Hutchinson v Metropolitan Police Commissioner and another

[2005] EWHC 1660 (QB)

QUEEN'S BENCH DIVISION

27 JULY 2005

MR JUSTICE WALKER

JUDGMENT: APPROVED BY THE COURT FOR HANDING DOWN (SUBJECT TO EDITORIAL CORRECTIONS)

MR JUSTICE WALKER:

Introduction

1. This action for damages for personal injury alleges that the claimant ("Miss Hutchinson") suffered physical and psychiatric harm from an assault on her in March 2000 by the second defendant ("Miss Morgan"). Miss Morgan was at that time a probationer constable in the Metropolitan Police. The first defendant is the Commissioner of the Metropolitan Police ("the Commissioner") and is said to be liable for the actions of Miss Morgan.

2. For reasons given below I have concluded that Miss Hutchinson's account of events is inaccurate and that no assault occurred. My draft judgment on liability, which was substantially as set out at paragraphs 4 to 102 below, was made available on 17.12.04.

3. At a hearing on 21.12.04 I was asked by Miss Hutchinson to reconsider my conclusion. At paragraphs 103 to 114 below I give my reasons for declining to do so. The parties also made requests that I deal with certain other matters. I describe those requests at paragraphs 115 to 168 below, where I also set out my findings on those matters. A brief summary of my overall conclusion is at paragraph 169 below.

The factual dispute

4. In March 2000 Miss Hutchinson was working as a part-time packer for J Sainsbury plc ("Sainsburys") at their supermarket in South Woodford. The manager of that supermarket was Barry Gramlick, and his deputy manager was Stephen Meechan. At that time Miss Morgan was the fiancee of Mr Meechan. As noted earlier, she was also a probationer constable in the Metropolitan Police.

5. On the evening of Saturday 25 March 2000 Sainsburys held a millennium party for their employees at the function suite at the David Lloyd Fitness Centre, Chigwell, Essex ("the Centre"). The Centre is located in Epping Forest. The party ended in the early hours of Sunday 26 March.

6. Among those attending the party were Miss Hutchinson, Mr Meechan and Miss Morgan. All concerned agree that during the course of the party there was an incident in the function suite over a bar bill involving Stephen Gibbard, an employee in the supermarket baking department, and that towards the end of the party there was an incident in the car park involving Miss Hutchinson and Miss Morgan. I shall call the former "the bar bill incident" and the latter "the car park incident". The precise circumstances of both incidents are in dispute. Miss Hutchinson said in her witness statement that during the bar bill incident she saw Miss Morgan with her hands around Mr Gibbard's throat, threatening him and swearing at him. She continued that after the bar bill incident, when she was outside the function suite near the stairs, Miss Morgan barged into her, causing her to spin around and knock the back of her head against the wall. Miss Hutchinson's witness statement added that Miss Morgan carried on walking past her, followed by Mr Meechan, and that she said to him that Miss Morgan had knocked her flying for no reason. I shall call this event "the stairwell bump".

7. The evidence of Miss Morgan and Mr Meechan was that in the course of the bar bill incident Miss Morgan held Mr Gibbard by his shirt collar, not his throat, and did not swear at him. They had no recollection of the stairwell bump. For her part Miss Hutchinson does not say that her injuries from the stairwell bump were such as to warrant legal action. Her claim is for assault and battery which she says Miss Morgan inflicted on her during the car park incident.

8. Miss Hutchinson's claim is that in the car park Miss Morgan stated "I will get the coppers and do you under section 28, I am a WPC" and that, following her reply and a remark by Mr Meechan, Miss Morgan grabbed her by the throat, threw her to the ground, and delivered blows to her upper body. Miss Morgan and Mr Meechan agree that Miss Morgan identified herself as a police officer — although not in the way described by Miss Hutchinson. They say that Miss Hutchinson was drunk and abusive and is responsible for her own injuries, having attacked Miss Morgan and fallen to the ground when Miss Morgan pulled away from her.

9. Miss Hutchinson says that the Commissioner is liable for Miss Morgan's actions as those of a constable under his direction and control in the performance or purported performance of her functions within s 88(1) of the Police Act 1996. Miss Morgan denies assaulting Miss Hutchinson, an issue on which the Commissioner is neutral. If, however, I should find that Miss Morgan did indeed assault Miss Hutchinson, then the Commissioner says that Miss Morgan was not acting in the performance or purported performance of her functions. If both the Commissioner and Miss Morgan are liable to Miss Hutchinson, then questions arise between them under Part 20 CPR.

10. A remarkable feature of this case is that the physical consequences of the alleged assault are dwarfed by what Miss Hutchinson asserts have been its psychiatric consequences. The Particulars of Claim describe physical injury in the form of a bleeding nose which was painful and swollen on its right hand side, a swollen right eye, pain and bruising to the face and left arm and weal marks and scratches to the neck and right arm, with limitation of movement in the left arm due to significant pain. Of these physical injuries, only that associated with the left arm is said to have had continuing physical effects. However, Miss Hutchinson says that the psychiatric consequences were so shattering that she is appropriately diagnosed as suffering from Post Traumatic Stress Disorder ("PTSD"), a condition more commonly associated with those who have suffered the trauma of war or catastrophic accidents. I heard evidence from Professor Malcolm Weller, an Emeritus Consultant Psychiatrist, Honorary Research Professor at Middlesex University and Chartered Psychologist, in support of this diagnosis. Professor Weller considered that the claimant's family history made her particularly vulnerable to PTSD, and that without that special vulnerability the assault would not have led to such severe psychiatric consequences. This was acknowledged by Mr Jacobson when opening the case for the claimant. He submitted that just as for physical injury a defendant is liable to recompense a claimant with an eggshell skull, so for psychiatric injury a defendant cannot complain that the victim of an assault was unusually susceptible to psychiatric disorder.

The course of proceedings

11. Miss Hutchinson was seen by police officers after she returned home in the early hours of 26.3.00. This led to 2 sets of proceedings. The first was a criminal prosecution against Miss Morgan. The second was a complaint by Miss Hutchinson against Miss Morgan of misconduct, which was dealt with under police disciplinary procedures. It was only after seeing solicitors on 28.3.01 that Miss Hutchinson gave instructions to solicitors to begin civil proceedings. The issuing of civil proceedings, however, was not put in hand immediately. It was decided to await the outcome of the criminal process.

12. In December 2001 the criminal proceedings against Miss Morgan were listed for trial at Chelmsford Crown Court. After 2 days of legal argument, HHJ Hawkesworth concluded that the prosecution was an abuse of process, and decided that it should be stayed. His Honour determined that the prosecution had failed to obtain a video recording which would have shown the area of the fracas in the car park and would have provided crucial and independent evidence which otherwise was signally lacking. He found that the original intention had been to prosecute only for common assault, but the CPS had decided, in order to avoid the time limit for such a prosecution, to prefer an indictment alleging assault occasioning actual bodily harm. This was grave prejudice to Miss Morgan caused by inexcusable delay and mismanagement. To this was to be added continuing delay, the ignoring of court

orders, and the continuing deterioration in the health of Miss Morgan. Looking at the cumulative effect, it was neither possible for Miss Morgan to have a fair criminal trial, nor was it fair to try her. His Honour emphasised that there was no evidence of bad faith, nor did he find any suggestion that people went soft on the prosecution because it involved a police officer. He added that he had made no observations which would indicate on the merits that any claim for assault by Miss Hutchinson would necessarily fail. Indeed, he had every sympathy with her predicament which he had been told had also in her case led to a deterioration in health.

13. It appears from information provided by the Commissioner on 13.5.04 that after the stay of the criminal proceedings the Police Complaints Authority directed that Miss Morgan should face disciplinary proceedings. On 6.2.03 the Commissioner notified Miss Morgan that she was to appear before a misconduct hearing to face a charge of behaving in a way likely to bring discredit on the police service. On 20.10.03 at the disciplinary proceedings Miss Morgan successfully applied to have the charges against her dismissed as an abuse of process based on the non-availability of the videotape, Miss Morgan's health, and the manipulation or misuse of the criminal process.

14. In the meantime Miss Hutchinson's solicitors had arranged for her to see Professor Weller on 11.11.02, and he provided a report on 9.12.02. This stated his belief that the symptoms described by Miss Hutchinson constituted PTSD. While it was arguable whether the index episode satisfied the diagnostic criteria for PTSD, Miss Hutchinson's symptoms were characteristic. There was a family history of psychiatric problems and this increased the likelihood of PTSD. He found a constellation of symptoms described as a "melancholic" pattern of illness, "compatible with a constitutional element and ... the more severe type of depression." Professor Weller recommended formal counselling, preferably cognitive behavioural therapy from a Chartered Psychologist, and a review of medication by a consultant psychiatrist pending which Miss Hutchinson should return to taking Venlafaxine as prescribed by her GP. His prognosis was that there was a high probability of Miss Hutchinson becoming a chronic case, and that even with treatment Miss Hutchinson was likely to be vulnerable to stress and for her symptoms to be exacerbated or re-ignited in stressful circumstances.

15. The claim form in the present proceedings was issued on 18.3.03, but the service of particulars of claim was left over until the disciplinary process was complete. The particulars of claim were served on 22.12.03 and defences were served by the first and second defendants on 21.1.04 and 2.2.04 respectively.

16. The trial began on Tuesday 16 November 2004. Mr Jacobson's opening on behalf of the claimant took longer than had been expected, largely because it was interrupted by a number of interlocutory disputes. I heard witness evidence from the afternoon of Wednesday 17.11.04 until the evening of Wednesday 24.11.04. All parties agreed that closing submissions should be in writing.

Consumption of alcohol at the party

17. At a large party of this kind some guests – especially those who have arranged to drive home – will avoid drinking alcohol, some will drink just a little, many will have quite a bit to drink, and some will get very drunk. That some guests will get drunk is no reflection on Sainsburys – it is inevitable. Nor is it necessarily a grave criticism of the people in question to say that some were very drunk –people are entitled to let their hair down at a party, provided that they do not drive home after drinking more than the legal limit, and provided that they do not become disorderly.

18. How much people had to drink is, however, an important question when considering their evidence about disputed events.

Witnesses who were at the party

Elizabeth Kennett

19. In considering the evidence I start with one of those who drove home. Ms Kennett was the checkout manager at South Woodford. She attended the function at about 7.30 p.m. with Ms Carol Ackerman, who is a checkout supervisor.

20. Ms Kennett's account in her witness statement included the following:

> 20.1. Although there were not any major problems, things seemed to go downhill after Mr Meechan announced that there was a free bar. This was at about 11 pm. Obviously, a lot of people drank to excess.
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> 20.2. She recalled Mr Gibbard being led away from the function suite. She did not know at the time what the dispute was about.
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> 20.3. Towards the end of the function she went out to the car park, sometime after midnight, with Mr Tucker, Ms Ackerman, Ms Kathleen Lewis and Miss Hutchinson. She had agreed to give them a lift, as she was not drinking that evening. Her car was parked close to the exit, facing away from the Centre. In the car park Mr Meechan and Miss Morgan were walking back towards the function suite. Miss Hutchinson saw them and said something about getting an apology from Miss Morgan about an earlier incident. Although Miss Hutchinson had mentioned an earlier incident involving Miss Morgan she (Ms Kennett) did not witness it. Miss Hutchinson walked over towards them. She (Ms Kennett) did not want matters to get out of hand and wanted to get Miss Hutchinson home, and said something like, "Leave it Debbie". Miss Hutchinson carried on towards them. Mr Meechan said something like, "Not now Deb". She (Ms Kennett) walked on towards the car with Ms Lewis, Ms Ackerman and Mr Tucker, as she did not want to get involved. She got in the car. This was about 35 to 40 feet away from where Miss Hutchinson and Miss Morgan were standing. Ms Ackerman got in the front and Ms Lewis and Mr Tucker got in behind. After about a few minutes, Mr Tucker went over to see what was going on.
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> 20.4. Mr Tucker came back a few moments later and said, "You had best come out here. She's only gone and decked her." They all got out of the car, and went over to Miss Hutchinson, who was in the foyer to the function suite. She was on the phone, a pay phone by the stairwell. Mr Meechan and Miss Morgan were walking away from the entrance. Miss Hutchinson was holding the phone, but not talking to anyone, crying, there was reddening around her nose, but Ms Kennett did not see any other possible injury. A security guard was there. He said Mr Meechan and Miss Morgan had tried to take the phone away from Miss Hutchinson. Miss Hutchinson said, "She's just hit me". She was very distressed. Both Ms Lewis and Ms Kennett suggested that Miss Hutchinson go home and sort things out from there. Miss Hutchinson put the phone down. Ms Kennett took her home and Ms Lewis went with her.

21. Miss Hutchinson called Ms Kennett as a witness. She was an impressive witness, giving her answers frankly and forthrightly.

22. Under cross-examination Ms Kennett's evidence was that she thought Miss Hutchinson was drunk. Ms Kennett did not know how much Miss Hutchinson had had to drink: she had not been with her all evening. When Miss Hutchinson came to join Ms Kennett and Ms Ackerman, Miss Hutchinson was quite angry. Ms Kennett said to Ms Ackerman, "I'm leaving because it seems like there is a load of trouble here," – or words to that effect.

23. Ms Kennett told me that knowing Miss Hutchinson's nature, she assumed that Miss Hutchinson was likely to be part of the trouble. What she meant by her "nature" was that Miss Hutchinson was quite argumentative: "... whenever I questioned her about something, she was always quite challenging with me - I had not seen her be particularly aggressive on previous occasions, but when we were together in the smoking room she put the world to rights: everything that was wrong with the store she knew what she could do." Returning to the evening of 25 March 2000, Ms Kennett said that Miss Hutchinson didn't have a drink in Ms Kennett's company – she was at Ms Kennett's table only a few moments. Miss Hutchinson was however clearly upset.

24. In response to questions from me, Ms Kennett said that she knew Miss Morgan as "Danny". When Miss Hutchinson came back into function room upstairs, Miss Hutchinson knew who Danny was, Mr Meechan's girlfriend, and that was who she was upset with.

25. Turning to the car park incident, in cross-examination Ms Kennett said that when Miss Hutchinson made for Miss Morgan and Mr Meechan she realised there was about to be trouble. She thought she [Ms Kennett] said something like. "Leave it". It was obvious that things were about to get out of hand. Miss Hutchinson went over to Miss Morgan and Mr Meechan, saying something about demanding an apology. Ms Kennett said to Ms Ackerman, "Let's get out of their way." Miss Hutchinson was angry. Ms Kennett didn't see much of the confrontation. She didn't hear anything that happened after she got into the car. Miss Hutchinson said something like, "I want a word with you". Ms Kennett then heard Mr Meechan say, "Not now Debbie." Ms Kennett didn't stop walking.

26. In reply to me Ms Kennett said that when Miss Hutchinson spoke about getting an apology she [Miss Hutchinson] was angry. Knowing Miss Hutchinson there were some swear words, but Ms Kennett could not recall the actual words.

27. I was satisfied that Ms Kennett had not had anything to drink on the night in question and that her evidence as to what she saw and heard, and as to the impression that she formed of the state of Miss Hutchinson as events unfolded, was truthful and reliable. Some of the matters recounted in Ms Kennett's witness statement were, of course, no more than what others told her. As to that, in the confusion of events that evening I place reliance only on those matters of which I have first hand oral evidence, tested in cross-examination.

Barry Gramlick

28. Mr Gramlick was the store manager at South Woodford. In his witness statement he explained that he had become involved in the bar bill incident after a security guard approached him and told him that there was a dispute about a bar bill. After he intervened Mr Gibbard said that Mr Meechan and Miss Morgan had been "out of order". Mr Gramlick did not then know what Mr Gibbard was referring to, but at some stage he became aware that there had been an earlier incident in which, apparently, Mr Gibbard had been grabbed around the throat by Miss Morgan. For his part Mr Gramlick did not recall seeing any injuries on Mr Gibbard at the time. Mr Gramlick had spoken to Miss Hutchinson in the stairwell, at a stage when he was considering following Mr Gibbard's friend to make sure he left the premises, but Miss Hutchinson said, "Barry, it's not worth it. You're the branch manager, he's going anyway." She was concerned that he would cause problems if Mr Gramlick followed after him. Mr Gramlick did not witness either the stairwell bump or the car park incident. After a complaint by Mr Flory the next day, however, Mr Gramlick visited Miss Hutchinson and conducted an investigation.

29. Mr Gramlick gave oral evidence on behalf of Miss Hutchinson. In cross-examination he accepted that he had had more than 3 or 4 drinks. He was at the party to relax. His reply when asked whether Mr Meechan was drunk was that he had no idea. His reply when asked whether Mr Gibbard was very drunk was that Mr Gibbard may have been very drunk. His reply when asked whether Miss Hutchinson had been drinking was that he did not have a clue.

30. I considered that Mr Gramlick gave evidence in a distinctly defensive way. Miss Hutchinson herself described Mr Gramlick's state on the night in question as "merry". I believe that he has only a hazy recollection of events.

Andrew Tucker

31. Mr Tucker was the bakery manager at South Woodford. In his witness statement he dealt with the bar bill incident, explaining that Mr Gibbard was a member of his staff. Mr Tucker described being told by Mr Gibbard that Mr Meechan and Miss Morgan kept looking over at him (Mr Gibbard). They were standing about 10-12 feet away. "Mr Gibbard felt that they were keeping their eyes on him as he is usually quite outgoing." A short while later Mr Gibbard asked him for money. Mr Tucker did not have enough cash, so asked Patricia Pells, another member of staff, if she could help. She gave him the money which he passed on to Mr Gibbard. Mr Gibbard went over to Mr Meechan to give him the

money. They began to argue and Mr Meechan said something like, "Pay up or I'll take you outside. " Mr Gibbard replied, "You're not at work now". Miss Morgan intervened, went up to Mr Gibbard and said something about being a martial arts expert and, "Don't get mouthy". She then grabbed his throat with one hand, her right hand, and squeezed his throat. Other people saw what had happened and started to intervene. Mr Gramlick came over, and Mr Gibbard was asked to go into the hallway to sort things out. Mr Tucker said he saw Miss Morgan push into some people, this was when she went up to Mr Gibbard and grabbed his throat.

32. Mr Tucker's witness statement also dealt with the car park incident. He said that in the car park he saw Mr Meechan, Mr Gibbard, Miss Morgan and Claire Houlihan talking together. Miss Morgan, he said, was apologising to Mr Gibbard for the earlier incident. Everything seemed quite calm. Mr Gibbard came over to him. He saw Miss Hutchinson talking to Mr Meechan and Miss Morgan whilst he stood with Mr Gibbard. He heard Miss Hutchinson say, "You owe me an apology, you barged me out of the way." She directed this to Miss Morgan, and Miss Morgan replied "Shut your face". As Mr Meechan and Miss Morgan were walking back to club Miss Hutchinson followed them and, again, asked Miss Morgan to apologise. She said she had been a police officer for five years and would not have dealt with incidents in the way that Miss Morgan had. Miss Morgan was generally abusive towards Miss Hutchinson verbally, poking Miss Hutchinson in chest at least five or six times. Mr Tucker said he was standing about 6 to 8 feet away at this time. The car park was quite well lit, and you could see clearly 40 feet. Miss Morgan grabbed Miss Hutchinson's neck and pulled Miss Hutchinson down to the ground. Miss Morgan kept her hands on Miss Hutchinson's throat for about 30 seconds. Miss Morgan was shouting and swearing at Miss Hutchinson. Mr Meechan and Ms Pells intervened, and pulled Miss Morgan away from Miss Hutchinson. Ms Lewis was in the vicinity. When pulled to the ground Miss Hutchinson was not lying completely on the ground, she was partly held up by Miss Morgan, with one side of her body towards the ground. Miss Hutchinson was assisted by Ms Lewis. She said to Miss Morgan she was going to call the police. Miss Morgan said, "Go on then". Miss Hutchinson was crying, he remembered her holding a tissue to her nose with blood on it. Ms Lewis and Miss Hutchinson went back into the club followed by Mr Meechan and Miss Morgan. He did not recall Miss Hutchinson being threatening, verbally or otherwise, or using force towards anybody.

33. As to events after the car park incident, his witness statement said that he did not go into the club until five minutes later. He spoke to Ms Kennett and Ms Lewis in the downstairs lobby. They were with Miss Hutchinson who was still crying. Miss Hutchinson said Miss Morgan had put the receiver down when she had tried to call the police. Miss Morgan was not there at this time, neither was Mr Meechan. After the incident he went home with Ms Kennett, Ms Lewis, Miss Hutchinson and Ms Ackerman.

34. Mr Tucker was called as a witness by Miss Hutchinson. It emerged that his witness statement gave a misleading impression and contained serious inaccuracies. In particular as regards the car park incident, the witness statement failed to mention that for much of that incident he had been with Ms Kennett and Ms Lewis – who were in Ms Kennett's car, some distance away from Miss Hutchinson, Mr Meechan and Miss Morgan. He accepted in cross-examination that it was on his way to the car that he had a conversation with Mr Gibbard. Initially he reiterated orally the claim in his witness statement that Miss Morgan "was actually apologising" to Mr Gibbard. Later, however, he admitted that he did not know what Miss Morgan had actually said to Mr Gibbard. He explained that it was Mr Gibbard who told him that Miss Morgan had apologised. As to what was taking place between Miss Hutchinson and Miss Morgan, he was seeing either through or around Mr Meechan, Ms Pells and Mr Gibbard. Under cross-examination he accepted that the "poking" described in his witness statement was not a real push to the body. Initially he said he could see Miss Morgan's finger touching Miss Hutchinson – he being at this time behind Miss Morgan's back, looking at a 45 degree angle, with Mr Meechan beside Miss Morgan. Later he accepted that he could not be sure that there was physical touching, adding that Mr Meechan was to the right of Miss Morgan, and that he [Mr Tucker] was to the right of Mr Meechan, both of them being slightly behind Miss Morgan, so that he could see Miss Morgan's right arm.

