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

Royal Courts of Justice
Strand, London WC2A 2LL

Hearing dates: 10, 11, 13, 14, 17, 18,
19, 20, 21 March, 1, 3, 4 and 7 April 2003.
Thursday 15th May, 2003

B e f o r e:

THE HONOURABLE MR JUSTICE STANLEY BURNTON

SEFTON JAMES KEATING

Claimant

- v -

THE MAYOR AND BURGESSES OF THE LONDON
BOROUGH OF BROMLEY

Defendants

J U D G M E N T

Roger ter Haar QC and John Greenbourne (instructed by Teacher Stern Selby) for the claimant

Tim Kerr QC and Karen Steyn (instructed by Watmores) for the defendant

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

Introduction

1. In these proceedings the claimant (who prefers to be known as Richard, rather than Sefton Keating) seeks damages against the defendant local education authority for its alleged negligence between 1977 (when he was aged 6) and 1986 (when he was 15) in relation to his education. He alleges that as a result of the negligence of the defendant and those for whose negligence it is vicariously liable he was deprived of any reasonable education and left school with impaired educational achievements that affected his personal as well as his intellectual development. He alleges that, had he been competently educated, he would have left school with a fair range of subjects at General Certificate of Education Ordinary ("O") level or Certificates of Secondary Education ("CSEs"), and could have continued to tertiary education and would have been in regular and rewarding employment and personally fulfilled. He alleges that he is instead, as described in his educational psychologist's report, "insecure, unemployed, semi-reclusive, anxious, all but illiterate and innumerate, socially isolated and unemployable".
2. The defendant denies these allegations. If they are well founded, the claimant is entitled to very substantial damages to compensate him for those consequences and his loss of earnings.
3. Counsel for both the claimant and the defendant generally referred to him as "Richard", without title or surname, and since most of the facts relate to his childhood and adolescence I too shall generally do so.

The history of these proceedings

4. These proceedings were commenced 22 May 1992, just before the claimant's 21st birthday and therefore the expiration of the limitation period relating to his claims, and some 15 years after the beginning of the period during which the defendant is alleged to have been negligent, and five years after its end. They were then delayed while the defendant's application to strike out the claim was determined, ultimately in June 1995 by the House of Lords (reported with other cases as *X v Bedfordshire County Council* [1995] AC 633). The House of Lords held that the allegations in the statement of claim of breach of statutory duty by the defendant, and the allegation that the defendant authority itself owed a direct duty of care to him, did not give rise to causes of action, and they were struck out, leaving only claims against the defendant for its vicarious liability for the alleged negligence of its employees. Subsequently, the trial of this claim was again delayed while the House of Lords considered, in *Phelps v Hillingdon London Borough Council* [2001] 2 AC 619, whether to depart from its decision in *X*.
5. The result is that the trial court is required to investigate events that occurred between 17 and 26 years ago. Witnesses have died or disappeared; inevitably, the memories of the available witnesses have faded or entirely gone. Important documents have been destroyed or lost. Basic documents, such as school reports, attendance records, teachers' notes on school files, notes of meetings, and, it would seem, some relevant correspondence, are unavailable. Disclosure of documents by the claimant and his family, whether relating to his education or his work record, his health or his attempts to obtain employment, has been negligible. None of the claimant's schoolwork has survived.
6. To make matters worse, the defendant disclosed significant additional documents on the last day of evidence. Given the lack of recollection of most of the defendant's witnesses and the costs that would have been involved in the recall of witnesses of fact and expert witnesses, the parties sensibly did not require them to be recalled. Nonetheless, the court has not had their reaction to these documents. This does not make the task of the trial judge any easier.
7. The absence of important documents and the impossibility of witnesses remembering what they did and did not do, and why they did it or why they did not do something, are not a satisfactory basis for the determination of contentious facts, particularly in an important case and one in which teachers and other professionals have been accused of negligence long after the event and in some cases after their retirement. Perhaps worse from the claimant's point of view, his educational psychologist, Mr Rabinowitz who first saw him in April 1992, and on the basis of whose advice these proceedings were commenced, retired because of stress immediately before the trial began and was unfit to give evidence.

8. It is not only events that become more difficult to determine after so long. It is more difficult to determine what educational and other professional practices were common, what were the prevailing circumstances, what was regarded as normal and acceptable and what was regarded as unacceptable. The difficulties are added to if, as a matter of law, one of the defendant's submissions, namely that the question whether the defendant's employees owed the claimant a duty of care is capable of receiving a different answer now from its answer at the times material to this claim, is well-founded.
9. The court is put in the position in which it must determine the primary and secondary facts as best it can on the evidence available. In such circumstances, the onus of proof may be more important than in cases in which the court is able more confidently to find the facts in issue.
10. In finding the facts, the court must be cautious in relation to inferences that might otherwise be made from the absence of documents, where those documents may have existed (and in many cases, such as school attendance records, certainly did exist) but have been destroyed or lost.
11. In addition, the court must exercise considerable caution before criticising opinions formed at the time by teachers or others as to the educational needs of the claimant, in circumstances where the material on which they formed their judgment is unavailable and they have no recollection specific to the claimant or of the reasons for their conclusions. A good example of the difficulties involved is the recommendation relating to the claimant of the Special Opportunity Class leavers' meeting of 22 May 1978, referred to below. In this connection, the court should bear in mind that although Bromley is the only defendant in these proceedings, its surviving officers and employees accused of negligence have a personal concern in the criticisms made of them. The possible impact of such allegations was vividly demonstrated by their regrettable effect on Mr Camp. A similar caution is appropriate in relation to those of the defendant's officers and employees who have died.
12. I comment below on the conflicts I have had to resolve between the oral evidence I heard and the surviving contemporaneous documents. With only very few, if any, exceptions, there is no reason to believe that any of the statements made in the contemporaneous documents was partial or tendentious or intended by its author to be other than accurate. It is significant that both parties relied on the documents for their chronologies, and that the closing speeches focused almost entirely on the documents. The outline chronology in paragraph 19 below, and the educational history of the claimant set out in paragraphs 27 to 125 below, are similarly based on the documents.

The claimant's background

13. The claimant was born on 24 May 1971, and is therefore now aged 31. He left school in June 1987 at age 16. Throughout the period to which these proceedings relate, he lived with his parents in the area of Bromley, and the defendant was his local education authority. His mother was born in 1938 and his father in 1927. He was the third child of the family, born some considerable time after his sisters Terrie (whose date of birth was 16 January 1959) and Glynda (26 August 1960).

The claimant's learning and psychological difficulties

14. I do not think that the summary of the claimant's learning and psychological difficulties in the defendant's skeleton argument was disputed by Mr ter Haar; it reflects my findings, and I gratefully incorporate it in my judgment with only minor supplement, taken from the conclusions of Mr Ramsden, one of the educational psychologists called by the defendant.
15. Richard has had throughout a complex pattern of emotional, behavioural and learning difficulties. His emotional and behavioural difficulties were present from his earliest school days, and had the effect of obstructing his learning. His full scale IQ, as assessed by Mr Ramsden and accepted by Mr Rabinowitz, is about 82, that is, within the below average to low average range. This assessment of his overall cognitive ability is reasonably consistent with the assessments that were made whilst he was at school, namely those made by (1) Miss Griffiths: IQ 71 (Stanford Binet), (2) Mr Camp: IQ 86 (Stanford Binet), (3) Mr Camp:

IQ 71 (WISC-R), and (4) Mr Bendkowski: 80 (BAS).

16. Richard also suffered from a specific learning difficulty, now called dyslexia, or of a dyslexic type, which was also present in some form and at some level of severity from his earliest school years. He had in addition other areas of at least moderate specific learning difficulty, including in some aspects of language use, of numerical and mathematical abilities and of visual perceptual abilities, which are probably best seen as separate from, and additional to, his dyslexic type of difficulty.
17. However, Richard has (and had) significant strengths and weaknesses across the range of skills that demonstrate overall cognitive ability. There are two equally tenable ways of describing his cognitive ability. He can either be viewed as someone with broadly average cognitive ability, but numerous specific learning difficulties, or as someone of below average ability with a number of specific strengths. The former accords with Mr Ramsden's description and the latter with that of Mr Acklaw, the other educational psychologist called on behalf of the defendant. There is no difference of substance between these descriptions, only a difference of focus, comparable to describing a glass as half empty or half full.
18. The point to be emphasised is that the combined effect of Richard's weaknesses, that is, both his undisputed dyslexia and his other specific learning difficulties in respect of aspects of language use, numerical and mathematical abilities and visual perceptual abilities, "in any real, practical educational situation, are likely to have (and to have had, in the past) quite a general impact". For this reason it was never appropriate to treat Richard as if he was a reasonably bright boy with a single area of under functioning, namely dyslexia, for which he required discrete specialist help.

The chronology of the claimant's education in outline

19. Taken from the agreed case summary, the claimant's educational chronology is as follows:
 - (i) From September 1976 to July 1977 he attended St Paul's Wood Hill Infant School. From September 1977 to July 1978 he attended the Special Opportunity Class at St Paul's Wood Hill Primary School.
 - (ii) From September 1978 to April/May 1979 the claimant was not registered at any school.
 - (iii) From 14 May 1979 to 25 July 1982 he attended Westbrooke Special School for maladjusted children in the London Borough of Bexley.
 - (iv) In September 1982 he went to Grovelands School, a special school for moderately educationally subnormal children ("ESN(M)"), and continued to attend there until it closed in July 1985.
 - (v) In September 1985 he went to the Glebe School, another ESN(M) school, on the first day of term, when he was withdrawn from that school by his parents. He remained on the roll of the Glebe School until November 1986, but he did not attend any school during this period
 - (vi) From November 1986 to 26 June 1987 the claimant attended Kemnal Manor School, an ordinary (referred to as a "mainstream") secondary (comprehensive) school of the defendant. His school education then came to an end.
20. Even this apparently straightforward chronology was eventually disputed. The report of the head teacher at St Paul's Wood referred to in paragraph 33 below states clearly that the claimant was in both the reception class and the second year infant class at St Paul's Wood Primary School before he entered the Special Opportunity Class. On this basis, he began school some time between September 1975 (when he was aged 4 $\frac{1}{2}$) and July 1976. Mrs Keating disputed this vehemently. Form SE1 dated 13 September 1978 relating to the claimant, referred to below, also suggests that he spent only one year at St Paul's Wood before entering the Special Opportunity Class. Fortunately, no issue of the liability of the defendant to the claimant turns on this difference.

21. However, Mrs Keating insisted that her son joined the Special Opportunities Class in 1976, when he was aged 5, and that he had been in neither the reception nor the second year infant class at St Paul's Wood Hill. Her recollection is inconsistent with the claimant's Statement of Claim, and with all of the contemporaneous documents. She was clearly wrong.

The claimant's work history

22. After leaving school in June 1987, the claimant worked as a sales assistant at Comet. After a few weeks he was dismissed because his written work was not up to standard. He then went on a YTS scheme, and worked in a video shop for a period. This placement was followed by a short course at Orpington College. He then worked for his parents in a video shop that they had set up for him. In April 1991 they closed the business. Since then the claimant has been unemployed. However, in October 2002 he joined a computer course at a local community college, involving four hours of tuition per week.

The issues

23. The list of issues agreed before the trial began included allegations that the claimant's school placements had been inappropriate for him, that he should have been placed in mainstream schools throughout, and that his teachers and head teachers had been negligent in relation to his education, as had Ms Griffiths, Mr Camp, Mr Conn and Mr Bendkowski, educational psychologists employed by the defendant who had seen him. However, at an early stage of the trial Mr ter Haar abandoned all the allegations of negligence except those relating to the two periods during which the claimant did not attend school, ie between July 1978 and May 1979 and between September 1985 and November 1986 respectively. The claimant alleges that he missed schooling during those two periods as a result of the negligence of the defendant or of its employees. In respect of the period between September 1978 and July 1982 the thrust of the original claim was that the claimant's education was severely prejudiced by his inappropriate placement at Westbrooke; at trial it was that his education suffered because he was unable to attend Westbrooke until May 1979. This was a very different case. The defendant denies that it or its employees were negligent. Even so reduced, the remaining issues are numerous.
24. The agreed list of issues, after the deletion of those allegations that Mr ter Haar abandoned, and the allegation of contributory negligence abandoned by Mr Kerr, is set out in the Annex to this judgment. It was submitted to counsel in writing (albeit differently ordered) for comment after the trial had finished. Mr ter Haar then suggested that Issue 4 should be enlarged because the documents most recently disclosed by the defendant showed that a reassessment of Richard had been promised in April 1983, to take place by the end of the academic year then current, at a time when it was not clear that Mr Bendkowski, the target of that issue, was involved Mr ter Haar suggested that issue 3(vii) should be enlarged because the new documents suggested that Mrs Keating had made requests for Richard to be placed in school in the period 1985 to 1986 as well as between July 1978 and May 1979. Thirdly, again basing himself on the new documents, he suggested that issues 3 and 5 should be enlarged to accommodate the allegation that an education officer or officers other than those named, or someone other than an education officer, was negligent in the respects alleged. Not surprisingly, Mr Kerr objected to these suggestions.
25. I have considerable sympathy with Mr ter Haar's position. In general, the court should be receptive to an application by a party to amend pleadings, or to enlarge previously agreed issues, based on documents disclosed late by the other party. But even apart from questions of limitation, it cannot be right to enlarge the factual issues in this case so long after the events in question and after the completion of evidence. This conclusion is fortified by the consideration that the alleged additional requests for reassessment and school placement were made by, and therefore must have been known to, Mrs Keating; and that it was always open to the claimant to broaden the allegation of negligence to include unnamed personnel of the defendant (although whether it would be right so long after the event to permit an amendment, even before trial, must in any event be doubtful in view of the difficulties for the defendant in investigating the facts).
26. In general, I shall not address issues that are academic as a result of my findings and conclusions.

The claimant's educational history in detail

27. Initially, while Richard was at St Paul's Wood Hill Infant School his academic progress was minimal. As a result, in March 1977 he was referred to Dinah Griffiths, an educational psychologist employed by the defendant. She reported on the 23 May 1977. She found that his motor co-ordination was poor and his academic skills negligible: he could not count, even using bricks as aids, and had no concept of reading at all. She stated:

"Sefton has posed problems since starting school; it is thought that his mother is over-protective towards him, seeming to keep him off school for the slightest excuse. He often arrives wearing layers of clothes and Mrs. Keating has at times complained if he has had a jumper or a shirt removed at school. It is thought that Sefton is treated like a baby at home; he is very dependent upon adults and the other children tend to rally round and help him in class. His general presentation is that of a Nursery School child. Dr Ball has confirmed, in a recent school medical, that although there appears to be little physically amiss with Sefton, his responses are immature and he has little ability to assert himself. Academic progress has been minimal; his teacher's main task has been to socialise him and encourage a more dependent attitude."

Her summary and recommendations were as follows:

"Sefton appears to function at the top end of the ESN range. It is difficult to assess whether this represents his real potential or whether his development has been suppressed by his mother's over protective attitude. He needs intensive work in the field of language development and a great deal of help with visual perceptual development. I would suggest that he should be transferred to the Special Opportunity Class at St Paul's Wood Hill as soon as possible. I shall visit his mother to discuss handling methods and Sefton's needs with her."

28. The Special Opportunity Class was a class to assist children with learning difficulties. In accordance with Miss Griffiths's recommendation, in September 1977 Richard started to attend the Special Opportunity Class at St Paul's Wood Hill.
29. In November 1977, Richard's class teacher, Ms Janet Rose, produced a report on the claimant for the defendant's School Psychological Service. Her report recorded normal fine and gross motor co-ordination, that his speech was clear and correct and that he had no problem in understanding concepts or carrying out simple messages. He was said to respond well to normal teaching approaches.
30. The Special Opportunity Class at St Paul's did not continue beyond the Infants' School into Junior School. The school arranged a Special Opportunity Class Leavers' Meeting, to be held on 22 May 1978, at which the further education of its pupils was discussed and recommendations made.
31. On 14 April 1978, Richard was interviewed by Mr Camp, an educational psychologist of the School Psychological Service, with a view to his advising on his next school at the Leavers' Meeting. Mr Camp arranged to meet Mrs Keating on 5 May 1978 "so that lean represent your views at this Meeting". He produced a report on the claimant dated 16 May 1978. In it he stated that when Richard tried to change the topic away from test materials, he first complained of a "rather painful tummy" that apparently went as quickly as it came". His summary and recommendations were as follows:

"There seems to have been considerable improvement in Sefton's intellectual development since his earlier assessment in 1977 with him now functioning within the limited to low average range. His language has improved considerably and he now has a vocabulary within the 8 year old level.

However, his basic academic attainments are non-existent. It is difficult to envisage his coping in an ordinary Junior classroom without a great deal of remedial support. Nor does his intellectual capability warrant special education in an ESN (M) school.

Altogether, Sefton presents as a very strange 'unaware' child. I have discussed this with Mrs Keating who also cannot see Sefton achieving at all in the ordinary classroom without considerable support.

As Mrs Keating has, on a number of occasions, seemed somewhat confused herself, I would like to involve the Child Guidance Clinic team in Sefton's difficulties and have obtained Mrs Keating's permission to refer Sefton to Dr Rodriguez at The Willows Child Guidance Clinic."

Mr Camp sent a copy of his report to Dr Rodriguez, a psychiatrist. The reference to an ESN(M) school was to a school specialising in the education of children who were assessed as Moderately Educationally Sub-Normal.

