimant's behaviour and presentation set out in the lengthy Particulars of Claim, are principally derived from the First Defendant's records. It is accepted that the Claimant was a vulnerable child and that prior to his placement at the Home, he was assessed as being at high risk, with no sense of danger (March 2009) and later at high risk of impulsive behaviour (9th July 2009).
13. It is accepted that the local police force were the lead MAPPA agency and that housing was procured for MT, in the expectation that police would assess the suitability of the address. It is accepted that MT was assessed

as a high risk under the MAPPA guidelines and was managed at level 3, the highest level provided for. It is not disputed, that in approving the accommodation at Alloway Close, the police were unaware of the presence of the Home close by. The First Defendant's housing department which identified and suggested the property as a suitable placement for MT were also unaware of the Home nearby. The Home was managed by the First Defendant's employees who provided care to the Claimant and other young people accommodated pursuant to the First Defendant's statutory duties under the Children Act and related legislation.

14. Factual issues arise as to the extent of the Claimant's behavioural problems and the response of the staff at the Home to those problems. The Claimant in his witness statement and oral evidence complained about a general uncaring attitude and lack of robust supervision. This is disputed by the First Defendants witnesses.
15. To assist me with any disputed facts, I have heard from the Claimant himself. Only two witnesses from the staff of the Home have been called, Dean Bennett, a residential social worker who was in a managerial position at the Home, and Sarah Hammond the overall manager. On behalf of the First Defendant I have also heard from members of the housing department. The Second Defendant relied solely on the evidence of John Norton a retired police officer. He was part of the Second Defendant's MAPPA team and he had MT allocated to him as part of his caseload.

16. I am satisfied that all witnesses have done their best to give an accurate account of the matters dealt with in their evidence. Inevitably, recollections have been affected by the passage of time. All the Defendants' witnesses have been assisted by reference to the substantial documentation in this case.
17. The Claimant's reliability as to his description of life at the Home has been challenged in cross-examination by the First Defendant. By way of example, the Claimant maintained in paragraph 68 of his witness statement that telephone calls at the Home were not properly monitored and that he told staff MT's name. However, in the course of interviews with the police recorded in February 2010, during their investigation into MT's behaviour, the Claimant denied that he told the Home he was calling MT.
18. In paragraph 82 of his witness statement, he refers to Mr Bennett failing to obtain a mentor for him as discussed after the Claimant had self-harmed. However social work records refer to a Michael Morris from the Prince's Trust in discussion with the Claimant e.g. 23rd September 2010 (after the abuse had occurred). In contrast the Claimant's evidence in paragraph 42 of his witness statement, the Home's records show staff taking time to speak to the Claimant, going out to look for him when he was absent, advising him about drug and alcohol abuse. There are also records of restrictions on his spending money by way of discipline.
19. The Claimant's oral evidence about his attendance at a work experience programme known as Gaz Autos, was directly contradicted by a number

of the Home's records which show a reluctance and occasional refusal to attend the programme.

20. Accordingly, I do have concerns about the Claimant's reliability. This is not a criticism. He was 15 at the time the abuse was perpetrated against him. He had had a significantly troubled childhood and a difficult relationship with his mother. He also had difficulties with his older brother, who had also been in care. Such difficulties are recorded as coinciding with the time at which the Claimant was being abused. I find on the facts, that the treatment afforded to the Claimant at the Home was not as uncaring or as heedless of the Claimant's behaviour and distress, as the Claimant asserts. There were however some shortcomings which I will deal with below.

21. The evidence from the four housing officers called on behalf of the First Defendant was not controversial. It is now established on the facts that at the request of the MAPPAs relating to MT the First Defendant's housing department was requested to provide MT with accommodation, to prevent him becoming homeless and to assist the police with supervising him. Plainly had MT become homeless, it would be more difficult to monitor his movements and enforce any requirement to notify the police of his address. Mr Supria attended the MAPPAs meetings. He told me that the role of the housing office was to find accommodation and execute the decision once made, to provide accommodation to MT. In doing so the First Defendant made an exception to its usual allocation policy. His evidence, in common with the evidence of the other housing

officers, was that he did not liaise with the First Defendant's children's services to establish whether accommodation found was located close to any children's homes. His evidence, in common with the other housing officer's evidence, was that he expected the police as the Responsible Authority to check upon the location and suitability of the area. Mr Supria confirmed that the housing department did not have access to any database that identified children's homes and other child-related facilities. Mr Supria told me that such a database has now been created. It is not clear whether the creation of this database has arisen as a result of lack of interdepartmental communication which occurred in this case. I find that had Mr Supria made the appropriate enquiry, of the appropriate department within the authority, the proximity of Alloway Close to the Home would have become apparent.