35. Mr Tucker's witness statement had said that Ms Lewis was in the vicinity at the time of the car park incident, and that when he saw Miss Hutchinson on the ground she was partly held up by Miss Morgan and was assisted by Ms Lewis. However, both Ms Lewis and Ms Kennett said that Ms Lewis had gone to the car with Ms Kennett and Mr Tucker, that Mr Tucker had gone to find out what was happening,

and that it was after Mr Tucker had returned from this expedition that Ms Lewis (with Ms Kennett) went to the entrance to the Centre and found Miss Hutchinson there. Under cross-examination Mr Tucker described what he had said on this in his witness statement as being "not 100% certain, about 8 out of 10." He was unable to accept the reality that he was plainly wrong.

36. Mr Tucker gave me a distinct impression of confusion as he gave his evidence. Miss Hutchinson herself admitted that it was clear that he had had more than one drink. Mr Tucker admitted to having three or four pints. I do not think he was in a position to see or hear much of what he described as taking place in the car park. As to those events that he could see or hear, whether in the function suite or in the car park, I conclude that he had had a good deal to drink – more than 3 or 4 pints, and was able neither at the time to discern, nor later to recollect, the detail of events with accuracy.

Kathleen Lewis

37. Ms Lewis is a teaching assistant. She explained in her witness statement that she used to work for Sainsbury's and left in July 1999. She went to the party with Miss Hutchinson. She recalled the bar bill incident, but was some distance away, and did not pay much attention. Sometime after that incident Miss Hutchinson came up to her and said she (Miss Hutchinson) had been pushed out of the way and had hurt her head. Miss Hutchinson seemed quite upset but after a while she calmed down. She (Ms Lewis) did not remain with Miss Hutchinson throughout the entire evening and was not aware where this incident had occurred or who was involved.

38. Turning to the car park incident, Ms Lewis's witness statement said that she, Ms Kennett, Ms Ackerman, and Mr Tucker walked towards Ms Kennett's car. The next thing Ms Lewis knew Miss Hutchinson was not with them. They waited outside for a few minutes but, as it was cold, they got into the car. They sat in the car for a few minutes and Mr Tucker said he would go and find out what was happening. A short while later Mr Tucker came back and said something like, "Your friend's been hurt. She wants you." She went back to the entrance to the function suite. Miss Hutchinson was in a state, crying, there was some swelling at the side of her nose and she was holding a handkerchief to her face. She said she had been hit by "Steve Meechan's girlfriend." She said she had tried to telephone the police but the girlfriend stopped her from doing so. Ms Lewis thought Miss Hutchinson said that the girlfriend had put receiver down. Ms Lewis suggested to her that she should call the police but she said she had tried and now wanted to go home. Miss Hutchinson said, "Just get me out of here".

39. Under cross-examination Ms Lewis said that on the night in question she drank very little. She wouldn't say Miss Hutchinson drank an awful lot, however Ms Lewis was not with Miss Hutchinson all evening. She remembered Miss Hutchinson having one bottle of beer and a coke.

40. She said it was ten to one when they went off towards Ms Kennett's car. They left the premises together. She was walking across the car park when she turned round and Miss Hutchinson was not there. She sat in the car for a number of minutes. It was a bitterly cold night. She had her coat on. Ms Kennett had to scrape the car windows – ice had frozen on the windscreen. Mr Tucker went to look for Miss Hutchinson- they were all waiting for her.

41. Towards the end of cross-examination Ms Lewis said that it might have been five or ten minutes waiting with Mr Tucker in car. In reply to a question from me she said he was either in the car or just outside.

42. In most respects I regarded Ms Lewis as an accurate and reliable witness. An area that caused me concern was her statement that she "wouldn't say Miss Hutchinson drank an awful lot" on the night in question. Ms Lewis did not give this answer with the same confidence as she displayed in other areas of her evidence. I concluded that the answer was strictly accurate in the sense that Ms Lewis did not see all that Miss Hutchinson drank. In that strict sense it was not inconsistent with Ms Kennett's clear perception that Miss Hutchinson was drunk. I believe that the careful way in which Ms Lewis framed her answer on this point reflects a natural desire to protect her friend.

The Claimant

43. The claimant gave evidence from the afternoon of Wednesday 17 November until the afternoon of Friday 19 November. She is now 44, and was 39 at the time of the incident. Her witness statement gave her employment history since leaving school at the age of 16. Until 1989 she worked for companies based in the City of London, starting as an office junior and rising to become a PA Secretary. During the early part of this period she was a special constable, initially for the City of London Police and later for the Metropolitan Police. She was looking after her children from 1989 to 1993. From 1993 to 1998 she worked part-time as a cleaner in Woodford Green and in 1998 she began work for Sainsburys, again part-time. The witness statement gave detailed accounts of the bar incident, the stairwell bump, and the car park incident, these being said to have occurred at midnight, shortly after midnight, and between 12.30 and 1 a.m. respectively. What the witness statement said about the detail of these incidents was largely in conformity with the account given by Miss Hutchinson under cross-examination. .

44. Miss Hutchinson's witness statement said that following the car park incident she went to a public telephone in the Centre and dialled 999, that before the number connected Miss Morgan slammed the telephone in its cradle, and that after a verbal exchange between her and Miss Morgan, Mr Meechan pulled Miss Morgan away.

45. Miss Hutchinson added that she picked the telephone up again, made contact with operator and asked for the police when Miss Morgan came towards her again, and on this occasion a security officer moved Miss Morgan away.

46. The physical injuries described by Miss Hutchinson were a bleeding nose, with painful swelling on the right side, a swollen right eye, pain and bruising to the face, "finger mark" bruising to the left arm, and weal marks or scratches to the neck and right arm. She said that the injuries caused pain in her back and around the back of her neck and breastbone, with bruising under the left eye appearing on 28.3.00. She described limitation of movement in her left arm and shoulder due to significant pain.

47. Miss Hutchinson said that for the most part these painful physical symptoms have now gone, although there remains some residual physical discomfort affecting movement of the left shoulder. This has required changes in the way she undertakes certain activities.

48. The effect of the assault on her mind was described by Miss Hutchinson as follows. After the assault she felt physically ill, could not stop shaking, cried incessantly, and could not sleep. She woke fitfully during the night and felt "unrefreshed" in the morning. Every time she closed her eyes she saw Miss Morgan hitting her, even now. She used to experience flash backs 3 or 4 times a day. She tried to keep away from reminders, if she saw anyone who had been at the event she would shake and cry unavoidably. This restricted her social activities and shopping. She had not returned to Sainsbury's South Woodford branch since September 2000 when she handed in her notice. She avoids watching violence on television, if her partner is watching violence she leaves the room. It is difficult to relate closely to others, she no longer feels happiness or pleasure. Things generally feel flat, she no longer wants to socialise or talk, she feels tense, and is uncharacteristically irritable and watchful. There has been no improvement in any substantial way. After the assault, she had 9 or 10 vodka tonics a day to cope, before she used to drink socially and rarely. By December 2002 she managed to reduce her drinking to the pre-assault level. Before the assault she smoked 15 to 20 cigarettes a day, since the assault there had been an increase to 35 to 40, due to the stressful circumstances. Her whole life feels as if it is turned upside down, she no longer have any confidence. She cannot bear her partner and children too close, her sexual relationship with her partner is virtually non-existent, and she feels guilt at not being a good partner or parent. She struggles to work, raised voices or sarcastic remarks lead to "finding myself in the toilet in floods of tears." It is still difficult to sleep, she is awake after 2 hours and constantly thinks about the whole incident. Her appetite is poor and she has lost a stone in weight. She used to take pleasure in doing her job well, now she is unable to maintain high standards due to lack of motivation. For the last 12 months she has needed 4 to 8 alcopops to fall asleep at night. She sleeps longer at weekends as she is exhausted by lack of sleep during the week. She still has no interest in people. She considered suicide on two occasions, and only drew back at the thought of the effect on her children.

49. Miss Hutchinson said that informal counselling with a friend had helped for a while but had no long lasting benefits. On the advice of her GP she takes Venlafaxine, but she was concerned she might

become addicted. It helped get through her daily routine but did not improve her attitude towards life and quality of life.

50. Miss Hutchinson's witness statement also described her employment history after the party. She was away from work for 5 weeks. When she returned she saw Mr Meechan, and this caused a panic attack. The result was that she remained off work for some months. Sainsbury's moved Mr Meechan to another branch but, said Miss Hutchinson, "By that time it was too late." She said that the psychological condition caused by the assault forced her to resign in November 2000. There was then a period of unemployment for 4 months, followed by 5 weeks as a casual kitchen assistant for the London Borough of Waltham Forest. Miss Hutchinson said she left this job in tears after only 5 weeks, not being able to cope due to stress and depression. Then from April 2001 until she was made redundant on 7.7.04 Miss Hutchinson was employed part-time at Bancroft School.

51. Miss Hutchinson was cross-examined by Mr Opperman for Miss Morgan. At an early stage she was asked about being made redundant by Bancroft School, and why she had not accepted an offer of alternative work. She maintained that the alternative work was unsuitable. Mr Opperman reminded her that on 15.5.04 she had written a letter to the school in which she said that she wanted the alternative work, but was made to feel not wanted for the position, leaving her no alternative but to decline it. The letter was clearly inconsistent with repeated assertions in evidence by Miss Hutchinson that she did not feel able to do the alternative work. I found Miss Hutchinson's attempts to explain away this letter unconvincing.

52. Miss Hutchinson was asked about how much she had to drink at the party. She said that on arrival she was greeted with a buck's fizz, after which the only alcohol she drank was one vodka tonic and a Budweiser. She denied being drunk. When pressed, she vehemently replied that she was "stone cold sober". She described Mr Gramlick as "merry." She denied that Ms Lewis and Mr Tucker were very tipsy, but accepted in the case of Mr Tucker that it was clear he had had more than one drink.

53. I bear in mind that on her own account Miss Hutchinson is suffering from severe psychiatric disorder, and plainly found the experience of giving evidence very stressful. Later in her evidence Miss Hutchinson broke down on several occasions. Even making allowances for the difficulties faced by Miss Hutchinson when giving evidence, as between Miss Hutchinson's assertion of complete sobriety and Ms Kennett's evidence that Miss Hutchinson was drunk, there is no doubt in my mind that Ms Kennett is right. Ms Kennett had no axe to grind. She had planned to drive home, and so had an excellent reason for remaining sober herself.

54. On the bar bill incident Miss Hutchinson's evidence was that at about midnight she was sitting at a table with Ms Kennett when she became aware of a commotion about 12 feet away, looked behind her, and saw Miss Morgan with her hands around Mr Gibbard's throat.

55. As to the stairwell bump, Miss Hutchinson said Miss Morgan came through the doorway from the function room, and hit her right shoulder. This knocked her off her balance and spun her round, so that the back of her head hit the wall. She had been walking towards the function room. Her left shoulder may have hit the wall, but she just recalled the impact with her head first. She was shocked, as she was not expecting it. It was not just someone brushing against another person. As she was moving, Miss Morgan came hurriedly, very fast. As to whether it upset her, Miss Hutchinson said her reaction was just "what was happening?" She claimed she was not angry.

56. Again Miss Hutchinson's evidence is contradicted by Ms Kennett, who told me that when Miss Hutchinson came back into the function room she was quite angry and clearly upset.

57. Under cross-examination by Mr Opperman as to the car park incident, Miss Hutchinson said she was leaving the function suite, getting a lift home with Ms Kennett. Miss Morgan and Mr Meechan were coming from the car park. A confrontation took place at the front of the doors to the function suite. She denied going out of her way to approach Miss Morgan and Mr Meechan, and said she did not go up to them deliberately. Miss Morgan was just walking and was not angry.

58. Miss Hutchinson said that when they were within speaking distance she said to Miss Morgan, "I think you owe me an apology". Without saying anything else and with no reason Miss Morgan started poking her. Miss Hutchinson said that she herself was not being aggressive, on the contrary she had been totally polite.

59. This evidence about Miss Hutchinson's own attitude when she first saw Miss Morgan and Mr Meechan in the car park is plainly inconsistent with Ms Kennett's evidence. I am sure that Ms Kennett is right when she says that Miss Hutchinson behaved in a way that made it obvious that things were about to get out of hand, going over to Miss Morgan and Mr Meechan, and speaking about getting an apology in an angry way.

60. As to what happened after her request for an apology, Miss Hutchinson's witness statement described this at paragraphs 13 to 15 as follows:

> "13. ... Before I could mention the reason for the apology, she raised her finger, started poking me in the chest and replied that "I don't flicking owe you anything I've had enough shit tonight I had to deal with 6 geezers". I replied "that's your problem not mine. You knocked me flying for no reason." I then gestured towards Steve Meechan and said, "you know" meaning that he had been there at the time. The Second Defendant said, "Take your fucking hands off him". I had not touched him. I did not threaten him or the Second Defendant nor did I become verbally abusive towards them at any time. All the time she was continuing to poke me in the upper chest with her right hand making contact with my breastbone. The strikes gradually become more forceful. In response to her comment I took a step backwards and raised my hands to indicate I intended no harm. The Second Defendant then stated "I will get the coppers and do you under Section 28, I am a WPC." I then realised that she was a police officer and was threatening me with arrest. I did not see her warrant card but had no reason to disbelieve that she was a police officer. I replied that she could call the police, as I had nothing to hide and had not done anything wrong. Steve Meecham, who by that time had moved to her right hand side, stated to me in a hard but controlled voice: "She's had enough shit tonight you cunt".
>
> 14. At that point, the Second Defendant was still poking me in the upper chest. I demanded that she stopped poking me. With that, she grabbed me by the neck and took me downward all the way to the ground. My face hit the ground mainly on its right side. The whole incident happened so quickly. I could feel her weight on my back. The Second defendant pulled up my left arm behind my back, beat me on the back of my head and upper body with her hand and thrust her knee into my upper body. My head made contact with the ground on a number of occasions. While I was being assaulted, I can vaguely recall someone saying "Oh no oh no". I managed to curl up when I was on the ground. I recall shouting "Leave me alone, stop." The blows suddenly stopped. I picked myself off the round and remember seeing Steve Meecham, the second defendant who had hit me, and Patsy Pells, a member of the store staff. I informed the Second Defendant that I was going to call the police. The Second Defendant put a restraining hand on my right arm.
>
> 15. I pushed past the Second Defendant and made my way back into the centre. ..."

61. Under cross-examination Miss Hutchinson said that the poking got harder and harder, and was hurting. The account of events given by Mr Meechan and Miss Morgan (which I shall describe shortly) was put to her, and in all respects where it differed from her witness statement she denied it. She said that ten seconds before the assault Miss Morgan said she was a police officer. Miss Hutchinson said she was in no doubt of this and understood Miss Morgan was threatening to arrest her and that the arrest would be by Miss Morgan. She had no reason to disbelieve that she was an officer. Miss Morgan's tone was official in that respect. Miss

Hutchinson did not recall Miss Morgan showing an ID card, but she [Miss Hutchinson] could have missed it. Miss Hutchinson was focused on Miss Morgan's face. Miss Hutchinson accepted that she didn't notice any bruising on her chest area from the poking.

62. Miss Hutchinson maintained that Mr Meechan was abusive, that Miss Morgan grabbed her by the neck and took her down to the ground, holding her and beating her, pushing her back down to the ground all the time. She fell on to rough tarmac material. She fell on her right side, but did not recall if her head hit the ground first. The right hand side of her nose hit the ground.

63. Miss Hutchinson's witness statement said that after returning to the Centre she picked up the telephone in the kiosk and dialled 999. However, before the number connected Miss Morgan approached, took the telephone, slammed it in its cradle and said, "Don't do this, let's talk about this." Miss Hutchinson screamed to leave her alone, and Mr Meechan pulled Miss Morgan away. Miss Hutchinson picked the telephone up again, made contact with operator and asked for the police. Miss Morgan came towards her again, and a security officer moved Miss Morgan away. Here too the account given by Mr Meechan and Miss Morgan was put to Miss Hutchinson and she denied it.

64. There was further cross-examination by Mr Opperman about her physical injuries, and financial losses.

65. Mr Ley-Morgan for the first defendant asked about the timing of the bar bill incident. Miss Hutchinson said it could have been before 11.45 p.m. but she did not think so. From where she was sitting, it was clear that Miss Morgan was threatening Mr Gibbard and being abusive to him. She did not then know Miss Morgan was Mr Meechan's girlfriend.

66. Her witness statement initially said in paragraph 9 that at about midnight she had told Ms Kennett that she was going outside to have a cigarette, and it was as she got up that she became aware of the bar bill incident. Later in the same paragraph, after describing the bar bill incident, the witness statement said she went outside because the bar bill incident might turn unpleasant and there was a risk she might get hurt. In cross-examination she said she was going to go outside anyway.

67. Mr Ley-Morgan took Miss Hutchinson to a typescript account which she said she had prepared for her lawyers at some stage after March 2001. I shall refer to this document as "the typescript account." It dealt at the end of the first paragraph with the bar bill incident as follows:

> "Sometime later in the evening we were sitting at a table talking when we heard a commotion and looked behind us to see a female who I now know as Danielle Morgan the person who assaulted me later on in the evening with her hand around the throat of a male member of staff who works in the Bakery at Sainsbury's threatening and swearing at him. We did not take much notice of the incident and carried on talking amongst ourselves as the Security staffs that were hired moved them over to the other side of the function hall and seemed to be dealing with it."

68. The last sentence of this passage was inconsistent with Miss Hutchinson's evidence about her concern that the incident might turn unpleasant and she might

get hurt. Under cross-examination she accepted it couldn't be more different. She could not explain why the two accounts were so different, but said, "We did carry on talking while incident was going on."

69. When questioned by Mr Ley-Morgan about the stairwell bump, for the most part Miss Hutchinson gave answers broadly consistent with her previous statements and earlier oral evidence.

70. However under cross-examination Miss Hutchinson said that when she was at the top of the stairs, outside the entrance doors to function room, there were people thrown out. She explained that she saw security staff leading people. She had not said that in her statements, and indeed she said that her first statement to the police, made on 15.5.00, gave the wrong impression in that it "...suggests that it was after people were thrown out that I went outside function room." Three people were taken out, taken past her. One was Mr Gibbard. She saw one security guard escorting two people, and another escorting Mr Gibbard. One of the men being escorted out was shouting at Mr Gramlick, being abusive. She did not know why she had not put that in any of her statements before. At about 12.15 she was outside the

function room having a cigarette, talking to Mr Gramlick. After people were led out, or at that time, Mr Gramlick had come out of the function room to where she was.

71. Miss Hutchinson then became confused as to the timing of Mr Meechan's presence in relation to the stairwell bump. When Mr Ley-Morgan asked about this, Miss Hutchinson's evidence initially was that she would have said Mr Meechan did not see Miss Morgan bump into her, he was coming out when she (Miss Hutchinson) came off the wall. However later in the car park, she had turned to Mr Meechan, and said "You know" – referring to the stairwell bump. This led to the obvious question of how he would know if he had not seen it. After further thought Miss Hutchinson said he could have seen it. She had said to Mr Meechan, "What the hell is going on?" That suggested he saw what happened.

72. There was an inconsistency in Miss Hutchinson's statements as to how long after the bar bill incident it was before she went outside to the stairwell. Her statement to the police had said it was very shortly after. The typescript account said 30 to 40 minutes. Miss Hutchinson said that the typescript account was wrong, she had been confused about the time.

73. Mr Ley-Morgan's cross-examination then turned to the car park incident. In reply to his questions Miss Hutchinson readily said that the aggression in both the bar bill incident and the car park incident had come from Miss Morgan, and not from Mr Gibbard in relation to the bar bill incident or herself in relation to the car park incident. She accepted that she had not seen Miss Morgan's warrant card. Miss Hutchinson also accepted that grabbing by the throat is not a recognised police hold, that Miss Morgan was very angry and perhaps not in control of herself, that Miss Morgan was swearing, poking her, and not showing a warrant card, and that all this was not the behaviour of a police officer. Nevertheless Miss Hutchinson believed Miss Morgan was a police officer because of way she said. "I am a WPC".

74. Miss Hutchinson said she thought Miss Morgan was threatening her with arrest, and was going to arrest her. She did not know why she did not say, "You can't arrest me." She accepted that Miss Morgan's words were not "I am going to arrest you," but "I'm going to get someone else in to do it". She did not know, and still does not know, what Miss Morgan meant by section 28. As to telling people, in particular the police, that Miss Morgan was off duty, by this she meant Miss Morgan did not have a uniform on. In the course of further evidence about the assault, Miss Hutchinson accepted that Miss Morgan did not say, "You are under arrest". When Miss Hutchinson said, "I am going to call police", Miss Morgan didn't say, "There is no need, they're here, I am the police."