32. A form dated 19 May 1978 shows that the Child Guidance Clinic accepted Mr Camp's reference to it of Richard. Unfortunately, however, Richard never saw Dr Rodriguez, because of his mother's subsequent objection to his doing so, for reasons that she was unable to make clear in evidence and do not appear to have been expressed at the time.

33. A report on Richard dated May 1978, on the notepaper of St Paul's Wood Primary School, and presumably written by the Headmistress, Ms Weisham, stated:

"Sefton joined the Special Opportunity Class in September, 1977. He had been in the reception and second year infant class of our school. He made no progress and his bizarre behaviour made it difficult to contain him in these classes.

Sefton's attention span is fleeting. He does not want to work or make any sustained effort. He is very disobedient and rebels at any direction. His behaviour is very bizarre - and seems to hover between fantasy and reality. He is very immature in many ways and very sophisticated and worldly in others.

Sefton is the young child of an older family and is clearly indulged. His immaturity and petulance makes his learning process very slow."

34. At the Special Opportunity Class Leavers' Meeting it was decided to recommend that Richard be placed in a residential school. If minutes or a note were made of this meeting they have not survived, but the approval of the recommendation was notified to Mrs Weisham, Dr Jones and Mrs Preston, the Senior Educational Psychologist, in a memorandum apparently from Mr Ellerby, the Chief Education Officer ("CEO") dated 25 May 1978, which remarked:

"Residential schooling is agreed to be the most appropriate course in this case. Notification should be deferred until Dr Rodriguez has had an opportunity of commenting."

I say "apparently from Mr Ellerby" because the documents bear his facsimile signature, and it may be that all documents emanating from his department bore that signature. In the end, nothing turns on this, and I shall continue to refer to such documents as being from him.

35. A manuscript note on a copy of Mr Camp's report of 16 May 1978 is as follows:

"Philpots Manor

? Philpots Manor Rudolph Steiner School, East Grinstead - Residential (ESN School)

Mr Rabinowitz described Philpots Manor as "an exceptionally good school run on the principles established by Rudolph Steiner. It provides boarding education for children of below average intellectual capacity". Given the absence of any reliable recollection of the discussion of the School Leavers' meeting, or even of who was present at, it, I infer that the residential school that those at the meeting had in mind was indeed Philpots Manor.

36. The recommendation of the Special Opportunity Class Leavers' meeting in relation to the claimant's further education is also referred to in a number of other memoranda from Mr Ellerby. In his memorandum of 21 June 1978 to Mrs Preston, Mr Ellerby stated:

"You will recall that this boy came up at the recent Special Opportunity Class leavers' meetings. As residential schooling was agreed to be the most appropriate course, I assume that you have sent Form SE.1 to Mrs Weisham with a view to starting the SE procedure."

At that time, before the education Act 1981 had been enacted, the form SE1 would have been a non-statutory form, and the SE procedure referred to would have been a non-statutory procedure adopted by the defendant authority for children with special educational needs. The procedure required forms SE2, SE3 and SE4 also to be completed, as appears below.

37. On the same date, Mr Ellerby wrote to Dr Rodriguez:

"It was recommended at the recent Special Opportunity Class Leavers' Meeting that this boy should be placed in a residential school. I believe the case is already known to you and I shall be glad to know whether I may expect a recommendation from you in due course. The Educational Psychologist is arranging for the SE procedure to be followed."

38. Mrs Preston passed on Mr Ellerby's memorandum to her of 21 June 1978 to Mr Camp, with the question "Is it in hand?", referring presumably to the preparation of Form SE1. Mr Camp noted on 27 June 1978:

"appt @ CGC (appointment at Child Guidance Clinic) not progressing well, may be not till August. Mr Elliot to advise Mrs Weisham that Sefton go into ord Jnr sch (ordinary junior school) till such time as Dr Rodriguez assesses the situation."

Mr Elliott was an officer in the defendant's education department, immediately subordinate to Mr Chamberlain, the Assistant Education Officer for primary and special schools.

39. In a memorandum of 12 July 1978 to Mr Elliott and to the defendant's Senior Educational Welfare Officer, Mr Ellerby stated:

"This boy has been in the Special Opportunity Class at St Paul's Wood Hill for the past year but is due to move on in September. At a recent meeting it was recommended that Sefton should be placed in a residential school because of his particular difficulties and the case was referred to Dr Rodriguez. At the time the mother had expressed her agreement to Sefton being seen by Dr Rodriguez but now seems to have withdrawn.

No advantage will be gained by this boy being allowed to stay in the Special Opportunity Class, and he is not suitable for admission to a Day ESN School as his IQ comes out at 86.

Westbrooke Day Special School, Bexley is not considered suitable for him and in any event the mother would not agree to this I should be grateful if an officer can visit Mrs Keating and have another attempt at persuading her that it is in Sefton's best interests to be seen by the Consultant Psychiatrist. Otherwise we really do not know what we are going to do with this boy in September."

40. As a result of that memorandum, Mr Lambkin, a senior education welfare officer, visited Mrs Keating. He reported back in a memorandum dated 31 July 1978:

"I have interviewed Mrs Keating and all attempts at persuading her to be seen by Dr Rodriguez, Consultant Psychiatrist, have failed. Under no circumstances would she attend with her son if an appointment was made. She has requested we leave her son's placement as she intends to employ a private tutor in September to educate her son in the home situation. Should, after a few weeks,

she find this too demanding then contact will be made to this department for alternative action."

41. On 2 August 1978, Mr and Mrs Keating went to see Mr Chamberlain, Assistant Education Officer for primary and special schools. He telephoned Mr Camp, whose note of their conversation is as follows:

"Sefton Keating

Phone call from Mr Chamberlain

Parents with him. Not agree to boarding. Mr C (Chamberlain) asked if Westbrooke suitable. Said yes - but would have preferred Dr R (Rodriguez) to have seen him before we made decision. Parents have now refused CGC (the Child Guidance Clinic).

Mr C to try Westbrooke."

Westbrooke was a school for "maladjusted" children.

42. On 4 August 1978, the Chief Education Officer sent a memorandum to Dr Jones, a Specialist Community Medicine Officer (Child Health):

"The parents of the above named boy would not agree to the recommendation at the St Paul's Wood Hill Special Opportunity Class Leavers' meeting regarding his placement at a residential special school. They have since visited this office and discussed the matter with Mr Chamberlain, as a result of which they are being encouraged to accept a place for Sefton at Westbrooke should this be available. In the meantime, I am setting the SE procedure in motion and shall be most grateful if you can let me have SE2 in respect of this boy as soon as possible. It would also be appropriate for the case to be referred to Dr Rodriguez at The Willows: such a recommendation was contained in Mr Camp's report dated 16 May."

It seems that Mr Ellerby was unaware that Mrs Keating had changed her mind about Dr Rodriguez seeing the claimant. On the same date, Mr Ellerby also wrote to the Director of Education of the London Borough of Bexley, the local education authority for Westbrooke, with a copy to the headmaster of Westbrooke:

"The above named boy was up to the end of the Summer Term 1978 a pupil at the St Paul's Wood Hill Special Opportunity Class. At a recent meeting it was recommended that Sefton needed education as a maladjusted child and that this would best be served by his admission to a residential special school. Unfortunately, the parents are unwilling to agree to residential placement and it is only with some reluctance that they have agreed to consider a day place.

It was not possible before the end of the Summer Term to arrange for the SE procedure to be carried out but I am enclosing such reports as are available and shall be glad to know whether you feel that there is any possibility of your considering Sefton for a place in Westbrooke from September. I ask this because, short of taking legal action, we see no prospect of placing this boy satisfactorily elsewhere and also because one or two other Bromley withdrawals suggest that you might perhaps have vacancies."

The suggestion that Richard needed special education because he was maladjusted was not justified by the earlier documents.

43. In a third memorandum of 4 August 1978, Mr Ellerby wrote to Mrs Preston stating:

"In reference to a recent telephone conversation with Mr Camp, I shall be glad if the SE procedure can be initiated in connection with this boy's possible admission to Westbrooke Day Special School. I have written to the Bexley authority asking for their informal comments about Sefton's suitability. In view of the time factor I am writing direct to Dr Jones asking for the completion of form SE2."

44. On 15 August 1978, Bexley replied to Mr Ellerby's letter of 4 August 1978, stating that all the places at Westbrooke had been allocated, and that the next meeting to discuss admissions would take place on 20 October 1978. They asked for the SE forms so that the claimant's case could be discussed at that meeting.
45. The claimant was seen by a Senior Clinical Medical Officer of the defendants, on 17 August 1978, for the purpose of completing form SE2, which was signed by Dr Jones, Senior Clinical Medical Officer of the defendant (although he may well have been seen by her colleague Dr Ball: see below). The form shows that the diagnosis was that the claimant was handicapped in the areas of behaviour and emotional development and intellectual development. It stated:

"Sefton is very immature ... he soon loses interest in the task set, and appears to be unaware and disinterested.

Sefton has now been working in a small group for 1 yr in school. Recent assessment (Ed. Psychologist) shows that his intellectual development has improved. However he is still having severe learning difficulties."

Under the heading "Additional Notes or Comments", it was stated:

"Mrs Keating presents as a rather vague person, who finds it difficult to grasp the facts, in any given situation. She is always anxious when presented with authority.

Sefton appears to have a similar approach to life."

46. On 21 August 1978, Mr Ellerby sent a memorandum to Mrs Preston and to Dr Jones stating:
- "In connection with our efforts to secure a place for Sefton in Westbrooke Day Special School, I have been reminded by the Bexley authority that no further vacancies exist at present, but. that the next meeting to discuss admissions will take place on 20 October. Bexley ask that all the SE forms be available by that time."
47. Dr Jones sent the completed form SE2 to the defendant's Chief Education Officer on 22 August 1978 enclosed with a memorandum in which she stated:

"With reference to your memorandum dated 4.8.78, I enclose a completed SE2 form as requested.

Dr Ball reports that at the interview with Mrs Keating and Sefton, arranged to complete the SE2 form, Mrs Keating made the following comments:

- 1) That she was not prepared to take Sefton to see Dr Rodriguez, although she may be prepared to see another psychiatrist.
- 2) That she would not consider allowing Sefton to attend a residential school, if a day placement for Sefton could not be found. If an appropriate day placement could not be found Mrs Keating would arrange for private tuition at home for Sefton."

48. Mr Ellerby sent form SE2 on to Mrs Preston with a memorandum of 30 August 1978 in which he stated:

"Dr Ball reports that at the interview with Mrs Keating she said that she would not consider allowing Sefton to attend a residential school if a day placement could not be found. She further stated that if an appropriate day school vacancy was not available she would arrange private tuition at home for Sefton. I await Forms S.F. 1; 3 and 4."

49. On 1 September 1978 Mr Camp wrote to Mrs Weisham, the headmistress of St Paul's Wood Hill:

"Apparently Mr and Mrs Keating have been to see Mr Chamberlain. They refuse to consider a referral to the Child Guidance team or the idea of a boarding school placement. Mr Chamberlain has suggested Westbrooke School, and it appears the parents are in agreement.

It would seem that special education is desirable for Sefton, though at this stage I am not entirely convinced it should be 'maladjusted'. Could you complete the SE1, however, and return it to me. I shall be visiting you soon to discuss Sefton's future educational needs."

50. On 6 September 1978, Mr Ellerby sent a memorandum to Mrs Weisham:

"We are, as you know, attempting to obtain a place for Sefton in Westbrooke Day Special School following the mother's refusal to accept residential placement for him. I have informed Mrs Keating that it will be some time before we can place Sefton and that the next meeting to allocate places at Westbrooke is not until 20 October. In the meantime, I understand it is Mrs Keating's intention to arrange private tuition for Sefton. I believe you mentioned at one stage that as a last resort you might be willing to have this boy back in St Paul's Wood, but the mother has herself expressed some reservations because she knows that Sefton is disruptive to other children and also feels that it will be bad for her son to return. I shall be glad to know, however, whether you would regard Sefton's return as feasible on a short-term basis. I do not intend to tell mother unless her own private tuition arrangements break down."

51. Also on 6 September 1978, Ms Rose, the claimant's teacher at St Paul's Wood, completed form BG-1, the Bristol Social Adjustment Guide No 1, entitled "The Child in School - Boy". Her comments included the following:

"Desire for approval or attention: Unconcerned about approval or disapproval.

General manner with teacher: couldn't care whether teacher sees him work or not.

Classroom behaviour: misbehaves when teacher is engaged with others.

Truthfulness: tells fantastic tales.

Response to correction: responds momentarily / bears a grudge, always regards punishment as unfair.

Paying attention in class: Attends to anything but his work.

Manual tasks or free activity: never really gets down to job and soon switches to something else.

Informal play: tries to dominate and won't co-operate when he can't get his own way / starts off others in scrapping and rough play, disturbs others' games.

Attendance: has had long absences / parent condones absences, malingering etc / stays away to help parent.

General health: complains of tummy aches, feeling ill or sick."

52. On the same date, Ms Rose also completed a child behaviour assessment form. In the column headed "Certainly Applies" she ticked "Tends to be absent from school for trivial reasons", "Is often disobedient" and "Has poor concentration or short attention span". Under the column headed "Applies Somewhat" she ticked, among other entries:

"Very restless. Often running about or jumping up and down. Hardly ever still"; "Irritable. Is quick to fly off the handle"; Often appears miserable, unhappy, tearful or distressed" "Often complains of pains or aches"; and "Has had tears on arrival at school or has refused to come into

the building this year".

53. Form SE1 was the report by a head teacher on a child who might require special education. The form completed in respect of the claimant was signed by Mrs Weisham, as head teacher of St Paul's, and also by Ms Rose. Under the heading "School Attendance", it recorded that the claimant had been in the special opportunities class between September 1977 and July 1978, and that in that period out of a possible 380 (half-day) attendances, his actual attendances had numbered 304, ie, he had been absent for 20 per cent of school. The report stated:

"Sefton spent 1 year in Reception Class, where attendance was also poor."

Under the heading "Brief description of child's difficulties and when they were first noted", the report stated:

"Sefton's problems were first noticed when he was in a normal reception class He was placed in SOC after assessment from school psychological service Sefton's behaviour is disruptive He cannot concentrate and consequently does not learn He is immature - yet has a certain degree of guile and sophistication He is very disobedient."

Under the heading "Do you suspect any physical condition which might cause or contribute to the difficulties?" the answer was "No". Under the heading:

"Do you think that the child's difficulties could be caused wholly or partly, by circumstances outside himself, eg irregular attendance, frequent changes of school or teacher, oversized classes etc?"

The answer was:

"Sefton's school attendance is poor. He is often away for no apparent reason."

Against the question:

"Has special attention already been provided in the school?"

The answer was:

"Sefton is in a Special Opportunity Class with a small group. He has had individual attention and approach to his learning difficulties provided in such a group. He has shown a little progress."

While his level of speech and understanding of speech were stated to be "Very good", his reading and spelling levels were "Nil", his numeracy had reached "Symbols and values 1-5" and against significant aspects of child's play it was noted:

"He plays with his peers - but it always leads to rough play with a great deal of disturbance."

Poor hand control was noted. Against the question "Has he made progress in the last twelve months?" the answer was "Yes. Concentration is a little better". In respect of parental attitudes, the report stated:

"Parents are aware of Sefton's need for Special education."

Ms Rose commented:

"Sefton is a strange child (whose) behaviour is often 'bizarre' and unaccountable."

The conclusions were:

"Although Sefton's intelligence scoring falls within the average range it is because of his odd behaviour pattern and low academic standard that he will need special placement. He needs a great deal of individual help which we are unable to give in an ordinary class."

54. Also on 13 September 1978, Mrs Weisham replied to Mr Ellerby's memorandum of 6 September. She stated:

"... We would be very pleased to accept Sefton back into the Special Opportunity Class should the need arise.

Unfortunately he would be too disruptive to put into an ordinary class."

There is no explicit explanation in the documents to explain why Mr Ellerby would not wish to tell Mrs Keating of the possibility of her son returning to the Special Opportunity Class, and nothing to indicate that the information that Mrs Weisham was willing to have him back in that class was passed on to her.

55. Mrs Preston completed Form SE4 on 29 September 1978. She recommended as action "Day Maladjusted School". She ticked box 23 on the form "remedial education (for children who are functioning markedly below their potential)", box 28 "Teaching in a unit or small school capable of giving specialist attention to abnormalities of behaviour", and under "Home background and parental attitude" wrote:

"Very colluding mother who is herself somewhat 'vague'."

Mrs Preston ticked boxes indicating that there was special need for the school to enlist home support if placement was to be effective, and that there was a need for counselling of Richard's parents before special education might be initiated, stating that the appropriate agency for counselling was the school.

56. On 2 October 1978 Mr Camp completed a form SF3. In it, he stated, in respect of Richard's behaviour:

"Sefton shows immature behaviour in the classroom. He misbehaves when an adult is not aware of him, and causes other children to do likewise. He often appears to be in a world of his own, and can relate quite fantastic stories about real events. He does not appear motivated to work, and can sit aimlessly until compelled to work."

Under the heading "Assessment of ability and personality", he stated:

"Stanford-Binet Intelligence Scale (Form L-M) 1972 norms

C.A. 6yr 10m

M.A. 6yr 3m

I.Q. 86- Limited/low average range (14.4.78)

Sefton has a limited span of concentration, and needs constant supervision, if he is to persevere at a task. He is constantly restless and shuffles about in his seat. There are also frequent unexplained absences from school."