22. I heard evidence from Miss Tote, who, as a Service Manager in the First Defendant's children's services department, attended the MAPPA meetings relating to MT. She told me that her role in attending at the meetings was related to any risks involving individual children known to be victims of or at risk from the offender. She did not appear to consider herself to have any responsibility for advising the MAPPA meetings about issues relating to children whether in First Defendant's Care, or generally, or the facilities in which they might be placed. She had no access to a database giving the location of the children's homes, such as that which now exists. I find that had Ms Tote made the appropriate enquiry, of the appropriate department within the authority, the proximity of Alloway Close to the Home would have become apparent.

23. Crucially she was aware that housing of MT was a particular issue, as discussed in the April MAPPA meeting. She did not attend the meeting on 31st July, where accommodation was discussed. If she was unable to attend, there was an expectation that a member of the county council's children's services department would deputise. He did not attend either. She had no input into the decision to allocate the Alloway Close property to MT. It is surprising, when considering the provisions of Part 5 of the MAPPA Guidance relating to information sharing and the duties of other services to cooperate with the same, that neither Mr Supria nor Miss Tote considered that it was part of their role to investigate or volunteer information about the proximity of children's facilities to any housing that was being offered.

24. I also heard from Ms Hammond and Mr Bennett who worked at the Home in senior positions and who were directly responsible for the Claimant's care whilst he was accommodated at the Home. Ms Hammond could only give limited assistance as to the Claimant's behaviour over the relevant period as she was not working at the Home during the critical period in late summer and early autumn 2009. However I was particularly struck by her evidence that, once she became aware that MT was housed so close to the Home and that she had not been informed she was "furious". Her indignation expressed in the witness box was, I find, genuine. I found it was clear that she considered that she should have been consulted, and if not consulted before the placement, then at least informed of the presence of MT so close to the Home. Had she been consulted, she told me and I find, that she would have objected to the provision of housing so

close to the Home. She also confirmed that the local police force were well aware of the presence of the Home. Not only was it necessary for them to assist with absconding or disruptive children from time to time, but the local officer would make courtesy calls to the Home, to share information and create positive relationships with the children there.

25. Mr Bennett had a management position at the Home during the relevant period. I found it worrying that he was unable to assist the court with what, if any, follow up there was to a telephone call from a police officer on 27th August 2009 raising concerns about sexual exploitation of the Claimant. Although the officer said it related to issues arising when the Claimant was at Wigston Lane, and the First Defendant's record suggested that they would monitor the situation, Mr Bennett was not able to point to any record of specific advice or guidance given to the Claimant as a result of the contact. He himself had no recollection of having done so. The contact from the police came after the Claimant had been missing from the Home on the previous day. He was returned by a police officer only to leave the Home again.
26. Mr Bennett also referred to the police being informed after staff became aware that children from the Home were obtaining drugs from a local dealer. He was unable to give any detail as to the follow up from staff at the home relating to this information and whether, as I find a concerned parent would have done, any pressure was placed by the staff on local police to take an active role in investigating and curtailing the activities of this dealer.

27. The Second Defendant's evidence came only from Mr Norton, who had been the Detective Constable with responsibility for supervision of MT under the MAPPA arrangements. He has now retired from the police force, but he is still employed as a support officer by the Second Defendant. He is described in the minutes of the MAPPA meetings as part of the a Public Protection Management Team. MT was assigned to his workload in February 2009, when MT was still a resident, subject to licence, at a bail hostel.
28. When housing for MT was being considered, he visited one property and found it was not suitable. Crucially when the flat at Alloway Close was identified by the housing department of the First Defendant, Mr Norton accepted he did not visit the property. It was clear from his oral evidence that, he had genuine regrets that he failed to visit. He had relied upon the fact that a colleague had managed a sex offender at the same location and found that location to be suitable. However, there was no information available to the court to determine the nature of the previous offender or whether it was reasonable for Mr Norton to rely on the colleague. At the time Alloway Close was allocated to MT, and Mr Norton approved it, he was unaware of the Home. He accepted in cross- examination that it was close by, probably, if children used a shortcut through a local car park, a two minute walk away. His evidence was that he was unfamiliar with the Rushey Mead area of Leicester. However, in his previous, lengthy experience with the local police force, he was aware that there was a children's home at Dunblane Avenue. He had heard mention of it over police radios. He knew it accommodated troubled adolescents.

29. Mr Norton accepted in his oral evidence that had he known of the presence of the Home, he would not have placed MT at Alloway Close. He regarded the presence of the Home as what he described as a “deal breaker”. He told me that he had trusted the assessment of his colleague. He accepted and I find that in carrying out his duties under the MAPPAs scheme he should have visited Alloway Close and the area in which it was situated, before approving the flat as accommodation for MT. He thought he was first aware of the presence of the Home when making enquiries about a young girl, thought at first to be 15 years old, who was found at MT’s flat in late September. Even then, he did not alert the senior staff at the Home as to the presence of MT in the neighbourhood. It is noted that there were several instances during September and October when the Claimant returned to the Home under the influence of alcohol or illegal substances or smelling of cannabis. These incidents occurred after Mr Norton was aware of the presence of the Home.