75. As to events at the Centre after the car park incident, under cross-examination by Mr Ley-Morgan Miss Hutchinson said that in order to end her first call to the police Miss Morgan put her hand on the connection bar. Her witness statement had said that Miss Morgan slammed the telephone down in its cradle. Miss Hutchinson did not know why she didn't correct it.

76. Mr Ley-Morgan's cross-examination turned to the period after Miss Hutchinson went home, and to subsequent events, which I need not address here.

77. In re-examination Miss Hutchinson told me that the purpose of the typescript account was to give an outline to her solicitors of what happened. Her mental state at that time was disturbed, and her concentration was not very good. There were typographical errors. The account said there had been 30 to 40 minutes between the bar bill incident and going out, this was because of confusion and lack of concentration.

78. She added that she suffered from visions which were affected by the disciplinary and prosecution failures, but if there had been no assault, these visions wouldn't have happened. If it had been dealt with properly, it wouldn't have been as stressful as it wouldn't have gone on and on. She referred to the stress and the depression, and said that all she kept seeing was a re-living of the event.

79. I asked Miss Hutchinson why, when she saw Miss Morgan and Mr Meechan, she did not say to herself that it would be better to stay out of the way. Miss Hutchinson replied that she did not know. She had asked for an apology because Miss Morgan had knocked her flying for no reason, and she expected Miss Morgan to give her an apology.

Miss Morgan

80. Miss Morgan's witness statement said that she had always wanted to be a police constable, it was her dream, and she joined the Metropolitan Police on 14.2.99. She passed out of Hendon Police College in February 2000, and was posted to Charing Cross on street duties, an initial probationary period of supervision on the streets. There were 10-15 probationer PCs under the supervision of 1 sergeant, all seemed to go well at first.

81. After the incident at the Centre she was neither suspended nor the subject of any immediate criticism and carried on as a probationer constable. A complaint came in about May of 2000, and it was at that time that she wrote an entry in an incident report book ("IRB").

82. I should add here that regrettably the original of the report book could not be found when the Commissioner searched for it. At one stage it may have gone to the CPS, but I had no evidence as to how it came to be lost. Nor did I have any evidence as to what if any attempts had been made by the police to locate Miss Morgan's pocket book, in which she would have made any contemporaneous notes.

83. What was available was a copy of relevant pages in the incident report book, but it was clear that parts of the pages copied were missing. Miss Morgan attempted to reconstruct the missing parts. The reconstructed IRB pages are set out in Annex 1 to this judgment.

84. Miss Morgan was extensively cross examined by Mr Jacobson and Mr Ley-Morgan. For the most part neither of these cross-examinations resulted in any substantial departure from the account given in the IRB. There were some additional points that emerged in oral evidence.

85. In the course of cross-examination by Mr Jacobson about the car park incident, Miss Morgan referred to the stage when Miss Hutchinson got up off the ground. Miss Morgan said that Miss Hutchinson ran off, and shouted "I'm going to call the police, I'm going to lose you your job." This was as she ran away - or trying to run, it was "clippity-cloppity", towards the building.

86. In the course of cross-examination by Mr Ley-Morgan, Miss Morgan said that after the incident she spoke to her tutor Constable, and rang up Ilford police station and spoke to a sergeant there. At that stage she did not know there had been a complaint, but she sought advice because Miss Hutchinson had said both she and Mr Meechan would lose their jobs. Both officers said, it's a drunken incident, and if you wrote up every drunken incident you'd never stop writing. It was George Sinclair at Charing Cross that she spoke to; as to the Sergeant on control panel at Ilford, she did not recall his name.

87. Miss Morgan's firm stance in cross-examination was that she was off duty at the party but placed herself on duty during the bar bill and car park incidents when she took action as a police officer.

88. Miss Morgan said she thought it was Sunday, say 10 a.m., that she rang Ilford police station, this being the nearest police station. The purpose of ringing was that although she was on a street duties course, she didn't have access to her tutor on Sunday - she had no mobile number. It was her first incident off duty, and she wanted to find out what the procedures were. She might have recorded it in her pocket book.

89. It is convenient at this point to deal with the evidence of DC George Sinclair, who was called by the Commissioner. He had some recollection of discussing this incident with Miss Morgan. He could not recall specific advice to Miss Morgan about the incident, but if she had said that she showed her warrant card then he would have advised her to write down what happened. It seemed to me that this evidence did not take us any further, as it was by no means clear that Miss Morgan had told him that in the course of the incident she showed her warrant card.

Mr Meechan

90. Mr Meechan's witness statement for these proceedings adopted what he had said in a statement to the police dated 8.12.00. Relevant parts were as follows:

90.1. As to the bar bill incident: "Very late in the evening I was alerted by security to a bar bill problem – I had previously put £500 behind the bar. The man concerned in the dispute was an employee called Steve – I don't know his last name but he works in the bakery at South Woodford. On approaching him he became instantly abusive – swearing at me – he was very drunk. He then raised his fist – I don't know if it was his left or right hand and was about to hit me. At this time my (then) fiancee Danielle came over – she had shown her warrant card to the security staff who were also coming over towards us. She then made herself known to Steve – as a police officer – she said, "I'm a police officer." As he went to strike me Danielle grabbed him by the shirt and pulled him away from me. The security guards then led him out of the building."

90.2. As to what happened after the bar bill incident: "Danielle then explained to me that she wanted to make sure things were OK outside and left – I followed half a minute later – when I got outside it was a chaotic scene – men shouting and swearing. Danielle then led Steve away from the others around a corner of the car park. She reappeared a few moments later and said everything was OK. The people then disappeared, I can then remember Patsy PELLS (administrative manager) approaching Danielle and thanking her for calming the situation down."

90.3. As to the car park incident: "Myself and Danielle then turned to go back to the party. We were approximately sixty yards from the front door – the main entrance when a woman was coming towards – she was marching very quickly towards us. She was screaming "I want an apology" – as she got nearer I recognised her as Debbie HUTCHINSON – an evening night worker at the South Woodford branch. She was continuously screaming "I want an apology" – I said to her several times "Debbie why are you doing this?" She was constantly swearing and abusive – I said to her "I will see you on Monday morning." She then grabbed my left arm with her right hand – my fiancee then told her to get off me – she explained she was a police officer and again showed her warrant card. The abuse then seemed to be directed towards Danielle – she said things like "I'm offering you out" and "Do you want to fight." She seemed completely intoxicated. She then took hold of Danielle's right arm with her left hand – Danielle then pulled away and Debbie HUTCHINSON fell to the ground – still screaming abuse towards us."

90.4. As to what happened after the car park incident: "She then got up and marched to the foyer – this was the entrance to the function suite. We followed – a short distance behind. She was screaming about phoning the police which Danielle offered to do for her. Debbie HUTCHINSON refused. We then turned round and left the building and went home."

91. In a change of order, Mr Meechan was first cross-examined by Mr Ley-Morgan. He accepted that he had refused to answer questions to Sainsburys and to two police officers who came to see him at work, investigating an allegation of assault made by Miss Hutchinson. He said he didn't have to speak to them, they had not made an appointment, he was running the store as Mr Gramlick was away, and it was inconvenient to see them.

92. Under cross-examination by Mr Jacobson, Mr Meechan gave evidence consistent with his witness statement and the evidence of Miss Morgan. He was asked about a statement he allegedly had made to Sainsburys. This document was never proved in evidence. I allowed questions about it only to establish whether he accepted that it was a statement that he had made to Sainsburys, or whether he accepted anything said in it. He denied that it was a statement he had made to Sainsburys, and he denied that he had said various of the things it contained. In the absence of any acceptance by him of this document, and with a lack of any evidence of how the document was produced, I ignore it.

Witnesses as to Miss Hutchinson's physical condition

93. Miss Hutchinson gave evidence about her injuries which accorded with her witness statement. She was supported to a greater or lesser extent by her partner Mr Flory, by Ms Lewis, and by her GP's

statement. For the purposes of this part of my judgment, I need only deal with the question whether those injuries could only have arisen from something other than the stairwell bump and her falling to the ground in the car park.

94. Mr Flory was advised to take photographs of Miss Hutchinson's injuries. He had no film in his camera, so he used a video recorder. I viewed the resulting videotape. The pictures were indistinct, and offered me no basis for concluding that they must be attributable to some sort of assault. This is particularly so as the night in question was very cold indeed, the ground was frozen, and Miss Hutchinson was wearing a chain around her neck which could well have caused such marks as were visible in the video.

Witnesses as to Miss Hutchinson's psychiatric condition

95. I have no doubt that Miss Hutchinson's psychiatric condition deteriorated after the incident. I accept the evidence both of Mr Flory and of Miss Hutchinson's neighbour Mrs Browne. I also accept that Miss Hutchinson finds reminders of the party traumatic: this was distressingly clear when she gave evidence.

96. I had the benefit of reports and oral evidence from Professor Weller. As his evidence was extensive, I have summarised it in Annex 2 to this judgment.

97. For the purposes of this part of my judgment, I note that Professor Weller recognised that it must be for the court to determine what happened on the night in question. In broad terms his evidence was that if Miss Hutchinson had not been assaulted in the way she described, then that would put his diagnosis of PTSD in doubt, and he would find it difficult to understand what had caused her symptoms.

My conclusions on liability

98. Having reviewed all the evidence, I am not satisfied that Miss Hutchinson was assaulted in the way she described.

99. There were many difficulties with Miss Hutchinson's evidence, even before hearing Miss Morgan and Mr Meechan give their accounts.

100. Points from cross-examination by Mr Opperman which I found unsatisfactory were as follows.

> 100.1. The claim that the alternative work at Bancroft school was unsuitable was inconsistent with Miss Hutchinson's letter of 15.5.04, and her attempts to explain away the letter were unconvincing.
>
> 100.2. Whereas she claimed she was "stone cold sober", in fact as Ms Kennett testified she was drunk.
>
> 100.3. Miss Hutchinson's evidence about her reaction to the stairwell bump is contradicted by Ms Kennett, who told me that when Miss Hutchinson came back into the function room she was quite angry and clearly upset.
>
> 100.4. Miss Hutchinson's evidence about her own attitude when she first saw Miss Morgan and Mr Meechan in the car park is plainly inconsistent with Ms Kennett's evidence. Ms Kennett says that Miss Hutchinson behaved in a way that made it obvious that things were about to get out of hand, going over to Miss Morgan and Mr Meechan, and speaking about getting an apology in an angry way.

101. Points arising in cross-examination by Mr Ley-Morgan which I found unsatisfactory were as follows.

101.1. The last sentence of the first paragraph of the typescript account was inconsistent with Miss Hutchinson's evidence to me. Under cross-examination by Mr Ley-Morgan she accepted it couldn't be more different. She could not explain why the two accounts were so different, but said, "We did carry on talking while the incident was going on."

101.2. Her account as to where she was when security guards escorted people out differed from that in her first statement to the police.

101.3. She was confused as to whether Mr Meechan saw Miss Morgan bump into her.

101.4. Miss Hutchinson said that in order to end her first call to the police Miss Morgan had put her hand on the connection bar. Her witness statement had said that Miss Morgan slammed the telephone down in its cradle.

102. Having heard Miss Morgan and Mr Meechan, whose evidence remained consistent and unshaken despite searching cross-examination, I believe on the balance of probabilities that their account is likely to be correct. This means that there is a mystery as to the precise cause of the psychiatric symptoms suffered by Miss Hutchinson. I fear that this judgment cannot identify the cause of those symptoms, other than to say that it is likely to have been something other than an assault by Miss Morgan. I hope that Miss Hutchinson may be able to reflect calmly on the fact that even her own witness Ms Kennett was unable to agree with her account on crucial points, and to ask herself whether there may be something else which is causing her problems.

My draft judgment on liability

103. On 17.12.04 I provided counsel with a draft judgment on liability. This comprised paragraphs 4 to 102 above (subject to corrections), followed by an indication that I would hear counsel as to the orders I should make. Paragraphs 1 to 3 of the draft judgment were as follows:

"1. This is my judgment on liability in this action. The trial of the action took place before me earlier this term. As questions might arise between the defendants if I were to find for the claimant, and as I shall not be sitting in this jurisdiction next term, I indicated that I would give judgment before the end of this term.

2. As will be seen below, I have concluded that the claimant fails against both defendants. My reasons are set out in detail below.

3. In the light of my conclusion in this judgment, other questions do not strictly arise for decision. I propose to canvass with counsel the extent to which rulings on other questions are desired, and if rulings on quantum of damages are desired I shall wish to consider a timetable for written submissions on specific aspects of that question."

104. In response to the draft all counsel lodged written submissions seeking rulings on other issues. In addition Mr Jacobson's written submission, relying on the jurisdiction to do so in exceptional circumstances as recognised in *Robinson v Fernsby* [2003] EWCA Civ 1820, invited me to alter my conclusion. The essence of his argument on this was that the draft judgment would perpetrate an injustice.

105. Oral submissions were made by all counsel on 21 December 2004.

106. I deal with the application to alter my conclusion on liability before turning to other issues.

The application to alter my conclusion on liability

107. This was the first matter dealt with in Mr Jacobson's written response to the draft judgment on liability. He submitted that the signs and symptoms noticed by Professor Weller showed that Miss Hutchinson suffered the alleged assault on 26.3.00 and did not fall as alleged by Miss Morgan. Thus an assault was established on an objective basis, not by placing any reliance on what Miss Hutchinson actually says happened but on her involuntary reactions to any reminder of the assault, no similar reaction being registered in respect of any other matters relating to the occasion in question. The point was made that these are not matters that can be simulated or conjured up as a matter of will. Mr Jacobson claimed that paragraph 95 of the draft judgment accepted that Miss Hutchinson's psychological condition deteriorated after the incident and that her symptoms stemming from reminders of the party are genuine. Turning to Professor Weller's evidence, the broad effect of this was said in para 7 of the written submission to have been that:

> 1 Miss Hutchinson's PTSD can only be explained on the basis of an assault;
>
> 2 He knows of no other cause of her symptoms. It follows therefore that the symptoms did not emanate from a fall or the other stressors suggested by Miss Morgan and Mr. Meechan;
>
> 3 The flashbacks that Miss Hutchinson experiences relate to visions of Miss Morgan hitting her and not from losing her grip on Miss Morgan's arm and falling;
>
> 4 Miss Hutchinson has never suffered from delusions nor has she been mistaken as to whether she was assaulted on 26.3.00; [para.20, p35]
>
> 5 She does not have an extensive history of psychiatric problems. The upset she suffered in 1987 when she felt emotionally betrayed by her fiancé was understandable;
>
> 6 She has had no previous history of suddenly and inexplicably showing signs of psychiatric illness;
>
> 7 She has been a Special Constable and was involved in a motor vehicle accident in 1992. In neither respect did she suffer from any psychiatric sequelae or conditions arising there from;
>
> 8 Miss Hutchinson showed clear signs of PTSD when she gave evidence in the course of the trial. She was reasonably composed when dealing with non-assault questions and invariably weeping when dealing with the assault; [para.19, p34]
>
> 9 There are no signs that Miss Hutchinson suffered from PTSD prior to the incident;
>
> 10 Miss Hutchinson's pulse was taken in Court after her Counsel had given a description of the alleged assault. Her hands were trembling and her pulse rate was at 150 beats per minute. During a more neutral period in the proceedings her pulse rate reduced to 120 beats per minute;
>
> 11 The particularly high pulse rate during the description of the assault and the accompanying tremor are indicative of a marked sensitivity to re-evocations of the memory of the event; [para.16, p34]
>
> 12 Symptoms of PTSD were in large measure present shortly after the assault. That was when the panic attacks started. Miss Hutchinson's description of such attack was similar to suffering a heart attack. Her description of a panic attack had a ring of truth; [para.31, p37]
>
> 13 Miss Hutchinson was expressly tested to check whether she was simulating her symptoms and was found to have a score below those who simulated.

108. At the oral hearing on 21.12.04 Mr Ley-Morgan and Mr Opperman opposed Mr Jacobson's application. Mr Opperman drew my attention to the Court of Appeal decision in *Gravgaard v Aldridge & Brownlee* [2004] EWCA Civ 1529. Mr Jacobson said that there would be substantial financial hardship to Miss Hutchinson if she had to lodge an appeal. The draft judgment might have rejected Professor Weller's evidence. The submission on behalf of Miss Hutchinson was not a quibble, which argued about the evidence of one witness against another. The draft judgment had left out of consideration material evidence from the only expert witness.

109. I indicated that I declined Mr Jacobson's application for reasons which I would give subsequently. I now give those reasons.

110. Paragraph 95 of the draft judgment, which was in identical terms to para 95 above, was not intended to suggest, and did not suggest, that I accepted Miss Hutchinson's evidence on the issue of her psychiatric condition, where it went beyond what was said by Mr Flory and Mrs Browne, nor that I accepted that all alleged "symptoms stemming from reminders of the party" were genuine. I am satisfied that paragraph 95 accepted two things only. First, it accepted Mr Flory and Mrs Browne's evidence that Miss Hutchinson's psychiatric condition deteriorated after the party. Second, it accepted that Miss Hutchinson finds reminders of the party traumatic.

111. As to Professor Weller's evidence, paragraph 97 of the draft judgment – in identical terms to paragraph 97 above – noted that Professor Weller recognised that it must be for the court to determine what happened on the night in question, that in broad terms his evidence was that if Miss Hutchinson had not been assaulted in the way she described then that would put his diagnosis of PTSD in doubt, and that in those circumstances he would find it difficult to understand what had caused her symptoms.

112. The suggestion is now made that Miss Hutchinson's previous medical history and Professor Weller's expert opinion and findings provided an objective basis for concluding that, despite the unreliable nature of Miss Hutchinson's evidence generally, there had been an assault on her by Miss Morgan.

113. I reject this submission. When preparing my draft judgment on liability I reviewed Professor Weller's evidence in its entirety. I have re-read my notes of that evidence. I continue to think that the observations made at paragraph 97 of the draft, reproduced at paragraph 97 above, accurately summarise what Professor Weller said, so far as relevant to this point. His conclusion is that if Miss Hutchinson had not been assaulted in the way she described he would find it difficult to understand her symptoms. However he readily accepted that it must be for the court to determine what happened on the night in question. I did not understand him to suggest – and it would be contrary to common sense to suggest – that difficulty in understanding psychiatric symptoms should lead the court to reach a different factual conclusion from that which would otherwise be plainly established by first hand oral evidence.

114. Three further comments arise. First, I have made no finding and do not make any finding as to precisely what has "triggered" Miss Hutchinson's problems. My findings are simply that the problems described by Mr Flory and Mrs Browne have existed since the party, and that Miss Hutchinson finds reminders of the party traumatic. Second, as to whether Miss Hutchinson suffers from chronic psychological conditions properly so called, I make no finding as to whether she does or not. The inevitable conclusion from my judgment is that Professor Weller has been proceeding on a false basis, for he has taken Miss Hutchinson at her word and has assumed the accuracy of what she has told him about events at the party. This is no criticism of him. However he accepted that his reports were only as good as the information on which they were based. It follows as a matter of logic that those reports cannot compel a conclusion that the information provided to Professor Weller was correct. Third, even if I were to conclude that as a result of the party Miss Hutchinson suffers from a chronic psychological condition, it is not possible to say that such a condition can only arise from an assault of the kind described by Miss Hutchinson. We are not dealing here with an exact science of cause and effect. Indeed Professor Weller very properly accepted that there might well be a substantial body of psychiatrists who would take a different view from his, even on the basis that Miss Hutchinson was giving an accurate account of what occurred.

The Commissioner's liability to indemnify Miss Morgan

115. In a written preliminary response to the draft judgment on liability Mr Opperman indicated that Miss Morgan would seek an order for costs against both Miss Hutchinson and the Commissioner. Mr Opperman acknowledged that the decision whether the Commissioner should bear Miss Morgan's costs would depend on a finding as to whether Miss Morgan was acting as a police officer. Miss Morgan's submission was that the Commissioner should have indemnified her from the start of this action.

116. Mr Ley-Morgan's written response was that even if Miss Morgan was acting in performance of her duties it did not follow that the Commissioner was liable to pay her costs. Nine reasons were identified. Moreover, the Commissioner wished to make further submissions on the question whether Miss Morgan was acting in the performance of her duties at the material time.

117. In accordance with directions given at the oral hearing on 21.12.04 Mr Ley-Morgan lodged further written submissions on behalf of the Commissioner. Before dealing with them, however, it is convenient to summarise the key passages from Miss Morgan's evidence.