Under the heading "Implication of above observations", he stated:

"Sefton requires a great deal of remedial support in the school situation. His basic skills are not yet established.

His whole behavioural approach is not suited to the ordinary classroom, as he requires constant supervision if he is to settle at any task. This will possibly obtain in a day maladjusted school."

In his assessment of language development, Mr Camp noted:

"Language structure and vocabulary are well above what might be expected. Sefton can 'converse' in an adult manner although without (illegible) appreciation of a listener's views."

In relation to literacy, he wrote:

"Sefton does not write freely and his reading skills are not yet begun."

In relation to mathematical knowledge and understanding, he stated:

"Below the 6 year number level of the Stanford-Binet."

Under the heading "educational implications of the above", Mr Camp wrote:

"Sefton requires an educational environment for a child at the early infant, stage. He needs pre-reading activities and training in number conceptualisation. His restless "unaware" approach to the learning situation will necessitate much one to one activity on the part of his teacher."

Under the heading seeking relevant information about the child's family background, Mr Camp stated:

"This is Mrs Keating's second marriage. She appears a somewhat confused person herself, and often colludes with Sefton's 'illnesses'. Mrs Keating has now provided Sefton with private tuition as she realised that Sefton is a disruptive influence on a class of children."

Under the heading "Parental attitudes", he wrote:

"Mrs Keating responds emotionally to Sefton's needs."

and

"Real understanding of Sefton's educational and emotional needs is limited."

In relation to parental ability and readiness to promote the child's growth and development, Mr Camp wrote:

"Mrs Keating appears ready to promote Sefton's growth, but is in effect perpetuating dependence on her by Sefton."

And he commented:

"There will have to be a period of weaning of Sefton from his mother's influence."

Mr Camp's summary and implications of psychological assessment stated that Richard required placement at "Day Maladjusted School such as Westbrooke", and that the teaching arrangements required were "remedial education (for children who are functioning markedly below their potential)" and "a regime which expects conformity to usually accepted patterns of behaviour."

57. On 10 October 1978, Mr Ellerby sent forms SE1 to SE4 to the Director of Education at Bexley, so that Richard could be considered at the meeting of 20 October 1978.

58. Mr Camp was present at the Westbrooke meeting held on 20 October 1978, as was Mr Ward, the headmaster. The extract from the minutes of that meeting is as follows:

"Mr Ward reported that his present roll is 49, although Nicola Jackson will shortly be transferring to High Close School, thereby creating another vacancy.

RE: SEFTON KEATING (24.5.71)

Mr Camp reported on this boy who has been attending a Bromley Special Opportunity Class Sefton, although charming at times, is unable to settle down to work, unless someone is standing over him and he presents as a very dreamy, unaware child. He is not aggressive. Apparently the mother agreed to a psychiatrist seeing Sefton and then changed her mind. However, she has agreed to special education although she is at present keeping him away from school. Again, Mr Ward is to arrange an interview with Mrs Keating with a view to his possible admission."

59. Mr Camp reported back to Mrs Preston by memorandum dated 23 October 1978, but presumably dictated on 20 October:

'The above named child was discussed at today's meeting for admission to Westbrooke School, Welling.

It was decided that, as applications exceeded the number of available places at the school, Mr Ward, Head Teacher of Westbrooke, would interview the children and parents concerned, and allocate the one available place, bearing in mind the order of priority recommended by the psychologists present at the meeting."

60. In January 1979 the local authority became concerned about the private tuition arranged by Mrs Keating. On 12 January someone, presumably Mrs Preston, wrote on Mr Camp's memorandum of 23 October 1978 "How is private tuition going?" On 18 January 1979 Mr Ellerby wrote to Mrs Preston, asking whether she had any knowledge of Richard's home tuition, and stating that it was important that Bromley should decide "whether the tuition provides an effective alternative to full time education, since there seems to be no early prospects of Sefton's admission to Westbrooke, if indeed a place will ever be allocated to him".

61. Mrs Preston replied to Mrs Ellerby on 29 January 1979:

"I understand that Sefton has been receiving home tuition given to him by his parent (?) with your consent. This is hearsay information, as we have had no official communication from you since October 1978 and, therefore, we were not informed that Sefton had not been given a place at Westbrooke Day Maladjusted School.

Under the circumstances it would seem more appropriate for the general adviser for Primary education to comment as to whether the tuition provides an effective alternative to full time education. We have already advised as to the special educational needs of Sefton through the S E procedure last October."

There is a handwritten note on Mrs Preston's memorandum:

"Mr Chamberlain, Do you want to see Mr Benistor about this one?"

That note is dated 2 February 1979, and initialled, probably by Mr Elliot. Mr Benistor was the Inspector of Primary education. The documents do not indicate whether any, and if so what, further action was taken as a result of that memorandum.

62. On 1 February 1979, Bromley were informed that Richard would again be discussed at the Westbrooke School admissions meeting to be held on 13 February 1979. On 21 February 1979 a note on the file recorded that there were eight children for two vacancies at Westbrooke, and that Mr Ward would be interviewing parents who would inform Bromley of the children who had been given a place.
63. Bromley was represented at the Westbrooke admissions meeting on 13 February 1979 by Mrs McMillan, an educational psychologist. The extract from the minutes records:

"Mrs McMillan reported on this child who has not been receiving tuition since summer, 1978, when he left the Special Opportunities Class. Sefton is also, therefore, to be considered for one of the vacancies at Westbrooke School."

64. On the 14 March 1979 Mrs Keating went to Footbury Hill School, a mainstream school, seeking to see the Head Teacher with a view to Richard being admitted there.

65. On 28 March 1979, Mr Ward telephoned Bromley and spoke to Eileen Tooth. Her note records that he said:

"He would consider Sefton Keating for a place at Westbrooke next term (he has just one vacancy and several children to be considered).

He would like to see mother and Sefton at School on Friday morning at 10 am if we can arrange this."

She added

"Mrs Loughton is going to contact mother and let me know if she will go."

66. Mrs Loughton replied to Ms Tooth:

"Mr Ward has agreed to see Mrs Keating this afternoon so if she rings when I am out can you say I will be calling for her and Sefton at about 2pm today."

That note has been annotated

"Interviewed 30/3/79

Going in on Wednesday, 4.4.79."

67. Mr Ward wrote to Mrs Keating on 2 April 1979, offering Richard a place at Westbrooke He stated:

Having noted Sefton's irregular pattern of attendance at his school I can offer him a place on condition that he is absent **only** for a justifiable degree of ill-health.

Before I can admit Sefton I need your assurance that you will give us your fullest support in this matter. Please sign and return the enclosed statement so I can arrange transport for Sefton to and from School."

The underlining (but not the emboldening) is in the original. The enclosure was a form addressed to Mr Ward, to be signed by Mrs Keating, stating:

"I fully understand that Sefton's admission and continuing placement at Westbrooke School is subject to his maintaining a satisfactory record of attendance."

On the same date, Mr Ward confirmed to Bromley his offer of a place at Westbrooke for Richard, "with conditions as the enclosed letter to Mrs Keating". On the following day, Mr Ellerby informed Ms Tooth of the welfare section and the transport section of the defendant:

"(Sefton Keating) is to be admitted to Westbrooke Day Maladjusted School on Wednesday 4 April, and I would be glad if you could make the necessary transport arrangements."

68. On 27 April 1979 Mr Ward telephoned the defendant and spoke to Ms Tooth. Her note of the telephone conversation is as follows:

"Mr Ward phoned

Sefton Keating

Sefton has not yet come to Westbrooke. There would be a provisional place for Sefton within a few weeks of it being decided that Sefton should come. Mr Ward will have vacancies in September.

I have told Mr Lambkin and Mr Chamberlain attendance action will probably be taken.

Transport has been cancelled."

69. Ms Tooth wrote another note on Richard on 10 May 1979:

"Mother & Mr Ward have now agreed to Sefton's admission to the school on Monday 14 May. Can you please re-start the transport arrangements from that date."

70. A letter to Mrs Keating from Mr Ellerby of 11 May 1979 stated:

"I understand from Mr Ward, Headmaster of Westbrooke School, that Sefton is to be admitted to that school on Monday, 14 May, and I am making the necessary arrangements for his transport to and from school.

I shall be glad if you'll ensure that Sefton is ready pick-up from 8am onwards."

71. A further note from Ms Tooth dated 14 May 1979, to Mr Lambkin, states:

"I phoned Mr Ward at Westbrooke and he confirmed that Sefton had arrived at school today."

72. Richard attended Westbrooke School from 14 May 1979.

73. Westbrooke reviewed Richard's progress in May 1980. He was aged (virtually) nine. The review, dated 14 May 1980 and signed by Mrs Bishop, who was then head teacher, noted:

"During the last few months a marked improvement can be seen in all the work Sefton undertakes to do.

Sefton's attitude to work is pleasing. He now realises he is achieving where before he has always failed and wishes to continue to improve and reap the benefits of "success at long last" – so to speak.

Socially Sefton has also improved. His attendance has been very good over the spring term, compared to previous ones, but so far this term he has missed over two weeks due to chicken-pox. I am sure that Sefton's improvements have occurred mainly due to the fact that he is attending school on a far more regular basis.

In conclusion, I feel that Sefton has at last found and met with a beginning of what is to be a long hard struggle to acquire and develop his basic skills and all round abilities. With continued effort and help I am sure that Sefton will carry on to improve in every aspect of the word."

74. A further review of progress was made in April 1981. The review noted that Richard had continued to improve slowly. He had gained a minimal score on his last reading test taken the previous July (6–, Schonell). At the date of the review, he was absent due to mumps, but his attendance was reported to have been good.

75. The school gave Richard a positive end of year report dated 7 July 1981.

76. On 13 November 1981, Mrs Bishop wrote to Mr Camp asking him to come to the school to assess Richard and another boy, because "With the discussion of secondary placement for Bromley school leavers pending, we are rather concerned" about them. Before he did so Ms Bishop produced a further Review of Progress report on Richard dated 26 November 1981. It stated:

"Sefton tries very hard in all aspects of his work but misses a great deal of school time' through illness.

It is difficult to decide whether because of his absences from school and ill health Sefton's performance is prone to such dramatic fluctuations or whether he has specific learning difficulties which as yet are undetermined. ... In a recent Schonell reading test he scored 6.9 which is an improvement of 5 months since his last test. His parents are working with him on his reading and he receives daily specialised remedial help at school, Sefton finds great difficulty with mathematics and apparently he has a very poor grasp of the basic concepts of number, addition and subtraction. Because of his lack of understanding, Sefton can work only with coins which amount to 20p (in addition) and lop (in subtraction). He can recognise and match most shapes but he does not know his tables or tell the time. His work is neat but often confused, he makes very simple mistakes which are contradicted by success in more difficult work, such as number sentences."

The report concluded:

"Sefton is well placed here at Westbrooke, but it is obvious his medical problem hinders his development. He seems to be maturing and copes well in the larger class of 20 with all the personal organisation that this involves. However, decisions regarding his future schooling seem to hinge greatly on investigations into his learning difficulties and at would seem extremely doubtful if any mainstream school would be able to offer the specialised help he desperately needs. It would also seem inappropriate to consider a residential school as Sefton obviously derives much satisfaction and support from his home situation and at is doubtful if he could thrive away from it."

77. Mr Camp made a note dated 13 January 1982:

"Went to Westbrooke again Sefton not in.

– C.T. (presumably, Class Teacher) - V. slow learner often bursts into tears if confronted with work he finds or thinks difficult.

Often away sick xtrabone in leg causes great pain s'times

Phoned (school) health - no medical record of P.A.

Phoned Dr Thelma Griffin re xtrabone in leg

Abnormal x-ray

App. Nov. '80 to help

Consultant said didn't turn up

Letter to hosp.

Pain in knee ... congenital abnormality & ossification

GP says boy should be re-referred by her

(mother) needs to come to see her."

The underlining is in the original.

78. On the same day Mr Camp wrote to Mrs Keating, asking her to bring Richard to his office on 21 January to discuss his future education. On the 21 January 1982, Richard was examined by Mr Camp. He noted on a test record form:

"Asked Mrs Johnson to contact (Mother) & visit Grovelands."

Richard was then aged over 10. His reading ages were recorded as 6.10 in terms of accuracy and 6.8 in terms of comprehension.

79. On the 7 April 1982 Mrs Bishop completed a form SE1 in respect of Richard. He was aged almost 11. The form described his attendance at Westbrooke as "reasonable" although it also referred to poor attendance due to ill health. It described his existing provision as follows:

"Westbrooke is a school for maladjusted children Sefton as in a class of 19 third and fourth year juniors taught by male and female co-teachers."

It stated

"Sefton has something physically wrong with his legs which causes him periodically to be absent from school.

Sefton's frequent absences from school have hindered his academic progress."

Question 7 on the form asked:

"Has special attention already been provided in the school, eg group teaching methods, or remedial education in school or elsewhere? Please indicate in some detail the measures taken and method employed, and the extent of any progress."

To this the answer was:

"Sefton receives remedial help in all subjects. Although he is in a class of nineteen, the class splits for most lessons into groups of ten and nine. A system of behaviour modification exists in the school and Sefton has responded with a fair degree of success to his individual modification. Currently his modification is to take a more active part in lessons. Sefton needs a great deal of remedial work to ensure progress."

His reading level was recorded as 6:10 (Schonell). For comprehension, the form recorded "R, Experience (D & D) no score. His spelling age (D & D) was 5.8. The report stated:

"Intellectually, Sefton performs at the bottom of the low average range of ability."

On parental attitude, Mrs Bishop noted:

"Parents have accepted the idea that Sefton will have to continue his secondary schooling in a special school environment. They have already visited the school and are quite happy with it."

The school in question was Grovelands, as appears from Mr Camp's memorandum referred to below. Mrs Bishop concluded:

"Academically he has made only slight improvement considering the vast amount of remedial help he receives and there can be no doubt that he would fail to thrive in a mainstream secondary school.

Sefton will require intensive remedial help throughout his future schooling. Socially he is more likely to succeed in a more sheltered environment and it is therefore felt that a day school for educationally subnormal children would be the best choice.

I have not been too happy with Sefton's attendance and this is something that will have to be closely monitored."

80. On 13 April 1982, Mr Camp sent a memorandum to Dr Jones:

"This young lad was originally at St Paul's Wood Special Opportunity Class.

After leaving the Special Opportunity Class, Sefton was placed at Westbrooke School. As you can see (S.E.1) he has made some progress socially but has presented many problems in coping with the level of academic work at the school in spite of a great deal of remedial help.

Sefton is a strange child who I believe is over-protected by his mother. He has lost much schooling through 'illness'. In January I telephoned the family GP as Mrs Keating repeatedly told the school that Sefton had an extra bone in his leg which rendered him periodically bedridden. Dr Griffin advised me that there was some congenital abnormality and ossification but that following an X-ray investigation Mrs Keating did not keep her appointment with the Consultant Orthopaedic Surgeon. Dr Griffin would like to re-refer Sefton.

As Sefton is due for Secondary transfer this year, I have reassessed him psychometrically and discussed the advisability of an ESN(M) placement with Mrs Keating.

I persuaded Mrs Keating to visit Grovelands following our interview and I understand from Mrs Johnson that Mrs Keating strongly wanted Sefton to transfer immediately.

I enclose Form S.E.1 and would be grateful for the S.E.2 as soon as possible."

81. Richard was seen by Dr Stewart, a senior clinical medical officer, on 5 May 1982, and form SF2 was completed. Under the heading "Diagnosis" he ticked the box labelled "Requires psychiatric surveillance". It stated that his physical health was satisfactory except for right hearing. The form was forwarded to Mr Camp on 13 May 1982. Mr Camp made a note dated 18 May 1982:

"received & queried SE2. Marylyn Reid to investigate."

82. I infer that the cause of his query and request to Dr Reid, who was a senior clinical medical officer, to investigate was the absence from the form of any reference to the problem with Richard's leg that had apparently caused school absences, because on 20 May 1982 Dr Reid wrote to Mrs Keating:

"I phoned your GP Dr Griffin, because of Sefton's frequent illnesses and absences from school. Dr Griffin has suggested that you visit the surgery so that another appointment can be made for Mr Percy, the Orthopaedic Surgeon at Queen Mary's Hospital, Sidcup, to see Sefton's knee, as the x-ray showed some abnormality of his kneecap.

Now that Sefton is changing schools, we are very anxious that he should be fit, in order to attend school regularly."

The letter was copied to Mr Camp and Dr Griffin.

83. The end of year school report for Richard commented:

"Sefton has had a great deal of time away from school and this has hindered his academic progress to some extent. However, he has improved socially and is always a willing but quiet work(er).

I do hope as Sefton grows older his health will improve because I feel that a lot of his present problems are due to him having so much time off school."

84. Mr Camp completed Form SE3 on 11 June 1982. Under the heading "Assessment of ability and personality", he wrote:

"W.I.S.C'R', (21.1.82) Verbal Scale I.Q. 74 / Performance Scale I.Q. 71 /Full Scale I.Q.71.

Sefton continues, since I knew him in his infant days, to be a puzzling child. His personality seems to exhibit islands of intense maturity if not 'old age'. But this is not consistent throughout his behaviour and overall he is immature, timid and reserved and, one feels, would prefer to be left alone.