30. As a result of concerns raised by the background to this case a Police Independent Management Report was prepared by a retired Police Chief Inspector which was published on 10th October 2011. This was after MT’s conviction and the concerns raised by the trial judge which are referred to in that report. In his oral evidence, Mr Norton told me that he respected the conclusions reached by the Inspector and accepted the criticisms made of the MAPPAs process in that report. He accepted that he could and should have liaised with the local police neighbourhood team before approving the accommodation, which would, of course, have alerted him to the presence of the Home. He accepted, that had he visited himself,

although the Home is not readily visible from the road, just seeing the road sign Dunblane Avenue would have alerted him to the presence of the Home.

FINDINGS OF FACT

31. In making my findings, I adopt the civil standard of proof, and accept, that it is for the Claimant to prove his claim. If I have not referred to any detail in the evidence, this is not an indication that I have disregarded it. I have heeded the advice given by Mr Justice Leggatt about the reliability of memory given in the decision in **Gestmin v Credit Suisse**, [2013] EWHC **3560**. The observations in that judgment are matters of common sense which all first instance judges will bear in mind.
32. I find on the balance of probabilities that the quality of the care provided to the Claimant at the Home was not as uncaring and unconcerned as the Claimant asserts. I find that the staff struggled to cope with the problems and consequences of the Claimant's difficult behaviour. I find that steps were taken to try to control and discipline him. However, given the very detailed records with which I have been provided, and in the absence of any positive evidence, I find that there was not adequate follow up to the police concerns with regard to the sexual exploitation of the Claimant reported on 27th August 2009.
33. I also find that staff at the Home could and should have done more to request active intervention from local police when it was known that children were obtaining drugs from an individual known as Dray who lived in a flat above MT. Mr Bennett was aware of these circumstances, but

was unable to give any evidence that this was followed up. However I find that the staff were aware that the Claimant was indulging in alcohol and substance abuse and did take steps to actively warn and advise him about the dangers of that behaviour.

34. I find that the staff of the Home were quite unaware of the presence of MT at Alloway Close until a meeting instigated by Mr Norton, after information was received that children from the Home may be in contact with MT. I find that prior to that information, the staff had reasonably believed that the principal cause of the Claimant's challenging behaviour was his unhappiness caused by family relationships, which is well documented in the records.

35. Criticism is made of the conduct of the First Defendant's staff at the Home in accepting advice from the police at that meeting in November 2009, that the children should not be alerted to the circumstances of MT. This meeting came after the last incident of abuse. MT was arrested on 2nd December. I find that although it would have been reasonable to challenge the advice from the police, it was also reasonable to follow it. In any event, adhering to that advice was not causative of the Claimant's injury.

36. In reaching my conclusions, I have accepted that the placement of serious sexual offenders presents considerable difficulty. I accept that it is better from a risk management perspective to provide such an offender with public authority housing, so that police and Probation Services will know where he is. I also accept that within the City of Leicester it would be very

difficult to find accommodation which is not in a neighbourhood where some children or children's facilities might be present. However, the concessions made by Mr Norton are a clear indication that on the facts there was a serious failure on the part of the MAPPA process to identify the Home and/or share information with senior staff at the Home of MT's presence, so that they could take steps to rigorously observe and provide safeguarding advice to the children in their care.

37. I accept that it would be unrealistic to try and find local authority accommodation in an area where there are no children present at all, whether within their families or attending schools or other facilities. I accept that children in the care of the First Defendant will be accommodated all over the city. However, I find that the presence of the Home accommodating children in the target group suggested by MT's past offending, was highly relevant. Had Mr Norton been aware of its presence, MT would not have been placed at Alloway Close.

THE MAPPA PROCESS

38. The court has been provided with the relevant MAPPA Guidance dating from April 2009. This is a substantial document. The Guidance is issued by the Secretary of State under Section 325(8) of the Criminal Justice Act 2003 and is therefore statutory. The Guidance provides in the introduction that all Responsible Authorities and cooperating bodies, being public bodies, have a duty imposed by public law to have regard to the Guidance in exercising their functions under MAPPA. The introduction also provides that agencies at all times retain their full statutory responsibilities and

obligations. Agencies are under a duty to cooperate with the Responsible Authority, in the present case, the police force. The Guidance specifically provides for social care services and registered social landlords to cooperate with the Responsible Authority.