118. Miss Morgan's witness statement stressed that she identified herself as a police officer to Miss Hutchinson, showed her warrant card, and did not in any way assault Miss Hutchinson. In truth Miss Hutchinson grabbed her, and she pulled away as explained in more detail in her incident report book ("IRB"). The relevant passage from the IRB can be summarised as follows:

> As we were walking along the car park [Miss Hutchinson] approached me at a very fast speed. She started shouting, "I want her to say sorry" and pointed at me. Mr Meechan said, "Go home, she has nothing to say sorry for". Miss Hutchinson said, "She pushed me when you were coming down the stairs." I said, "I do not remember you and I'm not saying sorry for something I have not done." Miss Hutchinson then started swearing and being very abusive to both me and Mr Meechan. Mr Meechan said, "Debbie if you have a problem I will see you on Monday." Miss Hutchinson again started swearing and was about one yard away from Mr Meechan's face shouting abuse. Miss Hutchinson grabbed hold of Mr Meechan's left and right arms using both of her hands to do so. Mr Meechan said, "Get off me", Miss Hutchinson said "Why what are you going to do?" I said "Take your hands off him right now." Miss Hutchinson said, "What are you going to do I'll fucking have ya, come on, come on then." I said "I don't think that's a good idea as I am a police officer." I produced my warrant card. She said "I used to be a police officer and I would not have handled it like this." I said, "Then you know what's going to happen if you don't go away." I turned my back on her and walked in a different direction, Miss Hutchinson blocked by path and put her face 2 cm away from mine and said, "Go on then arrest me, and it will be the last thing you'll ever do." I could smell intoxicating liquor on her breath and see that her eyes were glazed and her speech was very slurred, the only way I can describe her behaviour on the night is [similar to] a banshee, DH was drunk. I said, "Go home you are drunk." She said, "Oh, what and you're not." I said "No I am as sober as a judge." She said shouting, "You are still going to say sorry." I turned by back on Miss Hutchinson, as I did so she grabbed my right arm, I pulled my arm up and as I did so, Miss Hutchinson fell to the floor, she was on the floor screaming, "She has hit me, she has hit me." I said, "Don't be silly. Get up." She got up and ran off crying in the direction of the tennis centre.

119. Miss Morgan's witness statement added that at Police Training College she was taught that any incident which would normally involve police action should be dealt with. This applied whether on or off duty, and whether the incident was a criminal matter or an accident. Police officers did not enjoy the normal privilege of switching off once the day's work had finished. In potentially difficult situations she would rather not intervene if there was no obvious danger, however on this occasion there was.

120. The evidence given by Miss Morgan about the car park incident in the course of cross-examination by Mr Ley-Morgan can be summarised as follows:

> Miss Hutchinson was abusive from the outset. After Miss Hutchinson said, "She pushed me," I didn't say calm down. Miss Hutchinson was too irate. Telling her to calm down would have inflamed the situation. She was physically shaking Mr Meechan. My IRB may be in error, I recollect she shook Mr Meechan, then her attention was drawn to me. It is not in the correct order in the IRB. I didn't want to deal with any more incidents. I did have to put myself back on duty. Prior to that it was an employment situation, not a police matter. I was standing, watching, I used discretion. Miss Hutchinson took hold of Mr Meechan, I told her to take her hands off him. She then rounded on me, challenging me to a fight. When I was being threatened I identified myself. I produced my warrant card from my skirt, at the front there were two pockets. I held up the warrant card. I am right handed. I lifted it out, and opened it in front of her. My arm was bent at the elbow. I was saying it would be silly to assault me because I was a police officer. I produced my warrant card because I feared for my safety and that of Mr Meechan. It was not to prove to her I was a police officer, it was to say she would end up being arrested for threatening behaviour. I was going down the Public Order Act route, both as regards me and Mr Meechan. I remember Mr Meechan looking at me as if to say, "Please don't arrest her." He said something to her at that point. I used my discretion. I did not want to arrest a person who had had a drink and got a bit emotional. I thought I was doing her a favour. There was no way she could not have seen my warrant card. The Public Order Act route was not said to Miss Hutchinson. I did say, "I will arrest you". I was not about to bombard her with terminology. As to "I will arrest you" not being in the IRB, it was what I meant by, "Then you know what's going to happen." I then walked away. I gave her an opportunity to go. Why is that not reasonable? She was provoking me to arrest her. I didn't. I wasn't about to arrest a former police officer who had got a little worse for wear and who was my husband's employee. The closest I got to arresting her was, "You know what's going to happen if you don't go away" and showing my warrant card.

121. I turn to Mr Ley-Morgan's written submissions. These dealt first with the question whether Miss Morgan was acting in the course of her duties. At the outset the Commissioner acknowledged that the court had accepted Miss Morgan's account of what happened during the incident. It was nevertheless submitted that the court was not bound to accept Miss Morgan's evidence that she considered that she was acting in the course of her duties at the material time.

122. It is right that the court is not bound to accept that evidence. Nevertheless, I have no hesitation in doing so.

123. The court was asked to take into account the fact that by the time Miss Morgan came to give evidence she was aware of the potential financial consequences for herself if it were found that she was not acting in the course of her duties. Allowing for that factor, and having considered all points made by the Commissioner, I hold that from the time that Miss Morgan produced her warrant card to Miss Hutchinson she had placed herself "on duty", was acting as a police officer, and was acting properly in that regard.

124. Particular points were set out by the Commissioner at paragraphs 14(a) to (1) of his written submissions. Taking these in turn:

> (a) Even if Miss Morgan had been acting in the course of her duties during the earlier incidents those incidents were over and she was about to go home. I accept that the incident involving the alleged assault was separate from the earlier incidents and I examine it entirely on its own merits.
>
> (b) Miss Morgan was said to have been confrontational and argumentative, making no attempt to defuse the situation by identifying herself has a police officer and/or seeking clarification from Miss Hutchinson as to why she wanted an apology and/or explaining how she might inadvertently have bumped into her, an attitude which was said not to be that of a police officer who considered herself to be "on duty". I disagree. Miss Morgan identified herself as a police officer. The plain purpose of

doing so was to make it clear that she had an official role. That role was to keep the peace. Miss Morgan might have done this in various ways, but the manner that she adopted was not such as to show that she was simply acting as an ordinary member of the public.

(c) It was said that having identified herself as a police officer in response to a drunken challenge, the words used by Miss Morgan were not such as to indicate that she was acting in the performance of her duties. As a general proposition I disagree for the reasons given above. Particular words are relied upon in later sub paragraphs, and I deal with these below.

(d) The words, "Then you know what's going to happen if you don't go away" were said to be insufficient, and it was said that if Miss Morgan had considered herself to be "on duty" she would have given Miss Hutchinson an express warning. I disagree. In context, these words conveyed the message, "I am a police officer, and it is my role to keep the peace."

(e) Thereafter turning her back and walking away is said to be wholly inconsistent with Miss Morgan believing herself to be "on duty" and dealing with a "public order" situation, and inconsistent with any fear that Miss Hutchinson would assault either Miss Morgan or Mr Meechan. To my mind, however, this was simply the message by which Miss Morgan chose to attempt to defuse the situation. It is possible to fear an assault, but nevertheless conclude that the way to deal with it is by seeking to walk away. It does not follow that Miss Morgan thereby relinquished her role as a police officer. In my view it was plainly proper for Miss Morgan to seek to defuse the situation, and the Commissioner must allow some degree of judgment to Miss Morgan as to how she should do this.

(f) Miss Morgan made no attempt to arrest Miss Hutchinson. For the reasons given earlier this takes matters no further. Having placed herself on duty, it was a matter of judgment for Miss Morgan as to whether or not it was appropriate to arrest Miss Hutchinson.

(g) When Miss Hutchinson followed Miss Morgan, continuing to demand an apology, Miss Morgan simply told her to go home, and turned her back on Miss Hutchinson again, with no express threat to arrest. To my mind all this is consistent with Miss Morgan's wish to defuse the situation, and I do not accept that by taking this course Miss Morgan placed herself "off duty".

(h) When Miss Hutchinson assaulted Miss Morgan by grabbing her, Miss Morgan did not arrest her. For the reasons given above, there was no obligation on Miss Morgan to arrest Miss Hutchinson, and failure to do so does not place Miss Morgan "off duty".

(i) Knowing that Miss Hutchinson claimed Miss Morgan had assaulted her, if Miss Morgan had considered she was acting in the course of her duties she would have called the police herself, taken details of witnesses, and made a note of the incident at the time. While I accept that such a course of action would have been open to Miss Morgan, I do not accept that it was the only course of action that could have been followed consistently with remaining "on duty". Many would have regarded such a course of action as heavy handed.

(j) Although Miss Morgan accepted in evidence that she understood the concept of placing herself "on duty", in her statement of 22.10.00 she said she did not make a note at the time of the incident because she considered it to be an off duty incident. The oral evidence of Miss Morgan explained the position in that regard. Her statement of 22.10.00 said that at the time she made no notes because the incident had finished, it was an off duty incident, and she did not believe there was any need

to do so. There reference to it being an "off duty" incident was not a reference to the technical question of whether she had placed herself "on duty" or not it was simply a reference to the fact that the incident occurred at a time when Miss Morgan was not rostered for duty.

(k) It was said to be extraordinary that the statement of 22.10.00, prepared after receiving legal advice, made no mention of having sought the advice of other officers following the incident. It was also said to be significant that this was not mentioned in Miss Morgan's statement of 17.8.04. I consider that these factors need to be placed in context. In October 2000 there was no issue as to whether Miss Morgan had placed herself "on duty". By August 2004 such an issue had arisen, and in support of it the Commissioner had relied - in his Defence to Miss Hutchinson's claim – on the point made at sub-paragraph (1) above. Miss Hutchinson was well able to meet that point by giving the answer that I have identified in that sub- paragraph, and there was no need for her to go into the question of advice from other officers.

(l) As to Miss Morgan's evidence that she had told DC Sinclair about the incident, Miss Morgan in oral evidence had not said that she told DC Sinclair that she had placed herself "on duty". DC Sinclair's evidence was that if she had told him that then he would have advised her to make a detailed record. To my mind this takes the Commissioner no further. DC Sinclair's witness statement said that if Miss Morgan had told him she produced her warrant card he would have advised her to make a pocket book entry. He accepted however that he could not recall the details of the conversation. It seems to me quite possible that Miss Morgan described in broad terms an incident which from her point of view was trivial without mentioning the fact that she had shown her warrant card, and that on that basis DC Sinclair did not see any reason for her to make an official note of what happened.

125. It was said by the Commissioner at paragraph 15 of his written submission that Miss Morgan's behaviour immediately "post-incident", her failure to make a contemporaneous note, the content of her IRB and the content of her statement of 22.10.00 all suggest that she did not consider herself to be acting in the course of her duties. It is unclear whether it is sought here to make any additional point to those in the sub-paragraphs of paragraph 14. I have re-read my notes of the evidence of Miss Morgan, the content of her IRB, and the content of her statement of 22.10.00, and remain of the view that from the time Miss Morgan produced her warrant card she considered herself to be, and was indeed, acting in the course of her duties.

126. Accordingly I reject the Commissioner's contention that Miss Morgan was not acting in the course of her duties. In the ordinary course Miss Morgan would be entitled to look to the Commissioner to indemnify her for costs she has incurred as a result. However paragraphs 29 to 43 of Mr Ley-Morgan's submissions contended otherwise.

127. It was said at paragraphs 30 to 32 that the position must be judged at the time the decision not to indemnify was made. No authority was put forward for this proposition, and I consider it misconceived. In a note circulated to counsel prior to the hearing on 21.12.04 I formulated the relevant question in this way: whether there is any good reason why the Commissioner should not, as Commissioner of the police force in which Miss Morgan is an officer, indemnify her for expenses she has incurred as a result of carrying out her duties, such expenses taking the form of her costs of defending the claimant's claim, advancing her claim against the first defendant, and defending the claim against her by the first defendant, to be the subject of a detailed assessment if not agreed.

128. I should make it clear that the principles giving rise to an obligation to indemnify are not dependent on any relationship of principal and agent. It is of course well established that such a relationship does not arise merely because by statute a police constable is under 'the direction and control' of the Commissioner. However, given that police constables are statutorily under such direction and control, it seems to me necessarily implicit that they are entitled to be indemnified for reasonable costs incurred as a result of acting under that direction and control.

129. It may be that Mr Ley-Morgan was led astray by the wording of Mr Opperman's contention that the Commissioner should have indemnified Miss Morgan "from the start of this action." As a matter of principle, however, the right to indemnity arises because Miss Morgan has incurred costs as a result of carrying out the functions assigned to her by the Commissioner. Whether – either at the start of the action or at any other time - the Commissioner appreciated that she was indeed carrying out such functions, or ought reasonably to have appreciated this, is irrelevant. It would be illogical for entitlement to an indemnity to depend upon the position as it seemed to be at any particular time when the indemnity is sought, rather than upon the question whether in fact the costs in question have been reasonably incurred as a result of carrying out functions assigned by the Commissioner.

130. In those circumstances I do not propose to make any finding as to what the Commissioner knew when he determined not to indemnify Miss Morgan, nor whether his conclusion was reasonable. Points which might have been relevant to such questions were comprised in the nine reasons given on 20.12.04, and some of these were repeated in paragraph 30. In fact I have no evidence as to the time when that decision was taken, how it was taken, or what was known by those responsible. I was invited to have regard to statements which were not in evidence, but in the light of my conclusions as to relevance I have not sought to ascertain what was in those statements.

131. Paragraph 33 repeated the earlier assertion that Miss Morgan had been confrontational and argumentative, and said that had she been conciliatory Miss Hutchinson would not have grabbed her and this case would never have arisen. I have examined these contentions in a different context above when considering paragraph 14 of the written submissions. It may be intended to suggest in paragraph 33 that Miss Morgan by failing to be conciliatory acted in breach of her duty to the Commissioner. If so, I reject that suggestion: Miss Morgan's instantaneous response to Miss Hutchinson was well within the bounds of acceptable behaviour for a police officer.

132. It is convenient to take next paragraphs 40 to 43, which are concerned with public policy and CPR 44.3. These paragraphs too are misconceived, and again the origin may lie in the way the matter was put by Mr Opperman, who relied upon public policy to support his claim to an indemnity. To my mind no question of public policy arises. The obligation to indemnify arises by operation of law where an individual has reasonably incurred costs as a result of the performance of duties at the direction of another. For the same reason the discretionary principles set out in CPR 44.3 do not come into play: so long as the costs in question were incurred as a result of performing her duties, and were incurred reasonably, Miss Morgan is entitled to reimbursement from the Commissioner.

133. Thus I consider that Miss Morgan is entitled be indemnified by the Commissioner for her reasonable costs of defending Miss Hutchinson's claim.

134. Paragraphs 34 to 39 of Mr Ley-Morgan's submissions dealt with the Part 20 claims. In my view, however, on this aspect of the case as well Miss Morgan is entitled to rely on the legal principle identified earlier. Her actions in performance of her duties led to her being sued as second defendant in this action, which in turn led to the Commissioner's Part 20 claim against her and her own Part 20 claim against the Commissioner. Miss Morgan is accordingly entitled to be indemnified by the Commissioner for her reasonable costs incurred in defending the Commissioner's Part 20 claim, and in making her own Part 20 claim against the Commissioner. In this regard I do not propose to enter into the question whether Miss Morgan was well founded in her contentions by way of defence to the Commissioner's Part 20 claim and by way of support for her own claim: it suffices that she acted reasonably in making those contentions. I conclude that she did indeed act reasonably in that regard.

135. Of course if Miss Morgan is able to recover any part of her costs from Miss Hutchinson then credit must be given to the Commissioner for such sums as Miss Morgan actually receives. I shall return to the question of costs at the end of this judgment.

Hypothetical issues I was asked to resolve

136. At the hearing on 21.12.04 the parties asked that I make findings on points which my conclusion on liability rendered moot. These were:

(a) liability of the Commissioner for actions of Miss Morgan;

(b) causation and contributory negligence as regards Miss Hutchinson's physical injuries;

(c) causation, apportionment and contributory negligence as regards Miss Hutchinson's psychological injuries;

(d) quantum: Miss Hutchinson's physical injuries

(e) quantum: general damages for Miss Hutchinson's psychological injuries (0 quantum: special damages for Miss Hutchinson's psychological injuries.

137. It was said that such findings might be relevant to costs or might be needed in the event that there were a successful appeal against my conclusions on liability. Given that these issues were hypothetical, I asked whether I should proceed on the footing that I treat Miss Hutchinson as a witness who has given the court an accurate account of all that has occurred. Mr Jacobson submitted that I should. Mr Ley- Morgan submitted that I should not, but rather should make my own judgment. Thus he said that in assessing damages I was entitled to be influenced by my conclusion that Miss Hutchinson had not given an accurate account. Mr Opperman agreed that I should not proceed on the footing that Miss Hutchinson was a witness who had given the court an accurate account of all that had occurred. He had not come across a case where findings as to credibility on liability were said to vitiate the alternative findings on quantum.

138. I have concluded that I must resolve this dispute in the manner suggested by Mr Jacobson. I have grave reservations as to whether resolving any of these hypothetical issues is a justifiable use of court time. If my finding on liability is held by the Court of Appeal to be wrong, it seems to me that the resolution of remaining issues may well depend on the extent to which my rejection of Miss Hutchinson's evidence is held to be incorrect, and the reasons for any such conclusion. I can well understand that if after trial of all issues a defendant wins on limitation then the court might nonetheless make hypothetical findings on questions of breach of duty and damages, for the decision on limitation is unlikely to involve a finding as to the accuracy of the claimant's account of events. Where, as in the present case, the court concludes that the defendant wins on liability and holds that the claimant's account of events cannot be relied on I find it difficult to see how the court can usefully resolve hypothetical questions which depend on the reliability of the claimant's account. I am, however, reluctantly prepared to attempt this exercise on the footing that Miss Hutchinson has given the court an accurate account of all that has occurred, as that does not require me to speculate on the extent to which my reasons for rejecting her evidence may or may not be upheld in the Court of Appeal.

139. Accordingly I deal in turn with each of hypothetical issues (a) to (f) on the footing that Miss Hutchinson has given the court an accurate account of all that has occurred. I shall then deal with points made on costs in the parties' written submissions.

Liability of the Commissioner for the actions of Miss Morgan

140. This is hypothetical issue (a). Section 88(1) of the Police Act 1996, entitled "Liability for wrongful acts of constables", provides so far as material:

> "The chief officer of police for a police area shall be liable in respect of [any unlawful conduct of] constables under his direction and control in the performance or purported performance of their functions in like manner as a master is liable in respect of any [unlawful conduct of] his servants in the course of their employment, and accordingly shall [,in the case of a tort,] be treated for all purposes as a joint tortfeasor."

141. The words in square brackets were substituted with effect from 1 October 2002 by s 102 of the Police Reform Act 2002. Prior to that Act s 88 of the 1996 Act referred only to torts. Nothing turns on these amendments for the purposes of the present case.

142. All parties agreed that so far as liability under s 88 was concerned the issue was whether at the time of the alleged assault Miss Morgan was acting either in performance of her duties or in the purported performance of her duties.

143. In *Weir v Chief Constable of Merseyside* [2003] ICR 708 an off duty police officer, PC Dudley, borrowed a marked police van without permission to help his girlfriend move house. The claimant appeared to be rummaging through his girlfriend's belongings. PC Dudley, having previously indicated to the claimant that he was a police officer, manhandled him down the stairs, threw him into the back of the police van and said that he was going to take him to the police station. At paragraph 12 of the judgment the Court of Appeal said:

> "when taking hold of Mr Weir, throwing him down the stairs, assaulting him and locking him in the police van saying he was taking him to the police station ...PC Dudley was apparently acting as a constable, albeit one who was behaving very badly. It is clearly fair that Mr Weir should recover for the assault and the injuries caused and for the time he was forcibly confined in the van."

144. Mr Jacobson submitted that it was immaterial to the Court of Appeal's decision whether the officer in question was in fact justified in taking hold of Mr Weir. There was an apparent action in his capacity as a constable because he had confirmed to Mr Weir that he was a police officer and Mr Weir had understood that to be the case.

145. *Bernard v Attorney General of Jamaica* (Privy Council Appeal No. 30 of 2003) was also relied on by Mr Jacobson. The claimant had been queuing for some time to make an overseas phone call at the Post Office. Eventually his turn came, he picked up the phone and dialled. Suddenly a man intervened, announced "police" and demanded the phone. The man was in fact a police officer. The officer added that he wanted to make a long distance call and told the claimant to let go of the phone. The claimant refused. The officer slapped his hand and then pushed him. When the claimant still refused to let go of the phone the officer pulled out a service revolver and shot him in the head at point blank range. The claimant was rendered unconscious. When he awoke he found himself in a hospital bed surrounded by police officers including the officer who had shot him. The officer arrested him for assaulting a police officer and handcuffed him to the bed.

146. It should be noted that *Bernard* is concerned with a different statutory regime, police officers in Jamaica being employees of the Crown, and the Crown being exposed to vicarious liability for their actions. The Privy Council held that a feature of prime importance on the facts of that case was that there was a purported assertion of police authority, and applying the principle embodied in *Lister v Hesley Hall Ltd* [2002] 1 AC 215 concluded that the Crown was vicariously liable.

147. Mr Jacobson drew attention to the fact that although the officer was treated as not on duty at the material time, the officer said "police" as a pretext to persuade the victim to allow him precedence. The shooting had followed immediately upon the constable's announcement that he was a policeman, and the arrest at the hospital was retrospectant evidence suggesting that the constable purported to act as a policeman immediately before he shot the victim.

148. Mr Jacobson said that this case was in the same category as *Weir* and *Bernard*. Miss Morgan had introduced herself as a police officer, had threatened the claimant with arrest and had then attempted to carry out the threat or to use excessive force. There would have been no need for any retrospective arrest in this case because by introducing herself as a police officer together with a threat of arrest there was sufficient to show that Miss Morgan was apparently exercising her authority as a constable, albeit badly. As had been said by Lord Millet in the case of *Lister*, cited in *Bernard*, it is no answer to say that the employee was guilty of intentional wrong doing or that his act was not merely tortuous or criminal or that he was acting explicitly for his own benefit or that he was acting contrary to express instructions or that his conduct was the very negation of his employers duty.