In interview he appeared sad faced and avoided eye contact. He made little effort when he considered he was unable to answer immediately. Much of the interview was punctuated with his sighs.

The psychometric profile shows a great deal of internal scatter in both the Verbal and Performance items Investigation of the sub-scale profile does gave some indication of specific reading retardation and masked by his hesitant personality.

Sefton's general knowledge for example appears to be almost non-existent, yet this as incompatible with an average level of social maturity and awareness. Has general awareness of his physical environment is especially well developed but non-verbal reasoning as at an ESN (M) level and ability to learn discrete material at speed even worse. He still has difficulty in discriminating b & d, 6 and 9."

Under the heading "Implications of above observations" he wrote:

"Sefton will require an educational regime which can offer a small classroom situation with a curriculum designed basically for the slow learner. However, great care is needed in order to recognise Sefton's abilities and promote them to the full. His social awareness is average for a boy of his age and his general observation is excellent."

In section 7 of the form, under "Any assessment of educational performance", Mr Camp wrote in relation to the level of language development:

"Sefton engages in little free conversation - hence this is difficult to establish."

In respect of literacy, he wrote:

"Neale Analysis of Reading Form C. Reading Accuracy - 6yrs 10 months

Reading comprehension - 6yrs 8 months

I consider that Sefton exhibits indications of specific reading retardation."

For mathematical knowledge and understanding, he wrote:

"W.I.S.C 'R' Scales Score Arithmetic Sub-test 4 (mean for this test is 10)."

In respect of "Subject areas which the child dislikes or finds difficult", he wrote:

"All areas of the academic curriculum."

Under the heading "education implications of the above", he wrote:

"Sefton needs a great deal of specialised help with reading and arithmetic concepts within a curriculum modified for the slow learner."

In relation to Richard's family background, he wrote:

"I have never met Mr Keating but understand that he is much older than Mrs Keating. Mother has always appeared defensive and vague and has not really accepted that Sefton has special educational problems until of late."

On "Parental attitudes" he wrote:

"The Keatings appear to be a very close and somewhat "unrealistic" family. I do not believe that Mrs Keating is able to promote Sefton's development along the lines which are generally regarded as usual."

Under the heading "Implications of the above for special education" he wrote:

"Mrs Keating frequently keeps Sefton from school for what appear to be unusual reasons."

85. Mr Camp also completed Form SF4 on the same date. The recommended action for Richard was:

"Day school with classes of small numbers which can offer a modified curriculum for the slow learner."

Mr Camp noted on this form that it had been completed on the basis of a meeting or case-conference with "Parent, school staff and Head Teacher and E.P."

86. Richard was discussed at an "Admissions meeting ESN(M) Schools" attended by six of the defendant's education department officials, including Mr Conn of the " School Psychological Service, on 8 July 1982. His note records:

"Sefton's needs were discussed at the above meeting. It was noted that Sefton is at the end of his period at Westbrooke Special School and Mr Camp's reassessment indicates a need for continuing Special education in an ESN (M) school.

It was agreed that Sefton should transfer to Grovelands in September 1982."

87. Mrs Johnson, the head teacher of Grovelands, wrote to Mrs Keating on 15 July 1982, saying "how pleased we will be to welcome Sefton in September", and informing her of his class and teacher. The Director of education wrote to Mr and Mrs Keating on 23 July 1982 to inform, them that the place would be available at Grovelands."

88. Richard duly joined Grovelands on 8 September 1982.

89. On 28 October 1982, five months after Dr Reid's letter of 20 May 1982, Richard was again referred to Mr Percy, the consultant orthopaedic surgeon. The letter to Mr Percy from Dr Griffin's GP trainee, stated:

"I would be grateful if you could see this boy who has been consistently complaining of pain in both knees during the last 18 months. An x-ray of the right knee in 1980 showed evidence of a congenital abnormality. I believe he had an appointment to see you in the past but was unable to keep it because of illness.

The parents are very anxious about this problem because he is missing school through it, and I would be most grateful for your opinion."

90. Mr Percy replied on 28 February 1983:

"Thank you for asking me to see this lad with pain in the legs on and off for about a year. The pain comes on in spasms and wakes him at night, and X-rays taken last year showed a little fragmentation of the upper border of the patella which was not an abnormality at all, but simply a radiological appearance of ossification of the patella.

Clinically there was nothing whatever to find. I think the pains are those pains described as growing pains and certainly there is no abnormality.

I have reassured the parents and not arranged to see him again."

91. On 1 April 1983, the education Act 1981 came into force.

92. On 18 April 1983, Mrs Keating visited Grovelands "bringing Sefton back after long tonsillitis absence". She saw Mrs Johnson, the head mistress, who recorded that she was:

"Very anxious that I should not 'classify' him as a problem child. Became very upset and nervous.

Eventually calmed & accepted that I was merely enquiring as to why he was absent, and where they were living.

The family are buying or building a nursery at Edenbridge - will move there when they have made enough to build a house.

Insistent that Sefton is not 'subnormal' - wants him back in a normal school in Edenbridge - could be in 18 months, or less. Puts backwardness down to fear of school whilst at St Paul's Wood. Have had a tutor.

Have promised assessment before the end of the school year.

Needs to be carefully handled."

93. Mr Fox, an educational psychologist, recorded summaries of his visits to Grovelands School on 18 May, 7 June, 22 June, 24 June, 4 July and 11 July 1983. In his note dated 8 June 1983, Mr Fox noted, in relation to Richard, that he had discussed with Mrs Johnson the review of his placement. Against "present position in school", he wrote:

"Sefton transferred from a maladjusted school. His parents are moving from Bromley and they would like a review to see if he could cope in ordinary mainstream schooling."

Against "Action by S.P.S." he wrote:

"Review before the end of the summer term."

Mr Fox annotated his typewritten note of 8 June 1983, against Richard's name, "Not in school 24.6.83". The note made by Mr Fox dated 12 July 1983, following his four letter visits to Grovelands, was identical to that in his earlier note, except that against "Action by S.P.S." it stated "review in September".

94. Richard's end of year report stated:

"Sefton has settled well into the class and has learnt to control his outbursts of temper."

Under the heading "Educational Progress" it stated:

"Sefton is working well in all areas and has made significant progress this year.

He is interested in topic work and has a good general knowledge which he uses to the best of his ability."

It stated that Richard had begun to show an interest in artwork as a means of expressing himself, and that he enjoyed all sports. Under "General Comments", it stated:

"Sefton has worked well this year and appears much happier in himself and school life."

Mrs Johnson wrote at the end: "A good report."

95. No review did take place in September 1983. On 2 February 1984 a report on Richard was produced by, it would seem, two of his teachers. It stated that Richard had been admitted to Grovelands because of:

"Low intellectual development. Described as a puzzling child - personality exhibited islands of intense maturity, but overall he was immature, timid and reserved, preferring to be left alone. Under achieving academically".

Under "Family / Background", the teachers noted:

"... Sefton is often late for school because his Mother brings him to school after attending the animals. Sefton is left watching television, whilst his Mother goes to Edenbridge. Mother becomes very upset if there is any reference made to Sefton being abnormal / subnormal in any way. She says he ought to be in a mainstream school, but actually accepts Special education readily enough."

They recorded that his reading age was 8.1 (up 10 months in one year). "Reads jerkily and with little comprehension of sentence formation. Tries to work out new words phonetically." A note was made on the form in manuscript:

"June 1984: Reading re-tested. No measurable improvement - has reached a plateau stage, but has done well over the past year."

96. Mrs Keating telephoned or came to see someone within Bromley's education department on 13 June 1984. The note reads:

"Mrs Keating

Parental request for re-assessment under section 5 of the 1981 Act, because the parents feel he is under-achieving, and not giving of his best in the Spec. School situation. They are requesting that he be transferred to main stream education."

A formal request for a section 5 assessment was completed on 4 July 1984 by Mrs Johnson and Mr Bendkowski. It recorded:

"Parents feel Sefton is under-achieving, and are requesting a return to mainstream education."

97. On 12 July 1984, an assessment was conducted of Richard He was then aged 13 $\frac{1}{2}$. The document does not indicate where, or by whom, the assessment was carried out, but the date stamp on it indicates that it was sent to the defendant's School Psychological Service much later, on 22 March 1985, when it was initialled by Mr Bendkowski. The note of the assessment records that on an intelligence test, Richard's IQ came out at a little below average, as did his picture ability test. However, the mathematics test showed a mathematics age of 8 years and 6 months and a maths quotient of just over 60, where 100 is average. The Schonell reading test gave a reading age of 7 years and 10 months and the NFER Test A reading test showed a reading age of about 8 years and 3 months.

98. On 18 July 1984 Mrs Johnson completed a "Record of Annual Review". It stated that there had been no contact with the educational Psychologist that academic year, and that a parental request for re-assessment had recently been submitted. Mrs Johnson recorded her opinion that Richard was "Well placed at present" and that, "Sefton is appropriately placed at Grovelands at present". A copy of Richard's school report was attached to the review, but regrettably that document (which might be significantly informative) has not survived.

99. A copy of the review was sent to the Keatings. Mrs Keating then wrote to the defendant on 23 July 1984 stating that they did not think that Richard was suitably placed, and that they thought that he should be in a mainstream school with remedial classes.
100. On 25 July 1984 the Director of Education completed a statement of special educational needs. It concluded that Grovelands was appropriate for Richard and that he needed no additional provision.
101. However, Mr and Mrs Keating requested a full reassessment, and by letter dated 26 July 1984 the Director of education informed them that it would take place. The Keatings returned to the Director their form of consent for the assessment. Their comments were as follows (with spelling corrected):

"I would like to point out that Sefton is not placed right, because he is not (EDUCATIONALLY SUBNORMAL). He is very much behind academically and has been held back two years since attending Grovelands. He needs the environment of an ordinary school in a remedial class. He needs the right curriculum; the curriculum at Grovelands is very limited they cater for educationally subnormal children they can only absorb so much. Sefton can retain very well he is very capable of reaching a higher standard."

102. The assessment involved the production of five reports and a final statement of special educational needs. The forms were sent out on 20 August 1984 for completion by the professionals concerned, and on 21 August the Director of Education wrote to the Keatings informing them that it had been decided to proceed with the assessment, and that the case officer during the assessment would be Mr Bendkowski. The five reports, in chronological order of completion, were that of the defendant's Nursing Services, who stated that they had no relevant advice to provide, that of Mrs Johnson, the Head Teacher at Grovelands (dated 14 September 1984), that of the Medical Officer (dated 11 October 1984), and that of Social Services (15 November 1984), who had no advice to provide.
103. Mrs Johnson's report was fairly full, giving the school's educational assessment of the claimant as well as a general conclusion. His reading age, as tested in June 1984, when he was 13, was 8.1. Under the heading "Nature of Child's Problems" she wrote:

"Slow learner - functions at well below average level in literacy and numeracy.

Personality is puzzling - exhibits island of intense maturity, and excellent observation, but overall is immature and reserved, and lacking in self-motivation."

Under "Factors which may have contributed to the Child's Difficulties" she wrote:

"Sefton missed some early schooling through ill-health, but it is not certain to what extent this has limited his progress."

Her comments on the provision made in school were:

"Sefton already attends a school for children with learning difficulties, and is in a small group teaching situation."

Under the heading "Any other observations", she stated:

"Mr and Mrs Keating are very unhappy about their son's placement at the moment. They react very strongly to any suggestion that Sefton is not able to cope with mainstream schooling and suffered very much from newspaper reports stating that Grovelands was a school for E.S.N. pupils."

The conclusion of the report was:

"We feel that Sefton is educationally well placed at Grovelands, although he is underachieving, mostly through a lack of self motivation combined with specific learning difficulties."

104. On 28 February 1985 there was an unfortunate incident between Mrs Keating and Mrs Johnson, which may have contributed to Mrs Keating's decision in September of that year to remove Richard from the Glebe School. Mrs Keating came across Richard fighting with another boy. They were taken to Mrs Johnson's room and she dealt with them. Mrs Keating remained outside until asked in by Mrs Johnson. Mrs Johnson's note records the following:

"(Mrs Keating) came in and very soon became over-agitated.

She regards Sefton as a normal child who never tells anything but the truth, and who never is allowed to get into fights. I tried to explain that he did instigate some trouble because he did have a good vocabulary and sometimes used it to hurt other children although he didn't swear (at least not in my hearing).

She accused me of being personally antagonistic to her and rather intimated I took it out on Sefton. I kept quietly talking and she screamed at me for that.

After 1½ hours we came to an agreement that Sefton would inform me or mum if he was attacked by other children - particularly Ross, Billy or David, but to try and stand up for himself on other occasions.

She will come and see me or I will go to her home if there is a problem - before it reaches a high point.

Sefton was present - I could not persuade her to let him go until the damage was done. He knew he had lied and he knew she was over reacting. Sefton is an unhappy child at times but exaggerates to his mother. She insists that their home is completely non-aggressive verbally and physically. I believe this to be so, but the aggression is very real and deep. She truly despairs of Sefton being in a Special School and is completely blind to his faults. He is a sensitive child, but can play with his mother's emotions, and then regrets it (almost treating her as he does other children)."

105. Mr Bendkowski saw Richard on 7 March 1985. On the same date, Mrs Johnson wrote to Mrs Keating inviting her to come to a review meeting with Mr Bendkowski on 14 March, and stating that she looked forward to seeing her. According to Mrs Johnson's note of 14 March, Mrs Keating did come to the school on that date and discussed with Mr Bendkowski "Sefton's re-assessment & the various alternatives", but "Left without seeing myself".
106. Regrettably, there is no written or indeed any evidence as to what happened when Mr Bendkowski saw Richard on 7 March or of his discussion with Mrs Keating of 14 March: none of them has any recollection.
107. Mrs Keating obtained from Richard's home tutor a reference dated 18 March 1985, who stated that he believed that Richard was capable of coping within the remedial section of a comprehensive school. The reference was sent to the defendant and seen by Mr Bendkowski.
108. It seems that Mrs Keating was also prepared to have Richard referred to the Child Guidance Clinic in order to obtain its support for a change of school placement. She must have asked the family's General Practitioner to refer him, because a note to Mr Bendkowski of 19 March 1985 states:

"This boy (ie Richard) has been referred to CG (Chislehurst) by G.P. re query ESN(M) school isn't suitable. C.G. intend to take no action unless you contact them saying psychiatric opinion would be useful."

The Child Guidance Clinic in Chislehurst was the clinic where Dr Rodriguez had worked: whether he still

did so in March 1985 is not known.

109. A comprehensive report on Richard was produced by Mrs Phillips, Mrs Jones and Ms Adcock, who were teachers at Grovelands, on 20 May 1985. He was then aged 14. It stated:

"Sefton was interviewed by Mr P. Bendkowski during March, 1985, and on 14.3.85 his progress was discussed by his mother and Mr Bendkowski, but no written report has been received by the school to date.

Sefton was medically examined in school on 26.9.84. He was found to be physically fit... Otherwise there has been no change since the last review, but he has suffered from measles, and a series of colds and stomach upsets during this year, which has adversely affected his attendance at school."

A handwritten entry states that his reading age was 9.0 years in June 1985. They stated:

"Sefton has a poor attitude towards school. He will do the minimum, but no more. His teacher has been exerting some pressure upon him to improve the quality and quantity of his work, because she felt he was capable of doing better, and because the presentation of his work shows ability. She has found that giving him work designed to stretch him, albeit only marginally, only results in him giving up and resorting to negative behaviour. He will not ask for help, and will sigh very loudly if help is offered when he is obviously stuck. He seems to fear failure, and cannot accept that the situation can improve with effort. He has responded slightly more positively to one to one tuition at break times. He is unresponsive to homework and will frequently state that he had to go out or he forgot his books. He very much dislikes being questioned as to why it was not done and becomes very tearful."

110. In July 1985, Grovelands closed. In effect, it was merged into the Glebe School, a much larger school, to which most of its pupils and staff transferred. Mrs Johnson, the Head Teacher of Grovelands, became Head Teacher of the Glebe. Richard too was transferred to the Glebe School. He and his mother came on the first day of the autumn term, but seeing the other pupils his mother decided that the school was inappropriate for him, and they left. Mrs Keating did not speak to Mrs Johnson or any other member of the staff of the school. The result was that Richard ceased to receive schooling.

111. Mrs Keating telephoned the defendant's education department on 18 September 1985. The note of her call records:

"(Mrs Keating) has not been happy with progress at Grovelands. Took Sefton to Glebe on 1st day but did not think school was suitable as Sefton is no longer ESN (M).

Wants a meeting to discuss.

Will ring again tomorrow."

Someone has written on that note:

"Awaiting 'A' (ie, the psychologist's report). Reminder to Peter Bendkowski."

112. Mr Bendkowski then, on 3 October 1985, wrote to Mrs Keating asking her to bring Richard to his office on 23 October. He said:

"As you know I have been asked to give an opinion on the appropriate school placement for him and I would welcome this opportunity to see him again and talk things over with you."

113. Another note on the defendant's file, dated 8 October 1985, referring to Richard, states:

"Private tuition accepted by the Ed. Dept. - Linda Whybrow monitoring the situation."