39. The Second Defendant was the Responsible Authority for the purpose of the MAPPA process, the First Defendant had a statutory duty to cooperate with the Second Defendant in operation of the MAPPA process.
40. It is clear from the evidence of Mr Norton that he accepted that in providing accommodation to MT so close to the Home, that there was a significant failure in the process. Representatives of social services and housing departments are described as key agencies in paragraph 11.6.1 of the Guidance. That paragraph provides that “standing members” will ensure that all (my emphasis) relevant information from their area of work is made available to the meeting. Guidance as to disclosure is provided in paragraph 12.17 of the Guidance. I accept that there are sensitivities in identifying the location of sex offenders, because there is a risk of harm to the offender from vigilantes and potential breaches of the peace. I also accept that disclosure of the presence of a sex offender to a third party will be the exception. However in the circumstances I find that given the presence of a group of vulnerable adolescents accommodated by the First Defendant in close proximity to the flat allocated to MT, there could and should have been disclosure, at least to senior staff at the Home, if no other accommodation could be found for MT. I find that such senior staff, being professional social workers, would not misuse such information. Of

course, the staff were not informed, because neither Mr Norton, nor the First Defendant's children's services representative or housing services representative on the relevant MAPPA committee were aware of the presence of the Home. This information could have been easily discovered. I find it surprising that it was not.

41. I find that, had Mr Supria or Miss Tote made appropriate enquiries about the accommodation, and passed this on to Mr Norton, had Mr Norton taken the simple step of visiting the area and consulting the local police force, the presence of the Home would have been identified and MT would never have been placed at Alloway Close.
42. Accordingly, on the balance of probabilities, I find that had the MAPPA process been properly applied in accordance with the Guidance, the Claimant would not have encountered MT and would not have suffered the injury complained of. Further, if the disclosure processes identified in the Guidance had been observed, senior staff would have been made aware of the presence of MT and could and would have taken more rigorous action to investigate the Claimant's whereabouts and provided more directed supervision and safeguarding advice. I note that when such advice was given to the Claimant after concerns with regard to a lollipop man, when the Claimant was resident in a home at Wigston Lane, the warning was effective.
43. I find on the balance of probabilities, that had there not been this significant failure of communication between 3 important contributors to

the MAPPA process the Claimant would not have suffered the injury complained of.

THE LEGAL BACKGROUND

44. In reaching my conclusions I have considered the legal arguments presented by the parties. It is not the function of a judge at first instance to undertake a detailed analysis of authority or attempt to create new law. I set out below my understanding of the relevant law and its application to the facts of the present case. The Claimant brings his claim under Sections 6, 7 and 8 of the Human Rights Act 1998 for breaches of Article 3 and Article 8.

HUMAN RIGHTS ACT CLAIM

45. Article 3 provides that “no-one shall be subjected to torture or to inhuman or degrading treatment or punishment”. It is accepted that Article 3 imposes a duty to take reasonable steps to prevent ill-treatment of which authorities had or ought to have knowledge.

46. Article 8 provides for respect for private and family life. It is alleged that by reason of the injuries suffered, the Claimant’s ability to form future relationships has been damaged and his Article 8 rights have been contravened.

47. Each Defendant has raised the defence that the Human Rights Act claim has been time-barred by the provisions of Section 7(5)(b) which provides that proceedings under the Act must be brought before the end of the period of one year, beginning with the date on which the act complained

of took place, or such longer period as the court considers equitable having regard to all the circumstances. No provision is made in Section 7 for a longer period of limitation in the case of a child or protected party. It can be inferred from this that parliament considered it right that there should be a tight limitation period: **M (A minor by his litigation friend LT) v Ministry of Justice [2009] EWCA Civ 419**. The Supreme Court considered the basis upon which a court might deal with an application to extend time in **Rabone v Pennine Care NHS Trust [2012] UKSC 2**. Lord Dyson observed at paragraph 75 of the judgment that the court has a wide discretion. It is appropriate to take into account factors of the type listed in Section 33(3) of the Limitation Act 1980 however Section 7(5)(b) of the 1998 Act should not be interpreted as if it contained the language of the Limitation Act.

48. The Defendants contend that as no explanation has been given for the delay, and that the Defendants have suffered prejudice, the court ought not to exercise its discretion to extend the period for bringing the claim.
49. The most relevant dates for considering the issue of limitation are that the abuse occurred in October and November 2009. MT was convicted in March 2011 and sentenced in August of that year. A letter of claim was sent by the Claimant's solicitors to the First Defendant in June 2012 and to the Second Defendant in June 2013. Thereafter delays were occasioned by the fact that the Claimant, I find, reasonably wished to obtain disclosure of the First Defendant's records before formulating his claim. There were difficulties with regard to pre-action disclosure which

are rehearsed in the documents and arguments which have been presented to me. The Claimant and the First Defendant blame each other for the delays. I note however that the First Defendant's disclosure of the social work records did not occur until December 2015, there was further disclosure after a court order in February 2016. The court had made orders for disclosure in November 2015.