149. Mr Ley-Morgan submitted that *Weir* was a case where the officer had purported to exercise his lawful power of arrest. As to *Bernard* the shooting followed immediately upon the officer's announcement that he was a policeman, which in context was calculated to create the impression he was on police business. The officer's act in arresting the claimant in the hospital was retrospectant evidence that he had purported to act as a policeman immediately before he shot the claimant, and the police authorities had routinely allowed officers to take loaded service revolvers home and to carry them while off duty, thereby creating the risk that they might be used in an inappropriate way. The officer had purported to use lawful force (albeit disproportionate) upon the claimant because he was interfering in the execution of his duties as a police officer. It was of critical importance that at the first available opportunity, the officer purported to exercise his power of arrest.

150. In *Makanjuola v Commissioner of Police for the Metropolis* (1990) 2AdminLR 214 a plain clothed off duty police officer gained entry to premises by production of his warrant card. When there he proceeded to make enquires regarding the immigration status of the two residents. He informed the residents they were in breach of the immigration regulations, and demanded sexual favours, which the female resident acceded to, in return for his refraining from reporting the irregularities. Henry J determined that the Commissioner was not liable for the actions of the officer under Section 48(1) of the Police Act 1964 (which is identical to Section 88 of the 1996 Act). It was common ground that the expression "police functions" referred to" the ordinary police functions of investigating, preventing, discovering and reporting crime, including the power of arrest". The first defendant contended that the same approach should be applied in this case. As to "purported", Henry J held that this meant "in the professed performance of his functions." His judgment also used the expression "pretending to be acting in the course of his employment". Obtaining entry to the premises by identifying himself as a police officer and going on to make enquires was in purported performance of his police functions, and a statement by the officer that he intended to arrest, report, warn or take no further action would also be in purported performance of his police functions. However, this case was not concerned with something which a police officer might in certain circumstances be entitled to do, but something which the resident could never have believed was or could have been done in the performance of his duty, it being clear to her as it would have been to anyone else, that the demand for sexual favours was one which no one could make as a police officer.

151. Applying these principles to the account given by the claimant in the present case, Mr Ley-Morgan said that actions of Miss Morgan before she identified herself as a police officer could not lead to liability under Section 88, as she was neither acting nor purporting to act in the performance of her police functions. This meant the Commissioner could not be liable for the initial poking of the chest. As to her identifying herself as a police officer, the reasoning in *Makanjuola* makes clear that this does not mean that the first defendant is automatically liable for any assault that occurs thereafter. On the claimant's version of events, it was difficult to see what police function Miss Morgan was purporting to exercise. She had simply identified herself as a police officer as a means of emphasising that she would not give an apology. There then came the point at which the subject of arrest was mentioned. The evidence on that was insufficient to conclude that Miss Morgan actually threatened the claimant with arrest (whether by herself or other officers) or that if she did, the claimant ever believed that she would carry out that threat. Alternatively, the forcing of Miss Hutchinson's arm up behind her back and restricting her freedom of movement was not a purported exercise of a power of arrest. Miss Hutchinson described Miss Morgan has having simply attacked her. As a matter of common sense, this was a pure assault; a restriction of movement during a very short assault would stretch the concept of arrest beyond breaking point. Miss Morgan made no attempt at the time or subsequently to justify her actions on the ground that she had been exercising her lawful power of arrest (which was said to distinguish the case from *Weir* and *Bernard*). After the assault Miss Morgan made no attempt, either verbally or physically, to stop Miss Hutchinson moving away. The restraining hand was placed on the arm in response to Miss Hutchinson saying that she was going to call the police, not as a means of confirming that Miss Hutchinson was under arrest. No reasonable person who watched the incident unfold could have thought that such an assault by Miss Morgan was in performance of her police functions. The only reasonable inference to be drawn from Miss Morgan seeking to prevent Miss Hutchinson from calling the police is that Miss Morgan knew she had not purported to arrest Miss Hutchinson.

152. Mr Ley-Morgan added that Miss Morgan's failure to make any contemporaneous record of the incident demonstrated that she considered she was neither performing nor purporting to perform her police duties. In her statement of 22 October 2000 Miss Morgan referred to herself as being "off duty"

at the time of the assault. The truth of the matter was said to have been pleaded at paragraph 5(4) of the particulars of claim – Miss Morgan simply lost her temper and when she attacked Miss Hutchinson she was not purporting to exercise any police power. While the court might be sympathetic to Miss Hutchinson, the courts should adopt the approach of Henry J in *Makanjuola* : the matter was not one of sympathy or policy but one of construction of the statute.

153. Mr Opperman in submissions on behalf of Miss Morgan submitted that the evidence was against the Commissioner's submission that he was not responsible for Miss Morgan's actions. Citing *Bernard* he said it was hard to think of a more extreme act than that that was done by the Jamaican officer – namely shooting of a civilian for failure to give up a phone – and yet the officer's superiors were vicariously liable.

154. Proceeding on the basis that Miss Hutchinson is a witness who has given the court an accurate account of all that has occurred, I agree with Mr Ley-Morgan that actions of Miss Morgan before she identified herself as a police officer would not in this case lead to liability under Section 88. Thus the Commissioner would not be liable for the initial poking of the breastbone described by Miss Hutchinson. However, I would have held that the Commissioner was liable under s 88 for the actions of Miss Morgan once she said she was a WPC. The words described by Miss Hutchinson as being used by Miss Morgan are words which in my view would indicate that Miss Morgan was purporting to perform her police duties. Mr Ley-Morgan's contentions as to what may have been in the mind of Miss Morgan do not detract from this fact. An objective observer seeing the events described by Miss Hutchinson would say that this was a case like *Weir* : Miss Morgan would on these facts be apparently acting as a constable, albeit one who was behaving badly. A precise examination of whether the words used amounted to a threat to arrest seems to me unnecessary: the plain implication from Miss Morgan identifying herself as a police officer was that from that time onwards she was acting officially. In any event, on the hypothetical basis here adopted I must assume that Miss Hutchinson believed that there was a threat to arrest, and on the same basis I would have considered that belief to be objectively reasonable.

155. I would have distinguished *Makanjuola* from the present case. There the police officer's actions went completely outside the range of conduct that police officers could in certain circumstances perform. By contrast, the actions alleged in the present case might in certain circumstances be necessary: they were unlawful because on the hypothetical facts in the present case they would have been wholly inappropriate.

Causation of physical injuries

156. This is hypothetical issue (b). I can deal with it shortly. If I were proceeding on the basis that Miss Hutchinson was a witness who had given the court an accurate account of all that occurred, I would inevitably have accepted her evidence that the assault caused the injuries she has described. For the same reason I would have rejected any suggestion that she caused or contributed to those injuries.

Causation of psychological injuries

157. This is hypothetical issue (c). On this hypothesis, Professor Weller was given an accurate account of events by Miss Hutchinson, and I would have accepted his evidence that her personal history is likely to have made her unusually susceptible to PTSD. I would also have accepted his evidence that events subsequent to the assault were unlikely to be separate stressors: once the assault had brought about PTSD Miss Hutchinson's ability to cope was impaired, and things which previously would not have had a significant affect on her mood and conduct became problematic. In any event, I would have held that adverse effects of the problems which arose in the course of the criminal and disciplinary proceedings, the stress of the civil litigation, and the later employment problems all flowed from the assault.

158. I add that I would not have reached these conclusions without hesitation. I do not think it was enough for Professor Weller merely to have said in his report that it was arguable whether the index episode satisfied the diagnostic criteria for PTSD. He ought to have set out the arguments against such a conclusion.

159. Nevertheless the arguments against such a conclusion were fully canvassed in cross-examination of Professor Weller. The literature did not show a previous case of this kind. While that is a strong point, it would not in my view have outweighed the factors identified by Professor Weller as pointing to a diagnosis of PTSD in this case. Diagnosis of PTSD is a developing field, and one could not expect all cases to have been documented in the literature to date. Moreover, on the hypothetical basis adopted for present purposes, grave symptoms described by Miss Hutchinson occurred from the time of the assault and have continued; those symptoms are to a substantial degree associated with reminders of the assault. Whether they are properly described as PTSD or not, I would have to proceed on the basis that they existed and continue to exist. On the hypothetical basis adopted for present purposes, I can see no reason to think that they would cease to exist in the foreseeable future.

160. As to whether Miss Hutchinson had contributed to any of her psychiatric injuries, on the hypothetical basis adopted for present purposes I would not have considered that such failings as have been identified by the defendants could be blamed on Miss Hutchinson given what she has said about the impact of events on her.

161. Professor Weller said that Miss Hutchinson would in any event have been likely to suffer from depression as a result of events such as the death of her mother. This seems to me completely different in degree from the symptoms Miss Hutchinson describes as following on from the assault. On the hypothetical basis adopted for present purposes I would not have regarded this as something which should be taken account of when considering Miss Hutchinson's claim for psychiatric injury.

Quantum: physical injuries

162. This is hypothetical issue (d). At my request the parties prepared a Scott Schedule identifying the points in dispute. My hypothetical resolution of relevant points, on the basis that Miss Hutchinson is a witness who has given the court an accurate account of all that has occurred, appears in the Hypothetical Scott Schedule at Annex 3.

Quantum: psychological injuries - general

163. This is hypothetical issue (e). My hypothetical resolution of relevant points, on the basis that Miss Hutchinson is a witness who has given the court an accurate account of all that has occurred, appears in the Hypothetical Scott Schedule at Annex 3.

Quantum: psychological injuries - expenses

164. This is hypothetical issue (f). My hypothetical resolution of relevant points, on the basis that Miss Hutchinson is a witness who has given the court an accurate account of all that has occurred, appears in the Hypothetical Scott Schedule at Annex 3.

The parties' written submissions on costs

165. The Commissioner sought costs from Miss Hutchinson. Miss Morgan sought costs from both Miss Hutchinson and the Commissioner. I have set out above my reasons for concluding that the Commissioner is liable to indemnify Miss Morgan in that regard. That does not mean that she cannot claim costs from Miss Hutchinson. Miss Morgan has succeeded in her defence to Miss Hutchinson's claim, and the Commissioner has likewise succeeded in his defence to Miss Hutchinson's claim. The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party. Application of the general rule would

mean that Miss Hutchinson should pay the costs of the Commissioner and the costs of Miss Morgan.

166. In written submissions dated 20.12.04 Mr Jacobson on behalf of Miss Hutchinson contended that if I found that the Commissioner would have been vicariously liable for the acts or omissions of Miss Morgan, then Miss Hutchinson should not be liable to pay Miss Morgan's costs or alternatively should not be liable to pay 2 sets of defendants' costs. Mr Ley-Morgan in his submissions of 5.1.05 responded that on the court's findings the claim should not have been brought against either defendant, this was

not a case of one defendant joining another, and that the Commissioner acted reasonably in adopting a neutral stance on the facts of the alleged assault while denying vicarious liability. Mr Jacobson's submissions in response dated 14.1.05 said that Miss Hutchinson joined Miss Morgan as second defendant only because the Commissioner denied vicarious liability, a position which the authors of a leading text had said was unlikely to arise in practice. Although the Commissioner had concluded there were inconsistencies in Miss Morgan's account of putting herself "on duty", the fact remained that she was acting under his direction and control. It would have been appropriate for the Commissioner to conclude that on both the respective versions put forward by the two sides Miss Morgan was acting under his direction and control at the material time. On this basis it would have been for the Commissioner to decide whether to settle with Miss Hutchinson or go to trial on the evidence of Miss Morgan. In the latter event in the course of the trial the Commissioner, "like any employer, would experience the benefits, the burdens, the surprises and disappointments of the trial process."

167. I consider that Mr Jacobson's submissions over-simplify the position. It is true that on the hypothetical basis that I treat Miss Hutchinson as a witness who has given the court an accurate account of all that has occurred, my conclusion would be that the Commissioner was liable under s 88 for the assault described by Miss Hutchinson. However, it was by no means clear prior to trial – or indeed during the trial - that I would be bound to accept the entirety of Miss Hutchinson's evidence. On the contrary, there was in my view a respectable case to be made to the effect that Miss Hutchinson had exaggerated the degree to which Miss Morgan presented herself as acting as a police officer. If that case was born out by the evidence at trial, then the Commissioner would not be liable under s 88, nor would he necessarily be liable to indemnify Miss Morgan. In my view the Commissioner was reasonably entitled to probe witnesses at trial for this purpose.

168. Accordingly I conclude that there is no reason to do anything other than apply the general rule, with the result that Miss Hutchinson should be ordered to pay the costs of both the Commissioner and Miss Morgan. So far as the Commissioner is concerned those costs will include his costs of putting forward the contentions he advanced in making his Part 20 claim and defending Miss Morgan's Part 20 claim. So far as Miss Morgan is concerned those costs will include her costs of putting forward the contentions she advanced in making her Part 20 claim and defending the Comissioner's Part 20 claim. I consider that it was reasonable for each of them to have put forward those contentions.

Overall conclusion

169. This claim by Miss Hutchinson fails. At the specific request of the parties I have set out hypothetical conclusions on issues other than liability. Those hypothetical conclusions do not affect the orders which I would otherwise have been minded to make on costs.

170. I will hear counsel on the appropriate form of orders to be made in the light of this judgment.

Hutchinson v Commissioner of Police for the Metropolis

Annex 1 to Judgment of Walker J dated 27.7.05:

MISS MORGAN'S IRB (INCORPORATING RECONSTRUCTIONS)

TIME NOTES STARTED: 3:20 22/05/00

TIME NOTES COMPLETED: 5.05 22/05/00

LOCATION NOTES MADE: CX CANTEEN

Page 1

ON SATURDAY 25TH MARCH 2000 I WAS OFF DUTY ATTENDING A PRIVATE PARTY ALONG WITH MY FIANCÉ AT THE DAVID LLOYD TENNIS CENTRE BUCKHURST HILL, WHICH J. SAINSBURY SUPERMARKETS WERE HOSTING. THE PARTY BEGAN AT ABOUT

8.00PM I ARRIVED AT ABOUT 9.00PM AT ABOUT 11.00PM AN ARGUMENT TOOK PLACE INSIDE THE TENNIS CENTRE IN THE HALL WHERE THE PARTY WAS HELD. THE ARGUMENT BETWEEN 3 OR 4 WHITE MALES ~~WERE~~[DM] WAS GETTING MORE AND MORE HEATED, I FOUND

Page 2

Continued: OUT THAT THE ARGUMENT WAS OVER A BAR BILL, THE SECURITY GUARDS ASKED THE MEN TO PAY THE BILL FOR THE DRINKS BUT THEY REFUSED, AND BECAME VERY ABUSIVE AND ~~VOILENT~~[DM] VIOLENT TO THEM. THE SECURITY GUARDS ASKED THE MEN TO LEAVE THE HALL, BUT THEY REFUSED. I SAW MY FIANCÉ STEPHEN MEECHAN D.O.B. 26.12.65 GO IN BETWEEN THE WHITE MALES AND THE SECURITY GUARDS. MR MEECHAN WAS TALKING TO THE MALES TRYING TO PERSUADE THEM TO PAY THE BILL AS THE POLICE WERE ABOUT TO BE CALLED, I WAS* ABOUT 3 YARDS AWAY AND COULD HEAR AND SEE EVERYTHING, I HAD A CLEAR AND UNOBSTRUCTED VIEW. MR MEECHAN IS THE SENIOR DUTY MANAGER OF THE SOUTH WOOD J. SAINSBURY'S STORE AND THE WHITE MALES WERE HIS EMPLOYEES. I SAW ONE OF THE SECURITY GUARDS WALK AWAY TO THE LEFT HAND SIDE OF THE BAR, I IDENTIFIED MYSELF AS A POLICE OFFICER AND PRODUCED MY

*STANDING

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[MISSING LINES AT TOP RECONSTRUCTED AS: WARRANT CARD AND OFFERED MY ASSISTANCE IF HELP WAS NEEDED. I SAW A WHITE MALE WHO I NOW KNOW TO BE MR STEPHEN GIBBARD LIFT UP HIS RIGHT]

ARM AND TIGHTEN HIS FIST AS IF TO STRIKE OUT AND PUNCH, MR MEECHAN. I GOT IN BETWEEN THE WHITE MALE AND MR MEECHAN AND TOLD THE WHITE MALE ~~TO~~[DM] "CALM DOWN" HE REPLIED "WHY WHO THE FUCK ARE YOU" I SAID "I AM A POLICE OFFICER" AND PRODUCED MY WARRANT CARD. THE WHITE MALE TRIED TO HEAD BUT ME, AND AS I MOVED MY HEAD OUT OF THE WAY I GRABBED THE WHITE MALE BY HIS WHITE SHIRT AROUND THE COLLAR AND SAID "YOU ARE LEAVING" HE SAID "I CAN'T BELIEVE A BIRD HAS TOLD ME TO LEAVE" AS HE SAID THIS THE TWO SECURITY GUARDS FALSED THERE WAY INTO THE CROWD AND REMOVED HIM FROM THE PREMISES. 3 WHITE WOMEN THAT I DID NOT KNOW SAID "YOU ARE NOT ARRESTING HIM" AND TRIED TO PEN ME IN A CORNER I BROKE FREE AND FOLLOWED THE WHITE MALE OUTSIDE INTO THE CAR PARK WHERE A FIGHT BETWEEN 10-15 MALES WAS ABOUT TO TAKE PLACE

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Continued: THE WHITE MALE FROM THE PARTY WAS ALSO INVOLVED IN THIS I APPROACHED THE WHITE MALE AND SAID "IF YOU DON'T LEAVE IMMEDIATELY YOU WILL BE ARRESTED." THE WHITE MALE TOOK ME TO ONE SIDE AND SAID "I'M REALLY SORRY I WAS OUT OF ORDER I WILL PAY THE BILL, I'VE HAD TO MUCH TO DRINK AND I DIDN'T WANT TO LOOK STUPID IN FRONT OF MY MATES WITH A BIRD TAKING ME OUTSIDE." I SAID "GO HOME AND TAKE YOUR FRIENDS WITH YOU" HE SAID "YEAH, SORRY, YEAH" THE WHITE MALE CALLED TO SOME OF HIS FRIENDS THAT WERE ABOUT TO FIGHT AND 3 OR 4 OF THEM WALKED AWAY. I WALKED OVER TO THE REST OF THE GROUP OF MALES AND PRODUCED MY WARRANT CARD AND SAID I WAS A POLICE OFFICER AND NOT TO BE SILLY, THE MALES BROKE UP AND WENT INTO DIFFERENT DIRECTIONS AND LEFT THE DAVID LLOYD TENNIS CENTRE. I WAS ABOUT TO WALK BACK INTO THE PARTY WHEN I NOTICED SOME MEMBERS OF MANAGEMENT FROM **C 75**

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[MISSING LINES AT TOP RECONSTRUCTED AS: SAINSBURYS ACROSS THE OTHER SIDE OF THE CAR PARK. I MET UP WITH THEM]

WHERE THE MANAGEMENT TEAM COULD NOT STOP THANKING ME, FOR MY EFFORTS AND KEEPING CONTROL OF THE SITUATION. THE MEMBERS OF MANAGEMENT WENT BACK TO THE PARTY AND MR MEECHAN DROPPED BACK TO SPEAK TO ME. WE SAID THAT WE WOULD SAY OUR GOODBYES AND THEN LEAVE AS THERE WAS QUITE ENOUGH EXCITEMENT FOR ONE EVENING. AS WE WERE WALKING ALONG THE CARPARK A WHITE FEMALE AGED BETWEEN 33-38 WHO I DID NOT KNOW BUT WHO MY FIANCÉ MR MEECHAN DID KNOW, APPREACHED ME AT A VERY FAST SPEED SHE STARTING SHOUTING "I WANT HER TO SAY SORRY" AND POINTED AT ME. I NOW KNOW THIS WHITE FEMALE TO BE DEBBIE HUTCHINSON A J.SAINSBURY EMPLOYEE, OF THE SOUTH WOODFORD STORE GEORGE LANE. MR MEECHAN ~~TOLD HER TO GO HOME, AS I HAD~~[DM] SAID "GO HOME

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SHE HAS NOTHING TO SAY SORRY FOR" HUTCHINSON SAID "SHE PUSHED ME WHEN YOU WERE COMING DOWN THE STAIRS" I SAID "I DO NOT ~~REMEM~~[DM] REMEMBER YOU AND I AM NOT SAYING SORRY FOR SOMETHING I HAVE NOT DONE." HUTCHINSON THEN STARTED SWEARING AND BEING VERY ABUSIVE TO BOTH ME AND MR MEECHAN. MR MEECHAN SAID "DEBBIE IF YOU HAVE A PROBLEM I WILL SEE YOU ON MONDAY". HUTCHINSON AGAIN STARTED SWEARING AND WAS ABOUT ONE YARD AWAY FROM MR MEECHAN'S FACE SHOUTING ABUSE. HUTCHINSON GRABBED HOLD OF MR MEECHAN'S LEFT AND RIGHT ARMS USING BOTH OF HER HANDS TO DO SO. MR MEECHAN SAID "GET OFF OF ME" HUTCHINSON SAID "WHY WHAT ARE YOU GOING TO DO?" I SAID "TAKE YOU HANDS OFF OF HIM RIGHT NOW" HUTCHINSON SAID "WHAT ARE YOU GOING TO DO I'LL FUCKING HAVE YA, COME ON, COME ON THEN" I SAID "I DON'T THINK THAT'S A GOOD IDEA AS I AM A POLICE OFFICER, I PRODUCED MY WARRANT CARD. SHE

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[MISSING LINES AT TOP RECONSTRUCTED AS: SAID, "I USED TO BE A POLICE OFFICER AND I WOULD NOT HAVE HANDLED IT LIKE THIS." I SAID,]

"THEN YOU KNOW WHATS GOING TO HAPPEN", IF YOU DON'T GO AWAY". I TURNED MY BACK ON HER AND WALKED IN A DIFFERENT DIRECTION, HUTCHINSON BLOCKED MY PATH AND PUT HER FACE 2CM AWAY FROM MINE AND SAID "GO ON THEN ARREST ME, AND IT WILL BE THE LAST THING YOU'LL EVER DO. I COULD SMELL INTOXICATING LIQUOR ON HER BREATH AND SEE THAT HER EYES WERE GLAZED AND HER SPEECH WAS VERY SLURRED, THE ONLY WAY I CAN DESCRIBE HER BEHAVIOUR ON THE NIGHT IS TO THAT OF A (BANSHEE), DEBBIE HUTCHINSON WAS DRUNK I SAID "GO HOME YOU ARE DRUNK" SHE SAID "OH WHAT AND YOUR NOT" I SAID "NO I AM AS SOBER AS A JUDGE" SHE SAID SHOUTING "YOU ARE STILL GOING TO SAY SORRY". I TURNED MY BACK ON HUTCHINSON, AS I DID SO SHE GRABBED MY RIGHT ARM, I PULLED MY ARM UP ~~AS~~ [DM] AND AS I DID SO, HUT-

Page 8

CHINSON FELL TO THE FLOOR, SHE WAS ON THE FLOOR SCREAMING "SHE HAS HIT ME, SHE HAS HIT ME" I SAID "DON'T' BE SILLY GET UP" SHE GOT UP AND RAN OFF CRYING IN THE DIRECTION OF THE ENTRANCE TO THE TENNIS CENTRE. I FOLLOWED HER TO THE PHONE, SHE SAID "I'M CALLING THE POLICE I SAID "OK I WILL WAIT HERE" SHE

SAID " I KNOW PEOPLE VERY HIGH UP. WHEN HUTCHINSON SAW ME WAITING SHE SAID "GO AWAY GO AWAY I'LL CALL THEM WHEN YOUR NOT HERE." DEBBIE HUTCHINSON THEN RAN UPSTAIRS. MR MEECHAN AND MYSELF THEN CAUGHT A TAXI AND WENT HOME.