114. Mr Bendkowski produced his report on or about 5 November 1985. It stated that Richard was then being educated at home, in effect as a result of Mrs Keating's feeling that Glebe was inappropriate. Mr Bendkowski stated:

"Cognitive assessment

Assessments made of Sefton's abilities in the past have been remarkably consistent. In terms of overall ability, Sefton lies within the low average to below average range. Sefton's particular problems appear to centre around visual-spatial processes. This is noticeable in both formal test situation and more informal classroom work. He finds copying laborious and has great difficulty in dealing with free writing exercises. These problems appear to be linked to deficits in both auditory and visual memory.

Of particular note is Sefton's difficulty in dealing with abstract problems. He is not able to readily make conceptual connections or to construct hypotheses about the way in which the world works. Sefton very much operates at school on a passive receptive approach. He finds innovation hard and uncomfortable.

Language skills

This represents Sefton's strongest area. In particular, his receptive language skills are good being near average. Expressive language is not apparently so well developed. However, in informal one to one conversation Sefton's manipulation of language appears adequate. It would appear therefore, that there is an emotional element involved in his expressive language problem. Indeed, Sefton can be rather shy and diffident, lacking self confidence in presenting himself to others.

Educational attainments

Sefton's performance in class has been below what one would expect for a child of his age. His numeracy and literacy skills are some 48 months behind his chronological age. Sefton is a slow worker and he needs more rigorous supervision than one would expect for the more basic subjects.

AIMS OF PROVISION

Sefton's overall abilities are such that he should be able to cope with an integrated mainstream provision. Such an integrated provision must have a strong remedial input in order to facilitate continued small group work on a daily basis for numeracy and literacy.

The aim of the provision should be to develop a greater social range for Sefton along with an improved area to mainstream activities.

FACILITIES AND RESOURCES

1. Access to small groups for numeracy and literacy work on a daily basis.
2. Integrated mainstream secondary school.
3. Maintenance of a statement for a period of twelve months in order to monitor closely any placement that may be made in mainstream schooling."

115. On 7 November 1985, Mr Bendkowski was sent a chaser by the Director of Education, because Mrs Keating had requested a meeting to discuss Richard's needs and he had not attended school since the end of the summer term 1985. There were meetings of the education Department Special Group on 13 November 1985. A note states "Not discussed. Leave until next week". A second note on the same

document states "Not discussed on 11.12.85". On 22 November 1985, Mr Fox, the Senior Educational Psychologist, sent to the Director of Education the assessments made in respect of Richard and a draft statement of Special Educational Needs for completion by him. The memorandum from Mr Fox stated:

"The advice would seem to indicate that Sefton should be in mainstream education with support from Specialist Tuition Service."

A note on Mr Fox's memorandum state:

"Discussed at Special Group 18/12/85. Refer to Mr Talbot for mainstream placement."

On 13 January 1986, Mr Dawson wrote to Mr Talbot, enclosing copies of the assessment reports and asking whether he could let him know if a place was available for Richard in a suitable mainstream school.

116. The next document is a memorandum from Linda Whybrow to Ann Trunchion, an officer in the education Welfare Service of the defendant, dated 25 February 1986. It states:

"(Richard) is on roll at Glebe but since Sept '85 has been receiving private tuition at home pending completion of assessment as parents were not happy with placement. The recommendation is for placement in mainstream with support from STS (Specialist Tuition Service) and Mr Barker, Kemnal Manor has written to parents offering an interview.

However he has not been contacted by parents and I would be grateful if you could let me know what is happening."

Ms Trunchion wrote at the bottom of the memorandum:

"Ken, Could you follow this one up please as he should be in your school."

"Your school" must be either Glebe or Kemnal Manor. I infer that it was Kemnal Manor, for reasons which appear below.

117. Linda Whybrow's memorandum of 25 February 1986 came into existence as a result of a visit of an unnamed employee of the defendant to Glebe School on 24 February 1986. A note of the visit states:

"Sefton Keating

There has been some confusion about this boy as he was offered a mainstream place with support from the Specialist Tuition Service which his mother refused.

He was subsequently said to be receiving private tutorial help.

It now seems that Sefton is being kept at home by his mother and - as a result - Ann Trunchion of the education Welfare Service was advised of the situation on 25 2 86."

118. An employee of the Education Welfare Office (responsible for school attendance) sent a memorandum to Ms Whybrow on 27 February 1986:

"I have today seen Mrs Keating. She states she has not heard from any school re placement for her son. She has approached Mr Russel, head of Middle School, Walsingham but as he has not been informed from Education Department, he cannot accept him, until that correspondence is received. Mrs Keating does want Sefton to go to the Walsingham as the school is directly opposite their home and the transition would be a lot easier for Sefton.

She is most concerned that her son has been out of school since September 1985 and would appreciate this matter dealt urgently."

119. On 17 March 1986, Mr Dawson, Assistant Director of Education, wrote to Mr Talbot:

"Following my memo to you dated 13 January 1986 concerning (Richard), I understand that Mr Barker, Kennal Manor School had written to the parents offering an interview.

The Education Welfare Officer has visited the home and discussed this with Mrs Keating but she states that she has never received any correspondence from the school and that she wishes Sefton to be placed at Walsingham as they live opposite the school.

In view of the circumstances, I would be grateful if Mr Barker could offer the parents another interview and perhaps you could let me know whether or not a vacancy is available for Sefton at Walsingham."

120. On 25 March 1986, a few days before Good Friday, Mr Talbot wrote to Mr Barker, stating:

"I know that you have offered an interview to the parents of Sefton Keating.

Mrs Keating has stated that she knows of no such offer, and I would be very grateful if you could offer another interview to the parents, with a copy of the letter being sent to me so that I can pass it on to the agencies involved."

The copy letter has been annotated:

"Mr McCarthy is discussing Sefton with Walsingham as it is really the only relevant school, per Special Group 4.6.86."

121. Mr Barker wrote to the Keatings a letter dated 14 April 1986 which he copied to the education Department, offering an opportunity to visit Kennal Manor in order to view the school and for they and Richard to meet a Mr Norman and himself over possible placement. He asked them to telephone as soon as possible to arrange an appointment. The letter was addressed to the Keatings' correct address, but at St Mary's Cray rather than St Paul's Cray, as it should have been. St Mary's Cray is adjacent to St Paul's Cray.

122. On 6 October 1986, Mr Talbot wrote to Mrs Keating:

"I understand that following your interview with the Head of Upper School at The Walsingham School it is not possible to offer Sefton a place at the school.

It would seem that there are two alternatives for Sefton. Either he will attend The Glebe School where he is on roll or he continues his education at home which you have provided, in which case I will ask the appropriate Inspector to check on the education provided to ensure that it is adequate.

If you let me know which option you wish to progress I will make the necessary arrangements."

123. The next material document is a letter dated 11 November 1986 from Mr Barker to the Keatings. Like the letter of 14 April 1986, it was addressed to them at St Mary's Cray. It is accepted that it was received by them. It states:

"Thank you for coming with Sefton for interview and sending him along for his tests.

Please telephone my secretary as soon as possible so that a mutually convenient appointment can be made to discuss Sefton's future at Kennal Manor."

124. Mrs Keating must have made the appointment and gone to see Mr Barker. She and her husband signed an application for Richard's admission to Kennal Manor on 14 November 1986, and he was admitted during

that term. The documentary record for his time at Kemnal Manor has not survived, other than an entry stating that he went into the sixth form, despite being of fifth year age, "for CPVE course".

125. The loss of Kemnal Manor's documents is unfortunate. According to Mr Barker, the school would have set numeracy and literacy tests and formed an opinion as to his abilities, his limitations, and the help they could give him having regard to their staffing resources. The CPVE course was a one-year course in television studies in which students were taught how to film and to deal with the technical aspects of television and film making. Richard did not take examinations, either GCE or CSE. According to Mr Barker's witness statement:

"If he had wanted to stay on beyond the age of 16 and had shown a commitment to working hard we would have done our best to let him stay on and perhaps take some examinations. There are no reports or documents available that show how capable Sefton was or what advice was about it earlier rather than at this late stage when Sefton was 15."

Duty of care: issue (1)

126. The issue under this head is whether, apart from its vicarious liability for the negligence of its employees, the defendant itself owed the claimant a "direct" duty of care.
127. The parties' submissions under this head raise questions of considerable difficulty and at least academic interest. Mr Kerr submitted that it was not open to the claimant to assert a direct duty of care on the part of the defendant authority because of the decision of the House of Lords in this case, reported with *X v Bedfordshire County Council* [1995] AC 633, which is binding on the parties not only as a matter of authority, but also because that was a decision made in the present proceedings and for that reason binding on the parties. Mr ter Haar's reply was that this point had not been pleaded, and that in any event since the decision of the House of Lords concerned the claimant's pleading, the matter was determined by the decision of His Honour Judge Grenfell, sitting as a Judge of the High Court, to permit the claimant to reamend the particulars of claim so as to reinsert the allegations of a direct duty of care owed by the defendant to the claimant. Mr Kerr's response was to seek leave to further amend the defence. I deferred ruling on that application, stating that I should do so in this judgment.
128. These issues must be considered in the light of the further submission of Mr Kerr, which applies equally to Issue 2, that even if the defendant and its education officers may now owe a duty of care to the defendant's pupils, they did not do so at the times material to this claim in other words, the law may have changed. Mr ter Haar castigated this submission as heretical.
129. My findings of fact render these issues academic. However, since they were fully argued, I shall give my conclusions.
130. It is convenient to address this last submission of Mr Kerr first. Mr ter Haar is undoubtedly correct that the judgments of an English court are declaratory of the law: they declare what the law is, and in general therefore what it always has been. The practice of judicial prospective changes to the law is still foreign to our jurisprudence: see the speeches of the House of Lords in *R v Governor of Brockhill Prison, ex parte Evans (No 2)* [2001] 2 AC 19.
131. However, different considerations apply where the rule of law involves considerations of public policy. Considerations of public policy do change over time, as does the society to which the law applies. Changes in society and in public policy may, therefore, produce a change in the law without infringing the fundamental principle that the judiciary declares law rather than making it. In *Arthur J S Hall & Co v Simons* [2002] 1 AC 615, the House of Lords reconsidered the immunity of advocates from claims in negligence established by the earlier decision of the House of Lords in *Rondel v Worsley* [1969] 1 AC 191. In *Hall v Simons*, the House of Lords did not decide that *Rondel v Worsley* had been wrongly decided, but that the change in social circumstances since that decision dictated a different result in the application of public policy. Lord Steyn said, at 682H to 683A:

"My Lords, one is intensely aware that *Rondel v Worsley* [1969] 1 AC 191 was a carefully reasoned and a unanimous decision of the House. 'On the other hand, it is now clear that when the balance is struck between competing factors it is no longer in the public interest that the immunity in favour of barristers should remain. I am far from saying that *Rondel v Worsley* was wrongly decided. But on the information now available and developments since *Rondel v Worsley* I am satisfied that in today's world that decision no longer correctly reflects public policy. The basis of the immunity of barristers has gone"

He concluded, at 683G:

"My Lords, the cards are now heavily stacked against maintaining the immunity of advocates. I would rule that there is *no longer* any such immunity in criminal and civil cases."

The italics are mine.

132. Lord Browne-Wilkinson agreed with the speeches of Lord Steyn and Lord Hoffmann. Lord Hoffmann said, at 688E:

"Over 30 years have passed since *Rondel v Worsley* [1969] 1 AC 191: public policy, as Lord Reid said at the time, is not immutable, and there have been great changes in the law of negligence, the functioning of the legal profession, the administration of justice and public perceptions."

He added, at 704C:

"I do not say that *Rondel v Worsley* ... was wrongly decided at the time. The world was different then. But, as Lord Reid said then, public policy is not immutable and your Lordships must consider the arguments afresh."

Lord Hoffmann decided that the immunity of advocates should be abolished on the basis that "*Cessante ratione legis, cessat lex ipsa*": 705A. Lord Hope was alone in holding that the change in the law which he proposed, namely the abolition of the immunity of the advocate in civil cases, should take effect only from the date when their Lordships delivered judgment in that case. It is, nonetheless, implicit in his speech that he considered that *Rondel v Worsley* had been correctly decided when it was, a conclusion which is confirmed by the paragraph of his speech at 712C. Lord Hutton dissented. Lord Hobhouse, at 736, would have restricted the abolition of the advocate's immunity to civil cases. He said of *Rondel v Worsley*, at 736H:

"It is of the nature of a rule the continued existence of which has to be justified by the public interest that the balance of public interest may change. A decision such as *Rondel v Worsley* ... is therefore open to review, not because it was wrong when it was decided, but because circumstances have changed since 1967 and it is appropriate that the rule should be reviewed and, if no longer justified, changed or abrogated. It is not a question of whether to overrule previous authority but of declaring the law in current conditions."

Lord Millet agreed with the speeches of Lord Steyn and Lord Hoffmann.

133. Before considering whether it is, in the circumstances of this case, "fair, just and reasonable" for there to have been a duty of care owed to the claimant by the defendant's local education authority officers, I propose to consider the pleading issues referred to above. Mr ter Haar is correct in submitting that the decision of the House of Lords in the present case related to the claimant's pleading. The order made by the House of Lords was "That the Order of Her Majesty's Court of Appeal of 29 April 1994 . . . be . . . varied so as to strike out so much of the claim as alleges that the appellant authority is under a duty of care in the exercise of the powers and discretions specifically conferred on it by the education Act 1981 but otherwise Affirmed..." However, that order was but a consequence of the decision of the House of Lords that, as a matter of law, no such duty of care was owed. In my judgment, the decision to permit the claimant to reamend his particulars of claim is not determinative of the issue whether the decision of the House of Lords that no such duty of care was owed is binding as between the parties.

134. The question of the effect of the decision of the House of Lords in this case could have been, but was not, raised when the claimant applied for permission to reamend. The issue is one that can, and in my judgment should, be raised by the defendant in its defence after the amendment of the statement of claim.
135. In considering whether to permit the defendant to amend its defence to raise this issue, I bear in mind that the amendment was sought at the eleventh hour, after the close of evidence. I also bear in mind the considerations referred to in *Ketteman v Hansel Properties* [1987] AC 189. This case differs from *Ketteman* in that the claimant's own reamendment was relatively recent. The issue raised by the proposed amendment of the defence is purely legal, and involves no evidence. Having regard to the fact that the relevant amendment of the statement of claim is recent, in my judgment it is just to permit the issue to be raised by the defendant, and I shall, therefore, permit the defendant to make that amendment.
136. The question whether it is "fair, just and reasonable" to hold that there is a duty of care owed to the claimant is, in large part, if not entirely, a matter of public policy. It would be wrong to impose now a duty of care which would not have been held to be owed if this trial had taken place, and any appeals decided, contemporaneously with the events in question, if the change results from a change in public policy.
137. Turning to the effect of the decision of the House of Lords in this case, in my judgment the claimant is bound by it unless he can establish that one of the exceptions to the principle of *res judicata* or issue estoppel apply: see the judgment of Oliver J in *Midland Bank Trust Co Ltd v Green* 1980] Ch 590, at 609 and that of the Divisional Court in *R v Governor of Brixton Prison, ex p Osman* [1991] 1 WLR 281. These principles are subject to an exception "in special circumstances": see *Arnold v Nat West Bank* [1991] AC 93. I can think of no more special circumstance than a decision by the House of Lords that its previous decision in a case was wrong. However, I do not think that the House of Lords in *Phelps* went so far as to say that the decision in this case had been wrong, but only that there might be exceptions to the general exclusion of a direct duty of care laid down in *X*. I consider, therefore, that the claimant is precluded from establishing that the defendant owed him a direct duty of care.
138. Furthermore, apart from the binding effect of the decision of the House of Lords in this case, it seems to me that that decision is the best evidence of what the courts would have held if the existence of a direct duty of care had been litigated at a time near to the events in question in this case. I accept Mr Kerr's submission that there has been a relevant change in the perception of the requirements of fairness, justice and reasonableness. For that reason too, I should hold that no direct duty of care was owed by the defendant.
139. Logically, the next question is whether, if I am wrong in that conclusion, the defendant should be held to have owed the claimant a duty of care on the facts of this case. However, in view of my findings of fact it is unnecessary to determine that question. It is equally unnecessary to make a finding as to whether any of Bromley's named local education officers owed a duty of care to the claimant.

Witnesses of fact: credibility and reliability

140. The witnesses of fact called on behalf of the claimant were, in addition to himself, his mother and his two sisters. His father was ill and his witness statement was put in evidence under the Civil Evidence Act 1995. The evidence of each of them was broadly consistent with and supportive of the others'. However, there are important conflicts between, in particular, Mrs Keating's evidence and the contemporaneous documents. To a lesser extent, there are other conflicts between testimony and documentary evidence, to which I shall refer in due course. In order to determine, so far as possible, what happened, and why, during the period in question it is necessary to resolve the conflicts between testimony and the defendant's documents.
141. Even where the events in issue are relatively recent, testimony must be tested against contemporaneous documents coming into existence when the parties were not in contention. The more remote in time the events in question, the greater the weight that must be given to the contemporaneous documents. That is not to say that the contemporaneous documents are always to be preferred. There may be good reason to

reject the accuracy of the information in them: intrinsic illogicality, inconsistency with other documents, the fact that the author received the information at second hand, or partisanship or bias on the part of the author.