50. The Defendants assert that they have suffered prejudice. However the Claimant has also brought claims in negligence in the limitation period provided for by the Limitation Act 1980. The Claimant's 18th birthday was 28th April 2012. The claim was commenced on 24th April 2015, shortly before his 21st birthday.
51. The documents and the witness statements which have been provided to the court are as relevant to the claim in negligence as they are to the Human Rights Act claim. No greater burden has been cast upon the Defendants in defending this claim by the inclusion of the Human Rights Act claim, save in respect of legal argument. Although time has passed and the First Defendant's witnesses have left the Defendant's employment, this does not affect the Claimant's right to bring his claim in negligence, where the First Defendant faces the same difficulty.
52. I take into account the nature of this claim and its effect on the Claimant. I note the concerns expressed by the judge at the trial of MT and the criticisms made of the MAPPA process in the Second Defendant's own enquiry, referred to above, and in the MAPPA serious case review. I share the concerns expressed. I note that the conviction did not occur until

August 2011 and that the Claimant had to endure the ordeal of a contested trial. Thereafter, whoever may be responsible, obtaining full disclosure has been a slow process. Whilst it might be argued that the Claimant could have commenced his claim earlier, I find that it was reasonable to seek disclosure before formulating that claim. In the event, the Particulars of Claim required substantial amendment after disclosure had been given.

53. Taking into account the matters stated, and having considered the criteria provided for in Section 33(3) of the Limitation Act 1980, but only as guidance and not a requirement, I consider that it is just and equitable for the Human Rights Act claim to proceed.

ARTICLE 3

54. I have considered the observations of the House of Lords in **Van Colle v Chief Constable of Hertfordshire [2008] UKHL 50**. The claim in that case was brought under Article 2 but the observations of Lord Hope at paragraph 66 of the judgment are relevant. After reference to the decision of the Strasbourg Court in **Osman v United Kingdom [1998] 29 EHRR 245**, Lord Hope observed that the court must be satisfied that the authorities knew or ought to have known “at the time” of the existence of “a real and immediate risk to life” of an identified individual from the criminals acts of the third party. If they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk, the positive obligation will have been violated. More recently in **D v Commissioner of Police of the Metropolis [2018] 2 WLR 895** Lord Kerr observed at paragraph 29 “that simple errors or

isolated omissions will not give rise to a violation of Article 3 at the supra-national and national levels”. At the end of the paragraph he observed that “errors in investigation, to give rise to a breach of Article 3, must be egregious and significant”. He gave further guidance as to the nature of such errors in subsequent paragraphs of his judgment.

55. I am not aware of, and Counsel did not supply, any reported cases which deal with deficiencies in a MAPPA process. I find that the failure of the Second Defendant as the Responsible Authority to enquire as to whether Alloway Close was close to any children’s home, or to visit Alloway Close in the course of the risk assessment or to consult with the local police force, was, bearing in mind the high risk posed by MT and the vulnerability of the Claimant and other residents of the Home, was a significant error. Mr Norton himself accepted that had he undertaken either of those steps, MT would not have been placed at Alloway Close. I find that the failure of the housing department and children’s services of the First Defendant to communicate with each other over the offer of accommodation, to volunteer the information under its duty of cooperation and disclosure provided for by the MAPPA process was again a significant failure. A simple enquiry by either department of the other when the accommodation had been identified, would have revealed the proximity of the children’s home. I find, on the balance of probabilities, resulted in the offer of accommodation at Alloway Close to have been prevented, or withdrawn. I have considered whether this failure amounts to an egregious and significant error within the language expressed by Lord Kerr in the **D v Commissioner of Police** case. The Court is bound to wonder what

purpose the MAPPA process serves if such simple enquiries, which would readily produce the appropriate information, were not to be regarded as a significant failure. Put simply, using the language of the vernacular popular with our political masters, there appears to have been no “joined up thinking” by the First Defendant when offering the accommodation, or the Second Defendant when assessing its suitability. I find that the principal responsibility for this significant error falls upon the Second Defendant, but the First Defendant has contributed to that error.

56. Having made those findings it is not necessary for me to consider Article 8. The same failures on the part of the Housing department and Children’s Services departments within the First Defendant authority have given rise to the same harm. Had there been appropriate “joined up thinking”, the housing department would have made enquiries of children’s services, children’s services would have been able to readily provide the housing department with the information about the proximity of the Home to Alloway Close. Had this information been available and disclosure given to senior staff at the Home in accordance with paragraph 6.3 of the MAPPA Guidance, more rigorous, and on the balance of probabilities, effective measures could have been made to safeguard the Claimant. I take into account that safeguarding advice was effective, when there had been earlier concerns about grooming when the Claimant was at the Wigston Lane home.
57. Accordingly I find that there has been a contravention of the Claimant’s Article 3 and Article 8 rights.