[Signature:] Danielle Morgan PC/6204

[Stamp: unknown.]

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Hutchinson v Commissioner of Police for the Metropolis

Annex 2 to Judgment of Walker J dated 27.7.05:

PROFESSOR WELLER'S EVIDENCE

1 Professor Weller's first report was dated 9th December 2002, and was based on his examination of the claimant on 11 November 2002. He recorded (A8) that he had been provided with copies of GP records and correspondence, witness statements of Doctor Shantir dated 26.6.00 and 18.5.01, and "Miss Hutchinson's statement and supplemental statement, undated." The first of these was [in fact the claimant's statement to the police, dated 15.5.00, C116]. The "supplemental statement" was a document which, it emerged, had not been disclosed prior to the trial. It was a stand-alone account of events. [The claimant told me she had prepared it at the request of her solicitors, but she could not give it a date. It was added to the trial bundles as C274 and 275.]

2 After setting out the claimant's personal history, education, and employment, the report dealt with "hobbies, interests and life style". Under this head it said:

> "Since her alleged assault she has been drinking more. At her maximum, she was drinking up to 9 or 10 shorts a day. Before the assault, she drank socially and very rarely and she has managed to cut down her drinking to the same sort of pre-assault level.
>
> She is now smoking about 35 cigarettes a day and before the assault was smoking between 15 and 20 a day."

3 Under the heading "Relationships", the report described the claimant's relationship with her current partner, Mr Flory. Professor Weller noted that this was preceded by a relationship which broke up in 1987 when the claimant discovered that her then partner was seeing a close friend of hers and had been doing so for a few years. The couple had been planning on getting married but this was cancelled. The claimant drank a bottle and a half of vodka and was discovered comatose by her brother and it was believed that he had taken an overdose but, in fact, she had not.

4 The report then dealt with medication before summarising the assault described by the claimant.

5 Under the heading "Psychiatric Sequelae" the report recorded the symptoms now described by the claimant in her witness statement in these proceedings. Professor Weller continued:

> "I believe that the symptoms which Miss Hutchinson describes constitute [PTSD] according to DSM IV criteria. I append the diagnostic criteria.
>
> The Impact of Events Scale (Horowitz, 1979) specifically measures the effects of traumatic events. The Intrusion subscale measures the extent to which the memories of the traumatic event continue to impinge unwanted upon the mind, and the avoidance subscale measures the extent to which people try to put the bad memories out of their mind. Together the two scales give a total impact of events score.

> On the revised Impact of Event Scale she scored in the mild range but entirely focussed on intrusion symptoms. At her worst, judging by her symptoms at that time, her score would have been in the moderate range, comparable to a patient sample seeking treatment and suffering from [PTSD]."

6 This section of the report then continued with a further account of the claimant's description of her psychiatric symptoms. The report then described an interview with Mr Flory. This was followed by extracts from the witness statements of Doctor Shantir and the GP manuscript records and medical correspondence.

7 The diagnostic criteria referred to in the passage cited above were taken from the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association and commonly known as "DSM-IV." They were set out by Professor Weller as follows:

> "Appendix
>
> Symptoms of Post-Traumatic Stress Disorder specified in DSM-IV are itemised below.
>
> The person has been exposed to a traumatic event in which the person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others and the person's response involved intense fear, helplessness, or horror.
>
> The traumatic event is persistently re-experienced in one (or more) of the following ways
>
> recurrent and intrusive distressing recollections of the event, including images, thoughts, or perceptions, or recurrent distressing dreams of the event.
>
> acting or feeling as if the traumatic event were recurring, includes a sense of reliving the experience, illusions, hallucinations, and disassociative flashback episodes (including those which occur on awakening or when intoxicated).
>
> intense psychological distress at exposure to internal or external cues that symbolise or resemble an aspect of the traumatic event.
>
> psychological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event.
>
> The individual also has persistent avoidance of stimuli associated with the trauma
>
> and numbing of general responsiveness (not present before the trauma), as indicated by three (or more) of the following:
>
> efforts to avoid thoughts, feelings, or conversations associated with the trauma efforts to avoid activities, places, or people that arouse recollections of the trauma. inability to recall an important aspect of the trauma
>
> markedly diminished interest or participation in significant activities
>
> feeling of detachment or estrangement from others
>
> restricted range of affect

sense of a foreshortened future (e.g. does not expect to have a career, marriage, children, or a normal life span).

Persistent symptoms of increased arousal (not present before the trauma), as indicated by two (or more) of the following:

difficulty falling or staying asleep

irritability or outbursts of anger

difficulty concentrating

hypervigilance

exaggerated startle response.

The disturbance, which has lasted for at least a month, causes clinically significant distress or impairment in social, occupational, or other important areas of functioning."

8 Under the heading "Opinion and Prognosis", the report included the following:

"There is a positive family history of psychiatric problems. Miss Hutchinson's brother had psychiatric treatment and her father had alcohol and gambling problems. Miss Hutchinson had a stressful childhood and early psychiatric problems, pointers to vulnerability to further neurotic reactions ... Her early need for a trusting and supportive relationship will have resonated adversely with the circumstances of the alleged assault.

Distress is greater if the events are physically threatening, sudden, unpredictable and outside of the control of the individuals adversely affected ... It is arguable whether the index episode satisfied the diagnostic criteria for Post Traumatic Stress Disorder, in particular the so-called stressor criterion in DSM-IV:

> The person has been exposed to a traumatic event in which the person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others and the person's response involved intense fear, helplessness, or horror.

Nevertheless, Miss Hutchinson's symptoms are characteristic (see appendix).

A prospective study documenting psychopathology was undertaken in 48 subjects exposed to a range of physical trauma, but whose injuries were of similar severity. There was no correlation between the severity of the stressor with the subsequent development of [PTSD]...

A positive family history of psychiatric problems increases the likelihood of Post Traumatic Stress Disorder ...

'Many individuals in the community suffer from PTSD and other stress reactions. Physicians, however, tend to diagnose post-traumatic symptoms as anxiety or depressive disorders rather than PTSD.' (Davis and Breslau 1994)

….

> Miss Hutchinson feels worse in the morning. Whilst it is understandable for people to get upset and irritable in the evening with the problems of the day accumulating, the pattern of these symptoms being worse in the morning is more difficult to understand. This ‘diurnal’ pattern of symptom intensification, combined with irrational feelings of guilt is part of a constellation which is described as a ‘melancholic’ pattern of illness, compatible with a constitutional element and of the more severe type of depression."

9 Under the heading "Reliability of Self Reports" Professor Weller described his use of a dissimulation index, on which the claimant obtained a score below the range of people who simulated. Under the heading "Treatment" Professor Weller recorded his advice that the claimant should apply to her GP to see if she could get formal counselling, preferably cognitive behaviour therapy from a chartered psychologist, and whether she could have her medication reviewed by a consultant psychiatrist, but in any event she should go back on the Venlafaxine, which is an effective antidepressant on which she felt better.

10 Under a final heading, "Prognosis", Professor Weller said that as symptoms had been apparent for over two years seven months they were chronic by definition, which was an unfavourable prognostic feature, as was the early emergence of excessive alcohol consumption. Those whose PTSD symptoms persist beyond three to six months have a high probability of becoming chronic cases. Even with treatment, the claimant was likely to be vulnerable to stress and for her symptoms to be exacerbated or re-ignited in stressful circumstances. Settlement of the litigation could be helpful but the claimant did not seem unduly anxious on that score, and the follow up literature did not support this in the medium term.

11 Professor Weller prepared a second report dated 7th May 2004. This said that the physical assault described by the claimant was not likely to have caused significant psychiatric illness in the absence of other factors. One such factor was being female, with about twice the risk of developing anxiety or depressive reactions. A second factor was family history. Her brother had psychiatric treatment and her father had alcohol and gambling problems. Her childhood was stressful with early psychiatric problems, pointers to vulnerability to further neurotic reactions. Her early need for a trusting and supportive relationship would probably have resonated adversely with the circumstances of the assault. Her psychiatric problems were caused by the interaction of her vulnerability with the index episode. The likelihood of such a major upsetting event was remote, and nothing in the claimant’s history since 1987 suggested that she succumbed to less threatening events. As to the event in 1987, the psychiatrist whom she saw did not feel that she had any formal psychiatric problem or that she required treatment. Her experience as a special constable testified to her resilience in the hurly burly of life.

12 In a third report dated 21st June 2004 Professor Weller repeated the points made in his second report about the family history. He did not believe that a person of normal disposition would have suffered as extensive a psychiatric reaction. The claimant had "an egg shell personality" which led to the character of the incident affecting her in excess of a person with normal fortitude. However, there was a gender difference with women having around double the psychiatric vulnerability of men for Major Depressive Disorder and PTSD. In the absence of the index episode she would not have inevitably have become psychiatrically ill, but was likely to suffer from bouts of depression following major life events. Professor Weller noted her resilience following a road traffic accident on 28.5.92, when she sustained significant physical consequences from a whiplash neck and back injury.

13 Professor Weller prepared a fourth report during the afternoon and evening of 17.11.04, following the start of Mr Opperman’s cross-examination of the claimant. In this report Professor Weller noted that the claimant’s symptoms had been apparent for more than four and a half years. There was a well-established chronicity. He identified separate psychiatric conditions from which the claimant suffered. First, depression: many depressed patients continue to suffer from symptoms, which may take a number of paths: sustained chronic depression without any recovery, multiple recoveries and relapses, and partial recovery to disthymia and further relapses. Second, anxiety disorder: this was even more likely to result in a chronic disorder than depression. Third, agoraphobia: what was now occurring was that an approach to the feared situation was followed by withdrawal, the withdrawal was then accompanied by a reduction in anxiety, and this then reinforced the avoidant behaviour. Fourth, PTSD, a condition which failed to remit in somewhat more than one third of persons even after many years;

here the abnormal detachment (dissociation) which happened at the time of the assault and repeatedly afterwards is associated with chronicity and poor prognosis – those with peritraumatic dissociation were over 4 times more likely to develop acute PTSD and almost five times more likely to develop chronic PTSD.

14 Professor Weller then turned to the subjects of alcohol and employment. On the former, there was an elevated risk of three times the expected frequency for alcohol abuse in PTSD, and it was prognostically detrimental. On the latter, re-employment difficulties were significantly associated with poorer outcome of PTSD among the survivors of Piper Alpha.

15 Looking at the claimant's conditions together, the fourth report observed:

> "... many researchers have noted that more than one concurrent psychiatric illness (comorbidity) ... is associated with increased psychiatric suffering and increased use of medical service. ... depression with a comorbid anxiety disorder has a poor prognosis ... and the presence of comorbid depression is a predictor of chronicity of [PTSD] ..."

16 Overall, Professor Weller concluded this report as follows:

> "Because of Miss Hutchinson's several diagnoses and the several adverse prognostic factors, it is to be expected, on the basis of the relevant literature, that a previously established set of chronic disorders should have remained chronic. Miss Hutchinson's psychiatric conditions originating from the index assault have an established momentum which have undergone episodic aggravations but these aggravations have not materially affected the unleashed momentum."

17 Professor Weller also prepared a fifth report during the course of the trial. This was dated 19.11.04, and dealt with conversations between himself and the claimant at court on 16 and 17 November 2004 before she gave evidence. This fifth report included the following:

> "I had the opportunity of speaking with Miss Hutchinson on the 16th and 17th November 2004 in the precincts of the court. Miss Hutchinson described currently taking the antidepressant Venlafaxine, as I had advised and having been told by her G.P. that counselling would not transpire for 1 or 2 years. She told me that she had not heard anything further on that matter. Miss Hutchinson's avoidance of reminders seems to have generalised and she now describes fears of crowded situations and social gatherings, and a fear of answering the telephone. I consider that these are symptoms of Agoraphobia and Social Anxiety Disorder. Miss Hutchinson advised me that she has struggled with her alcohol consumption.
>
> I took Miss Hutchinson's pulse in court, after her Counsel had given a description of her alleged assault. Here hands were trembling and her pulse rate was 150 beats per minutes. During a more emotionally neutral period of the proceedings, Miss Hutchinson's pulse rate had reduced to 120 beats per minute. These rates are very fast, compatible with abnormally high anxiety. A normal resting adult pulse rate would be in the region of 70-75 beats per minute. The particularly high rate during the description of the assault and the accompanying tremor are indicative of a marked sensitivity to re-evocations of the memory of the event, making counselling and Cognitive Behavioural Therapy difficult.
>
> There is an understandable reluctance of many sufferers to discuss their experiences with others, including during therapy and this sensitivity is sometimes so great that Post Traumatic Stress Disorder can even be initiated for the first time some time after the trauma as a result of the anxiety inculcated by psychotherapy,"

18 Cross-examination of Professor Weller by Mr Opperman began at 14.40 on 22nd November. The professor accepted that his reports were only as good as the information on which they were based. He

thought he had sufficient information in December 2002. It occurred to him that there might be other causes of the claimant's symptoms, aside from the assault, in December 2002, at least some of the symptoms. He did not and does not consider it a particularly complex case.

19 As to Doctor Pfeffer's involvement, Professor Weller's view was that the medical history confirmed what he had said already. He would have hoped that the claimant would tell him about the 2+ years of temper tantrums, and he gave the opportunity to do so. For understandable reasons, people don't remember these things, and she did not tell him. He would have expected it to be in answer to the penultimate question at E9, and on the same question re time off. And if anything in the last 18 months, then two questions above. People often don't give these things saliency. The claimant may well have thought that the criminal proceedings, police investigation and police disciplinary and civil litigation aspects were already known and did not need to be itemised. It would have been helpful for her to itemise them. He was often not told things. He did not believe he was told of these matters in letters of instruction, and certainly was not told them by the claimant. As to E/7, the claimant asserted "the overdose" was over consumption of alcohol, and might not have thought it needed to be mentioned. A well-known consultant, Doctor Pfeffer said no psychiatric problem was present but suggested the possibility of PMT.

20 The professor said he was not handicapped: he had information from medical notes. He did not form the impression that the claimant trying to mislead or deceive. As to the claimant saying she had had "no support from the company" — she came to learn that her mother abandoned her in infancy, she was bullied by siblings, she needed a relationship with an authority figure. There had been a perceived assault by an authority figure, and so there was difficulty with some perceived over-arching authority figure.

21 After a discussion of medication the professor said it was quite clear that the claimant had PTSD when giving evidence. She was reasonably composed when dealing with non-assault questions, but almost invariably weeping when the assault was mentioned. The professor interpreted this as undue, pathological and abnormal sensitivity to any reminder of the assault. Harrowing though giving the evidence was, the effect would be transitory, because a sharp reminder had been removed. It was there all the time, but was highlighted by stresses. Because of her warped perception she could not assess what Sainsbury's were doing.

22 If the assault were grossly exaggerated by the claimant, the professor said that he would have difficulty. He would be mystified because he would not be able to understand the notes of how she presented to the G.P. He would be mystified as to how to restructure his views, reconceptualise the situation. He thought a delusionary experience on the part of the claimant was most unlikely. In 1987, a perceived delusion had been alleged, Doctor Pfeffer had looked into it and thought there was no question of it, there was no indication of any tendency to psychotic experience. There were situations that might meet the present circumstances. Sometimes after horrific road accidents, there was both pre and post amnesia. Such individuals could develop PTSD. They get descriptions from other people, which generate weights in their mind, even thought they may be slightly in error. They find these images convincing because they have had a very bad experience, with agitation and concern, which feeds into the accounts they receive. He didn't think this likely on that night. He didn't think it would be reasonable. It was extremely improbable. He questioned whether the claimant had delusional tendencies in the past. Doctor Pfeffer, a highly respected consultant psychiatrist had said not at all and thought it might have been others' interpretation of her excitable behaviour at that time that produced a false explanation that there was a paranoid disorder.

23 The professor thought that the problems at Bancroft school did not sound like a big deal. There was a contrast between her and her employer's perception as to how badly she was treated. Once PTSD was established, the claimant found straightforward matters quite stressful, containing elements of hazard and threat. She was more vigilant and more watchful. This may give her a different perception of what is happening around her. He would not put it in the category of delusional nor would he say that it was relevant pre-assault. There was no symptom then that the claimant suffered from PTSD.

24 He would not say there was a strong argument that the claimant failed to satisfy diagnostic criteria for PTSD, but he did accept there was an argument. There was not actual or threatened death, but she would satisfy the criteria, bearing in mind the greater susceptibility of women, as the assault involved a

possibility of serious injury, or a threat to physical integrity. He interpreted the criteria as "actual or threatened serious injury". After discussion of injuries suffered by the claimant in a road accident in 1992, the professor said that in her mind in March 2000, having regard to her experiences in 1992, she might have feared that she would suffer serious injury, but this was speculation. In normal conversation, one wouldn't say these injuries were actually serious, so the professor focused more on "threatened"- which looked at the perception of the subject. As to whether the criteria were fulfilled, it was a matter of clinical judgment.

25 The additional stresses after March 2000 made the claimant's symptoms worse, but he did not think they caused those symptoms. They maintained the symptoms for a period, and exacerbated them for a period. As to the suggested two-thirds one third split, he could not see how any of the claimant's PTSD could have been caused by these matters, they would only cause exacerbation. They might increase her depression, anxiety, agoraphobia, and social anxiety disorder. Although Venlafaxine makes the claimant feel better after a period, while her depression is improved her anxiety is increased. She said she felt more housebound than ever, so he took the increased anxiety to be agoraphobia. It could be that this was a side effect, but the other stresses could be part of it. Those stresses were akin to glucose having an effect on a diabetes sufferer. The final confounder was alcohol. The claimant had increased alcohol intake after a reduction, and this would cause an increase-in anxiety and depressive symptoms. Alcohol produces temporary benefits but you pay a long-term price.

26 The professor said that if he had had information about the termination of the criminal proceedings, he would have explored it. The claimant's feeling that the stay of proceedings was avoidable, and had arisen through mishandling, would have highlighted her symptoms for a period. As to civil proceedings, the studies all point to these not making an awful lot of difference. It's common sense that any form of civil contest is going to cause upset, and that once that contest is out of the way things will be better, but empirical evidence did not support this. The reason is that these conditions often have considerable momentum, which gives them independent life.

27 The cross-examination of Professor Weller continued on 23rd November. He agreed that the literature on PTSD was in relation to war veterans, fire fighters, and survivors of disasters or road accidents. No paper dealt with minor physical assaults as a case study leading to PTSD. However we were not in a position where there were studies of this case and a conclusion which did not support the claimant. The position was that researchers turned to convenient sources. If there was a disaster, motivated researchers would use this as a means of access to individuals. These papers were only guides to prognosis and condition and signs such as alcohol. Almost all the literature he had cited was collected from some major event.