142. However, I see no reason to question the accuracy of the defendant's documents. They came into existence before any dispute or claim had been made, for the purpose of the exercise by the defendant and its employees of their educational responsibilities. As mentioned above, with possibly a few exceptions there is no reason to regard them as tendentious or intended to be exculpatory. Furthermore, there are consistencies between documents prepared by different persons independently (such as the descriptions of Richard's attendance record) that are supportive of their reliability. I am fortified in my view of the reliability of the documents by the evidence of some of the authors. Where, therefore, there is a conflict between testimony and contemporaneous document, I have a strong preference for the contemporaneous document.
143. Mr ter Haar submitted that neither Richard nor Mrs Keating is on trial in these proceedings. Formally, of course, that is true; those on trial are the defendant and its named officers and employees. But the issues raised on Richard's behalf necessarily involve an investigation of Mrs Keating's actions during the period in question, in order to determine what happened and what would have happened if events had been otherwise, as Richard contends that they should have been. Richard's damages claim necessarily involves a judgment of his employability not only now but also over the last decade.
144. I would not expect the claimant's recollection of what happened during his schooldays, and in particular his early schooldays, his abilities and his conduct, to be reliable, and on a number of matters it is in conflict with the documentary record, which I unhesitatingly prefer. He was very supportive of his mother in giving his evidence, even where the documents show his stated recollection to be incorrect: for example, on the question whether his placement at Grovelands was instigated by his mother or the defendant (cf Mr Camp's note on the test record form of 21 January 1982), and on the question whether it was Bromley or his mother who instigated his placement at Kennal Manor. Most, if not all, of the documents relating to his efforts to find work, which on his evidence would be very numerous, would have come into existence after his solicitors had been instructed in relation to his claim, and indeed after proceedings had commenced. He must have been advised by his solicitors as to their relevance and importance. The unexplained lack of any such documents means that his evidence on his inability to find work must be treated with caution. I did not find him a reliable witness.
145. Mrs Keating has a strong personality and is strong willed. It was she who primarily if not solely took the parental role in relation to Richard's education. In evidence, she showed a high degree of obstinacy and irrationality when faced with documents the contents of which were inconsistent with her account, such as those relating to Richard's absences from school, including that referred to in paragraph 53 above, denying their accuracy and even, in the case of documents 502 (which gave the composition of the Special Opportunities Class at St Paul's 'Wood) and 503 (Mr Camp's report of 16 May 1978) their date. She denied that Richard had been examined on 17 August 1978 for the purpose of the completion of a form SE2 and was adamant that she had not been interviewed by Dr Ball as recorded in Dr Jones's memorandum of 22 August 1978. Consistently with her witness statement, she stated that Richard received private tuition in the autumn of 1978, whereas the claimant's reply, the information for which must have come from her, alleges that he received no home tuition in 1978 or 1979. I am unable to accept the suggestion that this inconsistency is to be explained on the basis that Richard received private tuition at the home of his tutor rather than his own home: the issue raised by the defence was obviously whether Richard received private tuition during this period, and it is this issue that must have been addressed by the claimant's solicitors when they took instructions for the drafting of the reply. These are but a few examples of the difficulties posed by her evidence.
146. Some of the assessments made contemporaneously indicate that Mrs Keating was sensitive, and indeed emotional, about the fact that Richard was in a non-mainstream school: see, for instance Mr Camp's form SE3 of 2 October 1978, the note of Mrs Johnson (a witness who impressed me) of 18 April 1983 and her report of 14 September 1984. The incident referred to in paragraph 13 of Mrs Johnson's witness statement, which I find did occur, indicates how emotional Mrs Keating was in relation to her son's education at a

non-mainstream school.

147. An overprotective attitude to Richard appears at the very beginning of Richard's schooling: I refer to Miss Griffiths's report of 13 May 1977. Richard's many absences from school are a recurring theme of the documents. None of his absences has been medically documented or supported in these proceedings. Their extent is explicable only on the basis of over-protectiveness or over-indulgence or a negative attitude to his education. This is not to say that there were no justified absences, due to mumps and other childhood illnesses; but it is to find that there were very many unjustified absences: hence Mr Ward's insistence on a written assurance of Richard's attendance. I reject Mrs Keating's allegation, in paragraph 36 of her witness statement of 28 November 1997, that Mrs Johnson connived at Richard's absences from Grovelands. It is inherently improbable; more importantly I have no doubt that Mrs Johnson would not have acted so unprofessionally. It, and Mrs Johnson's evidence, confirm that Mrs Keating did not support Richard's education at Grovelands, and that many of his absences were objectively unjustified (a conclusion consistent with the note of his late attendances in the report of 2 February 1984).
148. I also find that Mrs Keating could and would act in a manner that, viewed objectively, was not in Richard's best interests. An example is her failure to pursue the problem with his knee, which led to absences from school. At some time before 13 January 1982 Richard had been referred to a consultant orthopaedic surgeon and an appointment made. The probability must be that the appointment would have been made or confirmed by letter. Mrs Keating and Richard simply did not turn up: see Mr Camp's note of 13 January 1982. If Richard's failure to attend was due to illness, Mrs Keating did not forewarn Mr Percy, the consultant, or seek to make another appointment, before or after the original appointment. It was, I find, at Mr Camp's instigation that Richard eventually did see Mr Percy, and then only in February 1983, over a year after the original appointment. The reference in Mr Griffin's letter of 28 October 1982 to the previous appointment provides some confirmation of Mr Camp's note of 13 January 1982; the reference to Richard failing to keep the appointment through illness does not explain Mrs Keating's failure to make an alternative appointment, and lends force to the defendant's suggestion that illness was used as an unjustified excuse for non-attendance at school. Mrs Keating was recalled to deal with the documents relating to Richard's knee. I reject her explanation as inconsistent with the clear account to be gathered from the documents. Parenthetically, Mr Camp's part in this episode (of which he appears to have had no recollection, for he did not refer to it) says much that is positive for him and his attitude to Richard's education. Mrs Keating's ultimate refusal to allow Richard to be seen by Dr Rodriguez could not have been in his interests. An example of Mrs Keating's acting precipitately and another example of action that was unhelpful to Richard was his removal from Glebe, without a word to Mrs Johnson or, it would appear, to any other teacher, and without giving the school any opportunity to show that his education there was in his interests.
149. I have to say that I have no difficulty recognising the person described in Mrs Johnson's note of 28 February 1985.
150. These facts, as I find them, make it much more difficult to address issues such as whether the failure of the defendant's Education Department to inform Mrs Keating of the possibility that Richard could go back into the Special Opportunities Class at St Paul's Wood in September 1978 was justified. Witnesses agreed that as a matter of principle it could not be justified to withhold that information from a parent. But I cannot go from that statement of general principle, which I accept, to the particular, and to the conclusion that Mr Ellerby (if it was he who made the decision) necessarily had no good reason not to pass on the information to Mrs Keating. It is impossible now to know what Mr Ellerby had in mind when he formed the intention to which he referred in the last paragraph of his letter of 6 September 1978, and in particular what he thought that Mrs Keating's reaction to that information might be, and if that is what led him to withhold the information, whether his view was justified.
151. I am unable to accept Mrs Keating's evidence unless it is supported by contemporaneous documents, other evidence or it is uncontroversial and obviously correct. Where those documents indicate that letters were sent to her, but their receipt is denied, the probability is that they were received but ignored because they did not suit her then purpose.

152. The evidence of Mrs Abate and Mrs Robb (Richard's sisters) and Mr Keating (whose witness statement was admitted without his attendance at trial) was, naturally, generally supportive of Mrs Keating's and Richard's, but was unspecific, and does not generally advance the case. Their evidence does not lead me to take a different view of Richard's or Mrs Keating's. It is significant that none of their evidence was referred to in oral closing submissions.
153. The defendant called Mrs Bishop, Mrs Johnson (who is now Mrs McLaren, but to whom I shall continue to refer as Mrs Johnson in order to avoid confusion), who had been the head of Grovelands and went on to become head of the Glebe in September 1985; Mrs Phillips; Dr Coun; Mr Talbot; Mr Barker; Mr Bendkowski; and Mr Camp. In addition the defendant adduced the evidence of Mr Chamberlain and Mr Lambkin, both of whom are dead, and Mrs Preston, who was abroad during the trial, under the provisions of the Civil Evidence Act 1995. Ms Griffiths's witness statement was put in evidence: she was available to testify, but not required for cross-examination. A statement of Mr Grunewald was put in evidence, relating to Mr Rabinowitz's testimony in another case. Mr ter Haar did not accept that it was relevant to any issue in the present proceedings, and it was not referred to by either party in closing speeches.
154. Mr Chamberlain was Assistant Education Officer at Bromley between 1965 and 1980, when he retired. It is evident from his witness statement that when he made it he no longer had any specific recollection relating to Richard. Mr Elliott and Mrs Preston reported to him. It was Mr Elliott who made most decisions as to which secondary school a child should attend.
155. It is similarly evident that Mr Lambkin had no specific recollection relating to Richard when he made his statement. He was a Senior Education Welfare Officer, one of whose duties was to visit the homes of pupils who were absent from school for questionable reasons.
156. Neither Ms Griffiths nor Mrs Preston had any recollection of Richard or of any material event Mrs Bishop, who was the head teacher at Westbrooke from 1980, when she took over from Mr Ward, was in the same position. She was one of the witnesses whom Mr ter Haar, deprived of the live testimony of Mr Rabinowitz, sought to use as a proxy expert witness.
157. I found Mrs Johnson to be a very impressive witness, clear and careful and willing to agree with points put to her by Mr ter Haar that she considered right. I entirely accept her evidence, including her account of an episode, disputed by Mrs Keating, when Mrs Keating went down on her knees to beg her to permit Richard's transfer to a mainstream school. Mrs Johnson's opinion, which I accept, was that Richard's problems were largely emotional, that he was well placed at Grovelands and would have done well at Glebe. She disagreed with Mr Bendkowski's assessment.
158. Mrs Phillips was Richard's class teacher at Grovelands. In September 1985 she transferred to the Glebe School. She was one of the authors of the report on Richard dated 20 May 1985 referred to above. She did remember Richard. She commented on his lack of interest in schooling, and in his excessive absences, sometimes for trivial reasons. During the time he was her pupil she thought that Richard was not suitable for mainstream schooling, because he had not reached a sufficient standard. She described the methods the school used to teach pupils with reading problems. Her evidence led Miss Hart, the claimant's expert teacher of dyslexic pupils, to accept that he was appropriately taught literacy skills at Grovelands. I find that Miss Phillips was an enthusiastic, very able and sympathetic teacher of pupils with special needs. She thought that Richard was capable of greater progress than he in fact made. He was absent considerably during the year. It was her view that at the end of 1985 it was probable that Richard would not be able to pass in due course GCE O levels or CSEs, apart possibly from Art, at least by age 16. Her view is entitled to considerable respect, and I accept it.
159. Dr Conn was the author of the note of the meeting of 8 July 1982, at which it was decided that Richard should go from Westbrooke to Grovelands. He had no recollection of that meeting, and could only say that in the normal course Richard's needs would have been carefully considered by those present before a decision made.
160. Mr Talbot was Assistant Education Officer, Secondary, during 1985 and 1986, with responsibility for

admissions to secondary schools. He had no recollection of Richard. His evidence of particular facts depended entirely on the documents available to him.

161. Mr Barker was head teacher at Kemnal Manor comprehensive school. He said:

"Although Sefton was of fifth year age we placed him in the Lower Sixth form so that he could study the CPVE course, a 1 year course in television studies in which the students were taught how to film and to deal with the technical aspects of television and film making. We had a specialist teacher Mr Trevor Harris who was very talented and was inspiring to his pupils. Sefton would have mixed with pupils of mainstream ability, some of whom were very able and went on to pass exams and to obtain jobs in the media. There would have been between 8 and 12 students on the course. It is quite possible that Sefton was not expected to take any exams because he was joining the course very late, but we would have expected him to derive a great deal of benefit from the course. If he had wanted to stay on beyond the age of 16 and had shown a commitment to working hard we would have done our best to let him stay on and perhaps take some examinations. There are no reports or documents available that show how capable Sefton was or what advice was about it earlier rather than at this late stage when Sefton was 15."

162. Mr Barker emphasised that Kemnal Manor regarded remedial education as very important, and that the school had the skills to help and support children who had difficulties. He also said that a pupil could if necessary stay on into the sixth form to take 0 levels or CSEs. He had no specific recollection of Richard and did not, and I think could not now, say why Richard had gone into the sixth form when he joined Kemnal Manor rather than the fourth form, or why he did not start a two-year course in preparation for CSEs from the sixth form.

163. Mr Camp, an educational psychologist, took over Ms Griffiths's post in 1978. He was basically a reliable witness, but he was clearly under stress when giving evidence, as indeed had been shown by the medical report on him that I was shown when Mr ter Haar sought to adjourn the trial on the first day of the hearing. His witness statements were largely reconstruction of events based on the documents available to him. I was unable to accept one aspect of his evidence, namely the suggestion that Mr Chamberlain was solely responsible for the recommendation of the Special Opportunity Class Leavers' Meeting of 22 May 1978 that Richard should go to a residential school. I give my reasons for that below. For the present, it is sufficient for me to state that none of the criticisms made of Mr Camp in the course of these proceedings was well-founded.

164. Mr Bendkowski, an educational psychologist employed by the defendant until 1986, was somewhat defensive in giving evidence, but I accept the sincerity of the views he expressed. His evidence too was mainly reconstruction based on the documents. He had no personal recollection of Richard, with the result that the full facts concerning the delay in his producing his assessment of Richard in 1985 can never be known.

Expert witnesses

165. Mr Rabinowitz's reports on Richard were admitted in evidence under the Civil Evidence Act 1995, and were therefore untested by cross-examination. Much of his reports supports allegations that are no longer pursued. The defendant's written criticisms of his evidence were not specifically responded to by Mr ter Haar in his closing submissions. In my judgment they are well-founded. I find the error referred to in paragraph 4 of the defendant's written comments on Mr Rabinowitz's evidence, as to the duration of Richard's schooling astonishing. His reports are, in general, over-critical of the defendant's employees. He gives no credit, for example to Mr Camp's identification of specific reading retardation. His statement, at paragraph 14 of his report of 27 October 1996, that the "failure" of the defendant's staff to pursue the option of mainstream education plus support for Richard in May 1978 "sets the tone for all future assessments of Richard", ignores the fact that those future assessments (such as Mrs Johnson's) were made independently and, in my judgment, on the basis of adequate information. He failed to take into account the difficulty of criticising the defendant's psychologists and teachers who based their views on their experience of Richard when he was younger and in different circumstances from those applicable when he

saw him.

166. Miss Hart was called by the claimant as an expert teacher of persons with dyslexia, which she clearly is. Much of her evidence related to issues that are no longer pursued. My criticism of her is that, due perhaps to inexperience, she took inadequate care in some respects in preparing her report. Her reference to Mrs Bishop's form SE1 (see paragraph 79 above) significantly misquoted the description of Richard's intellectual performance, as did her reference to Mr Camp's letter to Mrs Weisham of 1 September 1978. Her description of Mr Camp's report, at paragraph 15 of her own report, was inaccurate, and she misunderstood Mrs Weisham's 'report of May 1978 as stating that Richard had made no progress in the Special Opportunities Class, when it was clearly referring to his time at St Paul's Wood before he joined that class. Miss Hart did not address the problems caused by Richard's absences from school, although they figured large in the documents she saw, or on his emotional problems, due, she said, to her inexperience as an expert witness. These were matters that should have been addressed in her report, and her failure to do so deprived some of her conclusions, such as that in paragraph 29 of her report, of validity.
167. Mr Langman was the claimant's occupational expert. His counterpart was Mrs Greenaway. I found her by far the more impressive witness, and I prefer her evidence whenever there is a conflict between them. She was ready to make concessions, but was convincing when answering questions put in cross examination making apparently valid points with which she disagreed. Her report was more precise than Mr Langman's: see, for example, their respective descriptions of Richard's role in his parents' video shop. Mr Langman addressed the fact that Richard had not worked since the commencement of proceedings in a manner that implicitly favoured his claim, without considering the possibility that he could return to work pending the resolution of the litigation. I found his report in a number of respects superficial, as in his statement that Richard *seemed* to have been put off working as a self-employed satellite dish installer because of the need to climb and work at height: did Richard say that he was so put off or not? Similarly, he stated that Richard "appears to be capable of using" his computer skills, but he had not tried to find out what Richard could or could not do with the computer. I found his assertion that Richard would need help in order to work as a shelf filler incredible in the light of Richard's own performance in the witness box, and his statement that Richard would need help with social relations in order to work at McDonald's (to justify his not having sought to return to work with that company) doubtful, but if true two-edged. He had not asked whether Richard had a driving licence or used it. He made assumptions about Richard's ability to read and his reading speed, rather than base himself on tests evidenced, for example, at page 425 of the trial bundles. He did however confirm that the Dyslexia Institute and Association were avenues for help to which Richard could have turned at any time.
168. Mr Macmullen was called on behalf of the claimant as an expert in education administration. I regret that I found that he was unable to distinguish the functions of party expert and advocate. I do not place undue weight on his statement that the purpose of his report was to give his opinion on the degree to which the LEA officers fell below the standard of skill and care which should be exercised, which prejudged the question whether they fell below that standard at all, but it was not a good start. However, he carelessly misread documents, thereby assuming, for example, that the Special Opportunities Class continued into junior school, but was reluctant to accept correction or to admit that he had made a mistake. I found that his evidence was not very focused and was imprecise. He was also, in my judgment, too ready to assume that a professional person would act unprofessionally, for example that in his letter to Dr Rodriguez of 21 June 1978 Mr Ellerby was seeking an endorsement of the recommendation that a residential school was appropriate for Richard irrespective of Dr Rodriguez's own findings and opinion, and that Dr Rodriguez would so understand the letter. He was too willing to interpret documents against the defendant. For example, he concluded that the documents did not indicate that Mrs Keating was colluding in Richard's absences from school. Consistently with this, he suggested that the reference in Mrs Preston's Form SE4 of 29 September 1978 to Mrs Keating as "very colluding" indicated a failure to consult the Keatings. Mr Macmullen had made no real attempt to understand what Mrs Preston meant in so describing her, or the implications of the description, if seriously meant (and it is not to be assumed that it was not) for Richard's education. In paragraph 6(u) of his report, he referred to Mr Camp's memorandum of 13 April 1982, and quoted from it the passage in which he stated that he had discussed with Mrs Keating the advisability of an ESN(M) placement for Richard. Mr Macmullen said of this: "There is no record of Mrs Keating's views on this development." The comment is inexplicable, and indeed inexcusable, since it

suggests that her views were not obtained: the very same memorandum continues:

"I (Mr Camp) persuaded Mrs Keating to visit Grovelands following our interview and I understand from Mrs Johnson that Mrs Keating strongly wanted Sefton to transfer immediately."