NEGLIGENCE

58. The First Defendant has accepted it owes a duty of care to the Claimant to take reasonable care to prevent or avoid the Claimant suffering personal injury. However it is denied that the First Defendant knew or ought to have known that the Claimant was at risk of abuse or that it failed to take any adequate measures to prevent the abuse. It is argued that there is no private law duty of care to the Claimant in relation to the Second Defendant's duty to cooperate with MAPPA or in its provision of accommodation to MT.
59. I have found on the evidence that the First Defendant knew that the Claimant was vulnerable to abuse. The episode at the Wigston Lane home, and successive risk assessments describing the Claimant as lacking a sense of danger and at high risk of impulsive behaviour, establish that the First Defendant knew of his vulnerability. I accept that when considering the standard of care afforded by the First Defendant's staff at the Home, the **Bolam** test is relevant. The standard of care is that which would be exercised by an ordinary reasonable parent, subject of course to the constraints imposed upon those looking after children in care. Such children cannot be kept under lock and key, unless a secure accommodation order has been made. It is difficult for a Social Worker to "ground" a child in the same way that a parent would by way of discipline or protection. Physical restraint is only possible in limited circumstances.
60. At the case management, an experienced District Judge refused permission for expert evidence to be called on this issue. I upheld that

decision on appeal. The court does not require expert evidence to consider, as a matter of common sense, and judicial experience in both personal injury and public liability cases, but also public law Children Act proceedings, what the appropriate standard of a reasonable parent may be.

61. I am concerned as to the lack of a follow up after the report by a concerned police officer when the Claimant went missing in mid-August 2009. I am also concerned as to the lack of documentation as to steps taken to try and prevent the Claimant's abuse of alcohol and cannabis. Further concerns arise from the failure to take active steps to put pressure on the police to intervene, when it was known that children at the Home were obtaining cannabis from a local dealer. However, those concerns have to be balanced against the Claimant's very difficult behaviour and the fact that there were other established causes for that behaviour at the time of the matters in which the court is concerned. The Claimant has accepted that he was experiencing difficulties with his relationship with his mother and brother at the material time.

62. Accordingly, I do not find that there has been a breach of a duty of care on the part of the First Defendant's staff at the Home.

63. My principal concern as to the First Defendant's position is with regard to the failure of the Housing and Children's services departments to exchange information as to the whereabouts of the First Defendant's children's homes. The failure to ask what appears to me to be a simple and obvious question. Mr Supria and Miss Tote both told me that they

expected the police to make the appropriate enquiry. They did not appear to consider they were under any obligation to ask the obvious question, or to volunteer the obvious information.

64. The First Defendant raises in its skeleton argument that there is no specific pleading of negligence against the housing department. I note however that in the Claimant's Particulars of Claim at paragraph 75(e), the Claimant refers to and relies on matters pleaded in paragraphs 68 to 70. Paragraph 69 refers to an alleged duty to assess the suitability of Alloway Close and provide relevant agencies with appropriate information about the risk posed by MT to children in the area. Accordingly I find that negligence in failing to liaise between departments and supply information to the Second Defendant is sufficiently pleaded.
65. I take into account that the Children Act does not create a private law cause of action for breach of the duties under that Act. I have considered the guidance of the Court of Appeal in **CN and GN v Poole Borough Council [2017] EWCA Civ 2185**. In that case, vulnerable children were placed by a local authority housing department in accommodation which was close to a family known to be engaged in persistent antisocial behaviour. The Claimants were subject to harassment and abuse to the extent that one attempted suicide. The Claimants in that case asserted a common law duty derived from the duties under the Children Act 1989.
66. There are, however, differences with the present case. The Claimant does not rely on the duties imposed under the Children Act, he asserts failures to properly assess the suitability of the accommodation for MT

given the location of the Home at which the Claimant was accommodated. The Defendant's submissions, which were accepted in the **Poole Borough Council** case was that there was no assumption of duty in the provision of housing. However in the **Poole** case, it was the housing provided to the Claimants which was complained of, not as in the present case, the assessment of housing provided to a known serious sex offender close to one of the First Defendant's children's homes. I have considered the decision of the House in Lords in **Mitchell v Glasgow City Council** [2009] 1 AC 874 which decided on the facts, the pursuers could not show that the local authority had made itself responsible for protecting a tenant from the criminal acts of his neighbour. In those circumstances it was held that, it would not be fair, just or reasonable to hold that the local authority was under a common law duty to warn the tenant of steps it was taking with regard to the other tenant. In paragraphs 22 and 23 of his judgment Lord Hope considered situations in which principles of proximity and fairness might create a duty upon a defender who has created the source of danger. In the present case, the First Defendant was a party to creating the source of danger to the Claimant, namely the allocation of housing to MT, in close proximity to the Claimant's home without making the simple enquiry as to the presence of the Home. Neither volunteered the relevant information to the other as to the proposal to allocate Alloway Close to MT or the fact that there was a children's home very close by. Neither department volunteered that information to the police as the Responsible Authority under the MAPPA arrangements.