28 A paper by Feinstein and Dolan, cited in his report, said there did not seem to be a good correlation between severity of stressor and severity of reaction (both immediate and chronic). The professor turned to other factors to explain this. One was gender: women were twice as commonly adversely affected as men. Age: peak age of onset was somewhere between 30 and 45. Prior history of threat: as to why the claimant had such a profound and prolonged reaction, her early history might be significant. Victimisation by the claimant's siblings may have reinforced feelings of rejection by her mother and failure of protection by her mother. As a member of the police force she would take on a protective role. All this background explained her reaction to these particular events as being so upsetting, distressing and unnerving as to develop PTSD.

29 In the course of a discussion of the definition of "stressor", Professor Weller noted that in the literature it included a fracture of the fibula. This was not in the same league as serious internal injuries. He accepted however, that all cases of injury he had cited included attendance at some form of hospital setting. Attendance of that kind was not present in this case.

30 Although the assault had little physical consequences, in psychiatric terms it was perceived possibly in a more alarmist way, because of the history of injury in the site. The previous injury was probably more serious, but interestingly didn't lead to the psychiatric consequences. The explanation probably lay somewhere else, in the global situation. He had had no expectation of an orthopaedic opinion on the physical symptoms arising from events on 26th March. He had assumed that they did not merit such a report. What was reported to him was behaviour, which was sudden, unexpected immensely distressing and disproportionate to the circumstances, with elements of violence in it. The nature of his opinion

was to a degree dependent on the nature of the assault and its physical consequences as set out in his first report.

31 Professor Weller said that in the article by Davies and Breslau, the reference to multiple stressors was to stressors before the event. Up to the precipitating event, there was a successful compensation for prior stressors: the claimant had been able to cope with pre-loading stressors until the index episode. Much of the research was on Vietnam veterans, fire fighters and body handlers. These were cases involving multiple stressors. As to whether large studies of this kind were not "community studies", Professor Weller replied that on the whole they were counting exercises.

32 The police prosecution, the approach taken by Sainsbury's management, the police disciplinary proceedings, the civil litigation and the Bancroft school redundancy all had an emotional impact on the claimant. Some were separate, others not entirely. He conceived of PTSD not as a gradual increase in loading causing the present symptoms – rather these symptoms were in large measure present shortly after the assault. That was when panic attacks started. Her description of the first panic attack– she believed she was having a heart attack – had the ring of verisimilitude. Panic attacks have now gone beyond the specific focus of reminders of the assault, to a more general potential trigger, from crowds and from normal social contacts. The events discussed increased the severity of the claimant's symptoms, but he did not think they caused the conditions from which she was now suffering. Sometimes they were not even exacerbating her symptoms, having effects e.g. unhappiness, which were not psychiatric conditions. The claimant had been remarkably modest in her description of her symptoms, her score on MMPI was 7, the lowest published score. However the professor accepted that he had overlooked failure to answer question 18, so there should be a score of 8.

33 He had not said that counselling would not make much difference. He believed it probable that counselling would reduce symptoms. He wanted to encourage it, and therefore didn't mention countering factors. There was evidence that cognitive behavioural therapy is often helpful. It was not easy for people with PTSD. One view of PTSD was that the encoding of the experience is neurophysiogically different to the encoding of normal memories, and that the memory is codified and accessed in visual images. This is exactly what the claimant describes. The purpose of cognitive behavioural therapy is to try to recodify the memories into verbal memories, robbing of them of some of their emotional force. This is generally an upsetting experience.

34 As to settlement of the litigation, he did not know if it would be helpful. He disagreed with the view of Miller. Professor Weller's own refutation of Miller's anecdotal views had been awarded a prize by Cambridge University. The answer lay in different models. As a result of the assault, the claimant had fallen over a cliff, on to the lowest level, which he described as illness. Once a person was ill in this way, there was a warped perception of what was going on in terms of hazard and threat. He thought the claimant would remain ill after the litigation. Her agoraphobia and social anxiety disorder might improve, as they might be fuelled by the stress of litigation. As to whether agoraphobia only developed after December 2002, he may have failed to discern it then. Answer 83 might show the seeds of developing agoraphobia. His first understanding of it was in conversation with the claimant on 16th/17th November 2004.

35 In the course of a discussion of vulnerability factors, Professor Weller said that family history was not the only factor. "Egg-shell personality" was a phrase; it was just a question of how thick was the shell. As to why this incident triggered symptoms but not the car accident or police work, it was a puzzle. He had struggled with it, as it was quite clear that she was far from well. He had speculated, it was no more than that, in the sentence at p. A164 reading, "Her early need for a trusting and supportive relationship will have resonated adversely with the circumstances of the alleged assault."

36 Prior to the incident she gave the appearance of being reasonably robust. This was akin to Holocaust survivors, who gave the impression of normality, and then something quite small exposed the underlying weakness or flaw or vulnerability.

37 Professor Weller accepted that the claimant in any event would have suffered from bouts of depression, from other life events irrespective of this incident, causing her to become psychiatrically ill.

38 Mr Opperman put to Professor Weller that his reports should have considered whether the claimant's psychiatric state could have been caused by other matters as well as the alleged assault. He accepted that he had not explored any such difference in modelling. He had thought much of the suggested other causes to be downstream, but did allude in his report to unfolding matters. His thoughts in his report of 17.11.04 possibly did not relate to the list of potential other causes which Mr Opperman had prepared. He had not had them in front of him at the time. He had not conceptualised these matters in the way that Mr Opperman was putting forward.

39 At the close of Mr Opperman's cross-examination Professor Weller explained that the studies he had referred to previously were those which looked at vulnerability and resilience to traumatic event. The more general studies were head counting studies, epidemiology, looking at psychopathology in the general population.

40 Cross-examination of Professor Weller by Mr Ley-Morgan began at 14.50 on 23.11.04. The Professor described the meeting with the claimant and Mr Florry and accepted he was entirely reliant on what he was told. He had to take matters at face value unless there was cause for doubt. As to answer 7 given by the claimant, he found difficulty in trying to conceptualise the time scale over which these improvements had occurred – it boiled down to being gradual. There were discrepancies, she said she remained sensitive, but denied sensitivity in certain regards. She did in some regards contradict herself. He believed PTSD was one of the conditions from which she suffered. There was considerable overlap with symptoms of other psychiatric conditions. As to Friedman's suggestion that PTSD was unique because great importance is placed on an etiological agent, the stressor, Friedman was wrong. That was also true of bereavement, induced psychosis disorder, and other conditions. Historically there had been agitation by the Vietnam veterans for the recognition of their psychiatric condition and the criteria which were then developed went through a series of changes.

41 Mr Ley-Morgan put to Professor Weller that diagnosis of PTSD could not be based simply on the subjective view of the patient. Professor Weller replied that efforts were made to see if there were biological markers which differentiated PTSD from other psychiatric conditions. In that regard there was a constellation of symptoms and there was an overlap. Biological markers included the amount of cortisol circulating in the body. In cases of depression there was an excess of cortisol. In PTSD there was an abnormally low level of cortisol. Physiological features such as the pulse rate were quite different in PTSD by contrast to depression, where every thing was slowed. PTSD produced a high physiological response, which was also shown in galvanic skin response. There was an abnormal startle reaction – this was particularly elevated in PTSD. The identification of stressor criteria was in large measure objective – a common sense appraisal by psychiatrists. He had examined the question of whether the claimant's case met the stressor criterion in his first report.

42 As to "serious injury" within DSM-IV, at the margins this was a question of some difficulty.

43 He had said that the claimant had mild PTSD, perhaps moderate. It was a chronic condition, i.e. persistent. He had proceeded on the basis of his clinical experience and reading. Professor Weller did not use criteria set out in ICD10 (WHO) because DSM IV was better researched. There might well be a substantial body of psychiatrists who would take a different view as to whether the claimant had PTSD. He probably did not make clear in his report that the stressor was threat of injury rather than actual serious injury.

44 Professor Weller accepted that it was important to get as much detail as possible about the stressor event. However, in conversation with the claimant, he had not wanted to go into the detail of the assault too vigorously for fear of upsetting the claimant even more than was already the case – he had to tread carefully. It was inferential that she thought she was going to suffer serious injury.

45 Mr Ley-Morgan suggested that the Professor had not explored at interview whether the claimant had experienced intense fear, helplessness or horror. Professor Weller replied that he believed she felt helpless, although he did not think he had explored this. It would have helped him to have had statements from witnesses, but he did not have such statements. He agreed that it was common sense that an argument in a car park after an office party was not remotely in the league of disasters such as Piper Alpha. He also accepted that the scuffle in the car park did not result in any serious injury. The

claimant had certainly said to him that she was seeking an apology. He probably took into account that the claimant put herself in the situation by seeking an apology.

46 The professor said that the boundaries of the stressor have now been broadened. There were people with lesser trauma and the same range of symptoms. The professor asked rhetorically, "How do you classify them if you don't call them PTSD?" He agreed the literature did not support that view. For a reason, which he did not understand, the claimant found the first incident [the stairwell bump] very upsetting and went off to seek redress. He did not know why the claimant had an abnormal emotional response. There were clues which he had rehearsed. He did not think it was because her head had been banged against the wall, or because she was poked in the chest. She was in that state because of a brief episode when she felt helpless in the hands of authority – going down to the floor, trying to get up. The claimant being angry did not affect his diagnosis overall. It rested on her being in a helpless condition. If aspects of the claimant's account were not accepted (e.g. the arm lock) so the period and severity of helplessness would be reduced.

47 Professor Weller said that he did not know whether other psychiatrists would disagree with his view. He was a second opinion doctor, fairly middle-of-the-road.

48 In re-examination Professor Weller said that the prognosis was worse where there were more than one condition. There could be more reliance on anti-depressants if depression were stand-alone. Features of PTSD such as difficulty in relating to other people, and in planning for the future, were found also with depression, as was disturbance of sleep. Thus you might find more depression in people with PTSD. Where a patient was suffering from PTSD alone, one would rely more on cognitive behavioural therapy. In the present case both cognitive behavioural therapy and anti-depressants were called for. He was not sure whether Venlofaxine was the best anti-depressant. There was also a need to address the alcohol problem.

49 In December 2002 he had thought the claimant would improve. Now, unfortunately, it looked to him that the claimant was in the poorer third of the relevant population. She was likely to have continuing symptoms, though possibly not full blown symptoms of these disorders. She could improve considerably with energetic and appropriate treatment. In December 2002 cognitive behavioural therapy was theoretically available on the Nation Health Service, in practice GPs would refer patients to an in house counsellor. In the private sector, psychologists had to charge VAT. The figures he had given in his reports were common figures for private therapy. It was very hard to achieve cognitive behaviour therapy for patients through their GPs.

50 In his report of 21st June 2004 he had said that the claimant was likely to suffer from bouts of depression following major life events. An example might be the death of the claimant's mother. She was more likely than the rest of us to have an episode of depression following such events. The duration might be 3 to 5 months.

Hutchinson v Commissioner of Police for the Metropolis

Annex 3 to Judgment of Walker J dated 27.7.05:

HYPOTHETICAL SCOTT SCHEDULE IN RELATION TO DAMAGES

Items of Past Loss

A. Miscellaneous

1. Cream and painkillers: - C seeks £12.20 (p2 schedule)

DEFENDANTS' SUBMISSIONS AS TO ENTITLEMENT:£0

• No receipts

• Not supported by witness evidence — not in witness statement; no application to adduce further evidence

• Amount allowed £0

CLAIMANT'S RESPONSE:

• No receipts were retained given that the Claimant only instructed solicitors on or about 28.3.01 in respect of the instant proceedings. Receipts would not have been relevant in the criminal or disciplinary proceedings.

• By paragraph 41 of the Claimant's witness statement she expressly incorporates the facts and matters set out in, among other things, the Schedules prepared on her behalf. This item appeared in her original Schedule of Loss and Damage at A32.

• If the Court accepts the Claimant's evidence in respect of the index event, then it can be reasonably assumed that the claimant would have required painkillers and cream to treat her physical injuries.

• Even when the Claimant had the opportunity to exaggerate her symptoms the simulation test carried out by Professor Weller showed that she did not simulate or exaggerate. Indeed she tended to under report her symptoms. In the circumstances it is unlikely that the Claimant has exaggerated the amount of this item.

• The Defendants' response is disproportionate to the amount involved.

.hedge's hypothetical conclusion: on the hypothetical basis adopted for present purposes, it must follow that this claim is sound. Amount allowed £12.20

2. Anti-depressants: - C seeks £151.20 (p2 schedule)

DEFENDANTS' SUBMISSIONS AS TO ENTITLEMENT: £0

(i) A clear example of the claimant overstating her case for commercial gain in the original schedule. She has had 3 years of medication and, in reality, had only 1 prescription of valium / Librium in the first 13 months post incident; she now seeks to accept the overstatement as per her evidence to the court

(ii) Reality is 1 valium / librium prescription in 2000, and 2 short courses of anti-depressants in 2001 and 2003. Not accepted that such anti-depressant prescription was by reason of the assault — there were other factors/triggers — see the other submissions already made on causation of psychiatric symptoms.

• Amount allowed £0

• If prescription proved to be caused by the assault then claim is for £6.10 in 2000, £6.10 in 2001 x 7 and £6.30 x 7 in 2003 = £92.90 See GP Notes – at A51,52,61,63,65 in the bundle

CLAIMANT'S RESPONSE:

(i) Receipts may be found on C22 and C65.

(ii) Professor Weller has created doubt about the accuracy of the

GP's notes in that they are unlikely to contain a record of all the prescriptions obtained by the Claimant. Many prescriptions may have been left unrecorded.

(iii) In his first report, Professor Weller reassured the

Claimant about the addictive properties of the anti-depressant medication. It was the fear of addiction that stopped the Claimant taking her medication prior to Professor Weller's examination.

(iv) The Claimant is clear that she has been taking her anti-depressant medication regularly since Professor Weller examined her in 2002 ie for a period of 2 years. Due to the effluxion of time and uncertainty about the accuracy of the GP's notes, she also claims for the 7 months prior to Professor Weller's examination.

(v) Rather than exaggerate her claim she is reducing it. The claim is based on the GP's notes, Professor Weller's report and the Claimant's evidence as set out in the Schedules..

(vi) A finding has been made that the Claimant's condition deteriorated after the index event and that she continues to find reminders of the party traumatic.

(vii) According to Professor Weller's evidence there was only one cause of the Claimant's psychological conditions, namely the assault. See the Claimant's primary submissions on causation.

(viii) In the light of Professor Weller's findings on the simulation test and if the Claimant's version of the index event is accepted then the Claimant's claim under this head should succeed.

Judge's hypothetical conclusion: on the hypothetical basis adopted for present purposes, it must follow that this claim is sound. Amount allowed £151.20

3. Alcohol/cigarettes: - C seeks £11,667.60 (p2-3 schedule)

DEFENDANTS' SUBMISSIONS AS TO ENTITLEMENT:£0

(i) Not an item evidenced by receipts, save for 1 at C36 and 2 at C21.

(ii) No legal basis of claim – claimant accepted she had a choice and no expert evidence in support; the law on this matter is such that there are no precedents that this counsel is aware of to support a claim such as this that is being put forward. The only case that does touch on it is the recent decision in the High Court and the Court of Appeal in *Eagle v Chambers*; transcripts of both of these judgments are included in the supplementary bundle of authorities.

Law – *Eagle v Chambers* in High Court [2003] EWHC 3135 and Court of Appeal [2004] EWCA Civ 1033

• –see in particular the comments of Mr Justice Cooke at first instance – paras 79 and 89 and the Waller LJ in the Court of Appeal at para 74. The High Court only allowed a claim for crushed cigarettes by reason of the disability. It should be stressed that the injuries to the Claimant in *Eagle v Chambers* were truly terrible and there was genuine argument on behalf of the Claimant in Eagle that there was no choice but to smoke. The crucial passage that the Court in this case is referred to is the judgment of Lord Justice Waller at paragraph 74 in the Court of Appeal: "*Only if the medical evidence were to convince the court that the accident had caused such injury to the brain that the victim had no real choice but to increase her consumption of cigarettes, could the extra consumption be a head of damage*."

• This is clearly not such a case; there is no such medical evidence. In her last answer in cross examination by the D1 counsel the Claimant accepted in any event that she had a choice whether she smoked or not

• Amount allowed £0

CLAIMANT'S RESPONSE:

(i) Receipts are set out on pages C21,C23-C64.

(ii) Prior to the index event the Claimant drank very rarely. Since the assault she has had a very compelling need for both alcohol and extra cigarettes to cope with her PTSD symptoms. Professor Weller in his report at A21 states that an increase in alcohol consumption and smoking is common in PTSD. It is strongly associated with chronicity. It seems clear from his report that the Claimant has no palpable choice in the matter. It is a compelling need tied up with an adverse genetic component. Indeed, Professor Weller also remarks at A22 that her symptoms are chronic which is an unfavourable prognostic feature as was the early emergence of alcohol consumption. In the circumstances and in the interest of justice the Claimant is entitled to recover for the chemical and other compelling factors that give rise to an overwhelming physical need for those substances, as a way of seeking relief

(iii) The Court of Appeal in *Eagle v Chambers* was concerned with a brain damage case thus their attention was focused on that aspect of the case to determine the strength of the Claimant's compulsion to smoke. It is submitted that similar considerations apply in the instant case ie whether the compelling agents causing excess alcohol and cigarette consumption effectively remove any element of choice in the victim.

(iv) The Claimant has shown in the history of this case that she does not consciously and deliberately exaggerate. See the results of the simulation test, Professor Weller's observations of the Claimant during the trial, his remarks on the Claimant's increased heart beat during the Claimant's opening address and her truthful description of a panic attack. The excess alcohol and cigarette consumption is not a life style choice for the Claimant. It is expensive and unhealthy. She had tried to reduce her drinking prior to being examined by Professor Weller but had relapsed due to a physical and psychological need arising out of the assault.(See A165f.)

(v) It is meaningless to rely on any alleged concession by the Claimant that she had a choice whether she smoked. It was as meaningless as asking her what the causes were of her psychological conditions. The answers are subject to medico-scientific considerations which only experts such as Professor Weller can deal with. Professor Weller's first report and further report dated 17.11.04 (A165a and A165c) strongly indicates that the excess alcohol and cigarette consumption is not related to lifestyle choices but is associated with PTSD.

(vi) It is submitted that the medical reports and the lay evidence of Mr. Flory and the Claimant show that the extra consumption was not a matter of lifestyle choice.

(vii) The claim under this head is well within the ambit of the principle in the *Eagle* case.

(viii) If the Claimant's evidence is accepted in respect of the assault then her claim should succeed under this head.

Judge's hypothetical conclusion: on the hypothetical basis adopted for present purposes, in conjunction with the evidence of Mr Flory and Professor Weller, I would have concluded that this claim was sound. Amount allowed £11, 667.60

4. Travel: C seeks £6 (p3 schedule)

DEFENDANTS' SUBMISSIONS AS TO ENTITLEMENT:£0

Now only sought in the sum of £6 but still unrecoverable in law; travel to a medical expert (not a treating surgeon) is an item of costs not an item of recoverable expense in a Schedule — as it is an expense of the litigation which we accept can be recovered as costs but not as part of the schedule.

• Amount allowed £0

CLAIMANT'S RESPONSE:

The Claimant takes no point on the Defendants' objection.

Judge's hypothetical conclusion: on the hypothetical basis adopted for present purposes, this claim would be dealt with by the court under the head of costs rather than as damages. Amount allowed £nil.

5. Clothing: C seeks £35 (p3-4 schedule)

DEFENDANTS' SUBMISSIONS AS TO ENTITLEMENT:£0

• If there is no assault such an item is unrecoverable in law

• Additionally, there is no evidence in support in witness statement, or receipts; no application to adduce further evidence; the first time the matters set out in the revised schedule were put forward was by counsel for the trial — this is not the subject of evidence. Also the video does not even show damage to the top. Finally the damage was self inflicted if it did occur; needless to say there is also the argument as to betterment

• Amount allowed £0

CLAIMANT'S RESPONSE:

In view of the Claimant's need to avoid any reminders of the incident she cannot bring herself to wear those clothes again. If the Claimant's evidence is believed in relation to the index event and the effect on her of her psychological injuries, the Claimant should be entitled to succeed under this head

Judge's hypothetical conclusion: on the hypothetical basis adopted for present purposes, it must follow that this claim is sound, and as the claim is for second-hand value I make no allowance for betterment. Amount allowed £35

B. Past Lost Earnings: C seeks £14,694.63 (p4-5 schedule)

DEFENDANTS' SUBMISSIONS AS TO ENTITLEMENT:£0

Preliminary submissions

- overstated and not borne out by receipts/pay slips/tax records

- This is an example of the Claimant deliberately overstating her case for commercial gain

- The claim is also too vague and unclear – the Claimant self evidently has no idea when she was working and what she earnt in the period November 2000-March 2001

1. Claimant now accepts that she worked and was paid between July – November 2000.

• Amount sought/allowed £0

2. Lost Earnings after November 2000: Claimant left Sainsbury's employ of her own volition and twice refused alternative employment at another store – as accepted in cross examination; this refusal is a failure to mitigate loss and any lost earnings are as a result of the Claimant's free choice for which the defendant is not responsible – particularly as at the time the leaving of the employment was approximately 7-8 months post accident and the Claimant was not being prescribed prescription drugs; there is no evidence of any effort the Claimant made to find alternative work. Also, the Claimant was not signed off sick or on anti depressants for all the period she spent off work. Claim is also too vague and unsubstantiated – the Waltham Forest job is not factored in / proved. Also there is no evidence of attempts to find alternative work. The Claimant has an obligation to mitigate her loss which she has failed to do

3. Lost Earnings after April 2001:

i). Claimant was initially working 2 hours a day for 35 weeks a year and then upped it. There is a failure to mitigate loss. Despite requests (see D2 Part 18 request and replies at A38) her tax records have not been provided to substantiate her loss. Her lost earnings documentation, in the form of payslips, as provided, is woeful, unreliable and patently incomplete. This is a case in which she has had private solicitors for around 4 years and has contemplated civil action for all that time. Her evidence is simply not supported by independent documentary evidence usually provided (and asked for) in such cases. She must bear the consequences of that decision.

ii). There is no legitimate reason why she did not work holidays or take additional part time work to supplement her income – this is a

lifestyle choice. If the shoulder is cited as the reason for such a failure then the claim again fails as the shoulder injury – if it exists – is not proven to derive from the accident.

iii). She has also failed to take the expert advice of Professor Weller and have the treatment and counselling which would have made her better – again this is a failure to mitigate her loss for which the second defendant is not to blame

iv). Causation of any loss of earnings: If the court is against D2 on this point and finds an entitlement to loss of earnings, the court is also specifically asked to address the issue as to what caused the loss of earnings: this is subtly different to the issue of attribution of psychiatric symptoms. The Court would have to make a finding that the specific cause of the Claimants inability to work more hours / loss of work was the alleged incident involving the D2.