See too the immediately preceding document, form SE1, under section 11, cited in paragraph 79 above, which Mr Macmullen had similarly ignored. He suggested that Mr Camp's memorandum of 13 April 1982 should have been copied to Mrs Keating, to ensure that she agreed with it. The document is manifestly an internal document written and intended as such: it would be extraordinary to send a copy to the parent. I do not see why Mr Camp should not have relied on the information he received from Mrs Johnson, and no basis for suggesting that he could not reasonably have done so.

169. I conclude that in general I am unable to rely on the evidence of Mr Macmullen.

170. The defendant called Mr R W Ramsden, an educational psychologist who interviewed and carried out formal tests on Richard in June 1998. I noted when he gave evidence that he presented as "a careful, thoughtful, intelligent and objective" witness. He said this of Richard:

"(I do) not agree (that Richard is) shy, diffident, unconfident, all but illiterate and innumerate person of unrealised educational potential. Has reading problems. I was amazed how confident he was in witness box finding things in bundles. I think (the description of him as) all but illiterate and innumerate is too strong. I wouldn't describe his performance in witness box in that way. I don't share that judgment."

But he added, fairly, that he feared that Richard might share that judgment, "which is another matter".

171. The second educational psychologist called by the defendant was Mr John Acklaw. He accepted that he was at a disadvantage in not having seen or assessed Richard, that Mr Ramsden was 'in a better position to opine as to matters depending on an assessment of Richard than he, and that Mr Rabinowitz, who had had the longest knowledge of Richard, was in the best position of all. He stated that he did not wholeheartedly agree with Mr Ramsden on every point, but did agree with his general conclusions. My note records that he answered questions put to him in cross-examination carefully and sensibly. He too was a very good witness. I was not, however, able to derive any real assistance from the graph he prepared of Richard's reading progress, for the reason given by Mr Ramsden.

172. The defendant's expert on education administration was Mr Christopher Luck. His witness statement was condemnatory of Mrs Keating, and Mr ter Haar understandably accused him of lacking objectivity. However, I found him to be a careful and reliable expert witness who was able to and did justify his views when challenged.

My findings: (a) the first period of lack of schooling: September 1978 to May 1979

173. Miss Hart and Mr Luck agreed that Richard's difficulties had been identified at an unusually early stage. In my judgment the documents indicate that far from being an uncaring education authority, during the period from April 1978 to May 1979 the defendant's officers and staff displayed a caring and concerned attitude towards Richard. That remark applies in particular to Mr Camp, who, despite my reservation as to his evidence, emerges vindicated and wholly unscathed by the allegations made against him.

174. The impression given by the documents is that the Special Opportunity Class Leavers' Meeting was a regular, annual meeting, at which the future education of all of the pupils in the Class were considered. No one has a specific recollection of the meeting of 22 May 1978. The documents show that those present included a psychologist from the School Psychological Service (in the case of Richard, if not others, Mr Camp, the psychologist who had most recently interviewed him), and presumably the head teacher, the form teacher and, possibly an officer from the Education Department, such as Mr Chamberlain or Mr Elliott. It is not suggested that it was negligent of the defendant not to have arranged the meeting for an earlier date. Mr Camp interviewed Richard specifically in order to advise on his future education, and he

met Mrs Keating for the same purpose. At her meeting with Mr Camp Mrs Keating agreed to Richard being referred to Dr Rodriguez and the Child Guidance Centre. Dr Rodriguez was the only consultant child psychiatrist in Bromley.

175. The probability is that when those present at the Special Opportunity Class Leavers' Meeting discussed Richard, they had before them Mr Camp's report of 16 May 1978 and the school report of May 1978 referred to in paragraph 33 above. On the basis of those documents and their knowledge of Richard, the meeting considered the available schools. On the basis of those reports, they would have rejected a mainstream school. Mr Camp had indicated that education in an ESN(M) school was unwarranted. The probability is that Westbrooke was also considered but at that date rejected: the subsequent memorandum of 12 July 1978 states that it was not considered suitable, and Mr Camp, in his later letter of 1 September 1978 stated that "he was not entirely convinced it (Richard's special education) should be 'maladjusted'". No one has suggested that this left any alternative to residential schooling.
176. I reject Mr Camp's suggestion that the decision to recommend residential schooling was imposed by Mr Chamberlain (or any other education officer). My reasons are the following:
- (i) None of the documents indicate that the recommendation was not agreed by those present at the meeting. The documents all speak of a recommendation by or agreement of the meeting: see, eg, the memorandum of 21 June 1978.
 - (ii) Mr Camp's evidence was tentative, and I conclude that he had no real recollection of the meeting. He made no reference to his views being overridden by Mr Chamberlain in his first witness statement. In his second witness statement, he said that he had not recommended residential school (and no such recommendation is in his report) and "*I think* this recommendation came from Mr Chamberlain". In cross-examination, he said that "Philpot Manor was in mind, not (identified) by me: either Chamberlain or Elliott, *but that is a guess*". (The italics are of course mine.)
 - (iii) None of Mr Camp's documents indicate any dissent to this recommendation. Contrast his letter of 1 September 1978, which did express his reservation as to the suitability of Westbrooke.
 - (iv) No one has been able to identify an alternative to residential schooling that could or should have been recommended by the meeting on the basis of the information before those participating in it, other than a return to the Special Opportunities Class. That option was probably considered and rejected on 22 May 1978: see the memorandum of 12 July 1978. In my judgment, when residential schooling was being ruled out by Richard's parents, the memorandum of 12 July 1978 accurately expressed the position of the education department: "... we really do not know what we are going to do with this boy in September."
 - (v) It would have been highly unusual for an education officer to overrule the other professionals at such a meeting. Mr Acklaw had no experience of an education officer making such a decision without professional support. Mr Camp said only that he "had known a senior education officer overriding other views".
 - (vi) The recommendation required the support of Dr Rodriguez and the agreement of Richard's parents. It is highly unlikely that in seeking Dr Rodriguez's comments the education officer expected a rubber-stamping of the recommendation without regard to Dr Rodriguez's views: the suggestion that Mr Chamberlain was so acting attributes unprofessional impropriety, if not dishonesty, to him and, presumably, to Dr Rodriguez too.
 - (vii) No one has suggested a motive for Mr Chamberlain to wish to override his professionals' opinions, particularly in a manner that was more expensive to the Council than any other solution.
 - (viii) Mr Chamberlain's conduct on 2 August 1978, when he asked Mr Camp whether he thought Westbrooke was suitable for Richard, is not that of an overbearing officer who would have overruled Mr Camp.

- (ix) The particular residential school that was discussed at the meeting had an exceptionally good reputation: see paragraph 35 above. There were possible additional reasons for residential schooling to be considered: the view that Mrs Keating over-protected or indulged him; the facts that he was kept off school "for the slightest excuse", or "for no apparent reason", and that his attendance was "poor". The legal action contemplated (but rejected) in the letter of 4 August 1978 to the Director of Education at Bexley must have been care proceedings in respect of Richard.
177. At one stage, both parties agreed, for their own forensic reasons, that I should find that Mr Chamberlain had overridden the views of his professionals at the meeting of 22 May 1978, and only judicial reluctance to give a judgment criticising a deceased professional against the weight of the evidence led Mr Kerr to accept that the court could find that Mr Camp was mistaken. For the above reasons, I have no doubt that he was. But for the same reasons, his agreement (as I find) with the recommendation of a residential school is not open to criticism.
178. Issue 3(ii) agreed by the parties is: Was the offer of a residential school placement reasonably appropriate? But there was no such offer. There was an agreement or recommendation of a residential school placement, but it was subject to the opinion of Dr Rodriguez, and of course the agreement of Richard's parents. If Dr Rodriguez had advised against boarding, it would not have been pursued. Of the experts, only Mr Macmullen sought to criticise the recommendation, but his evidence was flawed by his misunderstanding of the alternatives available, as well as his general approach to which I referred above. As I stated above, given the lack of evidence as to why the recommendation was made, I should be very cautious before condemning those responsible for it as negligent. My conclusion is that the defendant was not negligent in respect of the recommendation of residential placement. On the evidence before me, the recommendation was made by professionals with knowledge of Richard who were then unable to suggest a more suitable alternative. There was no negligence in making the recommendation or in pursuing it until it was defeated by the Keatings' refusal to allow Richard to be seen by Dr Rodriguez.
179. At this date, one can only speculate why Mr Ellerby's memorandum of 25 May 1978 stated that notification (presumably to Richard's parents) of the recommendation of residential schooling should be withheld until Dr Rodriguez had an opportunity of commenting on it. It may be that he wanted to be armed with Dr Rodriguez's support when he broached the subject with the Keatings; and if Dr Rodriguez did not support the recommendation, it would have been dead in any event. The second attempt to persuade Mrs Keating to allow Richard to be seen by Dr Rodriguez supports this interpretation.
180. Mr Camp did not have the opportunity to comment on his manuscript note of 27 June 1978. It is difficult to reconcile with other documents, such as the memorandum to Mrs Weisham of 6 September 1978, which in any event overtook the course suggested in Mr Camp's note.
181. Issue 3(iii) is whether in or about July and August 1978 Mrs Keating instructed the defendant not to look for a school placement for Richard because she intended to employ a tutor to educate him at home. The answer is that she did, as evidenced by Mr Lambkin's memorandum of 31 July 1978. However, on 2 August 1978 she and Mr Keating nonetheless went to see Mr Chamberlain. Given what Mrs Keating had said to Mr Lambkin, the probability is that it was Mr Chamberlain who arranged the meeting and that it was he who suggested Westbrooke: the memorandum of 4 August 1978 refers to the Keatings "being encouraged to accept a place for Sefton at Westbrooke should this be available", and the letter of 4 August 1978 to Bexley refers to the Keatings' reluctance to accept a day place at a special school. From then on, Bromley pursued a place at Westbrooke as being the best placement for Richard *faute de mieux*, a placement which they rightly viewed as being preferable to the home tuition that Mrs Keating had said she would arrange. In the result, Westbrooke proved to be an appropriate placement.
182. The possibility that Mrs Keating might permit Richard to be seen by a psychiatrist other than Dr Rodriguez, mentioned in Dr Jones's memorandum of 22 August 1978, was not pursued, probably because by that date the possibility of a place at Westbrooke was being pursued, for which a psychiatrist's opinion was unnecessary. Possibly also the Chief Education Officer had in mind that Mrs Keating had originally agreed to Dr Rodriguez, only to change her mind for no identifiable reason, and might change her mind

again.

183. Bexley's letter of 15 August 1978 indicated that a meeting to discuss admissions would take place on 20 October 1978. This meeting was to discuss admission for the one place at Westbrooke then available. I find that as a result of that meeting, which was attended by Mr Camp, Mr Ward did as he said he would do, that is, he wrote to the Keatings offering an interview. What Richard's prospects of being accepted for that place would have been cannot be known (other than that the offer to him in April 1979 of the only available place suggests that his chances would have been good), but there is no evidence that Richard attended the interview, and I find that he did not. It may be that the Keatings responded by letter to Mr Ward's offer of an interview, since the later documents do not state that Mr Ward's offer was ignored, but that too is unknown.
184. An interview did take place on 30 March 1979, as a result of Mrs Loughton's contact with Mrs Keating and her collecting Mrs Keating and Richard and taking them to Westbrooke. A place was offered by the letter of 2 April 1979, which if accepted would have enabled Richard to start at the school on 4 April. Richard did not attend on that date, although transport had been arranged for him. The only reason was that the Keatings were unhappy with Richard attending Westbrooke. Bromley were informed of his failure to attend on 27 April. The probability is that the Keatings were then contacted and threatened with attendance action, as indicated in Ms Tooth's memorandum of 27 April 1979. As a result, Mrs Keating agreed to Richard attending Westbrooke from 14 May, and he did so.
185. It follows that the answers to issues 3(v) and (vi) are in both cases "Yes". As to issue 3(vii), the answer is "No". My answers to issue 3(iv) appear above.
186. Richard's absence from school between September 1978 and May 1979 was not due to any negligence on the part of the defendant or its officers or employees. For the sake of completeness, I should state that I accept Mr Ramsden's evidence that it would have been negligent of Bromley to have placed Richard in a mainstream school. Furthermore, in view of what happened in October 1978 and April 1979, the claimant has not established that, if an interview at Westbrooke had been offered earlier, it would have been accepted and, if a place offered, that Richard would have attended without further intervention by Bromley. Lastly, while it is no longer alleged that it was negligent of Bromley to place Richard at Westbrooke, I should state that I have seen nothing that would have justified any criticism of what Mrs Bishop, the head teacher at Westbrooke, reported at the time, namely that Richard was "well placed ... at Westbrooke", who were obviously concerned for his education.

(b) The second period of lack of schooling: September 1985 to May 1986

187. The background to the issues arising under this head is the question of the appropriateness or otherwise of Grovelands and its successor the Glebe School for Richard. Mrs Keating's view was that Grovelands was inappropriate, and that Richard should have been in a mainstream school. Mrs Johnson, the headmistress at Grovelands, considered that he was "educationally well placed at Grovelands". It is no longer suggested that her view was one that no reasonably competent head teacher could properly have arrived at. To the contrary, on the basis of her evidence, that of Mrs Phillips and that of Mr Ramsden, and the contemporaneous reports, I find that, at least until Mr Bendkowski had reported, she was correct in her view. Mr ter Haar suggested that her view failed to take into account the importance of Mrs Keating's dissatisfaction in undermining Richard's attitude to his education at Grovelands. I have no doubt that Mrs Keating's attitude was taken into account by Mrs Johnson, and that if she had thought that Mrs Keating's attitude meant that a mainstream school was more appropriate than Grovelands, she would have so stated at the time. As mentioned above, Mrs Johnson disagreed with Mr Bendkowski's view that a mainstream school was appropriate for Richard. Given the absence of any evidence as to Richard's progress at Kemnal Manor, it cannot be said that she was proved wrong.
188. It is against this background that I turn to consider Issue 4, concerning Mr Bendkowski's delay in producing a report on Richard for the purposes of his statutory assessment until November 1985. The delay between August 1984 and November 1985 has to be considered against the background of the general pressure of work on educational psychologists working for LEAs at the time. Mr Bendkowski's

evidence was that delays of 8 to 12 months, or even longer, between the beginning of the assessment process and the production of a report by an educational psychologist were not unusual at the time, and implicitly that it was not indicative of any lack of diligence on his part. There was a vast amount of assessment work, resulting from the implementation of the new education Act, and a national shortage of educational psychologists. He said that, having been nominated to produce a report on Richard in July 1984, it would have been impractical to produce a report in time for the beginning of the following term. He had no recollection of his interview of Richard in March 1985 or of his meeting with Mrs Keating. That interview and meeting could have been connected with the statutory assessment, but they could have been connected with some other problem that had arisen.