67. The whole purpose of the MAPPA scheme is to protect the public. Accordingly I find that it is fair just and reasonable to impose upon the First Defendant a liability for its failures set out above. I find that these failures amount to a breach of duty on the part of the First Defendant as pleaded in paragraph 69 of the Particulars of Claim.

NEGLIGENCE – SECOND DEFENDANT

68. The liability of a police force to a Claimant arising from the criminal behaviour of a third party has attracted the attention of the Supreme Court in two recent cases: **Michael v Chief Constable of South Wales [2015] AC 1732** and **Robinson v Chief Constable of West Yorkshire [2018] 2 WLR 595**.

69. The **Michael** case concerned the failure of the police to respond promptly to a 999 call from a victim who was subsequently killed by her assailant. In his judgment, Lord Toulson at paragraph 97 observed that English law does not as a general rule impose liability on a Defendant for injury or damage to the person or property of a Claimant caused by the conduct of a third party. However, he goes on to say in paragraph 98 that the rule is not absolute. Examples are given in the subsequent paragraphs of his judgment. In paragraph 116, he observes that the question is not whether the police should have a special immunity, but whether an exception should be made to the ordinary application of common law principles.

70. In the **Robinson** case, a passer-by was injured when two police officers attempted to arrest a drug dealer who put up considerable resistance. Allowing the Claimant's appeal, it was held that the police might be under

a duty of care to protect an individual from a danger of injury which they themselves had created, but in the absence of circumstances such as an assumption of responsibility, they were not normally under such a duty where they had not created the danger of injury. On the facts of that case, it was found that there was a positive act by the police and not an omission, there was a reasonably foreseeable risk of injury to the passer-by and accordingly the officers owed a duty of care towards pedestrians.

71. In the present case I find there was a positive act in approving the accommodation of MT at Alloway Close. A positive decision was made by Mr Norton, not to conduct a visit to the area or make enquiries of the local police units about the area, preferring to rely on the judgment of a colleague. The circumstances in which that colleague made her assessment, have not formed part of the evidence. There was also a failure to ask the appropriate questions of the First Defendant's housing department or children's services department. This in itself might be regarded as an omission. I regard the approval of the accommodation as a positive act which gave rise to a foreseeable risk of injury to the vulnerable adolescents living a few minutes' walk away. Mr Norton has conceded that had he been aware of the Home, MT would never have been placed at Alloway Close.

APPORTIONMENT

72. The Second Defendant was the Responsible Authority under the MAPPA scheme. Although collective responsibility is provided for within the scheme, ultimately it was the Second Defendant's decision to place MT at

Alloway Close. However that decision was made acting on the information provided, or more relevantly not provided, by the officers of the First Defendant. I find that the principal responsibility for the placement of MT at Alloway Close rests with the Second Defendant. Nevertheless, there has been a contribution by the officers of the First Defendant in failing to provide and share appropriate information. Both with regard to negligence and the Human Rights Act claim, I find that the greater responsibility for the Claimant's injury lies with the Second Defendant. Furthermore, when Mr Norton became aware of the proximity of the Home in late September after a young girl was found at MT's home when he was visited by a social worker, there was a failure to inform the senior staff of MT's presence in the area.

73. Accordingly I find the Second Defendant is responsible as to 80% of the harm suffered by the Claimant and the First Defendant responsible for 20%.

QUANTUM

74. I have heard evidence from two expert Consultant Psychiatrists with considerable experience in treating adults who have suffered abuse in childhood. They have presented helpful reports and reached a large measure of agreement in the course of their joint discussion. Whilst they apply a different diagnostic label to the Claimant's condition, it is accepted that this does not amount to a significant difference between them. They agree the Claimant has suffered from post-traumatic stress disorder, described by Professor Peckett as complex for the reasons given in his

report. Although he was vigorously challenged about the use of the term complex in cross-examination, I note that Dr Kehoe did not expressly disagree with this term. In any event, they have agreed at paragraph 5 of their joint report there is no significant difference in the diagnoses of the Claimant's condition.