In support of this argument and against the Claimant the D2 asserts and puts forward the following:

- Sainsburys: she left this job by reason of their attitude (even though they offered her 2 alternative places and Mr Meechan had moved well before November 2000) – see the comments in Professor Weller's report as to Sainsburys at A10 &12

- The police investigation / failed prosecution: aside from the 3 Witness statements given by the Claimant (CI16-123) – taken between the 15/5/00 – 30/11/00, the case itself lasted 1 and years. She was clearly treated very badly by the investigating police in a way that affected her terribly. This passage of time coincides with the first period claimed in respect of past loss, and continues.

- The effects of the police disciplinary proceedings and their failure at the door of the tribunal in October 2003, just as the C was about to give evidence

- The dismissal and wranglings / treatment by Bancroft school – see the May 2004 documentation

- The effects of 4 years of civil litigation – part of which appears to have been privately paid; it should be noted that since the departure from Bancrofts for example there have multiple applications and orders in the build up to the trial itself

• Amount allowed £0

4. and 5. As above at 3: Please see the causation arguments set out at length above; figures claimed are wrong as well and not borne out by Bancroft documents. She chose to leave Bancrofts. The schedule is also wrong as she left Bancrofts in July – see the disclosed documentation

• Amount allowed £0

CLAIMANT'S RESPONSE:

July – November 2000:

• The Claimant has accepted that she made a mistake about claiming for this particular period.

She only became aware of the mistake when the matter was put to her in cross examination by the Second Defendant whereupon she immediately accepted it was a mistake. She was confused by the amount of time she actually worked during that period and the amount if any that she was paid. She accepted that the mistake was due to a certain amount of carelessness on her part. At no time has she deliberately sought to overstate or exaggerate her claim. In the Amended Schedule of Loss she does not claim in respect of the above period.

Lost Earnings after November 2000

• The Claimant reasonably refused to accept alternative employment in another Sainsbury's store because, as she explained in cross examination, she knew that staff from the other stores were aware of what had happened on the date in question and that would continue to remind her of the index event with all the discomfort that that entailed. Furthermore she had suffered from panic attacks at Sainsbury's. It was a perfectly reasonable step for her to take and does not indicate a failure to mitigate her loss. The Court has accepted that her symptoms are and were genuine and result from any reminder of the party. The Waltham Forest job totalled a maximum of about £412.50 (£82.50 per week x 5 weeks). The loss it produced was about £164.65. See para. 36 of the Claimant's witness statement. The Claimant has stated in evidence that she was physically and psychologically unable to work or work for longer hours or for greater remuneration. If the Court accepts her version of events then she should succeed under this head of damage. Her evidence is supported by Professor Weller's reports and oral evidence.

• The Claimant did attempt counselling with her friend Miss Lewis but they were not beneficial. She also attempted to obtain the same through her GP without success. She had no personal income to obtain the same on a private basis.

• As to causation of loss, the court is respectfully referred to the Claimant's previous submissions on the issue. The material cause of the Claimant's physical and psychological restrictions on the work front was due to the assault. Please see Professor Weller's reports on these points. Professor Weller refers only to the other matters relied on by the Second Defendant as perhaps exacerbating her condition but not causing them. The Second Defendant has not proved when the exacerbating factors took place, in what form they affected the Claimant in excess of her symptoms at that time, and, in each case,

how long the alleged effects lasted. In the absence of such evidence, the effects if any of the alleged exacerbating factors cannot be assessed.

• The Claimant's decision to leave Bancroft School was based on her physical and psychological conditions caused by the assault. The job she was offered was merely temporarily involved heavy lifting with no support from other members of the team. The confusion manifest in the correspondence to and from the Bursar of the School was caused by a tacit acceptance by the Claimant that she could not do the job together with a feeling of frustration that she was not regarded as suitable for the job by the head of catering. The Claimant was attempting to seek acceptance by the head of catering as a normal person while deep down she knew the job was beyond her physical and psychological capabilities. When it became apparent that he would not accept her a person fully capable of carrying out the expected tasks, she felt rejected even though the Bursar was prepared to offer her the job. She did not perceive the Bursar as her employer. Rightly or wrongly, it was the head of catering she regarded as her employer.

• The calculation of the Claimant's past loss of earnings are based on payslips provided at the time the original Schedule was prepared. The Amended Schedule was prepared on the basis of the changes arising in the course of the trial. The difference between the figures for past loss of earnings set out in the Amended Schedule and the average of the pay slips of the Bancroft School in the Bundle is about £490 greater than the current past loss of earnings total in the Amended Schedule.

• The payslips in the Bundle, the medical and lay evidence and figures in the Amended Schedule are sufficient to provided the Court with a reasonable overview of the likely loss of earnings suffered by the Claimant.

• The Claimant, despite the difficulties she has experienced with her conditions, has been in employment until July 2004.

Judge's hypothetical conclusion: on the hypothetical basis adopted for present purposes, it must follow that the claims under this head in Miss Hutchinson 's Amended Schedule are sound. Amounts allowed £2,308.60 + £164.65 + £4, 793.76 + £3, 937.50 + £1,181.52 + £2, 308.60 = £14,694. 63

C. Care and assistance: C seeks £1134 (p5-6 schedule)

DEFENDANTS' SUBMISSIONS AS TO ENTITLEMENT: £0

• Again this is overstated.

• Recovery not permissible where care so basic and not above and beyond normal family help — see *Mills v British Rail Engineering* (1982) PIOR 130 the 7th case in the Second Defendant's original 3 Paper Buildings authorities bundle, which is also cited in the extract from Facts and Figures (found in the updated bundle of authorities and precedents — number 8)

• Dillon LJ stated at the top of the 2nd last page of the transcript of the judgment:

"In principle, it must be, in my judgment, a matter for an award only in recompense for care by the relative well beyond the ordinary call of duty for the special needs of the sufferer"

• The harsh truth of the evidence in the case is that this incident and injuries did not justify such care, and the witness Mr Flory accepted in broad terms the proposition that the symptoms suffered were no different in practice, and practical effect, than a situation where the Claimant had got flu and was confined to bed. The evidence does not justify any award of care on the facts and the law.

• No evidence Mr. Flory took 35 days off post accident — in fact in the morning of day 5 Mr. Flory admitted that he had only taken 5 days off in the first 6 weeks.

• We are told in court and in the revised schedule, that this claim is now reduced to a 4-5 hour claim and is intended to include not only the time Mr. Flory took off in the first six weeks but also odd hours of work he has lost when the Claimant has called him away from work to help her. There is no documentary evidence in support of this claim at all. At its high point this is a 4.5 hour claim for 35 days x £4.50 an hour = £708.75

• The rate claimed by the Claimant is also too high — see Facts and Figures page photocopies at pages 223-224 — authority marked number 8 in the revised bundle of authorities submitted with these submissions; it should be discounted from the daytime carer rate by 25% - authority is *Housecroft v Burnett* (1986) 1 AER 332, and more recently *Lamey v Wirral Health Authority*, 22/9/93 Morland J, as set out in the Facts and Figures extracts at sub paragraph 19 (c).

• Thereafter there has to be discounting for tax, NI etc; we submit that the appropriate rate is £4.50

CLAIMANT'S RESPONSE:

• The 6 week period referred to is an aggregate period. Dealing with the children and household

chores in the manner outlined in the Amended Schedule represents work well beyond Mr.Flory's usual duties, if the Claimant was merely suffering from flu.

• By reference to Mr.Flory's P60 (C66), he earns about £386p/w. The amount charged under this head is only £I89p/w. Thus Mr. Flory is making a loss. Accordingly, since Mr. Flory, as the Claimant's partner and father of her children, is prepared to assist her at all hours of the day, night or week it is reasonable that the weekly amount charged under this head should not be reduced or discounted any further.

Judge's hypothetical conclusion: on the hypothetical basis adopted for present purposes, and for the reasons given in the two bullet points in the claimant's response, this claim is sound. Amount allowed £1,134

Items of Future Loss

A. Miscellaneous:

NB Multipliers:

-the multiplier claimed is the correct one for a 2.5% woman of 44 years

-separate submissions are made as to the entitlement to future loss and a multiplier for the future

-the court is reminded of it's power to award a reduced multiplier but we remain of the firm view that there is no future loss claim and that therefore multipliers do not apply.

Judge's hypothetical conclusion: on the hypothetical basis adopted for present purposes, I would have accepted the claimant 's submissions on multipliers and would not have considered this an appropriate case for reduction of the multiplier.

1. Anti depressants: C seeks £1878.66 (p6 schedule)

DEFENDANTS' SUBMISSIONS AS TO ENTITLEMENT: £0

• Denied in full. The claim is for life and is grossly overstated.

• If there was no assault and no PTSD that follows then clearly no entitlement follows in law

• There is no evidence that such a claim would be required

• Claimant's need for such items is disputed on grounds of causation, failure to mitigate loss at earlier opportunity, and basic lack of evidence in support.

• As a fallback position the high point of the Claimants case is the need for a concentrated course of treatment in the short term which is worth a maximum of £75.60

CLAIMANT'S RESPONSE:

• Professor Weller, at A22 advised that the Claimant should go back on Venlaxafine and the prescription of that drug should be under the auspices of a psychiatrist. In para.29 of the Claimant's witness statement she alleges that it helps her to get through her daily routine. Professor Weller has not stated that she should cease using antidepressants.

• The Claimant repeats and adopts her arguments on causation as set out in the body of this document, the overwhelming medical evidence in support of her condition and the effect of her conditions on her domestic and working life.

• The Defendants' attempt to offer a short-term course of treatment worth £75.60 is contrary to Professor Weller's evidence.

Judge 's hypothetical conclusion: on the hypothetical basis adopted for present purposes, it must follow that this claim is sound. Amount allowed £1,878.66

2. Smoking: C seeks £39,482.67 (p7 schedule)

DEFENDANTS' SUBMISSIONS AS TO ENTITLEMENT: £0

• denied in full — no evidence in support; the authority is *Eagle v Chambers* in High Court [2003] EWHC 3135 and Court of Appeal [2004] EWCA Civ 1033, particularly the passage at paragraph 74 of the Court of Appeal judgment per Lord Justice Waller.

3. Drinking: C seeks £32,872.50 (p7 schedule)

DEFENDANTS' SUBMISSIONS AS TO ENTITLEMENT: £0

NB This item should not even feature in the schedule as it has never previously been pleaded in the original schedule- see pages A32 and 34

However, in the unlikely event that this item is considered the law in relation to drinking is analogous to smoking and the case of *Eagle v Chambers* applies

CLAIMANT'S RESPONSE:

• The Claimant repeats and adopts her arguments under Past Loss in respect of both cigarettes and drinking.

• The principles in the case of *Eagle* are appropriate in the context of cigarettes and alcohol.

• The matters relating to cigarettes and alcohol appear in the Claimant's witness statement and are evidenced by the receipts contained in the trial bundle. Some of the receipts were referred to in the course of the Defendants' cross-examination of the Claimant.

• The Claimant's witness statement expressly incorporates all Schedules prepared on her behalf.

• The Defendants were not taken by surprise.

Judge's hypothetical conclusion: on the hypothetical basis adopted for present purposes, and in the light of my determinations in relation to past expenses for smoking and drinking, I would have concluded that claims2 and 3 under this head were sound. Amounts allowed £39,482. 67 and £32,872.50

4. Counselling: C seeks £3350 (p7 schedule)

DEFENDANTS' SUBMISSIONS AS TO ENTITLEMENT: £0

Overstated, not pursued and not the subject of a genuine quote. The figures given are astronomical - £140 per counselling session, when the usual rate is around £30-40. Not entitled to at this stage, particularly given the Claimant's comments as to her failure to find it of any use. The Claimant has failed to avail herself of this previously.

CLAIMANT'S RESPONSE:

This method of treatment and estimate of cost were contained in Professor Weller's report. He has not sought to exclude them. In any event, the Defendants have not adduced any evidence in support of their alternative estimate. The Claimant's comments are restricted to her experience of counselling with her friend, Miss Lewis. Professor Weller, at A22 had in mind an experienced Chartered Clinical Psychologist and Psychiatrist in private practice.

Judge's hypothetical conclusion: on the hypothetical basis adopted for present purposes, I would have accepted that the comments in question related only to informal counselling from a friend, and in the light of Professor Weller's evidence I would have concluded that this claim for professional counselling was sound. Amount allowed £3,350

5. Future Lost Earnings: C seeks £80,754 (p8 schedule)

DEFENDANTS' SUBMISSIONS AS TO ENTITLEMENT: £0

i). Denied in full; the claim is overstated and unsupported by evidence.

ii). The Claimant seeks to argue she would never work again when it is palpably clear on her own evidence that she is able to hold down a job. If the claimant worked 5 hours a day she would easily make her Sainsbury money. She could work as a cleaner or on a checkout.

iii). Any ongoing shoulder injury is not proven to be accident related, and not sufficient to stop her working or earning. She has failed to mitigate her loss; any ongoing psychiatric problems she faces are not incident related and such to keep her from working.

iv). Finally, she chose to stop working at Bancrofts, refused alternative employment, has not retrained and has made minimal efforts to find a new job.

We argue that there is no way a court can take a claim for lost earnings for life — or any future period - seriously when the Claimant held down a 35 week a year job at 22 hours a week (and chose not to work holidays) for many years prior to July 2004, refused alternative employment and has failed to mitigate her loss.

v). In the alternative, if the court is minded to award a future loss claim such a claim is a maximum of a year on the basis that the claimant needs a little time to get back to full earning potential; the Claimant has a residual earning capacity; further, and in the alternative, if she had a future loss claim for the future it is on a reduced multiplicand basis and a reduced future multiplier

CLAIMANT'S RESPONSE:

(i) The clear thrust of Professor Weller's evidence is that the Claimant is unlikely to recover from PTSD. She is in a chronic state. The prognosis is poor in all the conditions he has outlined. It is implicit in his evidence that the Claimant is likely to be in the group of somewhat more than one third of persons whose conditions failed to remit even after many years with or without treatment. It follows that, aside from her physical inability to do any cleaning job or anything requiring heavy lifting, the Claimant will still be subject to the same restrictions in the number of hours she can work, the amount of remuneration she can earn and the number of times she feels psychologically able to attend work. She mentioned in evidence that she only kept her job at the Bancroft School because there were other staff members who could assist or cover for her. Her employment options are and were curtailed because she would need to retrain because of her shoulder injury. Nevertheless she is still vulnerable to the vagaries of her psychological conditions even if she is retrained. Realistically she is unlikely to get another job. She was fortunate that she found the Bancroft School job. However, any slight change in the routine or the non-availability of staff assistance, she would be vulnerable to dismissal.

(ii) The shoulder injury is directly attributable to the index event. The full impact of being pushed out of the way by the Second Defendant was taken on the back of her head. It was not her shoulder. It was not a blow that was likely to cause such long term symptoms. The shoulder symptoms are more consistent with a wrenching injury of the type caused by the arm lock during the index event.

(iii) The Defendants seek to ignore the evidence, both professional and lay and do not attempt to make any effort to provide realistic alternatives to the Claimant's claim. The Claimant should not have to rely on a game of chance to determine what would be adequate compensation. The Defendants have not effectively challenged Professor Weller's diagnosis and very guarded prognosis in respect of all her conditions. Accordingly the Claimant should be entitled to the full sum claimed under this head.

Judge's hypothetical conclusion: on the hypothetical basis adopted for present purposes, and in the light of Professor Weller 's evidence, I would have concluded that this claim was sound. Amount allowed £80, 754

5. General Damages: C seeks between £20,000 - £62,000 (p8-9 schedule)

DEFENDANTS' SUBMISSIONS AS TO ENTITLEMENT: £0

i). D2 argues that there is no assault therefore no general damages follow;

ii) However, if there had been an assault and the Claimant had suffered injury then the likely award would be £500 for physical injuries — see separate submissions already made. The D2 stands by and repeats these. No claim for PTSD has ever been made out.

CLAIMANT'S RESPONSE:

(i) The Claimant accepts that the award for her physical injuries, with the exception of the shoulder injury, is likely to be about £500. In relation to the balance of the physical and psychological injuries please refer to the Claimant's Closing Submissions in paragraphs 37-57 as supplemented by the Skeleton Argument prepared on her behalf.

(ii) If the Claimant's version of events, in relation to the assault, is accepted, then the claim for PTSD would be made out.

Judge's hypothetical conclusion: on the hypothetical basis adopted for present purposes, I would have awarded £50 for the poking prior to Miss Morgan identifying herself as a police officer, £450 for remaining physical injury other than that to the shoulder, and £7, 000 for the shoulder. On the same hypothetical basis, and in the light of Professor Weller 's evidence, I would have grouped the PTSD, depression and other psychological injuries together and awarded a global figure of £35, 000. Total amount allowed for pain, suffering and loss of amenity £42,500

6. Loss of earning capacity: C seeks £13,851.60

DEFENDANTS' SUBMISSIONS AS TO ENTITLEMENT: £0

denied in full; there is none. The evidence simply does not support such a claim. In any event such a claim is duplicitous and in the alternative to future lost earnings which have already been dealt with

CLAIMANT'S RESPONSE:

The evidence clearly highlights the difficulties experienced by the Claimant in attending to her duties on a regular basis and is not rebutted by any evidence adduced by or on behalf of the Defendants. As a matter of fact and law such a claim is not duplicitous. See *Frost v Palmer* 119931 PIQR Q14 @ Q22. A claimant would be entitled to both awards because they are designed to cover different aspects of the claimant's loss. For instance, if the claimant returns to work after an accident and receives less by way of earnings than he did previously, he will be entitled to claim the difference in earnings as damages because the same is readily identifiable. However, if there is also a risk of absences from work or unemployment in the future as a result of his injuries and he is therefore a handicap on the labour market, he should be entitled to a *Smith v Manchester* award.

It is submitted that if the Court decides to award a sum based on a reduced multiplicand or on a multiplier that is less than the Claimant's working life of 60-65 years, then an award under both heads would be reasonable.

Judge's hypothetical conclusion: even on the hypothetical basis adopted for present purposes, this head of claim would duplicate the award for future loss of earnings. Amount allowed £nil.

7. Interest:

DEFENDANTS' SUBMISSIONS AS TO ENTITLEMENT: £0

Interest: in the circumstances — given that these submissions are predicated on the basis of a loss of the trial by the Claimant then no judgment is required in relation to matters of interest;

CLAIMANT'S RESPONSE:

In the absence of any judgment on damages, the actual calculation of interest is academic.

Judge 's hypothetical conclusion: this point does not arise.

Final points:

1. The Second Defendant stands by the separate submissions already submitted by hard copy dated the 2/12/04 and disc as to the law, causation, findings and general damages.

2. The First Defendant stands by his submissions on generals contained in his Counter Schedule dated 2"d December 2004 submitted in hard copy.

3. As to the specifics of the Claimants schedule throughout this claim there has been:

• A failure to provide receipts / evidence in support of items sought;

• Overstatement of the claim — given that this was a schedule created on direct instructions then it can only be for commercial gain;

• A repeated and gross failure to mitigate losses;

• A failure to take up the recommended course of treatment: the Claimant has financed this litigation herself but was not prepared to seek the private treatment recommended by the expert that would have made her better.

CLAIMANT'S RESPONSE:

The summary of the Defendants' arguments, with the exception of the final point, does not warrant a response. I refer the Court to the Claimant's submissions made in this document. In relation to the final bullet point under item 3 above, there is nothing in the evidence to suggest that the Claimant's attendance for private treatment would, without more, have made her better. In the circumstances, the Claimant, not being a person with abundant means, currently unable to earn a living and with joint responsibility for the welfare of her 3 children, could not afford such an outlay.

Judge's hypothetical conclusion: many of the points made by the defendants in this respect are overtaken by the hypothetical factual basis adopted for present purposes; the remaining points, along with the Court's conclusions on hypothetical issues (b) and (c) set out in the main judgment, have been taken into account when arriving at the figures allowed under each head above.