189. Mr Bendkowski's evidence on the heavy general workload of educational psychologists was supported by Miss Hart (see paragraph 26 of her report), Mr Luck, Mrs Johnson and Mr Acklaw, whose evidence I prefer to that of Mr Macmullen. On the basis of this evidence, I conclude that a delay in producing a report of an educational psychologist from August 1984 to November 1985 was not of itself indicative of a lack of care or want of diligence. Nor, parenthetically, is it indicative of any failure by Bromley to devote appropriate resources to its educational psychologists' service, even supposing that a failure to do so might give rise to a liability in negligence.
190. Mr ter Haar sought to circumvent the evidence of the general workload on Mr Bendkowski by suggesting that he should have given the assessment of Richard priority over others. I do not accept that it was necessary for Mr Bendkowski to do so. Until September 1985, when Mrs Keating removed Richard from Glebe, there was no reliable indication that Richard was inappropriately placed at Grovelands. To the contrary, in July 1984 Mrs Johnson in her annual review confirmed that Richard was appropriately placed, as did the statement of special education needs prepared by the Education Department. Mrs Johnson was of the same view in September 1984 and did not change her mind afterwards. While it is true that Richard was due to transfer from Grovelands to the Glebe, and the assessment would be relevant to a transfer from one school to another, that transfer was more nominal than real: in effect, the whole of Grovelands was absorbed into the Glebe. Bromley were entitled to assume, therefore, that the Glebe would be as (if not more) appropriate for Richard as Grovelands had been. Assessments for other children were important for them as was Richard's for him: they were relevant not only to the choice of school, but also as to what and how those children were to be taught. I do not think that the letter from Richard's home tutor of 18 March 1985 would have justified Richard being given priority. Once the matter became urgent, in September 1985, Mr Bendkowski's report was produced in a relatively short time.
191. More difficult is the question why Mr Bendkowski did not produce a report following his interview of Richard in March 1985. The evidence as to the purpose and content of the interview is sparse in the extreme: only the references to it in Mrs Johnson's letter of 7 March 1985 and the teachers' report of 20 May 1985. It appears from the latter that the school were expecting a report. However, it seems that no report went onto the school psychological service file; there is no reference in any other document to a report of that date; and there are no copies of or references to any tests or their results of that date. On the basis of this evidence, I do not find that Mr Bendkowski assessed Richard on 7 March 1985. The probability is that the interview had some other purpose. I cannot find that Mr Bendkowski was careless or lacking in appropriate diligence by reason of that interview.
192. Neither party asked Mr Bendkowski whether, if he had assessed Richard at a significantly earlier date (say, March 1985), his conclusion would have been the same or different. Mr Kerr deliberately refrained from doing so, on the basis that it was for the claimant to prove that it would have been the same. Mr ter Haar, I think, assumed that it was for the defendant to prove that an earlier report would have contained a different recommendation, and so submitted when the point arose during final speeches. In the end, nothing turns on this, particularly since any answer of Mr Bendkowski would have been speculation or reconstruction rather than recollection. There is evidence that Richard progressed significantly between June 1984 and November 1985. At the end of the academic year 1983–84 his reading age on three different tests administered in June and July 1984 was found to be 8.1, 7.10 and 8.3. In June 1985 his reading age was assessed as 9.0 (Salford). In October 1985 Richard's reading age was found to be 10.5 (Neale), so that his literacy skills were then about 48 months behind his chronological age. Mrs Johnson was of the view that a reading age of 9.10 was the absolute minimum for transfer to a mainstream school, and 10.3 preferable. On

the basis of this evidence, I would not find that a report on Richard in March 1985 would have resulted in a recommendation of a transfer to a mainstream school.

193. If I had found that Mr Bendkowski had been guilty of a lack of care, then assuming that he owed Richard a duty of care from August 1984, I would not have found that Richard's absence from school between September 1985 and May 1986 was a reasonably foreseeable consequence of his negligence. A failure to produce a timely assessment might have resulted in Richard receiving education that was inappropriate; Mr Bendkowski had no reason to foresee that it would result in his being withdrawn from school.
194. I do not think it necessary to address all of the sub-issues arising under Issue 5. I can state my findings and conclusions relatively shortly. Bromley cannot be criticised for not having placed Richard in a mainstream school before Mr Bendkowski produced his report in November 1985. Realistically, the earliest Richard could then have been placed in a mainstream school would have been at the beginning of the following term. At some date between January 1986 and 25 February 1986, Mr Barker wrote to the Keatings offering an interview for a place at Kemnal Manor: see Ms Whybrow's memorandum of 25 February 1986. Mr Barker's letter must have been sent at least two weeks before that date, since the time since he wrote was sufficient for him to remark that he had not been contacted by the Keatings. It may be that that letter, like those of 14 April and 11 November 1986 was addressed to the Keatings at the correct street address but at St Mary's Cray rather than St Paul's Cray, which was the correct neighbourhood. However, given that they are neighbouring areas, the unusual street address, the fact that the last of those letters was received, and that no letter was returned undelivered to Mr Barker, the probability must be that all three letters were delivered to the Keatings. I reject Mrs Keating's evidence to the contrary. At the time, Mrs Keating wanted Richard to be enrolled at Walsingham School, which was markedly closer to their home than Kemnal Manor: see the memorandum of 27 February 1986. Incidentally, the fact that Mrs Keating had been seen within two days of the memorandum of 25 February 1986 indicates that the Education Department were not ignoring Richard. While she was pursuing a place at Walsingham, Mrs Keating was not interested in a place at Kemnal Manor; she therefore ignored the first letter from Mr Barker, and when asked about it said that she had not received it.
195. It is unclear why it took some two weeks for Mr Dawson to write to Mr Talbot on 17 March 1986 and a further week for Mr Talbot to write to Mr Barker on 25 March 1986. Mr Barker wrote again to the Keatings on 14 April 1986, after the Easter holiday, copying his letter to the Education Department as requested. I find that this letter too was received and ignored by Mrs Keating. It is significant that although Mrs Keating must have known, from the visit of the education welfare officer of 27 February 1986, that Kemnal Manor had offered an interview, she did not pursue placing Richard there until after Walsingham had finally refused to accept him. The documents indicate that Walsingham's refusal occurred at some date before 6 October 1986. Why it took so long for the position at Walsingham to be resolved is unknown. Mr Barker must have written a third time, since by 11 November 1986 Richard had been interviewed and had on a subsequent occasion attended Kemnal Manor for tests.
196. Thus my answers on issue 5(vi) are: Yes; and the failure to respond to Mr Barker's letters delayed Richard's placement at Kemnal Manor by about nine months, (which include the summer holiday). In my judgment, therefore, no significant absence from school, and no absence having a lasting effect on Richard's education, can be attributed to any default on the part of Bromley's officers or employees. I do not find that there was any want of due care on the part of Bromley's education officers or other employees.
197. My answers to the other questions raised under this head are as follows:
- (i) No: Glebe would have been an appropriate placement for Richard.
 - (ii) The Education Department should have been aware of Richard's non-attendance within a short time of the beginning of the autumn 1985 term: certainly within about a fortnight. Someone within the Education Department, probably, Miss Whybrow, that Richard was not attending Glebe as a result of Mrs Keating's telephone call of 18 September 1985, and the person for whom the note of that call was made presumably met or spoke to Mrs Keating on the following day or shortly afterwards. The Director of education knew by 7 November 1985 at the very latest.

- (iii) Bromley were told that Richard was being educated at home: see, eg, Mr Bendkowski's report. It is however unlikely that Richard received appropriate home tuition in the period from September 1985 to November 1986.
 - (iv) It is unclear whether Bromley took any steps to ascertain whether Richard was receiving appropriate home tuition. The likelihood is that they did not: there is no earlier letter to the Keatings in the terms of Mr Talbot's letter of 6 October 1986.
 - (v) The steps taken by Bromley are set out above.
198. If there was a failure by Bromley, or by any of the named officers, to ascertain whether Richard was receiving appropriate home education, it was of no relevance. All that Bromley could have done would have been to threaten or to take attendance proceedings against the Keatings. Such proceedings were regarded as very much a last resort. Whether such proceedings should be taken or threatened is very much a question of discretion. It is, I think, common ground that decisions concerning the taking of such proceedings do not give rise to a liability in damages for breach of a duty of care. In any event, there is no relevant allegation of negligence in this respect. In these circumstances it is unnecessary to consider the individual actions of the persons named in Issue 5.

Damages

199. In view of my findings on liability, it is strictly unnecessary for me to make any findings on damages. It is in fact impractical to do so. Any determination of the consequences of Bromley's negligence involves findings as to the length of the period of Richard's absences from school during the two periods in question that resulted from that negligence, and a comparison of the education Richard received with that which he should have received. The absence of any evidence as to the quality of the private tuition received by Richard makes it very difficult to assess what he did receive. It is in addition very difficult to identify what would have happened if Richard had, for example, gone to Westbrooke at an earlier date. Richard's attendances at his earlier schools had been inadequate. Although Mr Ward required Mrs Keating to confirm that Richard would not be absent without good reason, it appears that his attendance there too was inadequate. It is impossible to know how regular his attendance would have been if he had been accepted there before April 1979, but the probability must be that it would not have been regular.
200. The position in relation to Kemnal Manor is more difficult. There is no reliable evidence of any kind as to Richard's attendance record there. Mrs Keating's attitude to Richard's education at a mainstream school was more positive, and it is reasonable to infer that Richard's attendance was better than at previous schools. But there remained the problem of absences for slight medical reasons; cf Richard's tendency, at least when younger, to complain of stomach ache when testing schoolwork was put to him.
201. Even more difficult is the question why Richard did not enrol on a two-year CSE course when he entered Kemnal Manor. He went into the sixth form, although he was of fifth form age. He could equally have gone into the fourth form; or possibly he could have entered the sixth form and remained there, after reaching the age of 16, in order to take some examinations. There are a number of possibilities: principally, that the school tests indicated that he would be unable to pass any CSE examination, even in Art, a subject which did not present the same literacy and numeracy challenges as other subjects (a view that would have been consistent with that of Mrs Phillips); that his parents did not want him to remain in school after reaching 16; that they or he objected to his going into a class of younger children. There is a complete absence of evidence on this matter. Mr ter Haar invited me to find that the probabilities favoured the first of these possibilities, but on the basis that Richard's unsuitability for any public examinations was the result of his enforced absences from school. The evidence is that Richard was not motivated to be educated; that he tried to avoid challenging work. That would have impacted on the possibilities of his taking any examinations and on passing them. My impression is that Mrs Phillips' view was that over a longer period than the normal two-year period Richard might have taken and passed some CSEs. There is no evidence as to why there was no attempt on his part to take one or more examinations over a longer period than normal.

202. Mr ter Haar obtained from a number of witnesses' acceptance that someone with Richard's difficulties required all the education he could get if he were to achieve his potential. But the reasons for his receiving less education than he might have done were not only that he had no school to go to between September 1978 and 4 April 1979, or between September 1985 and May 1986 (other than, during the second period, the Glebe). His education suffered from his considerable absences even when he was on the roll of the schools he did attend: see, for example, Mrs Bishop's review of 14 May 1980.
203. In addition, I accept the evidence of Mr Bendkowski and others (such as Mrs Bishop and Mrs Phillips), that, with commitment and application and parental support, Richard could have very substantially reduced the impact of his periods out of school. His prospects of "catching up" were greatest in special schools, such as Westbrooke, Grovelands and the Glebe, with smaller classes, high teacher/pupil ratios, specialised and experienced staff, and the possibility of individual remedial teaching (of which he had a "vast amount" at Westbrooke). But, as Mrs Phillips stated, and is borne out by Mrs Johnson's report of 14 September 1984 and the report of 20 May 1985, in addition to his dyslexia, during some periods at least Richard had problems of application in a number of areas and a lack of motivation: those problems affected his progress while he was at school, and would have affected it if he had been at school during the periods in relation to which he alleges negligence. Whether and if so to what extent they affected his education at Kennal Manor is unknown.
204. With regard to the claim for loss of earnings, I have already indicated that I was impressed by Mrs Greenaway's evidence. I do not accept that Richard has been unemployable since 1992. Mrs Greenaway's evidence, and the coincidence of the cessation of his employment with the commencement of these proceedings, lead me to conclude that he could and should have obtained employment long ago. Regrettably, his attitude to employment has been affected by the self-fulfilling prognoses of Mr Rabinowitz and Mr Langman, and by an unrealistic view of what is suitable for him. It is significant that the impression he gave to Mrs Greenaway of the level of his self esteem (although not what he said about it), was consistent with his description to her of his responsibilities when he worked in his parents' video shop, but was markedly different from that reported on by Mr Langman. Her description is much more consistent with what Mr Ramsden said about Richard's behaviour and his ability to handle files and documents when giving evidence. Richard could and should have pursued the avenues described by Mrs Greenaway during cross-examination which would have enabled him to find suitable employment, and could still do so. As Mr Ramsden pointed out, Richard's lack of self-esteem was commented on from his earliest school years. I do not accept that it is as incapacitating as suggested on his behalf. However, I find that it was not caused by his absences from school during the two periods now in issue.

Conclusions

205. The work done by counsel on behalf of their respective clients in preparation for the trial and during the course of it was very considerable and of very great assistance to me. I expressed my appreciation during the course of the trial and I am happy to repeat it. No more could have been done on behalf of their clients or to assist the trial judge.
206. As it is, for the reasons set out above, the claimant has not established that there was any negligence on the part of the defendant or its education officers or other employees in relation to his education or that their conduct damaged his educational achievements. The claim will be dismissed.

ANNEX 1

LIVE ISSUES

Duty of care

1. Whether the defendant owed the claimant a direct duty of care.
2. Whether the defendant's local education authority officers, or any of them, owed the claimant a duty of

care.

Negligence

(a) The first period of lack of schooling: September 1978 to May 1979

3. Did Mr Elliott and/or Mr Chamberlain, local education authority officers, act negligently in failing to take reasonable steps to provide the claimant with a school placement between July 1978 and May 1979? In respect of this question, the following issues arise:
 - (i) Was the claimant in fact without a school placement from September 1978 until 4 April 1979, by reason of having remained at St Paul's until the end of the summer term 1978 and being offered a place at Westbrooke School with effect from 4 April 1979?
 - (ii) Was the offer of a residential school placement reasonably appropriate?
 - (iii) In or about July and August 1978 did the claimant's mother instruct the defendant not to look for a school placement for the claimant because she intended to employ a tutor to educate him at home?
 - (iv) What steps did the defendant take to find the claimant a school placement during the period from August 1978 until April 1979?
 - (v) Did the claimant's parents receive an invitation to attend an interview with Mr Ward, head teacher of Westbrooke School, in or about the autumn term of 1978, but fail to attend?
 - (vi) Did the claimant's parents fail to ensure that the claimant attended Westbrooke School from 4 April 1979 until 14 May 1979?
 - (vii) Did the claimant's mother make repeated, or any, requests for the claimant to be placed in school during the period from July 1978 until May 1979?

(b) The second period of lack of schooling: September 1985 to May 1986

4. Did Mr Bendkowski, educational psychologist, act negligently in that, having been identified by the Senior Educational Psychologist in a response to the proposal to conduct a full assessment dated 20 August 1984 as the educational psychologist who would assess the claimant, he failed to produce his report until 5 November 1985, rather than earlier?
5. Did Mr Dawson, Mr Talbot, Ms Ann Trunchion and/or Ms Linda Whybrow, local education authority officers, act negligently in failing to place the claimant at a mainstream school during the period from September 1985 until November 1986? In respect of this question the following issues arise:
 - (i) Was the claimant inappropriately and negligently placed on the roll of Glebe School from September 1985 until November 1986?
 - (ii) Did they know, and if not should they or other officers of the defendant have known, that after the first day of the September 1985 term the claimant was not attending school?
 - (iii) Did the claimant's parents provide appropriate home tuition for him during the period from September 1985 until November 1986?
 - (iv) What steps did the aforementioned or any LEA officers take to ascertain whether the claimant was being provided with such tuition?
 - (v) What steps did the aforementioned LEA officers take to try to place the claimant at Walsingham School and Kemnal Manor School?

- (vi) Did the claimant's parents fail to respond to letters from the head teacher of Kemnal Manor School, inviting them to visit the school, and if so, did such failure to delay the claimant's placement at Kemnal Manor School?

Causation of damage

6. Whether any breach of duty for or in respect of which the defendant is liable has caused the claimant to suffer any loss or damage, in particular:
- (a) To what extent did the claimant have specific learning difficulties and/or emotional and behavioural difficulties during the period September 1976 to June 1987 and what aspects of his cognitive functioning were affected by them?
 - (b) How and to what extent have the claimant's dyslexia and/or other learning, emotional or behavioural problems affected him since leaving school?
 - (c) But for the alleged negligence, to what extent (if any) would the claimant's specific learning difficulties and emotional and behavioural difficulties have been ameliorated or avoided?
 - (d) Has the claimant suffered any impairment of and/or damage to his personal and intellectual development and/or distress as a result of the alleged negligence and if so, to what extent if any, does this sound in damages?
 - (e) But for the alleged negligence, would the claimant have passed GCSEs and A levels and undertaken further education and training?
 - (f) Is the claimant handicapped on the labour market as a result of the alleged negligence and/or has he suffered any loss of earnings or earning capacity?
7. Whether the alleged damage was caused or contributed to by the treatment the claimant alleges he suffered at the hands of other children who were attending mainstream schools, and, if so, whether the defendant is liable for any such damage.
8. Whether the claimant's parents caused the alleged damage by:
- (i) refusing to allow the claimant to be assessed by Dr Rodriguez, a consultant psychiatrist;
 - (ii) refusing to allow the claimant to be placed at a residential school;
 - (iii) failing to take reasonable steps to ensure the claimant attended school regularly;
 - (iv) withdrawing the claimant from the Glebe School in September 1985;
 - (v) failing to provide appropriate home tuition for the claimant during the period from September 1978 to May 1979 and September 1985 to November 1986; and
 - (vi) failing to respond to invitations to visit or attend interviews at Westbrooke School and Kemnal Manor School.

Damages

9. Quantification of the claimant's general damages, if any.
10. Assessment of the claimant's loss of earnings and/or earning capacity, if any.

11. What steps (if any) can the claimant take to ameliorate the effects of his specific learning difficulties and/or emotional and behavioural difficulties? What steps (if any) can the claimant take to mitigate his loss of earnings? If these steps would involve future remedial tuition:
- (i) What is the likelihood of the claimant undertaking such tuition?
 - (ii) What is the cost of such tuition?
 - (iii) What effect would such steps have on the claimant's future earnings and/or earning capacity?