75. Professor Peckett was subjected to considerable cross-examination on the part of the Second Defendant to the effect that, as the Claimant already had emotional and behavioural problems and a diagnosis of ADHD which had arisen, independently of any harm suffered as a result of the abuse at the hands of MT, he was likely to suffer difficulties in adult life in any event. The cross-examination was conducted on the basis of assertion, unsupported by any statistical or scientific evidence. Professor Peckett convincingly maintained his views. Professor Peckett maintained his opinion that the Claimant was damaged in the long term as a result of PTSD and that this was based not just on scientific criteria, but also his long-term clinical experience. It is also noted that the Claimant appears to have overcome his tendency to substance misuse. There are reports that he was doing well at school prior to the abuse. Assertions made with regard to the family history were rejected by Professor Peckett, as he had not examined the Claimant's mother or brother and did not have access to their medical records.

76. Dr Kehoe's prognosis was more optimistic, but he had the advantage of seeing the Claimant a year after Professor Peckett, during which period the Claimant's condition had improved. This does illustrate that the

Claimant was capable of improvement. Both doctors accepted that mental health problems have a tendency to fluctuate.

77. The most significant difference was the opinions of the doctors as to the Claimant's lack of consistent full-time employment. Each doctor was a convincing witness with appropriate experience. Having considered the evidence, I find it finely balanced. It is for the Claimant to prove his case. Both the doctors considered that after appropriate treatment, the nature of which they were agreed upon, the Claimant could expect improvement.
78. Accordingly I find that the PTSD has brought about a degree of persisting personality change caused by the abuse, in particular in the Claimant's difficulty in forming and maintaining intimate relationships and trusting older men. I take into account however that the Claimant has maintained seasonal warehousing work, without difficulty, such employment coming to an end because of its seasonal nature. I find, accordingly, that after treatment in the long term the Claimant should not experience any difficulty with regard to obtaining and sustaining employment as a result of the injury he has suffered. It is of course difficult to be precise as to when a further recovery might be achieved.
79. The doctors advise the Cognitive Behavioural Therapy. They recommend a course of treatment which would take four to six months. The psychiatric support advised by Professor Peckett was considered by Dr Kehoe to be unnecessary. Dr Kehoe considered that support would be available from primary care services (that is general practitioner), although he accepted that psychiatric support might have some benefit. Noting the difficulties

with regard to General Practitioner resources in the National Health Service at and that lack of resources in mental health provision is of public concern generally and experienced by the judiciary, specifically when dealing with cases involving individuals with mental health problems, whether in public law care proceedings, or in Mental Health Tribunals, I find that it is reasonable to allow privately funded psychiatric support during the treatment advised by both doctors. I adopt the period advised by Professor Peckett.

80. So far as general damages are concerned, Dr Kehoe expressly accepted the classification of moderately severe psychiatric and psychological damage as set out in Chapter 4A(b) of the Judicial College Guidelines. This provides for a wide bracket of awards. A similarly wide bracket is provided for in Chapter 4(B) for moderately severe post-traumatic stress disorder. I have not been provided with comparables. I note the observations in the guidelines as to the effect on an award where the harm has arisen from sexual abuse. In the present case, the abuse did not persist over a long period. It was detected promptly. Although the Claimant clearly feels that he was let down by those who had the duty of caring for him at the Home, I find that there has been no breach of trust on their part. I award £39,000 in general damages.

81. I find that the Claimant is entitled to an award to represent the costs of therapy at £6,000 to include CBT and psychiatric support. No particulars are given as to travelling expenses claimed and I make no award.

82. As to past loss of earnings, the court has been provided with very little information. The Defendants complained of the lack of information. In his closing remarks, Counsel for the Claimant simply suggested that Professor Peckett had advised that the Claimant after treatment would be capable of employment at minimum wage levels. I have not been supplied with those levels and have been obliged to fall back on my own examination of the information given as to the levels of minimum wage on the government website. I note that in the period covered, an annual gross income after the age of 18, assuming a 37 hour week and employment for 52 weeks of the year would vary between £7,080 per annum to £13,564 per annum in 2017. The Claimant has sustained seasonal employment, but I have no information as to the wages he has earned, that might be set against his loss.
83. It is for the Claimant to plead and prove his claim. I have only the slightest evidential basis on which to base a past award. I am invited by the Claimant's schedule to adopt the approach in **Blamire v South Cumbria Health Authority [1993] PIQR 1**. It was suggested in submissions that what the Claimant sought was an award for disadvantage in the labour market. As I have no evidential basis for making an award for past loss, I decline to do so.
84. As to future loss of earnings, noting what the medical experts have said about the Claimant's prognosis, I find that only a modest award for disadvantage in the labour market representing approximately one half

the annual income that might be expected at minimum wage levels is justified. I award £7,000.

CONCLUSION

85. For the reasons given I have found the First and Second Defendants are liable for the Claimant's injury. Damages are to be apportioned as to 80% to be paid by the Second Defendant and 20% to be paid by the First Defendant.

Dated this 27th day of July 2018

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HER HONOUR JUDGE HAMPTON